

# SUPREME COURT OF INDIA

Rajiv Dawar

Vs.

High Court of Delhi

CrI.A.No.51/2007

(Kurian Joseph and R.Banumathi,JJ.,)

26.07.2017

## JUDGMENT

### **Kurian Joseph,J.,**

1. The appellant is before this Court aggrieved by the conviction and sentence under section 2(c) read with Section 10 & 15 of Contempt of Courts Act and under Article 215 of the Constitution of India. Under the Contempt of Courts Act a fine of Rs.2,000/- was imposed and under Article 215 of the Constitution of India the appellant was suspended from practice for a period of two months.

2. The main contention of the learned senior counsel appearing for the appellant is that the whole conviction is based on the unilateral version of the complainant before the Additional Sessions Judge, New Delhi. Either before the Additional Sessions Judge at the time of reference to the High Court or at the stage of the proceedings in the High Court, the appellant was not given an opportunity to adduce evidence, or at least cross examine the de facto complainant. We find that the learned amicus before the High Court had also requested the High Court to comply with the procedural formalities giving full opportunity to the appellant to disabuse the allegations against him. In contempt proceedings, the contemnor has to be given an opportunity to establish his innocence. From the proceedings it is seen that the appellant was not granted such an opportunity except the opportunity of filing an affidavit. On the facts of this case, unless the allegations made by the de facto complainant who was an accused in a criminal case under the N.D.P.S. Act, had actually been established or proved in accordance with law, there could not have been a conviction based solely on the allegations. The situation could have been different had at least at the time of reference by the Additional Sessions Judge, the appellant had been given an opportunity to participate in the enquiry and cross examine the complainant. On facts, we do not find that any such exercise had been undertaken even by the Additional Sessions Judge while making a reference to the High Court.

3. It is a case where the de facto complainant made an allegation that the appellant had charged exorbitant fees to the tune of Rs.7.05 Lacs, without any active assistance to the

accused and also withdrawn from the case and, therefore, he prayed for a direction to the Additional Sessions Judge for refund of at least Rs.6 Lacs. However, it was the case of the appellant that for professional services rendered to the de facto complainant appropriate fees had been charged and it was not as if the amount received was for any other purpose as alleged by the complainant.

4. It is seen that the Bar Council of Delhi had also looked into this complaint and in the order dated 30.09.2006, at paragraph 12, it has been held as follows:-

"12. An advocate should not ordinarily withdraw from engagements, once accepted, without sufficient cause and unless reasonable and sufficient notices is given to the client. Upon his withdrawal from a case, he shall refund such part of the fee as has not been earned. It is substantially a matter of withdrawal by Respondent from the case and not one of misconduct involving any misrepresentation, deliberate receipt of money by falsification or false assurances. The complainant is also not seeking any disciplinary action. His prayer is confined to the refund of Rs.6 lacs and we feel that to the extent of Rs.4 lacs, the prayer of the complainant is justified, which would be covered under clause 12 of Bar Council of India Rules. The present matter according to us is, therefore, one of withdrawal from the case and for the deficiency of professional services, the ends of justice would be met, if we order refund of part of payments made to the Respondent. No prejudice will be caused to the complainant. For the reasons stated above, issue No.1 and 2 are decided against the complainant insofar as the misconduct is concerned. In view of the observations and findings, however, the refund of Rs.4.00 lakhs would be justified. There is neither a claim for interest nor would be justified, as such no interest will be payable."

5. The Disciplinary Authority having completely absolved the appellant and in view of the procedural safeguards having not been followed in this case and also having regard to the fact that the appellant has complied with the direction to refund the money, the conviction and sentence imposed on the appellant is set aside.

6. The appeal is, accordingly, allowed.