In Re: S.R. Mirajkar

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Court : Mumbai

Decided On : Mar-23-1931

Reported in : (1931)33BOMLR1215

Judge : John Beaumont, Kt., C.J. and ;Baker, J.

Appeal No. : Civil Application No. 714 of 1930

Appellant : In Re: S.R. Mirajkar

Judgement :

John Beaumont, C.J.

1. This is a petition to the Court to exercise its disciplinary jurisdiction against a pleader named Mr. S. R. Mirajkar, The petition was referred to a tribunal of the Bar Council under the provisions of Sections. 10 and 11 of the Indian Bar Councils Act, and the tribunal has made a report to this Court under the provisions of Section. 12. The tribunal went very thoroughly into the matter, and we are much indebted to them for the very able, careful and full report they have made to the Court. As this is the first case which has arisen under the Indian Bar Councils Act, it is desirable to lay down the correct procedure. Section 12 provides that the finding of a tribunal on an inquiry referred to the Bar Council under Section. 10 shall be forwarded to the High Court. Sub-section (3) provides that on receipt of the finding, the High Court shall fix a date for the hearing of the case and shall cause notice of the day so fixed to be given to the advocate concerned and to the Bar Council and to the

Advocate General, and shall afford the advocate concerned and the Bar Council and the Advocate General an opportunity of being heard before orders are passed in the case. It follows, I think, from that, that the original petitioner is not entitled to be served with notice or to be heard on the hearing before the Court. I think that the Advocate General is served in order that he may submit to the Court the report of the tribunal, and ask for such order as he thinks fit. I think he has the right of opening. The Bar Council is there, I think, in order to assist the Court in any way it can and also to deal with any directions which may be given under Sub-section (4), which enables the Court to refer the matter back to the Bar Council tribunal for further inquiry and to make any submission it thinks fit as to costs. The advocate concerned is of course entitled to be heard, I think, therefore, the correct course is for the Advocate General to open by submitting the report of the tribunal to the Court. Then the advocate concerned is entitled to be heard by himself or his advocate, and then if necessary the Advocate General will have a right of reply.

2. Now, in this case the tribunal formulated certain issues, three in number. The first was, whether the opponent, I. e., the advocate, acted contrary to the instructions of the petitioner' or his friends regarding the recovery of salary from Mr. Pandya. The second was, whether the opponent obtained the said salary from Mr. Pandya by false representations. The third was, whether the opponent failed to render proper account of the moneys received by him from time to time from the petitioner and his friends. All these issues are answered in the affirmative, and at the conclusion of their report the tribunal say:-

On our findings on the above three points of inquiry we are definitely of opinion that the conduct of the opponent in dealing with the petitioner and his friends was fraudulent and was not merely due to an error of judgment or indiscretion and thus clearly amounts to professional misconduct within the meaning of Section 10 of the Indian Bar Councils Act.

3. I have been carefully through the whole of the evidence, and I find it quite impossible to differ from the finding of the tribunal. The tribunal has been at length through the evidence, and it is not necessary for me to analyse it in detail, but having regard to the importance of the case to the advocate concerned, I will state

shortly my reasons for the conclusion I have arrived at.

4. The facts are very simple, The advocate was instructed to appear for the petitioner, who was a clerk of Mr. Pandya, a solicitor of this Court, and who had been charged by Mr. Pandya with theft The advocate was instructed to appear in the Police Court for the petitioner, In the Police Court the petitioner was convicted, and he brought an appeal to this Court, and the advocate again represented him in respect of the appeal. An application for bail in the first instance was made to the Court by Mr. Coyajee, as counsel, and it is in evidence that on that

5. Application Mr. Coyajee was paid a fee of Rs.60. At the hearing of the appeal Mr. G. N. Thakor was briefed on behalf of the petitioner, and it is proved that the fee paid to him was Rs.100. The appeal was successful, and the petitioner, therefore, became a free man. Soon after his appeal had succeeded, he thought it desirable, not unnaturally, to recover the arrears of salary due to him from Mr. Pandya, and accordingly a letter was written on July 12 by Mr. Mirajkar, the advocate on behalf of the petitioner, to Mr. Pandya, asking for arrears of salary. On July 14 Mr. Pandya replied. He says:-

As regards your client's salary, ho has worked up to June 23, and I am willing to pay him his salary till then, which at the rate of Rs.70 cornea to Rs.53-10-8. On your sending me a receipt for the amount signed by him and attested by you I shall send you a cheque for the amount payable to your client's order and crossed.

6. That amounts to this that Mr. Pandya will pay Rs.53-10-8 as salary but only on production of a receipt signed by the petitioner and attested by Mr. Mirajkar. That was received presumably on July 15; it is dated the 14th. On July 17th there was an interview between Mr. Mirajkar and certain friends of the petitioner, and I think the petitioner was also present, and at that interview Mr. Pandya's letter was shown, Shortly after that interview, probably on July 18, Mr. Mirajkar, at the instance of one of the petitioner's friends, drafted out a formal receipt for the petitioner to sign which could then be handed over to Mr. Pandya against the arrears of salary, and that document was given by Mr. Mirajkar to Mr. Iyer, a friend of the petitioner, in order that he might obtain the signature of the petitioner there to. But the petitioner not being satisfied with the account which had been given at

the interview on the 17th, to which I will return presently, as to the way in which Mr. Mirajkar had dealt with moneys handed over to him, refused to sign that receipt, and on July 19, Mr. Iyer wrote to Mr. Mirajkar saying that the petitioner had not given the receipt to him, that he (petitioner) wanted a complete account together with various receipts as to moneys paid to Mr. Mirajkar from time to time, and that he wanted vouchers also for counsel's fees paid. So there is a perfectly plain letter addressed to Mr. Mirajkar explaining that the receipt, the form of which he had drafted out for the signature of the petitioner, was not going to be signed until he (Mirajkar) had given an account of the moneys which he had received. Notwithstanding that letter, Mr. Mirajkar proceeded to collect the money duo from Mr. Pandya. He got a cheque from Mr. Pandya dated July 20. He cashed it on the 21st, notwithstanding that he had been told that his client was not going to give him the receipt without which he had told his client the money could not be obtained, The way in which he got the money out of Mr. Pandya is explained in Mr. Pandya's evidence. He says:-

Mr. Mirajkar used to meet me in Mr. Justice Rangnekar's Court. We used to see each other several times but he talked to me only once, I do not remember the exact date when he talked to me but by a reference to the date of the cheque, I am able to say that the date must be July 18 or 19, 1920, probably the latter. I am quite positive that the cheque was given to Mr. Mirajkar at about 2 p.m. on July 20, 1928. I cannot reproduce the exact words of the conversation that Mr. Mirajkar had with me but I can give the substance of it. There was no talk about the release of the petitioner. Mr. Mirajkar said that in my reply I insisted on very strict conditions, viz , that the receipt was to be signed by the petitioner and attested by Mr. Mirajkar and secondly that I was to give a crossed cheque in favor of the petitioner or order. In my opinion these wore strict terms looking to the amount involved. Mr. Mirajkar told me that his client the petitioner was too ill to come to his office and that to comply with my conditions, he the petitioner must come to his office, sign the receipt of Rs.53 and odd and then come again for endorsement on the cheque which was payable to order and crossed, as petitioner had not got any current account in any bank. He therefore said that a crossed cheque payable to petitioner meant a lot of trouble, He therefore appealed to mo for indulgence and I relaxed my conditions and asked him to see me in my office during the recess hour. He did not come on the same day but to the best of my recollection I gave him the cheque on the following day. I had no reason to disbelieve Mr. Mirajkar when he said that the petitioner was ill.

7. That seems to me a perfectly plain instance of obtaining money by a form of cheating. Mr. Mirajkar had told the client that the money would not be handed over without the client's signed receipt. He was then told by the client that that receipt was not forthcoming because the client was not satisfied that Mr. Mirajkar had accounted for the moneys paid to him, Notwithstanding that, Mr. Mirajkar goes to the employer Mr. Pandya, and collects the money by a false story as to the difficulties the petitioner was in. The tribunal point out that there is no reason whatever for not accepting the story of Mr. Pandya as correct. He is an entirely disinterested witness. If he had any prejudice at all in the matter, it would rather be against the petitioner, his ex-clerk, and not against Mr. Mirajkar.

8. Then the other point which has been found against Mr. Mirajkar is as to the accounts of the moneys paid to him. It is not in dispute that he received altogether from the petitioner the sum of Rs.473. At the meeting to which I have referred, which took place on July 17, there was undoubtedly a discussion as to Mr. Mirajkar's liability to account, and Mr. N. S. R. Aiyar, who is one of the friends of the petitioner who had been helping him in his difficulties, says that at that interview he wrote down on the dictation of Mr. Mirajkar the figures as to the ex penditure of the money which had been paid to Mr. Mirajkar. The document which he then wrote out, as he says, is Exhibit P. That document states that Mr. Coyajee's fees were Rs.125, Mr. Thakor's fees Rs.175, Mr. Valavalkar's Rs 30, cash Rs.8,and then there are other items of small amounts. The total comes to Rs.404. Apart from the Rs.68 which had been paid in respect of Police Court proceedings, that figure of Rs.404 is only Rs.1 less than the balance of the Rs.473. Now Mr. Mirajkar says those figures are false, that he never said Mr. Coyajee's fees were Rs.125, the correct fee being Rs.60, and that he never said Mr. Thakore's fees were Rs.175, the correct fees being Rs.100, and that those false fees had been put in by Mr. Aiyar. It is exceedingly difficult to see how Mr. Aiyar could have made any mistake in the matter. It is obvious the parties were discussing the question how the Rs.473 had been spent. It is obvious also that

unless Mr. Mirajkar gave some explanation as to the way in which he had dealt with the Rs.473, there was no answer to the claim to hand over the balance in his hands. It is quite clear that the figure of Rs.38 as the balance in Mr. Mirajkar's hands is correct, because he himself in his letter of July 31,1928, refers to the balance of Rs.38 being 'the balance left in my hands after the disbursements referred to above.' In this letter Mr. Mirajkar is writing to the petitioner's solicitors, and giving his account of the matter. He says:-

As promised they (i. e. the petitioner and his friends) came about five days later (this is a reference to the interview of July 17) and on ray giving the accounts of the monies that I had to disburse in the course of the proceedings aforesaid they agreed to pay me a sum of Rs.125 for my fees and asked me to take the agreed amount of Rs.63-10-8 from Mr. Pandya towards the part payment of my fees and further promised to pay the remaining balance after deducting the aforesaid sum and a sum of Rs. 38 being the balance left in my hands after the disbursements referred to above.

9. So that, he admits in that letter that he had given accounts, that the balance in his hands is Rs.8. Further, on September 5, the petitioner's solicitors write to Mr. Mirajkar, and they say:-

With reference to your interviews with the writer in our office on Tuesday last the 28th ultimo and on Monday last when you informed the writer that since you had paid Mr. H. C. Coyajee Rs.125 for his fees and Mr. Thakore Rs.175 for his fees, you could not possibly see your way to return to our client the whole amount received by you from Mr. Pandya.

10. There you have a statement that at the end of August Mr. Mirajkar had told the petitioner's solicitors that he had paid Mr. Coyajee and Mr. Thakor the exact sums mentioned in Exhibit F, and he makes no answer to that letter. He does not deny that he made that statement. It seems to ma perfectly plain that the statement was made, I think, twice over, that lees of Rs.125 and Rs.175 were paid to Mr. Coyajee and Mr. Thakor respectively, though the correct fees were R. 60 and Rs.100, and if the matter had not been further pressed, I have not the slightest doubt that the truth would never have come out.

11. That being the position, here are two plain cases of fraud. I agree that the sums involved are not large. Probably the means of the parties concerned are not large either. I confess I have felt great difficulty as to how we should deal with this case. It is absolutely necessary to maintain a high standard of honor amongst the members of the bar, and it is very necessary to protect the public against advocates who behave in the way in which this advocate has behaved. I doubt whether we ought not to strike his name off the roll altogether. But having regard to the fact that proceedings under this Act are new, and to the fact that the amounts involved are small, I think we are justified in taking a more lenient course. We, therefore, suspend Mr. S.R. Mirajkar from practice for two years, and order him to pay the costs of the petitioner and of the tribunal in respect of the inquiry, and the costs of the application to this Court. The coats will be on the Original Side scale. The opponent must present his sanad to the Registrar.

Baker, J.

1. I agree.