

c Vs.r

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Court : THE DISCIPLINARY COMMITTEE OF THE BAR COUNCIL OF INDIA

Decided On : Dec-09-1996

Reported in : 1997(3&4)IBR201

Judge : Shri Jagannath Patnaik, Chairman; Shri Ashok Deb, Member; Shri S.K. Padhi, Member, Jj.

Appeal No. : B.C.I TR. CASE No. 76 of 1995

Appellant : Complainant

Respondent : Respondent

Judgement :

Briefly stating the facts of the case are that the complainant filed a complaint against the respondent on the allegations that he engaged the respondent to file a case in respect of the theft committed in his house. It is alleged against the respondent that the respondent gave him a draft of the complaint which was sent to the Commissioner of Police and other authorities by the complainant. The respondent also issued notice to the SHO Police Station, Lajpat Nager, New Delhi, on behalf of the complainant for supplying the enquiry report. In respect of the complaint lodged by the complainant against Mool Chand and sons who have allegedly committed the theft in the house. It is further alleged that till issuing of the notice no fees was settled between the complainant and the respondent. But the respondent told that he would charge minimum amount of fees. It is further alleged that on 8-12-1993 the complainant paid Rs. 2,000/- to the respondent and also

gave his documents for filing the complaint in the court of law. Again he paid Rs. 2,000/- on 5-1-1994 for Court expenditure and preparing the case. After that the respondent asked him to bring certain papers like bank account etc. In the meantime the complainant became busy, and asked the respondent not to file the case and later on asked him to return the fees of Rs. 4,000/- which he had allegedly paid to him. On these allegations the complainant came to the Bar Council and sought an action against the respondent for professional misconduct. Notice was sent to the respondent who in his reply denied the allegation and stated that the allegations in the complaint were false, and he denied having received any money from the complainant. Further stated that the complainant came to him for filing the complaint case regarding the alleged theft in the house by some neighbours. As he alleged that his complaint to the police was totally ineffective, the respondent issued two notices to the police authorities without charging a single penny from the complainant. A draft of the complaint was also prepared and since heavy amount of theft was alleged to have been involved, the complainant was asked to bring the photocopy of the bank account to substantiate his charges. He was asked to pay legal fees of Rs. 2,200/- for his complaint case as well as the earlier notice issued by him. But after a few days of drafting of the complaint, the complainant came to him and told him that he did not want to file the complaint and asked for the return of the papers. The respondent asked him to sign the receipt for the said paper which the complainant refused and left his office and filed the present complaint against him. On the basis of the pleadings following issues were, framed:-1. Whether the respondent took Rs. 4,000/- from the complainant? Whether the respondent did professional misconduct by not rendering the service to the complainant, if he has paid the alleged amount? 2. Any other professional misconduct. The complainant examined himself as C-I and closed his evidence. Whereas the respondent also examined himself as RW-1 and did not adduce any other evidence. The complainant in his statement stated that the respondent Advocate gave him a draft of notice which he typed and then sent it to the SHO which was marked as Ex C-I. He also stated that one more notice was given by the respondent on behalf of the complainant on .20-8-1993 which is Ex. C-II. He has stated that he paid Rs. 4,000/- to the respondent first installment of Rs. 2,000/- was paid on 18th December, 1993 and second Rs.

2000/- was paid on.5-1-1994. He had signed the Vakalatnama and gave two sets of papers to the respondent for filing the case. The respondent demanded Rs. 11,000/- as his fees. But later on he told the respondent not to file in case and demanded the money and papers back which the Respondent refused to do so. 'The complainant has examined himself as a witness and in his statement he stated that he engaged the respondent for giving notice to the police in respect of theft committed in his house. The notice was drafted by the respondent which was given to the complainant for typing which he typed and sent the same. The copy of notice is marked as Ex. C-I. Another, notice was also given by the respondent on 29th August, 1993 the copy of the same was marked as Ex. C-II. He further stated that he gave Rs. 4,000/- to the respondent towards expenses which were paid to the respondent in two installments of Rs. 2,000/- each on 18-12-1993 and 5-1-1994. The respondent demanded Rs. 11,000/- for filing a case which the complainant later on asked him not to do so and then demanded his money and papers back from the respondent which he refused. On the question put by the Committee the complainant stated that he was prepared to pay the drafting of the notices C-I and C-2 which the committee may decide as the reasonable amount, During the course of cross-examination he has stated that he borrowed this amount of Rs. 4,000/- from his neighbour, the name of which he refused to disclose. She was a household lady and no document was executed for taking the loan from her by the complainant. He has denied the suggestion, of the respondent and the respondent was prepared to return the papers provided he gives him the receipts, of those papers. He also denied having paid any money to the respondent. No other witness was produced by him in support of his case. On the other hand the respondent examined and stated that on 14-6-1993 the complainant was referred by Mr. Manoj Swarup, Advocate practicing in Supreme Court to help the complainant as he was a poor man without charging any fee. Accordingly, he sent letters on his behalf to the Commissioner of Police and also gave notice to the SHO P.S. Lajpat Nagar, the copies of which have been Ex. C-I and -C-II. He further states that he sent an application on 28-9-1993 to the Lt. Governor, Delhi, for permission to file the complaint against the Police Officers. For filing, the complainant promised to pay in January, 1994 but later on he came and demanded his papers bag and when he told him- to give receipts of his

documents and the vakalath and he refused to do so. He further stated that he did not charge any fee from the complainant and on the contrary incurred expenses for sending the notices and the complainant has filed a false case against him, In cross-examination by the complainant the respondent denied having received Rs. 4,000/- as alleged and also denied that he demanded Rs. 11,000/- as his professional fee for filing the complaint on behalf of the complainant. He has denied that he refused to return the papers of the complainant only after he would pay Rs. 11,000/- by way of his professional fee. The respondent also closed his evidence without producing any other witness. The case was fixed for arguments and parties expressed their desire to file written arguments. Written arguments on behalf of the complainant were filed but respondent failed to file written arguments and the case was fixed for 22-6-1996. The matter was deliberated and we have perused the pleadings, documents and evidence on record as well as the written arguments of the complainant. The crucial point involved in this case is whether the complainant has proved his case to the effect that he paid Rs. 4,000/- to the respondent as alleged. The complainant has not produced any convincing evidence to show that he paid Rs. 4,000/- to the respondent as alleged. In his cross-examination he has given very massive answers of having received the money from his neighbor who refused to produce her in evidence. Even her name has not been enclosed by the complainant. In answer to the question by the Committee he has agreed to pay the reasonable amount for the notices sent by the respondent and if he had paid Rs. 4,000/- to the respondent, he would have positively said that the reasonable amount be deducted from the amount of Rs. 4,000/- which he had already paid. It is not uncommon in practice when a senior lawyer sends a case to another colleague with a request for helping a client, the advocate to whom the case is sent normally help that person and in this case also we feel that the respondent might have issued notices without charging any fees from the complainant. It was also not unjustified by the respondent to take a receipt from the complainant at the time of handing over the documents which the complainant was not willing to do so for reasons best known to him. Since the complainant has failed to establish that "he paid Rs. 4,000/- to the respondent we find this complaint has been filed against the respondent with mala fide intention in order to harass the respondent. We, therefore, are of the opinion that the complainant has

failed to prove his case against the respondent for professional misconduct; As such the complaint is dismissed. The parties are left to bear their own costs.

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