

In Re: Advocate

In Re: Advocate

SooperKanoon Citation : sooperkanoon.com/781530

Court : Chennai

Decided On : Sep-12-1938

Reported in : (1939)1MLJ564

Appellant : In Re: Advocate

Judgement :

Alfred Henry Lionel Leach, C.J.

1. The respondent who is an Advocate of this Court was charged with professional misconduct on a complaint by one Palaniswami Chetty, who is now dead. There were three separate charges. The first charge was that the respondent was engaged in or about July, 1934, by the complainant to file an appeal in this Court and put in sufficient funds for filing it, but that he presented the memorandum of appeal with a court-fee stamp of only Rs. 50 whereas it should have been stamped with court-fee of Rs. 142. The second charge was that having filed the appeal with a deficient court-fee the respondent made the complainant believe that the full court-fee had been paid. The third charge was that when the memorandum of appeal was returned by this Court for re-presentation with the proper court-fee the respondent did not re-present it in time, as he ought to have done. The Bar Council Tribunal heard the evidence on behalf of the complainant and the respondent and has presented a report in which it accepts the respondent's version of the arrangement between him and the complainant, and finds that there has been no professional misconduct.

2. The complainant's case is this. On or about the 26th July, 1934, he saw the respondent with a view to filing an appeal from a decision of the Subordinate Judge of Cuddalore, and that on the 30th July, the respondent having accepted his instructions, he paid to the respondent a sum of Rs. 175 on account of costs of the appeal. It is common ground that the stamp and the process-fees required Rs. 169-9-0. The complainant says that the arrangement was that the court-fee was to be paid out of the Rs. 175. The respondent's case is that of the Rs. 175, Rs. 100 was to be kept by him on account of his fees, Rs. 50 to be spent on court-fee stamps and the balance utilised for other expenses. He says that as the complainant was not in a position to pay all that was required for court-fees and his fees it was arranged that the respondent should file the appeal, stamped to the extent of Rs. 50 only and the complainant should pay the balance when the Court discovered the deficiency in the court-fee.

3. In this Court a memorandum of appeal is received by what is known as the Receiving section. The Officials in this department merely enter in a register the date of filing. The memorandum is then passed on to another department where the stamping is checked. If it is discovered that there is a deficiency in the stamping the matter is placed before the Deputy Registrar, who causes the memorandum to be returned to the advocate who filed ;JL. The arrangement in this case was that the memorandum should be filed with a stamp of less than the proper value and that when the deficiency was discovered, the complainant should put the respondent in further funds so that the deficiency in the stamping could be rectified. This scheme depended for its success on the Court not discovering the true position. The memorandum of appeal was not returned to the respondent until the 26th September, 1934, that is nearly two months after it had been filed.

4. Subbaraya Chetti gave evidence in support of the allegation that the Rs. 175 was paid to the respondent for the purpose of filing the appeal and that the arrangement was that he should pay the court-fee out of this money. This evidence was not accepted and in rejecting it the tribunal relied on the evidence of Mr. V.S. Ramanujachariar an advocate practising at Cuddalore. According to Mr. Ramanujachariar the complainant told him after his interview with the respondent that only some portion of the court-fee had been paid and some portion of the

advocate's fee. On hearing this he informed the complainant that there would be difficulty in obtaining an extension of time and advised the complainant to send the balance as soon as possible. The respondent states that when the complainant failed to send the money to make up the deficiency in the court-fee he wrote to him several times but the complainant took no notice of the letters. The complainant denies that he received any letter but it is quite clear that the respondent wrote to him. Ex. I is a post card which the respondent wrote to the complainant on the 15th November, 1934, and in it he referred to the fact that he had written to him on the 21st October, 1934, and on the 31st October, 1934, asking him to meet him at Tirupapuliyur on the 2nd November, 1934, to attend to the matter of re-presenting the appeal in Court. This post card, as the endorsement by the postal authorities shows, was refused by the complainant.

5. We see no reason to take a different view of the evidence of Mr. Ramanujachariar especially as the respondent's case is strongly supported by Ex. I. We agree with the Tribunal that the charges against the respondent have not been substantiated and that the arrangement between him and the complainant was as stated by the respondent. At the same time it is obvious from the respondent's own evidence that the riling of the memorandum of appeal on the last day of limitation knowing full well that it was under-stamped and hoping that the Court would be persuaded to accept the deficiency later is certainly not in accordance with the high traditions of the profession to which he belongs. If the real facts did become known to the Court it is obvious that the Court would not allow the deficiency to be paid. Another advocate who had been approached to file the appeal on terms similar to the arrangement accepted by the respondent refused to file it and the respondent also should have refused to file it unless the full amount of the court-fee was first paid. We are not now considering whether this action of the respondent amounts to professional misconduct. That question is not before us. But this Court will not tolerate practices of this nature.

6. Before I conclude, I will refer to another matter, and that is the delay which has taken place in the presentation of the report. The order constituting the Tribunal was passed on the 25th April, 1936. The report was presented on the 27th July, 1938. Including the complainant and the respondent the total number of witnesses

examined was seven and the examinations were not of a lengthy nature. The complainant was examined on the 10th December, 1936, Subbaraya Chetty on the 5th February, 1937, and another witness called by the complainant on the 23rd February, 1937. There was no further examination till the 19th August, 1937, when Mr. Ramanujachariar was examined, and the last witness was not examined until the 6th April of this year. There is no explanation of the delay. The Court trusts that in future these matters will be dealt with much more speedily. In fairness to the respondent a charge of this nature should not be hanging over his head for more than two years, as has been the case here. I hope that these remarks will have the effect they are intended to have.

Mockett, J.

7. I agree. I only wish to add a word with regard to one matter. My Lord the Chief Justice has pointed out the undesirability of the practitioners lending themselves to the practice of deliberately filing appeals under-stamped. I wish to emphasise one evil which must inevitably arise out of that practice and it is this. On the facts in this case there was no reason whatever why the appeal should not have been filed in time and with the correct court-fee. The result probably would have been that the advocate would have been asked to draft an affidavit setting out wholly false grounds known to him to be untrue for not putting the proper stamp fee, and experience unfortunately shows that statements are included in this class of affidavit which have no basis whatever. If the proper practice is followed, as I have no doubt it is by many members of the Bar (one advocate clearly would have nothing to do with the arrangement in this case) this danger of the Bar being asked deliberately to draft false affidavits will not arise.

Abdur Rahman, J.

8. I agree.