Vasant D. Bhavsar vs Bar Council Of India & Ors. on 12 November, 1998

Equivalent citations: JT1999(5)SC420, 1998(6)SCALE282, (1999)1SCC45, AIRONLINE 1998 SC 101, (1999) 4 ALL WC 2822, (1999) 1 MAH LJ 185, 1999 (1) SCC 45, (1999) 4 SCT 878, (1999) 3 EAST CRI C 269, (1998) 6 SCALE 282, (1999) 4 CIV LJ 82, (1999) 37 ALL LR 115, (1999) 5 JT 420, (1999) 5 JT 420 (SC), 1999 ALL CJ 1 552

Bench: S.P. Bharucha, V.N. Khare

ORDER

C.A.No. 2625 of 1997

1. This is an appeal against an order dated 5th October, 1996 passed by the Disciplinary Committee of the Bar Council of India on a complaint made by the third respondent against the appellant, a practising lawyer. The said Disciplinary Committee found that the appellant had misconducted himself within the meaning of Section 35 of he Advocates Act, 1961 and had acted in a manner unbecoming of a lawyer and his professional ethics. The appellant was, therefore suspended from practice for a period of two years.

2. The complaint, by the third respondent, was originally filed before the Bar Council of Maharashtra. The Disciplinary Committee thereof found the appellant guilty of professional misconduct and suspended him from practice as an advocate for a period of three years commencing 1st July, 1992. The appellant carried the matter in appeal to the Bar Council of India, which, for technical reasons, set aside the order of the Maharashtra Disciplinary Committee and remanded the matter. A period of one year having elapsed thereafter, by reason of Section 36B of the Advocates Act the matter came to be heard by the said Disciplinary Committee of the Bar Council of India. The evidence that had been led before the MAharashtra Disciplinary Committee was the only evidence that was required to be considered.

3. We do not find any discussion of the evidence in the impugned order of the said Disciplinary Committee. It is not enough to state that the evidence on record proved beyond the shadow of a doubt that the complainant had consulted the appellant and, when the appellant did not take any interest in her case, she lost it before the Prant Officer for want of documents which were in the appellants custody, being filed in support of her case and that she intended to challenge the order before the High Court and, therefore, she approached the appellant for the return of those documents again and was confronted with the demand for payment of Rs.3,000/- where upon she initiated the disciplinary proceedings against the appellant. We find, having (sic) the evidence, that it was admitted by the complainant in cross-examination that the vakalatnama that the appellant had given her "was not presented before the Circle Officer. It was also not produced be (sic) me

either before the Tehsildar or the Prant Officer". In fact, the original vakalatnama was produced by the complainant from her possession and placed on the record. If the vakalatnama of the appellant had not been filed before these authorities, it is difficult to see how the appellant could have been held to be guilty of dereliction of duty for not appearing before them on behalf of the complainant. There is no documentary proof whatever that fees were paid by the complainant to the appellant. Even as to the documents which were supposed to have been handed over to the appellant for being produced before the authorities aforementioned, there is no receipt. In any case, it is difficult to see why the documents would have been handed over by the complainant to him for being produced before the authorities when his vakalatnama was not filed by the complainant before them. Our reading of the evidence leads to grave doubt about the veracity of the complainant and he benefit of doubt must go to the appellant.

4. We think that we should impress upon the Disciplinary Committees of the Bar Council that their orders in disciplinary matters should be speaking orders, they must set out the reasons for which they are passed. Where the orders are based upon evidence as is usually the case with complaints against advocates, there must be some analysis of the evidence and the conclusion must be based on such analysis. It is not enough to state the conclusions without indicating the material on the record upon which such conclusions (sic) based.

5. The appeal is allowed. The order under appeal is set aside. The complaint filed by the third respondent is dismissed.

6. Having regard to the conclusion we have reached in the above appeal, this appeal against the review petition does not survive. It is disposed of accordingly.