

CASE COMMENT: HARISH CHANDRA TIWARI VS. BAIJU

Rashmi R. Vhaval***INTRODUCTION**

Law as a profession has been considered one of the virtuous professions by society, and the proviso for any good profession is good ethics. Legal ethics refers to the standards of professional conduct applicable to members of the legal profession within a given jurisdiction.¹ It provides rules on how a person should act towards other people and institutions in a particular environment. So, all people related to the law profession must maintain good ethics.

Chief Justice Marshall has observed:

"The fundamental aim of Legal Ethics is to maintain the honour and dignity of the Law Profession, to secure a spirit of friendly cooperation between the Bench and the Bar in the promotion of highest standards of justice, to establish honourable and fair dealings of the counsel with his client opponent and witnesses; to establish a spirit of brotherhood in the Bar itself; and to secure that lawyers discharge their responsibilities to the community generally."²

Not complying with professional norms or ethics leads to misconduct. Professional misconduct means any unacceptable or improper behaviour, especially done by a professional person. In the legal sense, it refers to an act done wilfully with a wrong intention by the people of the legal profession, which betrays the client's confidence or attempts to practice fraud or deceive the court. Some of the instances of professional misconduct are non-performance of duty, negligence, changing sides, false information and evidence, suggesting to bribe the court officials, contempt of court and improper behaviour in the court premises, misappropriation, giving improper advice, misleading the clients in court, forcing the prosecution witness not to say the truth. Professional misconduct can disqualify an advocate from continuing his legal profession.

Advocates in India are governed by the Advocates Act of 1961. It has conferred the jurisdiction to take action in all cases of misconduct, both professional and other, and has left it to the

*BBA LLB, THIRD YEAR, KARNATAKA STATE LAW UNIVERSITY, HUBBALLI.

¹ Henry Campbell Black, Black's Law Dictionary (10th Edn, 2009)

² C. J. Anand, General Principles of Legal Ethics (Law Book Company, 1965) p. 63

discretion of the Disciplinary Authority. It is the charging party that has the burden of proving the charge of misconduct and be punished accordingly.

In *State of Punjab v. Ram Singh*,³ the Supreme Court held that the term 'misconduct' may involve moral turpitude, it must be improper, wrong, unlawful behaviour, wilful in character, a forbidden act, a transgression of established and definite rule of action or code of conduct, but not mere error of judgement, carelessness or negligence in performance of duty; the act complained of bears forbidden quality or character.

*Harish Chandra Tiwari vs. Baiju*⁴ is one such case where the importance of professional ethics is seen and any kind of misconduct wouldn't be tolerated. Thus, the trust of society in the legal system should always be intact, and anything endangering it should be immediately eliminated.

FACTS OF THE CASE

Harish Chandra Tiwari was an advocate registered under the Bar Council of the State of Uttar Pradesh. He was the council of the respondent Baiju in a land acquisition case where he was a claimant for compensation. The state had deposited Rs.8,118 in the court as compensation amount. The appellant applied for its withdrawal, and as per the orders of the court, he withdrew the amount. Neither did he inform about the withdrawal of money to the client nor the receipt of the amount. Later, when Baiju came to ask for the same, the appellant refused to return it. Thus, the client filed a complaint in the Bar Council of the State for initiating suitable disciplinary actions against the appellant under section 35 of the Advocate's Act, 1961.⁵ The Bar Council of the State assigned this case to the disciplinary committee to have a closer look at the facts. In return, the appellant filed a reply before the Bar Council against the said complaint. However, he accepted the fact that he was the council of the respondent in the land acquisition case and had also withdrawn Rs.8,118 from the court, but he rejected the fact that the amount wasn't returned to the client. He said that he had returned it to Baiju after deducting his fees and expenses.

The appellant filed an affidavit before the Bar Council of the State of Uttar Pradesh saying that a compromise had been made between him and his client and requesting no further action to

³ AIR 1992 SC 2188

⁴ 2002 (2) SCC 67

⁵ Advocates Act 1961, s. 35

be taken against the complaint filed by the respondent, whereas the respondent rejected the statements made in the affidavit and said that there was no any compromise made between them and no amount of settlement was received by him from the appellant-advocate.

The complaint and proceedings were later transferred to the Bar Council of India under section 36B(2) of the Advocate's Act, 1961⁶

LEGAL ISSUES

- Whether Harish Chandra Tiwari had misappropriated the funds received on behalf of Baiju.
- Whether Tiwari had fabricated the affidavit to mislead the disciplinary committee.

OBSERVATION

The Disciplinary Committee concluded that the said affidavit claimed to have been sworn to by the respondent was a forged one and the application attached therewith was fabricated.

The Disciplinary Committee observed:

"Thus, the conduct of the respondent and his evasive reply and his evasive vague deposition duly make out that after taking the cheque from the Land Acquisition Officer in his name, the respondent has failed to make the payment to the complainant who is illiterate, poor person and his money has been misappropriated by the respondent advocate."

The Supreme Court observed that "among the different types of misconduct envisaged for a legal practitioner misappropriation of the client's money must be regarded as one of the gravest. In his professional capacity, the legal practitioner has to collect money from the client towards expenses of the litigation withdraw money from the Court's payable to the client or take money from the client to be deposited in Court. In all such cases when the money of the client reaches his hand, it is a trust. If a public servant misappropriates money, he is liable to be punished under the present Prevention of Corruption Act⁷ with imprisonment which shall not be less than one year. He is certain to be dismissed from service. But if an advocate misappropriates the money of the client, there is no justification for de-escalating the gravity of the

⁶ Advocates Act 1961, s. 9

⁷ Prevention of Corruption Act, s 13(2)

misdeemeanour. Perhaps, the dimension of the gravity of such breach of trust would be mitigated when the misappropriation remained only for a temporary period.”

Similarly, in a case,⁸ the advocate misappropriated the money received as a court fee. He was held guilty of professional misconduct.

The court has observed that various factors should be considered while determining the punishment given to the accused guilty of professional misconduct. One of them is the acute need to cleanse the legal profession of those who are prone to misappropriating client’s money. The only authority which can effectively maintain the probity of the legal profession is the Disciplinary Committee of the Bar Council of the state of India.

DECISION

The advocate for suspended from practice by the Disciplinary Committee for 3 years. The appellant filed an appeal in the Supreme Court where the court held that the findings of the Disciplinary committee that, the advocate had withdrawn the amount and held it with himself for more than 11 years was true and thus he was guilty of professional misconduct and had slandered the reputation of the noble profession and committed breach of trust. The punishment imposed by the disciplinary committee was intensified. The Supreme Court thus punished the appellant by removing his name from the roll of advocates. He was thus debarred from practising in any court or any authority in India.

Under section 38 of the Advocates Act,1961,⁹ the Supreme Court can pass an order varying the punishment awarded by the Disciplinary Committee of the Bar Council of India. The only condition that was varying is that if that variation brings any unjustifiable effect on the appellant, then he should be given a reasonable chance of being heard.

ANALYSIS

In the present case, the Supreme Court highlights the importance of ethics in an advocate’s profession. Here, the misappropriation remained persistent even after the disciplinary proceedings commenced and it continued as the advocate did not care to return even a single penny to the client. The appellant committed grave misconduct when he determined to forge

⁸ L.C. Goyal v. Suresh Joshi, AIR 1999 SC 2222

⁹ Advocates Act 1961, s 38

an affidavit in the name of the client and present it before the Disciplinary Committee so that he could cheat his client, deceive the committee, and make them believe that there was a settlement between them. The court also observed that if the appellant was left without giving any punishment it would be unsafe for the legal profession. Thus, he was punished by removing his name from the role of advocate.

CONCLUSION

An analysis of the case in all its enclosures has brought us to the following learnings and understandings –section 35 of the Advocate’s Act makes it clear that an advocate may be punished not only for professional misconduct but also for other misconduct. Section 36 empowers the Disciplinary Committee of the Bar Council of India to punish an advocate for professional or other misconduct. The Advocate’s Act also provides remedies against the order of punishment such as review,¹⁰ appeal to the Bar Council of India from the State Bar Council,¹¹ appeal to the Supreme Court¹²

The proper message which should reach all the members of the legal profession is that they are all being watched, regarding their professional activities through binoculars by the Bar Council of the State as well as the Bar Council of India and that their Disciplinary Committee would not acquiesce any professional delinquency with flee bite punishment

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¹⁰ Advocates Act 1961, s 44

¹¹ Advocates Act 1961, s 37

¹² Advocates Act 1961, s 38