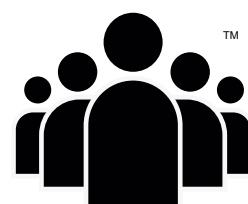


**COMPILED
SELECTED CASES
ON BAR AND BENCH
PREPARED BY
TEAM PROBONO INDIA**



**JUNE
2021**



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"If the independent judiciary is the pillar of democracy, the Bar is the foundation of the independent judiciary. The Bar is the mother of the Bench and the bright mirror of the Judicial Officers whose image, character and conduct is correctly and visibly reflected therein, and it is for the Bench to nurse and nourish the merits of the Bar"

Justice Rajan J Kochhar

**(Role of the Bar in the Process of Elevation,
AIR 2003 Journal 357)**

June 2021

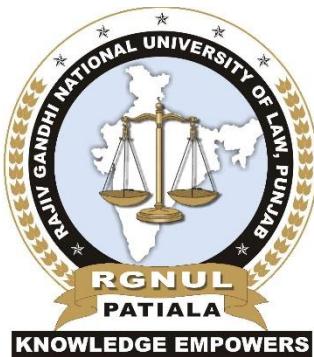
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Team ProBono India has made all efforts to summarize the cases from original cases retrieved from AIR, SCC, Manupatra and other leadings databases. For some cases, team has tried to summarize cases from the available sources as they could not find original ones.



FOREWORD

A professional is not a mere hired gun; responsibilities go with knowledge and position.

Abraham Lincoln once said, “There is a vague popular belief that lawyers are necessarily dishonest. I say vague, because when we consider to what extent confidence and honors are reposed in and conferred upon lawyers by the people, it appears improbable that their impression of dishonesty is very distinct and vivid. Yet the impression is common, almost universal.” Surprisingly his words are still relevant even after one and half centuries. It is a common narrative among the non-legal fraternity that ‘lawyers are liars’. People generally undermine the role of lawyers in society.

India is a common law country and follows an adversarial system of trial, that means any accused is presumed innocent until proven guilty. When any crime occurs in the society, that shakes the conscience of the people, media trials and people declare the accused guilty even before the actual trial begins. The lawyer who represented such accused faces the backlash from the society members. People call them corrupt, dishonest and even sometimes anti-national.

One thing that people generally don't know or pretend to not know about the distinction between a business or profession. As both business and profession are economic activities, unlike business, in a profession, a person has to be formally qualified and has undergone prolonged training, rendering services to the general public. When one starts to get their foot in a profession, it's often experience that helps him. But it takes more than skill alone to be truly impactful at most organizations. Almost every profession demands for the person who is tactful, communicative, reliable and generally pleasant to work with, in general, they're looking for professionalism.

It is also important to focus on the way you appear and behave in an employment as it sends a number of different messages in your profession. If a person demonstrates professionalism in the workplace, they are often perceived to be more competent and valuable. It's also important to recognize that nearly every individual can work to improve in this area. Advocacy is not a business but a profession. And thus, there is an inherent code of conduct applicable to advocates also, and advocates need to adhere to these professional ethics.

Article 22(1) of the Constitution envisaged the right of an accused to consult and engage a lawyer of his own choice to represent their case. It means that lawyers have the constitutional obligation to take up the case of every person who approaches them for legal representation. Now the question arises whether a lawyer is obligated to represent every person who approaches him? For instance, if a self-confessed murderer, rapist, or persons who are alleged to have committed very serious offences against the nation approached the lawyers, whether a lawyer should represent the person even though his conscience or his personal beliefs do not permit that? Another question that rises during the practice is, as all clients approach the lawyer with hope and desire that their lawyers will zealously represent their case. Does zealous representation mean that the lawyers must get the relief sought by the clients by all means? Are there any boundaries set by law or professional ethics that a lawyer must not cross? What is the role of truth and morality in determining the standards of professional ethics for lawyers? What conduct amounts to professional misconduct? What are the repercussions if a lawyer does not follow the principles of professional ethics? What are the mechanisms set by law to deal with complaints of professional misconduct? These and many other similar questions trouble the mind of new entrants to law practice. The lawyers have to adopt ethical practices in all spheres of their profession from meeting clients, giving them legal counseling, presenting their cases before appropriate bodies, managing client's accounts, etc. Being in a profession, we have certain rights to do many things but as rightly said by Potter Stewart that, "Ethics is knowing the difference between what you have a right to do and what is right to do". Therefore, one has to focus on professional ethics to attain the peak of success.

As we know that Indian Legal system is a heritage of the British Common Law System. The adversarial system of trial, *inter alia*, is the contribution of the Common law system itself. Presumption of innocence forms one of the fundamental cornerstones of the adversarial system. When a lawyer decides to take a case of an accused involved in a heinous crime, he is not doing anything which is contrary to the professional ethics in his profession. But lawyers are not bound to represent any accused who approached them. Thus, when a self-confessed murderer or rapist approaches a lawyer and asks him to represent his case, the lawyer can simply refuse to represent such a client. But since a lawyer is a professional, any statement or confession made by the accused would have no evidentiary value in front of the court.

The second question arises with respect to the extent for which a lawyer can go to protect the interest of his client. In the case of *Shambhu Ram Yadav vs. Hanumandas Khatri*, a lawyer wrote to his client suggesting him to bribe the judge to get the suit decided in his favour. Such an act of a lawyer definitely amounts to professional misconduct. Thus, it is clear that a lawyer cannot cross certain boundaries while representing the interest of his client.

While talking about ethics in legal profession, former American Chief Justice John Marshall had observed that, "The fundamental aim of Legal Ethics is to maintain the honour and dignity of the Law Profession, to secure a spirit of friendly co-operation between the Bench and the Bar in the promotion of highest standards of justice, to establish honourable and fair dealings of the council 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."

The legal and ethical aspects of advocacy in India are governed by the Advocates Act, 1961. The act also provides for the establishment of the State Bar Councils and the Bar Council of India and empowered these bodies to take cognizance in professional or ethical misconduct related matters. But the irony is, neither the Advocates Act nor the Bar Council specifies the particulars of professional misconduct, and is kept open for suitable interpretation.

In the case *Noratanmal Chaurasia vs. M.R. Murli* the Supreme Court has held that, “misconduct envisages breach of discipline, although it would not be possible to lay down exhaustively as to what would constitute misconduct and indiscipline which, however, is wide enough to include wrongful omission or commission, whether done or omitted to be done intentionally or unintentionally”. There are instances in which a court found a specific behaviour of an advocate as professional misconduct. For instance, in *UP Sales Tax Service Association vs. Taxation Bar Association, Agra*, one of the advocates was found to be attending the court with a licensed fire arm for the purpose of self defence, such conduct was held to be inconsistent with the dignity of the legal profession and amounts to professional misconduct.

In 1999, an incident happened in the Supreme Court which shackled the conscience of the legal fraternity. An advocate named Nand Lal Balwani hurled the shoes and shouted slogans in the Supreme Court. The Supreme Court took *suo moto* cognizance of the case on the ground of contempt of court and awarded the imprisonment of 4 months and a fine of 2000 rupees. The Bar Council Disciplinary Committee also found the accused guilty of professional negligence and was removed from the bar council. Nowadays, in order to gain some cheap publicity, some of the advocates are also found to bring baseless or frivolous applications to the court in the name of Public Interest Litigation. Recently, in one such case, Hon’ble Delhi High Court has imposed a fine of Rs. 20 lakh on Juhi Chawla for seeking estoppel against the implementation of 5G technology in India. The court said in its order that “it appears that the suit was filed for publicity”.

A lawyer must be very careful about his attributes and behavior. As Mahatma Gandhi said-

Keep your thoughts positive, because your thoughts become your words.

Keep your words positive, because your words become your behavior.

Keep your behavior positive, because your behavior becomes your habits.

Keep your habits positive, because your habits become your values.

Keep your values positive, because your values become your destiny.

In his book ‘The Seven Lamps of Advocacy’, Edward Abbott Parry has put forward seven qualities which are to be possessed by a person who pursues the legal profession. These seven qualities are Honesty, Courage, Industry, Wit, Eloquence, Judgement and Fellowship.

William Jennings Bryan once said that he did not know any profession more noble than the law. Rennard Strickland considered lawyers as the society's professional problem solvers. The lawyers play a very vital role in society. Lawyers are not only the litigators but hold positions of Academicians, Judge, Legislator and even the Constitution-makers. Thus, it is cardinal to

lawyers to understand the nature of their work, the ethics included in the parcel of their profession and act virtuously.

I place on record the best wishes to **Dr. Kalpeshkumar L Gupta (Founder of ProBono India)** in providing briefing of such **Compilation on Selected Cases on Bar and Bench** to the society through the medium of the future Advocates so as to acknowledge and establish a good practice of “Bar and Bench”. With time the community will earn even more respect that it deserves and shall pave the way for enhancing the prestige. **ProBono India** is surely doing its bit for the society.

It is a great effort put together by the faculty co-ordinator **Ms. Foram Patel**, Assistant Professor of Law, L J School of Law, Ahmedabad along with all the contributors in giving their fair trials. I extend my best wishes to the team.

Prof. (Dr.) G S Bajpai
Vice Chancellor
Rajiv Gandhi National University of Law, Patiala, Punjab

PREFACE

Advocacy is not a business but a noble profession to be practiced for the betterment of society and so it becomes especially important that a certain stands and practices are maintained and followed. A lawyer cannot be called learned if the actions are not securing the society and so confining themselves only by laws won't suffice. Advocates Act, 1961 along with other laws provides an idea about the working of **Bar and Bench** for the better governance of the field. The code of conducts allows certain act and at the same time it prohibits certain acts.

This compilation focuses on communicating different facets of the ‘Bar and Bench’ to convey the objective of the advocacy as a field. **Dr. Kalpeshkumar L Gupta (Founder, ProBono India)** the pioneer in the field of the law came up with the idea of this compilation and with the help of various enthusiastic volunteers, this project has been successfully completed. The process of coming together, learning, and then sharing knowledge is what helps knowledge grow in the true sense, and this project forwards this form of learning. It was Dr. Kalpeshkumar who proposed the idea of developing and launching a series of Case Compilation under the ProBono India banner, including the ‘Bar and Bench’.

The present compilation titled “**Compilation of Selected Cases on Bar and Bench**” was selected as this being the basic of the field of advocacy. It includes professional as well as social concerns in India. This great result is the hard work of few bright students and their brilliant efforts under the guidance of the Dr. Kalpeshkumar kept the project alive and developing while it was in the process of development. His zeal and enthusiasm kept us all together to work constantly for a better outcome for this project.

I would like to take this opportunity to thank Dr. Kalpeshkumar to entrust me being the faculty coordinator for this brilliant and innovative compilation. It was indeed an amazing experience and a learning experience to work on such a project. I am proud to present my talented team members of this compilation. Their support and hard-work resulted into the successful launch of the innovative idea which will surely be helpful to all the students in the field.

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17. **Rishi Raj**, *Symbiosis Law School, Noida*
18. **Prachi Joshi**, *L J School of Law, Ahmedabad*

The idea that Dr. Kalpeshkumar wanted all of us to understand as stated by Sir Henry Ford was "*Coming together is a beginning. Keeping together is progress. Working together is success.*" With the idea of teamwork, it was the importance of working with minimal resources, and achieving the most is what he wanted to teach us.

We hope our effort inspires great creations!

On behalf of the Team ProBono India,

Foram Patel

Assistant Professor of Law,

L J School of Law, Ahmedabad

(Faculty Coordinator)

ABBREVIATION

ADV.	Advocate
AGA	Additional Government Advocate
AIR	All India Reporter
AIIMS	All Indian Institute of Medical Sciences
BCI	Bar Council of India
CCI	Child Care Institutions
CJI	Chief Justice of India
COI	Constitution of India
CPC	Civil Procedure Code
Cr.l	Criminal
Cr.PC	Criminal Procedure Code
CRL. REV. P.	Criminal Review Petition
COVID	Corona Virus Disease
DLSA	District Legal Services Authority
DSLSA	Delhi State Legal Services Authority
DMA	Disaster Management Act
DPSP	Directive Principles of State Policy
FIR	First Information Report
GO	Government Order
GNCTD	Government of National Capital Territory of Delhi
HC	High Court
Hon'ble	Honorable
IPC	Indian Penal Code
ICT	Information and Communication Technology
J.	Justice
J & K	Jammu and Kashmir
LNJP	Lok Nayak Jai Prakash Narayan
MANU	Manupatra
MOU	Memorandum of Understanding
NALSA	National Legal Services Authority

NCT	National Capital Territory
NGO	Non-Governmental Organization
No.	Number
NOC	No Objection Certificate
Ors.	Others
PIL	Public Interest Litigation
PM	Prime Minister
Re.	Reply
Retd.	Retired
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reporter
SLP	Special Leave Petition
SOP	Standard Operating Procedure
SMS	Short Message Service
UOI	Union of India
U. P.	Uttar Pradesh
V.	Versus
WP	Writ Petition
Yrs.	Years

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CASE NO. 1
DISTRICT BAR ASSOCIATION
V.
ISHWAR SHANDILYA
(AIR 2020 SC 1412)

RIGHT TO PROTEST BY BAR ASSOCIATION

ABSTRACT

The following case is the case summary of the recent judgement by Supreme Court after the filing of Special Leave Petition under Article 136 by the District Bar Association who felt that the order by the Hon'ble High Court of Uttarakhand, Dehradun violated their right to protest as a fundamental right under Article 19(1)(a) of the Constitution of India. The decision of the High Court to take an action against the advocates who refused to represent their client in front of the court in the lieu of a protest has been challenged as an over-reach of its powers by the District Bar Association, Dehradun who believed that abstaining from practising in the court and protesting is the only way they can protest and make their demands considered therefore any such act done in good faith and intention is covered under the Section 48 of the Advocates Act, 1961 which protects them from any impunity by the court. While balancing the right to protest with the right to a fair trial, Supreme Court had to consider the implications of the protest of the court, one of many is resultant damage to the client to whom the advocate agreed to represent. This case shows the bureaucratic nature of the structure of the profession, who has the final say in regulating the behaviour of the advocates and who does not have the imprimatur. This court also reflects the duty of the High Courts and Supreme Courts to maintain the efficacy of the lawyers alongside with the court where they practise.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Special Leave Petition (Civil) No. 5440 of 2020
Jurisdiction	:	Supreme Court of India
Case Decided On	:	February 2, 2020
Judges	:	Justice M. R. Shah
Legal Provisions Involved	:	Advocates Act, 1961; Constitution of India, Article 19(1)(a), 144, 145; Contempt of Court Act, 1971

Case Summary Prepared By	:	Shaurya Talwar, Gujarat National Law University, Gandhinagar
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2. BRIEF FACTS OF THE CASE

- Advocates in the entire District of Dehradun, in several districts of Haridwar and Udhampur Singh Nagar district in the State of Uttarakhand have been boycotting the Courts on all Saturdays for the past more than 35 years. The strikes are seriously obstructing the access to justice to the needy litigants.
- According to the statistics shown by the High Court of Uttarakhand, Dehradun to the Law Commission in the State of Uttarakhand, The Advocates were on strike for about 455 days in Dehradun district and 515 days in Haridwar district averaging about 90 to 103 days per year. Taking cognizance of the matter, High Court of Uttarakhand passed an order taking action against the Advocates who abstained from representing their client in the court.
- High Court delivered an order that whoever abstains from representing the client in the court for any reason and consideration in lieu of the strike calls will be punished by the court. Feeling impugned by the order of High Court, the petitioner filed a Special Leave Petition under Article 136 to seek redressal from the civil appellate jurisdiction of the Supreme Court. The Supreme Court referring to various judgements and idiosyncrasies of the Advocates Act, 1961, called upon the district bar association to withdraw their call of strike in case they do not start attending Courts, as directed hereinabove, the District Judges concerned shall submit their respective reports to the High Court for it to consider whether action should be initiated against the errant Advocates under the Contempt of Court Act, 1971. The court also issued direction to Uttarakhand State Bar Council to take disciplinary proceedings against the office bearers of the Dehradun District Bar Association, within the time period of four weeks under the offence of illegally having issued a call for illegal strikes/boycott of the Courts on Saturday in the jurisdiction of Dehradun, Haridwar and Udhampur Singh Nagar. The Court also took the initiative to direct the Bar Council of India to also take an appropriate action against the rebellious Bar Association in lieu of its notice published on July 12, 2019, within three weeks and also make sure that such an action does not repeat itself again in future by such Bar Associations.
- Finally, The Supreme Court also requested The High Court and ordered the District Court to make sure the proper functioning of courts and such actions do not come in the way of providing speedy justice to the civilians.

3. ISSUES INVOLVED IN THIS CASE

- I. Is the balance between the right to protest of an Advocate under Article 19(1)(a) and not denying fair and proper trial to a client?
- II. What is the Role of Bar Council of India in regulating recalcitrant Advocates and other Bar Associations?

4. ARGUMENTS OF THE PARTIES

This case law is a bundle of orders and directions, to make the arguments coherent we shall discuss each issue separately along with the subsequent arguments of the parties. The Arguments were as follows-

- **Balance between right to strike of an Advocate and not denying fair and speedy trial to the client in the court**

Mr. Mahabir Singh, learned Senior Advocate appearing on behalf of the petitioner has vehemently submitted that the High Court has not properly appreciated and considered the fact that the right to go on strike/boycott courts is a fundamental right to Freedom of Speech and Expression guaranteed under Article 19(1)(a) of the Constitution of India. It was also submitted by the learned Senior Advocate appearing on behalf of the petitioner that the High Court ought to have held that the protection conferred by Section 48 of the Advocates Act is for any act done in good faith and therefore the directions issued by the High Court to take action against the Advocates on strike would be contrary to the protection conferred by Section 48 of the Advocates Act.

The Supreme Court upholding the directions issued by the High Court and referring to the judgement of *Harish Uppal v. Union of India*¹ held that lawyers have no right to go on strike or even token strike or to give a call for strike. It is also further observed that nor can they while representing on behalf of clients, abstain from appearing in courts in pursuance of a call for strike or boycott. It is further observed by this Court that it is unprofessional as well as unbecoming for a lawyer to refuse to attend the court even in pursuance of a call for strike or boycott by the Bar Association or the Bar Council. It is further observed that an Advocate is an officer of the court and enjoys a special status in the society; Advocates have obligations and duties to ensure the smooth functioning of the court; they owe a duty to their clients and strikes interfere with the administration of justice. They cannot thus disrupt court proceedings and put interest of their clients in jeopardy.

¹ *Harish Uppal v. Union of India*, (2003) 2 SCC 45

- **Role of Bar Council of India in regulating the behaviour of Advocates and working of other Bar Associations.**

Supreme Court in its judgement has laid down that any misconduct on the part of a lawyer will amount to Contempt of Court in the case of *Bar Association v. Union of India*². Subsequently, it was laid down that an advocate who is found guilty of contempt of court may also, as already noticed, be guilty of professional misconduct in a given case but it is for the Bar Council of the State or Bar Council of India to punish that advocate by either debarring him from practice or suspending his licence, as may be warranted, in the facts and circumstances of each case. Under Article 144 of the Constitution ‘all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court’.

The Supreme Court affirmed that the Bar Council which performs a public duty and is charged with the obligation to protect the dignity of the profession and maintain professional standards and etiquette is also obliged to act ‘in aid of the Supreme Court’. It must, whenever facts warrant, rise to the occasion and discharge its duties uninfluenced by the position of the recalcitrant advocate. In the current case, the Supreme Court took cognizance of the inactivity of the Bar Council to maintain dignity and professional conduct among the abstaining advocates. The Supreme Court warned of taking actions into its own hand under the lieu of Section 38 of the Advocates Act by sending for the record of the proceedings from the Bar Council and passing appropriate orders as set in Ramon Services case³. Advocate is an officer of the court and enjoys special status in society. Advocates have obligations and duties to ensure smooth functioning of the court. They owe a duty to their clients. Strikes interfere with administration of justice. They cannot thus disrupt court proceedings and put interest of their clients in jeopardy.

5. LEGAL ASPECTS INVOLVED IN THE CASE

1. Strikes by Bar Associations and Advocates are illegal and unlawful.

Conducting cases in the court is a matter which is under the jurisdiction of the court and thus, the court has major supervisory and controlling powers. Therefore, courts cannot be and are not divested of control of supervision of conduct in court just on the doubt that it may involve the right of an advocate. An Advocate cannot deny representing his client in the court under the guise of Section 48 of Advocates Act. Advocates have obligations and duties to ensure the smooth functioning of the court; they owe a duty to their clients and strikes interfere with the administration of justice. They

² *Bar Association v. Union of India*, (1998) 4 SCC 409

³ *Ramon Services Pvt. Ltd. v. Subash Kapoor and Ors*, (2001) 1 SCC 118

cannot thus disrupt court proceedings and put interest of their clients in jeopardy. Also, in case any Association calls for a strike or a call for boycott the State Bar Council concerned and on their failure the Bar Council of India must immediately take disciplinary action against the advocates who give a call for strike and if the Committee members permit calling of a meeting for such purpose, against the Committee members. Further, it is the duty of every advocate to boldly ignore a call for strike or boycott.

2. Duty of the Bar Council to ensure professional conduct and behaviour

The Bar Council is a public organization and hence it is its responsibility to ensure the upkeep of the highest standards of professional service and standards towards the client and the court. Under Article 144, it is obliged to work in the aid of the Supreme Court. Therefore, it should take timely cognizance of resistance on parts of such Bar associations and advocates and take a timely action. Any latency will invite interference from the Supreme Court under Section 38 of the Advocates Act. There is no justification to assume that the Bar Councils would not rise to the occasion, as they are equally responsible to uphold the dignity of the courts and the majesty of law and prevent any interference in the administration of justice. The High Court can also make Bar Council aware of any intractable conduct under their jurisdiction to allow a proportionate action on the perpetrators. Under section 34 of the Advocates Act, the High Court and under Article 145, the Supreme Court can also frame rules of its own regarding the conduct in the court to punish the defaulting advocates.

6. JUDGEMENT IN BRIEF

- The Supreme Court taking in consideration the right to protest under Article 19(1)(a) of the Indian Constitution and also the right to ensure smooth functioning of the courts, held that advocates cannot abstain from representing the client under the garb of a call for strike.
- It held that any call for a strike by Bar Associations is fraudulent and illegal and Advocates should seldom follow them. Being a professional ecosystem, resistance cannot be excused under the lieu of right to protest which cannot be exercised in contrary of the Indian Judicial System. They cannot thus disrupt court proceedings and put interest of their clients in jeopardy⁴.
- The Supreme Court therefore, upheld the decision of the High Court to punish the misdemeanor of the defaulting advocates and disrupt the working of the court. Therefore, the Special Leave Petition was dismissed.

⁴ Krishant Kant Tamrakar v. State of Maharashtra, (2018) 17 SCC 27

- The Court also recognized the inactive behaviour of the Bar Council of India and directed it to take action against defaulting Advocates as soon as possible and not to allow such possible slip ups again in the future. The Bar Council has to act in the aid of the Supreme Court and ensure cordial and professional behaviour among the esteemed profession. In the event in future such disruptions happen again, the Supreme Court has imprimatur to interfere in the matter and take rightful actions for smooth functioning of the courts. Also. High Court can also formulate guidelines and rules for regulating behaviour if the Advocate in the courts under its jurisdiction.

7. COMMENTARY

The Supreme Court has vociferously asserted its dominance over the affairs of the courts and has maintained hard line upon its independence. While the court is rightful to assert that right to protest cannot be used to deny the right to a trial to a client and also disrupt Indian Judicial System, I as a law student feel that Supreme Court rather than denying the opportunity to protest at all should have taken into considerations of the actual problems advocates have to face during day to day working. The only reason protest happens is due to the unprofessional state of affairs, and shutting down protest can set a bad precedent not only for the judiciary but also other machineries of the Law. While India is already suffering from an identity crisis as the world's largest democracy and also the denier of basic rights such as right to internet, this judgement does not help and only gives more lieu to the government to suppress protest. Judiciary has to take a stand and make sure the feedbacks of the advocates is taken into consideration to desecrate the problem at its core rather than only focusing upon the outlet of such feedback. The advocates form as important part of the judicial eco system as the judges and the courts. One cannot exist without each other. On the other side, advocates have a responsibility to abide by the Constitution they so rightfully preach and passionately represent their client in the court despite all their other problems. Perfection can only be achieved when each member of the system performs his/her own function perfectly rather than focusing on the shortcomings of the other.

8. IMPORTANT CASES REFERRED

- *Harish Uppal v. Union of India, (2003) 2 SCC 45*
- *Bar Association v. Union of India, (1998) 4 SCC 409*
- *Ramon Services Pvt.. Ltd. v. Subash Kapoor and Ors, (2001) 1 SCC 118*
- *Krishant Kant Tamrakar v. State of Maharashtra, (2018) 17 SCC 27*

CASE NO. 2
AN ADVOCATE
V.
B. B. HARADARA AND ORS.
1989 AIR 245

ADVOCATE ACTED WITHOUT CONSENT OF A CLIENT

ABSTRACT

The case dealt with professional misconduct and the Advocates Act. A disciplinary committee had barred an advocate for three years on the basis of charges levied against him of professional misconduct. Gautam Chand was an old client of the advocate and had hired him to file a suit against a Shri S. Antanaraju for recovery of a sum of Rs. 30,098/. The Advocate asked his junior to file the suit. Post this the respondent gives the allegation that without his knowledge the appellant informed the court that the case had been settled out of court and filed a memo and got the case dismissed. The respondent also claimed that he wasn't informed of dates in the case. The State Bar Council called the appellant for comments but there was no charge which specified the nature and content of professional misconduct. The case instituted by State Bar Council couldn't be completed within the right time and hence it reached to the Bar Council of India. The disciplinary committee found him guilty and held that he should be barred from practising for three years. The advocate appealed against this judgement of the disciplinary committee. It was held in the Supreme Court that the facts weren't established clearly beyond reasonable doubt and the disciplinary committee had not afforded the advocate an opportunity for a fair hearing. The case is a seminal case since it concerns the ethics of the legal profession. The case involves professional honour and discusses professional misconduct.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Writ Petition (Criminal) 316 of 1987
Jurisdiction	:	Supreme Court
Case Decided On	:	September 29, 1998
Legal Provision Involved	:	Advocates Act, 1961, Section 38
Judges	:	Justice M. P. Thakker, Justice B. C. Ray
Case Summary Prepared By	:	Namah Bose Rajiv Gandhi National University of Law, Patiala

2. BRIEF FACTS OF THE CASE

The case was filed in 1989 and in this case the appellant was an advocate. The suit dealt with the matter of recovery of Rs. 30,098/. The complainant left the responsibility of the case to the advocate (appellant) who had given the responsibility for the matter at hand to his Junior colleague. There are two versions to the story. As per the version of the complainant, the Respondents has failed to inform him and without taking his due consent pulled back the case. They did also inform him that his presence would be needed in court and without giving him the following information they got the suit dismissed through court. The complainant believed his legal needs were infringed.

The version of the appellant advocate and his junior colleague (respondent 2) where quite different. The appellant contended that he came to know the complainant through an old acquaintance Gautam Chand. On Gautam Chands request the case of the complainant was taken up by the advocate and passed on to his colleague. That time the colleague worked with the appellant advocate but during the dismissal of the suit the junior advocate had his own office. Gautam Chand was in business with Haradara (the plaintiff) and the defendant in the suit initiated by them through the appellant was Anantaraju. Anantaraju was a common adversary for both Gautam Chand and Haradara. Gautam Chand had paid earnest money to Antaraju for the execution of a sale deed of property in his name. However, the sale deed was not executed during the required time. Gautam Chand sent instructions to the advocate (appellant) and his colleague (respondent no 2 Ashok) to get the suit dismissed as the sale deed was achieved. Initially the court denied the request, post which Gautam Chand published a notice stating that he has dealt with the property matter and the object of the suit is achieved and no one should interfere as its the personal matter of Anantaraju and Gautam Chand. RW 3 (Gautam Chand) and the complainant acted in complete concert and had common interests. The court dismissed the suit in 1981 on December 10. The complainant Haradara gained knowledge the suit in which he was the plaintiff which was against Anantaraju had been dismissed by the court he made no attempts to restore the suit or to meet the appellant. The appellant contended that Haradara the complainant has knowledge of the dismissal and yet failed to immediately act upon it. Also, that he only acted on the claims made by Gautam Chand who was a close friend of Haradara and they filed the suits together towards the common adversary Anantaraju.

3. ISSUES INVOLVED IN THE CASE

- I. Should the appellant have been informed and apprised of the particular and specific charge and allegation made against him regarding the true nature and content of the professional misconduct?

- II. It also questioned whether the doctrine of benefit had been utilized. Did the disciplinary authority establish the basic allegations against the appellant while deciding on the question of the punishment to be inflicted on him.
- III. Will the appellant be punished under misconduct rules on absence of any dishonesty or intentional motives? Would it amount to non-culpable negligence or would it be professional misconduct?

4. LEGAL PROVISIONS INVOLVED IN THE CASE

The appeal was instituted as per Section 38 of the Advocates Act. On looking at the legal landscape in the area of disciplinary proceedings this scenario emerges:

"In exercise of powers under section 35 contained in Chapter V entitled "conduct of Advocates", on receipt of a complaint against an Advocate (or *suo moto*) if the State Bar Council has 'reason to believe' that any Advocate on its role has been guilty of "professional or other misconduct". Disciplinary proceeding may be initiated against him."⁵

Neither Section 35 nor any other provision of the Act defines the expression 'legal misconduct' or the expression 'misconduct'.

The Disciplinary Committee of the State Bar Council is authorized to inflict punishment, including removal of his name from the rolls of the Bar Council and suspending him from practise for a period deemed fit by it, after giving the Advocate concerned and the 'Advocate General' of the State an opportunity of hearing. The disciplinary committee under Section 42(1) of the Advocates Act is vested in the same power as a civil court for summoning and enforcing attendance of a person and also the rights to examine him on oath. The procedure to be followed in an Enquiry under Section 35 is outlined in Part VII of the Bar Council of India Rules (1) made under the authority of section 60 of the Act.

5. JUDGEMENT IN BRIEF

It was held that the advocate wasn't afforded a proper and reasonable opportunity to express his side of the story. There were no specific charges devised against him and he wasn't informed of the charges against him.

⁵ Section 35, Advocates Act 1961

The doctrine of benefit of doubt had not been reasonably established the intentions of the advocate was not considered. The motives of the advocate weren't considered while judging the case and its outcome by the disciplinary committee.

The court also felt that such a judgement before being given by the BCI had to have been discussed properly and the judgement should leave no place for any reasonable doubt. The court held the opinion that a detailed inquiry ought to be held as the discipline committee is giving a very heavy sentence of removing the advocate from the bar. The conclusion, cannot only be taken in terms of evidence and has to be supported by a proper enquiry till the doctrine of benefit of doubt has been reasonably established.

6. COMMENTARY

The judgement held that the petitioner was not afforded a proper opportunity to explain the situation. The petitioner was not informed of the charges and claims levied against him. He also wasn't given an opportunity to explain his side. The constitution also allows for hearing both sides and the principle of *Audi Alteram Partem*. The principles of natural justice were being violated in this case and it was rightly noticed by the Supreme Court. The Supreme Court also felt that the State Bar Council has not accorded a proper opportunity to the appellant to fight the allegations levelled against him.

It was also held that the Bar Council had not taken the help of doctrine of benefit of doubt. Nor had it been established that the advocate had any *mens rea* or negative intentions towards the client. They set aside the order of BCI blaming and punishing the advocate for unfairness, negligence and professional misconduct. The Supreme Court remitted the matter to BCI. It was also held that such a stringent punishment of disbarring him from practise is unfair considering that the advocate wasn't given appropriate chances to explain his conduct and also wasn't informed of the charges against himself.

The court also referred to the way Bar Council of India acted in the O N Mohindroo case while giving the appropriate judgement. In the case the court had held that the Advocates Act and its rules are solely responsible for regulating the machinery and mechanisms of professional conduct. In the case of Mohindroo also the Bar Council of India stated that there shouldn't be too much of technicality present in terms of the work of disciplinary committees especially when professional behaviour and honour is on the line.

This case was seminal as it dealt with the matters of ethics in court just like the ON Mohindroo case. If the Supreme Court would not remit the claim back to BCI then this would violate the principles of justice and would promote improper hearings.

7. IMPORTANT CASES REFERRED

- *O. N. Mohindroo v. The District Judge, Delhi and Anr, 1971 AIR 107*
- *L. D. Jaisinghani v. Naraindas N. Punjabi, AIR 1976 SC 373*

CASE NO. 3
BALDEV RAJ SHARMA
V.
BAR COUNCIL OF INDIA
1989 AIR 1541

**RIGHT OF BAR COUNCIL TO REJECT ENROLMENT
APPLICATION**

ABSTRACT

A writ petition was filed by Baldev Raj Sharma under Article 32 decided on 1989. It was against the order of Bar Council of Haryana and Punjab rejecting his application for an enrolment as an Advocate. The Bar council denied enrolment on the grounds of not having fulfilled conditions in rule 1(1)(C) of the Rules of the Bar Council of India framed under Section 7(h) and (i), Section 24(1)(c)(iii) and (iii-a) and Section 49(1)(d) under the Advocates Act, 1961. The judgement was given by Justice Pathak and it held that the Bar Council of India has the right to reject applications if the rules aren't fulfilled under Advocates Act. The court also interpreted the difference as studying as regular student with attendance and as a private student. It acknowledged the importance of attendance in a law school and the clause clearly required that regular attendance be achieved accompanied by practical training in the form of moots and training courses. The petitioner in the case had only received his third-year degree as a regular student of VSSD College, Kanpur. He had done his bachelor in laws two years course from Kanpur University in 1981. The rules set under Advocates Act required that attendance be maintained constantly throughout the course and hence denied him admission to bar by stating that he had obtained his degree from Kurukshetra University as a private candidate. It had appeared that the state bar council had received the opinion from Bar Council of India and only then rejected the application. SC held that it was right on the part of the Bar Council of India and found no mistake had been made in rejecting his application as his admission would have been in contravention to the rules. This brief discusses the entire case in detail to show the rights of the BCI in rejecting enrolment as an advocate in a high court.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Writ Petition No. 747 of 1985
Jurisdiction	:	Supreme Court of India

Case Decided On	:	May 1, 1989
Legal Provisions Involved	:	The Advocates Act, 1961, Section 7, 24, 49; Rules of Bar Council of India
Judges	:	Justice R S Pathak
Case Summary Prepared By	:	Namah Bose, Rajiv Gandhi National University of Law, Patiala

2. BRIEF FACTS OF THE CASE

The petition was filed by Baldev Raj Sharma, who had completed his law degree, against Bar Council of Punjab and Haryana for the order rejecting his application for enrolment as an advocate and later Bar Council of India. The respondent in the case was Bar Council of India. He filed a civil writ petition against the State Bar Council and they later passed the case to the Bar Council of India. The respondent was hence the Bar Council of India which issued the final order rejecting his application for enrolment as an Advocate.

Facts

- Baldev Raj Sharma passed his B.A. exam in March, 1972 from Punjabi University. In 1978 he joined the Bachelor of Laws of 2 years duration in a private manner.
- In the year 1981 he was awarded the degree of Bachelor of Laws from Kurukshetra University. In 1981, petitioner joined Kanpur University in third year professional course for LL.B. The course had to be attended as a regular student. The most important fact in the case is that the two years from Kurukshetra University were without regular attendance.
- The petitioner contended that the rules of Kanpur University made no distinction on whether the General course of LL.B. has to be pursued by regular attendance or as a non-collegiate student.
- The petitioner also states that Kanpur University degree of LL.B. was a recognized degree and he attended all the requisite classes of LL.B. at the third year of Kanpur University.
- He gave the final examinations and was awarded the degree on July 22, 1982. Upon the successful completion he applied to be an Advocate at Punjab and Haryana High Court and even paid the required fee.

- The Bar Council of Punjab and Haryana denied the petitioner enrolment as an Advocate on April 26, 1983 on the basis of rules and provisions under Advocates Act, 1961.
- The reason under these rules was that the petitioner has obtained his degree of two years study from Kurukshetra University as a private student.
- On the receiving of the application the Bar Council had asked for the opinion of Bar Council of India. The Bar Council of India has similar opinions as the State Bar Council in this matter.
- BCI used the rules stating that the rules mentioned regular attendance in the three years course of studies. Considering that the petitioner has not fulfilled the following condition the State Bar Council is right in denying admission. The BCI believed that there was a clear difference between private candidate course and a course taught with compulsory and regular attendance.

3. ISSUES INVOLVED IN THE CASE

- I. Does the Bar Council have the right to set regulations for law students to enroll as lawyer after graduation?

4. LEGAL ASPECTS INVOLVED IN CASE

The Bar Council rejected his application as per the Rules of Bar Council of India which required the lawyer to study law from a college with a regular course mandating attendance etc. According to section 24(1)(C)(iii) of the Advocates Act a degree shall not be recognized post March 12, 1967, unless the requisite condition is fulfilled including "that the course of study in law has been by regular, attendance at the requisite number of lectures, tutorials and moot courts in a college recognized by a University". A new set of BCI Rules replaced these provisions in 1984 but they had rule 1(1)(c) which was similar to section 24 and required mandatory attendance in a regular course for a law degree to be valid. Section 24(1)(C) (iii) deals with the mandatory requirement of attendance of a regular course which is required for the law degree to be valid. The Advocates Act, 1961 talks about all the provisions which regulate the validity of law degrees and enrolment as Advocate in State Bar Councils.

5. JUDGEMENT IN BRIEF

The writ petition filed by Baldev Raj Sharma under Article 32 of the Constitution of India against the Bar Council of Punjab and Haryana order rejecting his enrolment as an Advocate. The application was rejected under the legal rules as the petitioner had not fulfilled the conditions laid down in Rule

1(1)(c) of the Rules of the Bar Council of India framed under S. 7(h) and (i), S. 24(1)(c)(iii) and (iiia) and S. 49(1)(d). The rules required regular attendance which was missing as the petitioner had completed bachelors in law in a two years private course then followed by one year of regular attendance. This was different from the mandatory three years of regular attendance course.

The policy underlying the relevant provisions of the Bar Council Rules indicates the great emphasis laid on regular attendance at the law classes. The conditions are specifically spelt out when the Act is read along with the Rules. When so read, it is plain that a candidate desiring enrolment as an Advocate under the Advocates Act must fulfil the conditions mentioned in S. 24(1)(c)(iii) or S. 24(1)(c)(iiia) read with Rule 1(1)(c) of the Bar Council of India Rules, 1975. In the present case the petitioner failed to do so. It was held that his application was rightly rejected by the Bar Council.

6. COMMENTARY

The petitioner has not completed the course according to the guidelines of the Bar Council. The Bar Council had rules which had stated the requirement of attendance accompanied with various activities like moot courts and tutorials which encourage the practical aspect of legal education. It's an important case dealing with the rules governing Advocates. The Advocates Act and its interpretations are a matter of importance for law students and lawyers across the country.

The SC recognized the power of BCI to make such rules and allowed for the petition to be dismissed while agreeing that the rejection of application was rightful. It was also made clear that his enrolment would have been in contravention with the clearly stated rules of Bar Council of India. The case shows the difference between pursuing law and practising law. The petitioner was pursuing law but did not have the right to practice law as an advocate due to lack of fulfilling the required conditions. This case has been cited in many cases and is a seminal case in terms of legal education. It's been used in cases like *Kiran Kumari v. Delhi University*⁶ to show the importance of attendance in a law student's life. The case has been seminal to show how private course is different from a regular course because of attendance.

⁶ WP(C) Appeal No. 9143 of 2007, Delhi High Court

CASE NO. 4
MAHIPAL SINGH RANA, ADVOCATE

V.

STATE OF UTTAR PRADESH
(MANU/SC/0730/2016)

HIGHLIGHTING THE NEED OF REGULATING LEGAL PROFESSION

ABSTRACT

The case addresses the urgent need for review/ modification of various provisions of the Advocates Act, 1961. In the present case, the major concern was regarding Section 24A of the Advocates Act, 1961 which deals with disqualification. It states that a person convicted for an offence having moral turpitude or if he/ she is convicted under provisions of Untouchability (Offences) Act, 1955 or he/she had been dismissed/ removed on the charge of having moral turpitude then the said person cannot get enrolled as an Advocate on state roll. However, the proviso to it seems to wipe off the very object of the section as it provides that any person (even the one's committing the most heinous crime) can get enrolled after 2 years from the expiry of his/ her sentence. The same applies in conditions of post-enrollment too. In this case, the contemnor was found guilty of criminal contempt by the Hon'ble Allahabad High Court and the Court had imposed fined along with imprisonment. The High Court had also directed the Bar Council of Allahabad High Court to look into the complaint of Civil Judge (Senior Division), Etah (based on which case against the present contemnor was instituted) for taking appropriate proceedings for professional misconduct. Hon'ble Apex Court looked into the inaction of the statutory body i.e. Bar Council even after a decade of passing of order and held that High Court can in cases of failure of Bar Council to conduct its duty, High Courts can use its *suo moto* powers available under Article 226.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Criminal Appeal No. 63 of 2006
Jurisdiction	:	Supreme Court of India
Case Decided On	:	July 5, 2016
Judges	:	Justice Anil R. Dave, Justice Kurian Joseph, Justice Adarsh Kumar Goel

Legal Provisions Involved	:	Constitution of India, Article 226; Contempt of Courts Act, 1971, Section 2(c), 12, 15(2), 19; The Advocates Act, 1961, Sections 24A, 34 & 38
Case Summary Prepared By	:	Prasoon Shekhar, ICFAI Law School, Dehradun

2. BRIEF FACTS OF THE CASE

- In the present case, a reference under Section 15(2) of Contempt of Courts Act, 1971 was made by Civil Judge (Senior Division), Etah through District Judge, Etah regarding two separate incidents in his courtroom by one Mahipal Singh Rana, a practicing Advocate. The incidents related to the usage of foul/indecent language and inappropriate comments/ behavior in the courtroom.
- The matter was placed before the Administrative Judge who forwarded the matter to the Registrar General. Subsequently, the matter was placed before the Hon'ble Chief Justice who referred the matter to the appropriate bench. The Hon'ble Allahabad High Court took into account the then prevalent conditions where advocates tried to persuade and threaten the judges and the prior antecedents of the contemnor. The court sentenced the appellant to simple imprisonment of two months and a fine of Rs. 2,000/- and to go for further imprisonment of two weeks in case of failure of payment of the fine. Further, the Hon'ble High Court had directed the Bar Council of Uttar Pradesh to consider the complaint of Civil Judge (Senior Division), Etah to initiate proceedings for professional misconduct and direct the contemnor not to enter the judgeship at Etah until he purges the contempt.
- The contemnor preferred an appeal against the judgment of Hon'ble Allahabad High Court whereby the appellant was found guilty of threatening the Civil Judge (Senior Division), Etah.

3. ISSUES INVOLVED IN THE CASE

- I. Whether a case is made out to interfere with the order passed by Hon'ble Allahabad High Court whereby the appellant has been convicted in the said Criminal Contempt?
- II. Whether the appellant can be allowed to practice pursuant to the conviction in Criminal Contempt?

4. ARGUMENTS OF THE PARTIES

Appellant

- The main argument was that the entire case against the appellant was false and frivolous as the appellant had not even visited the courtroom on the said dates where the alleged instances took place. The High Court had failed to look into the fact that whether the alleged contemnor had visited the courtroom of the said judge on dates of instances i.e. April 16, 2003 and May 13, 2003.
- The contempt proceedings were filed with ulterior motives as the appellant had previously filed several complaints against the very same Judge who is the complainant in the instant case.
- The matter is barred by limitation for the reason that the instances as alleged took place on April 16, 2003 and May 13, 2003, whereas the notice was ordered to be issued on April 28, 2004.
- That the appellant has turned out to be of 84 years of age and as such, considering the old age, the imprisonment awarded in the contempt case be set aside and fine may be increased.

Respondents

a. State of Uttar Pradesh

- It was argued that the order under challenge was just, legal and proper and the order convicting the appellant was given considering the facts. The manner in which the appellant behaved before the court on the alleged date was contemptuous and he has rightly been convicted.
- Reliance was placed on the report of Learned District Judge and it was argued that the acts of the appellant are unpardonable and hence, he has been correctly convicted for contempt.

b. Bar Council of India

- It was argued that Section 24A of Advocates Act, 1971 (hereinafter referred to as the ‘Act’) provided a bar on advocate guilty of offence involving moral turpitude however, it does not provide for removing of a person on the roll. It was further argued that in such cases Section 35 of the Act comes into light under which an Advocate can be punished for ‘professional misconduct’.
- In the case of advocates, even a minor offence can be considered as an offence of moral turpitude for the reason being that an advocate is considered to know the legal position and conduct should be as high as the profession.
- It was argued that a direction be issued to all Courts that whenever an advocate is convicted of an offence involving moral turpitude, concerned State Bar Council or Bar Council of India

be immediately informed after pronouncing of the judgment of conviction for taking necessary actions provided under the Act.

c. Union of India

- It was argued that in any profession, the apex body of professionals takes action against the erring members i.e. the Bar Council of India in the present case.
- It was argued that Advocates do not have any absolute right to appear before the Court. Reliance was placed on Article 145 of Constitution of India i.e. Power of the Supreme Court to make rules for regulating practice and procedure and Section 34 of the Act, i.e. Power of High Court to make rules for conditions subject to which advocates be made to practice.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Many crucial aspects regarding the check on the legal profession and punishment in cases of contempt and professional misconduct were involved in this case. Request was made to the Law Commission of India for going through the case and take mandatory steps for the regulation of legal profession at the earliest.

The court opined on the jurisdiction of court vis-a-vis statutory powers of Bar Councils in light of the judgment in *SCBA v. UO*⁷, wherein it was held concerned Bar Council must take action against erring Advocates under provisions of the Act and courts cannot take over the exercise of disciplinary committee of Bar Council in the exercise of competent jurisdiction. However, in cases of concerned Bar Council failing in the said duty, the Supreme Court can exercise jurisdiction under Section 38 of the Act. In view of the instant case, it was held that High Courts can also exercise the power under Article 226 of Constitution of India to take action in case of failure of Bar Council to do so.

The case highlighted the need for amendment in Section 24A of the Act. The proviso to Section 24A i.e. Disqualification from Enrolment reads as follows: “*Provided that the disqualification for enrolment as aforesaid shall cease to have effect after a period of two years has elapsed since his [release or dismissal or, as the case may be, removal.]*” So, even if a person is involved in the gravest offence, a person can be enrolled as an advocate after two years of expiry of his/ her sentence. Further, the legal proposition w.r.t undesirability of convicted persons in discharging public function was discussed in the light of various judgments of Hon’ble Supreme Court.

⁷ MANU/SC/0291/1998

6. JUDGMENT IN BRIEF

The Court held that the Hon'ble Allahabad High Court had committed no error while convicting the accused and further held that the accused had appeared before the court. The court looked into the aspect of complaints of the present appellant against the said judge and opined that it is not a valid defense and the act of the accused and the language used were contemptuous.

It was held that the contention of the appellant regarding limitation had no merit as it is upon the concerned judge to take requisite action as per the law which s/he finds appropriate. The appellant was held liable for contempt and it was further held that the incidents as alleged regarding malafides of the complainant judge were made with a motive to protect himself from contempt proceedings and no apology was ever rendered. The court set aside the imprisonment keeping in view the old age of appellant however, it held that Hon'ble Allahabad High Court was correct in convicting the appellant under Criminal Contempt. The court discussed the settled principle of law regarding merit imprisonment i.e. culpability of offender and likelihood of interference with administration of justice.

The enrollment of the appellant in State Bar Roll was suspended for two years from the date of order in light of Section 24A of the Act. Also, in light of jurisdiction under Section 38 of the Act, the court directed the license of the petition to remain suspended for another five years and further, the appellant was debarred from appearing before the court even after the said period, unless he purges out of contempt.

It was held that in case of failure of Bar Council to take appropriate actions in case of misconduct, the Supreme Court can take actions Under Section 38 of the Act whereas, the same power can be availed by High Court under Article 226. Hon'ble Court expressed the need of review/amendment in regulatory provisions of the Act and requested the law commission to do the needful in this regard at the earliest.

7. COMMENTARY

In the present case, the Supreme Court highlighted urgent need of review of regulatory mechanism in legal profession. The importance of legal profession and the significant role played by it in the justice delivery system cannot be neglected. The Court took into account the malpractices followed by advocates and also discussed about the undesirability of convicted person in this profession as the legal profession is considered as noble professions and the practitioners are expected to act accordingly. Pursuant to the judgment in instant case, comments were invited from shareholders and even the Advisory Committee appointed by BCI had made comprehensive recommendations. Law Commission of India vide its 266th Report on The Advocates Act, 1961 (Regulation of Legal

Profession) submitted a draft Advocates (Amendment) Bill, 2017 however, no further action in this regard has been taken which may further lead to more such instances and still such persons cannot be completely prohibited from practicing this noble profession.

8. IMPORTANT CASES REFERRED

- *Supreme Court Bar Association v. Union of India, MANU/SC/0291/1998.*
- *Pravin C. Shah v. K.A. Mohd. Ali, MANU/SC/0622/2001.*
- *E x- Captain Harish Uppal v. Union of India, MANU/SC/1141/2002.*
- *Bar Council of India v. High Court of Kerala, MANU/SC/0421/2004.*
- *R.K. Anand v. Registrar, Delhi High Court, MANU/SC/1310/2009.*
- *Amit Chanchal Jha v. Registrar, High Court of Delhi, MANU/SC/1207/2014.*

CASE NO. 5
IN RE: PRASHANT BHUSHAN & ORS.
(MANU/SC/0587/2020)

**CONTEMPT CASE FOR TWEETS MADE AGAINST HON'BLE
CHIEF JUSTICE OF INDIA**

ABSTRACT

The case is one of the most highlighted cases which the country witnessed in 2020. It relates to two tweets made by Prashant Bhushan, Advocate, against the Hon'ble Chief Justice of India and the Supreme Court. Pursuant to the tweets, one Mahek Masheshwari filed a petition and the same was taken on the administrative side by the courts however, the petition was filed without the consent of the Attorney General of India. Subsequently, the petition was listed before the court for passing appropriate orders and on *prima facie* view that the tweets were of the nature that it would have adversely affected the reputation of Hon'ble Chief Justice of India and the Supreme Court of India, the Hon'ble Court took *suo moto* cognizance on the tweets and notices were issued to Prashant Bhushan (Contemnor No. 1 in the present case), Twitter Inc. (Contemnor No. 2 in the present case) and Attorney General of India. A detailed affidavit running in 463 pages (along with annexures) was filed on behalf of the Contemnor No. 1 wherein he tried to justify his tweets on various grounds of – bonafide comment, expressing anguish against the Hon'ble SC on justifiable grounds etc. In a 108-page judgment, the court by referring to a plethora of judgments and hearing detailed arguments held Prashant Bhushan liable for criminal contempt whereas the case against Contemnor No. 2 was discharged on the ground that it was only an intermediary. Despite not tendering an apology or withdrawing affidavit, Hon'ble Supreme Court showed its magnanimity and imposed a symbolic fine of Rupees 1/- failing which the contemnor had to undergo simple imprisonment for three months.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Suo Motu Contempt Petition (Crl.) No. 1 of 2020
Jurisdiction	:	Supreme Court of India
Case Decided On	:	August 14, 2020
Judges	:	Justice Arun Mishra, Justice B.R. Gavai, Justice Krishna Murari
Legal Provisions Involved	:	Constitution of India, Article 19(1)(a), 129, 142; Contempt of Courts Act, 1971, Section 2(c);

		Rule 3 of The Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975
Case Summary Prepared By	:	Prasoon Shekhar, ICFAI Law School, The ICFAI University, Dehradun

2. BRIEF FACTS OF THE CASE

In the present case, Prashant Bhushan a well-renowned Advocate with over 30 years of Standing at Hon'ble Supreme Court and Delhi High Court, famously known for his public interest lawyering made tweets against Hon'ble Chief Justice and The Supreme Court of India. They are reproduced as follows:

“CJI rides a 50 Lakh motorcycle belonging to a BJP leader at Raj Bhavan Nagpur, without a mask or helmet, at a time when he keeps the SC in Lockdown mode denying citizens their fundamental right to access justice!”

And

“When historians in future look back at the last 6 years to see how democracy has been destroyed in India even without a formal Emergency, they will particularly mark the role of the Supreme Court in this destruction, & more particularly the role of the last 4 CJIs.”

Pursuant to the tweets, one advocate named Mahek Maheshwari, filed a petition without obtaining the consent of the Learned Attorney General of India against the above-mentioned tweets and the matter was taken on the administrative side. Subsequently, after being listed on the administrative side the court directed the matter to be listed on the judicial side for the passing of the appropriate order. The matter was listed on July 22, 2020, and after *prima facie* observing the tweets the Hon'ble Court found that the tweets were of the nature of disreputing the administration of justice and were capable of bringing down the dignity of Hon'ble Chief Justice and the Supreme Court in the eyes of the public at large. As such, the court took *suo moto* cognizance in this matter and directed the Contemnors to file their reply.

3. ISSUES INVOLVED IN THE CASE

- I. Whether contempt proceedings cannot be initiated in the present case without the consent of the Attorney General of India?
- II. Whether the tweets in question are entitled to protection under 19(1)(a) of the Constitution of India as fair criticism made in good faith in the larger public interest or not?

III. Whether the intermediary i.e, Twitter in the instant case, be held liable for contempt as per the facts of the case?

4. ARGUMENTS OF THE PARTIES

Appellants – Contemnor No. 1 (Prashant Bhushan) Represented by Dushyant Dave & Contemnor No. 2 (Twitter Inc.) Represented by Sajan Poovayya

- The preliminary objection was regarding the maintainability of the petition for the reason that the proceedings were initiated after a petition filed by one Mahek Maheswari which was filed without the consent of the Learned Attorney General of India and as such the same cannot be treated as a *suo moto* petition.
- The order issuing notice has no mention of any act of the Contemnor No. 1 based on which he can be charged with criminal contempt. Further, it was argued that even if the tweets are taken strongly into account, it could not be considered anything more than a defamatory attack on CJI and the past three CJIs in their individual capacity and as such, it cannot be said that the said tweets will interfere with due course of justice or administration of law.
- Coming on the tweets in question, it was argued that the first tweet was made to express his anguish at the virtual functioning of the Hon'ble SC where hardly any cases were heard whereas on the other hand Hon'ble CJ was seen with groups of people without a mask. If such a statement is considered as contempt, the same would create an unreasonable restriction to Article 19(1)(a). Coming to the second tweet in question, it was argued that it had three distinct elements which are as follows:
 - a. Democracy has been destroyed in the last six years.
 - b. Supreme Court played a substantial role in allowing the destruction of democracy.
 - c. Regarding the role of last four Chief Justices in allowing the destruction of democracy.It was argued that all three parts are merely an opinion and it is the essence of democracy to discuss about the institutions freely and fairly and build public opinions for reform of such institution and as such, the tweets cannot constitute contempt of Court.
- Chief Justice is not Supreme Court and as such making comments regarding how Chief Justice conducts will not come under the purview of Criminal Contempt. Considering Supreme Court as CJI and CJI as Supreme Court would be nothing more than undermining the institution itself. The tweets were against the present CJI/ past three Chief Justices in their individual capacity.

- The order issuing notice had no mention of any act of Contemnor No. 1 for which he could be held liable under Criminal Contempt. Further, even if the tweets are taken for maximum consideration, it is a mere defamatory attack on the judge, and such proceeding with contempt is not fair.
- The Contemnor No. 1 had taken up several matters of public interest before the Supreme Court and Delhi High Court concerning the health of democracy and its institutions including accountability in the judiciary and as such, the court should not proceed against him.
- On behalf of Twitter, it was argued that it is merely an ‘intermediary’ within the meaning of IT Act, 2000 and it has neither published nor authored the tweets. It was further argued that it acts merely as a display board and has no editorial board. Further, to show its bonafide it was argued that after the court had taken cognizance on tweets in question, Twitter disabled and blocked access to the said tweets.

5. LEGAL ASPECTS INVOLVED IN THE CASE

This most crucial aspect the case revolves around is the thin line of gap between Freedom of Speech and expression under Article 19(1)(a) and contempt of court being the reasonable restriction of the same under Article 19(2).

The Hon’ble Court again clarified that the contempt powers are conferred upon the court by the Constitution of India (Article 129) and the manner in which contempt is initiated is not limited to Contempt of Court Act, 1971 and it is well within the powers of the Hon’ble Court to initiate *suo moto* contempt without consent of Attorney General of India, the only limitation being the procedures laid down in *PN Duda*’s judgment needs to be followed.

Article 19(1)(a) of the Constitution of India states “*All citizens shall have the right (a) to freedom of speech and expression*” and it is subject to the restriction provided under 19(2) which reads “*Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence*”.

Any act/comment on any judge which lowers public faith in the judiciary or interferes with the administration of justice comes within the definition of “criminal contempt”. Section 2(c) of the Contempt of Courts Act, 1971 defines ‘criminal contempt’ which reads as follows: “(c) “*criminal*

contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which—

- (i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or
- (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
- (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;"

6. JUDGMENT IN BRIEF

- Considering the facts and circumstances of the case, the Court held Prashant Bhushan liable for criminal contempt whereas, the notice issued to Contemnor No. 2 (Twitter) was discharged.
- The contention regarding the maintainability of the petition had already been considered by the Supreme Court in several cases. It was observed that the manner to initiate contempt is not limited by provisions of Contempt of Courts Act, 1971 but the source of such power is the Constitution (Article 129 to be specific) itself. In case of *suo moto* contempt petitions, there is no need of taking consent from anybody and the Court can initiate proceedings based on the information received.
- It was observed that if a person while exercising his right under 19(1)(a), bona fide exceeds right in the public interest, the court would show its magnanimity and will be slow in exercising contempt jurisdiction. However, if such a statement is made against a judge having an adverse effect on the administration of justice or maligning the image of the judiciary, court cannot be supposed to be a silent spectator and would be entitled to invoke contempt jurisdiction.
- It was observed that the statement "*CJI Rides.....time when he keeps the SC in Lockdown mode denying citizens their fundamental right to access justice*" is completely false, malicious and scandalous undermining dignity and authority of administration of justice for the reason being that the alleged Contemnor No. 1 himself appeared in various matters through video conferencing.
- It was observed that the second tweet is a clear criticism about the institution of the Supreme Court and institution of Chief Justice of India and the tweets clearly gave an impression that the judges presiding the Supreme Court in the last six years played a role in the destruction of democracy and the last four CJI's in particular. The tweets tend to shake public confidence in the institution of the judiciary and it cannot be considered as a fair criticism made in bonafide public interest.

7. COMMENTARY

In my opinion, the decisions in the present case, grossly undermines the freedom of speech and expression. India, one of the largest democracies is going through a phase where dissenters, protestors, activists are charged under criminal laws including the draconian legislation The Unlawful Activities (Prevention) Act, 1967 (UAPA). The judiciary had interfered time and again and on various occasions observed that dissent give a chance to improve, however, in the instant case the court failed to apply the same.

The court failed to appreciate/evaluate/engage with the detailed affidavit in reply on behalf of Contemnor No. 1 running into 134 pages, which along with annexures run into 463 pages. Contemnor No. 1 through the detailed reply consisting of 47 annexures, had tried to justify how he reached to the conclusion regarding the tweets in question. The Annexures contained statements made by Judges, Reports of Law Commission, Opinions of eminent jurists (including retired judges) and several order/judgments including that of Hon'ble Court itself to justify his stand. However, complete non-discussion of the same in 108-page long judgment appears to set a bad precedent.

The contempt of court has been introduced for efficient working of court without any fear, however, many instances suggest that judges try to protect their self-esteem through misusing the contempt law.

8. IMPORTANT CASES REFERRED

- *Re: Vijay Kurle & Ors., 2020 SCC Online SC 407.*
- *In Re: Hira Lal Dixit and Ors., MANU/SC/0036/1954.*
- *In Re: S. Mulgaokar, MANU/SC/0067/1977*
- *Brahma Prakash Sharma and Ors. v. The State of Uttar Pradesh, MANU/SC/0020/1953.*
- *Baradakanta Mishra and Ors. v. Registrar of Orissa High Court and Ors., MANU/SC/0071/1973*
- *P.N. Duda v. P. Shiv Shanker and Ors., MANU/SC/0362/1988.*

CASE NO. 6
SHAMBHURAM YADAV
V.
HANUMANDAS KHATRI
(AIR 2001 SC 2509)

**PROFESSIONAL MISCONDUCT CASE FOR SUGGESTING
CLIENT TO BRIBE JUDGE**

ABSTRACT

Advocacy is a noble profession. An advocate is the most accountable, privileged, and erudite person of the society and his act are role model for the society, which are necessary to be regulated. The following is an appeal against orders of statutory bodies : Bar Council of India and case summary of *Shambhuram Yadav v. Hanumandas Khatri* which deals with professional misconduct wherein the advocate of the Bar Council of Rajasthan was referred to the disciplinary committee of Bar Council alleged for writing a letter to his client and suggesting him to give bribe to judge and obtain several favourable orders in his favour and for that reason the said advocate held guilty of professional misconduct. The list of professional misconduct is not exhaustive; the Supreme Court has widened the scope and ambit of the term misconduct in numerous instances. Generally legal profession is not a trade or business, it's a gracious, noble and decontaminated profession of the society. Members belonging to this profession should not encourage deceitfulness and corruption, but they have to strive to secure justice to their clients. The credibility and reputation of the profession depends upon the manner in which the members of the profession conduct themselves. It's a symbol of healthy relationship between bar and bench.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal No. 6768 of 2000
Jurisdiction	:	Supreme Court
Case Filed On	:	October 16, 2000
Case Decided On	:	July 27, 2001
Judges	:	Justice K.T. Thomas, Justice Y.K. Sabharwal
Legal Provisions Involved	:	Advocates Act, 1961, Section 35, 44
Case Summary Prepared By	:	Anchaliya Priti, V. T. Choksi Sarvajnaik Law College, Surat

2. BRIEF FACTS OF THE CASE

- In this case complaint was filed against the advocate before Bar Council of Rajasthan and was referred to Discipline Committee which was constituted by the State Bar Council.
- The complaint was that the advocate – responded who appeared as a counsel in civil suit wrote a letter to his client–Mahant Rajgiri *inter alia* stated that another client has told him that concerned judge accepts bribe and give favourable orders in his favour and so he should send amount of Rs. 10,000/-. In case he can influence the judge himself there is no need to send such amount to be given to the judge.
- The State Bar Council observe that the respondent advocate had admitted the contents of the letter and said that it constitutes professional misconduct and suspended him from practice for a period of two years with effect from June 15, 1997.
- The respondent advocate has challenged this before the Bar Council of India. By order dated July 31, 1999 the disciplinary committee of Bar Council of India comprising three members enhanced the punishment and directed that the name of the responded be struck off from the roll of advocates and thus debarring him permanently from the practice.
- The responded filed a review petition under section 44 of the Advocates Act against the order dated July 31, 1999. The review petition is accepted and the earlier judgement of the committee is modified to the extent and his suspension for life is revoked and he is only reprimanded. The review petition is allowed keeping in view the following observation such as
 - A perusal of the letter shows that the petitioner has simply given a reply to the query put by his client regarding the conduct of the judge and as such it remained a fact that it was not an offer on the side of the delinquent advocate to bribe a judge.
 - That the petitioner is an old man of 80 years and is practicing since 1951 and during such a long inning, it was for the first time that he conducted himself in such an irresponsible manner although he had no intention to bribe.
 - The committee by keeping in view the age and past clean record of the petitioner in legal profession and is of considered view that it would not be appropriate to remove the advocate permanently from the roll of advocates and he is warned by the committee.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the Disciplinary committee of the Bar Council of India has erred in giving judgement?
- II. Whether the disciplinary committee can modify the earlier order passed by another disciplinary committee by taking a different view of the same set of facts in exercise of power of review?

4. ARGUMENTS OF THE PARTIES

Appellant

- Appellant contended that the earlier order cannot be modified by the disciplinary committee while deciding a review petition. Therefore, the disciplinary committee has erred while delivering judgement.
- It is also said that the disciplinary bodies are guardians of the due administration of justice. They have requisite power and rather a duty while supervising the conduct of the members of the legal profession to inflict appropriate penalty when members are found to be guilty of misconduct.

Respondent

- Responded referred to disciplinary committee and from the said quotation it is evident that the advocate was simply given a reply to the query put by his client regarding the conduct of the judge and as such it remained a fact that it was not an offer on the side of the advocate to bribe a judge.
- Further, he argued that he has joined the profession since 1951 and has past clean record in the legal profession.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The Advocates Act, 1961

- **Section 35** Punishment of advocates for misconduct:
 - 1) Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee. [(1A) The State Bar Council may, either of its own motion or on application made to it by any person interested, withdraw a proceeding pending before its disciplinary committee and direct the inquiry to be made by any other disciplinary committee of that State Bar Council.]
 - 2) The disciplinary committee of a State Bar Council shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the advocate concerned and to the Advocate-General of the State.
 - 3) The disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate-General an opportunity of being heard, may make any of the following orders, namely:

- a) dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;
 - b) reprimand the advocate;
 - c) suspend the advocate from practice for such period as it may deem fit;
 - d) remove the name of the advocate from the State roll of Advocates.
- 4) Where an advocate is suspended from practice under clause (c) of sub-section (3), he shall, during the period of suspension, be debarred from practising in any court or before any authority or person in India.
- 5) Where any notice is issued to the Advocate-General under sub-section (2), the Advocate-General may appear before the disciplinary committee of the State Bar Council either in person or through any advocate appearing on his behalf.
 [Explanation—In this section, 4[section 37 and section 38], the expressions “Advocate-General” and Advocate-General of the State” shall, in relation to the Union territory of Delhi, mean the Additional Solicitor General of India.]

- **Section 44** Review of orders by disciplinary committee:

The disciplinary committee of a Bar Council may of its own motion or otherwise review any order [within sixty days of the date of that order] passed by it under this Chapter: Provided that no such order of review of the disciplinary committee of a State Bar Council shall have effect unless it has been approved by the Bar Council of India.

6. JUDGEMENT IN BRIEF

- The Supreme Court held that the earlier order considering all relevant aspects directed expulsion of respondent from profession which could not be lightly modified while deciding a review petition.
- It is evident that the earlier committee on consideration of all relevant facts came to the conclusion that the advocate was worthy of remaining in the profession.
- It is evident that the Bar Council considered that a high standard of morality is required from the lawyer more so from a person who has put in 50 years in profession. One expects from such person a very high standard of morality and unimpeachable sense of legal and ethical propriety. Since the Bar Councils under the Advocates Act have been entrusted with the duty of guarding the professional ethics, they have to be more sensitive to the potential disrepute on account of action of a few black sheep which may shake the credibility of the profession

and thereby put at the stake other members of the bar. Considering these factors Bar Council had inflicted in its earlier order the condign penalty.

- Under these circumstances the apex court has no hesitation in setting aside the impugned order dated June 4, 2000 and restoring the original order of the Bar Council of India dated July 31 1999.
- The appeal thus allowed in the above terms with cost quantified at Rs. 10,000/-.

7. COMMENTARY

Members of the legal profession are officers of the court and subject to the rules imposed in regulation to the practice therein. Besides courts they also owe a duty to the society which has a vital public interest in the due administration of justice. The said public interest is required to be protected by those on whom the power has been entrusted to take disciplinary action. The present case held advocate responded guilty of a serious misconduct by writing to his client the letter suggesting to give bribe to judge and corrupting the system and considering the nature of the misconduct the penalty of permanent debarment had been imposed on the advocate responded. The credibility of a council including its disciplinary body in respect of any profession whether it is law, medicine, accountancy or any other vocation depends upon how they deal with cases of delinquency involving serious misconduct which has a tendency to erode the credibility and reputation of the said profession. The punishment, of course, has to be commensurate with the gravity of the misconduct.

CASE NO. 7

BAR COUNCIL OF ANDHRA PRADESH V.

KURAPATI SATYANARAYANA
(AIR 2003 SC 178)

PROFESSIONAL MISCONDUCT BY ADVOCATE FOR RETAINING THE MONEY OF CLIENT

ABSTRACT

An Advocate is the most accountable, privileged, and erudite person of the society and his act are role model for the society, which are necessary to be regulated. This is an appeal against orders of statutory bodies: Bar Council of India and case summary of *Bar Council of Andhra Pradesh v. Kurapati Satyanarayana* which deals with professional misconduct wherein the Advocate Kurapati Satyanarayana was engaged as counsel by Shri Gutta Nagabhushanam in the execution proceedings and the Advocate Kurapati Satyanarayana has received a total sum of Rs.14,600/- on various dates in the execution proceedings on behalf of his client but the said money was retained by the Advocate Kurapati Satyanarayana and has conducted grave professional misconduct. The list of professional misconduct is not exhaustive; the Supreme Court has widened the scope and ambit of the term misconduct in numerous instances. Generally legal profession is not a trade or business, it's a gracious, noble and decontaminated profession of the society. The credibility and reputation of the profession depends upon the manner in which the members of the profession conduct themselves.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal No. 3412 of 2001
Jurisdiction	:	Supreme Court of India
Case Filed On	:	January 3, 2000
Case Decided On	:	November 15, 2002
Judges	:	Justice V. N. Khare, Justice Ashok Bhan
Legal Provisions Involved	:	Advocates Act, 1961, Section 38; Bar Council of India, Rule 23 and Rule 24; Prevention of Corruption Act, 1988

2. BRIEF FACTS OF THE CASE

- The Bar Council of Andhra Pradesh has filed this appeal against the order of the Disciplinary Committee of the Bar Council of India dated March 28, 1999 by which the Bar Council of India has set aside the order passed by the State Bar Council removing the name of the Kurapati Satyanarayana from the roll of the State Bar Council as he was found guilty of grave professional misconduct in discharge of his duties.
- Initially, O.S. No 1624 of 1991 was filed by the Shri Gutta Nagabhushanam on the file of the Additional District Munsif Magistrate. The said suit was decreed and the Execution Petition No. 112 of 1995 was instituted for realization of the decretal amount. Kurapati Satyanarayana was engaged as counsel by Shri Gutta Nagabhushanam in the execution proceedings.
- Kurapati Satyanarayana received a total sum of Rs. 14,600/- on various dates in the execution proceedings but he did not make the payment of same to Shri Gutta Nagabhushanam. Hence, on October 18, 1996 Shri Gutta Nagabhushanam filed a complaint with the Additional District Munsif who then transferred the matter to the Bar Council of Andhra Pradesh.
- The complaint filed and important documents were forwarded to the State Bar Council and Kurapati Satyanarayana chose not to file a counter. Hence the matter went to its Disciplinary Committee which after examining the witnesses produced came to the conclusion that Kurapati Satyanarayana received the total sum of Rs. 14,600/- belonging to Shri Gutta Nagabhushanam and retained the same with him. Hence, the disciplinary committee of the State Bar Council concluded that the Advocate had retained the money with him and was thus guilty of professional misconduct. He was directed to return the money to the complainant.
- Kurapati Satyanarayana asserted that he had informed Shri Gutta Nagabhushanam through a post card about the receipt of the decretal amount and that on April 24, 1996 he paid Rs.11,000/- to Shri Gutta Nagabhushanam. However, these were not accepted by the Disciplinary Committee as Kurapati Satyanarayana failed to produce any evidence proving the payment of the sum of Rs. 11,000/-.
- Kurapati Satyanarayana then filed an appeal before the Disciplinary Committee of the Bar Council of India. The Disciplinary Committee of the Bar Council of India agreed with the finding of fact recorded by the State Bar Council that Kurapati Satyanarayana failed to pay the amount of Rs.14,600/- received by him on the behalf of Shri Gutta Nagabhushanam in the

execution proceedings but came to the conclusion that Kurapati Satyanarayana did not commit any professional misconduct though there might have been some negligence on his part.

- The Disciplinary Committee of Bar Council of India observed that the conduct of the appellant shows that Kurapati Satyanarayana never refused to return the money the same and also, he had made part payment of the total amount. Perusal of the file shows that Kurapati Satyanarayana could not make the payment of the remaining amount because of his family circumstances as the remaining amount was utilized by him in his treatment. The Committee concluded that Kurapati Satyanarayana never wanted to misappropriate the decretal amount and hence, the Bar Council of India set aside the State Bar Council's order holding that the delinquent had not committed any professional misconduct though there might have been some negligence on his part, which did not involve any moral turpitude.
- The Bar Council of Andhra Pradesh has filed this appeal against the aforesaid order of the Disciplinary Committee of the Bar Council of India.

3. ISSUES INVOLVED IN THE CASE

- I. Whether or not retaining client's money by an advocate amount to professional misconduct?
- II. Whether or not in this case retaining client's money is just negligence on the part of Kurapati Satyanarayana?
- III. Whether or not Kurapati Satyanarayana is guilty of professional misconduct?
- IV. Whether the Disciplinary committee of the Bar Council of India has erred in giving judgement?
- V. Whether the disciplinary committee can modify the earlier order passed by another disciplinary committee by taking a different view of the same set of facts in exercise of power of review?

4. ARGUMENTS OF THE PARTIES

Appellant

- The appellant Bar Council of Andhra Pradesh filed appeal petition against the order of the Bar Council of India which set aside its order of removing the name of Kurapati Satyanarayana from the State roll as it was of the view that he committed one of the gravest professional misconduct as he retained money belonging to his client Shri Nagabhushanam.

Respondent

- The point raised before the court on behalf of the advocate responded is that the appeal filed by the Bar Council of Andhra Pradesh is not maintainable as it is not the person aggrieved so this appeal is not maintainable.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The Advocates Act, 1961

Section 38. Appeal to the Supreme Court.—Any person aggrieved 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)] thereon as it deems fit: [Provided that no order of the disciplinary committee of the Bar Council of India shall be varied by the Supreme Court so as to prejudicially affect the person aggrieved without giving him a reasonable opportunity of being heard.]

Bar Council of India Rules

Part-VI, Chapter- II of the Bar Council of India Rules provide Standards of Professional Conduct and Etiquette for advocates.

Rule 24 of the aforesaid Chapter provides that an advocate shall not do anything whereby he abuses or takes advantage of the confidence reposed in him by his client. Rule 25 says that an Advocate should keep accounts of the client's money entrusted to him.

Prevention of Corruption Act, 1988

If a public servant misappropriates money, he is liable to be punished under the Prevention of Corruption Act, with imprisonment which shall not be less than one year.

6. JUDGEMENT IN BRIEF

- Apex Court found that the order of the Disciplinary Committee of the Bar Council of India is unsustainable. It is sad that the Disciplinary Committee of the Bar Council of India which is the highest body to monitor the probity of the legal profession in the country chose to trivialise and treat a very grave professional misconduct on the part of the Delinquent lightly by saying that

the Delinquent did not make the payment to the de-facto complainant as he had utilised the money for his personal need for treatment and that such like instances do take place when a person is in trouble.

- The Supreme Court said that the finding of the Bar Council of India that there was no intention on the part of the advocate to misappropriate the money of his client was not only “unfounded and perverse” but also lacked the serious thought which was required to be given to the disciplinary committee of the Bar Council of India in the discharge of quasi-judicial functions while probing into such grave instances.
- Further, it said that it was neither pleaded nor shown that Mr. Kurapati Satyanarayana was in dire financial difficulty which promoted him to utilize the decretal amount for his treatment which was with him in trust. This is an act of breach of trust. It said that “we are firmly of the view that such types of excuses cannot be entertained being frivolous and unsustainable”.
- The Supreme Court referred to the case of *Harish Chandra Tiwari Baiju*, in which it was held that “Amongst the various types of misconduct envisaged for a legal practitioner the misappropriation of the client’s money must be regarded as one of the gravest.” It was 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 or withdraw money from the Court payable to the client or take money of 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 Act, with imprisonment which shall not be less than one year. He is certain to be dismissed from service. But if an advocate misappropriates money of the client there is no justification in de-escalating the gravity of the misdemeanor. Perhaps the gravity of such breach of trust would be mitigated when the misappropriation remained only for temporary period. There may be a justification to award a lesser punishment in a case where the delinquent Advocate the money before commencing the disciplinary proceedings.”
- The Supreme Court said that the pleading of the point raised by the respondent that the appeal filed by the Bar Council of Andhra Pradesh is not maintainable need not be dilated as seven Judge Constitution Bench of this Court held in Bar Council of Maharashtra M. V. Dabholkar and others that the role of Bar Council is of dual capacity one as the prosecutor through its Executive Committee and the other quasi-judicial performed through its Disciplinary Committee.

- Setting aside the Bar Council of India's order, the Bench said that the conduct of the delinquent advocate who is an elderly gentleman is reprehensible and is unbecoming of an advocate. It deeply pains us that the delinquent who claimed to have practised for three decades and has worked as Government advocate for four years should have been guilty of such serious misconduct.
- Hence, the Supreme Court has upheld the order of the Andhra Pradesh Bar Council removing the name of the advocate from its rolls after he was found guilty of grave professional misconduct in the discharge of his duties and also the appellant shall be entitled to the costs of this appeal, which was assessed as Rs. 5,000/-.

7. COMMENTARY

The role of the advocates in the society is of great importance. They being part of justice delivering holds great reverence and respect in the society. Each individual has a well-defined code of conduct which needs to be followed by the person living in the society. An advocate in discharging his professional assignment has a duty to his client. In the present case the act of advocate responded is considered as breach of trust as the money of his client de facto complainant was retain by the advocate and Apex Court found Advocate responded guilty of a grave professional misconduct and feel that having regard to the serious nature of misconduct the punishment of removal of his name from the roll of Bar Council would be the only appropriate punishment. Adherence to the correct professional conduct in the discharge of one's duties as an advocate is the backbone of legal system. Any laxity while judging the misconduct which is not bona fide and dishonest would undermine the confidence of the litigant public resulting in the collapse of legal system. While placing the law before the court an advocate is at liberty to put forth a proposition and canvass the same to the best of his wits and ability so as to persuade an exposition which would serve the interest of his client and the society.

8. IMPORTANT CASES REFERRED

- *Bar Council of Maharashtra v. M.V. Dabholkar & Ors., 1975 (2) SCC 702*
- *Harish Chandra Tiwari v. Baiju, 2002 (2) SCC 67*

CASE NO. 8
HARISH CHANDRA TIWARI
V.
BAIJU
(AIR 2002 SC 548)

MISAPPROPRIATION OF CLIENT'S MONEY

ABSTRACT

This is a case of misappropriation of client's money where the appellant an Advocate with the Bar Council of U. P. was engaged by the respondent Baiju for a land acquisition case where Baiju claimed for compensation. The Advocate had applied for releasing the amount and as per orders of the Court, he withdrew the mentioned amount but didn't return it to the client nor informed him about the receipt of the amount. When Baiju got to know about this he filed a case with the Bar Council of the State. Later on, July 12 the appellant filed an answer to the said grievance by acknowledging the representation of the respondent by him and withdrawal of cash, yet used the defense that he had restored the add up to the customer subsequent to deducting his charges and costs. When the bar council disciplinary committee was examining the affidavit with the respondent. The respondent denied the substance as well as denied having gotten any sum from the appealing party Advocate. Under section 36-B the Act of procedures stood moved to the Bar Council of India. The disciplinary committee led enquiry and reached the resolution that the oath dated August 3, 1988 was a forged one and that the application was modified. On this evidence the committee forced a discipline of suspending the Advocate from practice for a time of 3 years. Against this request an allure was made under the watchful eye of the Hon'ble Court under Section 38 of Advocates Act, 1961. However, The Supreme Court arranged the Appeal and forced the discipline of evacuation of the name of appellant from the roll of advocate.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Appeal (C) 200 of 2000
Jurisdiction	:	Supreme Court of India
Case Filed On	:	August 3, 1988
Case Decided On	:	January 8, 2002
Judges	:	Justice K.T. Thomas, Justice S. N. Phukan
Legal Provisions Involved	:	Advocates Act, 1961, Section 35, 36B (2), 38

Case Summary Prepared By	:	Nilabhra Bhattacharya Rajiv Gandhi National University of Law, Punjab.
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2. BRIEF FACTS OF THE CASE

Appellant was selected as an Advocate with the Bar Council of U. P. in May 1982, and has been practicing from that point forward. Appellant was locked in by Baiju the respondent, in a land obtaining case in which the respondent was an inquirer for remuneration. The appellant applied for delivering the sum and according to the Courts request pulled out the sum on September 2, 1987 yet he didn't restore it to the customer to whom it was expected nor did he educate the customer about the receipt regarding the sum.

When the customer got the information on it and subsequent to get the sum composed by the Advocate, a complainant was lodged by him with the bar committee of state for reasonable disciplinary action against Appellant.

On June 12, 1988, appellant documented an answer to the said accepting the representation of the respondent by him for pulling out cash, however he used the defense that he had restored the add up to the customer subsequent to deducting his charges and costs. Notwithstanding this Appellant on 3 August 1988 recorded an affidavit before State Bar gathering bar board in which a trade-off between the appellant and respondent had been shown up was expressed. State Bar Disciplinary Advisory Group was checking the affidavit with the respondent. The respondent denied the substance as well as denied having gotten any sum from the appellant Advocate.

Under area 36-B the Act of procedures stood moved to the Bar Council of India. The disciplinary board of trustees led enquiry and reached the resolution that the affidavit dated August 3, 1988 was fabricated one and that application was created. On this conclusion the advisory group forced a discipline of suspending the Advocate from practice for a duration of 3 years.

3. ISSUES INVOLVED IN THE CASE

- I. What ought to be the quantum of punishment to be imposed on the advocate?

4. ARGUMENTS OF THE PARTIES

Plaintiff

The plaintiff, who is an old, poor, vulnerable and an uneducated person, had assigned the appellant for his land acquisition case and later when he realized that his assets had been misappropriated by

the appellant, he filled a case with the Bar Council of the State for initiating suitable disciplinary actions against him and also to make sure that he gets his due back.

Defendant

The defendant Harish Chandra Tiwari, was enlisted as an advocate with the Bar Council of the State of U. P. had filed a reply to the said complaint before the Bar Council of the State. Although he admitted of withdrawing a certain amount of money, he used the defence of returning the money to the client after a deduction of his fees and expenses. Then later an affidavit implying to be that of Baiju was filled by the defendant before the State Bar Council in which it is expressed that a trade-off had been shown up between him and his customer and that no further move should be made on the complaint made by the respondent and pleaded non liability, however when the Bar Council of the State confronted the plaintiff regarding the same, he flat out denied of having received any amount from the appellant-advocate.

5. LEGAL ASPECTS INVOLVED IN THE CASE

This case deals with the extent of punishment that the offending Advocate should be imposed. The advocate had filled his appeal under Section 38 of the Advocates Act, 1961 Court upholding the appeal of misconduct, asked the advocate why the punishment shall not be enacted to strike his name from the roll of the Bar Council of the State. Further grievance and the procedures later stood moved to the Bar Council of India by excellence of Section 36B (2) of the Act.

Coming to the gravity of the punishment that is to be given to the guilty Advocate Section 38 of the Act empowers the Supreme Court to "pass such order including an order varying punishment awarded by the disciplinary committee of the Bar Council of India as it deems fit". The only condition for varying the punishment awarded by the Bar Council of India is that if such variation is to prejudicially affect the appellant, he should be given a reasonable opportunity of being heard.

Three unique punishments are acted in Section 35 of the Act: (1) censure the advocate (2) suspend the advocate from practice for such period as it might consider plausible (3) eliminate the name of the advocate from the State Roll of Advocates.

6. JUDGEMENT IN BRIEF

In the current scenario, the misappropriation stayed unabated even after the disciplinary procedures initiated and it proceeded even till now as the deficient advocate didn't want to return even a solitary pie to the customer. The wrongdoing of the appellant-advocate turned out to be more disturbed when he resolved to fabricate an affirmation for the sake of his customer, which he created before the

disciplinary committee to swindle his customer and to delude the disciplinary committee to accept that he and his customer had settled the contest by making a late instalment to his customer. The court thinks holding such advocate on the move of the legal profession, it is risky to the calling. The circumstance for this situation along these lines, warrants the discipline of expulsion of his name from the move of advocates.

In deciding the discipline to be granted by the disciplinary committee on demonstrated wrongdoing for each situation, the committee ought to weigh different factors. One of them is the intense need to scrub the legal profession from the individuals who are inclined to abusing the cash of the customers. Prevention is consequently a noticeable thought. This is especially vital when the legal profession has gotten swarmed as it is today, without there being any powerful sifting measure at the confirmation stage. Besides, to keep up the professional principles, it is important that no one should frame the feeling that once an individual is admitted to the legal profession, he would be safe to any corrective measures and is allowed to enjoy evil or wretched activities. The solitary position which can successfully keep up the fidelity of the legal profession is the disciplinary committee of the Bar Council, both of the State or of India. The appropriate message which should go to all individuals from the legal profession is that they are generally being watched, in regards to their professional activities, through optics by the Bar Council of the State just as by the Bar Council of India and that their disciplinary committees would not submit any professional misconduct with escape nibble discipline.

7. COMMENTARY

Advocacy is an honourable profession and an Advocate is the most responsible, favored and intelligent individual of the general public and his act are good example for the general public, which are important to be controlled. Professional wrongdoing is the conduct beyond what is viewed as satisfactory or deserving of its enrolment by the overseeing body of a profession. Professional offense alludes to shocking or disreputable direct not befitting an advocate. Section V of the Advocate Act, 1961, manages the lead of Advocates. It portrays arrangements identifying with discipline for professional and different wrongdoings. Section 35(1) of the Advocate Act, 1961, says, where on receipt of a grievance or in any case a State Bar Council has motivation to accept that any advocate on its roll has been liable of professional or other wrongdoing, it will allude the case for removal to its disciplinary committee. For the most part legal profession isn't an exchange or business, it's a benevolent, respectable, and purified profession of the general public. Individuals having a place with this profession ought not support trickery and debasement, however they need to endeavor to tie down justice to their customers. The believability and notoriety of the profession relies on the way wherein

the individuals from the profession act. It's an image of sound connection among Bar and Bench. This case is a classic example of the quantum of punishment that any advocate will get if he/she misappropriates the client's money, here the advocate fraudulently withdrew a certain amount of money from the client without informing him and further when a case was filed against him, he forged a document claiming that he had settled the matter with his client personally and no further action should be taken against him. The Court observing all these activities of the advocate, forced the punishment of removal of the name of appellant from the roll of Advocates.

8. IMPORTANT CASES REFERRED

- *Prahlad Saran Gupta v. Bar Council of India., 1997 (2) SCR 499*

CASE NO. 9
IN RE: AN ADVOCATE
V.
UNKNOWN
(AIR 1961 KER 209)
ADVOCATE'S FAILURE TO PAY THE DECREE-HOLDER

ABSTRACT

Advocacy is a noble profession, and an advocate is the society's responsible, fortunate, and insightful individual. The conduct of an advocate serves as role models for the society, which must be governed. Professional misconduct is the behavior outside the bounds of what is considered acceptable or worthy of its membership by the governing body of a profession. If any misconduct is happened by any an Advocate, then the Court or any person or the Bar Council of India can complain about the misconduct. The complaint is done either to the State Bar Council or Bar Council of India. This case discusses the professional misconduct by an advocate in the performance of his duty. The complainant filed a petition alleging that the advocate failed to pay the decree-holder. Kerala Hight Court heard the complaint where it was found that the Advocate had withdrawn Rs. 270/- deposited by the judgment-debtor in the case for payment to the complainant-decree-holder as per the Debt Relief Act, but had not paid the same to the complainant despite repeated demands and a registered notice through counsel. It was held by the Court that "It is the imperative duty of the counsel on receipt of the client's money, to inform the client thereof and pay him without any delay the amount under receipt." For non-fulfilment of this duty on the part of the counter-petitioner, the advocate was suspended from practice for six months with effect from the date of service on him of a copy of this order by the learned Munsiff of Pathanamthitta in whose court he is reported to be practicing.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Professional Misconduct Petition. No. 2 of 1960
Jurisdiction	:	Kerala High Court
Case Decided On	:	February 8, 1961
Judges	:	Justice M Ansari, Justice T C Raghavan, Justice M Madhavan Nair
Legal Provisions Involved	:	BCI Rules, Rule 27 - Chapter II, Debt Relief Act

Case Summary Prepared By	:	Manisha Gupta National Law University, Odisha
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2. BRIEF FACTS OF THE CASE

In *Re: An Advocate v. Unknown*, the complaint was filed by the client, the decree-holder [Petitioner] in the Changanacherry Munsiff's Court against the Advocate [Counter-petitioner] who was involved with the client's case. The petitioner raised an allegation that the Advocate had withdrawn Rs. 270/- deposited by the judgment-debtor for payment to the client as per the Debt Relief Act, but has not paid the same to the complainant despite repeated demands and a registered notice through counsel. In the later investigation, it was found that the date when the counter-petitioner withdrew the amount from the court was not disclosed by the petitioner. However, the counter petitioner admitted that he was issued a receipt of a notice demanding the money by the complainant on February 26, 1959 and that he paid the amount on December 12, 1959 even after the complaint before the Bar Council was filed by the decree-holder on June 24, 1959. The retention of the client's money by the counter-petitioner even after demand by the client for a period of more than 9 months had no excuse whatever and was quite unbecoming of the Advocate. It was noted that there was no due fee to the Advocate by the client.

3. ISSUES INVOLVED IN THE CASE

- I. What is the quantum of punishment to be imposed on the counter-petitioner?

4. ARGUMENTS OF THE PARTIES

The learned District Judge of Quilon was referred to do the inquiry for this complaint. His report concluded that the counter-petitioner was guilty of misappropriation of his client's money even though the misappropriation was only temporary. In reference to the matter of *S. An Advocate, 1937 Mad WN 1322 (FB)*, he quoted, "The fact that the misappropriation is only temporary does not lessen the offense or the gravity of the misconduct." Therefore, he recommended that appropriate action may be taken against the counter-petitioner. The court noted that since nothing was brought out in the discussion before this Bench to satisfy that this finding was in any way incorrect, the court accepted the finding of the learned District Judge in the matter.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Rule 27 of the BCI Rules-Chapter II, Part-VI, Section II (Duty to the Client)

Rules on the professional standards that an Advocate needs to maintain are mentioned in Chapter II, Part VI of the Bar Council of India Rules. These rules have been placed there under section 49(1)(c) of the Advocates Act, 1961. Rule 27 states:

“Where any amount is received or given to him on behalf of his client the fact of such receipt must be intimated to the client as early as possible.”

6. JUDGEMENT IN BRIEF

- The Kerala High Court suspended the counter-petitioner for a period of six months, for non-fulfilment of this duty under Rule 27 of the BCI Rules- Chapter II.
- While deciding the case, the court viewed that the cases of professional misconduct cannot be viewed as cases for recovery of money or breach of contract. The court is bound to uphold the high and rigid standard of professional conduct expected of a legal practitioner who, because of their privileged status, are bound to conduct themselves in a manner befitting the high and honorable profession to whose privileges they have been admitted; and if they depart from the high standards which the profession has set for itself and demands of them in professional matters, they are liable to disciplinary action.
- In observation to matters *In re 'M' an Advocate, (S) AIR 1957 SC 149* and *Ratnamma v. Abdul Khader, AIR 1959 AP 135*, the Kerala High Court stated that it will watch zealously the professional activities of advocates enrolled by it; and if, in any case, it is established that an advocate, instead of discharging his duties faithfully like a person of trust and honor, has betrayed the trust in consequence of which a client has been, constrained to adopt proceedings for misconduct against his own counsel, such advocate will be dealt with severely. The members of the legal profession should stand free from all suspicion.
- The court held that it is the imperative duty of the counsel, on receipt of the client's money, to inform the client thereof and pay him without any delay the amount under receipt.

7. COMMENTARY

Advocates' conduct is discussed in Chapter V of the Advocate Act of 1961. It explains the provisions that govern the punishment of professionals and other infractions. In general, the legal profession such as advocacy is not a trade or a business; rather, it is a noble act for society. Members of this profession should not promote fraud or corruption, but rather work to ensure that their clients receive

justice. The way members of the legal profession handle themselves determines the profession's prestige and reputation. It's a representation of a positive relationship between the Bar and the Bench. Due to the broad nature and scope of professional misconduct, neither the Advocates Act of 1961 nor the Bar Council of India provides a precise description as to what is professional misconduct. However, the Advocates Act of 1961 provides for disciplinary action when the integrity and prestige of the profession are jeopardized as a result of acts of omission and commission by any member of the profession.

Every lawyer owes it to his or her client to defend him or her to the end of the legal process. Normally, an advocate's actions impact only his clients, but in certain cases, people who are personally injured by an advocate's actions or omissions may file a lawsuit against the advocate. Many jurisdictions accept an advocate's responsibility to a disgruntled beneficiary. The legal profession would not authorize an advocate to absolve himself of responsibility in the event of a service failure. Such actions are forbidden by law if a legal professional contract out his responsibility for deficiency in services. The law forbids such practices to protect the interests of clients from unprincipled legal professionals.

8. IMPORTANT CASES REFERRED

- *In re 'M' an Advocate, (S) AIR 1957 SC 149*
- *Mrs. Ratnamma Breganza v. Abdul Khader Khureshi, AIR 1959 AP 135*

CASE NO. 10
BAR COUNCIL OF MAHARASHTRA
V.
DABHOLKAR AND OTHERS
(AIR 1976 SC 242)
BAR ON SOLICITING THE WORK

ABSTRACT

Advocacy is a noble career that has evolved over time, and the conventions making it a more rigorous career. This is a case summary of the *Bar Council of Maharashtra v. Dabholkar and others* which set the precedent for deciding the baseline for professional misconduct in the future and thus aided in drawing fine lines of distinction to keep the legal profession noble. It discussed Professional conduct such as soliciting work amounting to Misconduct. One of the things that an advocate is not permitted to do is advertise oneself, or anything related to the profession in any way. The complaint was directed to the Disciplinary Committee of the Bar Council of Maharashtra. Following a review of the matter and due to its voluminous nature, the Disciplinary Committee of the Bar Council of India tried all 8 cases as a single proceeding and issued a common judgment.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal Nos. 1461 to 1468 of 1974
Jurisdiction	:	Supreme Court of India
Case Decided On	:	October 3, 1975
Judges	:	Justice V. R. Krishna Iyer, Justice Ranjit Singh Sarkaria, Justice A.C. Gupta, Justice Syed Murtaza Fazalali
Legal Provisions Involved	:	The Advocates Act, 1961, Section 35, 38 The Bar Council of India, Rule 36
Case Summary Prepared By	:	Manisha Gupta National Law University, Odisha

2. BRIEF FACTS OF THE CASE

This case involves the Bar Council of Maharashtra as the Petitioner v M.V. Dabholkar and others as the respondent. The respondents, who were lawyers practicing in criminal courts, were charged with professional misconduct under section 35(1) of the Advocates Act, 1961. The Bar Council of

Maharashtra considered the complaint received from the High Court of Maharashtra against the lawyers and referred the matter to its Disciplinary Committee for further probe. According to the testimony; recorded by the State Disciplinary Committee, these lawyers were sited at the entrance to the Magistrates' Courts, waiting for the arrival of potential litigants. They raced towards the clients in an unpleasant tussle to snatch the briefs, to lay claim to the engagements even by physical fight, to undercut fees, and to obtain work for themselves through such unedifying behavior. The State Disciplinary Committee held the respondents guilty of professional misconduct and suspended them from practicing as advocates for three years. Aggrieved by the order the respondents preferred an appeal to the Bar Council of India under Section 37 of the Advocates Act, 1961.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the prosecuted practitioners are guilty of professional misconduct?
- II. Whether the State Bar Council be considered an aggrieved party since it has suffered any legal grieving and since the Bar Council of India has not deprived the State Bar Council of anything?

4. ARGUMENTS OF THE PARTIES

Petitioner

The State Bar Council referred to as the Appellant herein has filed the present appeal seeking to reverse the order passed by the Bar Council of India stating that the acts committed by the practitioners were only to solicit work and does not cross the borderline of professional misconduct. Aggrieved by the verdict of the Disciplinary Committee, the State Bar Council approached the Supreme Court for an appeal.

Respondent

The Supreme Court argued that it was only fair to the respondents that each of the eight cases is heard separately rather than all of them being heard together.

1. **C.A. 1461/74 (Dhabolkar)** Respondent Mr. Dabholkar was a Senior Prosecutor and the only witness that appeared for him testified that "I have not seen him snatching away the papers." Considering all the facts and the weak evidence against him, the Supreme Court did not state any specific order against him as he assured that being 68 years old, he would not pursue the path of professional impropriety as he had decided virtually to step out of the Bar except for four cases left with him which he desired to complete.

2. **C.A. 1462/74 (Bhagtani)** Respondent Shri Bhagthani had not appointed a counsel, nor appeared in person, but upon examination, the Court found very little to hold him liable for.
3. **C.A.1463/74 (Talati)** Respondent Mr. Talati was found guilty of some misconduct on his part but pleaded to show some consideration as he was in poor circumstances and had suffered because of it. Further, he expressed an unqualified regret for his deviant behavior and has prayed for the clemency of the Court, promising to practice proper professional conduct if given the chance to practice again. The court upon consideration of the said facts found him guilty but reduced his suspension, as ordered by the State Bar Council.
4. **C.A. 1464/74 (Kelawala)** Respondent Mr. Kelawala, represented by Mr. Zaki, pleaded that he was purblind and was ready to give an undertaking to the Court that he would no longer practice his profession. Also, there was considerably little evidence against him. Given these, the court held that Mr. Kelawala will not practice the profession of law any longer.
5. **C.A.1465/74 (Dixit)** Respondent Mr. Dixit represented by Shri Gannule was also absolved from professional misconduct due to inadequate evidence to prove him guilty of misconduct.
6. **C.A.1466/74 (Mandalia)** Respondent Mr. Mandalia did not appear either through counsel or in person due to lack of evidence against him to prove him guilty of any particular 'soliciting' act. Hence there was no proof of professional misconduct.
7. **C.A. 1467/74 (Doshi)** Respondent Mr. Doshi contested his guilt and pursued his plea with righteous persistence and challenged the evidence and its credibility projecting his grievance about processual improprieties. Upon examining the witness and the background of Mr. Doshi, the Court ruled that he wasn't guilty of professional misconduct but reprimanded him for the same and cautioned him to refine himself in advocacy.
8. **C.A.1468/74 (Raisinghani)** Respondent Shri Raisinghani being 65 years old was found guilty as the evidence showed that he had physically fought two rival advocates in the course of snatching the briefs from clients, entering the criminal courts. One of these fights resulted in his trousers being torn and the other assault by him was on Mr. Mandalia, one of the respondents in these appeals. The court also found that Shri Raisinghani was a refugee from Pakistan and appeared at the Magistrate's Courts to make a living. He showed remorse for his actions and prayed that he would go nowhere close to professional misconduct in the last years of his career. The court upon hearing this did not absolve him, but rather reduced his suspension.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Section 35 (3) Punishment of Advocates for misconduct, Advocates Act, 1961

The disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate-General an opportunity of being heard may make any of the following orders, namely:

- (a) dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;
- (b) reprimand the advocate;
- (c) suspend the advocate from practice for such period as it may deem fit;
- (d) remove the name of the advocate from the State roll of advocates.

Section 38: Appeal to the Supreme Court

Any person aggrieved 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, 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 thereon as it deems fit provided that no order of the disciplinary committee of the State Bar Council of India shall be varied by the Supreme Court to prejudicially affect the person aggrieved without giving him a reasonable opportunity of being heard.

Rule 36 of the Bar Council of India Rules

An advocate shall not solicit work or advertise either directly or indirectly, whether by circular, advertisement, personal communication, interviews not warranted by personal relations furnishing newspaper comments or providing his photograph to be published in connection with cases in which he has engaged or concern. The three elements in Rule 36 are to be satisfied in order to be amenable to the disciplinary jurisdiction the advocates must have:

- a) Solicited work
- b) From a particular person
- c) With respect to a case

6. JUDGEMENT IN BRIEF

Rationale

- a) It held that the Appellate Tribunal has erred in the application of Rule 36 of the Bar Council Rules, as it was only promulgated in 1965, post the Amendment and the said act took place way before that.
- b) When the question arose for consideration of the Bar Council of India as an “aggrieved person”, the Court referred to the findings in *Adi Pherozshah Gandhi v. H. M. Seervai, 1970*, where an appeal filed by the Advocate General of Maharashtra to the Bar Council of India was questioned, the Court held that the right of appeal is a statutory right and is invariably confined to an aggrieved person or a person that claims to be aggrieved. And that the interests of the Bar Council are to uphold professional conduct and etiquette of the advocates enrolled under it.
- c) The Court also held that “the Bar Council functions in a dual capacity, one as the prosecutor through its Executive Committee and the other quasi-judicial performed through its Disciplinary Committee. Hence, being the prosecutor, the State Bar Council would be an ‘aggrieved person’ and therefore, the appeal under section 38 of the Advocates Act, 1961 would be maintainable.”

Obiter Dicta

- a) Addressing the issue of “professional misconduct”, Justice Krishna Iyer stated that “Be it remembered that the central function of the legal profession is to promote the administration of justice. If the practice of law is thus a public utility of great implications and a monopoly is statutorily granted by the nation, it obligates the lawyer to observe scrupulously those norms which make him worthy of the confidence of the community in him as a vehicle of justice-social justice. The Bar cannot behave with doubtful scruples or strive to thrive on litigation.”
- b) The Bar Council acts as a sentinel of professional code of conduct and is vitally interested in the rights of the advocates as well as the purity and dignity of the profession, giving it all the more reason to be considered an “aggrieved party”.
- c) It lit up the path to notice the nobility the legal profession holds and how advertising of the legal profession shall amount to professional misconduct. It is evident to note that the Legal profession is not a trade, and no commercial practice or merchandising must vulgarize the legal profession.
- d) Justice Krishna Iyer observed the idea of advertising of legal services in the following words, “The canons of ethics and propriety for the legal profession taboo conduct by way of soliciting, advertising, scrambling and other obnoxious practices, subtle or clumsy, for the betterment of

the legal business. Law is not a trade, briefs no merchandise and to the leaven of commercial competition or procurement should not vulgarize the legal profession.”

- e) An advocate must fulfill the above-mentioned duties to his colleagues. The object of framing this rule is to safeguard the interest of the profession itself. Advocacy is a profession and not a business. The restriction put on this profession under the said rule is Constitutional and not violative to Article 19(1)(g) and Article 21 of the Constitution. Moreover, such restrictions are just, fair, and reasonable, and not arbitrary, fanciful, and evasive. It satisfies the twin test given in Article 14 of the Constitution. i.e. the classification is just, fair and reasonable and there is Nexus between the object and classification. The object is to achieve the efficiency of advocates to the legal profession, to safeguard the interest of both advocates as well as the public at large, and the better administration of Justice for which the legal profession is a partner with the judiciary.

7. COMMENTARY

This case gives one of the landmark judgments making it a watershed moment in laws related to professional misconduct in India. The Court discussed important issues such as legal ads and the obligations of advocates to one another, issuing a promising decision that remains in effect until this date. According to my views, this case opens the discussion for determining if the legal profession is suitable for a trade, and therefore whether it should be marketed or not. Advertising in the legal profession is frowned upon, and sufficient laws are there which prohibit it, as well as those that recommend a dose of punishment when an attorney advertises his profession. With lawyers strewn around the world, it's strangely refreshing to note that active promotion of the profession is strictly prohibited. Since the legal profession is not a trade, it does not require advertisements because there is no need to brag about it. It creates an unwelcome sense of dismay among the advocates, and they cannot afford such palpable stress. The aim is to prevent one advocate from having an unfair advantage over the other, and advertisement suppression is undoubtedly one explanation for this. Advocacy must live up to its reputation as a noble career. Unfortunately, several law firms, despite their claims that they do not advertise, use websites or other sources to lay out facts about the firm and assert monopolistic market power, forcing smaller firms and independent practitioners out of business.

CASE NO. 11
P. D. KHANDEKAR
V.
BAR COUNCIL OF MAHARASHTRA, BOMBAY
AND OTHERS
(1984) 2 SCC 556
MISLEADING THE CLIENT

ABSTRACT

The following is a Case Summary of the *Pandurang Dattatraya Khandekar v. Bar Council of Maharashtra, Bombay and Others*, also commonly known as the “Advocate’s Misconduct Case”. This case was an appeal brought before the Hon’ble Supreme Court of India under Section 38 of the Advocates Act, 1961. In this case, the appellant and another person named ‘A’ have been charged with professional misconduct under Section 35 of the Advocates Act, 1961 pertaining to their actions in 2 different situations as per the facts. The disciplinary committee as constituted under Section 9 of the Advocates Act, found them guilty of such misconduct and have suspended them for a period of 4 months for the appellant and 2 months for ‘A’. Thus, the present case is of an appeal before the Hon’ble Supreme Court of India against the charge of professional misconduct so levelled and the order of suspension. The Hon’ble court has in this case explained what amounts to professional misconduct under Section 35 of the Act and what is the test to determine such misconduct. Furthermore, the case also highlights the importance of how advocates must work in accordance with rules and regulations as well as provide the best possible advice to their clients.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal No 720 (NCM) of 1976
Jurisdiction	:	Supreme Court of India
Case Filed On	:	1976
Case Decided On	:	October 20, 1983
Judges	:	Justice A.P. Sen, Justice E. S. Venkatarmiah, Justice R. B. Misra
Legal Provisions Involved	:	Advocates Act, 1961- Section 9, 35, 36, 36B, 38, 42; Bar Council of India Rules- Part VII, Chapter-1

Case Summary Prepared By	:	Rishi Raj Symbiosis Law School, Noida
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2. BRIEF FACTS OF THE CASE

This case is of an appeal against the suspension order passed by the disciplinary committee of the Bar Council of India. The appeal has been brought under Section 38 of the Advocates Act, 1961. Advocate V. J. Francis has represented the appellant in this case. V. N. Ganpule and V. D. Khanna were Advocates for respondents in this case.

In this case, a complaint was brought before the disciplinary committee constituted under Section 9 of the Advocates Act, 1961. The complaint was brought by 12 Advocates practising at 2 courts of the Sub-Divisional Magistrates in Collectorate of Poona under Part VII, Chapter-1 of the Bar Council of India Rules. The complaint is against appellant P. D. Khandekar and A. N Agavane. The complaint was transferred to the disciplinary committee of the Bar Council of India by the virtue of Section 36B(1) of the Advocates Act, 1961 as the State Bar Council failed to dispose of the complaint within one year from the receipt of the complaint under Section 35 of the act.

In this case, two charges have been levelled against the appellant- P.D. Khandekar and A.N Agavane-

1. On January 7, 1974, the appellant and Agavane got 2 people remarried S. B. Potdar and Smt. Leelawati Dhavale even though the divorce of the aforesaid 2 people was not as per the legal requirements. The charge on both advocates is that in order to receive Rs. 100 as their fee they induced the couple into swearing-in an affidavit before the Sub-Divisional Magistrate, Poona stating that they have divorced their spouses and got remarried in Poona. This affidavit would be sufficient proof of their remarriage as per Hindu rites.
2. On February 22, 1974, the appellant Agavane prepared an affidavit stating that Smt. Sonubai Girju Valekar had gifted her land to her grand-daughter Smt. Mangala Ramesh Ghorpade. All Advocates Smt. Sonubai Girju Valekar suggested she go for the formation of gift deed and must submit registration fees and stamp duty fees for making such transfer. However, the appellant and Agavane suggested she does not need to make payment of any registration fees and they would get the work done through affidavit on payment of Rs 45.

Therefore, the advocates have brought a complaint against the appellant under Section 35 of the Advocates Act, 1961 read with Part VII Chapter -1 of the Bar Council of India Rules alleging professional misconduct on the part of the appellant and Agavane as per Section 35 of the act.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the acts are done by the appellant advocates tantamount to professional misconduct under Section 35 of the Advocates Act?
- II. What is the test to determine as to what constitutes professional misconduct under the Advocates Act?

4. ARGUMENTS OF THE PARTIES

Appellant

- The appellant pleaded that the case instituted against him is a frame-up and frivolous.
- The appellant submitted that the affidavit prepared by them for the remarriage of Mr. Potdar and Mrs. Dhavale as per the instructions given by them.
- The appellant further submitted that he did not make any affidavit containing any details of the transfer of land as a gift by Mrs. Mangala and receipt of any money in exchange for that.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The legal aspects in this case involved are as follows-

1. Advocates Act, 1961
 - Section 9 (Constitution of Disciplinary committees in State Bar Council and All India Bar Council)
 - Section 35 (Punishment of advocates for misconduct)
 - Section 36 (Disciplinary powers of Bar Council of India)
 - Section 36B (Disposal of disciplinary proceedings)
 - Section 38 (Appeal to Supreme Court of India)
 - Section 42 (Powers of disciplinary committee)
2. Bar Council of India Rules
 - Part VII, Chapter-1 (Complaints against advocates and procedure to be followed by Disciplinary Committees of the State Bar Council and the Bar Council of India)

6. JUDGEMENT IN BRIEF

The Hon'ble Supreme Court of India gave the following verdict in the present case.

- Advocates act as *loco parentis* for their clients and they must follow norms of the profession as well as protect the clients.

- The legal advice rendered by an advocate must not be improper in nature. There is a difference between ‘Wrong-legal advice’ and ‘Improper legal advice’. The rendering of ‘Improper legal advice’ with ulterior motive can be classified as professional misconduct.
- Mere negligence in preparing the legal documents with no moral delinquencies must not amount to professional misconduct.
- The test to affirm ‘professional misconduct’ has been outlined in various cases. The court relied on the case *In re A Solicitor Ex parte the law Society* (1912) 1 KB 302 in which the court laid down that when a person in pursuit of his profession does something which brings disgrace or dishonour to the profession, they are working in then it to be held as ‘Professional Misconduct’.
- The court held that it is not misconduct or unprofessional on part of the appellant and Agavane to draft an affidavit on instructions of the client. Furthermore, the clients of the appellant in question here are of reasonable prudence owing to their power of understanding of what they were doing. The evidence submitted by the complainant was not found to be substantial.
- The court held the second charge on the appellant and Agavane to be of no basis due to lack of substantial evidence connecting the appellant to the affidavit in question.
- Placing reliance on the case of *A, a' Pleader v. Judges of Madras High Court* (AIR 1930 PC 144) in which the Privy Council held that charges of professional misconduct must be proved and should not be inferred on the ground of mere suspicion. The Court set aside the order of the disciplinary committee of the Bar Council of India against the appellant and ‘A’ and dropped the proceedings against them under Section 35 of the Act.
- The court further suggested the Bar Council of India and State Bar Councils take adequate steps and allocation of funds to organise legal profession and proper schemes and training must be held by the bar in order to provide proper guidance to the new generation of lawyers for an efficient process of law.

7. COMMENTARY

The present case is *Pandurang Dattatraya Khandekar v. Bar Council of Maharashtra, Bombay and Others* also known as ‘Advocates Misconduct Case’ is an appeal against suspension orders passed by the disciplinary committee of the Bar Council of India on the grounds of professional misconduct. The verdict of the court was not guilty which has been elaborated above.

Advocates have been regarded as the officers of the court. This has been reiterated even by our Hon’ble apex court in the cases of *Ex-Capt. Harish Uppal v. Union of India & Anr* (2003) 2 SCC 45) and *U. P. Sales Tax Service Association v. Taxation Bar Association, Agra and others* (1995 SCC (5)

716). Advocates have a duty towards the court as well as the clients they are attached to. The sanctity of the legal profession, as well as the faith in the judiciary, can only be ascertained if advocates do their job with due diligence and integrity. In the present case, 2 Advocates suffered suspension although there was no evidence of misconduct found against them. As per Section 42 of the Advocates Act, 1961 the Disciplinary Committee of Bar Council of India and Bar Councils of State as to have powers of the Civil Court under the Code of Civil Procedure. Hence, in my opinion, the proceedings so conducted are judicial in nature and the disciplinary committee must act in accordance with that. In the present case, it has failed to acknowledge the lack of evidence against the advocates and passed an order of suspension which is erroneous in nature. The court's reliance on the actual meaning of professional misconduct has been perfect in my opinion. The advocates do not show an ulterior motive in their actions of advice so given. Their advice was incorrect maybe but not improper in nature along with an intention to damage the clients. The affidavit made by them was on the dictate of their own clients who were well aware of their actions. Furthermore, the second charge is merely based on suspicion and there has been no evidence presented. The bar council's committee has thus committed a grave error in suspending the advocates merely because of suspicion and conjecture. The court has placed reliance on various verdicts and has explained the true meaning of 'professional misconduct' as well as explained the test of determining such 'misconduct' very aptly. Lastly, the court's advice to the Bar Council of India and State Bar Councils to devise schemes and training for new Advocates enrolled in the bar for an efficient running of the legal profession and the judicial system is necessary and even today it is the need of the hour.

8. IMPORTANT CASES REFERRED

- *A, a' Pleader v. Judges of Madras High Court, (AIR 1930 PC 144)*
- *Ex-Capt. Harish Uppal v. Union of India & Anr., (2003) 2 SCC 45*
- *U.P. Sales Tax Service Association v. Taxation Bar Association, Agra and Ors. (1995 SCC (5) 716)*
- *In re A Solicitor Ex parte the law Society (1912) 1 KB 302*

CASE NO. 12
HIKMAT ALI KHAN
V.
ISHWAR PRASAD ARYA AND ORS.
(1997) 3 SCC 131
ASSAULT ON FELLOW ADVOCATE

ABSTRACT

The following is a Case Summary of the *Hikmat Ali Khan v. Ishwar Prasad Arya and Ors.* which can also be known as *Advocate's Assault Case* is a case brought before the Hon'ble Supreme Court of India against the order of the disciplinary committee of Bar Council of India. This case has been brought before the Hon'ble Supreme Court of India by the appellant under Section 38 of the Advocates Act, 1961 which confers a right of appeal to the Supreme Court on any person aggrieved by an order by the disciplinary committee of the Bar Council of India. In the present case, the appellant has impugned the order of the disciplinary committee of the Bar Council of India in which the committee set aside the punishment of the respondent. The State Bar Council of Uttar Pradesh had disbarred the respondent on counts of professional misconduct under Section 35 of the Advocates Act, 1961 read with Section 24-A of the Act.

In this case, the appellant had appealed against U. P. State Bar Council Disciplinary Committee's order against the respondent debarring him for 3 years. The appellant wanted an increase in his punishment which was not considered by the Bar Council of India's disciplinary Committee and hence he appealed to the Hon'ble Supreme Court of India. The respondent is charged with fraud and assault in the courtroom against a fellow advocate and hence, the case pertains to professional misconduct. The case also highlights the importance of how advocates must work in accordance with rules and regulations as well as must pay certain respect to fellow advocates and assign dignity to their profession.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal No 4240 of 1986
Jurisdiction	:	Supreme Court of India
Case Filed On	:	1986
Case Decided On	:	January 28, 1997
Judges	:	Justice S. C. Agarwal, Justice Sujata V. Manohar

Legal Provisions Involved	: Constitution of India- Article 161; Advocates Act, 1961- Section 3,6, 9, 24-A, 35, 36, 37, 38; Bar Council of India Rules- Part VII, Chapter-1; Indian Penal Code- Section 307 Arms Act, 1959- Section 25
Case Summary Prepared By	: Rishi Raj Symbiosis Law School, Noida

2. BRIEF FACTS OF THE CASE

This case is an appeal under Section 38 of Advocates Act, 1961 before the Hon'ble Supreme Court of India against the order of the Disciplinary Committee of Bar Council of India dated September 8, 1985 setting aside the U. P. State Bar Council Disciplinary Committee's sentence to the respondent of being disbarred for 3 years. In this case, the advocate for the appellant was Mr. Subodh Markandeya, Miss Chitra Markandeya, Mr. Ajay Singh and Miss Meenakshi Agarwal. The respondent was represented by Advocate H. K. Puri and Pramod Swarup.

In this case, the respondent, namely Advocate Ishwar Prasad Arya practised in Badaun. On May 18 1971, he assaulted his opponent Radhey Shyaam Tiwari with a knife and a bullet is also said to have been fired by him in the course of this. He was convicted for this under Indian Penal Code, Section 307 and Arms Act, Section 25 by the 1st Temporary Civil and Sessions judge on July 3, 1972. The High Court upheld his conviction under Section 307 IPC on appeal. He was sentenced to 3 years of rigorous imprisonment by the High court. However, the IIIrd Additional District and Sessions Judge, Badaun who was responsible for the execution of the order of the High Court received a letter from Deputy Secretary, Ministry of Home, U. P. stating that the Governor has suspended the conviction of Ishwar Prasad Arya under Article 161 of the Constitution of India.

On further enquiry it was found that letter so received was fraudulent and he was arrested and sent to Badaun Jail to undergo imprisonment. The IIIrd Additional District and Sessions Judge sent a complaint to the Bar Council of U. P. against the respondent alleging professional misconduct as envisaged under Section 35 of the Advocates Act, 1961. The disciplinary committee of the U.P. state Bar Council initiated proceedings against him and found him guilty of professional misconduct under Section 35 of the act. He was debarred from practising as an advocate for a period of 2 years through an order dated 30th January 1982.

The respondent appealed against the State Bar Council Disciplinary Committee order to Bar Council of India under Section 37 of the Act. The Bar Council of India set aside this order stating lack of material evidence in the case that respondent could be held guilty for fraudulent forgery of orders.

Meanwhile, the appellant namely- Hikmat Ali Khan also complained to the U. P. State Bar Council in 1972 on the grounds of fraudulent documentation to evade arrest, his conviction under Section 307 of the Indian Penal Code and also his name in register No 8 of the police *kotwali* which was the register pertaining to bad character. The state bar passed the ex-parte order because of the non-appearance of the respondent in the case and debarred him for 3 years.

The appellant appealed against this order to the Bar Council of India for increasing the quantum of punishment, and the respondent also appealed seeking relief from the case. The Bar council disposed of both the appeals and set aside the respondents punishment.

Then Hikmat Ali Khan filed an appeal to the Supreme Court under Section 38 of the Advocates Act, 1961 against such setting aside of punishment.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the acts are done by the appellant advocates tantamount to professional misconduct under Section 35 of the Advocates Act?

4. ARGUMENTS OF THE PARTIES

Appellant

- The advocates on behalf of the appellant argued that Disciplinary Committee had failed to acknowledge the fact that the respondent evaded arrest for 16 months on the basis of a fraudulently forged letter.
- The conviction of the respondent under IPC Section 307 has also not been taken into regard by the Bar Council.
- The respondent's entry in register 8 of *kotwali* Badaun which is for people with bad character in the society is unbecoming for an advocate and this leads to his bad reputation in society.
- The appellant lastly submitted that the Bar Council of U. P. which levied punishment of disbarment of 3 years was less quantum of punishment and the Bar council should have allowed an appeal against it.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The legal aspects in this case involved are as follows-

- Constitution of India- Article 161 (Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases)
- Advocates Act, 1961-
 - Section 3 (State Bar Councils)
 - Section 6 (Functions of State Bar Councils)
 - Section 9 (Disciplinary committees)
 - Section 24-A (Disqualification for enrolment)
 - Section 35 (Punishment of advocates for misconduct)
 - Section 36 (Disciplinary powers of Bar Council of India)
 - Section 37 (Appeal to the Bar Council of India)
 - Section 38 (Appeal to Supreme Court of India)
 - Section 42 (. Powers of disciplinary committee)
- Bar Council of India Rules- Part VII, Chapter-1 (Complaints against advocates and procedure to be followed by Disciplinary Committees of the State Bar Council and the Bar Council of India)
- Indian Penal Code-
 - Section 307 (Attempt to murder)
 - Section 193 (Punishment for false evidence)
 - Section 228 (Intentional insult or interruption to public servant sitting in the judicial proceeding)
- Arms Act, 1959- Section 25 (Punishment for certain offences)

6. JUDGEMENT IN BRIEF

The Hon'ble Supreme Court of India gave the following verdict in this case.

- The court set aside the order of the Bar Council of India dated September 8, 1985 which set aside the U. P State Bar Council's order of disbarment of the respondent.
- The court upheld the order of disbarment of the respondent owing to gross professional misconduct under Section 35 of the Advocates Act, 1961.
- The court furthermore, stated that the act of the Advocate not only amounts to professional misconduct but also has been convicted of an offence involving moral turpitude which is a ground for Disqualification for enrolment from State rolls as per Section 24-A(1)(a) of the Act.
- The court order the removal of respondent-advocate from state rolls.

7. COMMENTARY

The Present case- *Hikmat Ali Khan v. Ishwar Prasad Arya and Ors.* which can also be known as *Advocate's Assault Case* is a case brought before the Hon'ble Supreme Court of India against the order of the disciplinary committee of the Bar Council of India. The case is of assault and forgery committed by an advocate in open court against a fellow lawyer and evading punishment for the same.

Advocates have been regarded as *loco parentis* i.e., “in the place of a parent”. This has been held by the Hon’ble Supreme Court in the case of *Pandurang Dattatraya Khandekar v. Bar Council of Maharashtra, Bombay and Others* (1984) 2 SCC 556. Furthermore, Advocates have been regarded as the officers of the court. This has been reiterated even by our Hon’ble apex court in the cases of *Ex-Capt. Harish Uppal v. Union of India & Anr* (2003) 2 SCC 45) and *U.P. Sales Tax Service Association v. Taxation Bar Association, Agra and others* (1995 SCC (5) 716). However, in the present case, the conduct of the advocate in all regards is against ethics. In order to evade arrest, the respondent went on to forge documents pertaining to the governor’s powers. The respondent is a practising advocate and yet using a knife against a fellow advocate to assault him and intimidate him is against the law itself and the decorum and dignity of the court. There is an onus on each legal practitioner to uphold such dignity and decorum. However, the act done by the respondent is against his role as an officer of the court. Furthermore, as per Section 42(2) of Advocates Act, 1861 All proceedings before a disciplinary committee of a Bar Council shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code, 1860. Furthermore, Section 42 of the act also confers the disciplinary committee with the powers of the Civil Court. Thus, this means that the Bar Council of India and State Bar Council Disciplinary Committees and complaints under Section 35 of the Act must be dealt with like a judicial proceeding and the members of such committees must leave behind their biases and preconceptions as well as professional affiliations behind.

However, in the present case, the Bar Council of India’s decision to set aside the respondent’s punishment is an erroneous decision as he has been held guilty and even convicted of the offence by the High Court. Lastly, in my opinion, the respondent’s actions have failed the test devised by the court to ascertain misconduct as held in the case of *Pandurang Dattatraya Khandekar v. Bar Council of Maharashtra, Bombay and Others* (1984) 2 SCC 556 read with *In re A Solicitor Ex parte the law Society* (1912) 1 KB 302. The acts of the advocate stand violative of the above-mentioned cases and tests and hence he has been rightly removing from rolls of the state bar by the Hon’ble Court.

8. IMPORTANT CASES REFERRED

- *Ex-Capt. Harish Uppal v. Union of India & Anr (2003) 2 SCC 45)*
- *In re A Solicitor, Ex parte the law Society, (1912) 1 KB 302*
- *Pandurang Dattatraya Khandekar v. Bar Council of Maharashtra, Bombay and Others (1984) 2 SCC 556*
- *U.P. Sales Tax Service Association v. Taxation Bar Association, Agra and others (1995 SCC (5) 716)*

CASE NO. 13
N G DASTANE
V.
SHRIKANT S. SHIVDE & ANR.
AIR 2001 SC 2028

JUDICIAL DELAY CAUSED BY PROFESSIONAL MISCONDUCT

ABSTRACT

This is a case where imparting of justice was being delayed because of the “professional misconduct” at the hands of the counsel on behalf of the aggrieved. A counsel is the most trusted party associated with any matter before a court but such trust is subject to various professional obligations which needs to be fulfilled by the advocate without any disparity. A special leave petition was filed before the apex court regarding gross miscarriage of an Advocate’s professional duty by abusing the process of court. Before this case came before the Apex Court, it was first filed as a complaint before the Maharashtra State Bar Council, as the respondents in this very case are advocates on behalf of the accused in a previously filed case, for postponing the examination of witnesses who were present in the court on respective dates without even making other arrangements for examining such witnesses. The Supreme Court held the decisions of the State Bar Council and Bar Council of India as woefully and respondents were held accountable for professional misconduct. This case justifies the statement, “*Justice delayed is justice denied*”.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal No. 3543 of 2001
Jurisdiction	:	Supreme Court of India
Case Decided On	:	May 3, 2001
Judges	:	Justice K.T. Thomas, Justice R. P. Sethi, Justice S. N. Phukan
Legal Provisions Involved	:	Advocates Act, 1961, Sections 35 (1) & 36 (2); Bar Council of India Rules, 1975, Rule 11
Case Summary Prepared By	:	Tanya Katyal School of Law, Delhi Metropolitan Education, New Delhi

2. BRIEF FACTS OF THE CASE

The complainant, here is the appellant in a previously filed case before the Judicial Magistrate. Whereas, the respondents in this case, are the advocates on behalf of the accused in such previously filed case regarding theft of electricity.

- A complaint was previously filed by the appellant-complainant before the Judicial Magistrate regarding a theft of electricity in 1993. The accused party hired two Advocates (Respondent 1 and 2) to represent his defence.
- The matter in the wake of theft of electricity was posted for cross-examination of the appellant and other witnesses but on several subsequent occasions the advocates on behalf of the accused sought for frivolous adjournments continuously.
- A table of such instances and their frivolous reasons are as follows:

Date	Grounds for Adjournment
30/07/1993	2 nd respondent-advocate sought for an adjournment on the ground that, “it wasn’t possible to conduct the cross-examination unless all the other witnesses on behalf of the prosecution were also present before the court”.
23/08/1993	The 1 st respondent-advocate sought for an adjournment on the ground that, “he was busy outside the court” and the 2 nd respondent-advocate gave the reason that, “the father of the respondent’s friend has expired”.
13/03/1993	Both the respondents-advocates sought for an adjournment by giving a superficial reason.
16/10/1993	Adjournment was sought on the ground that, “one of the respondent-advocate was out of station”.
20/11/1993	Adjournment was sought on the ground that, “one of the respondent-advocate was unwell”.
04/12/1993	Another adjournment was sought by 2 nd respondent-advocate with a written application on the ground that, “the 1 st respondent-advocate was unable to speak on account of throat infection and continuous cough”.

- On account of the last adjournment sought by the 2nd respondent-advocate, the Judicial Magistrate ordered the respondents-advocates to produce a medical certificate regarding the throat infection, in addition to which cost of Rs. 75 was also imposed which needs to be paid to the appellant.

- Post-order of the latest previous adjournment, the appellant affirmed that when on the same day he was passing by the corridors of the court complex, he saw the 1st respondent “forcefully and fluently arguing” in a case before another bench in the same court premises.
- Subsequent to the instance, the appellant filed a complaint against the advocates-respondents before the Maharashtra State Bar Council; dated December 27, 1993.
- A joint reply to the complaint was filed by both the respondents stating that, Respondent 1 was ailing to severe throat infection and has taken adjournment in all the cases where extended cross-examination was lined up.
- After considering the reply the State Bar Council sought for a Report from its Advocate Member, upon which the State Bar Council disposed off the complainant against the respondents on the ground that “the complaint is without any substance”.
- In response to this disposal of the complaint, the appellant-complainant, filed a revision petition before the Bar Council of India, but the complainant met with the same fate all over again, as the BCI disposed of the revision petition by upholding the impugned order passed by the State Bar Council on the ground that, there was no reason to believe that the advocates had committed “professional or other misconduct”.
- On account of the above decisions issued by the State Bar Council and Bar Council of India, the aggrieved party, filed a Special Leave Petition before the Apex Court.

3. ISSUES INVOLVED IN THE CASE

The issues raised by the petitioner revolved around the matter of “professional or other misconduct” and causing much “harassment and hardship to the witnesses”.

This issue raised was based on the ground that:

- I. Whether the respondents-advocates, sought for continuous frivolous adjournments in a previously instituted case regarding theft of electricity or not?
- II. Whether such adjournments were sought for postponing the examination of witnesses or not?
- III. Whether such adjournments were sought even after being well-versed with the fact that, the required witnesses were present in the court for prolonged cross-examination or not?
- IV. Whether such adjournments were sought without making other arrangements for examining such witnesses or not?

4. ARGUMENTS OF THE PARTIES

Petitioner

- The petitioner affirmed the fact that the petitioner complainant strong-mindedly affirmed the fact that the respondents-advocates sought for continuous frivolous adjournments on various occasions in a previously filed case regarding theft of electricity. Such adjournments were based on unjustified and unreasonable grounds such as, “father of the respondent’s friend has expired”, “one of the respondent-advocate is out of station” etc. In such circumstances the other respondent-advocate could have taken up the cross-examination but they chose to obtain adjournments upon such baseless grounds.
- Such adjournments were definitely sought for postponing the examination of witnesses even after being well versed with the fact that, the required witnesses were present in the court for such prolonged cross-examination.
- Such frivolous adjournments were sought without making other arrangements for examining such witnesses causing harassment and hardship to the witnesses besides abusing the decorum of court proceedings.
- Such allegations were made because the appellant affirmed that on the day of last order of adjournment, when he was passing by the corridor of the court complex, he saw the 1st respondent “forcefully and fluently arguing” in a case before another bench in the same court premises. Owing to this incident only, the appellant filed a complaint before the Maharashtra State Bar Council.

Respondent

- The respondent completely denied the allegations made by the complainant. They filed a joint reply to the complaint stating that, Respondent No. 1 was ailing to severe throat infection and has taken adjournment in all the cases where extended cross-examination was lined up.
- The respondents admittedly stated that the reasons for seeking adjournments were solely because of the continuous health issues for which they have submitted a medical certificate along with Rs.75 which was imposed on them as cost by the court.
- In accordance to the reply by respondents and the report by advocate members the State Bar Council and Bar Council of India held that there was no reason to believe that the advocates had committed “professional or other misconduct”.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The legal issues raised by the petitioner are under Section 35(1) of the Advocates Act, 1961 which states as follows-

“35. Punishment of advocates for misconduct- (1) Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.”

In addition to this another legal provision is involved in this case from the same Act is of Section 36 (2) which states as follows-

“36. Disciplinary powers of Bar Council of India - (2) Notwithstanding anything contained in this Chapter, the disciplinary committee of the Bar Council of India may, either of its own motion or on a report by any State Bar Council or on an application made to it by any person interested, withdraw for inquiry before itself any proceedings for disciplinary action against any advocate pending before the disciplinary committee of any State Bar Council and dispose of the same.”

According to these provisions, misconduct covers any misdeed or unacceptable behaviour which obstructs administration of justice such as seeking frivolous adjournments which abuses the process of court proceedings. If the Bar Council finds or receives any such genuine case or bona fide complaint of such misdeed, then it is Bar Council’s duty to forward the matter to Disciplinary Committee.

6. JUDGMENT IN BRIEF

The bench observed that the complainant raised a very strong issue which should have been addressed by the Disciplinary Committee of the State Bar Council initially but due to the loose ended notions the matter was not taken up seriously even by the Bar Council of India. The Supreme Court stated that, even the Bar Council of India was woefully wrong while deciding this complaint.

The court interpreted Section 35 of the Advocates Act as a provision which equips the Bar Council with binoculars along with a whip to trace out all the irresponsible and negligent advocates and legal professionals who violate and abuse their professional duties. Any behaviour which poses hurdles or abuses the promotion of administration of justice will be regarded as, guilty of professional misconduct.

It was highlighted that the witnesses are respectable and responsible citizens of the nation who obeyed the summons of the court and were present on every date. Such witnesses were not supposed to be treated less respectable by asking them to come over and over again as per the convenience of the

advocates and in any case if the advocates had any unavoidable circumstances, then they could have made other arrangements for the cross examination but such an abuse of the court proceedings caused prolonged delay of justice and hardship and harassment to the witnesses.

Besides the professional misconduct the lenient behaviour of the Judicial Magistrate was also questioned for such serious laches where such Judicial Magistrate yielded orders of adjournment upon justified reasons.

Hence, in this case the Supreme Court ordered that the complaint will be taken care of by the Bar Council of India under Section 36 of the Advocates Act. Further, the order of the State Bar Council and The Bar Council of India were set aside as they were erroneously adjudicated.

7. COMMENTARY

This illuminating judgement is authored by Justice K. T. Thomas, who observed the facts of the case and deeply explained the corroboration of events which led to such an injustice and misconduct at the hands of the officers of the court, who are advocates. This very case highlights the importance of professional ethics which if not followed would lead to abuse of administration of justice and will be violative of the rights of citizens to access justice. The continuous frivolous and unjustified adjournments often dim the burning fire for justice and demotivates the society who keeps hopes for justice from the court of law. So, in order to lighten up the hopes for justice the very first person, the officers of the court, who are advocates and judicial officers, should maintain and promote their professional ethics and conducts for the betterment of the society because as we all know-

“Justice delayed is justice denied”

8. IMPORTANT CASES REFERRED

- *Bar Council of Maharashtra v. M.V. Dabholkar*, (1976) 2 SCC 291: (1976) 2 SCR 48
- *George Frier Grahame v. Attorney-General*, AIR 1936 PC 224
- *R.D. Saxena v. Balram Prasad Sharma*, (2000) 7 SCC 274
- *State of U. P. v. Shambhu Nath Singh*, (2001) 4 SCC 677: 2001 SCC (Cri) 798: JT (2001) 4 SC 319

CASE NO. 14
R D SAXENA
V.
BALRAM PRASAD SHARMA
AIR 2000 SC 2912
ADVOCATE'S RIGHT TO LIEN

ABSTRACT

This case is based on the retainment of fees of an advocate. As the Advocate didn't receive his fee, with bona-fide intention he kept the case briefs of his client in his hand as to keep the link with client and he hoped his client would settle his payment. However, the law does not permit an advocate to take the clients document as a lien of fees. This case analysis discusses such a case where it held that the advocate, if not returning documents of a public institution, is to be punished for the misconduct of keeping such documents. The case tries to demystify the wrong beliefs of advocate client privileges. It also brings light to the provisions as well as the right of advocates with respect to payment. It also clarifies that the client is only entitled to payment of fees and the advocate cannot do any malpractice for attaining his payment that he is supposed to receive. If the advocate is unable to receive payment, he can directly approach court. the advocate should not take advantage of the confidence the client reposed in him.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal No. 1938 of 2000 with Contempt Petition No. 147 of 2000
Jurisdiction	:	Supreme Court of India
Case Filed On	:	2000
Case Decided On	:	August 22, 2000
Judges	:	Justice K T Thomas, Justice R P Sethi
Legal Provisions Involved	:	Code of Civil Procedure 1908, Order 3 Rule 4(1); Contract Act 1872, Section 148, 171; Advocates Act 1961, Section 35, 36B, 38; The Sale of Goods Act, 1930, Section 2(7); Constitution of India, Article 22(1)
Case Summary Prepared By	:	Pooja Lakshmi Bennett University, Greater Noida

2. BRIEF FACTS OF THE CASE

The appellant was practising in Bhopal, enrolled as a legal practitioner under the State Bar Council of Madhya Pradesh. According to the views of the appellant, he was appointed to act as a legal advisor for Madhya Pradesh State Cooperative Bank Ltd. However, during the succeeding year, the bank retained him due to his capacity in conducting cases for the bank till July 17, 1993. After the termination of the retainership, the bank requested him to return all the bank related case files. It is to be noted that instead of returning files to the bank, the appellant forwarded a consolidated bill of legal remuneration showing an amount of Rs. 97,100/- which is payable to the appellant by the bank as he is entitled to receive the balance legal remuneration.

The appellant also informed the bank that the files will be only returned after setting all the dues that he is to receive in the name of legal remuneration. Regarding the amount, corresponding documents went on between both the parties. The bank disclaimed liability outstanding from the side of the bank to the appellant. Due to these reasons, the dispute remained unresolved, leading to the case bundles of bank in hands of appellant. For counting the pending proceedings before the tribunals/courts, the bank required the said files. However, Bank was not disposed to capitulate appellants terms and considered the dictated terms as grossly unreasonable. Therefore, the Managing Director of the Bank was forced to file a complaint on February 3, 1994 before the State Bar Council (Madhya Pradesh). The said complaint alleged that appellant is guilty of professional misconduct if he persists to not return files to his clients. As a reply to the same, appellant submitted a reasonable response by stating the facts and the reason as to why he has not returned the files. He admitted that he did not return the file and claimed before the Bar Council that he has the right to retain files as a part of exercising his right of lien. He also offered to return the files as soon as the bank clears the payment from their side. The District Bar Council forwarded the complaint to the Disciplinary Committee. State Bar Council even after one year was not able to dispose of the complaint. Therefore, under Section 36-B of the Advocates Act the complaint was transferred to the Bar Council of India. After an inquiry, the Disciplinary Committee of the Bar Council of India concluded that appellant is guilty of professional misconduct.

In the order, the Disciplinary Committee stated that the documents available on record were of the opinion that appellant is guilty of professional misconduct. Therefore, the appellant is liable for punishment as the complainant is a public institution. The appellant is duty bound to return the briefs to the Bank and appear before the committee to revert his allegations in application dated November 8, 1995, where no such attempts were made by him.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the advocate has a lien for his fees on the litigation papers entrusted to him by his client?

4. ARGUMENTS OF THE PARTIES

Allowing an advocate lien over case briefs or other such documents in view of fees claims would result in serious abuse and exploitation of illiterate litigants. Moreover, the cause in a tribunal or a court is far more important than the right of an advocate to his fee. The advocate is entitled to deduct his fees from money of client remaining in his hand at the termination of proceedings, the rule does not provide his lien over the litigation papers and files. Advocate has no lien over litigation papers required for progress that is filed in court as the client can change advocate if he or she feel that the advocate is prejudicial to his or her interest or any other reason, the advocate cannot act against the choice of client. It is the decision of the litigant to choose the advocate. The advocate that worked till that moment is supposed to give all the details and files to the client in that case. The advocate cannot take papers and files of the client as “goods bailed”. He is supposed to return the papers and files on the demand of the client. The advocate must conduct at all times in a manner that befits his status and should behave in a fair and reasonable manner according to the law. As the advocate failed to reciprocate the same, he should be held liable for disciplinary action.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Advocates Act, 1961 – Section 35 – Professional Misconduct:

In case of refusal to return the case files when a client demands the same, it amounts to professional misconduct. The advocate has no lien with respect to litigation papers that he keeps of his client even in circumstances where there is a dispute regarding the payment of fees. The advocate is obligated to return the brief and such an act is not a legal duty but a moral imperative. To recover the fees, the advocate can approach court as he has other legal remedies. The litigant or client is free to change his advocate if he feels the advocate retained cannot espouse his cause efficiently or the conduct of advocate is prejudicial to the interest of the client or for any other reasons.

Contract Act, 1872 - Section 171 and 148 r/w Sale of Goods Act, 1930 – Section 2(7):

The advocate has the right to retain security for maintaining a general balance of account including any goods bailed to him. However, these goods bailed cannot be equated with litigation papers and

case files. The legal practitioner has no lien over such papers and files that belong to the client. Therefore, if the client demands the same, he is entitled to return the files and papers.

6. JUDGEMENT IN BRIEF

The court opined that the appellant is guilty of the professional misconduct from his side by not delivering the case details when the client (respondent) replaced him from his duty. Therefore, the appellant is liable for the punishment due to his professional misconduct. The bank is a public institution. It is the duty of the Advocate to return the case briefs to the Bank as well as appear before the committee to revert the allegations. However, he did not appear before committee to revert the allegations made in application of November 8, 1995 nor was any attempt made regarding the same. The court also held that the goods (purview of Section 171 of the Contract Act) should have marketability. The person to whom the goods are bailed is supposed to be in a position to dispose of the said goods. Additionally, the person should also be in a position to dispose of the goods in consideration of money, i.e., the scope of saleability of goods. In this case, the case files have no scope to be sold as to receive money or receive money from a third party in any other manner.

Halsbury's Laws of England states the Solicitors rights where it quotes that the solicitor, under a common law, has two rights, i.e., liens. The first right under this law is the right to retain property that is already under the possession of a party until he/she receives paid costs that are due in his professional capacity. The next one is the right to ask the court to direct the personal property recovered under judgement that is obtained by exertions and stands as a security for recovery cost. The Bar Council of India framed these rules and empowered it in the Advocates Act. These rules contain provisions to specifically prohibit an Advocate from adjusting his fees that are payable by client against his own personal liability to the client.

If the fee is left unpaid or unsettled, the Advocate can deduct the entitled amount from the money of the client remaining in his hands that is engaged during the termination of the proceedings. Under the rules enforced the fee payable to the advocate during the time being can be settled from the balance left in court that is to be refunded to client in cases where client is unwilling to pay and the rest amount can be refunded to the client. Thus, the court held that even after giving provisions as a right for an advocate to deduct money from client from the remaining money of the client left in his hand at the termination of the proceeding for which the advocate was engaged, it is significant to note that no lien is provided on the litigation files kept with him. The client has freedom to change his Advocate when he feels that the Advocate engaged is not capable of espousing his cause efficiently or for any other matter where conduct is prejudicial to the interest involved in the list.

It was also held that the refusal to return files of the client when client demanded amounts to misconduct under Section 35 of the Act. Therefore, the appellant is liable for punishment in this misconduct. The court to reprimand the appellant altered the punishment in the view that he bona-fide believed that he had lien.

7. COMMENTARY

As per the Solicitors rights, it is not permitted for any lawyer to keep the files or case briefs of clients if the client wishes to replace the Advocate. He is supposed to return the documents to the lien. The Advocate cannot link documents that cannot give money if sold as a compensation to the fees. Even though the advocate kept documents in his hands, it is not a right decision as per the rules of the advocates act. In case of such events, where the client does not provide fees, the advocate can approach the court. In this case the court asks the advocate to approach the court directly rather than taking action on his own as to reduce the burden of both the parties. If the advocate keeps the documents, it is neither going to affect him nor the client positively. Instead, it might affect clients in a bad manner. Hence, when the lawyer directly approaches court, the client cannot file another suit of losses due to the act of Advocate. This law also portrays the fact that there are no bad laws. The highest duties of the citizen are to obey laws and thus even though the act of advocate is bonafide, he did a misconduct, therefore he is punished accordingly. The advocate should neither depart from the standard nor use any unfair means in the context of recovering his fees. He should act reasonably according to the law. Law is useless when men are pure and it is our duty to be correct on our side. Even the authorities would be liable to disciplinary action in case of failure of their duty.

The members of the legal profession have a social duty to be a role model to society through his actions. The uneducated, underprivileged people need a helping hand from the legal professionals and it should not be exploited in such a manner. The acts of the legal professionals ought to evolve as to strengthen the faith of common man in the institution of judiciary.

8. IMPORTANT CASES REFERRED

- *CCE v. Eastend Paper Industries Ltd., (1989) 4 SCC 244*
- *State of M. P. v. Shobharam, AIR 1966 SC 1910*
- *Union of India v. Delhi Cloth and Genera/ Mills Co. Ltd., AIR 1963 SC 791*
- *M, an Advocate, Re., AIR 1957 SC 149*
- *'G', a Senior Advocate of the Supreme Court, Re, AIR 1954 SC 557*
- *Bat-ratt v. Gough-Thomas, (1950) 2 All ER 1048*

- *George Frier Grahame v. Attorney General, AIR 1936 PC 224*
- *B. an Advocate, In re, AIR 1933 Pat 571 : 34 Cri LJ 1131*
- *P. Krishnamachariar v. Official Assignee of Madras*
- *Tyabji Dayabhai & Co. v. Jetha Devji & Co., AIR 1927 Bom 542*
- *A solicitor ex p the Law society, In re, (1912) 1 KB 302 : 81 LJKB 245 : 105 LT 874*

CASE NO. 15

VIRENDRA KUMAR GUPTA

V.

ANIL KUMAR JAIN

REVISION PETITION NO. 1342 OF 2007, NCDRC, NEW DELHI

LAWYERS COVERED UNDER CONSUMER PROTECTION ACT

ABSTRACT

The case *Virendra Kumar Gupta v. Anil Kumar Jain* before the National Consumer Disputes Redressal Commission was decided in favour of the petitioner who filed the appeal for the order and decree dated May 20, 2011 by the State Consumer Disputes Redressal Commission and was awarded compensation of 1 Lakh Rupees. The case deals with the question whether the Lawyers are covered under the Consumer Protection Act and are the services of a lawyer can be questioned in respect to the act. The petitioner in this case has hired the respondent (Advocate) as his counsel and case herein is regarding the deficiency of the services by the lawyer and hence to compensate for the losses incurred by the same. The Petitioner was awarded with the compensation of 1 lakh within 6 weeks from the date of order failing which it would carry 6% p.a. as interest.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Revision Petition No. 1342 of 2007
Jurisdiction	:	National Consumer Disputes Redressal Commission
Case Decided on	:	May 20, 2011
Case Decided By	:	Justice Ashok Bhan, President Mrs. Vineeta Rai, Member of the Commission
Legal Provisions Involved	:	Consumer Protection Act, 1986
Case Summary Prepared By	:	Sai Harshith Bennett University, Greater Noida

2. BRIEF FACTS OF THE CASE

The petitioner herein hired the respondent as his counsel to represent him and appear for him in the legal proceedings and according to the petitioner the respondent had failed to do the same. Specifically, on March 28, 1998 the respondent in connivance with the other party did not appear for the execution proceedings and which led to dismissal of the case and incurring loss to the petitioner

herein. The fact that the lawyer did not appear on so many other occasions and also on the aforementioned date was known to the petitioner after a year when the petitioners have approached the respondent on February 15, 1999 to know the status of the case. When the petitioners approached the respondent, he filed an application for restoration of the execution which he already knew that there is no provision for doing so. According to the petitioner the restoration application is just way to cover up his mistakes. The respondent acted illegally, and with malefic intention and misused the position of advocate, petitioner added.

As a result of this the petitioners are put to irreparable loss and also the petitioner had to suffer a heart attack and was admitted in the Escorts Hospital where it costed 1 lakh for the treatment. Petitioner therefore filed a complaint before the District Forum seeking compensation of Rs. 1,80,000/- from the respondent. The District Forum concluded that due to non-execution of Vakalatnama, Respondent is not covered by the definition of consumer as laid down in the Consumer Protection Act, 1986. An appeal for the same was made by the petitioner before the State Commission. The State Commission observed that there was no Vakalatnama and also there was no proof that the petitioner paid the respondent, Rs. 10,500/- as fees. The State Commission, therefore, upheld the order of the District Forum and dismissed the appeal. The petitioner then approached the National Commission through a Revision Petition.

The National Commission after analyzing all the documents submitted by the petitioners which shows that the respondent has appeared for the earlier dates and his signature on the documents were submitted. The respondent pleaded that it was some other Anil Kumar Jain. The present case was decided on May 20, 2011 in the favour of the Petitioner and was awarded with the compensation of 1 lakh within 6 weeks from the date of order failing which it would carry 6% p.a as interest.

3. ISSUES INVOLVED IN THE CASE

- I. Whether or not the services rendered by a lawyer covered under definition of services under Consumer Protection Act, 1986?
- II. Whether the respondent herein represented the petitioner in the previous hearings or not?
- III. Whether or not there was a deficiency in the service rendered by the respondent?

4. ARGUMENTS OF THE PARTIES

The petitioner approached the District Forum for compensation for the damage caused due to deficiency of the service by the respondent. The petitioner urged that the respondent had agreed to appear for the petitioner and failed to do so on a specific date which led to dismissal of execution and

hence the petitioner had to suffer a heart attack and got admitted to the hospital. The petitioner herein has put into irreparable loss and hence this petition. The respondent denied that there was any contract of service between him and petitioner and he also mentioned that it was on only February 15, 1999 that the petitioner approached him through telephone and requested him to file an application of restoration. The respondent further stated that the petitioner despite promising to pay him Rs 10,500/- as fees, did not pay him a single paisa even after reminders and also filed the complaint to avoid payment of fees. The petitioner herein has failed to show that they had a contract from the beginning and failed to submit the Vakalatnama executed.

The District Forum believed that without the Vakalatnama there would be no contract of service between the lawyer and client and hence said due to non-execution of the Vakalatnama, respondent is not covered under the definition of consumer as laid down in the Consumer Protection Act, 1986 and hence dismissed the present petition in favour of the respondent. The State Commission observed that while it is a fact that the Respondents presence had been recorded on certain dates during the course of the proceedings, it was not enough to establish his engagement as an Advocate to represent the Petitioner since no Vakalatnama had been executed between the parties. Under the circumstances, the District Forum was fully justified in coming to the conclusion that the Petitioner had failed to prove the execution of Vakalatnama by him in favour of the Respondent in order to represent the Petitioner in his case/execution proceedings. There is also no proof that the Petitioner paid the Respondent, Rs.10,500/- as fees.

The State Commission, therefore, upheld the order of the District Forum and dismissed the appeal. Aggrieved by the decision of the State Commission the petitioner approached the National Commission through the revision petition. The counsel for the petitioner by citing the ruling of the National Commission in *R. P. No. 1392 of 2006 – D K Gandhi v. M. Mathias*, wherein this commission has stated that the services rendered by the lawyers is covered under the Consumer Protection Act. The counsel for petitioner also argued by submitting the previous records which show that respondent has appeared for previous hearings and added that the Vakalatnama was signed in the office-cum-residence of the respondent and the respondent has failed to file the same in the proceedings and hence the petitioners has failed to produce on record and hence the petition is wrongfully dismissed. The previous records with the signature of A. K. Jain were produced before the National Commission and the respondent argued it might be any other A. K. Jain and he did not appear for any hearings in favour of the petitioner and the Commission did not believe the same and granted the petitioner with 1 lakh compensation for the deficiency of service by the respondent.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The present case is concerned with the Consumers Protection Act. In the present case the Respondent (Lawyer) is the service provider and the petitioner is considered to be the consumer. Hence the petitioner herein has the jurisdiction and *locus standi* to approach the district forum for the loss incurred due to the deficiency of the service provided by the respondent. The section 2(d) of the Consumer Protection Act defines Consumer. The hierarchy of the consumer courts is as the first is the District Forum which has the jurisdiction to take the matters which in value do not exceed 5 lakhs. Then the State Commission which entertains matters from the appeal of the district forum and also have the jurisdiction to proceed with the case where the value of it is more than 5 lakhs and less than twenty lakhs.

The next is the National Commission which has jurisdiction for the value of above 20 lakhs. It also has appeal jurisdiction. i.e. appeals from the State Commission. In the present case the petitioner filed the case in the district forum and aggrieved by the decision of the district forum he approached the State Commission. And then aggrieved by the State Commission he approached the National Commission. The district forum dismissed the case due to non-execution of Vakalatnama and said the non- execution of the Vakalatnama indicates there is no contract between the petitioner and respondent and hence the petitioner does not come under the definition of consumer. hence dismissed the petition. Consumer protection is the practice of safeguarding buyers of goods and services, and the public, against unfair practices in the marketplace. Consumer Protection is governed by the Consumer Protection Act.

6. JUDGEMENT IN BRIEF

The petitioner approached the district forum for compensation due to loss incurred by the respondent due to not attending the execution proceedings. In the district forum the petitioner failed to submit the proof that is Vakalatnama which indicates there was no contract between the petitioner and respondent. The State Commission also dismissed the petition by saying the petitioner failed to produce the Vakalatnama before the District and State Forum.

The petitioner approached the National Consumer Disputes Redressal Commission. Counsel for Petitioner contended that the learned fora below erred in concluding that a lawyer is not covered under the Consumer Protection Act, 1986 and cited a ruling of the National Commission in R. P. No. 1392 of 2006 - *D.K. Gandhi v. M. Mathias* (decided on August 6, 2007) wherein this Commission ruled that the services rendered by lawyers are covered under the Consumer Protection Act, 1986. In fact, in all fairness, the District Forum in its order had also not given a categorical finding to the

contrary; it had only stated that in the absence of a Vakalatnama, the case is not maintainable under the Consumer Protection Act. The counsel of the petitioner produced the previous documents which indicates that respondent was present on previous dates. Various jiminy orders passed between August 9, 1996 to March 28, 1998, copies of which have been placed on record, are reproduced to show that the respondent had appeared before the Civil Judge, Rohtak on various dates. Respondents' plea before us that it was some other Anil Kumar Jain who may have represented Petitioner lacks credibility, we note that this plea was never taken by him earlier.

Respondent who is appearing in person admitted before us that he had filed the application for restoration which was signed by him as A. K. Jain which also go to show that the respondent was representing the petitioner. After all the arguments the National Commission has come to the decision that professionals like doctors and lawyers as per the traditions of their profession are expected to serve their clients interest to the best of their professional competence and ability. Failure to do so is clearly a deficiency in service. The Respondent is, therefore, directed to pay the Petitioner Rs.1 lakh within six weeks from the date of receipt of this order failing which it would carry interest @ 6% p.a. from the date of filing of the complaint till date of payment.

7. COMMENTARY

The Section 2(d) of the Consumer Protection Act defines consumer. The hierarchy of the consumer courts is as the first is the District Forum which has the jurisdiction to take the matters which in value do not exceed 5 lakhs. Then the State Commission which entertains matters from the appeal of the District Forum and also have the jurisdiction to proceed with the case where the value of it is more than 5 lakhs and less than twenty lakhs. The next is the National Commission which has jurisdiction for the value of above 20 lakhs. It also has appeal jurisdiction. i.e. appeals from the State Commission. Consumer's interest, satisfaction is governed by the Consumers Protection Act. Any illegal activity in the market place can be brought the consumer court under the consumer protection act where the consumer can get the remedy for the loss incurred. In the present case the District Forum and the State Forum ought to have seen the relation between the petitioner and respondent more thoroughly. The respondent might have not submitted the Vakalatnama and which would not conclude that there was no contract between the parties. The National Consumer Commission has referred the previous records and concluded that the respondent has appeared for the before dates and didn't appear for the specific date which incurred irreparable loss for the petitioner and hence there was a deficiency of service and hence petitioner is eligible for the compensation.

8. IMPORTANT CASES REFERRED

- *D. K. Gandhi v. M. Mathias, R. P. No. 1392 of 2006*

CASE NO. 16
JOGINDER SINGH
V.
THE BAR COUNCIL OF INDIA
(AIR 1975 DELHI 192)
APPELLANT'S CONCEALMENT OF FACTS

ABSTRACT

This case deals with appellants' concealment of fact under Section 24A and Section 26(1) of the Advocates Act 1961. Appellant Joginder Singh, an Advocate, was grieved because his name had been struck off from the rolls, the Bar Council of India notified the appellant that when he had applied for enrolment under the Advocates Act of 1961 to the Bar Council of Uttar Pradesh, he concealed the fact that he was previously convicted of offences related to moral turpitude. This concealment of fact is considered misrepresentation and fraud within the ambit of Section 26(1) of the said Act, and thus his name was removed. The appellant was to file his written statement which he received this notice, and was informed that his defense would be considered by them, on a date to be notified to him when he could appear in person or by an Advocate. The appellant and his counsel appeared before the Bar Council of India and pleaded for the postponement of the hearing but they interrogated him and convicted him under Section 411 and 473 Indian Penal Code. The appellant then filed a suit in the court seeking declarations that the orders made by the Bar Council of India on April 11, 1965 were null void, and non-binding. The court gave the verdict that there was nothing to suggest that the ultimate decision of the Bar Council was based on the finding that the certificate of character produced by the appellant was false, thus the contentions raised by the appellant was unsound and dismissed the appeal.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal No. 25 of 1995
Jurisdiction	:	Delhi High Court
Case Filed On	:	July 26, 1968
Case Decided On	:	October 17, 1974
Judges	:	Justice T. P. S. Chawla
Legal Provisions Involved	:	Advocates Act of 1961, Section 24A, 26(1)
Case Summary Prepared By	:	Nilabhra Bhattacharya, Rajiv Gandhi National University of Law, Punjab

2. BRIEF FACTS OF THE CASE

Appellant Joginder Singh, an Advocate, was grieved because his name had been struck off from the rolls. On January 12, 1965, the Bar Council of India notified the appellant that when he had applied for enrolment under the Advocates Act of 1961 to the Bar Council of Uttar Pradesh, he concealed the fact that he was previously convicted of offences related to moral turpitude. This concealment of fact is considered misrepresentation and fraud within the ambit of Section 26(1) of the said Act, and thus his name was removed. The appellant was to file his written statement within three weeks of the date on which he received this notice, and was informed that his defense would be considered by them, on a date to be notified to him when he could appear in person or by an Advocate.

The appellant and his counsel appeared before the Bar Council of India on the date fixed, he pleaded for the postponement of the hearing but they interrogated him and convicted him under Section 473 and 411 Indian Penal Code. The appellant then filed a suit in the court seeking declarations that the orders made by the Bar Council of India on April 11, 1965 were null void, unconstitutional, ultra vires, without jurisdiction and non-binding. The main contention was whether the appellant had secured his enrolment by misrepresentation/fraud or whether he was under no duty to volunteer that information, thus not amounting to misrepresentation or fraud. The court gave the verdict that there was nothing to suggest that the ultimate decision of the Bar Council was based on the finding that the certificate of character produced by the appellant was false, thus the contentions raised by the appellant was unsound and dismissed the appeal.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the advocate had got his enrolment by deception or misrepresentation?
- II. Whether the appellant was at this point bound to specify that had he had been indicted for offenses?

4. ARGUMENTS OF THE PARTIES

Plaintiff

The plaintiff contended that his right had been encroached in two ways :-

- Where he had not been shown the fourth page of his application for enrolment and had hence been biased in his defense;
- At the meeting on April 11, 1965 the Bar Council had permitted next to no time to him and his counsel to contend the case. The plaintiff also contended that the orders made by the Bar

Council of India on April 11, 1965 were null void, unconstitutional, ultra vires, without jurisdiction and non-binding.

Defendant

The Bar Council of India in that said application for enrolment claimed that the plaintiff had concealed the fact of him having been previously convicted of offences involving moral turpitude, that by such concealment of an essential fact he obtained his enrolment, and whereas it appears to the Council that this concealment constitutes misrepresentation and fraud within the meaning of the provision to Section 26(1) of the said Act, and whereas the appellant's name is liable to be removed from the roll of advocates under the said section of the mentioned Act.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Section 26(1) of the Advocates Act deals with:

A State Bar Council will allude each application for affirmation as an advocate to its enrolment committee, and subject to the arrangements of sub-segments (2) and (3) and to any heading that might be given recorded as a hard copy by the State Bar Council in this behalf, such committee will discard the application in the recommended way, provided that the Bar Council of India may, whenever fulfilled, either on a reference made to it for this benefit or something else, that any individual has got his name entered on the roll of advocates by misrepresentation regarding a fundamental certainty or by extortion or undue influence, eliminate the name of such individual from the roll of advocates in the wake of giving him a chance of being heard.

Section 473 of The Indian Penal Code:

Making or having counterfeit seal, and so forth, with the goal to submit fraud culpable otherwise.— Whoever makes or counterfeits any seal, plate or any other instrument for establishing a connection, intending that the equivalent will be utilized to submit any fabrication which would be culpable under any section of this Chapter other than Section 467 or with such goal, currently possesses any such seal, plate or other instrument, realizing the equivalent to be fake, will be punished with imprisonment of one or the other depiction for a term which may stretch out to seven years, and will likewise be obligated to fine.

Section 411 of The Indian Penal Code:

Dishonestly receiving stolen property: - “Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with

imprisonment of either description for a term which may extend to three years, or with fine, or with both”.

6. JUDGEMENT IN BRIEF

So, the main contention is that, given the exclusive expectations expected of those in the legal profession, it would be a fraud/misrepresentation if the concerned advocate doesn't unveil the reality of his past conviction, particularly those including moral turpitude as they help find out the personality of a man. (Infringement of Rule 43 of the BCI Rules-Chapter II). It was encouraged that by the guidelines of natural justice, the appellant was qualified for notice of what was charged against him so he could make his answer, it was additionally said that in the notification requiring the appellant to show cause against their proposed activity, the Bar Council had not affirmed that he had got the testament of character by fraud or misrepresentation; yet they considered this matter while making their request notwithstanding the complaint of the appellant that it was not pertinent. the request for the Bar Council fits this development. The misrepresentation of the endorsement of character is alluded to in that of the request which records the appropriate responses given by the appellant and the entries made by his counsel. There isn't anything to recommend that a definitive choice of the Bar Council depended on the finding that the declaration of character delivered by the appellant was false. It holds that the appellant had acquired admittance as an advocate by fraud or misrepresentation in that he had abstained from unveiling that he had recently been indicted for offenses. In this way the appeal falls flat and is excused with costs.

The judge, while deciding the case had a few other things to say which were not that pertinent to the case but were relevant to the matter. While having regards to the known high customs of the legal profession and the capacities which its individuals are relied upon to perform, I can't resist believing that the individuals who look to enter its entrances are obliged to announce whether they were indicted for an offense. Particularly is this valid in regard of offenses including moral turpitude. These are matters which the conceding authority absolutely should know. They are pertinent for discovering the personality of the man. Character is, and consistently has been, a most material thought for concluding if to concede an individual as a supporter. That is the purpose behind the perpetual and fundamental pre-requisite to a declaration of good character. It is the methods by which an affirmation of good character is acquired. In England no individual can be conceded as an understudy of an Inn with the end goal of being called to the Bar except if he creates such a testament or other proof of good character. Nor, on the off chance that he has been sentenced for a criminal offense of such a nature that in the assessment of the Masters of the Bench his admission is not desirable.

7. COMMENTARY

We all know that lawyers are not supposed to lie and in this instant case, the important issue that I feel has been highlighted, is if the appellants had concealed facts in violation of Section 24A of the Advocates Act of 1961 and Section 26(1) of the Advocates Act of 1961. The Bar Council of India had informed the appellant that when he sought for enrolment under the Advocates Act of 1961 to the Bar Council of Uttar Pradesh, he had disguised the fact that he had previously been convicted of charges connected to dishonesty. This falsification of facts was considered deception and fraud under Section 26(1) of the Act which was a breach of duty, and his name was therefore expunged which I feel is justified given the legal profession rightly demands high standards of honesty and integrity from the lawyers and it is also the responsibility of the Bar Council of India to regulate the conduct of an advocate. The fundamental issue of this case was that if the advocate had got his enrolment by deception or misrepresentation. Since advocates are the pillars of Judiciary, they not only need to abide by the Constitution but also have a responsibility to rightfully represent their client despite all problems, without holding any malice or ill will and certainly not misrepresenting their own identity. Judiciary can only function effectively when each of its members carry out their functions and responsibilities properly with due diligence, honesty and sincerity.

CASE NO. 17

P. D. GUPTA

V.

RAM MURTI AND ANR.

AIR1998 SC 283

THE ACT OF BUYING THE PROPERTY OF THE CLIENT IN DISPUTE

ABSTRACT

The following is the case summary of *P. D. Gupta v. Ram Murti and Anr.* The matter stems from a previous court case in which a man named Srikrishan Das died, leaving behind property that was claimed by Adv. P. D. Gupta's client Vidyawati under the guise of being the deceased's sister, the complainant Ram Murti, and two others via Wills. The properties in question in this case were purchased by the Advocate, the appellant, and his son-in-law by a registered sale deed from Vidyawati, his client, and subsequently sold at a significantly higher price using a registered sale deed. Ram Murti, the claimant in the property dispute, filed a complaint for misconduct against Adv. Gupta in Delhi, where the Advocate practises. The Advocate filed an appeal against the verdict of the Bar Council of India's Disciplinary Committee (DC), which found him guilty of misconduct and sentenced him to a one-year suspension under Section 35 of the Act. The Disciplinary Committee of the Bar Council of Delhi was unable to resolve the complaint within a year of it being lodged under Section 38 of the Act.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal No. 15496 of 1996
Jurisdiction	:	Supreme Court of India
Case Decided On	:	July 8, 1997
Judges	:	Justice S. C. Agrawal, Justice D. P. Wadhwa
Legal Provisions Involved	:	Advocate Act, 1961, Section 35, 36, 36B, 37, 38; Indian Succession Act, 1925, Section 276
Case Summary Prepared By	:	Yash Patil Bharati Vidyapeeth New Law College, Pune

2. BRIEF FACTS OF THE CASE

The petitioner in this case is P. D. Gupta and the respondent is Ram Murti. A man named Srikrishan Das died on June 5, 1980. His sister Vidyawati filed a complaint seeking a declaration of title in her favour for various assets owned by Srikrishan Das, but Ram Murti and others objected, claiming ownership in their own names. P. D. Gupta bought a portion of the contested land for Rs. 1,80,000/- and promptly sold it for Rs. 3,40,000/- while the action was pending. Adv. P. D. Gupta was accused of professional misconduct by Ram Murti, who filed a complaint with the Bar Council of Delhi. The major claim was that he acquired a portion of the contested property from his client while the action was pending.

The Advocate purchased one property in his own name, while his son-in-law purchased the other, which happened to be the property for which his father was a renter. The Advocate did not report the transactions of disputed properties in the complaint. Vidyawati's request for building on property, on the other hand, was approved by the Municipality despite the fact that she had yet to receive a declaration of title. Furthermore, the Appellant and his son-in-law paid the consideration on the sale deed rather flexibly during the year, notwithstanding the fact that the sale document contained no reference of civil litigation on the property sold. The Advocate presented an affidavit of Mr. Bansal, the father of the heir to Vidyawati's property and her General Attorney, in which he indicated that the transactions to the Appellant and his son-in-law were done without any coercion and via free choice. The Appellant claimed that the complainant lacked legal standing and was biased against him. In addition, he claimed that the property he purchased was sold and that he had no interest in them. The Advocate further maintained that no concrete allegations were made in the initial proceedings, and that a complainant from a third party can prevent attorneys from acting freely for their clients. The fact that the Advocate knew Vidyawati even while Srikrishan Dass was alive, as well as Vidyawati's contradictory declarations about her relationship with Dass as his sister and half-sister, led the court to dispute her actual existence, casting doubt on the Appellant, who is her family lawyer. The Appellant was aware that the property was under dispute and even acquired it for less than market value. Furthermore, the payment flexibility demonstrates that the client and the Advocate were well acquainted. These facts led to the Bar Council of India's conclusion.

The current litigation was still ongoing at the Delhi High Court, and all procedures pertaining to Srikrishan Dass' estate filed under Section 276 of the Indian Succession Act were also moved from the District Judge's court. The matter was firstly referred from the Disciplinary Committee of the Bar Council of Delhi to the Bar Council of India under Section 38 of the Advocates Act, 1961, since the former was unable to resolve it within one year of the complaint being made under Section 36B.

Under Section 35 of the Act, the Advocate was held guilty for professional misconduct, and an appeal was filed with the Supreme Court.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the act of purchasing the property in dispute by the client considered misconduct on the part of the Advocate?
- II. Is a one-year suspension of his sentence disproportionate to his crime?

4. ARGUMENTS OF THE PARTIES

Appellant

- The learned council, appearing for the appellant P. D. Gupta, argued that if the court found a lawyer guilty of professional misconduct in this case, particularly on the basis of a complaint filed by an interested party like Ram Murti, no lawyer would be able to conduct his client's case fearlessly in the future.
- It was argued that if there was an aggrieved party in this matter, it would have been Vidyawati, her daughter Maya Devi, or her grandson Anand Prakash Bansal, but nobody of them had filed a complaint.
- The learned council further asserted that, despite the fact that the land was bought by P. D. Gupta in late 1982, Ram Murti's suit was filed only on December 16, 1922.
- The learned council went on to clarify that how Vidyawati had been characterised differently in numerous litigations was due to instructions from her or her attorney, and it was not P. D. Gupta's fault.
- Then it was claimed that no specific allegations had been formulated in the disciplinary procedures, causing P. D. Gupta to be prejudiced in the conduct of his defence.
- Finally, the learned council maintained that P. D. Gupta was no longer interested in the land since he had sold it.

Respondent

- The respondent party in person stated that the learned counsel's statements seemed to be devoid of substance, and that P. D. Gupta was fully aware of the claims he would face. It wasn't a difficult charge.
- It was argued that he had been practising for a long time. The contention that a charge had not been established appears to stem more from P. D. Gupta's dissatisfaction with his inability to address the accusation.

- The respondent indicated that it is his action in purchasing the property, which is the subject of litigation between the parties, from his client on which he may wield undue influence, particularly when there was a question thrown on his client's title to the property. If P. D. Gupta had sold the land back to Vidyawati and had the sale deed revoked in his favour, something may have been stated in his favour.
- It was argued that he profited by selling the property to a third party, complicating the current lawsuit. P. D. Gupta acquired the properties at issue for himself and his son-in-law for nearly throwaway rates, making him a party to the suit. P. D. Gupta's conduct cannot be described as above board.
- Finally, the respondent claimed that he was acting as a court officer while handling the matter. In this case, P. D. Gupta had effectively subverted the legal system by purchasing the land, and his actions had raised severe concerns about his fairness in the conduct of the trial, as well as his professional behaviour as an advocate.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The present case revolves on the Section 35, 36, 36B, 37, 38 of the Advocates Act, 1961 and Section 276 of the Indian Succession Act, 1925.

Section 35: Punishment od Advocates for misconduct.

Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.

Section 36: Disciplinary powers of the Bar Council of India.

(3) The disciplinary committee of the Bar Council of India, in disposing of any case under this section, shall observe, so far as may be, the procedure laid down in section 35, the references to the Advocate-General in that section being construed as references to the Attorney-General of India.

(4) In disposing of any proceedings under this section the disciplinary committee of the Bar Council of India may make any order which the disciplinary committee of a State Bar Council can make under sub-section (3) of section 35, and where any proceedings have been withdrawn for inquiry [before the disciplinary committee of the Bar Council of India], the State Bar Council concerned shall give effect to any such order.

Section 36B: Disposal of Disciplinary Proceedings.

The disciplinary committee of a State Bar Council shall dispose of the complaint received by it under section 35 expeditiously and in each case the proceedings shall be concluded within a period of one

year from the date of the receipt of the complaint or the date of initiation of the proceedings at the instance of the State Bar Council, as the case may be, failing which such proceedings shall stand transferred to the Bar Council of India which may dispose of the same as if it were a proceeding withdrawn for inquiry under sub-section (2) of section 36.

Section 37: Appeal to the Bar Council of India.

(1) Any person aggrieved by an order of the disciplinary committee of a State Bar Council made [under section 35] [or the Advocate-General of the State] may, within sixty days of the date of the communication of the order to him, prefer an appeal to the Bar Council of India.

Section 38: Appeal to the Supreme Court.

Any person aggrieved 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)] thereon as it deems fit.

Section 276 of the Indian Succession Act, 1925:

(1) Application for probate or for letters of administration, with the Will annexed, shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the Will or, in the cases mentioned in sections 237, 238 and 239, a copy, draft, or statement of the contents thereof, annexed, and stating:

- (a) the time of the testator's death,
- (b) that the writing annexed is his last Will and testament,
- (c) that it was duly executed,
- (d) the amount of assets which are likely to come to the petitioner's hands, and
- (e) when the application is for probate, that the petitioner is the executor named in the Will.

6. JUDGEMENT IN BRIEF

The Buying and Selling games of the Appellant P. D. Gupta:

- The recitals in the selling document, dated December 30, 1982 issued in favour of P. D. Gupta, demonstrate that the agreement to sell was put into on September 3, 1980. The certificate of completion of the building was issued on August 28, 1981. The payment of Rs. 1,50,000/- was made before the deed of sale was executed on various dates from March 8, 1980 to

November 20, 1981 by cheques with one exception: payment of Rs. 10,000/- made in cash on September 3, 1980.

- The balance of the price of Rs. 30,000/- was paid at the time of registration of the selling document. There was no indication of any civil litigation concerning this property pending in the High Court in the selling document.
- Instead, it was stated the seller allegedly built several floors and assured the buyer that Vidyawati had good and transferable ownership of the property and did not charge any liens, fees, encumbrances or other similar expenses. And if defects in the seller's property are discovered in the future, the seller promises to compensate for all losses, damages and claims that the buyer may cause.
- Another sale deed dated December 2, 1982 was signed for P. D. Gupta's son-in-law and submitted during the appeal hearing. He mentioned that after receiving the termination certificate from Vidyawati on August 28, 1981 he rented a set of five bedrooms, a kitchen and two bathrooms on the second floor. The house was rented for Rs. 500 a month to Suraj Bhan Gupta.
- Recitals to that deed reveal that, in order to obtain a higher price, Vidyawati consented to sell the property, which was on the second floor and was not yielding a satisfactory return, to Suresh Kumar Gupta for a consideration of Rs. 1,75,000/-. Suresh Kumar Gupta, P. D. Gupta's son-in-law, is none other than the tenant's son, Suraj Bhan Gupta. In this sale-deed, there was no indication of any agreement to sell, but it was discovered that the first payment of Rs. 20,000/- was paid on November 5 1981, the second payment of Rs. 25,000/- on February 20, 1982 and the third payment of Rs. 30,000/- on April 26, 1982. The balance payment was made at the time of the selling deed's execution on December 2, 1982.

The findings of the Bar Council of India:

- P. D. Gupta claims to have known Vidyawati when Srikanth Dass was still alive in 1980. Vidyawati was a close friend of his, although she took opposing positions whether she claimed herself as Srikanth Dass' half-blood, genuine sister, or step-sister. These contradicting positions call into question Vidyawati's fundamental existence. This cast doubt on the credibility of P. D. Gupta, who appeared to be Vidyawati's family lawyer.
- P. D. Gupta was aware that the property he acquired from Vidyawati was the subject of litigation and that Vidyawati's ownership to that land was in dispute.
- P. D. Gupta acquired a large land in Daryaganj Ganj for a meagre Rs. 1,80,000/- in 1982.

- The understanding available to be purchased of property was gone into as far back on September 3 1980 and P. D. Gupta had propelling cash to Vidyawati every now and then which demonstrated that according to variant of P. D. Gupta he realized Vidyawati very well, when P. D. Gupta knew Vidyawati so intently how Vidyawati could take conflicting stands versus her relationship with Srikishan Dass.
- As a result, the Bar Council of India concluded that P. D. Gupta's conduct in these circumstances was unworthy of professional ethics and behaviour.

In the final judgment the Bar Council of India's Disciplinary Committee found him guilty of professional misconduct and suspended him for a period of one year. In addition, the Supreme Court held that under the facts of the case, there was no reason to interfere with the sentence meted out to P. D. Gupta. The appeal was rejected.

In this case the Court opined thus,

It is recognized truth that a legal advisor leading the instance of his customer has a commanding status and can apply impact of his customer. As an individual from the Bar, it is common knowledge that legal advisors have begun contracting with the customers and go into deals that if there should arise an occurrence of achievement, he will shore the outcome. Most likely there is no bar for a legal advisor to buy property however by virtue of basic reasonability exceptionally law realizing individual will never prefer to purchase the property, the title of which is under question.

7. COMMENTARY

It was observed by the Supreme Court that the Appellant's argument lacked foundational support. The arguments that the charges are not explicit and that the defendant is not in possession of the property are not legitimate. The accusations are straightforward, and the fact that he does not really own the land does not absolve him of the wrongdoing that he committed by purchasing the contested property in the first place. According to the Court, "a lawyer has a responsibility to be fair not only to his client, but also to the court and the opposing party in the conduct of the case." The administration of justice is a stream that must be maintained pure and free of impurities. It must be maintained free of pollution. The administration of justice is not something that is only the responsibility of the Bench. It also has implications for the Bar. The recruitment of judges is mostly done via the legal profession. No one should be allowed to lift a finger in protest of a lawyer's behaviour. He has brought significant doubts about his professional behaviour into issue by purchasing the disputed property in the current case, and he has brought disgrace upon the administration of justice. Consequently, the BCI's judgement was upheld and reiterated by the court.

The issue under consideration revolves on the duty of an advocate not to engage in the subject matter of a dispute for the purpose of gaining personal benefit. In addition to having extensive knowledge of the law, a lawyer should be aware of the actions that may be harmful and increase the complexity of the lawsuits and disputes that he is involved in. In this regard, it is essential that a lawyer constantly have in mind the BCI's standards and conduct himself in an honourable manner when carrying out his professional duties. The practise of law obligates the advocate to defend the rule of law and to assist in the smooth operation of the public judicial system. It is critical for him to have a high level of honesty, and nothing should be done that might undermine his credibility. When performing any professional job, an advocate should be careful and follow the rules of the law to the greatest extent possible. Any breach of the norms of professional ethics is regrettable, but it is much more so when it occurs in the workplace.

8. IMPORTANT CASES REFERRED

- *Noratanmal Chaurasia v. M. R. Murli, AIR 2004 SC 2440*
- *Prof. Krishanraj v. Vishwanth D. Mukashikar, BCI Tr. Case No. 49/1993*
- *Sambhu Ram Yadav v. Hanuman Das Khatry, AIR 2001 SC 2509*
- *Smt. Sudesh Rani v. Munish Chandra Goel, (2002) 1 UPLBEC 654*
- *Suo Moto Enquiry v. Nand Lal Balwani, (1999) 2 SCC 743*

CASE NO. 18
JOHN D'SOUZA
V.
EDWARD ANI
(1994) SCC (2) 64

FAILURE TO RETURN WILL EXECUTED

ABSTRACT

The following is the case summary of *John D'souza v. Edward Ani*. In the present case, the respondent filed a professional misconduct complaint with the Karnataka State Bar Council, alleging that the Appellant, an Advocate who had drafted his late mother-in-law's will and kept it in his safe custody after entering it in his register of wills and providing a receipt, had failed to return the will despite written requests. It was further claimed that when the testatrix's new lawyer asked the Appellant for the will, the Appellant denied possessing it, forcing the testatrix to prepare a new will. Now, every profession has its own set of professional ethics that must be followed by everyone who works in that field. Professional misconduct is, nevertheless, a widespread occurrence not just in other professions, but also in advocating. In basic terms, it refers to actions taken by individuals that appear to be unsuited for the profession as well as actions that violate specific ethics in this sector. Although it would be impossible to spell out fully what would constitute misconduct and indiscipline, the Advocates Act, 1966 does not define misconduct. Misconduct, on the other hand, encompasses improper omission or act, whether done intentionally or accidentally.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal No. 3206 (NM) of 1993
Jurisdiction	:	Supreme Court of India
Case Decided On	:	December 17, 1993
Judges	:	Justice S. R. Pandian, Justice P. B. Sawant
Legal Provisions Involved	:	Advocates Act 1961, Section 14, 35; Chapter II Rule 15 of the Bar Council of India Rules
Case Summary Prepared By	:	Yash Patil Bharati Vidyapeeth New Law College, Pune

2. BRIEF FACTS OF THE CASE

- The appellant's clients were Mr. N. E. Raymond and Mrs. Mary Raymond. During lifetime of Mrs. Mary Raymond, the appellant prepared her will, and she committed it to the appellant after it was executed, for which the appellant had issued a receipt dated July 5, 1968. An entry in the appellant's register of Wills confirms that the will has been submitted with him. Her spouse was named as the executor of the will. In the year 1974, her spouse N. E. Raymond died.
- Mrs. Mary Raymond changed her counsel, the appellant herein, and hired one Mr. George DaCosta as her Advocate. According to the respondent, who claims to be Mrs. Mary Raymond's son-in-law and the legal agent of her estate, alleged that when Mr. George DaCosta asked the appellant in 1978 for his client's will, the appellant denied possessing it.
- Mrs. Mary Raymond was forced to write a new will on June 24, 1978, which was made by Mr. George DaCosta. The respondent claims that he sent two letters to the appellant, one dated January 4, 1982 on behalf of Mrs. Mary Raymond through Certificate of Posting from Manchester (U.K.) and the other dated April 15, 1986 by Registered Post with A/D. Both letters were sent to the appellant and asked him to return the will dated July 1, 1968. However, the appellant did not respond to any letter and remained deafeningly silent.
- Mr. Edward Ani lodged a complaint with the Karnataka State Bar Council, alleging that the appellant with whom a will executed by his mother-in-law, was entrusted for safe custody against receipt in his register of wills has refused to return that will despite of the two letters demanding the appellant to hand over the will kept in his custody and that the appellant thereby has committed professional misconduct.
- The respondent filed a complaint dated November 7, 1986 before the Karnataka Bar Council. By a Resolution No. 110 of 1987 on July 12, 1987, the State Council rejected that complaint holding that there was no *prima facie* case made out. The respondent preferred a revision before the Bar Council of India which by its order dated November 20, 1988 set aside the order of the State Bar Council and allowed the revision holding that there existed *prima facie* case of misconduct against the respondent and remitted the matter to the Disciplinary Committee of the State Council.
- The respondent filed a complaint dated November 7, 1986 before the Karnataka Bar Council. By a Resolution No. 110 of 1987 on July 12, 1987, the State Council rejected that complaint holding that there was no *prima facie* case made out. The respondent preferred a revision before the Bar Council of India which by its order dated November 20, 1988, set aside the order of the State Bar Council and allowed the revision holding that there existed *prima facie*

case of misconduct against the respondent and remitted the matter to the Disciplinary Committee of the State Council. The parties appeared before the State Bar Council's Disciplinary Committee on the instruction of the Bar Council of India.

- Dissatisfied with the judgement of the State Bar Council's Disciplinary Committee, the respondent filed an appeal with the Bar Council of India's Disciplinary Committee. When the case was heard on July 20, 1993, the appellant filed this appeal together with a motion for a stay of proceedings. The destiny of the dictum therefore remains to be resolved.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the act of the appellant to refuse to surrender a will executed by the respondent's Mother-in-law amounts to professional misconduct?

4. ARGUMENTS OF THE PARTIES

Appellant

- The learned senior counsel for the appellant challenged the impugned findings, claiming that the respondent had not supported the accusations that Mr. DaCosta asked the appellant to allow him have the will of Mrs. Mary Raymond entrusted to him and that the appellant denied possessing it.
- On the other hand, Mr. George DaCosta wrote a letter to the Chairman of the Karnataka Bar Council's Disciplinary Committee on May 1, 1990 stating, "*I should like to clarify my own position and to emphasise and state very clearly that at no time did I make any request of John D'Souza for the return of her 1968 will, nor did she require it. As a result, there was no reason to challenge Mr. John D'Souza's denial of possession. Mr. John D'Souza offered no such denial.....*" plainly falsifies the respondent's assertions.
- According to the senior counsel, the will in issue was cancelled and returned on January 13, 1982, probably to Mrs. Mary Raymond, who was still living at the time. That fact is reinforced by an endorsement made by the appellant's wife in the register of Wills, and even if the will had not been returned, the appellant cannot be claimed to have committed any breach of trust by keeping the revoked will, which had become a mere shred of paper following its revocation.
- It was also argued by the learned counsel that the will had become an unquestionable res nullius (no man's thing) and an unworthy paper without any value, and no dishonest or indirect motivation or profit could be claimed by the applicant by preserving the cancelled will for his own gain.

Respondent

- The respondent who was appearing in person had taken the findings of the Disciplinary Committee of the Bar Council of India that, inter alia, the appellant who kept the will in custody was in the nature of a trustee and was entitled as such to return the will upon request, and that it was irrelevant whether it was oblique or private.
- The will cannot be said to have become *res nullius* (nobody's stuff) because neither the testatrix, Mrs. Mary Raymond, nor the respondent, as the legal agent of the testatrix's estate, had abandoned it.
- He claims that the appellant should have received, or be presumed to have received, the first letter, which was mailed from Manchester (U.K.) under Certificate of Posting.
- The respondent further argued that the facts and circumstances of the case sufficiently demonstrated that the appellant had flagrantly breached the client-attorney relationship constituted by law and betrayed the respondent's faith and faith in him.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The present case revolves around the Section 35 and Section 14 of the Advocates Act, 1961 and Rule 15 of the BCI rules; which reads as follows: -

Section 14: Election to Bar Councils not to be questioned on certain grounds.

No election of a member to a Bar Council shall be called in question on the ground merely that due notice thereof has not been given to any person entitled to vote thereat, if notice of the date has, not less than thirty days before that date, been published in the Official Gazette.

Section 35: Punishment of Advocates for misconduct

(1) Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.

[(1A) The State Bar Council may, either of its own motion or on application made to it by any person interested, withdraw a proceeding pending before its disciplinary committee and direct the inquiry to be made by any other disciplinary committee of that State Bar Council.]

(2) The disciplinary committee of a State Bar Council shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the advocate concerned and to the Advocate-General of the State.

(3) The disciplinary committee of a State Bar Council after giving the Advocate concerned and the Advocate-General an opportunity of being heard, may make any of the following orders, namely:

- (a) dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;
 - (b) reprimand the advocate;
 - (c) suspend the advocate from practice for such period as it may deem fit;
 - (d) remove the name of the advocate from the State roll of advocates.
- (4) Where an advocate is suspended from practice under clause (c) of sub-section (3), he shall, during the period of suspension, be debarred from practising in any court or before any authority or person in India.
- (5) Where any notice is issued to the Advocate-General under sub-section (2), the Advocate-General may appear before the disciplinary committee of the State Bar Council either in person or through any advocate appearing on his behalf.

Chapter II Rule 15 of the BCI Rules

Rules on an Advocate's duty towards the Client

An advocate should not misuse or takes advantage of the confidence reposed in him by his client.

6. JUDGEMENT IN BRIEF

I. The findings of the State Bar Council:

The State Bar Council found that the appellant's actions did not amount to "misconduct much less a professional misconduct to punish the respondent" and that "he has not proven any *mens rea*" on the appellant's part in withholding the will and placing too much emphasis on the point of delay and the parties' strained relationship.

II. The findings of the Disciplinary Committee of the Bar Council of India:

After a thorough investigation, the Bar Council of India's Disciplinary Committee condemned the State Bar Council's conclusions, concluding that the State Bar Council's disciplinary committee placed too much stress on the point of delay in registering the complaint. It also alluded to the parties' fragile relationships. The DC of Bar Council of India was not inclined to agree with these findings. It held that a complaint would not be false simply because of a delay or deteriorated relations between the parties. These are the considerations that should anchor while respecting the arguments made on either side. However, in a situation where the majority of the facts are acknowledged, there is nothing to do but hold that the Advocate's failure to restore the complainant's property does not constitute professional misconduct. The respondent attempted to argue that the will had been returned, but no credible evidence was presented to support this claim.

III. The appealing party didn't return the letters even on request:

Mr. George DaCosta's request for the appellant to hand up the will cannot be described as a spur-of-the-moment decision made immediately after the lawsuit was filed. Mr. George DaCosta requested the appellant to hand over the will of Mrs. Mary Raymond drafted in 1968 and maintained in his safe custody, and it was known that the appellant disputed that the will was in his custody, according to the first letter dated January 4, 1982. The facts concerning Mr. DaCosta's demand for the return of the will, and the appellant's denial of it, are mentioned in the second letter dated April 15, 1986, which had been indisputably received by the appellant. Furthermore, the respondent indicated that he sent a letter on January 4, 1982, to which he received no response. The letter dated May 1, 1990 written by Mr. DaCosta to the State Bar Council is the only document on which the appellant seeks to establish his contention that there was no such demand and rejection by him. This letter was sent only after the State Bar Council procedures were concluded, but before the order was issued. The State Bar Council's order, on the other hand, made no mention of this letter since it was not provided until the proceedings were completed.

IV. The manipulation of the entry in the Registers of Wills:

There was no persuasive evidence that the appellant had returned the will, as the Bar Council of India pointed out. According to the respondent, the will, though being cancelled, was the property of Mrs. Mary Raymond and had become his property upon her death, and that neither of them had abandoned the document. The Court noted that the documentary evidence and the circumstances surrounding the case led to the unavoidable conclusion that the January 13, 1982 entry in the register of Wills was modified to make it appear as though the document had been returned.

In the final judgment, after an overall evaluation of the facts and circumstances of the case the Supreme Court held that the appellant had not returned the will and that it did not find any reason to interfere with the impugned order of the Disciplinary Committee of the Bar Council of India. The appeal was thus dismissed and the court's temporary restraining order was revoked.

In this case, the court opined thus,

The appealing party had not returned the will however requests were made first by the testatrix, at that point by her new legal counsellor and by the respondent who was additionally holding the force of lawyer from the testatrix when he composed the main letter and was the agent delegated under the subsequent will. The appealing party has no privilege to retain the will. Then again, he was bound in

obligation to return the said will when requested in light of the fact that the instrument was endowed to his guardianship by the testatrix, Mrs. Mary Raymond just on trust.

7. COMMENTARY

A lawyer, Mr. John D'Souza, filed an appeal before the Supreme Court of India after he felt he had been wronged by such a decision. Following a thorough examination of the case, the Supreme Court determined that there was no evidence to support the claim that the will had been returned in accordance with the demands made, and that the advocate had no right to withhold the will; rather, it was his responsibility to return the will when requested because the will had been placed in his hands with the trust of his client. The disciplinary body of the Bar Council of India maintained its decision. As a result, it was determined that the advocate had violated his professional obligations and that he had engaged in professional misconduct.

In the judicial system, the function of the advocate is very important. By putting their full faith in them, one may rely on them totally. It is essential for an advocate to carry out his or her duties in a precise and timely way. Because they are in the legal profession and are officers of the court, advocates are expected to maintain high standards and to preserve the dignity of the judicial office in which they are employed. It will not be tolerated if an advocate engages in unethical behaviour since it would undermine the public's confidence and attitude towards the court environment. The establishment of a disciplinary commission with the authority to investigate and prosecute cases of fraud, misconduct, and cheating perpetrated by an advocate against his own client is intended to guarantee that such reckless and illogical behaviour does not go unpunished.

A lawyer provides support in the administration of justice to the courts and delivers expert counsel to the people who need their services. For the public interest and not private gain, the legal profession has been founded by the State. A lawyer is an officer of the court. His declarations are the subject of the Court. Legal ethics can imply the body of norms and practices that determine the members of the bar's professional behaviour. The Chief Justice Marshall has very well emphasized the essential purpose of legal ethics:

"The essential point of Legal Ethics is to keep up the honour and nobility of the Law Profession, to get a feeling of agreeable co-activity between the Bench and the Bar in the advancement of best expectations of equity, to set up noteworthy and reasonable dealings of the advice with his customer, adversary and witnesses, to set up a feeling of fraternity in the actual Bar and to get that the legal counsellors release their duties to the local area for the most part."

8. IMPORTANT CASES REFERRED

- *Gordhan Das v. State and Others, AIR 1968 Raj 241*
- *UP Sales Tax Service Association v. Taxation Bar Association, Agra, AIR 1995 SCC (5) 716*

CASE NO. 19
V C RANGADURA
V.
D. GOPALAN
1979 SCR (1) 1054

PROFESSIONAL MISCONDUCT IN LAW

ABSTRACT

Misconduct means any acts which are unlawful, unparliamentary words in nature though they are not inherently wrongful. But Before the Advocates Act, 1961, we had the Legal Practitioners Act, 1879. There is no definition given in the Act for the term ‘misconduct’ but the term ‘unprofessional conduct’ is being used in the Act. From the definition, it is now clear that the act of professional misconduct is done purely with the intention of getting unlawful gains. The Advocates Act, 1961 and the Bar Council of India play a vital role in providing rules and guidelines regarding the working, code of conduct and such other matters concerning lawyers and advocates in India.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal no. 839 of 1978
Jurisdiction	:	Supreme Court of India
Case Decided On	:	October 4, 1978
Judges	:	Justice V R Krishna Iyer, Justice D A Desai, Justice A P Sen
Legal Provisions Involved	:	Advocates Act, 1961, Section 35(3), 38
Case Summary Prepared By	:	Kanchan Faculty of Law, Delhi University

2. BRIEF FACTS OF THE CASE

- The respondent had given two promissory notes to the Petitioner for filing the suits one for Rs. 15,000/- and Rs. 5,000/- both dated August 26, 1969 executed by their land-lady Smt. Parvathi Ammal, who had borrowed Rs. 20,000/- from them, by deposit of title deeds. They also paid the fees as was asked by the advocate.
- Admittedly, though the plea for recovery of the amount due on the promissory note for Rs. 15,000/- with interest thereon bearing court fee of Rs. 1,519.25/- was returned for presentation

to the proper court, it was never re-presented. It was also not denied that though the appellant had drafted the plaint for recovery of Rs. 5,000/- with interest no such suit was ever filed

- The appellant then made false representations to the complainants Deivasenapathy, his wife Smt. Kamalammal and the power of attorney agent of the complainants, D. Gopalan that the suits had been filed and were pending, gave them the various dates fixed in these two suits, and later on falsely told them that the court had passed decrees on the basis of the two promissory notes.
- In the faith of such representation the complainants served a lawyer's notice dated December 25, 1973 on the debtor Smt. Maragathammal, to the effect: "*That you are aware of my clients' filing two suits against you for recovery of Rs. 15,000/- and Rs. 5,000/- with due interest and cost thereon and it is not to state that both the suits were decreed as prayed for by my clients in the court proceedings. My clients further say that in spite of the fact that the suits had been decreed long ago you have not chosen to pay the amount due under the decrees in question and on the other hand are trying to sell the property by falsely representing that the original documents have been lost to the prospective buyers. My clients further state that you are aware of the fact that my clients are in possession of the original documents relating to the property bearing door No. 41 Shaik Daood Street, Royapeeth, Madras-14, but deliberately made false representation as aforesaid with the mala fide intention to defeat and defraud my clients' amounts due under the decree. My clients emphatically state that you cannot sell the property in question without disclosing the amounts due to them*".
- Hence acting on the representations made by the appellant, the complainants called upon the debtor Smt. Maragathammal to pay the amount due under the decrees failing which they had instructed their lawyer to bring the property to sale. Actually, no such suits had in fact been filed nor any decrees passed.
- When the respondent found out about the professional misconduct committed on the appellant's part, they reached out to the Disciplinary Committee of the Bar Council of India.
- The ultimate conclusion of the Disciplinary Committee couldn't be reconciled with its earlier observation that it was not prepared to attach any credence to the conflicting assertion of Deivasenapathy as he had at first handed over Rs. 855/- on December 2, 1970 for filing the suit on the promissory note for Rs. 5,000/- and then paid Rs. 2,555/- sometime in July 1972 for filing the suit on the promissory note for Rs. 15,000/- which is in conflict with the allegation in the lawyer's notice dated February 21, 1974 that a sum of Rs. 3,410/- was paid on July 17, 1972 towards court fees and expenses for the filing of the two suits, or that the various dates marked in the copies of the two plaints, were indeed given by him.

- In view of the discrepancies the Disciplinary Committee held the appellant liable for the act.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the suspension of the petitioner was justified?
- II. Whether the misconduct was committed or not?

4. ARGUMENTS OF THE PARTIES

Plaintiff

- It was evident that the Disciplinary Committee mainly based the charge of misconduct on mere suspicion. Lastly, it is said that the complaint was a false one and was an attempt to pressurize the appellant to persuade his client Smt. Maragathammal to sell the house to the complainants.
- Though the plaint was drafted, in the suit to be filed on the basis of the promissory note for Rs. 5,000/-, the plaintiff felt that as the debtor Smt. Maragathammal had consulted him in another matter, it would be better that the complainants engaged some other counsel and he advised them accordingly. They were even suggested the names of two or three lawyers out of whom, the complainants engaged K. S. Lakshmi Kumaran.
- The two promissory notes were handed over to him or that he had received any amount by way of court fees or towards his fees was denied by him. According to him, K. S. Lakshmi Kumaran was, therefore, instructed to file the suits.

Respondent

K. S. Lakshmi Kumaran, on the other hand, pleaded that he knew nothing about the suits but had in fact signed the Vakalat as a Junior counsel, as a matter of courtesy at the behest of the appellant. He had never met the complainants nor he had been instructed by them to file the suits. He further pleaded that when the complainants served him with their lawyer's notice dated February 11, 1974, he went and saw the appellant who told him that he had returned the plaint, which was returned by the court, together with all the documents to the complainant Deivasenapathy as per receipt. On February 21, 1974 the complainants served another lawyer's notice on both the appellant and K. S. Lakshmi Kumaran. The appellant and K. S. Lakshmi Kumaran sent their replies to this notice.

5. LEGAL ASPECT INVOLVED IN THE CASE

Section 35(3) of the Advocates Act, 1961 which reads

The disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate-General an opportunity of being heard, may make any of the following orders, namely:—

- (a) dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed
- (b) reprimand the advocate
- (c) suspend the advocate from practice for such period as it may deem fit
- (d) remove the name of the advocate from the State roll of advocates.

Section 38 of the Advocates Act, 1961 which emphasis that

Any person aggrieved by an order made by the disciplinary committee of the Bar Council of India under Section 36 or Action 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)] thereon as it deems fit: [Provided that no order of the disciplinary committee of the Bar Council of India shall be varied by the Supreme Court so as to prejudicially affect the person aggrieved without giving him a reasonable opportunity of being heard.]

6. JUDGEMENT IN BRIEF

Justice Krishna Iyer observed that Sec. 35(3) has a mechanistic texture, a set of punitive pigeon holes, but we may note that words grow in content with time and circumstance, that phrases are flexible in semantics, that the printed text is a set of vessels into which the court may pour appropriate judicial meaning. That statute is sick which is allergic to change in sense which the times demand and the text does not countermand. The court is superficial which stops with the cognitive and declines the creative function of construction. So, they take the view that 'quarrying' more meaning is permissible out of Section 35(3) and the appeal provisions, in the brooding background of social justice, sanctified by Article 38, and of free legal aid enshrined by Art. 39A of the Constitution. Section 37 (2) empowers the Bar Council of India widely to 'pass such an order as it deems fit.' And the Supreme Court, under Sec. 38 enjoys ample and flexible powers to 'pass such an order. as it deems fit'.

The court condemned both the advocates for their dereliction of duty, but only reprimanded K. S. Lakshmi Kumaran, the junior advocate, because he never knew the complainants and had signed the *Vakalat* at the bidding of the appellant, but took a serious view of the misconduct of the appellant, and castigated his whole conduct in no uncertain terms, by observing: "*Finding himself in difficulties RD miserably failed in his duty to his fellow advocate very much junior to him in the profession and*

who trusted him. The conduct of a lawyer to his brothers in the profession must be characterized by candour and frankness. He must keep faith with fellow members of the bar. While quite properly RD did not accept the engagement himself, we are of the view that he has been party to the institution of a suit and tended merely to harass the defendants in the suit, with a view to secure some benefit for the other party-manifestly unprofessional."

The court therefore sought to adapt the punishment of suspension to serve two purposes-injury and expiation. The ends of justice will be served best in this case by directing suspension plus a provision for reduction on an undertaking the court to serve the poor for a year. As a condition precedent to his moving to the court the appellant must pay (and produce a receipt) Rs. 2,500/- to the victim of the misconduct. The State Legal Aid Board, that was working actively with two retired Judges of the High Court at the head, may use the services of the appellant while also keeping a close watch on his work and relations with poor clients, if he applies to the Legal Aid Board for giving him such an opportunity, after getting this court's order as provided below. Independently of that, as a token of the courts inclination to allow the appellant to become people-minded in his profession, his suspension may be reduced from practice upto the August 14, 1979.

7. COMMENTARY

Law is a noble profession, true; but it is also an elitist profession. While the Constitution under Article 19 enables professional expertise to enjoy a privilege and the Advocates Act confers a monopoly, and now the new amendment states that a person may end up in jail or pay a hefty fine or both, the goal is not assured income but commitment to the people whose hunger, privation and hamstrung human rights need the advocacy of the profession to change the existing order into a Human Tomorrow. This desideratum gives the clue to the direction of the penance of a deviant geared to correction. Serve the people free and expiate your sin, is the hint. The responsibility of lawyers is to get people justice which they long for. Whenever misconduct is initiated just like the case discussed above, it is unfair to the common public who are not aware of any laws hence they are dependent on the legal fraternity for justice. Bar Council of India plays a vital role in enacting pandect. It must regularly monitor and accordingly bring about amendments in professional ethics with changing the aura of the society.

8. IMPORTANT CASES REFERRED

- *Dhanraj Singh Choudahry v. Nathulal Vishwakarma (Civil Appeal No(s). 2293 of 2005)*
- *Ramasamy v. Government of Tamil Nadu (W. P. No. 8279 of 2006)*

- *Jaipur Vikas Pradhikaran v. Ashok Kumar Choudhary & Ors. (Civil Appeal NO. 5099 of 2002)*
- *Pharamond Dit D'Costa Antoine v. T. Gandhi Das (C.R.P.(PD) No. 995 of 2019)*

CASE NO. 20

ASHWINI KUMAR UPADHYAY

V.

UNION OF INDIA

WRIT PETITION (CIVIL) NO. 95 OF 2018, SC

**LAWYER MP/MLAS MUST BE DEBARRED FROM PRACTICE
TILL COMPLETION OF THEIR TENURE**

ABSTRACT

Ashwini Kumar had filed a writ, she is of the opinion that those who are the members of the parliament i.e. MLAs./MPs, members of Lok Sabha or Rajya Sabha and if they are advocates, then according to the tenure when they are the members of the parliament, till that particular period of time will be debarred from practising in the field as a litigant. With reference to the said writ petition, Supreme Court refers and through some light on the Advocate Act, 1961 and on the Bar Council of India which came in force from the said Act. Supreme Court said that there was no explicate or specific provision made under the act and in the Bar Council of India, in which it is stated that those legislatures who are member of parliament till that particular period of time will be debarred from practicing in the field as a litigant, It is stated that some people are barred from practising in the field as a litigant, that person is a salaried person in different-different profession as full time salaried employee and in regard to the same, Bar Council is having such provisions its Rule 49.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Writ Petition No. 95 of 2018
Jurisdiction	:	Supreme Court of India
Case Filed On	:	August, 2018
Case Decided On	:	September 25, 2018
Judges	:	Justice A M Khanwilkar, Justice Dr. D Y Chandrachud
Legal Provisions Involved	:	The Advocates Act, 1961, Section 21, 49; The Constitution of India, Article 99, 102, 105, 106, 233(2); The Indian Penal Code, 1860, Section 21
Case Summary Prepared By	:	Rahil Joshi L. J. School of Law, Ahmedabad

2. BRIEF FACTS OF THE CASE

Ashwini Kumar had filed a petition through which she wants to say that who are MLAs./MPs and if they are Advocates, then according to the tenure when they are the members of the parliament, till that particular period of time will be debarred from practising in the field of advocacy as an Advocate.

Reliance has been placed on Rule 49 of the Rules in particular to contend that there is an express restriction on Advocates to take up other employment. It is also urged that being an elected people's representative, by the very nature of his/her duty as a law maker and legislator, it is a full-time engagement, coupled with the fact that the emoluments paid to them is under The Salary, Allowances and Pension of Members of Parliament Act, 1954. Similarly, allowances are paid as per the rules framed for different heads under the 1954 Act. It is urged that there can be no relationship of an employee and employer between the MP/MLA/MLC and the Government as such, merely because they receive salary, allowances and pension in terms of the provisions of the 1954 Act as applicable to the Members of Parliament or similar enactment applicable to the Members of Legislative Assembly/Council.

3. ISSUES INVOLVED IN THE CASE

- I. Whether legislators can be debarred from practising as Advocates during the period when they continue to be the Members of Parliament or the State Assembly/Council?
- II. Whether, by virtue of such practice, the concerned elected people's representative may incur disqualification to continue to be a member of the concerned House on the ground of office of profit or any other ground resulting in his/her disqualification provided by the Constitution or any law made by the Parliament/State Legislature in that regard.

4. ARGUMENTS OF THE PARTIES

Petitioner

The elected people's representatives take a constitutional oath to serve the people and are supposed to work full-time for public causes. For, if they are allowed to practice law they would charge fees from their private clients and, at the same time, continue to draw salary from the public exchequer, which will be nothing short of professional misconduct. If they do so, they would end up becoming casual towards one of the two engagements and in a given situation be guilty of conflict of interest amounting to professional misconduct. It is thus urged that allowing legislators to practice law will have the potential of permitting them to indulge in conflict of interest amounting to professional

misconduct since they may appear in matters, in their capacity as advocates, challenging the wisdom of Parliament/State Legislature.

Respondent

The draft legislation prepared on the basis of the Law Commission's report is under active consideration and was referred to stakeholders, that is, the States and Union Territories for their inputs and suggestions. It was highlighted that the 'Criminal Laws' and the 'Criminal Procedure' fall in the Concurrent List of the Seventh Schedule to the Constitution of India and, therefore, comments and views of the State Governments/Union Territories were solicited on the recommendations made by the Law Commission of India. There may have been some delay as some States did not furnish their response, albeit the Union of India took steps by sending reminders on June 27, 2018, November 27, 2018 and December 20, 2018. Any direction by this Court requiring the Parliament to frame a law or modify an enactment in a particular manner would violate doctrine of separation of powers, a basic feature of the Constitution.

5. LEGAL ASPECTS INVOLVED IN THE CASE

- The conditions to be fulfilled for continuing as advocates, however, must be reasonable restrictions. The right to practise any profession in that sense is not an absolute right. At the same time, the restriction must be expressly stated either in the Advocates Act, 1961 or the Rules framed there under. Chapter IV of the said Act deals with the right to practise as an Advocate. Section 49 of the said Act empowers the Bar Council of India to make Rules for discharging its functions under the Act on matters specified in sub-section (1)(a) to 1(j) therein. The Bar Council has already framed Rules regarding restrictions on other employment, in exercise of powers under Sections 16(3) and 49(1)(g) of the said Act.
- An Advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practice, and shall, on taking up any such employment, intimate the fact to the Bar Council on whose roll his name appears and shall thereupon cease to practice as an advocate so long as he continues in such employment and subject to the rules against advertising and full-time employment, engage in broadcasting, journalism.
- Nothing in these rules shall prevent an advocate from accepting after obtaining the consent of the State Bar Council, part-time employment provided that in the opinion of the State Bar Council, the nature of the employment does not conflict with his professional work and is not inconsistent with the dignity of the profession. For, Rule 47 deals with a situation where the

advocate is engaged in business, Rule 48 is attracted when the advocate is a Director or Chairman of the company, Rule 50 becomes applicable when the advocate inherits family business, Rule 51 becomes applicable when the advocate is engaged in other specified activities, Rule 52 is applicable when an advocate accepts part time employment. It is an admitted position that no rules were framed by the respondent entitling a Law Officer appointed as a full-time salaried employee coming within the meaning of para 3 of Rule 49 to enroll as an Advocate. In the absence of express or positive rule, the appellant could not fit in the exception and the bar contained in the first paragraph of Rule 49, was clearly attracted as rightly held by the High Court.

6. JUDGEMENT IN BRIEF

The Supreme Court of India held that in the absence of any rule which clearly and expressively prohibit the legislators from practicing as advocates Rule 49 of the rules framed by Bar Council of India does not apply. It was held that; rule 49 of the Bar Council of India Rules provides that an Advocate should not be the full-time employee of anybody. It includes any person, firm, organization or Government if any advocate takes any such employment, he has to inform the Bar Council about the emplacement and he ceases to be an Advocate and from practicing law till the course of employment.

Judge while giving the verdict of the case, stated following things such as:

State Bar Councils can frame the rules regarding restrictions and a condition for the practicing Advocates. Advocacy is a noble work which requires full time engagement. Rules can be made for putting restrictions on legal practitioners so that they can pay full attention towards their client and the cases. The court held that, if State's Bar Council frames any such rules providing conditions for Advocates who are in practice that would not amount to breach of their Fundamental Rights of Freedom of Trade, then it would be justified. Rule-49 does not impose any unreasonable restrictions on the Advocates. The mere fact that the law makers or the Legislatures or the Members of the Parliament/Legislative Assembly/Councils withdraw salaries and pension or allowances does not bring them into the ambit of Rule-49. Case of the professional misconduct will have to be proved beyond the reasonable doubt and it may vary from case to case. There is no express provision prohibiting MPs./MLAs./MLCs. having a law degree from practicing as an Advocate in Court of Law during the relevant period. The only Rule framed by Bar Council of India which is closer is Rule-49 but it talks about other employment. Thus, court dismissed this particular petition on the above-mentioned grounds by making it clear that no such ban or restriction can be imposed on the

Legislatures or elected people's representatives under the light of Rule-49 of Bar Council of India Rules.

7. COMMENTARY

The current case deals with the disputed question of fact whether the members of the parliament i.e. MLAs./MPs, members of Lok Sabha or Rajya Sabha and if they are advocates, then according to the tenure when they are the members of the parliament, till that particular period of time will be debarred from practising in the field as a litigant. Here the court had done justice in its finest sense. But, here as per the ethics of Advocacy, an advocate must be committed to his work and his client and no question arises of extra benefit/income to him from any other profession and took advocacy as a normal bread earning job. As advocacy is not just a bread earning job it is a well decorated profession for helping the people who are in need of justice.

8. IMPORTANT CASES REFERRED

- *Abdul Mannan v. The State of West Bengal & Anr. (Calcutta High Court, Criminal Revision 1409 of 2019 decided on June 24, 2019)*
- *Lok Prahari Through Its General Secretary v. Union of India Legislative (SC, Writ Petition (C) No. 784 of 2015 decided on December 3, 2018*
- *Mathews J. Nedumpara v. Bar Council of India, (SC, Writ Petition (C) No. 198 of 2018 decided on November 22, 2018*
- *Smt. Khasimon Phanbuh & Anr. v. Union of India & Ors. (High Court of Meghalaya, PIL No. 8/2015 decided on February 25, 2019*

CASE NO. 21
SATISH KUMAR SHARMA
V.
THE BAR COUNCIL OF HIMACHAL
(AIR 2001 SC 509)
RULE MAKING AUTHORITY

ABSTRACT

The board allowed the appellant to act as an Advocate of the board and also ordered that the expenditure of his getting license from the Bar Council shall be met by the board. The Secretary of the respondent by letter informed the Board that the Office Order dated September 6, 1983 of the Board did not meet the requirements of the Rules and that the appellant should first be designated as a Law Officer. The respondent also requested the Board to send the order of appointment and the terms of such appointment of the appellant. The Board modified the earlier order dated September 6, 1983 and declared the appellant as a Law Officer of the Board. Another order was passed by the Board by changing the designation of the post of Law Officer Grade-II as Law Officer. By Office Order, the appellant was given ad hoc promotion to the post of Under Secretary Legal-cum-Law Officer, which order also stated that he would continue to work in the Legal Cell of the Secretariat of the Board. Appellant was promoted as Under Secretary Legal- cum-Law Officer on officiating basis.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Appeal (Civil) 5395 of 1997
Jurisdiction	:	Supreme Court of India
Case Filed On	:	May 12, 1996
Case Decided On	:	January 3, 2001
Judges	:	Justice S. V. Patil, Justice R. C. Lahoti
Legal Provisions Involved	:	The Advocates Act, 1961, Section 24, 28, 35, 49, 49A; The Constitution of India 1949, Article 233(2); The Indian Bar Councils Act, 1926
Case Summary Prepared By	:	Rahil Joshi L. J. School of Law, Ahmedabad

2. BRIEF FACTS OF THE CASE

- 6/9/1983- The board allowed the appellant to act as an advocate of the board and also ordered that the expenditure of his getting license from the Bar Council shall be met by the board.
- 13/10/1983- His application seeking enrolment was sent by the Secretary of the Board to the respondent.
- 28/3/1984- The Secretary of the respondent by letter informed the Board that the Office Order dated 6/9/1983 of the Board did not meet the requirements of the Rules and that the appellant should first be designated as a Law Officer. The respondent also requested the Board to send the order of appointment and the terms of such appointment of the appellant.
- 11/6/1984- The Board modified the earlier order dated 6/9/1983 and declared the appellant as a Law Officer of the Board.
- 5/7/1984- Another order was passed by the Board by changing the designation of the post of Law Officer Grade-II as Law Officer.
- 9/7/1984- It is, thereafter, the respondent issued a certificate of enrolment to the appellant.
- 8/5/1991- By Office Order, the appellant was given ad hoc promotion to the post of Under Secretary Legal-cum-Law Officer, which order also stated that he would continue to work in the Legal Cell of the Secretariat of the Board.
- 14/1/1993- Appellant was promoted as Under Secretary Legal-cum-Law Officer on officiating basis.
- 10/7/1993- The meeting was held in which the respondent considered the matter regarding enrolment of certain Law Officers and decided to constitute a committee to examine the same.
- 13/9/1993- By its communication, the respondent called upon the appellant to appear before the Committee on 28/9/1993 along with all connected documents/evidence in regard to his enrolment as an advocate.
- 27/12/1993- A show cause notice dated was sent to the appellant requiring him to elucidate for his enrolment number and same was replied on 30/12/1993.
- After taking extension of time twice the appellant sent a communication on 25/2/1994 stating that there was no ground for withdrawal of his enrolment reserving his right to file a detailed reply. He also stated that he would like to be represented by an advocate.

An Advocate shall not be a full-time salaried employee of any person, Government, firm, corporation or concern, so long as he continues to practise and shall, on taking up any such employment intimate the fact to the Bar Council on whose roll his name appears, and shall thereupon cease to practise as an Advocate so long as he continues in such employment. Nothing

in this rule shall apply to a Law Officer of the Central Government of a State or of any Public Corporation or body constituted by statute who is entitled to be enrolled under the rules of his State Bar Council made under Section 28(2)(d) read with Section 24(1)(e) of the Act despite his being a full-time salaried employee. Law Officer for the purpose of this Rule means a person who is so designated by the terms of his appointment and who, by the said terms, is required to act and/or plead in Courts on behalf of his employer. In terms of Section 24 of the Act, a person shall be qualified to be admitted as an Advocate if he satisfies the provisions of the Act, the Rules and the rules, if any, made by the State Bar Council besides fulfilling other conditions as laid down in this Section.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the validity and correctness of the resolution was challenged by the appellant before the High Court in the writ petition which contending that the enrolment was validly granted to him as he fulfilled the requirements of relevant provisions of the Advocates Act, 1961?
- II. Why did he pointed out that advocates, who obtained enrolment and later on joined State Government service in the Prosecution Department, have continued to retain their enrolment and defend the State Government in the courts?
- III. Why no rules have been framed by the respondent preventing persons like the appellant from getting enrolled?
- IV. Was it not open to the respondent to withdraw the certificate of enrolment?
- V. Is Rule 49 of the Rules framed by the Bar Council of India been misconstrued and misunderstood by the respondent?
- VI. It was contended that the respondent had no jurisdiction to withdraw the enrolment certificate granted to the appellant. The Division Bench of the High Court by an elaborate and well-considered order dealing with all aspects dismissed the writ petition. How far is it fair?

4. ARGUMENTS OF THE PARTIES

Petitioner

The High Court failed to appreciate that the second para of the Rule 49 carves out an exception to the Bar created by Rule 49, precluding a full time salaried employee from practicing as an Advocate; the said exception was subject only to one limitation, i.e., an express bar created by Rules, made by any State Bar Council in exercise of its powers under Section 28(2)(d) read with Section 24(1)(e) of the Advocates Act, 1961; since the respondent has not framed any rules expressly barring such Law Officers from being enrolled as advocates the appellant was entitled for enrolment. According to the

learned Counsel the High Court also failed to note that it was not a case of refusal of enrolment to a Law Officer but it was a case wherein the respondent was estopped from cancelling the certificate of enrolment issued to the appellant by the very respondent as early as on July 9, 1984; therefore, cancellation of enrolment after almost a decade and half based on an erroneous interpretation of Rule 49 of the Rules of Bar Council of India, was unjust. The learned Counsel added that the impugned action of the respondent was unwarranted as it amounted to a punishment of removal of the name of an advocate from the Roll of the State Bar Council as postulated by section 35(d) of the Act without following the procedure.

Respondent

Respondent made submissions supporting the orders impugned in this appeal. According to him the appellant was not at all entitled for enrolment as an advocate having regard to Rule 49 of the Bar Council of India Rules in the absence of any enabling provision to a full-time salaried employee for enrolment as an advocate. The learned Counsel submitted when the appellant was not at all entitled to be enrolled as an advocate the action taken by the respondent after lapse of some time is of no consequence and the delay in taking action in a case like this itself does not give protection so as to sustain the enrolment. He further submitted that there was no discrimination as alleged by the appellant looking to the nature of duties of the prosecutors in the State Departments and the appellant.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Subject to the provisions of this Act, and the rules made there under, a person shall be qualified to be admitted as an Advocate on a State roll, if he fulfils the following conditions, namely, he fulfils such other conditions as may be specified in the rules made by the State Bar Council under this Chapter; Section 28.

- (1) A State Bar Council may make rules to carry out the purposes of this Chapter.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for the conditions subject to which a person may be admitted as an advocate on any such roll;
- (3) No rules made under this Chapter shall have effect unless they have been approved by the Bar Council of India Section 49.
 - (i) The Bar Council of India may make rules for discharging its functions under this Act and in particular, such rules may prescribe;

- (ab) qualifications for membership of a Bar Council and the disqualifications for such membership; the class or category of persons entitled to be enrolled as advocates;
- (ah) the conditions subject to which an advocate shall have the right to practice and the circumstances under which a person shall be deemed to practise as an advocate in a court;
- (c) the standards of professional conduct and etiquette to be observed by advocates;

Chapter II of the Rules made under Section 49(1)(c) of the Act read with the proviso thereto deals with standards of professional conduct and etiquette. Preamble of Chapter II reads: -

An advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an Advocate. An Advocate shall not be a full-time salaried employee of any person, Government, firm, corporation or concern, so long as he continues to practise and shall, on taking up any such employment intimate the fact to the Bar Council on whose roll his name appears, and shall thereupon cease to practise as an Advocate so long as he continues in such employment.

Nothing in this rule shall apply to a Law Officer of the Central Government of a State or of any Public Corporation or body constituted by statute who is entitled to be enrolled under the rules of his State Bar Council made under Section 28(2) (d) read with Section 24(1)(e) of the Act despite his being a full-time salaried employee.

Law Officer for the purpose of this Rule means a person who is so designated by the terms of his appointment and who, by the said terms, is required to act and/or plead in Courts on behalf of his employer.

In terms of Section 24 of the Act, a person shall be qualified to be admitted as an Advocate if he satisfies the provisions of the Act, the Rules and the rules, if any, made by the State Bar Council besides fulfilling other conditions as laid down in this Section. Even if no rules were framed under Section 28(2)(d) read with Section 24(1)(e) of the Act by a State Bar Council, enrolment of a person shall be subject to the provisions of the Act and the Rules. Section 28 has conferred rule making power on a State Bar Council to carry out the purposes of Chapter III of the Act. Under Section 49 of the Act the Bar Council of India has power to make rules for discharging its functions under the Act. In the Preamble, extracted above, to the Rules made under Section 49(1)(c) of the Act read with the proviso thereto it is stated that an Advocate shall at all times conduct himself in a manner befitting to his status as an officer of the court, a privileged member of the community,

and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an advocate.

It is further stated that an advocate shall fearlessly uphold the interest of his client, and in his conduct conform to the rules. As is clear from the Rules contained in Chapter II of the Rules an advocate has a duty to court, duty to the client, duty to opponent and duty to colleagues unlike a full-time salaried employee whose duties are specific and confined to his employment. Rule 49 has a specific purpose to serve when it states that an advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern. Mere non framing of rules by a State Bar Council under Section 28(2) (d) read with Section 24(1) (e) of the Act cannot dispense with obedience to Rule 49.

The profession of law is called a noble profession. Bar Council of Maharashtra & Goa, while dealing with the validity of Rule 1 of the Maharashtra and Goa Bar Council Rules relating to enrolment of Advocates eligibility conditions, in Para 20 has observed that `legal profession requires full time attention and would not countenance an Advocate riding two horses or more at a time'. Rules framed by the Maharashtra Bar Council denied simultaneous practice of another profession along with practice of law. It is for ensuring the full-time attention of legal practitioners towards their profession and with a view to bringing out their best so that they can fulfil their role as an officer of the court and can give their best in the administration of justice, that the impugned rule has been enacted by the State Legislature. The Central Government in exercise of the powers conferred by Section 49-A of the Act framed the Advocates (Right to Take up Law Teaching) Rules, 1979. As per Rule 3 of the said Rules, a practicing Advocate has a right to take up teaching of law in any educational institution affiliated to university so long as teaching of law does not exceed three hours a day and such employment may be deemed to be a part time employment.

Since the terms of appointment, nature of duties and service conditions relating to the appellant have also bearing in resolving the controversy, it is considered appropriate to briefly refer to them. In response to the application made for the enrolment of the appellant as an Advocate, the Secretary of the respondent by a letter dated March 28, 1984 informed the appellant that the Office Order dated September 6, 1983 of the Board did not meet the requirements of the Rules and that he first be designated as Law Officer.

6. JUDGEMENT IN BRIEF

During the course of hearing, a question arose as to whether the appellant, while serving on full time basis with Himachal Pradesh State Electricity Board, is confining his work only to acting as an Advocate for and on behalf of the Board, including appearances in the Court, or has some other duties also assigned to him in his capacity as Deputy Secretary-cum-Law Officer. Mr. V.A. Bobde learned senior counsel appearing on behalf of the appellant submits that since this issue never arose before, he shall have to seek instructions and file an appropriate affidavit supported by relevant documents. Four weeks' time, as prayed for, is granted for the purpose. An advance copy shall be furnished to the learned counsel opposite who will have four weeks thereafter to file response, if any.

Judge while giving the verdict of the case, stated following things such as:

On a proper and careful analysis, having regard to the plain language and clear terms of Rule 49 extracted above, it is clear that: -

- (i) The main and opening paragraph of the Rule prohibits or bars an advocate from being a full-time salaried employee of any person, government, firm, corporation or concern so long as he continues to practice and an obligation is cast on an Advocate who takes up any such employment to intimate the fact to the concerned Bar Council and he shall cease to practice so long as he continues in such employment;
- (ii) Para 2 of the Rule is in the nature of an exception to the general Rule contained in main and opening paragraph of it. If in the Rules of any State Bar Council, a provision is made entitling Law Officers of the Government or authorities mentioned above, the bar contained in Rule 49 shall not apply to such Law Officers despite they being full-time salaried employees;
- (iii) Not every Law Officer but only a person who is designated as Law Officer by the terms of his appointment and who by the said terms is required to act and/or plead in courts on behalf of his employer can avail the benefit of the exception contained in Para 2 of Rule 49.

It is an admitted position that no rules were framed by the respondent entitling a Law Officer appointed as a full-time salaried employee coming within the meaning of Para 3 of Rule 49 to enroll as an Advocate.

7. COMMENTARY

The present case deals with the disputed question of fact whether the appellant serving on full time basis with Himachal Pradesh State Electricity Board, is confining his work only to act as an Advocate

for and on behalf of the Board, including appearances in the Court, or has some other duties also assigned to him in his capacity as Deputy Secretary-cum-Law Officer.

Advocacy is the pious profession and it is a well settled law that any person who is in the noble profession of an Advocacy, he is not supposed to share any office of profit. Looking at the present case, the Board has appointed the appellant as a lawman and confined him to work as an advocate on behalf of the Board only and he is also a full-time salaried person. According to the combined reading of the Advocates Act and Rules, the person who acquired the degree of the advocate, he has to choose either the profession or office of profit. Once he chooses the profession and he applies for the enrolment, the respondent has rightly disqualified him. Considering the facts and circumstances of the case, the court has rightly observed that the legal profession requires full time attention and the appellant cannot ride on two horses. In the present case the appellant also did not meet the required criteria to enroll himself as an advocate. Thus, looking to the facts of the present case and settled proposition of law, the court has rightly dismissed the appeal.

8. IMPORTANT CASES REFERRED

- *Biji v. Registrar, High Court of Kerala 2001(3) KLT 99*
- *Smt. Jyoti Gupta v. Registrar General, High Court Of M.P 2008 (3) MPHT 13*
- *R.Sreekanth v. The Kerala Public Service WP(C) No. 31585 of 2009(P)*
- *Seven Star Rep. By Its Proprietor v. The District Collector, Karur W. P. No.1251 of 2004*
- *S. Nagender v. Government of Andhra Pradesh And 2006 (4) ALD 210*

CASE NO. 22
J. R. PARASHAR, ADVOCATE & ORS.
V.
BAR COUNCIL OF INDIA
AIR 2002 DELHI 482
DRESS CODE FOR ADVOCATES

ABSTRACT

Here, the Petitioners filed a writ petition of Mandamus to ask for the enforcement of Sec. 49(1)(gg) of Advocates Act, 1961 which prescribes the dress to be worn by the Advocates. The plea was to restrain the Senior Advocates from wearing the Queens Counsel gown and to direct all Advocates wearing the dress as prescribed under the Rule. The petitioners urged that all Advocates whether senior or junior deserve to be treated equally and there must be no discrimination amongst them even in the matter of dress. It was held that the rule framed by the BCI does not make any distinction in dress but the distinction has been maintained prior to the Act. The Act has recognized a distinction between the senior advocates and advocates. The Senior Advocates constitute a different class within the advocates based on the ability, knowledge, experience, expertise and standing at the bar. As the distinction is accepted, the wearing of a distinct gown or a coat by a senior advocate cannot be questioned as discriminatory under Article 14 of the Constitution. Thus, it was held that, the plea of the petitioner that a bias is created in favour of a senior advocate is without any supporting evidence and deserves to be rejected.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Writ Petition No. 647 of 2001
Jurisdiction	:	High Court of Delhi
Case filed On	:	2001
Case decided On	:	July 9, 2002
Judges	:	Justice Manmohan Sarin
Legal Provisions Involved	:	Advocates Act, 1961, Sec. 16, 23 and 49(1); Constitution of India, Article 14, 226
Case Summary Prepared By	:	Helly Makwana L. J. School of Law, Ahmedabad

2. BRIEF FACTS OF THE CASE

The case was brought before the High Court of Delhi in the form of a Writ Petition under Article 226 of the Constitution of India by Mr. J. R. Parashar and two other advocates. The bench consisted of Justice M. Sarin. Mr. N. N. Keswani appeared for the petitioner in the above-mentioned writ petition and Mr. Sanjeev Sachdeva appeared for Bar Council of India. Mr. J. R. Parashar along with two other advocates, filed a writ petition of Mandamus in the High Court of Delhi against the Bar Council of India for the enforcement of Chapter IV of Bar Council of India Rules 1975 framed under Section 49(1)(gg) of the Advocates Act, 1961 which prescribes the form of dress or robe to be worn by advocates. An order of restraint was also sought against the senior advocates from wearing what is described as the Queens Counsel (QC), gown contrary to the above rule. The petitioners' case in brief is that the relevant rule prescribes the same dress for all the advocates. Senior Advocates therefore cannot wear the QC gown as also the short coat or jacket decorated with frills and fineries, to make out a different class of advocates.

Here, firstly, the petitioner Mr. J. R. Parashar along with two other Advocates has filed the Civil Writ Petition No. 647 of 2001 of Mandamus. Secondly, another Civil Writ Petition No. 1959 of 2001 was filed by the Lawyers Reformist Forum, through its President Shri K. L. Rathee, seeking a writ of mandamus for the same matter. Both the cases were combined and were presented by the common counsel and notices to show cause in these two writ petitions were issued and Counter affidavits have been filed.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the Bar Council of India Rules, 1975 implies a special provision for the dress code of Senior Advocates?
- II. Whether the rule of Article 14 of the Constitution of India has been infringed?

4. ARGUMENTS OF THE PARTIES

Petitioner

The Counsel urged that all advocates whether senior or junior deserve to be treated equally by the courts and there ought to be no discrimination amongst them even in the matter of dress. He submitted that the Bar Council of India had framed the rules in Chapter IV under Section 49(1)(gg) of the Advocates Act, 1961 prescribing the form of dress. The rule does not prescribe a different dress for a senior advocate, than that for an advocate. Thus, there was no justification for a senior advocate to wear a gown different and distinct from the normal gown worn by all other advocates.

The Counsel submits that the wearing of a gown with its overflowing arms, embroidery and frills creates a bias in favour of a senior advocate, which often manifest itself either in terms of accommodation for adjournments, prior hearing or urgent hearing, which senior advocates get from the court as compared to the other advocates. This creates an impression among the advocates as well as the clients and general public that the senior advocates are superior and get better and favourable treatment from the courts. Counsel also urged that the senior advocates in India though not being Queens Counsel emulate them and wear the gown, which the Queen Counsel wear. He also urged that the wearing of different gowns by the seniors could not be justified on the basis of tradition as the rule framed by the Bar Council of India.

Respondent

Bar Council of India in the counter affidavits filed in response that there is no legitimate grievance of the petitioners. It is claimed that the Advocates Act makes and recognizes a distinction between the senior advocates and other advocates. The rule framed by the Bar Council of India only prescribes the dress, which is to be worn. It does not prescribe the design of the gown or the coat. It is stated that the distinction in the design of the coat and gown of senior advocates has been maintained, based on the age-old tradition. The said tradition and practice are not opposed to any public policy or law and there was no cause to disturb the same.

5. LEGAL ASPECTS INVOLVED IN THE CASE

- This is a case of a civil writ petition which involved Article 226 of the Constitution of India.
- It also includes Sections 16, 23 and 49(1) of Advocates Act, 1961.
- The case involved the question of right to equality; thus Article 14 of the Constitution of India is also included.

6. JUDGEMENT IN BRIEF

It was held by the Hon'ble court that:

- The rule framed by the Bar Council of India does not make out any distinction in dress or prescribe the design of a different gown or coat for a senior advocate, yet the distinction has been maintained and followed by a practice of long-standing, even prior to the Advocates Act, 1961.
- The Advocates Act has recognised a distinction between the senior advocates and advocates in Section 16 & 23 of the Act provides for right of pre audience for Senior Advocates among others.

- The senior advocates constitute a different class within the advocates which is based on the ability, knowledge, experience, expertise and standing at the bar. It is an honour and distinction conferred by the court in recognition of the ability and standing of the concerned advocate.
- Once the distinction between an advocate and a senior advocate is accepted and accorded statutory recognition, the wearing of a distinct gown or a coat by a senior advocate, which is different from the one worn by advocates, cannot be questioned or assailed as discriminatory or violative of Article 14 of the Constitution of India.
- The plea of the petitioner that a bias is created in favor of a senior advocate, who wears a gown with frills or overflowing arms or on account of the design of the coat, in the mind of the judge is without any supporting evidence or factual foundation and deserves to be outrightly rejected.

7. COMMENTARY

In my view, the decision of the Delhi High Court on the above-mentioned case was fair, balanced and acceptable for a number of reasons. Before reading the reasoning of the Hon'ble court, my opinion was in favour of the petitioners that there was discrimination between the senior advocates and other advocates on the basis of dress code, but after having the knowledge of the reasoning, my opinion changed. There is a distinction between the senior advocates and other advocates. The senior advocates constitute a different class within the advocates which is based on their ability, knowledge, experience, expertise and standing at the bar. It is an honour and distinction conferred by the court in recognition of the ability and standing of the concerned advocate. Thus, there is no discrimination and violation of right to equality under Article 14 of the Constitution of India.

8. IMPORANT CASES REFERRED

- *A. K. Balaji v. The Government of India, (High Court of Madras, WP No. 5614 of 2010, decided on February 21, 2012)*

CASE NO. 23

BHUPINDER KUMAR SHARMA

V.

BAR ASSOCIATION, PATHANKOT

(AIR 2002 SC 47)

**ADVOCATE AND THE RULES DEBARRING THEM FROM
DOING BUSINESS**

ABSTRACT

The following is the case summary of *Bhupinder Kumar Sharma v. Bar Association Pathankot* which was filed regarding to the ‘Rules debarring the Advocates from doing business.’ This case had a major impact on the advocates in India who were indulged in profits of business as well as who were practising in courts. Hence, this case can be easily called as one of the milestones of making good impact on the rule of advocates being debarred from making profits out of business. Here, in this case, an appeal was filed under Section 38 of the Advocates Act, 1961 against the judgment dated November 4, 1998 passed by the Disciplinary Committee of BCI, removing the name of the appellant from the States Roll of Advocates under Section 35(3)(d) of the Act. The respondent had made a written complaint to the State Bar Council making allegations of misconduct against the appellant that he was making profits out of a business despite of the rule: ‘Advocates are debarred from making profits out of a business.’ The appellant contended that the allegations made, were not proved and the evidence on this point was not properly appreciated. Thus, the punishment imposed on the appellant is disproportionate. The respondent drew our attention to the evidence brought on record to show that the findings recorded against the appellant are justified. He contended that in spite of the order, he is still continuing his business. Thus, the punishment imposed on the appellant is proper. After considering the evidence, it was held that the appellant was guilty of professional misconduct and the punishment imposed on him was just. Hence, the appeal was dismissed. It was also found that the appellant had not only procured enrolment by submitting the false declaration but also suppressed the material fact; otherwise, the appellant would not have been enrolled at all. It was left open to the State Bar Council to take such action under Section 26 of the Act. In the final statement, it was held that the punishment to debar the appellant from practising would be upto end of December, 2006.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Appeal (Civil) 6304 of 1998
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Jurisdiction	:	The Supreme Court of India
Case Filed On	:	1998
Case Decided On	:	October 31, 2001
Judges	:	Justice D. P. Mohapatra, Justice Shivaraj V. Patil
Legal Provisions Involved	:	Constitution of India, Article 133; Advocates Act, 1961, Sec. 26, 35(3)(d) and 38
Case Summary Prepared By	:	Helly Makwana L. J. School of Law, Ahmedabad

2. BRIEF FACTS OF THE CASE

- The case was brought before the Supreme Court of India in the form of an appeal under Section 38 of The Advocates Act, 1961 against the judgment and order dated November 4, 1998 passed by the Disciplinary Committee of the Bar Council of India, confirming the order passed by the Disciplinary Committee of Bar Council of Punjab & Haryana removing the name of the appellant from the States Roll of Advocates under Section 35(3)(d) of the Act.
- The bench consisted of Justice D.P. Mohapatra & Justice Shivaraj V. Patil.
- The appellant was enrolled with the State Bar Council as an Advocate on September 16, 1994.
- On September 9, 1995, the respondent-association made a written complaint to the State Bar Council making allegations of misconduct against the appellant.
- The State Bar Council took cognizance of the complaint and referred the complaint to its Disciplinary Committee. After the completion of the proceedings in D.C.E., order was passed by the Disciplinary Committee of State Bar Council to remove the name of the appellant from the State Roll of the Advocates and the same was confirmed by the Disciplinary Committee of the Bar Council of India, in appeal.
- Hence, this appeal.
- On September 9, 1995, the respondent-association made a written complaint to the State Bar Council making allegations of misconduct against the appellant.
- The decision of the DCE was held on November 4, 1998.
- After that judgement, this appeal was filed in the Supreme Court of India.
- The appellant – Bhupinder Kumar Sharma filed this appeal against the order of the DCE, as the DC, BCI had removed his name from the State Roll of the Advocates.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the appeal is fit to be entertained?
- II. Whether the punishment given to the appellate is appropriate?

4. ARGUMENTS OF THE PARTIES

Appellant

- The learned senior counsel for the appellant strongly contended that the allegations made in the complaint were not established or proved.
- The standard of proof is required in a case like this.
- Here, the appellant was not actually carrying on business and the evidence on this point was not properly appreciated.
- Thus, it was argued that the punishment imposed on the appellant is grossly disproportionate even if it is assumed that the misconduct was proved.

Respondent

- The learned senior counsel for the respondent made submissions supporting the impugned order.
- He drew out attention to the evidence brought on record to show how the findings recorded against the appellant are justified.
- He strongly contended that the misconduct of the appellant before and after filing of the appeals before the Bar Council of India and this Court in continuing the business cannot be condoned.
- Further, in spite of giving undertaking before this Court, he is still continuing his business as is supported by the report of the Sub-judge made to this Court.
- Thus, here it was argued that the punishment imposed on the appellant is proper in the absence of any good ground to take any lenient view.

5. LEGAL ASPECTS INVOLVED IN THE CASE

- This is a case of a civil appellate petition which involved Article 133 of the Constitution of India.
- It includes Section 26 of Advocates Act, 1961 which lays down the provision for – Disposal of applications for admission as an advocate where a State Bar Council in writing may give directions as to dispose of the application in the given manner prescribed in given the section.

- It includes Section 35(3)(d) of Advocates Act, 1961 which lays down the provision for – Punishment of advocates for misconduct where on receipt of a complaint a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, the following orders may be imposed:
 - a. Dismiss the complaint;
 - b. Reprimand the advocate;
 - c. Suspend the advocate from practice for such period as it may deem fit;
 - d. Remove the name of the advocate from the State roll of advocates.
- Lastly Section 38 of Advocates Act, 1961 is included which lays down the provision for – Appeal to Supreme Court where any person aggrieved by an order made by the disciplinary committee of the Bar Council of India may, within sixty days of the date on which the order is communicated to him, prefer an appeal to the Supreme Court of India.

6. JUDGEMENT IN BRIEF

- The finding recorded holding the appellant guilty of professional misconduct is supported and based on cogent and convincing evidence even judged by the standard required to establish misconduct as required to prove a charge in a quasi-criminal case beyond reasonable doubt.
- Any merit in the argument that the misconduct alleged against the appellant was not properly proved by the standard required to prove such misconduct was not found.
- There was also no merit in the contention that the evidence was not properly appreciated by both the Disciplinary Committees.
- Nothing was brought on record to discredit the evidence led on behalf of the complainant and no material was placed to support the allegation of the appellant that the members of the respondent – Association had any grudge or ill-will against the appellant.
- Having regard to the nature of misconduct and taking note of the handicap of the appellant, the court opined, debarring him from practising for all time is too harsh, thus it should consider it just and appropriate to modify the punishment to debar the appellant from practising upto end of December, 2006.

7. COMMENTARY

The current case deals with the rules relating to advocates being debarred from doing business. This provision is laid down in the rules of 47 to 52 of Bar Council of India. In my view, the decision of the Supreme Court of India on the above-mentioned case was fair, balanced and acceptable for a number of reasons. One of the reasons is the provision of the Advocates Act, 1961 that “An advocate

is been barred from doing business and earn the profits.” Thus, he cannot be the proprietor of any business entity. Here, the appellant, Bhupinder Kumar Sharma should be punished for his conduct – for making profits out of business, but not by disbarring him from practicing for all time, as it would be too harsh. Thus, the court rightly opined to be just in giving the punishment to the accused advocate.

8. IMPORTANT CASES REFERRED

- *B. S. R and Associates Ltd. & Anr v. Union of India & Anr, (2021) ibclaw.in 109 SC*
- *N Sampath Ganesh v. Union of India & Anr, 2019 SCC Bom 9643, 2020 SCC Bom 782*
- *Deloitte Haskins And Sells Ltd. v. Union of India & Ors, 2019 SCC Bom 8060*

CASE NO. 24
VIKAS DESHPANDE
V.
BAR COUNCIL OF INDIA AND ORS.
AIR 2003 SC 308
WRONGFUL AUTHORIZATION

ABSTRACT

In the following case, Vikas Deshpande, an Advocate, sold property of respondents who never authorized the appellant to sell their land in the first place. The appellant said that he would not charge any fees considering the situation. Nevertheless, the appellant had played fraud on them to sell the property on the basis of the alleged power of attorney obtained by him through misrepresentation. The complaint was taken cognizance of the matter the same was referred to the Disciplinary Committee of the State Bar Council. The Bar Council of India had permanently debarred the appellant from practicing as an advocate for the commission of such grave professional misconduct and also imposed the cost of Rs. 25,000/- as fine.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal No. 4003 of 2001
Jurisdiction	:	Supreme Court of India
Case Filed On	:	January 3, 2001
Case Decided On	:	November 29, 2002
Judges	:	Justice Ashok Bhan, Justice V.N. Khare
Legal Provisions Involved	:	Advocates Act 1961, Section 35, 36, 38
Case Summary Prepared By	:	Pooja Lakshmi Bennett University, Greater Noida

2. BRIEF FACTS OF THE CASE

Ramrao Chandoba Jadhav, Vidyadhar Ramrao Jadhav and Chandrakant Ramdeo Jadhav (all deceased), hereinafter referred to as "the complainants", were prosecuted for committing murder of six persons on December 16, 1990 at village Mandgi, Taluka-Degloor, District-Nanded. Complainants requested the Sessions Court for appointment of an advocate as *amicus curiae* to defend them as they were unable to engage an advocate because of their poverty. Sessions Court

appointed Shri S. V. Ardhapurkar, Advocate as *amicus curiae* to defend the complainants. Sessions Court after trial found the complainants guilty of the offence of murder and awarded them with death penalty by the way of an order dated August 30, 1991. On the same date the appellant contacted the complainants in Yervada Central Prison where they were lodged. Appellant took the copies of the judgment from the complainants and obtained their thumb impression and signatures on the *Vakalatnama* to prefer an appeal in the High Court of Bombay at Aurangabad Bench. Appellant told the complainants that he would not be charging any fee as he was doing this to make a name for himself and the same was believed by the complainants.

The appellant Vikas Deshpande, filed an appeal under Section 38 of Advocates Act, 1961 along with Section 36 against the order passed by the Bar Council of India in BCI/TRC No. 51 of 1995 dated January 3, 2001. The complainants who were clients of the appellant were found guilty and sentenced to death on August 30 1991. On February 16, 1992, appellant met the complainants in Yervada Central Prison again and told them that he had sold their land on the basis of power of attorney executed in his favor by them authorizing him to sell the land. That he had appropriated the money received by him towards his fees. Even though when taking the case, the appellant said that he would not charge any fees considering the situation after a while appellant went to complainants and obtained their signatures on certain other papers. Later appellant went on to meet complainants and disclosed that he had sold their lands in return for his service to obtain his fees.

Complainants had requested for the appointment of an advocate as *amicus curiae* to defend them to leave their property for the surviving members of the family in case the complainants were sentenced to death. The complainant clearly stated that they had never authorized the appellant to sell their land and that the appellant had played fraud on them to sell the property on the basis of the alleged power of attorney obtained by him through misrepresentation.

The complainants filed a complaint in the State Bar Council, Maharashtra explaining appellant's act of professional misconduct. Appreciating the seriousness of the complaint made by the complainants, State Bar Council took *Suo Moto* cognizance and issued notice to the appellant. The appellant filed his reply admitting that the trial of the aforesaid complainants was conducted by an *amicus curiae* and the death sentence was imposed by the Sessions Judge. He also alleged that out of 16 acres of land owned by the complainants the appellant had sold only 6 acres and 30 *gunthas* of land to meet the expenses. Furthermore, he also stated that the remaining amount of Rs. 28,000/- could not be obtained by the appellant as the power of attorney executed in his favor was cancelled by the complainants. The complaint was taken cognizance of the matter the same was referred to the Disciplinary Committee of the State Bar Council on March 25, 1993

3. ISSUES INVOLVED IN THE CASE

- I. Whether the respondent solicited case brief for no remuneration?
- II. Whether the respondent met petitioners and obtained their signatures on the stamp paper without explaining the contents of the stamp paper?
- III. Whether the sale of plaintiff's land by respondent in the given circumstances constitutes the professional or any other misconduct of respondent advocate?
- IV. Whether the respondent is entitled to and justified in recovering the fees by selling the land belonging to the petitioners or not?

4. ARGUMENTS OF THE PARTIES

Plaintiff

The advocate argued that on the request of the complainants on August 30, 1991 he accepted the *Vakalatnama* on behalf of the complainants on an oral agreement that the complainants would pay Rs. 50,000/- to the appellant for conducting the confirmation case and the appeal before the High Court. That the complainants agreed to pay a sum of Rs. 50,000/- as fees and authorized him to dispose of their land to recover and appropriate the money received by way of sale towards his fees. That out of 16 acres of land owned by the complainants the appellant had sold only 6 acres and 30 *gunthas* of land to meet the expenses. the government valuation of the land was Rs. 1,35,000/- but the appellant had settled the final consideration at Rs. 75,000/- out of which Rs. 30,000/- was paid at the time of the agreement to sell and the remaining amount was to be paid before March 1, 1992. Later on, a sum of Rs. 17,000/- was paid to the appellant. The remaining amount of Rs. 28,000/- could not be obtained by the appellant as the power of attorney executed in his favor was cancelled by the complainants.

Defendant

The complainants argued that advocate was grieved because he committed an act of professional misconduct. They stated that advocate took the copies of the judgment from the complainants and obtained their thumb impression and signatures on the *Vakalatnama* to prefer an appeal in the High Court of Bombay at Aurangabad Bench. Moreover, advocate also told the complainants that he would not be charging any fee as he was doing this to make a name for himself and the same was believed by the complainants. However, on October 10, 1991 Advocate visited the Yervada Central Prison again and obtained their signatures on some stamp papers. The deeds were not read over to the complainants nor were the contents made known to them where complainants signed and put their thumb impression on the documents in good faith. Advocate met the complainants in Yervada Central

Prison again and told them that he had sold their land on the basis of power of attorney executed in his favour by them authorizing him to sell the land and had appropriated the money received by him towards his fees. Complainants argued that had never authorized the appellant to sell their land and that the appellant had played fraud on them and sold the property on the basis of the alleged power of attorney obtained by him through misrepresentation.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Section 35 of Advocates Act, 1961

Punishment of advocates for misconduct (professional or other):- Where on receipt of a complaint a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee. The disciplinary committee of State Bar Council after giving an advocate an opportunity of being heard may make any of the following orders:

Dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;

- (a) Reprimand the advocate;
- (b) Suspend the advocate from practice for such period as it may deem fit;
- (c) Remove the name of the advocate from the State roll of advocates.

Section 36 of Advocates Act, 1961

Disciplinary Committee of the Bar Council of India may, withdraw for inquiry before itself any proceedings for disciplinary action against any advocate pending before the disciplinary committee of any State Bar Council and dispose of the same.

Section 38 of Advocates Act, 1961

Any person aggrieved 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) thereon as it deems fit: Provided that no order of the disciplinary committee of the Bar Council of India shall be varied by the Supreme Court so as to prejudicially affect the person aggrieved without giving him a reasonable opportunity of being heard.

6. JUDGEMENT IN BRIEF

By the impugned order the Bar Council of India had permanently debarred the appellant from practising as an advocate for the commission of such grave professional misconduct and also imposed the cost of Rs. 25,000/- as fine. The Hon'ble court did not find any merit in appeal, accordingly the appeal was dismissed. The advocate has failed to show that he was entitled to and justified in selling the complainants' land to recover the fees. For the purpose of recovering expenses, a lien was imposed on the appellant's property. The testimony of Vidhyadhar clearly confirms the charge of professional misconduct made against the appellant. A power of attorney was obtained in favor of the appellant on the basis of misrepresentation to sell the land without informing and to the knowledge of the complainants. The court understood the fact that the appellant took advantage of the fact that the complainants was facing a death sentence and procured a power of attorney based on misrepresentation in his favor to sell the complainants' property. Furthermore, the appellant deceived the seller by appropriating the sale money for his own benefit. He has engaged in severe professional misconduct.

7. COMMENTARY

The relationship between an advocate and his client is among trust, and as a result, it is fundamental to have it established completely. Such professional misconduct, as well as the frequency with which such misconduct is happening distresses and concerns the society at the same time. The retention of mutual trust between the advocate and the client is essential, otherwise it will lead to the country's current court system to disintegrate and fail. The time has come for the Society as a whole, the respective Bar Councils of the States, and the Judges to pay attention to the red flags and take immediate measures to bring an adequate system.

CASE NO. 25
NEW INDIA ASSURANCE CO. LTD
V.
A K SAXENA

2004 (1) SCC 117

NO LIEN OVER THE PAPERS OF THE CLIENT

ABSTRACT

The current case deals with the disputed question of fact that whether an Advocate can demand his unpaid fees by keeping the client's papers to case as lien or not. Though the court granted leave to the respondent Advocate to be discharged as counsel for the petitioner's side until the dispute was solved but it was stated that an Advocate has no lien over the papers of client, while he still can apply or can file for appropriate proceedings in the court for the pending remuneration.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal No. 8957 of 2003
Jurisdiction	:	Supreme Court of India
Case Filed On	:	April 3, 2002
Case Decided On	:	November 7, 2003
Judges	:	Justice S. N. Variava, Justice Dr. A R Lakshamanan
Legal Provisions Involved	:	Advocates Act 1961, Section 35, 36B, 38
Case Summary Prepared By	:	Pooja Lakshmi Bennett University, Greater Noida

2. BRIEF FACTS OF THE CASE

- Here in this case, dispute arose between appellant and respondent Advocate due to which respondent Advocate was asked to return the papers of the case. Petitioner is a multinational company, who hired respondent, their counsel for a particular case. Firstly, the respondent Advocate agreed to return all the papers, provided that all his fees were paid, later when an appeal for Order No. 24 of 1999 was on board the respondent Advocate moved an application in High court that he had been asked to return the files which he will do once his full fee will

be paid. First the respondent agreed to return the files and later denied stating that his full fees were not paid.

- A writ petition of *mandamus* bearing serial No. 27380 of 2001 was filed against the judgement of High Court passed on April 3, 2002. It was proved that respondent; Advocate was a legally appointed counsel for the petitioner company. The application from the respondent's side was moved in the high court stating that he(respondent) has been asked to return the papers therefore he may be discharged when his full fees has been paid. After this an appeal was filed by an order dated October 9, 2003 where it was stated that all the papers were returned to the appellant, now the full fees shall be paid. The previous judgement of the same court i.e., *R. D. Saxena v Balram Prasad* was referred.
- This case was an appeal when an Order No. 24 was on board of the High Court; the Advocate moved an appeal in the court.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the respondent advocate was entitled to keep the papers of other party as lien or not?
- II. Whether can the High Court decide a case with such a disputed question of fact or not?
- III. Will the respondent Advocate get his fees back from this case itself or from other proceedings?

4. ARGUMENTS OF THE PARTIES

Plaintiff

Dispute rose between them and the petitioner demanded their cases' files back. When the Advocate refused to return the files, the company went to a learned senior counsel. The senior counsel argued that the case was a disputed question of fact and the same can't be decided by the High Court.

Defendant

Respondent argued that once his full fees were paid, he would return all the files belonging to the petitioner., i.e., The Advocate was willing to return the papers provided that all his fees were paid. He further wanted discharge as a counsel for the petitioner because of their dispute. Once he returned all the files after the court granted him leave, his learned counsel had insisted the petitioner to pay the full fees for all the matters.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Section 35 of Advocates Act:

Punishment of advocates for misconduct (professional or other):- Where on receipt of a complaint a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.

The disciplinary committee of State Bar Council after giving an advocate an opportunity of being heard may make any of the following orders:

- a. Dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;
- b. Reprimand the advocate;
- c. Suspend the advocate from practice for such period as it may deem fit;
- d. Remove the name of the advocate from the State roll of advocates.

Section 38 of Advocates Act, 1961

Any person aggrieved by an order made by the disciplinary committee of the Bar Council of India under section 36 or section 37 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 thereon as it deems fit.

6. JUDGEMENT IN BRIEF

The High Court said that the appellant company is to pay the full fees after which the files will be returned to them immediately. On this learned senior counsel said that no fee was payable to the respondent as this was such a question of fact which can't be adjudicated by High Court. It was further determined that the fact that he had withdrawn his prior writ petition due to the impugned order would not prevent him from filing any other relevant case. The advocate may only use legal remedies for underpaid remuneration, according to the judgment. It has been decided that the litigant's entitlement to have his files returned is a corresponding counterpart of the advocate's professional responsibility, and that any disagreement about fees would be a dispute to be resolved in an appropriate court procedure.

It was stated that advocates have no lien over the papers of their clients and at the most the advocate may resort to legal remedies for, unpaid remuneration. The right of the litigant to have the files returned to him is a corresponding counterpart of the professional duty of the advocate and that dispute regarding fees is to be decided in an appropriate proceeding in Court.

The judge while deciding the case said some other things relevant to the matter which are as follows;

It is not a question that whether or not the fees are payable to the respondent. The advocate can still file any appropriate proceeding to get back his fees. The fact that due to the impugned order had withdrawn his petition earlier does not preclude him from applying for any other appropriate orders for fees recovery. The appeal was allowed.

7. COMMENTARY

The relationship between a client and his advocate is one of utmost trust and a dispute about the fees develops distrust. As a result, it is common for the advocate to refuse to continue with the case unless he is paid, while the client decides to change the advocate. According to the Court, Section 171 of the Indian Contract Act enables lawyers to keep any goods bailed to them as a security for a general balance of account. It's important to note that the Supreme Court ruled that no professional could be granted the right to withhold returnable records relating to work done for a client on the grounds of an unpaid remuneration claim. It was possible for the professional in question to take legal action to recover any unpaid remuneration.

8. IMPORTANT CASES REFERRED

- *R. D. Saxena v Balram Prasad, (2000) 7 SCC 264*

CASE NO. 26
(DR.) HANIRAJ L. CHULANI
V.
BAR COUNCIL OF MAHARASHTRA & GOA
1996 SCC (3) 342

ADVOCATES ACT CODIFIED THE LAW RELATING TO LEGAL PRACTITIONERS

ABSTRACT

The Advocates Act, 1961 enacted to amend and consolidate the law relating to legal practitioners and to provide for the constitution of the Bar Councils and an All-India Bar "An advocate entered in any role under the provisions of this Act." Before this Act, there were different classes of legal practitioners under the Legal Practitioners Act, 1879. They were Advocates, Lawyers, Vakils, etc. the Advocates Act has abolished these classes and has recognized only one class of Advocates. Only an Advocate who is enrolled in the "Common Roll" is entitled to practice in the Supreme Court or in any court, tribunal and in any other body where an advocate can practice. The Advocates Act, 1961 has discussed the formation of the Bar Council of India as an autonomous body charged to carry out certain duties and functions.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal No. 6876 of 1996 (Arising out of SLP (C) No. 20216 of 1993)
Jurisdiction	:	Supreme Court of India
Case Decided On	:	April 8, 1996
Judges	:	Justice S B Majmudar, Justice A M Ahmadi, Justice Sujata Manohar
Legal Provisions Involved	:	Advocates Act, 1961, Section 24A Constitution of India. Article 14, 19(6), 21
Case Summary Prepared By	:	Kanchan Faculty of Law, Delhi University

2. BRIEF FACTS OF THE CASE

The appellant is a permanent resident of Bombay. He has been a medical practitioner (colorectal surgeon) since 1970. During the continuance of his said profession as a medical practitioner, the appellant joined LL.B. Degree Course and obtained Degree of Bachelor of Laws on March 4, 1991. Thereafter the appellant applied to the respondent State Bar Council of Maharashtra & Goa for being enrolled as an Advocate under the Advocates Act, 1961 (hereinafter referred to as 'the Act'). This application was moved by the appellant on July 26, 1991. The appellant insisted that even though he is a medical practitioner he is entitled to simultaneously carry on the profession as an advocate. The Enrolment Committee of the respondent-State Bar Council rejected his request for being enrolled as an advocate simultaneously with his carrying on his medical practice as a surgeon. The appellant was ultimately informed on November 16, 1992 that his application for enrolment as an advocate was rejected. He was also supplied a copy of the reasons for 'refusal for grant of a *Sanad*'. The appellant feeling aggrieved by the said refusal filed Writ Petition No. 2584 of 1992 in the High Court of Bombay.

After hearing the petitioner, a Division Bench of the High Court summarily dismissed his writ petition on December 14, 1992. It is thereafter that the appellant moved the present proceedings by way of special leave petition. By an order dated November 30, 1993 delay in filing the special leave petition was condoned and notice was ordered to be issued to the Bar Council of Maharashtra & Goa with a direction that the notice will state that the matter will be disposed of at the notice stage itself.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the impugned Rule (I) framed by the State Bar Council of Maharashtra & Goa suffers from the vice of excessive delegation of legislative power and hence is void and inoperative at law?
- II. Whether the said rule is violation of Article 19(1)(9) and is not saved by sub-article (6) thereof?
- III. Whether the aforesaid rules are violating Articles 14 and 21 of The Constitution?
- IV. Whether the respondent-State Bar Council of Maharashtra & Goa was justified in refusing enrolment of the appellant as an advocate under the Advocates Act, 1961 as he is a medical practitioner who does not want to give up his medical practice but wants simultaneously to practice law?

4. ARGUMENTS OF THE PARTIES

Appellant

- Learned senior counsel for the appellant submitted that Rule (1) framed by the respondent-Bar Council of Maharashtra under Sections 28(2) and 24(1)(e) of the Act was ultra vires and illegal.
- In this connection she submitted that in so far as the said rule prohibits a person who is otherwise qualified to be admitted as an advocate from being enrolled as an advocate if he is carrying on any other profession like medical profession in the present case, it suffers from the vice of excessive delegation of legislative power and even otherwise the said rule is unconstitutional being violative of Article 19(1)(9) of the Constitution and is not saved by sub-article (6) thereof as it imposes unreasonable restriction on the right of a citizen to pursue any profession of his choice and that the rule is equally violative of Articles 14 and 21 of the Constitution of India as it seeks to deprive right of livelihood to the appellant in a most unreasonable manner.
- It was contended that there was nothing obnoxious or illegal in a practising doctor insisting on being enrolled as an advocate and in carrying on practice both as a medical practitioner as well as an advocate.
- As the medical profession cannot be said to be in any way less dignified profession and once the appellant is found to be qualified to be enrolled as an advocate as per the Act, the State Bar Council by framing such a rule could not have restricted his entry to the profession of advocates especially when the appellant was ready to give an undertaking that during court hours he would not carry on his medical profession.

Defendant

- Learned counsel appearing for the State Bar Council on the other hand supported the decision of the High Court and contended that the rule framed by the State Bar Council does not suffer from any vice nor was it violative of any of the fundamental rights invoked by the' appellant for getting it voided on that score.
- It may be stated that the Medical Council of India to whom notice was issued had referred this matter to its Executive Committee which was of the view that Medical Council of India has no objection to any medical practitioner holding a registerable recognized medical certificate who is also qualified in law, practising medicine and law simultaneously.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Article 19(6) in The Constitution of India

Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,

- i. the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or
- ii. the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise

Article 21 of the Constitution of India

Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law

Section 24A of The Advocates Act, 1961

Disqualification for enrolment.

- (1) No person shall be admitted as an advocate on a State roll
 - (a) if he is convicted of an offence involving moral turpitude;
 - (b) if he is convicted of an offence under the provisions of the Untouchability (Offences) Act, 1955;
 - (c) if he is dismissed or removed from employment or office under the State on any charge involving moral turpitude.

Explanation - In this clause, the expression "State" shall have the meaning assigned to it under Article 12 of the Constitution:] Provided that the disqualification for enrolment as aforesaid shall cease to have effect after a period of two years has elapsed since his [release or dismissal or, as the case may be, removal.

- (2) Nothing contained in sub-section (1) shall apply to a person who having been found guilty is dealt with under the provisions of the Probation of Offenders Act, 1958.

6. JUDGMENT IN BRIEF

- In the light of the aforesaid statutory settings it, therefore, becomes clear that it is for the concerned State Bar Councils by promulgating appropriate rules to regulate the entry of

persons seeking to join the legal profession. The respondent-State Bar Council of Maharashtra & Goa in exercise of its powers under Section 28(2)(d) read with Section 24(1)(e) of the Act has framed rules in this connection. Rule (1) with which we are concerned reads as under: “*A person who is otherwise qualified to be admitted as an Advocate but is either in full or part time service or employment or is engaged in any trade, business or profession shall not be admitted as an Advocate*”.

Provided however that this rule shall not apply to :

- Any person who is a Law Officer of the Central Government or the Government of a State or of any public corporation or body constituted by Statute. For the purpose of this clause a "Law Officer" shall mean a person who is so designated by the terms of his appointment and who by the said terms is required to act and/or plead in Court on behalf of his employer.
- Any person who is an Articled Clerk of an Attorney;
- Any person who is an assistant to an Advocate or to an Attorney who is an Advocate
- Any person who is in part-time service as a Professor, Lecturer or Teacher-in-Law
- Any person who by virtue of being a member of a Joint Hindu Family has an interest in a joint Hindu Family business, provided he does not take part in the management thereof and
- Any person who is not personally engaged in any business but is a sleeping partner in a firm doing business, provided that in the opinion of the Bar Council of Maharashtra the nature of the business is not inconsistent with the dignity of the profession.
- Any person who is a Director or Chairman of the Board of Directors of a company with or without any ordinary sitting fees, provided none of his duties are of an Executive character and he is not a Managing Director or a Secretary of the said company, or of any other company.
- Any person who has inherited or succeeded by survivorship to a family business but who is not personally participating in the management thereof.
- Any person who either prior to or after his application for enrollment under Section 24 holds or continues to hold a share with others in any business which descended to him by survivorship or inheritance or by Will provided, he does not personally participate in the management thereof.

- Any person who reviews Parliamentary Bills for a remuneration, edits legal textbooks at a salary, does "press Vetting" for news-papers, sets and examines question papers or is a part-time teacher or lecturer or an assistant to an editor of a Law journal provided his hours or work and/or engagement do not conflict with the hours of court, and subject to the rules against advertising and full-time employment to which an Advocate after enrollment is subject to, is engaged in broadcasting, journalism, lecturing and teaching subjects, both legal and non-legal.
- Any other person or class of persons as the Bar Council may from time to time be exempt."
- The rules framed by the Bar Council of India, especially relating to standards of professional conduct and etiquette clearly aim at securing high standards of competence in legal services and seek to strengthen professional relationships among its members and promote the welfare of the society as a whole. Specific norms have been laid down in respect of conduct of the persons practising the profession vis-a-vis the public, the court, the client, the opposite lawyer and professional brethren.
- As the enrollment by the State Bar Council entitles an advocate after entry to the profession, to practise the noble profession of law and who becomes, by such enrollment, an officer of the court, the said entrant can be validly subjected by the concerned Bar Council to the strict requirements of the profession for enabling such an aspirant to effectively cater to the needs of the legal profession. The power and the duty entrusted to the State Bar Councils to monitor such entry, in the light of the nature of the profession to which such entry is given would themselves supply the necessary yardstick and guidelines for the exercise of such power by the elected body of advocates constituting the concerned Bar Councils.
- It is no doubt true that under Article 19, sub-Article (1)(g) all citizens have a right to practise any profession, or to carry on any occupation, trade or business and any profession may include even plurality of professions. However, this is not an absolute right. It is subject to sub-Article (6) of Article 19 which lays down that nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause.
- It is no doubt true that the right to live includes the right to livelihood. However, the appellant is not denied his right to livelihood. He is already a professional carrying on the profession of

a medical practitioner. He wants to have a second string to his bow. He wants simultaneously to be permitted to practise law with a view to earn additional or more livelihood.

- The appeal also fails and will stand dismissed. In the facts and circumstances of the case there will be no order as to costs.

7. COMMENTARY

Though the demand for a unified All India Bar initially emerged mainly, if not wholly, as a protest against the monopoly of the British Barristers on the 'Original Side' of the Calcutta and Bombay High Courts and the invidious distinctions between the barristers and non-barristers, after independence it assumed the status of a professional claim and a national necessity in the search for better delivery of justice to the people. It was assumed that a unified Bar for the whole country with monopoly in legal practice and autonomy in matters of professional management would advance the cause of justice in society. The role of the profession in the national movement for Independence and the professional standards displayed by native lawyers including Vakils, Pleaders and Mukhtars, convinced Parliament to adopt the Advocates Act giving a unique status and structure to the Indian Bar.

8. IMPORTANT CASES REFERRED

- *A. N. Parasuraman & Ors. v. State of Tamil Nadu*, (1989) 4 SCC 683
- *Ajoy Kumar Banerjee & Ors. etc. v. Union of India & Ors.*, (1984) 3 SCC 127
- *Indian Council of Legal Aid & Advice & Ors. v. Bar Council of India & Anr.*, JT 1995 (1) SC 423 1995 (1) SCC 732. (Para 12)

CASE NO. 27

VINOD KUMAR BHARDWAJ

V.

STATE OF MADHYA PRADESH

AIR 2013 MP 1455

**GOVT. MUST PAY ELECTRICITY CHARGES OF BAR
ASSOCIATION ROOMS**

ABSTRACT

The following is the case summary of *Vinod Kumar Bhardwaj v. State of Madhya Pradesh* which was filed as a Public Interest Litigation under Article 226 of the Constitution of India in the High Court of Madhya Pradesh for the issuance of a direction to the State to the effect that the electricity charges of electricity consumed in the Bar Association Rooms be paid by the State Government. The petitioner submitted that the Government has responsibility to bear expenses for the administration of justice and thus the electricity charges of the bar room. They further pleaded that for the purpose of effective administration of justice, the Government has to provide expenditure for well-equipped Bar Rooms including Library and electricity charges. The respondent in its return pleaded that the Bar Association receives contribution from its members as monthly fee. They further pleaded that the advocates are in a profession and for their benefits bar rooms have been provided. Thus, for the purpose of its maintenance it is the duty of the advocates to pay monthly contribution and maintain the same. After hearing both the parties and referring to the precedents, it was held that the Government cannot ignore providing the facilities to the advocates in practising so that they can effectively practise before the Courts and it is the responsibility of the Government to bear the electricity expenses of the Bar Association Rooms of the High Courts, District Courts and Tahsil Courts.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Writ Petition No. 5007 of 2012 (PIL)
Jurisdiction	:	High Court of Madhya Pradesh
Case Filed On	:	2012
Case Decided On	:	January 24, 2013
Judges	:	Justice S. K. Gangele, Justice G.D. Saxena
Legal Provisions Involved	:	Constitution of India, Article 226
Case Summary Prepared By	:	Helly Makwana L. J. School of Law, Ahmedabad

2. BRIEF FACTS OF THE CASE

- The case was brought before the High Court of Madhya Pradesh in the form of a Public Interest Litigation under Article 226 of The Constitution of India by a Senior Advocate in representative capacity for issuance of a direction to the State to the effect that the electricity charges of electricity consumed in the Bar Association Rooms or Rooms provided by the Court to the members of the Bar Association be paid by the State Government.
- The bench consisted of Justice S.K. Gangele & Justice G. D. Saxena.
- The advocates used to sit in the bar rooms, they consult with their clients in the bar rooms and they also used to read and prepare their briefs in the bar room when they are not required to appear before the Court.
- The Hon'ble Supreme Court is paying all the electricity charges of Bar Association Rooms and is even providing other facilities.
- The cause of matter is that as per the opinion of the petitioners' it is the duty of the government to provide expenditure for such Bar Rooms.
- Here, the Petitioner filed a Public Interest Litigation in the High Court of Madhya Pradesh for issuance of a direction to the State to the effect that the electricity charges of electricity consumed in the Bar Association Rooms are paid by the State Government.
- The same PIL was filed in the year 2012 and the judgement was passed on January 24, 2013.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the PIL is valid to be entertained by the Hon'ble Court?
- II. Whether the State Government is responsible to pay the electrical expense of the Bar Rooms of the High Court, District Courts and Tahsil Courts?

4. ARGUMENTS OF THE PARTIES

Petitioner

- It is submitted that it is a part and parcel of the process of administration of justice and the Government has responsibility to bear expenses for the administration of justice, however, the electricity charges of the electricity consumed in the bar room have been paid by the Bar Association and it has to be paid by the Government.
- It is further submitted that the Hon'ble Supreme Court is paying all the electricity charges of Bar Association Rooms and is even providing other facilities.

- In other States like Rajasthan, the Government used to pay electricity charges of electricity consumed in the bar rooms.
- It is further pleaded that for the purpose of effective administration of justice, the Government has to provide expenditure for well-equipped Bar Rooms including Library and electricity charges.

Respondent

- The State Government in its return pleaded that each and every Bar Association has affiliation with State Bar Council of Madhya Pradesh, which is a statutory body.
- The Bar Association also receives contribution from its members as monthly fee.
- The State Bar Council also receives application fee of Rs. 1,000/-, Registration Fee Rs. 11,200/- from each advocate at the time of registration. The State Bar Council has sufficient funds to pay the electricity charges of bar rooms of the Court.
- It is further pleaded that the advocates are in a profession and for their benefits bar rooms have been provided and for the purpose of maintenance of bar rooms.
- Thus, it is the duty of the advocates to pay monthly contribution and maintain the same.

5. LEGAL ASPECTS INVOLVED IN THE CASE

This case involves the provision of Article 226 of the Constitution of India which provides that – Power of High Court to issue certain writs wherein a case any of the five writs or Public Interest Litigation can be filed.

6. JUDGEMENT IN BRIEF

- The Advocates are officers of the court; they have their duty towards their clients and also towards the Court and an efficient and intelligent bar are necessary for the effective administration of justice.
- If the bar does not have proper facilities in the Court premises, then the administration of justice would be affected adversely.
- The members of the Supreme Court Bar Association have been earning much more than the members of the High Court Bar Association or District Court Bar Association or Tahsil Court Bar Association, when they are being provided facilities of free electricity, then certainly the aforesaid members are also eligible to get free electricity in the Bar Rooms officially provided in the Courts premises.

- The State Government cannot ignore the aspect of administration of justice to the effect that for providing facilities to the advocates in practising so that they can effectively practise before the Courts.
- In the aforesaid Bar rooms, the advocates used to sit when they are not required to appear in the Court, then certainly they are entitled to get some facilities, consequently it naturally follows the electricity charges of the electricity consumed in the bar rooms officially provided by the Court shall be paid by the State Government.
- This does not mean that the State Government has to provide Air Conditioning charges in the Bar Rooms.
- It is obligatory on the part of the Government to bear electricity expenses of fans, tube-lights and bulbs and also of coolers during summer season in the Bar Rooms of High Court, District Courts and Tahsil Courts officially provided by the Courts.

7. COMMENTARY

The current case is regarding a Public Interest Litigation which deals with the matter that whether government must pay the electricity charges of the Bar Association Rooms or not. In my view, the decision of the High Court of Madhya Pradesh on the above-mentioned case was fair, balanced and acceptable for a number of reasons. One of the reasons is that the State Government cannot ignore providing the facilities to the advocates in practising so that they can effectively practise before the Courts. It is certainly the responsibility of the Government to bear the electricity expenses of the Bar Association Rooms of the High Courts, District Courts and Tahsil Courts. Thus, the High Court has rightly ordered that the State Government shall bear the electricity expenses of the Bar Association Rooms of the mentioned courts.

8. IMPORTANT CASES REFERRED

- *Lalit Mohan Das v. Advocate General, Orissa*, 1957 AIR 250, 1957 SCR 167
- *O. P. Sharma v. State of Punjab and Haryana*, (2012) 1 LRC 50, (2011) INSC 481
- *Bar Association v. B.D. Kaushik*, 2011 (4) KLT 64 (SN) (C. No. 71), 2011 AIR (SCW) 5804, 2011 (8) MLJ 719, 2012 (1) SCJ 479
- *Advocates Association, Bangalore v. The Chief Minister, Government of Karnataka, Bangalore*, AIR 1997 Kant 18, 1997 (1) KarLJ 474

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- 8) Mr. Aditya Trehan, Public Prosecutor, New Delhi
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TATSAT BHATT is a fifth-year student pursuing BBA, LL.B. from L. J. School of Law, Ahmedabad. He has an inherent interest in Constitutional Law, Criminal Law, Corporate Law and International Laws. He is very keen in the field of research with his articles published in many reputed Journals in the legal arena. He has interned with Centre for Trade and Investment Law, Ministry of Trade and Commerce, New Delhi and various top legal firms like Thakkar and Pahwa Advocates and is currently interning with Adv. Nitin T. Gandhi and has also interned under the guidance of Hon'ble Mr. Justice J.B. Pardiwala, High Court of Gujarat, S.V. Raju Associates and is a prospective intern at the Chamber of Solicitor General of India, Sr. Adv. Tushar Mehta at Supreme Court, New Delhi and Shardul Amarchand Co. at Mumbai office. He is also an active member of Free Legal Aid Initiative at his college named as 'Law on Wheels'. He is a Blog Writer at Novak Djokovic Foundation, NGO working on Early Childhood Development. He hopes that his philosophy and skills will lead to a greater sense of social equality. Future lawyer and lifelong humanitarian.

PRITI is a law graduate and is pursuing her masters in Criminal Law from V. T. Choksi Sarvajanik Law College, Surat. Her key interests lie in Constitutional Law, Family Law, and having good command on Cr.PC and IPC. She practices at District Court, Surat. Apart from law she is passionate about dance and has choreographed many events.

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RAHIL JOSHI is pursuing BBA, LL.B second year at L. J. School of Law, Ahmedabad. He is having two years' experience in the legal fraternity and keen to serve Judiciary. He is always keen to learn and read new things. He has an inherent interest in Constitutional Law, Criminal Law, Arbitration, Space Laws and International Laws. He is very keen in the field

of research with his articles published in many of the well-established websites such as All India Human Rights Association (AIHRA), E-Justice India, etc. He is associated with IMUN and doing internship at International Model United Nations (IMUN) where he got the chance to represent his country India with other countries at world conference. He is also associated at Desai Law Firm and mainly indulged in the work of drafting contracts from the Government of Gujarat side. He is Also a representative of Gujarat and Ahmedabad at AIHRA and PR Head and campus ambassador head in E-justice India, and campus Ambassador at S&M Partners.

PRASOON SHEKHAR is a third-year student pursuing BBA, LL.B. from ICFAI Law School, The ICFAI University, Dehradun. He is highly interested in the areas of Criminal Law, Constitutional Law and RTI. He has published multiple research articles on socio-legal issues at several platforms including Manupatra (Student Section), Live Law, iPleaders etc. He has interned at various levels of Courts including District Court, High Court and Supreme Court; Law Firms, NGO's and Research Organization including All India Reporter Law Academy and Research Centre. He is passionate over using his practical skills for the benefit of masses and as such he had earlier filed an PIL for effective implementation of provisions of RTI Act, 2005 in Bihar State Online RTI Portal. He was selected as a Delegate at Harvard College Project for Asian and International Relations Embracing Change Conference'21. Apart from law, his interest lies in Politics and Social Work.

RUDRAKSHI M. MENDHE is a final-year law student at Dr. BACL, University of Nagpur. She is the Coordinator of the case compilation at ProBono India. She is Psychological Counsellor at very young age and also works as a social worker. She is a polygot. She is interested in every facet of law. She is also interested in developing more skills of legal drafting and exploring knowledge around on law with its psychological aspects and socio-legal issues. She is a keen learner of different languages. She has previously interned with National Legal Services Authority, New Delhi and many more legal areas. She has experienced many visits to old age homes, jails and juveniles and looking forward more of it. Besides law, she believes in interacting with number of peoples and exploring minds. She is a team member translator for Malayalam and Bengali language at constitution connect and also a member of MANCH – National Speaking Assembly. She is the Founder of “LEGAL TRAVEL – take the lead” with the sole purpose of reaching out to the people and to take the lead of informing them about the socio-legal issues prevailing in the country, having an opinion is a *sine qua non* to the profession and this was one of the many reasons for starting this blog. Legal Travel is interested in every facet of law and hope to bring the change that it wishes to see by contributing in any and every way possible. She has vast experience in psychological aspects as worked for 4 years as intern and assistant under Mrs. Madhuri Mendhe who is a social activist and psychotherapist. Currently, she is working under Adv. Mahesh Mendhe and Adv. Abhay Sambre at High Court of Bombay, Nagpur Bench.

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TANYA KATYAL is a very diligent researcher as well as an ambitious student enrolled in the course of BBA., LL.B. at Delhi Metropolitan Education affiliated to GGSIPU, New Delhi. She has written various research papers, amongst them one being on "NPR: A Clouded Controversy" published by Bharti Publications in a book titled as "CAA|NRC|NPR: Constitutional Analysis". Further, she has interned in various reputed organisations like NHRC, Trans India Law Associates, Indian National Bar Association and IRA Law. She has an all-rounder knowledge in various facets of law as she has undertaken various courses like General Course on IPR by WIPO, Legal Aid and Allied Laws by ProBono India and Civil Drafting & Three Labour Codes 2020 by SkillxPro. Apart from law she is passionate about swimming, painting and poetry.

POOJA LAKSHMI is pursuing BBA, LL.B. second-year at Bennett University, Greater Noida. She is always keen to learn and read new things and loves to attend webinars of eminent personalities around the globe. She is capable of handling high volume workloads and flexible to adapt to change. Being passionate about legal research and interest in law from the perspective of society and empowerment, Pooja has published multiple research papers in esteemed journals and other publications at various platforms like the Indian Law Portal, Lexpeeps, KnowLaw, and paper presentation conferences in various NLUs. She is currently working as a Researcher at ProBono India. She also has used her free time as a research intern with The LawKit associated with Diwan Advocates, Commercial law and Consulting Internship Experience UK program through Bright Network, Internship Experience UK program. She is good at communicating things as well as essay writing from her school days and has a skill of finding relevant information. She was also a part in bringing laurels to her university by reaching the Semi-finals of international mediation competition conducted by Nirma University. She is an expert in interpersonal skills as well as maximizing the opportunities from new ventures.

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MANISHA GUPTA is a second-year Law student at National Law University, Odisha. She is exploring various fields of law by participating in different competitions and volunteering for the same. She is also a member of the Centre of Corporate Law in her university and has been learning a lot about various aspects of Corporate Law. She is keenly interested in improving her legal research skills and looks for every opportunity that can help her write good research papers. This project has been a starting journey for the same.

RISHI RAJ is a second-year law student pursuing BA, LL.B. from Symbiosis Law School, Noida. He is an avid reader and writer. He is passionate for research and wants to carve a niche in it. He has interned at HelpAge India, Competition Commission of India, ProBono India etc. He has a keen interest Criminal law, Constitutional Law, Human Rights and Security Law. He is an avid cricket player as well as a keen watcher. He also takes part in track and field events actively. After the completion of his course, he would like to pursue a career in the Indian Armed Forces.

PRACHI JOSHI is a second-year student pursuing BBA, LL.B. program from L. J. School of Law, Ahmedabad. She has developed a keen interest in the legislation of the nation at a young age and is seeking an opportunity to learn and develop her skills in the same field. She has interest and capabilities in criminal as well as civil fields and to explore the same, has participated in various competitions such as moot court, mock trials and debates at various levels.

About ProBono India

Founded in October 2016 with an aim to integrate legal aid and awareness initiatives – ProBono India has ventured into different avenues viz. legal aid, legal awareness, legal intervention, legal journalism, legal activism etc. – all with the underlying objective of contributing to the positive development of the society with a strong socio-legal approach.

The activities at ProBono India include an active dissemination of legal information via the medium of its official website, rolling internship programmes for law students to help them develop a holistic personality with a socio-legal approach to their professional personality, interviews with eminent personalities working at the ground-level offering insights into their successful projects, providing a platform to promote and publish the art of research and legal writing, amongst many others.

The team of ProBono India works to promote legal activism as we believe that law and society are two sides of the same coin. Law and society are so inextricably interdependent that to both need to be equally improved in order to lead the world into the desired new order. We at ProBono India believe in a better and brighter tomorrow. We believe not just in being passengers on this drive to change – rather, we aim to drive towards the change.

Vision

Integrate Legal Aid and Legal Awareness Initiatives.

Mission

To provide the legal aid, conduct legal awareness activities, disseminate legal aid, legal awareness activities of various organizations of the world and conduct research on overall aspects of legal aid and legal awareness.



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