

A.K. Subbaiah Vs. Karnataka State Bar Council and ors.

A.K. Subbaiah Vs. Karnataka State Bar Council and ors.

SooperKanoon Citation : sooperkanoon.com/384931

Court : Karnataka

Decided On : Jul-19-2002

Reported in : AIR2002Kant410; ILR2002KAR3918; 2003(4)KarLJ219

Judge : H.L. Dattu, J.

Acts : [Advocates Act, 1961](#) - Sections 35 and 35(1)

Appeal No. : Writ Petn. No. 26718 of 2002

Appellant : A.K. Subbaiah

Respondent : Karnataka State Bar Council and ors.

Advocate for Pet/Ap. : Ravivarma Kumar, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

H.L. Dattu, J.

1. A complaint filed by one Sri J. Gopal son of late Sri Jatappa under Section 35 of [Advocates Act, 1961](#), against the petitioner before the Karnataka State Bar Council is referred to the disciplinary committee by the Bar council for enquiry. The initiation of these proceedings is the subject matter of this writ petition.

2. To appreciate the grievance of the petitioner, it is necessary to have a look at the relevant facts leading to filing of this writ petition.

3. Petitioner is a Practising Advocate and is in the roll of Karnataka State Bar Council (hereinafter for the sake of brevity referred to as 'Bar Council'). One SriJatappa, while he was alive, through his power of attorney holder Sri J. Gopal filed a petition in W. P. No. 28236/1992 before this Court, inter alia questioning the order passed by the Land Tribunal, Bangalore South Taluk, in case No. LRF 5448/78 dated 22-7-1992, by engaging the services of Sri C. V. Subba Rao, a learned Counsel. When the petition was pending before this Court, the power of attorney holder of Sri Jatappa, some time in the month of February, 1998, had engaged the petitioner to conduct the case by handing over the writ petition papers. It appears, Sri Jatappa expired some time in the month of May, 1998. It is the case of the petitioner that the death of Sri Jatappa was never brought to his notice either by the power of attorney holder or any other legal representatives of Sri Jatappa. It is also stated in the petition that W. P. No. 28236/1992 was posted before the Court for hearing on 25th day of October, 2000 and on that day, on the submission made by the learned Counsel for the contesting private respondent that Sri Jatappa has expired two years ago and no steps have been taken to bring the legal representatives on record, the Court has dismissed the petition as abated with liberty to restore it, if appropriate application is made after complying with the legal requirements.

4. The power of attorney holder of late Sri Jatappa, after coming to know of the dismissal of the writ petition, has filed a complaint dated 22-1-2002, under Section 35 of the [Advocates Act, 1961](#), before the Bar Council, inter alia alleging the professional misconduct said to have been committed by his learned Advocate. The sum and substance of the allegation is that, after his father's death on 1-5-1998, he had brought that fact to the knowledge of his Advocate Sri A. K. Subbalah and his assistant and subsequently he came to know about the dismissal of the writ petition as abated, since the legal representatives of the deceased petitioner had not been brought on record and further when the matter had been posted for hearing before the Court on 25-10-2000 his Advocate had not appeared or represented the matter and the same amounts to professional

misconduct. Therefore, he requests the Bar Council to take action against his Advocate as per law. The complaint filed by Sri J. Gopal, who is not only the power attorney holder but also the son of late SriJatappa before the Bar Council reads as under:

'COMPLAINT UNDER SEC. 35 OF THE ADVOCATES ACT, 1961

The complainant above named begs to state as follows :

1. My father late Jattappa had engaged the services of Sri A. K. Subbaiah in writ petition No. 28236/1992 (LR), on the file of the Hon'ble High Court of Karnataka in fact. I was taking care of the matter and my father had appointed me as Power of Attorney Holder in the above matter.

2. My father Jattappa passed away on 1-5-1998. Immediately thereafter, I brought this fact to the knowledge of Sri A.K. Subbaiah and his assistant. To my shock and disbelief, I came to know that the said Writ Petition was dismissed on 25-10-2000. I immediately applied for certified copy and obtained the same. It was only then that I understood that the Writ Petition was abated as the application for bringing the legal representatives on record was not filed. The order dated 25-10-2000 also makes it clear that my Advocate has not appeared or represented the matter. This is nothing but professional misconduct. I am ignorant of legal proceedings. I was not aware that an application has to be made to proceed with the matter. Even otherwise, my Advocate should have advised me and taken care to attend the matter. I feel defeated.

Wherefore I pray that necessary action as per law be taken against the respondent for his professional misconduct.

A complaint fee of Rs.300/- is paid by cash on 22-1-2002'

5. The Bar Council, after receipt of the complaint, by its communication No. KSBC/ 14/2002 dated 2-2-2002, has informed the petitioner herein about the filing of the complaint by his client and has called upon the petitioner to furnish his explanation, if any, to the said complaint within ten days of the receipt of the communication/notice. This notice came to be replied by the petitioner by his reply

letter dated 13-2-2002 by offering his explanation and also his defence.

6. The Bar Council, after considering his reply so filed has informed the petitioner by its communication dated 3-7-2002 that the Bar Council in its meeting held on 31-3-2002 vide its resolution No. 65/2002 has referred the complaint to the Disciplinary Committee II for enquiry for the reasons stated therein. The communication is relevant for the purpose of the case and therefore, it is extracted and it reads as under :

'With reference to above, I write to inform you that the above said complaint filed by Sri J. Gopal, residing at Bangalore-78, was placed before the Bar Council in its meeting dated 31-3-2002 and vide Resolution No. 65/02 the same is referred to Disciplinary Committee No. II for enquiry, relying on the following reasons :

Reasons : The complainant has filed this complaint against the respondent alleging that his father had engaged the services of the respondent to file W. P. in High Court. The respondent filed a W. P. No. 28236/ 1992. On 1-5-1998, the complainant's father passed away. Immediately the complainant had brought the death of his father to the knowledge of the respondent and sought for filing of L.R. application in the said Writ Petition. In spite of repeated request the respondent has not filed L.R. application. Hence the writ petition came to be dismissed as abated. Hence he sought for legal action for the negligence of the respondent. This authority has issued notice to the respondent and called for explanation.

The respondent received the notice and sent his explanation admitting the entrustment of the brief for conducting the case in W. P. No. 28236/1992 and denied regarding the information of the death of the petitioner in the said writ petition and it is also clearly stated in the statement of objections of the respondent that he has stated that nobody informed him about the death of the petitioner in the writ petition much less the complainant herein has not informed to any one of his colleagues about the death of the petitioner in the said case. It is also stated that on the morning of 25-10-2000 he was waiting for the instructions from his client and he sought for adjournment from the Court and subsequently when the case was called he was, engaged elsewhere and he could not attend the Court. But on the information of the respondent and not about the death of the petitioner

the Court held that the petition abate and liberty was given to the concern to fulfill the legal requirement and get the case restored and he has sought for dismissal of the complaint.

At the time of filing of the complaint, the complainant has produced the copy of the order passed in W. P. No. 28236/1992. As could be seen from para 2 of the Order of the Hon'ble High Court has observed as under :

'There is also no representation by the learned Counsel though in the morning a request was made asking for an adjournment and this Court directed that such request will be considered when the case is taken up. When the case is taken up, no representation is made on behalf of the counsel for the petitioner. For the first time, the matter was passed over and the second time also the same. The Counsel is absent. But, Mr. Kumar learned Counsel, who is present before the Court appearing for R1 informs that the petitioner himself is dead, which information given to him by his client'.

Hence, the committee is of the view that the respondent has to perform his duty. Once he filed a vakalath on behalf of the party, it is bound duty of the Advocate to appear before the Court for argument. The respondent has not placed any material to show that he has no knowledge about the death of the petitioner in Writ Petition and moreover as per the findings of the High Court, the respondent did not turn up when the case was called for two times. Hence, it is a fit case to be referred to Disciplinary Committee for enquiry.'

7. Petitioner, a Practising Advocate, aggrieved by the aforesaid communication, is before this Court, inter alia questioning the correctness or otherwise of the impugned communication.

8. Sri Ravivarma Kumar, learned Counsel appearing for the petitioner in support of the petition contends that the Bar Council has not formed the requisite opinion even to suggest that they had reason to believe that the petitioner is guilty of professional misconduct. Secondly, the irrelevant considerations have weighed in the mind of the Bar Council while referring the complaint filed by the litigant for enquiry. Thirdly, there is total non-application of mind by the Bar Council before

referring the complaint for enquiry by the disciplinary committee and lastly the explanation offered by the petitioner is not taken into consideration before framing the impugned communication.

These are the only issues raised by the learned counsel at the time of hearing of this petition.

9. A litigant has suffered a penalty of dismissal of a petition filed by his father for his Advocate's non-appearance before the Court on a day fixed for hearing of the case. Whether this amounts to professional misconduct or against professional ethics is a larger question. The Charge of professional misconduct is in the nature of quasi-criminal charge. It requires to be established not by preponderance of probabilities but beyond a reasonable doubt. That requires to be established by the complainant before the disciplinary committee of the Bar Council. We have not yet reached that stage.

10. Petitioner before me is a Practising Advocate. A complaint is lodged by the third respondent herein, who was not only the power of attorney holder of late Sri Jatappa but also is his son. He had engaged the services of the petitioner as his Counsel in a case pending before this Court. The case is dismissed by this Court on two grounds, namely, though Sri Jatappa has expired two years ago, his legal representatives are not brought on record to prosecute the writ petition and secondly, for non-appearance of the Advocate, when the case was taken up for hearing.

11. The fate of this case hinges on the interpretation of Section 35 of the [Advocates Act, 1961](#). Before taking up this provision for interpretation, let me first notice Section 6 of the Act, which provides for functions of State Bar Councils. Among others, it provides for admission of a person as an Advocate on its roll, to prepare and maintain such roll, to entertain and determine cases of misconduct against Advocates on its roll. Chapter V of the Act deals with the conduct of Advocates. Sub-section (1) of Section 35 of the Act, mandates that on a receipt of the complaint or otherwise, a State Bar Council, if it 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 complaint filed under

this sub-section must necessarily contain that an Advocate on the roll of the State Bar Council has been guilty of professional misconduct or other misconduct. If this is alleged and ultimately proved by the complainant, then only the disciplinary committee of the State Bar Council can impose any punishment as provided under clauses (b) to (d) of Sub-section (3) of Section 35 of the Act, otherwise, it can dismiss the complaint as provided in Sub-clause (a) to Sub-section (3) of Section 35 of the Act and this exercise can be done only after giving the Advocate concerned and the learned Advocate General an opportunity of being heard in the matter.

12. The learned Counsel for the petitioner, firstly contends that the resolution of the Bar Council in its meeting held on 31-3-2002 does not disclose that it had reason to believe that the Advocate involved in this case is guilty of professional misconduct. Therefore, the initiation of enquiry proceedings by referring the complaint to the Disciplinary Committee for conducting an enquiry is illegal, invalid, unfair, arbitrary and opposed to the provisions of Section 35 of the Act. In support of this submission, the learned Counsel invites my attention to the observations made by Apex Court in the case of Bar Council of Maharashtra v. M.V. Dabholkar reported in : [1976]2SCR48 . In the said decision, the Court was pleased to observe (Para 4 of AIR):

'The requirement of 'reason to believe' cannot be converted into a formalised procedural road block, it being essentially a barrier against frivolous enquiries. It is the simplicity in the resolution of the Bar Council, when it says that it has considered the complaint and decided to refer the matter to the disciplinary committee, that it had reason to believe as prescribed by the Statute.' (Emphasis supplied by me)

13. In the present case, the Bar Council in its meeting held on 31-3-2002, firstly considers the allegations and accusations made in the complaint by a litigant, the explanation offered by the delinquent Advocate and also refers to the order made by this Court in W.P. No. 28236/1992 and then observes that it has considered the complaint and the explanation offered by the delinquent Advocate and thereafter decides to refer the matter to disciplinary committee for enquiry. This clearly demonstrates that it had reason to believe, that prima facie the Advocate

concerned is guilty of professional misconduct. I hasten to add, this is its tentative opinion and requires an investigation and decision by the disciplinary committee after holding an enquiry and by affording an opportunity of hearing to the Advocate concerned.

14. The expression 'reason to believe' occurring in Section 35(1) is a combination of two words, 'reason' and 'to believe'. The word 'reason' means cause or Justification and the word 'believe' means to accept as true or faith in it. In other words, it means coming to a conclusion on the basis of the information that a thing, condition, statement or fact exists. In the other words it only means facts, which prima facie will convince any reasonable person under the circumstances of the case to form a belief that will impel him to take action under law. Therefore, undoubtedly, before the Bar Council has faith or accepts a fact to exist, there must be a reasonable justification for it. The believe may not be open for scrutiny of this court as it is the final conclusion arrived by it as a result of mental exercise made by it on the information received by it. But the reason due to which the decision is reached can always be examined by this Court. When I say, the reason to believe is open to scrutiny of this Court, I mean that the satisfaction arrived at by the Bar Council is immune from challenge, but where the satisfaction is not based on any material or it cannot withstand the test of reason which is integral part of it, then it falls through and the Court is empowered to strike down such opinion.

15. The expression 'reason to believe' which finds a place to Section 35 (1) of the Advocate's Act, 1961 also came up for consideration before the Apex Court in the case of N.G. Dastane v. Shrikant Shivade reported in : [2001]3SCR442 . In the said decision, the Court was pleased to observe :

'The expression 'reason to believe' is employed in Section 35 of the Act only for the limited purpose of using it as a filter for excluding frivolous complaints against Advocates. If the complaint is genuine and if the complaint is not lodged with the sole purpose of harassing an Advocate and it is not actuated by mala fides, the Bar Council has a statutory duty to forward the complaint to the disciplinary committee.'

16. The Court in the aforesaid decision while explaining the meaning of the expression 'professional misconduct' or other misconduct has observed :

'Section 35 of the Act indicates that the misconduct referred to therein is of a much wider import. The collocation of the words 'guilty of professional or other misconduct' In Section 35(1) of the Advocates Act has been used for the purpose of conferring power on the Disciplinary Committee of the State Bar Council. It is for equipping the Bar Council with binoculars as well as a ship to be on the qui vive for tracing out delinquent advocates who transgress the norms or standards expected of them in the discharge of their professional duties. The central function of the legal profession is to help promotion of administration of justice. Any misdemeanour or misdeed or misbehaviour can become an act of delinquency if it infringes such norms or standards and it can be regarded as misconduct.'

17. The expression 'reason to believe' is a common feature in taxing statutes. This expression came up for consideration before the Apex Court in the case of S. Narayanappa v. CIT, Bangalore reported in : [1967]63ITR219(SC) . In that, the Court was pleased to observe :

'The expression 'reason to believe' in Section 34 does not mean a purely subjective satisfaction on the part of the Income-tax Officer, The believe must be held in good faith. It cannot be merely a pretence. It is open to the Court to examine whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section. To this limited extent, the action of the Income-tax Officer in starting proceedings under Section 34 of the Act is open to challenge in a court of law.'

18. The reasons which lead to the formation of believe contemplated in Section 35(1) of the Advocate's Act 1961 must have a bearing on the question of professional misconduct or other misconduct of an Advocate. Once there exists reasonable grounds for the Bar Council to form the above belief, that would be sufficient to clothe the Bar Council with the jurisdiction to issue notice and thereafter refer the matter to its disciplinary committee for enquiry. Whether the grounds are adequate or not is not a matter for the Courts to investigate. The

sufficiency of the grounds, which induced the Bar Council, is not a matter which requires to be investigated at this stage. This requires to be done by the delinquent Advocate in the enquiry that may be held by the disciplinary committee. In the present case, a perusal of the impugned communication would demonstrate that after prima facie coming to the conclusion that the complaint is genuine and not lodged with the purpose of harassing the advocate and not actuated by any mala fides, the Bar Council has referred the complaint filed by the complainant for enquiry before the Disciplinary Committee. Therefore, it cannot be said that the impugned communication is either bad or illegal or contrary to provisions of Section 35(1) of the Advocate's Act, 1961.

19. The impugned communication is a part of the writ petition docket. A perusal of the same itself indicates the material considered by the Bar Council before referring the matter for enquiry by its disciplinary committee. The Bar Council firstly takes into consideration the complaint lodged and the explanation offered by the Advocate concerned and then takes into consideration the observations made by this Court while disposing of the writ petition and on being satisfied that a prima facie case has been made out by the complainant in his complaint, frames the impugned order. Therefore, in my view, the learned Counsel for the petitioner may not be justified when he contends that there is no non-application of mind and non-consideration of his explanation offered to the notice by the Bar Council before issuing the impugned communication. Therefore, at this stage, it cannot be said that the impugned order suffers from any infirmities as contended by learned counsel for petitioner.

20. Lastly, it is not for me, at this stage to go into the merits or demerits of the controversy raised by the parties in the proceedings pending before the Disciplinary Committee of the Bar Council. It is for the enquiry committee to take a decision on the complaint after holding an enquiry as required under Section 35 of the [Advocates Act, 1961](#).

21. In the result, petition falls. Accordingly, it is rejected without reference to the respondents. No order as to costs. Ordered accordingly.