

In Re: G.M. Oka

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Court : Mumbai

Decided On : Mar-18-1952

Reported in : [1952]22CompCas168(Bom)

Judge : Chagla, C.J. and ;N.H. Bhagwati, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 406

Appeal No. : C.A. No. 2 of 1951

Appellant : In Re: G.M. Oka

Judgement :

Chagla, C.J.

1. This matter arises out of disciplinary proceedings taken against a chartered accountant. The matter was investigated by the Disciplinary Committee and the Council has submitted to us its findings.

2. It would appear that the respondent, a chartered accountant, was the accountant of the Shivaji Sugar Mills which was incorporated in 1942. There were two principal directors of that company, G. P. Uplap and his brother N. P. Uplap, and the charge against the respondent is in connection with the balance-sheet of that company as of the 30th November, 1946. One Dahanukar became the director in 1948 and on the 6th April, 1948, Dahanukar filed a complaint against G. P. Uplap under Section 406 of the Indian Penal Code alleging that Uplap had

misappropriated Rs. 15,000. The Resident Magistrate, Pandharpur, acquitted Uplap, and the findings of the Council of the Institute of Chartered Accountants are in relation to certain statements made by the respondent. We should like to point out that the misconduct of the respondent does not lie in any evidence that he gave before a court of law. He was in the witness box not as a chartered accountant, but as a witness, and assuming that he made false statements in the witness box, the falsity of his statements cannot give rise to any disciplinary proceedings against him as a chartered accountant. In order that a chartered accountant should be held to be guilty of misconduct, his conduct or action must be qua his own profession or in the course of his carrying on that profession. He must have done something as a chartered accountant which would be contrary to the traditions of the profession or something which would call upon him the censure of the Council. If a chartered accountant gives false evidence, he may be guilty of perjury, he may be prosecuted for perjury, and if he is convicted, the conviction itself may be the basis for disciplinary proceedings. Therefore, we find that instead of the Council giving findings of their own as to what the accountant has done or not done, they have merely contented themselves with pointing out that in their opinion certain statements made by the respondent were not true statements.

3. Now, what happened with regard to the balance-sheet is this. There are two balance-sheets prepared by the respondent which vary on a most material particular. It is admitted by the respondent that on the 7th of May, 1947, he gave a copy of the balance-sheet, which was exhibited in the Magistrate's Court as Exhibit 3-D, to G. P. Uplap. This was an unqualified balance-sheet. In order to understand this expression one must look at this balance-sheet. This balance-sheet shows the Uplap brothers as creditors of the company in the sum of Rs. 1,16,147-6-9. This credit in favour of the Uplap brothers arose from the fact that they had spent moneys for the improvement of certain lands which were intended for the company. The balance-sheet would not correctly represent the true state of affairs of the company unless the lands had been transferred or sub-let to the company by the Uplap brothers. If the Uplap brothers continued to remain the owners of these lands, then their spending moneys for the improvement of the lands would not impose any liability upon the company. Therefore, when the draft balance-

sheet was submitted to the respondent, it was his duty not to sign it as an unqualified balance-sheet, but to have pointed out that the lands belonging to the Ulap brothers were not transferred to the company. It is the respondent's own case that he did sign the balance-sheet on the 7th May, 1947, and that he gave it to G. P. Ulap. His explanation is that he told G. P. Ulap that this balance-sheet should not be submitted to the general meeting of the company which was to have been on the 25th June, 1947, unless G. P. Ulap got a resolution of the board of directors passed transferring the lands to the company. Mr. Peerbhoy who appears for the respondent has urged before us that his client trusted G. P. Ulap and therefore he put his signature to the balance-sheet which, as we said before, on his own admission did not represent a true or correct state of affairs. Then we have the other balance-sheet which, as we said before, on his own admission did not represent a true or correct state of affairs. Then we have the other balance-sheet which is also dated the 7th of May, 1947, and which contains a certificate by the respondent that the lands have not been transferred nor sub-let to the company and hence the land cost and agricultural expenses could not be considered as against the company unless ratified in the general meeting. So this second balance-sheet, which was exhibited as Ex. 11 before the magistrate, correctly represented the state of affairs of the company. The finding of the Council is that the statement of the respondent that he had delivered the amended balance-sheet containing the addition with regard to the fact that Ulap brothers had not transferred the lands to the company was not true. In the case before the Magistrate a letter dated 7th June, 1947, written by the respondent also came to light. This letter stated that the respondent had already given the final blue copy of the balance-sheet dated 7th May, 1947, duly amended in the auditor's report and asking the chairman of the board of directors to place this balance-sheet at the general meeting to be held on 25th June, 1947. Therefore this letter, if genuine, supports the case of the respondent that the amended balance-sheet was handed over to the complainant along with this letter of 7th June, 1947. The Council has found that the statement of the respondent with regard to this letter of 7th June, 1947, was also not true. Really what the Council implied by this finding was that the amended balance-sheet and the letter of 7th June, 1947, were subsequently fabricated by the respondent, but the Council has not given a direct or specific

finding to that effect. There was obviously difficulty on the part of the Council in arriving at that finding because the Council had no evidence before it as to which balance-sheet was ultimately presented to the shareholders on the 25th June, 1947. In our opinion, that evidence was of a most vital character, because if it was shown that the balance-sheet presented on the 25th June, 1947, was Ex. 11, then it would have conclusively established the case of the respondent and any suggestion that the balance-sheet was subsequently fabricated would have been dispelled. On the other hand, if the evidence had shown that the balance-sheet presented at the general meeting was Ex. 3-D, then the case against the respondent would have been proved to the hilt. The Council was also handicapped by the fact that the complainant G. P. Uplap never gave evidence before the Council. Therefore there was no direct evidence before the Council that the respondent had not handed over the amended balance-sheet and the letter of 7th June, 1947, to the complainant. The further finding of the Council is that the statement of the respondent before the Magistrate that the only balance-sheet as on the 30th November, 1946, signed by him was the balance-sheet containing the addition to which reference has been made, was not true, as he had signed and delivered to the complainant on the 7th May, 1947, the balance-sheet as on the 30th November, 1946, being Ex. 3-D. This charge has undoubtedly been established, because when we look at the evidence of the respondent before the Magistrate, he was made that statement, and on his own case and on his own admission that statement is false. But as we pointed out before, the gravamen of the charge against the respondent is not and cannot be that he made this false statement. The gravamen of the charge against the respondent is that he represented to the company and its shareholders that the only balance-sheet prepared by him was the balance-sheet Ex. 11. But that is not the finding of the Council.

4. But apart from the technical aspect of these proceedings on which the respondent is undoubtedly entitled to rely, there can be no doubt that on two serious matters the respondent on his own admission is guilty of professional misconduct. We have had occasion to say this before when the first matter under this new jurisdiction came before us that the Council of the Institute of Chartered

Accountants of India is entitled to expect from the chartered accountants the highest professional integrity and the maintenance of the highest traditions. It is only if the Council insists upon chartered accountants maintaining the highest traditions of the profession that the profession of chartered accountants will come to be looked upon as a very high profession. The two matters on which, in our opinion, the respondent is guilty on his own admission is, first, having put his signature to Exhibit 3-D knowing full well that the balance-sheet which he was signing did not represent the correct state of affairs of the company. It is hardly necessary to emphasise what value and importance is attached by all concerned to the signature of a chartered accountant appended to the balance-sheet. His signature authenticates the balance-sheet and represents to the shareholders and to the Registrar of Companies that the balance-sheet as signed by him is correct and genuine. Therefore, any chartered accountant putting his signature to the balance-sheet when he knows that the balance-sheet is not a correct balance-sheet is guilty of serious professional misconduct. It is no excuse to say, as Mr. Peerbhoy has suggested, assuming it is true, that the respondent did this because he trusted Uplap. We fail to understand how it can ever be an excuse on the part of an accountant to say that he made a false statement because he believed that the director of the company will set matters right at a future date, because when one analyses it that is what the defence of the respondent comes to because admittedly on signing the balance-sheet he made a false statement. He put his signature to a document which to his knowledge was not a genuine document, and the only extenuating circumstances to which Mr. Peerbhoy can draw our attention is that according to his client he hoped and trusted that matters would be set right at a future date. Chartered accountants must have the strength and courage to refuse to put their signatures to any balance-sheet, whatever representations may be made by directors and whatever hopes may be held out with regard to setting matters right in the future. A chartered accountant is the only guarantee that the shareholder has that the affairs of the company are as shown in the balance-sheet. If that guarantee disappears and if balance-sheets are signed merely because directors represent certain facts to the chartered accountants, then indeed a very serious situation will arise in the affairs of a company. Therefore, in our opinion, in having put his signature to Exhibit 3-D on his own admission the

respondent is guilty of professional misconduct. We must therefore severely censure him for having done what he did. We would have taken a more serious view of the action of the respondent but for the fact that if his case is true he set matters right by preparing Exhibit 11 which represented the true state of affairs. If that is the balance-sheet which went to the company, as is the case of the respondent, then no harm was done to the shareholders as they knew what the exact position was. In the absence of any evidence to the contrary, we are not prepared to hold that the balance-sheet that went to the shareholders was not Exhibit 11 but Exhibit 3-D.

5. The other matter which also calls for out censure is that when Exhibit 11 was prepared according to him he signed the balance-sheet on that date, still he put the date not 7th June, 1947, but the 7th May, 1947. In coming to this finding we are accepting the case of the respondent as put by him before us. Here again the respondent did something which was obviously wrong. By putting the date 7th May, 1947, he represented that the balance-sheet was prepared by him on that date when it was in fact prepared and signed by him on 7th June, 1947. It is not only the signature of the chartered accountant which is a sign of authenticity of the balance-sheet, but also the date which appears on the balance-sheet, because very often an important question may arise as to when the balance-sheet was prepared and signed by the chartered accountant. His only excuse is that is this balance-sheet was really the completion of the original draft which he had prepared on the 7th May, 1947, therefore he put the date 7th May, 1947, and not the 7th June, 1947. The explanation is wholly unsatisfactory, and in out opinion the respondent is guilty also of professional misconduct in wrongly dating the balance-sheet which on his own admission he had prepared later than the date which it bears. We therefore severely censure the respondent for this conduct also.

6. Mr. Peerbhoy on behalf of his client has tendered regret on the part of his client for not having been more careful and more conscious of the traditions of his profession in doing what he has done with regard to the two matters to which we have drawn attention. In out opinion it would be sufficient to meet the ends of justice if in this case we severely censure the respondent for misconduct with regard to the two matters to which reference has been made earlier, and also

make him pay the costs of the case.

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