

MANU/BH/0044/1955

Equivalent Citation: AIR1955Pat195, 1954(2)BJR570, 1955CriLJ685

IN THE HIGH COURT OF PATNA (SPECIAL BENCH)

Misc. Judl. Case No. 132 of 1954

Decided On: 23.09.1954

Appellants: **Fulbasia Banian**

Vs.

Respondent: **G.P. Agarwala**

Hon'ble Judges/Coram:

Das, Vaidynathier Ramaswami and Jugal Kishore Narayan, JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: Govt. Pleader, Secy. Bar Council and Rash Behari Sinha, Adv.

For Respondents/Defendant: G.P. Das and S. Anwar Ahmad, Adv.

JUDGMENT

Vaidynathier Ramaswami, J.

1. In this case proceedings have been taken against Mr. G. P. Agarwala, an Advocate of this Court, under Ss. 10 and 12, Bar Councils Act (Act 38 of 1926) on a petition of Mt. Fulbasia alleging that the said Advocate was guilty of professional misconduct. The petition of Mt. Fulbasia is dated 23-7-1953 and in this petition Mt. Fulbasia alleged that she had engaged Mr. G. P. Agarwala to file a criminal revision in the High Court against the order of Mr. N. C. Ganguli, Magistrate of Chaibasa, and the appellate order of Mr. S. P. Singh, Sessions Judge of Manbhum in Cr. App. No. 71 of 1953. On 10-6-1953 Mt. Fulbasia had handed over to Mr. G. P. Agarwala the brief including certified copy of judgment pronounced by Mr. N. C. Ganguli, Magistrate of Chaibasa. The case of the petitioner is that she also had paid a sum of Rs. 47 to Mr. G. P. Agarwala on account of his fee and incidental expenses. The petitioner stated that the advocate actually filed the revisional application in the High Court on 11-6-1953 without copy of the judgment of Mr. N. C. Ganguli, the trying Magistrate. On 16-6-1953 the matter was placed before Misra J. who granted ten days' time for filing the copy of the trial Court judgment failing which the application would stand dismissed without further reference to a Bench. On 26-6-1953 the application stood dismissed by virtue of the peremptory order since the copy of the trial Court judgment had not been filed by the Advocate. The case of the petitioner is that Mr. G. P. Agarwala intentionally withheld the copy of the trial Court judgment on account of which the application for revision was dismissed for default. The petitioner hence prayed that an enquiry should be made into the conduct of the Advocate and action should be taken against the Advocate for professional misconduct.

2. The petition of Mt. Fulbasia was sent by the High Court to the Bar Council for their comment. On 21-12-1953 the Secretary of the Bar Council replied stating that there was no case made out for enquiry into the conduct of the advocate. Thereafter the High Court appointed the District Judge of Manbhum to make enquiry under Section 10(2), Bar Councils Act. Mr. G. P. Agarwala appeared before the District Judge of

Manbhum and denied that the petitioner had handed over to him the certified copy of the trial Court judgment. He alleged that the petitioner produced certified copy of an order passed in some other case and informed him that she had no money to obtain certified copy of the trial Court judgment in this case. After the peremptory order was passed by Misra J. the Advocate wrote to the petitioner asking her to send the certified copy of judgment within a week's time.

The petitioner, however, did not send the document nor did she send a reply to the letter of the Advocate and so the certified copy of the judgment could not be filed in the High Court in time and the revisional application was dismissed for default. The District Judge of Manbhum recorded also the oral statement made by Mr. G. P. Agarwala. The petitioner, however, was not present before the District Judge in the course of the enquiry. The petitioner had written a letter to the District Judge asking him to hold the enquiry at Chaibasa but the prayer was rejected by the District Judge who thought that it was unreasonable. On 17-2-1954 the District Judge of Manbhum reported to the High Court stating that in his opinion the allegation of the petitioner has not been established and that Mr. Agarwala was not guilty of professional misconduct.

3. When this case was taken up for hearing on 24-8-1954 before the Full Bench the petitioner appeared in person on that date and filed a supplementary application together with additional documents including two original letters dated 25-6-1953 and 2-7-1953 written by Mr. Agarwala to the petitioner after the revisional application was dismissed by the High Court. As the petitioner was unrepresented the Full Bench requested Mr. Rash Behari Sinha to act as 'amicus curiae' and to present the petitioner's case.

4. Two questions arise for determination in this case (1) whether the petitioner handed over the certified copy of the trial Court judgment to Mr. G. P. Agarwala and whether the latter intentionally withheld the document from being filed in the High Court, (2) whether the Advocate was guilty of negligence and of making a false statement to the petitioner and whether in the eye of law such conduct on the Advocate's part would be tantamount to professional misconduct

5. As regards the first question the case of the petitioner is that on 10-6-1953 she had come to Patna and handed over to Mr. Agarwala the brief of the case including the certified copy of the judgment of the trial Court. In support of her case Mr. Rash Behari sinha pointed out that the Advocate had written two letters to the petitioner after the application was dismissed in the High Court and in neither of these letters did the Advocate state that the application was dismissed because trial Court judgment was not filed. On the contrary, the Advocate has said in the first letter dated 25-6-1953 that "the Hon'ble High Court refused to admit the application since there was no illegality". This letter reads as follows :

"You are hereby informed that Hon'ble High Court has refused to interfere and admit your application as there is no illegality and you have been left out simply after having been given due admonition. I am herewith sending you your papers."

On 2-7-1953 the Advocate wrote a postcard to the petitioner which is to the following effect :

"Your case has been dismissed. There is no judgment or any detailed order of which a copy is required. The only order is 'Dismissed'.

I had already advised you while you were here that your remedy no more lies in the High Court or in the Supreme Court. It is all a waste of labour or money. You should try to start fresh case in the lower Court if you are so advised. In higher Court there is no remedy for you for the present. Your coming to this place will simply put you to some extra expenditure. No purpose will be served."

It was argued on behalf of the petitioner that if the certified copy of the trial Court judgment was not given to the advocate and if the application in the High Court was dismissed for want of the trial Court judgment there was no reason why Mr. Agarwala did not expressly state in the letter dated 25-6-1953 or in the letter dated 2-7-1953 that the application had been dismissed by the High Court because the trial Court judgment was not filed. On the contrary, the Advocate stated in his letter dated 25-6-1953 that the application was dismissed as there was no illegality in the order passed by the trying Magistrate. On behalf of the petitioner a certificate of the Assistant Record Keeper of Chaibasa has also been produced to show that on 9-3-1953 the petitioner had taken a certified copy of the trial Court judgment and on 11-5-1953 the petitioner had taken a second copy of the trial Court judgment. The first copy was obviously meant for being filed along with the memorandum of appeal in the Sessions Court and the second copy taken on 11-5-1953 was obviously meant for being filed along with the revisional application in the High Court.

It was contended on behalf of the petitioner that it was most unlikely that the petitioner would not hand over the certified copy of the trial Court judgment to the Advocate on 10-6-1953 after having obtained it for the very purpose of being filed along with the revisional application in the High Court. All these circumstances strongly suggest that the petitioner is right in saying that on 10-6-1953 she handed over the certified copy of the trial Court judgment to Mr. Agarwala at Patna. But the point taken by Mr. G. P. Das on behalf of the Advocate is that if the petitioner had really handed over the copy of the trial Court Judgment on 10-6-1953 there was no reason why the Advocate should not file it along with the revisional application in the High Court. No motive was suggested on behalf of the petitioner why Mr. Agarwala should intentionally refrain from filing the copy of the judgment along with the revisional application.

Mr. G. P. Das pointed out that Mr. Agarwala was a junior in the profession and should normally be anxious that the case he had undertaken should succeed and should not be dismissed for default. Counsel, therefore, argued that the case of the petitioner could not be true and the trial Court judgment was not actually handed over to Mr. Agarwala on 10-6-1953 as alleged by the petitioner. The argument presented by Mr. G. P. Das is very cogent, but it is manifest that the petitioner has adduced equally cogent argument for holding that the copy of the Judgment was actually handed over to Mr. Agarwala on 10-6-1953. In my opinion the matter is left in the realm of doubt and upon the materials produced in this case it is not possible to resolve this doubt or to positively reach the conclusion that the petitioner had given the copy of the Judgment to Mr. Agarwala on the alleged date.

6. Mr. Rash Behari Sinha then raised the point that the Advocate at any rate was guilty of negligence since he did not send any communication to the petitioner about the peremptory order passed by Misra J., on 16-6-1953. On behalf of Mr. Agarwala it was alleged that soon after the peremptory order was passed Mr. Agarwala sent a letter to the petitioner asking her to send the copy of the trial Court judgment within a week otherwise the application would be dismissed by the High Court. The

petitioner denies that Mr. Agarwala sent to her any such letter after the peremptory order was passed and that the first letter she received was the letter dated 25-6-1953 in which Mr. Agarwala stated that the application had been dismissed on merits because there was no question of law involved. In my opinion the case of the petitioner on this point must be accepted as true.

Mr. Agarwala has not produced any material to show that he did send any letter after the peremptory order was passed requesting the petitioner to send certified copy of the trial Court Judgment. No certificate of posting has been produced on behalf of the Advocate and it is said on his behalf that no office copy of the letter was preserved. It should be noticed in this connection that the Advocate was careful to send the letter dated 25-6-1953 to the petitioner under certificate of posting. It is obvious that if the advocate had sent any letter to the petitioner after the peremptory order was passed the Advocate would have taken care to send that letter also either by registered post or under certificate of posting. I am unable, therefore, to accept the case of the Advocate that he wrote any letter to the petitioner communicating to her the peremptory order of Misra J. I hold that the allegation of negligence made by the petitioner is proved against the advocate.

Mr. Bash Behari Sinha also pointed out that the Advocate was guilty of telling a falsehood to the petitioner in his letter dated 25-6-1953. From the order sheet of the High Court it is apparent that the revisional application was dismissed because the trial Court judgment was not filed and because there was no question of law involved in the case. But in his letter dated 25-6-1953 Mr. Agarwala wrote to the petitioner saying that the application, was dismissed because there was no illegality. Mr. Agarwala admitted that he wrote the letter dated 25-6-1953 but he explained that he wrote the letter because he thought that "the petitioner would again come to Patna and trouble him".

It was also contended on behalf of the Advocate that even before the revisional application was filed he had told the petitioner that the application had no merit, and there was no sentence of fine or imprisonment but simply a warning had been given to her by the Magistrate. In my opinion this explanation is hardly convincing. If the Advocate thought that the application had no merit there was no reason why he undertook to file the application in the High Court at all. The postcard dated 2-7-1953 is also important. This postcard is written by the Advocate in reply to the letter of the petitioner asking for a copy of the order of the High Court. In this letter the Advocate states that "the case has been dismissed and there was no judgment or any detailed order of which a copy was required" and that "the only order was 'dismissed'". The Advocate admits that he wrote this postcard and he has given no convincing explanation why he omitted to state even in this postcard that the case has been dismissed because the trial Court Judgment was not filed. It is manifest that the Advocate has made a false statement to the petitioner in both the letters and that the Advocate was also guilty of negligence in not informing the petitioner about the peremptory order of Misra J., passed on 16-6-1953.

7. The question is whether upon these facts Mr. Agarwala can be held to be guilty of professional misconduct. It is true that mere negligence on the part of an Advocate would not amount to professional misconduct. But if the negligence of the Advocate is accompanied by suppression of truth or deliberate misrepresentation of facts the Advocate is liable to be charged for professional misconduct. That is the 'ratio' of the decision of the Full Bench of the Calcutta High Court in 'In the matter of an Advocate' MANU/WB/0287/1934 : AIR 1935 Cal 484 (A). The principle is that mere negligence

in itself cannot amount to misconduct but if a professional man deliberately conceals the truth in connection with a matter which he has undertaken to carry through on behalf of his client, such conduct involves an element of moral turpitude. The basis underlying the principle is that the relationship between an Advocate and his client rests upon a very high standard of mutual trust and confidence and professional etiquette requires that the Advocate should act in a truthful and upright manner in all dealings with his client.

The standard expected of an Advocate is, therefore, a high standard of professional conduct. He is expected to act as a gentleman; he is expected to act with utmost honour and sense of rectitude in all his dealings with his client. In a recent case 'In the matter of 'G' a Senior Advocate of the Supreme Court AIR 1954 SC 557 it was observed by the Supreme Court that an Advocate is expected at all times to comport himself in a manner befitting his status as an 'officer and a gentleman' and that he is bound to conduct himself in a manner befitting the high and honourable profession to whose privilege he has so long been admitted; and if he departs from the high standards which that profession has set for itself and demands of him in professional matters, he is liable to disciplinary action. At p. 559 the Supreme Court states:

"Now it can be accepted at once that a contract of this kind would be legally unobjectionable if no lawyer was involved. The rigid English rules of champerty and maintenance do not apply in India, so if this agreement had been between what we might term third parties, it would have been legally enforceable and good. It may even be that it is good in law and enforceable as it stands though we do not so decide because the question does not arise: but that was argued and for the sake of argument even that can be conceded. It follows that there is nothing morally wrong, nothing to shock the conscience, nothing against public policy and public morals in such a transaction 'per se', that is to say, when a legal practitioner is not concerned.

But that is not the question we have to consider. However much these agreements may be open to other men what we have to decide is whether they are permissible under the rigid rules of conduct enjoined by the members of a very close professional preserve so that their integrity, dignity and honour may be placed above the breach of scandal. That is part of the price one pays for the privilege of belonging to a kind of close and exclusive 'club' and enjoying in it privileges and immunities denied to less fortunate persons who are outside its fold. There is no need to enter its portals and there is no need to stay, but having entered and having elected to stay and enjoy its amenities and privileges, its rules must be obeyed or the disciplinary measures which it is entitled to take must be suffered".

Applying the principle to the present case I am of opinion that Mr. Agarwala is guilty of professional misconduct. Under Section 10(1), Bar Councils Act, the High Court has option to punish an Advocate guilty of misconduct either by reprimanding him or by suspending or removing him from practice. As Mr. G. P. Agarwala is a young man and is a junior in the profession I consider that the proper punishment would be that the High Court should make an order of reprimand against him and that no higher punishment is necessary.

8. I wish to express the appreciation of the Court to Mr. Rash Behari Sinha who acted as 'amicus curiae' for the petitioner in this case.

Das, J.

9. I entirely agree.

Jugal Kishore Narayan, J.

10. I also entirely agree.

© Manupatra Information Solutions Pvt. Ltd.