

**In Re: Prem Narain, Advocate**

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**Court :** Allahabad

**Decided On :** Feb-05-1940

**Reported in :** AIR1940All289

**Appellant :** In Re: Prem Narain, Advocate

**Judgement :**

Thom, C.J.

1. On 23rd April 1937 one Mazhar Alim filed a complaint against Babu Prem Narain, a legal practitioner practising in the Civil Courts of Agra. His complaint was referred to the Bar Council which framed the following charge against Babu Prem Narain:

That you Babu Prem Narain being the counsel for the complainant Mr, Mazhar Alim in Civil Suits Nos. 217 and 218 of 1929 in the Court of the Munsif of Agra and appeals therefrom, and having determined to be counsel after the decision of the appeals, realized out of Court costs from the respondents, awarded to the complainant, without his consent, knowledge and instructions and failed to account for the same to the said complainant or to certify it in Court and thereby committed an act of professional misconduct.

2. It will be observed that although one charge only was framed against Babu Prem Narain that charge really comprises two: firstly a charge of having realized money due under a decree in favour of his client and having failed to account for

the amount realized to his client; and secondly of having failed to certify the realization in Court. The tribunal of the Bar Council which heard the case has held the first charge not proved, but has recorded a finding of unprofessional conduct on the second. Briefly the facts are as follows: Mr. Mazhar Alim was the defendant in the two suits (Nos. 217 and 218 of 1929). These suits were decreed in the Munsif's Court. On appeal, however, the District Judge recalled the order of the Munsif and dismissed the suits with costs. The costs due to Mr. Mazhar Alim amounted to Rs. 88-14-0 in all. Babu Prem Narain who had represented Mr. Mazhar Alim, the complainant, was not paid his fee in connexion with the appeals in the Court of the District Judge. The fee to be paid to him had been agreed at Rs. 25 in respect of each appeal. The position was therefore that when the appeals were allowed and the suits against Babu Prem Narain were dismissed the sum of at least Rs. 105 was due by Mr. Mazhar Alim to Babu Prem Narain. Babu Prem Narain had not been paid his fees and he had paid the costs in connexion with the appeals out of his own pocket under an agreement between him and his client. In these circumstances Babu Prem Narain realized the amount due under the decree and thereafter according to his own statement asked Mr. Mazhar Alim to meet him with a view to settling his account. Whether Mr. Mazhar Alim was invited by Babu Prem Narain to settle the account or not is uncertain; the evidence upon the point is not conclusive. Be that as it may Mr. Mazhar Alim was due Babu Prem Narain the sum of Rs. 105 in respect of his fees and the costs of the two appeals in the Court of the District Judge. Babu Prem Narain had realized under the decree for costs the sum of Rs. 88-14-0 only. This left a balance still due to him. In appropriating the Rs. 88-14-0 as he undoubtedly did to the payment of his account the Bar Council have held, and we think rightly in the circumstances, that Babu Prem Narain was not guilty of professional misconduct.

3. The charge of failure to certify however stands in an entirely different position. The amount due under the decrees namely Rs. 88-14-0 was realized from the two judgment debtors on 31st March 1930. When the money was paid to him Babu Prem Narain granted two receipts and both these receipts certify that the realization of the decretal amounts had been certified in Court. It is a matter of admission that at the time when the realization was made there had been no such certification but it was understood by the judgment-debtors that Babu Prem Narain

would immediately certify the payments. In fact Babu Prem Narain did not certify the payments and on 17th April 1930 Mr. Mazhar Alim who had then employed another lawyer filed an application for the execution of his decrees for costs. This application was dismissed on 16th May 1930, because the applicant had failed to file along with the application certified copies of the decrees which he sought to execute. Meanwhile an appeal had been taken by the plaintiffs in Suits Nos. 217 and 218 of 1929 to the High Court. These appeals were eventually dismissed on 12th December 1934. After the dismissal of the appeals in the High Court Mr. Mazhar Alim filed another application for the execution of his decrees for costs. The judgment-debtors appeared and protested that they had paid to Babu Prem Narain the full amount due under the decrees against them as in fact they had. It further appears that Babu Prem Narain deposed in the execution proceedings that he had in fact received payment. Inasmuch as, however, the payment had not been certified the decree-holder Mr. Mazhar Alim proceeded with his application for execution and on 4th April 1935 he obtained a warrant of arrest against the judgment-debtors. The result was that the judgment-debtors were again forced to pay the sum of Rs. 88-14-0 this time to Mr. Mazhar Alim. This sum they eventually recovered in a suit in which they also obtained a decree for damages against Mr. Mazhar Alim. The loss which he has sustained, Mr. Mazhar Alim alleges was due to the misconduct of Babu Prem Narain.

4. After a consideration of the evidence which was adduced before the Bar Council we find it very difficult to understand the failure of Babu Prem Narain to certify the payment of the decretal amounts to him by the judgment-debtors on 31st March 1930. The receipts which he granted clearly bore that the certification had in fact been made. It was the imperative duty of Babu Prem Narain in these circumstances immediately to certify in Court that the decretal amounts had been realized. By 12th December 1934 when Mr. Mazhar Alim made his final application for execution no such certification had been made by Babu Prem Narain. We cannot see what motive Babu Prem Narain had in delaying the certification of the realization of the decretal amounts. So far as we can see he had nothing whatever to gain by refusing to certify. After a consideration of all the facts and circumstances having heard counsel for Babu Prem Narain and the Advocate General we are satisfied that the failure of Babu Prem Narain to certify the

realization of the decretal amounts was due either to stupidity or to negligence or to both. If it be negligence, no doubt the negligence was gross negligence; but there was no element, we are satisfied, of moral delinquency in this dereliction of duty on the part of Babu Prem Narain. Mere negligence is not sufficient in itself to found a charge of professional misconduct. In this connexion we refer to the decisions in the cases in *B. Munuswami Naidu, In the matter of* (1926) 13 AIR Mad 568 and *In re Gondikota Satyanarayanamurthy* (1938) 25 AIR Mad 965. We further refer to the case in *Myers v. Elman* (1939) 4 All ER 484 and in particular to the observations of Viscount Maugham L.C. at p. 488. The case was one of a solicitor against whom a charge of professional misconduct had been preferred. In the course of his speech the Lord Chancellor observes:

Apart from the statutory grounds, it is of course, true that a solicitor may be struck off the rolls or suspended on the ground of 'professional misconduct,' words which have been properly defined as conduct which would reasonably be regarded as disgraceful or dishonourable by solicitors of good repute and competency: *In re a Solicitor; Ex parte Law Society* (1912) 1 KB 302. Mere negligence, even of a serious character, will not suffice.

5. We are unable to hold after a review of the facts in the present case that Babu Prem Narain though undoubtedly guilty of negligence has been guilty of conduct which would be regarded as 'disgraceful or dishonourable' by solicitors of good repute and competency. Upon the whole matter we are satisfied that the Bar Council Tribunal's finding that Babu Prem Narain has been guilty of professional misconduct cannot be sustained. In the result the rule is discharged.

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