D.P. Chadha vs Triyugi Narain Mishra & Ors on 5 December, 2000

Equivalent citations: AIR 2001 SUPREME COURT 457, 2001 AIR SCW 50, 2001 (2) ALL CJ 1225, 2001 (1) UPLBEC 241, (2001) 1 CGLJ 546, 2001 (1) UJ (SC) 131, 2000 (3) JT (SUPP) 505, 2001 ALL CJ 2 1225, 2001 (1) SRJ 79, 2000 (8) SCALE 76, 2001 (2) SCC 221, 2001 (4) LRI 148, (2000) 7 SERVLR 514, (2000) 4 LAB LN 701, (2000) 3 RAJ LR 513, (2001) 1 WLC (RAJ) 27, (2001) 1 RAJ LW 95, (2000) 8 SCALE 76, (2001) 1 EASTCRIC 306, (2001) 3 GUJ LR 2687, (2001) 2 MAD LJ 9, (2001) 1 MAHLR 630, (2001) 1 SCT 338, (2001) 1 SERVLR 280, (2001) 1 UPLBEC 241, (2000) 8 SUPREME 251, (2001) WLC(SC)CVL 42, (2001) 42 ALL LR 435, (2001) 1 ALL WC 407, (2001) 89 DLT 49

Author: R.C. Lahoti

Bench: R.C.Lahoti

CASE NO.:
Appeal (civil) 1124 1998

PETITIONER:
D.P. CHADHA

Vs.

RESPONDENT:
TRIYUGI NARAIN MISHRA & ORS.

DATE OF JUDGMENT: 05/12/2000

BENCH:
R.C.Lahoti, K.G.Balakrishna

JUDGMENT:

R.C. Lahoti, J.

L.....I.....T.....T.....T.....T.....T..J Shri D.P. Chadha, advocate, the appellant, has been held guilty of professional misconduct by Rajasthan State Bar Council and punished with suspension from practice for a period of five years. Shri Anil Sharma, advocate was also proceeded against along with Shri D.P. Chadha, advocate and he too having been found guilty was reprimanded. An appeal

preferred by Shri D.P. Chadha, advocate under Section 37 of the Advocates Act, 1961 has not only been dismissed but the Bar Council of India has chosen to vary the punishment of the appellant by enhancing the period of suspension from practice to ten years. The Bar Council of India has also directed notice to show cause against enhancement of punishment to be issued to Shri Anil Sharma, advocate. The Bar Council of India has further directed proceedings for professional misconduct to be initiated against one Shri Rajesh Jain, advocate. Shri D.P. Chadha, advocate has preferred this appeal under Section 38 of the Advocates Act, 1961 (hereinafter the Act, for short).

It is not disputed that Upasana Construction Pvt. Ltd. had filed a suit for ejectment based on landlord-tenant relationship against the complainant Shri Triyugi Narain Mishra, who was running a school in the tenanted premises wherein about 2000 students were studying. Shri D.P. Chadha was engaged by the complainant for defending him in the suit.

It is not necessary to set out in extenso the contents of the complaint made by Shri Triyugi Narain Mishra to the Bar Council. It would suffice to notice in brief the findings concurrently arrived at by the State Bar Council and the Bar Council of India constituting the gravamen of the charge against the appellant. While the proceedings in the ejectment suit were going on in the Civil Court at Jaipur, the complainant was contesting an election in the State of U.P. Polling was held on 18.11.1993 and again on 22.11.1993 on which dates as also on the days intervening, Shri Triyugi Narain Mishra was in Chilpur in the State of U.P. looking after the election and was certainly not available at Jaipur. Shri D.P. Chadha was in possession of a blank vakalatnama and a blank paper, both signed by the complainant, given to him in the first week of October, 1993. These documents were used for fabricating a compromise petition whereby the complainant has been made to suffer a decree for eviction. The blank vakalatnama was used for engaging Shri Anil Sharma, advocate, on behalf of the complainant, who got the compromise verified. Though the compromise was detrimental to the interest of the complainant yet the factum of compromise and its verification was never brought to the notice of the complainant inspite of ample time and opportunity being available for the purpose. The proceedings of the court show a deliberate attempt having been made by three erring advocates to avoid the appearance of the complainant before the court, to prevent the complainant from gathering knowledge of the compromise filed in court and creating a situation whereby the court was virtually compelled to pass a decree though the court was feeling suspicious of the compromise and wanted presence of complainant to be secured before it before the decree was passed.

The proceedings of the court and the several documents relating thereto go to show that earlier the plaintiff company was being represented by Shri Vidya Bhushan Sharma, advocate. An application was moved on behalf of the plaintiff discharging Shri Vidya Bhushan Sharma from the case and instead engaging Shri Rajesh Jain, advocate on behalf of the plaintiff and in place of Shri Vidya Bhushan Sharma, advocate. On 17.11.1993 Shri D.P. Chadha was present in the court though the defendant was not present when an adjournment was taken from the court stating that there was possibility of an amicable settlement between the parties whereupon hearing was adjourned to 14.2.1994 for reporting compromise or framing of issues. On 20.11.1993, which was not a date fixed for hearing, Shri Rajesh Jain and Shri Anil Sharma, advocates appeared in the court on behalf of the plaintiff and the defendant respectively and filed a compromise petition. Shri Anil Sharma filed Vakalatnama purportedly on behalf of the complainant.

The compromise petition purports to have been signed by the parties as also by Shri Rajesh Jain, advocate on behalf of the plaintiff and Shri Anil Sharma, advocate on behalf of the defendant. The compromise petition is accompanied by another document purporting to be a receipt executed by the complainant acknowledging receipt of an amount of Rs.5 lakhs by way of damages for the loss of school building standing on the premises. The receipt is typed but the date 20.11.1993 is written in hand. A revenue stamp of 20 p. is fixed on the receipt in a side of the paper and at a place where ordinarily the ticket is not affixed. The factum of the defendant having received an amount of Rs.5 lakhs as consideration amount for the compromise does not find a mention in the compromise petition.

The Learned Additional Civil Judge before whom the compromise petition was filed directed the parties to remain personally present before the court on 17.12.1993 so as to verify the compromise. Instead of complying with the orders, Shri Rajesh Jain, advocate filed a misce. civil appeal raising a plea that the trial court was not justified in directing personal appearance of the parties and should have recorded the compromise on verification by the advocates. The complainant Shri Triyugi Narain Mishra was impleaded as respondent through advocate Shri Anil Sharma __ as stated in the cause title of memo of appeal. The appeal was filed on 20.12.1993. Notice of appeal was not issued to the complainant; the same was issued in the name of Shri Anil Sharma, advocate, who accepted the same. Shri Anil Sharma, advocate did not file any vakalatnama on behalf of the complainant in the appeal and instead made his appearance by filing a memo of appearance reciting his authority to appear in appeal on the basis of his being a counsel for the complainant in the trial court. This appeal was dismissed by the Learned Additional District Judge on 24.1.1994 holding the appeal to be not maintainable.

On 30.1.1994, the trial courts record was returned to it by the appellate court. On 17.12.1993 also the trial court had directed personal appearance of the parties. On 16.2.1994 the counsel appearing for the parties (the names of the counsel not mentioned in the order sheet dated 16.2.1994) took time for submitting case law for the perusal of the court. Similar prayer was made on 21.2.1994 and 18.3.1994. On 8.4.1994, the plaintiff was present with his counsel. The defendant/complainant was not present. Shri D.P. Chadha, advocate appeared on behalf of the defendant and argued that personal presence of Shri Triyugi Narain Mishra was not required for verification of compromise and the presence of the advocate was enough for the court to verify the compromise and take the same on record. The court was requested to recall its earlier order directing personal appearance of the parties. A few decided cases were cited by Shri D.P. Chadha, advocate before the court for its consideration. The trial court suspected the conduct of the counsel and passed a detailed order directing personal presence of the defendant to be secured before the court. The trial court also directed a notice to be issued to the defendant for his personal appearance on the next date of hearing before passing any order on the compromise petition.

Shri Rajesh Jain, advocate again filed an appeal against the order dated 8.4.1994. Again the complainant was arrayed as a respondent in the cause title through Shri Anil Sharma, advocate. An application was moved before the appellate court seeking a shorter date of hearing as defendant was likely to go out. On 21.8.1994 the appellate court directed the record of the trial court to be requisitioned. Shri Anil Sharma, advocate appeared in the appellate court without filing any

vakalatnama from the complainant. He conceded to the appeal being allowed and personal appearance of the defendant not being insisted upon for the purpose of recording the compromise. The appellate court was apparently oblivious of the legal position that such a misce. appeal was not maintainable under any provision of law.

Certified copy of the order of the appellate court was obtained in hot haste. Unfortunately, the Presiding Officer of the trial court, who was dealing with the matter, had stood transferred in the meanwhile. An application was filed before the successor Trial Judge by Shri Rajesh Jain, advocate requesting compliance with the order of the appellate court and to record the compromise and pass a decree in terms thereof dispensing with the necessity of personal presence of the parties. On 23.7.1994, the Trial Judge, left with no other option, passed a decree in terms of compromise in the presence of Shri Rajesh Jain & Shri Anil Sharma, advocates. The decree directed the suit premises to be vacated by 30.11.1993 (the date stated in the compromise petition).

Shri Triyugi Narain Mishra, the complainant, moved the State Bar Council complaining of the professional misconduct of the three advocates who had colluded to bring the false compromise in existence without his knowledge and also made all effort to prevent the complainant gathering knowledge of the alleged compromise.

In response of the notice issued by the State Bar Council, Shri Anil Sharma, advocate submitted that he did not know Shri Triyugi Narain Mishra personally. The vakalatnama and the compromise petition were handed over to him by Shri D.P. Chadha, advocate for the purpose of being filed in the court. Shri Anil Sharma was told by Shri D.P. Chadha, advocate that he was not well and if there was any difficulty in securing the decree then he was available to assist Shri Anil Sharma. In the two misce. civil appeals preferred by Shri Rajesh Jain, advocate, Shri Anil Sharma accepted the notices of the appeals on the advice of Shri D.P. Chadha, advocate.

Shri D.P. Chadha, advocate took the plea that he was not aware of the compromise petition and the various proceedings relating thereto leading to verification of the compromise and passing of the decree. He submitted that he never obtained blank paper or blank vakalatnama signed by any one at any time and not even Shri Triyugi Narain Mishra, the complainant. He also submitted that on 8.4.1994 his presence has been wrongly recorded in the proceedings and he had not appeared before the court to argue that the personal presence of the parties was not required for verification of compromise petition filed in the court and counsel was competent to sign and verify the compromise whereon the court should act.

Amongst other witnesses the complainant and the three counsel have all been examined by the State Bar Council and cross examined by the parties to the disciplinary proceedings. The defence raised by the appellant has been discarded by the State Bar Council as well as by the Bar Council of India in their orders. Both the authorities have dealt extensively with the improbabilities of the defence and assigned detailed reasons in support of the findings arrived at by them. Both the authorities have found the charge against the appellant proved to the hilt. The statement of the complainant has been believed that he had never entered into any compromise and he did not even have knowledge of it. His statement that Shri D.P. Chadha, the appellant, had obtained blank paper and blank

vakalatnama signed by him and the same have been utilised for the purpose of fabricating the compromise and appointing Shri Anil Sharma, advocate, has also been believed. Here it may be noted that Shri D.P. Chadha had denied on oath having obtained any blank paper or vakalatnama from Shri Triyugi Narain Mishra. However, while cross-examining the complainant first he was pinned down in stating that only one paper and one vakalatnama (both blank) were signed by him and then Shri D.P. Chadha produced from his possession one blank vakalatnama & one blank paper signed by the complainant. The Bar Council has found that the blank paper, so produced by the appellant, bore the signature of the complainant almost at the same place of the blank space at which the signature appears on the disputed compromise. Production of signed blank vakalatnama and blank paper from the custody of the complainant before the Bar Council belied the appellants defence emphatically raised in his written statement. On 8.4.1994 the presence of the appellant is recorded by the trial court at least at two places in the order sheet of that date. It is specifically recorded in the context of his making submissions before the court relying on several rulings to submit that personal appearance of the party was not necessary to have the compromise verified and taken on record. The appellant had not moved the court at any time for correcting the record of the proceedings and deleting his appearance only if the order sheet did not correctly record the proceedings of the court. On and around the filing of the compromise petition before the trial court the appellant was keeping a watch on the proceedings and noting the appointed dates of hearing though he was not actually appearing in the court on the dates other than 8.4.1994. In short, it has been found both by the State Bar Council and the Bar Council of India that the complainant had not entered in any compromise and that he was not even aware of it. Blank vakalatnama and blank paper entrusted by him in confidence to his counsel, i.e. the appellant, were used for the purpose of bringing a false compromise into existence and appointing Shri Anil Sharma, advocate for the defendant, without his knowledge, to have compromise verified and brought on record followed by a decree. Shri Vidya Bhushan Sharma, the counsel originally appointed by the plaintiff might not have agreed to a decree being secured in favour of the plaintiff on the basis of a false compromise and that is why he was excluded from the proceedings and instead Shri Rajesh Jain was brought to replace him. The decree resulted into closure of the school, demolition of school building and about 2000 students studying in the school being thrown on the road.

We have heard the learned counsel for the parties at length. We have also gone through the evidence and the relevant documents available on record of the Bar Council. We are of the opinion that the State Bar Council as well as the Bar Council of India have correctly arrived at the findings of the fact and we too find ourselves entirely in agreement with the findings so arrived at.

In the very nature of things there was nothing like emergency, not even an urgency for securing verification of compromise and passing of a decree in terms thereof. Heavens were not going to fall if the recording of the compromise was delayed a little and the defendant was personally produced in the court who was certainly not available in Jaipur being away in the State of U.P. contesting an election. The counsel for the parties were replaced apparently for no reason. The trial court entertained doubts about the genuineness of the compromise and therefore directed personal appearance of the parties for verification of the compromise. The counsel appearing in the case made all possible efforts at avoiding compliance with the direction of the trial court and to see that the compromise was verified and taken on record culminating into a decree without the knowledge

of the defendant/complainant. Instead of securing presence of the defendant before the court, the counsel preferred misce. appeals twice and ultimately succeeded in securing an appellate order, which too is collusive, directing the trial court to verify and take on record the compromise without insisting on personal appearance of the defendant. Such miscellaneous appeal, as was preferred, was not maintainable under Section 104 or Order 43 Rule 1 of the C.P.C. or any other provision of law. In an earlier round the appellate court had expressed that view. The proceedings in the appellate court as also before the trial court show an effort on the part of the counsel appearing thereat to have the matter as to compromise disposed of hurriedly, obviously with a view to exclude the possibility of the defendant-complainant gathering any knowledge of what was transpiring.

Order 23 Rule 3 of the C.P.C. reads as under:-

> Compromise of suit. __ Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, in writing and signed by the parties, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit.

xxx xxx xxx xxx xxx xxx xxx xxx Byram Pestonji Gariwala Vs. Union of India & Ors. AIR 1991 SC 2234 is an authority for the proposition that inspite of the 1976 Amendment in Order 23 Rule 3 of the C.P.C. which requires agreement or compromise between the parties to be in writing and signed by the parties, the implied authority of counsel engaged in the thick of the proceedings in court, to compromise or agree on matters relating to the parties, was not taken away. Neither the decision in Byram Pestonji Gariwala nor any other authority cited on 8.4.1994 before the trial court dispenses with the need of the agreement or compromise being proved to the satisfaction of the court. In order to be satisfied whether the compromise was genuine and voluntarily entered into by the defendant, the trial court had felt the need of parties appearing in person before the court and verifying the compromise. In the facts & circumstances of the case the move of the counsel resisting compliance with the direction of the court was nothing short of being sinister. The learned Additional District Judge who allowed the appeal preferred by Shri Rajesh Jain unwittingly fell into trap. It was expected of the learned Additional District Judge, who must have been a senior judicial officer, to have seen that he was allowing an appeal which was not even maintainable. But for his order the learned Judge of the trial court would not have taken on record the compromise and passed decree in terms thereof unless the parties had personally appeared before him. In our opinion the appellant Shri D.P. Chadha was not right in resisting the order of the trial court requiring personal appearance of the defendant for verifying the compromise. This resistance speaks volumes of sinister design working in the minds of the guilty advocates. Even during the course of these proceedings and also during the course of

> hearing of the appeal before us there is not the slightest indication of any justification behind resistance offered by the counsel to the appearance of the defendant in the trial court. The correctness of the proceedings dated 8.4.1994 as recorded by the court cannot be doubted. The order sheet of the trial court dated 8.4.1994 records as under:
>
> 8.4.94 (Cutting). Plaintiff with counsel present.

Defendants counsel Shri D.P.Chadha present. Arguments heard. Judicial precedents A.I.R. 1980 Cal 51, A.I.R. 1976 Raj. 195, A.I.R. 1991 SC 2234 cited by Shri D.P. Chadha perused. In the matter under consideration, compromise was filed on 20.11.93 and the same day the counsel were directed to keep the parties present in court but parties were not produced. On behalf of the plaintiff- appellant, an appeal was also preferred against the order dated 20.11.93 before the Honble Distt. & Sessions Judge but the order of trial court being not appealable, appeal has been dismissed.

Para No.40 of the decision A.I.R. 1991 SC 2234 is as under :

> Accordingly, we are of the view that the words in writing and signed by the parties inserted by the CPC(Amendment) Act, 1976 must necessarily mean to borrow the language of Order III R.1 CPC.
>
> Any appearance . . . . . or by a pleader appearing applying or acting as the case may be on his behalf.
>
> Provided that any such appearance shall if the court so desires be made by the party in person.
>
> Thus in my view the court can direct any party to be present in court under Order III R.1 in compliance with the said decision of Honble Supreme Court. The counsel for the defendant has not produced the defendant in court. Therefore, notice be issued to the defendant to appear personally in court. For service of notice, the case be put up on 5.5.94. Before (cutting) preparing the decree on the basis of compromise, I deem it proper in the interest of justice to direct the opposite party to personally appear in the court.
>
> Sd/- Illegible Seal of Addl. Civil Judge & Addl. Chief Judl. Magistrate No.6, Jaipur City.
>
> [underlining by us] The record of the proceedings made by the court is sacrosanct. The correctness thereof cannot be doubted merely for asking. In State of Maharashtra Vs. Ramdas Shrinivas Nayak & Anr. AIR 1982 SC 1249, this court has held . . . . . .the Judges record was conclusive. Neither lawyer not litigant may claim to contradict it, except before the Judge himself, but nowhere else. The court could not launch into inquiry as to what transpired in the High Court.

The Court is bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. It cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there.

Again in Bhagwati Prasad & Ors. Vs. Delhi State Mineral Development Corporation - AIR 1990 SC 371 this Court has held : It is now settled law that the statement of facts recorded by a Court or Quasi-Judicial Tribunal in its proceedings as regards the matters which transpired during the hearing before it would not be permitted to be assailed as incorrect unless steps are taken before the same forum. It may be open to a party to bring such statement to the notice of the Court/Tribunal and to have it deleted or amended. It is not, therefore, open to the parties or the Counsel to say that the proceedings recorded by the Tribunal are incorrect.

The explanation given by the appellant for not moving the trial court for rectification in the record of proceedings is that the presiding judge of the court had stood transferred and therefore it would have been futile to move for rectification. Such an explanation is a ruse merely. The application for rectification should have been moved as the only course permissible and, if necessary, the record could have been sent to that very judge for dealing with prayer of rectification wherever he was posted. In the absence of steps for rectification having been taken a challenge to the correctness of the facts recorded in order sheet of the court cannot be entertained, much less upheld. We agree with the finding recorded in the order under appeal that the proceedings dated 8.4.1994 correctly state the appellant having appeared in the court and argued the matter in the manner recited therein.

The term misconduct has not been defined in the Act. However, it is an expression with a sufficiently wide meaning. In view of the prime position which the advocates occupy in the process of administration of justice and justice delivery system, the courts justifiably expect from the lawyers a high standard of professional and moral obligation in the discharge of their duties. Any act or omission on the part of a lawyer which interrupts or misdirects the sacred flow of justice or which renders a professional unworthy of right to exercise the privilege of the profession would amount to misconduct attracting the wrath of disciplinary jurisdiction. In the Bar Council of Maharashtra Vs. M.V. Dabholkar (1976 (2) SCC 291), Krishna Iyer, J. said

that the vital role of the lawyer depends upon his probity and professional lifestyle. The central function of the legal profession is to promote the administration of justice. As monopoly to legal profession has been statutorily granted by the nation, it obligates the lawyer to observe scrupulously those norms which make him worthy of confidence of community in him as a vehicle of justice ___ social justice. The Bar cannot behave with doubtful scruples or strive to thrive on litigation. Canons of conduct cannot be crystalised into rigid rules but felt by the collective conscience of the practitioners as right. Law is no trade, briefs no merchandise. Foreseeing the role which the legal profession has to play in shaping the society and building the nation, Krishna Iyer, J. goes on to say ___ For the practice of Law with expanding activist horizons, professional ethics cannot be contained in a Bar Council rule nor in traditional cant in the books but in new canons of conscience which will command the members of the calling of justice to obey rules of morality and utility, clear in the crystallized case-law and concrete when tested on the qualms of high norms ___ simple enough in given situations, though involved when expressed in a single sentence.

A mere error of judgment or expression of a reasonable opinion or taking a stand on a doubtful or debatable issue of law is not a misconduct; the term takes its colour from the underlying intention. But at the same time misconduct is not necessarily something involving moral turpitude. It is a relative term to be construed by reference to the subject matter and the context wherein the term is called upon to be employed. A lawyer in discharging his professional assignment has a duty to his client, a duty to his opponent, a duty to the court, a duty to the society at large and a duty to himself. It needs a high degree of probity and poise to strike a balance and arrive at the place of righteous stand more so when there are conflicting claims. While discharging duty to the court, a lawyer should never knowingly be a party to any deception, design or fraud. While placing the law before the court a lawyer is at liberty to put forth a proposition and canvass the same to the best of his wits and ability so as to persuade an exposition which would serve the interest of his client so long as the issue is capable of that resolution by adopting a process of reasoning. However, a point of law well settled or admitting of no controversy must not be dragged into doubt solely with a view to confuse or mislead the Judge and thereby gaining an undue advantage to the client to which he may not be entitled. Such conduct of an advocate becomes worse when a view of the law canvassed by him is not only unsupportable in law but if accepted would damage the interest of the client and confer an illegitimate advantage on the opponent. In such a situation the wrong of the intention and impropriety of the conduct is more than apparent. Professional misconduct is grave when it consists of betraying the confidence of a client and is gravest when it is a deliberate attempt at misleading the court or an attempt at practising deception or fraud on the court. The client places his faith and fortune in the hands of the counsel for the purpose of that case; the court places its confidence in the counsel in case after case and day after day. A client dissatisfied with his counsel may change him but the same is not with the court. And so the bondage of

trust between the court and the counsel admits of no breaking.

In George Frier Grahame Vs. Attorney-General, Fiji [AIR 1936 PC 224] the Privy Council has approved the following definition of professional misconduct given by Darling J. in Re A Solicitor ex parte the Law Society [(1912) 1 KB 302] -

If it is shown that an Advocate in the pursuit of his profession has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency, then it is open to say that he is guilty of professional misconduct.

It has been a saying as old as the profession itself that the court and counsel are two wheels of the chariot of justice. In adversarial system it will be more appropriate to say __ while the Judge holds the reigns, the two opponent counsel are the wheels of the chariot. While the direction of the movement is controlled by the Judge holding the reigns, the movement itself is facilitated by the wheels without which the chariot of justice may not move and may even collapse. Mutual confidence in the discharge of duties and cordial relations between Bench and Bar smoothen the movement of chariot. As a responsible officer of the court, as they are called __ and rightly, the counsel have an over all obligation of assisting the courts in a just and proper manner in the just and proper administration of justice. Zeal and enthusiasm are the traits of success in profession but over- zealousness and misguided enthusiasm have no place in the personality of a professional.

An advocate while discharging duty to his client, has a right to do every thing fearlessly and boldly that would advance the cause of his client. After all he has been engaged by his client to secure justice for him. A counsel need not make a concession merely because it would please the Judge. Yet a counsel, in his zeal to earn success for a client, need not step over the well defined limits or propriety, repute and justness. Independence and fearlessness are not licences of liberty to do anything in the court and to earn success to a client whatever be the cost and whatever be the sacrifice of professional norms.

A lawyer must not hesitate in telling the court the correct position of law when it is undisputed and admits of no exception. A view of the law settled by the ruling of a superior court or a binding precedent even if it does not serve the cause of his client, must be brought to the notice of court unhesitatingly. This obligation of a counsel flows from the confidence reposed by the court in the counsel appearing for any of the two sides. A counsel, being an officer of court, shall apprise the Judge with the correct position of law whether for or against either party.

Mr. Justice Crampton, an Irish Judge, said in Queen Vs. OConnell, 7 Irish Law Reports, at page 313:

The advocate is a representative but not a delegate. He gives to his client the benefit of his learning, his talents and his judgment; but all through he never forgets what he owes to himself and to others. He will not knowingly misstate the law, he will not wilfully misstate the facts, though it be to gain the case for his client. He will ever bear in mind that if he be an advocate of an individual and retained and remunerated often inadequately, for valuable services, yet he has a prior and perpetual retainer on behalf of truth and justice and there is no Crown or other license which in any case or for any party or purpose can discharge him from that primary and paramount retainer.

We are aware that a charge of misconduct is a serious matter for a practising advocate. A verdict of guilt of professional or other misconduct may result in reprimanding the advocate, suspending the advocate from practice for such period as may be deemed fit or even removing the name of the advocate from the roll of advocates which would cost the counsel his career. Therefore, an allegation of misconduct has to be proved to the hilt. The evidence adduced should enable a finding being recorded without any element of reasonable doubt. In the present case, both the State Bar Council and the Bar Council of India have arrived at, on proper appreciation of evidence, a finding of professional misconduct having been committed by the appellant. No misreading or non-reading of the evidence has been pointed out. The involvement of the appellant in creating a situation resulting into recording of a false and fabricated compromise, apparently detrimental to the interest of his client, is clearly spelled out by the findings concurrently arrived at with which we have found no reason to interfere. The appellant canvassed a proposition of law before the court by pressing into service such rulings which did not support the interpretation which he was frantically persuading the court to accept. The provisions of Rule 3 of Order 23 are clear. The crucial issue in the case was not the authority of a counsel to enter into a compromise, settlement or adjustment on behalf of the client. The real issue was of the satisfaction of the court whether the defendant had really, and as a matter of fact, entered into settlement. The trial judge entertained a doubt about it and therefore insisted on the personal appearance of the party to satisfy himself as to the correctness of the factum of compromise and genuineness of the statement that the defendant had in fact compromised the suit in the manner set out in the petition of compromise.

The power of the court to direct personal presence of any party is inherent and implicit in jurisdiction vesting in the court to take decision. This power is a necessary concomitant of courts obligation to arrive at a satisfaction and record the same as spelt out from the phraseology of Order 23 Rule 3 C.P.C.. It is explicit in Order 3 Rule 1. This position of law admits of no doubt. Strong resistance was offered to an innocuous and cautious order of the court by canvassing an utterly misconceived proposition, even by invoking a wrong appellate forum and with an ulterior motive. The counsel appearing for the defendant, including the appellant, did their best to see that their own client did not appear in the court and thereby gather knowledge of

such proceedings. At no stage, including the hearing before this court, the appellant has been able to explain how and in what manner he was serving the interest of his client, i.e. the defendant in the suit by raising the plea which he did. What was the urgency of having the compromise recorded without producing the defendant in-person before the court when the court was insisting on such appearance? The compromise was filed in the court. The defendant was away electioneering in his constituency. At best or at the worst, the recording of the compromise would have been delayed by a few days. In the facts and circumstances of the case we find no reason to dislodge the finding of professional misconduct as arrived at by the State Bar Council and the Bar Council of India.

It has been lastly contended by the learned counsel for the appellant that the Bar Council of India was not justified in enhancing the punishment by increasing the period of suspension from practice from 5 years to 10 years. It is submitted that the order enhancing the punishment to the prejudice of the appellant is vitiated by non-compliance with principles of natural justice and also for having been passed without affording the appellant a reasonable opportunity of being heard.

Section 37 of the Advocates Act, 1961 provides as under:- 37. Appeal to Bar Council of India. - (1) Any person aggrieved by an order of the disciplinary committee of a State Bar Council made under Section 35 [or the Advocate General of the State] may, within sixty days of the date of communication of the order to him, prefer an appeal to the Bar Council of India.

(2) Every such appeal shall be heard by the disciplinary committee of the Bar Council of India which may pass such order [including an order varying the punishment awarded by the disciplinary committee of the State Bar Council] thereon as it deems fit :

[Provided that no order of the disciplinary committee of the State Bar Council shall be varied by the disciplinary committee of the Bar Council of India so as to prejudicially affect the person aggrieved without giving him reasonable opportunity of being heard.} Very wide jurisdiction has been conferred on the Bar Council of India by sub-section (2) of Section 37. The Bar Council of India may confirm, vary or reverse the order of the State Bar Council and may remit or remand the matter for further hearing or rehearing subject to such terms and directions as it deems fit. The Bar Council of India may set aside an order dismissing the complaint passed by the State Bar Council and convert it into an order holding the advocate proceeded against guilty of professional or other misconduct. In such a case, obviously, the Bar Council of India may pass an order of punishment which the State Bar Council could have passed. While confirming the finding of guilt the Bar Council of India may vary the punishment awarded by the Disciplinary Committee of the State Bar Council which power to vary would include the power to enhance the punishment. An order enhancing the punishment, being an order prejudicially affecting the advocate, the

proviso mandates the exercise of such power to be performed only after giving the advocate reasonable opportunity of being heard. The proviso embodies the rule of fair hearing. Accordingly, and consistently with the well-settled principles of natural justice, if the Bar Council of India proposes to enhance the punishment it must put the guilty advocate specifically on notice that the punishment imposed on him is proposed to be enhanced. The advocate should be given a reasonable opportunity of showing cause against such proposed enhancement and then he should be heard.

In the case at hand we have perused the proceedings of the Bar Council of India. The complainant did not file any appeal or application before the Bar Council of India praying for enhancement of punishment. The appeal filed by the appellant was being heard and during the course of such hearing it appears that the Disciplinary Committee of the Bar Council of India indicated to the appellants counsel that it was inclined to enhance the punishment. This is reflected by the following passage occurring in the order under appeal:- While hearing the matter finally parties were also heard as to the enhancement of sentence.

The appellant himself was not present on the date of hearing. He had prayed for an adjournment on the ground of his sickness which was refused. The counsel for the appellant was heard in appeal. It would have been better if the Bar Council of India having heard the appeal would have first placed its opinion on record that the findings arrived at by the State Bar Council against the appellant were being upheld by it. Then the appellant should have been issued a reasonable notice calling upon him to show cause why the punishment imposed by the State Bar Council be not enhanced. After giving him an opportunity of filing a reply and then hearing him the Bar Council could have for reasons to be placed on record, enhanced the punishment. Nothing such was done. The exercise by the Bar Council of India of power to vary the sentence to the prejudice of the appellant is vitiated in the present case for not giving the appellant reasonable opportunity of being heard. The appellant is about 60 years of age. The misconduct alleged relates to the year 1993. The order of State Bar Council was passed in December 1995. In the fact and circumstances of the case we are not inclined to remit the matter now to the Bar Council of India for compliance with the requirements of proviso to sub-section (2) of Section 37 of the Act as it would entail further delay and as we are also of the opinion that the punishment awarded by the State Bar Council meets the ends of justice.

For the foregoing reasons the appeal is partly allowed. The finding that the appellant is guilty of professional misconduct is upheld but the sentence awarded by the Rajasthan State Bar Council suspending the appellant from practice for a period of five years is upheld and restored. Accordingly, the order of the Bar Council of India, only to the extent of enhancing the punishment, is set aside. No order as to the costs.

The Bar Council of India, by its order under appeal, directed notices to be issued to Shri Rajesh Jain & Shri Anil Sharma, Advocates, respectively, for initiating

proceedings for professional misconduct and for enhancement of punishment. During the course of hearing we had enquired from the learned counsel for the parties as to what was the status of such proceedings. We were told that the proceedings were lying where they were presumably because the records of the State Bar Council and the Bar Council of India were requisitioned here. The records shall be sent back and the proceedings, directed to be initiated, shall now be commenced without any further loss of time. We, however, express no opinion regarding that aspect of the matter at this stage.

. . . . . .

. . .CJI.

. . . . . .

. . . . .J. (R.C. Lahoti) . . . . . .

. . . . .J. (K.G. Balakrishnan) New Delhi; December 5, 2000.