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Case Comment: Prahlad Saran Gupta v Bar Council of India and Another

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Appellant: *Prahlad Saran Gupta*

Respondent: *Bar Council of India and Another*

Case[1] No.: *Appeal (Civil) 3688 of 1984*

Date of Judgment: *26 February 1997*

Bench: *Justice S.C Agrawal & Justice G.B Pattanaik*

STATUTE: *The Advocates Act, 1961*

FACTS

Prahlad Saran Gupta (hereinafter mentioned as the appellant) was a counsel for the decree-holders in the Execution Case of M/S. Atma Ram Nanak Chand v.Shri Ram Contractor, Case No. 55 of 1974, in the Court of Civil Judge, Ghaziabad. On August 1, 1979, Rajendra Prasad (later

[1] *Prahlad Saran Gupta v Bar Council Of India And Another* [1997] 2 SCR 499

referred to as the Complainant), one of the partners in the firm M/S. Atma Ram Nanak Chand (Decree-holder firm in Case No. 55 of 1974), filed a complaint alleging professional misconduct against the appellant with the Uttar Pradesh State Bar Council.

THE ALLEGATION MADE BY THE COMPLAINANT AGAINST THE APPELLANT:

The complainant made the allegation on the appellant that Prahlad Saran Gupta (Appellant) had conspired with Sri Ram Contractor (Judgment debtor in the case *M/S. Atma Ram Nanak Chand v Shri Ram Contractor*) and also stated that he withheld with himself a sum of Rs. 1,500 and the remaining Rs. 100 he took it as a fee from the judgment debtors, to have time to obtain a stay order on the execution proceeding from the High Court.

The judgment debtor paid the appellant Rs. 245 for appointing a second attorney to stop the execution process and the auction of the judgment debtor's property. Additionally, the appellant negligently handled the case, leaving a loophole for postponing the execution, and Shri M.P. Tyagi, taking advantage of said gap, filed an objection under Order 21 Rule 72 of C.P.C. for the cancellation of the auction for Rs. 110. Shri M.P. Tyagi.

Furthermore, the appellant was accused of receiving Rs. 450 from Shri Ram Contactor (Judgment debtor) as fees and expenses for appointing an advocate named Sri V.K Gupta in Allahabad to obtain a stay order on the execution proceedings, and that he also gave a letter in this regard to advocate Shri V.K Gupta on April 5, 1978.

The appellant was accused of filing a suit against the judgment holder on behalf of the complainant's firm in the wrong court, forcing the firm's new counsel to file the suit in the correct court, the Court of Civil Judge (Judge, small cause court), Ghaziabad.

The complainant imposed an allegation against the appellant that he was engaged in the business of lending money with a very high-interest rate and cash advances to Sunderlal of Ghaziabad.

- The complaint was intended to be referred to one of the State Bar Council's Disciplinary Committees, but the Committee in question was unable to complete the prosecution

within the allotted one-year period. As a result, the proceedings were forwarded to the Bar Council of India under Section 36B of the Advocate Act, 1961, and the Disciplinary Committee handled the trial. The appellant was given a year's practice suspension after the disciplinary committee found him guilty of grave unethical behaviour.

- The appeal was submitted on March 25, 1984, under Section 38 of the Advocate Act, 1961, contesting the decision of the disciplinary committee of the Bar Council of India in "B.C.I Tr. Case No. 12 of 1982".

ISSUES

Whether or not the appellant engaged in severe professional misconduct?

RULES

Punishment of advocate for misconduct: - Section 36 of the Advocate Act, 1961 states that –

1. "If a State Bar Council has cause to think that any advocate on its roll has committed professional or other misconduct, it shall send the case to its disciplinary committee for adjudication"[2].
2. "The State Bar Council may, on its initiative or at the request of any person interested, discontinue a procedure ongoing before its disciplinary committee and instruct the inquiry to be conducted by any other disciplinary committee of that State Bar Council"[3].
3. "The disciplinary committee of a State Bar Council shall fix a date for the case's hearing and shall give notice accordingly to the advocate involved and the State Advocate-General"[4].
4. "After hearing the advocate and the Advocate-General, the disciplinary committee of a State Bar Council may make any of the following orders: -

[2] Advocate Act 1961, s 36(1)
[3] Advocate Act 1961, s 36(1A)
[4] Advocate Act 1961, s 36(2)

a. Dismiss the complaint or, where the proceedings were initiated at the State Bar Council's request, direct that the proceeding be filed.

b. Reprimand the advocate.

c. Suspend the advocate from practice for such period as it may deem fit.

d. Remove the advocate's name from the State roll of the advocates"[5].

"When an advocate is suspended from practice under clause (c) of sub-section (3), he is prohibited from practising in any court or before any authority or person in India during the term of suspension"[6].

"If any notice is issued to the Advocate-General under sub-section (2), the Advocate-General may appear before the State Bar Council's disciplinary committee in person or via any advocate appearing on his behalf"[7].

Termination of Disciplinary Proceeding: - Section 36B of the Advocate Act, 1961 states that –

1. "The disciplinary committee of a State Bar Council shall dispose of the complaint received by it under section 35 quickly and decisively, and in each case, the proceedings shall be concluded within a period of one year from the date of the complaint's submission on the date of initiation of the proceedings at the instance of the State Bar Council, as the case may be, failing which such proceedings at the instance of the State Bar Council, which may dispose of the same as if it were a proceeding withdrawn for inquiry under sub-section (2) of 36"[8].
2. "Notwithstanding anything in sub-section (1), if any proceedings in any respect of any disciplinary matter against an advocate are pending before the disciplinary committee of a State Bar Council on the commencement of the Advocates (Amendment) Act, 1973 (60 of 1973), the disciplinary committee of the State Bar Council shall dispose of the same

[5] Advocate Act 1961, s 36(3)
[6] Advocate Act 1961, s 36(4)
[7] Advocate Act 1961, s 36(5)
[8] Advocate Act 1961, s 36B (1)

within six months from the date of such commencement or within one year from the date of initiation of the proceedings at the instance of the State Bar Council, whichever is later, failing with such proceeding shall be transferred to the Barr Council of India for disposal under Sub-Section (1)"[9].

Appeal to the Supreme Court: - Section 38 of the Advocate Act, 1961 states that " Any person affected by an order made by the disciplinary committee of the Bar Council of India under Section 36 or Section 37 [or the Attorney-General of India or the Advocate-General of the State concerned, as the case may be], may within sixty days of the date on which the order is communicated to him, prefer an appeal to the Supreme Court, and the Supreme Court may pass such order [including an order varying the punishment awarded by the disciplinary committee of the Bar Council of India] as it deems fit.

Provided, however, that no order of the disciplinary committee of the Bar Council of India shall be altered by the Supreme Court in such a way as to prejudice the person aggrieved providing him with a reasonable chance of being heard."[10]

ANALYSIS

The Disciplinary Committee determined that the assertion in the complaint against the appellant of being extremely reckless in managing the execution case and purposefully failing to seek the court's permit for the disposer to bid on the auction created a legal loophole in the execution of the decree were completely baseless. However, in light of the following findings, the appellant is liable for severe professional misconduct:

- The Complainant's interpretation of the appellant accepting Rs. 1,500 from the judgment debtor was acceptable, and it is supported by Shri Nanak Chand's endorsement of the writ for the bidding process, which asserts that his advocate received Rs. 1,500 from the judgment debtor and notified him that he had given the judgment debtor two months,

[9] *Ibid*
[10] Advocate Act 1961, s 38

and it was noted that based on the endorsement, the appellant was the person who provided the judgment debtor two months.

- The appellant's clarification that Rs. 1,500 was deposited in faith with him by both the decree-holder and the judgment debtor and that it was agreed that the appellant would pay back the sum if a receipt signed by both the judgment debtor and the decree-holder was presented for it was rioting reasonable.
- The appellant claimed writing a letter dated April 5, 1978, to advocate Sri V.K Gupta, and his explanation that the letter was offered to Naresh Chandra Singhal regarding one of his cases was not provided in written explanation, which was provided for the first time in his evidence, and Naresh Chandra Singhal has denied receiving any letter from the appellant.
- Despite being a standing counsel for the Railway, the appellant committed unprofessional conduct by preparing a notice under Section 80 of the Code of Civil Procedure on behalf of M/S. Agarwal Traders, Ghaziabad, a sister counsel of the complainant, for service upon the Union of India through the General Manager, Western Railway, and the said notice was represented by another counsel. The above-mentioned notice draught, written in the appellant's handwriting, was filed as Document No. 16 by the Complainant.

The appeal was filed before the Supreme Court under section 38 of the Advocate Act, 1961, against the order of the disciplinary committee of the Bar Council of India, and the appellant was represented by Shri R.B Mehrotra, a renowned senior counsel. He claimed that the Disciplinary Committee's finding contains several inaccuracies. These are the errors:

- The appellant was tried and convicted of professional misconduct by the disciplinary committee based on the charge of failure to provide notice under section 80 of C.P.C of 1908. It was alleged that the notice was written by the appellant himself, even though he should not have done so because he was the Railway's standing counsel. It was stated the aforementioned charge was not included in the complaint but was instead brought straight before the State Bar Council's disciplinary committee in the complainant's

application. Furthermore, the expert's request to study handwriting was disallowed by the disciplinary board. The Supreme Court ruled that the Bar Council of India's disciplinary committee erred in rejecting the appellant's plea. The court cited the decision in State (Delhi Administrator) v Pali Ram, which stated that Tit is not advisable for the judge to compare handwriting and it is best to seek professional advice and assistance in this regard, and thus the appellant was not guilty of serious misconduct in this scenario.

- The Disciplinary Committee of the Bar Council of India also issued a ruling pronouncing the appellant guilty of professional misconduct for writing a letter to Sri V.K. Gupta. The complainant failed to call Shri Naresh Chandra Singhal as a witness before the disciplinary committee, the Supreme Court ruled, and there is no proof that Shri Ram (the judgment debtor) wrote a letter to lawyer V.K. Gupta. Therefore, it is impossible to establish the appellant's professional fault.
- The Supreme Court rejected all allegations brought against the appellant but ruled that the charges were sustained and found the appellant guilty of unjustifiable withholding of Rs. 1,500 due to the decree-holder with himself until he deposited it in court violated his professional ethics as a senior lawyer, and he was reprimanded for the same offence.

CONCLUSION

In my perspective, the Hon'ble Supreme Court's decision is both legal and impartial. The Hon'ble Supreme Court delivered the verdict after carefully reviewing the statutes of professional misconduct, which are concerned with the professional ethics that govern a person's behaviour in the profession. Prahlad Saran Gupta (Appellant) was tried and convicted in this instance of wrongfully keeping an amount and neglecting to refund the amount to the decree-holder and he received a reprimand for the same offence.