

In Re: Sri A. Gurubasappa, Advocate Rayadrug

LegalCrystal Citation : legalcrystal.com/427602

Court : Andhra Pradesh

Decided On : Aug-12-1963

Reported in : AIR1964AP261

Judge : Satyanarayana Raju, ;Kumarayya and ;Venkatesam, JJ.

Acts : [Bar Councils Act, 1926](#) - Sections 10 to 13; [Advocates Act, 1961](#) - Sections 35, 50, 50(4), 56 and 56(1); Code of Civil Procedure (CPC) - Order 3, Rule 4

Appeal No. : Referred Case No. 29 of 1962

Appellant : In Re: Sri A. Gurubasappa, Advocate Rayadrug

Advocate for Def. : N.M. Sastry and ;B. Rama Rao, Advs.

Advocate for Pet/Ap. : D. Narsa Raju, Adv. General and ;A. Venkataramana, Adv.

Judgement :

Satyanarayana Raju, J.

1. This proceeding arises out of a complaint preferred by one M. Basappa (hereinafter referred to as the complainant) to the High Court alleging professional misconduct against Sri A. Gurubasappa (hereinafter referred to as we respondent), an Advocate practising at Rayadrug.

2. The substance of the complaint is as follows the complainant filed O.S. No. 164 of 1958, on the tile of the Court of the District Munsif, Rayadrug, and engaged the respondent as a Junior Advocate. A sum of Rs. 50/- was settled as fees for the respondent and it was paid. the respondent appeared for the complainant during the early stages of the suit; but when the Government was impleaded as the 3rd defendant, at the instance of defendants 1 and 2, he reported 'no instructions' for the complainant without his knowledge and consent and filed a memo of appearance on behalf of the 3rd defendant and contested the suit against the complainant. It is further averred that we complainant had given a registration copy of a mortgage deed to the respondent for the purpose of filing it along with other documents in court, but that the respondents deliberately withheld that document.

3. By its proceedings, dated 20th June, 1961, the High Court directed the District Judge, to enquire into the complaint.

4. TWO charges were framed against the respondent:

[1] that having appeared for the complainant in the suit, he reported 'no instructions'

without justifiable cause and appeared for the Government without the consent of the complainant; and

(2) that he deliberately withheld the certified copy of the mortgage deed of 1928 with a view to help the defendants in the suit.

5. The respondent pleaded not guilty to the charges. He averred that when he accepted the vakalat of the complainant, the Government was not a party to the suit; that he was subsequently appointed as Pleader doing Government work in respect of all cases in the Court of the District Munsif, Rayachoti, in which the Government is a party; that he addressed the District Collector, Anantapur, informing him of the fact that he was already appearing for the plaintiff in that suit; and requesting instructions in the matter; that the Collector instructed him to give up the vakalat for the plaintiff and to appear for the Government; that he brought these facts to the notice of the complainant and obtained his consent to give up his vakalat; and that it was thereafter that he reported no instructions on behalf of the complainant and filed the memo of appearance on behalf of the Government. He averred that he acted bona fide, and that if his appearance for the Government was considered improper, he might be pardoned for the same, he denied the allegation that a registration copy of the mortgage deed of 1938 was entrusted to him by the complainant. He stated that he filed, into Court all the documents that the complainant gave him.

6. In his report dated 11th December, 1931, the learned District Judge of Anantapur, who enquired into the complaint, found that the complainant failed to substantiate the second charge. On the first charge he held that the respondent did obtain the consent of the complainant before giving up the vakalat for him and before he entered appearance for the Government. The District Judge also held that the respondent had expressed his regret, and that the interests of justice would be amply served by accepting his apology.

7. Initially, before considering the merits of the complaint, it will be convenient to consider the question as to the jurisdiction of this Court to deal with cases of professional misconduct after the enactment of the Advocates Act (XXV of 1961),

8. The Indian Bar Councils Act (XXXVIII of 1926), as is indicated in its preamble, was enacted:--

'to provide for the constitution and incorporation of Bar Councils for certain courts, to confer powers and impose duties on such Bar Councils, and to consolidate and amend the law relating to legal practitioners and entities to practice in such Courts.'

9. Section 10, as amended by Madras Act IX of 1947, reads as follows:--

'(1) The High Court may, in the manner hereinafter provided, reprimand, suspend or remove from practice any advocate of the High Court whom it finds guilty of professional or other misconduct.

(2) Upon receipt of a complaint made to it by any Court or by the Bar Council, or by any other person that any such advocate has been guilty of misconduct, the High Court shall, if it does not summarily reject the complaint, refer the case for inquiry either to the Bar Council or, after consultation with the Bar Council, to the Court of a District Judge (hereinafter referred to as a District Court and may of its own motion

so refer any case in which it has otherwise reason to believe that any such advocate has been so guilty.'

10. Sub-section (2) of Section 10 empowers the High Court to refer a complaint made to it for inquiry (1) to the Bar Council and (2) after consultation with the Bar council, to the Court of a District Judge. Admittedly, the present complaint was referred for inquiry to the District Court, Anantapur, in exercise of the powers vested in the High Court under Section 10(2) of the Bar Councils Act. It is not denied that in the present case, the Bar Council was consulted before the District Court was called upon to make the enquiry.

11. The Advocates Act (XXV of 1951) amended and consolidated the law relating to legal practitioners. Sub-section (3) of Section 1 provides:

'It shall come into force on such date as the Central Government may by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.'

12. Section 9(1) provides that a State Bar council shall constitute one or more disciplinary committees, each of which shall consist of five persons of whom three shall be persons elected by the Council from amongst its members and two shall be persons elected by the Council from amongst advocates on its roll who are not members of the council. Similarly the Bar Council of India is empowered, under Section 10(2), to constitute a disciplinary committee consisting of five persons of whom three shall be persons elected by the Council from amongst its members and two shall be persons elected by the Council from amongst advocates on the common roll who are not members of the Council. Section 35(1) provides :

'Where on receipt of a complaint or otherwise 3 state Bar Council 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.'

13. The powers vested in the State Bar council are similar to those vested in the High Court under Section 10(2) of the Bar Councils Act. Section 37 provides that any person aggrieved by an order of the disciplinary committee of a State Bar Council made under Sub-section (3) of Section 35, may, within sixty days of the date of communication of the order to him, prefer an appeal to the Bar Council of India and that every such appeal shall be heard by the disciplinary committee of the Bar Council of India which may pass such order thereon as it deems fit.

14. Sub-section (1) of Section 50 provides:

'On the date on which a State Bar Council is constituted under this Act, the provisions of Sections 3 - 7 (inclusive), Sub-sections (1), (2) and (3) of Section 9, Section 15 and Section 20 of the Indian [Bar Councils Act, 1926](#), shall stand repealed in the territory for which the State Bar Council is constituted.'

15. Notwithstanding the constitution of the State Bar Council and its disciplinary committee, Section 10(2) of the Bar Councils Act and the provisions of the Letters Patent which empower the High Court to take disciplinary action, do not stand repealed. Clauses (c) and (d) of Sub-section (4) of Section 50 specifically provide that those provisions stand repealed only from the date on which Chapter V comes into

force. Sub-Section (4) of Section 50 reads: --

'On the date on which Chapter V comes into force, the following shall stand repealed; namely:--

xxxxx (c) Sections 10 - 13 (inclusive) of the Indian [Bar Councils Act, 1926](#);

(d) the provisions of the Letters Patent of any men Court and of any other law in so far as they relate to the suspension, removal or dismissal of legal practitioners. Sub-section (5) provides:

'When the whole of this Act has come into force:

(a) the remaining provisions of the Acts referred to in this section which do not stand repealed by virtue of any of the foregoing provisions of this section (except sections 1, 3 and 36 of the Legal Practitioners Act, 1879) shall stand repealed:

(b) the enactments specified In the Schedule snan stand repealed to the extent mentioned therein.'

16. Section 56(1)(c) provides that on the constru-tion, under this Act, of a State Bar Council, all proceed-ings pending before the corresponding Bar Council in respect of any disciplinary matter or otherwise shall stand transferred to the new Bar Council.

17. The first question which arises for consideration is:

Whether by virtue of Sub-section (c) of Section 56, the present inquiry should be dealt with by the Bar Council constituted under the Advocates Act?

18. Sub-section (c) contemplates the transter of dis-ciplinary proceedings pending before the erstwhile Bar Council to the new Bar Council constituted under the Advocates Act. The present inquiry was referred to the District Court after consultation with the Bar Council, as provided by Section 10(2) of the Indian Bar Councils Act Clause (c) of Section 56, therefore, does not govern the present the quiry. On a plain reading of that provision, it is clear that it governs cases which were pending before the erstwhile Bar Council and not cases which were referred to tha District Court after consultation with tha Bar Council.

19. There is also the fact that no notification has yet been made bringing into force the provisions of Chnapter v of the Act, which is headed: 'Conduct of Advocates.' Section 35, which occurs in this Chapter, provides for punishment of advocates for misconduct, and for appeals by the aggrieved party to the Bar Council of India. As is manifest from a reading of Section 50, it Is only on the date on which Chapter V comes into force, that Sections 10 - 13 (inclusive), of the Indian [Bar Councils Act, 1926](#), stand repealed and not till then, it is therefore clear that this Court has jurisdiction to deal with the complaint petition preferred to it by the complainant.

20. We will now deal with the merits of the complaint petition. The second of the charges may be disposed or shortly. On a consideration of the relevant material placed before us, we find that the complainant has not substantiated the allegations made by him against the respondent.

41. There remains the first part of the Charges, with regard to which the following undisputed facts may be mentioned. The complainant engaged Messrs. A. Kondappa and K. Purnapragna Rao as Advocates in O. S. 161 of 1958 on the file of the District Munsif's Court, Raya-durg. They filed the suit on September 9, 1958, for a mandatory injunction against defendants 1 and 2 for the closure of a pit dug by them in the complainant's site in front of his house. On October 7, 1958, defendants 1 and 2 tiled an application for impleading the Government as a party-defendant to the suit. On October 13, 1958, the respondent filed his vakalat on behalf of the complainant. The respondent thereafter appeared for the complainant in the early stages of the suit. He filed documents on his behalf. On November-1, 1958, he filed a petition, along with the complainant's affidavit for a local Inspection or the suit site. Subsequently, the respondent was appointed as Pleader doing Government work for the Court of the District Munsif, Rayadurg. He then wrote a letter to the District Collector, Anantapur, intimating him of the fact that he had already filed a vakalat for the complainant in O. S. No. 164 of 1958 and requesting the Collector to make other arrangements for engaging another lawyer for the Government. In reply, the Collector informed the respondent that he might give up his vakalat for the complainant and appear for the Government in the suit, on June 30, 1959, the respondent reported no instructions for the complainant, on the same date, he filed his appearance for the Government.

22. While there is no controversy about these facts, the parties are at variance as to whether the respondent has obtained the consent of the complainant before reporting no Instructions on his behalf and filing his appearance for the Government. On a consideration of the evidence, the learned District Judge found that the respondent had obtained the consent of the complainant before giving up his vakalat for him and before entering appearance for the Government. We are satisfied that this finding is correct.

23. Even so, the question still remains as to whether it was proper on the part of the respondent to have appeared for the Government after having conducted the suit on behalf of the complainant in its initial stages.

24. The relevant provisions of the Code of Civil Procedure are as follows: --

Order 111, Rule 4. '(1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognised agent or by some other person duly authorized by or under a power-of-attorney to make such appointment.

(2) Every such appointment shall be filed in court and shall be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and tiled in court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.'

25. Once an advocate is appointed by a party, such appointment shall continue until and unless it is determined with the leave of the Court by a document subscribed with his signature in his own hand by the client or by the advocate as the case may be and filed into Court or until the proceedings in the suit terminate, or the advocate or the client dies. It is no doubt true that no particular formality is necessary with regard to the leave of the court, out there is nothing in writing by the complainant authorizing the respondent to determine his vakalat.

26. That apart, there is the question of propriety. Rule 20 of the Civil Rules of Practice lays down the circumstances in which an Advocate may appear for the opposite party. It says:

'Except when specially authorized by the Court, or by consent of the party, a pleader who has advised in connection with the institution of a suit, appeal or other proceeding or has drawn pleadings in connection with any such matter, or has during the progress of any such suit, appeal or other proceeding acted for a party, shall not, unless no first gives the party for whom he has advised, drawn pleadings or acted, an opportunity of engaging his services, appear in such suit, appeal or other proceeding, or in any appeal or application for revision arising or in any matter connected therewith for any person, whose interest is opposed to that of his former client :

Provided that the consent of the party shall be presumed if he engages another pleader for him in such suit, appeal or other proceedings without offering an engagement to the pleader whose services he originally engaged. Explanation. Notwithstanding anything hereinbefore contained, a practitioner who discloses to one client the information confided to him in his capacity as a legal practitioner of another without the latter's consent, shall not be protected merely by reason of his being permitted to appear for the other client under this rule'.

27. As pointed out by a Division Bench of this Court consisting of Jaganmohan Reddy and Kumarayya JJ., in *Public Prosecutor v. Venkata Reddy*, : AIR1961AP105 .

'Even apart from any contractual obligation, the courts will, in the exercise of their powers to maintain the highest traditions of the Bar and the profession, preclude advocates from appearing for the opposite party if that is likely to embarrass the advocate or raise a suspicion in the mind of the client with respect to the conduct of his erstwhile advocate or that it is not gentlemanly conduct or that it is improper to do so, or the circumstances are such from which an inference of imparting confidential nature of information can be raised.'

28. In *Mary Lilian Hira Devi v. Digbijal Singh*, AIR 1917 P. C. 80, Sir John Edge observed, at page 84, thus: --

'Before concluding, their Lordships must express their complete assent to the observations of the learned Judges of the High Court on the impropriety of a legal practitioner who has acted for one party in a dispute, such as there was in this case, acting for the other party in subsequent litigation between them relating to or arising out of that dispute. Such conduct is, to say the least of it, open to misconception and is likely to raise suspicion in the mind of the original client and to embitter the subsequent litigation. As the learned Judges of the High Court have said in this case, this is a matter which concerns the honour of the profession.'

29. In *S. P. a Pleader, In The Matter of Air 1934 Pat 352 (SB)*, It was observed.-

'Proper professional conduct is not a mere matter of compliance with technical rules, it is one to which everyone who aspires to be called a gentleman should have an instinctive appreciation.'

30. An advocate or pleader, who has appeared on behalf of one party in a suit, ought not to allow himself to be placed in the position in which there might be some-

suspicion, whether well or ill founded, that his knowledge or his client's case would be used by him on a subsequent occasion in appearing for another party and against his original client. It is no doubt true that while in a case of professional misconduct, it may be necessary to establish breach of confidence or some act which would amount to grossly Improper conduct of an advocate in the discharge of his professional duty, any conduct which may not necessarily amount to that but which is deemed to be improper, suspicious or embarrassing and does not agree with the highest standards of professional morality or ethics, cannot be countenanced. When an advocate accepts a brief, it is his duty to attend to his client's Interest throughout the proceedings in the case, to present his interest properly and to prosecute the case with due diligence. Therefore, to my view, the respondent having once appeared for the complainant, should not have appeared against him in the same suit.

31. It would appear from the material placed before us that the respondent did apprise the District collector that he was already engaged by the complainant and that he might make arrangements for engaging another advocate on behalf of the Government. The reply of the District Collector is most extraordinary. He informed the respondent that he should report no instructions on behalf of the complainant and appear for the Government. It is unfortunate that the respondent took this as a mandate which he was bound to obey.

32. The respondent has apologized for his conduct.

33. Under all the circumstances of the case, we, accept his apology and drop the proceedings. The respondent will however, pay the costs of the complainant which we fix at Rs. 100/-.

LegalCrystal - Indian Law Search Engine - www.legalcrystal.com