INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 3 | Issue 5

2021

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Sardul Singh V. Pritham Singh & Others

JUNY VARGHESE[1] AND RESHMI D[2]

ABSTRACT

Advocacy is a noble job, and an advocate plays a crucial role in the system of delivering justice and also holds great reverence and respect in the society. Professional misconduct is the behaviour that goes beyond what the governing body of a profession considers appropriate or worthy of membership. Disgraceful or dishonourable behaviour unbecoming of an advocate is referred to as professional misconduct.In general, the legal profession is not a trade or a business; rather, it is a gracious, dignified, and uncontaminated society vocation. Members in this profession should not encourage deception or corruption, but rather work to ensure that their clients receive justice. The way individuals of the profession conduct themselves determines the profession's credibility and reputation. It's a representation of a positive relationship between the Bar and the Bench. This is a case of professional misconduct, and it demonstrates that an advocate's wrongdoing should not be treated lightly because advocacy is such a noble profession, and it should not be degraded by the professional misconduct and unethical practises. In this case Sardul Singh v. Pritham Singh and Others, the main question was to decide whether was a professional misconduct and to decide whether the working of the respondent during the suspension period was an offence or not and also to determine the quantum of punishment was satisfactory or not?

APPEAL (CIVIL) 1763 OF 1993

Decided on: March 18, 1999

Bench: M. Jagannadha Rao, A P Misra

Appellant: Sardul Singh

Respondent: Pritham Singh & Others

I. FACTS OF THE CASE

- On 29.11.1984 the Bar Council of Delhi held Sri Pritham Singh the first respondent guilty of professional misconduct and suspended him from practice for a period of three years. The first respondent filed an appeal in this court and obtained stay of the said order of the Bar Council of Delhi. The

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appeal preferred by the first respondent before the Bar Council of India was dismissed and thus suspended him from practicing as an advocate for 3 years.

- The appellant filed a complaint before the Delhi Bar Council stating that notwithstanding the order of suspension the first continued to practice in violation of the order of the notification and thereby committed fresh misconduct which was liable to be punished. An order was passed by the Bar Council of Delhi on 02.05.1990 holding the respondent guilty of professional misconduct in as much as he continued to practice during the period of suspension by another name.

- Also, Delhi Bar Council held him guilty for concealment of the material fact at the time of enrollment that he was convicted for a criminal offence under the Narcotics Drugs Act and was sentenced to six months imprisonment and was also noticed that the first respondent had changed his name while practicing during the said period as "P S Madan".

- The Delhi Bar Council when it came to the question of punishment felt that 'admonition' of the first respondent would be sufficient and passed an order of the warning and reprimand and directed that the same be entered in rolls.

- Dissatisfied with quantum of punishment awarded, the appellant filed appeal before the Bar Council of India. The Bar Council of India by its order came to conclusion that the respondent was guilty of suppression of the facts relating to his conviction at the time of enrollment and that he practiced during the suspension period under different name. The Bar Council of India then passed an order suspending him from practicing for three years.

- Instead of filing appeal before the court, the respondent applied for review before Bar Council of India and then impugned order was passed by the Bar Council setting aside earlier order and restoring the order of admonition passed by Delhi Bar Council.

II. ISSUES

- Whether there is professional misconduct?

- Whether the working of the respondent during the period of suspension is an offence or not?

- Whether the quantum of punishment issued by the Bar Council in its review petition was satisfactory?

III. JUDGEMENT

- The Supreme Court held that the order passed in review by the Bar Council of India dt.27.02.1992 be set aside and the order of Bar Council of India dt.04.10.1992 be restored.

- The court directed that a fresh order of prohibition of three years from practice should be issued by the Bar Council of Delhi by way of a notification in the prescribed manner and to publish the same and see that it is served personally on the first respondent.

- The Bar Council of Delhi may fix the date from which it will run covering three years.Also directed the Bar Council of Delhi that the same shall be reported to the Court.

IV. REASONING

- The provisions of section 35 of the Advocates Act deal with professional misconduct of lawyers and advocates in India. As per the provision, if a person is found guilty of professional misconduct it shall refer the case to disciplinary committee. The Committee on hearing both sides of the case dismiss the complaint or where the proceedings were initiated at the instance of the state Bar Council: * Directs the proceedings be filed. * Reprimand the advocate. * Suspend the advocate from practice for such a period as it deems fit. * Remove the name of the advocate from the State roll of advocates.

- If a person found guilty of professional misconduct and on whom, punishment of suspension from practice has been imposed, has to be undergone in letter and spirit. Hence the fact that he has been practicing under different name other than his correct name is more serious offence.

- The manner in which the Bar Council of India in the review order had gone into the question of misconduct as well as the quantum of punishment in opinion, was very casual and unsatisfactory. It had not given enough seriousness to the two items of misconduct proved against the first respondent and particularly in his violating an order of the Bar Council of India and in practicing in a different name throughout the relevant period.

V. SEPARATE OPINION

- The fact that the respondent has been practicing under a different name other than his correct name, makes it all the more serious offence. The same cannot be let off the hook with warning and reprimand as the Bar Council of India had in the review order passed. And hence the judgement by the court directing the Bar Council of India to adhere to the punishment awarded by it to the respondent in its initial order passed is perfectly justified.

VI. ANALYSIS

- Advocacy is a noble profession and in a society which is based on respect towards the rule of law, an advocate undertakes a special role. Advocate's duty does not merely start from and end in faithful performance of his assignments. Professional misconduct refers to the act done willfully with a wrong intention by the

people engaged in the profession. It means any activity or behavior of the advocate in violation of professional ethics for his selfish ends. The person practicing advocacy shall not act or be encouraged to act deceitfully and in corrupt manner rather he shall be striving to attain justice for the clients.

In this case the professional misconduct performed by the respondent Pritham Singh is grave and serious as it was deceitful to enroll conceal material fact of conviction and practice during suspension period under different name.

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