

B Sunitha vs The State Of Telangana on 5 December, 2017

Equivalent citations: AIR 2017 SUPREME COURT 5727, 2018 (1) SCC 638, 2018 CRI. L. J. 715, AIR 2018 SC (CRIMINAL) 342, 2018 ACD 143 (SC), (2018) 246 DLT 196, (2018) 1 ALLCRIR 129, (2018) 1 PUN LR 175, (2017) 4 CRILR(RAJ) 1240, (2018) 1 RECCRIR 102, (2019) 1 GUJ LH 157, (2018) 1 CRIMES 66, (2017) 4 KER LJ 946, (2018) 1 KER LT 186, (2018) 4 MAH LJ 27, (2018) 3 MPLJ 32, (2018) 1 ORISSA LR 618(2), (2018) 69 OCR 400, (2017) 14 SCALE 66, (2018) 2 UC 903, (2018) 1 CGLJ 268, (2018) 1 ALD(CRL) 42, (2018) 1 BOMCR(CRI) 293, (2018) 1 ALLCRILR 596, (2018) 2 CIVLJ 1, (2018) 1 PAT LJR 110, (2018) 1 RAJ LW 299, (2018) 1 JLJR 35, (2018) 1 GAU LT 1, (2018) 181 ALLINDCAS 70 (SC), (2018) 1 NIJ 1, (2018) 3 MH LJ (CRI) 36, (2018) 1 CURCRIR 25, (2018) 1 MADLW(CRI) 497, (2018) 2 MAD LW 289, 2017 CRILR(SC MAH GUJ) 1240, 2017 CRILR(SC&MP) 1240, (2018) 1 CIVILCOURTC 581, (2018) 102 ALLCRIC 271, (2018) 1 BANKCAS 362, 2018 (1) SCC (CRI) 246, (2018) 1 BOM CR 16, AIRONLINE 2017 SC 13

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Bench: Uday Umesh Lalit, Adarsh Kumar Goel

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2068 OF 2017
(ARISING OUT OF SPECIAL LEAVE PETITION (CRL.) NO.10700 OF
2015)

B. SUNITHA

...APPELLANT

VERSUS

THE STATE OF TELENGANA & ANR.

...RESPONDENT

JUDGMENT

ADARSH KUMAR GOEL, J.

1. This appeal has been preferred against the order dated 14th October, 2015 of the High Court of Judicature at Hyderabad in CRLP No.3526 of 2015, thereby, the High Court declined to quash the proceedings initiated against the appellant under Section 138 of the Negotiable Instruments Act, 1881('the Act').

2. The proceedings were initiated by the respondent who is an advocate in whose favour the appellant executed a cheque allegedly towards his fee. The same was dishonoured. The stand of the appellant is that Section 138 of the Act is not attracted as there was no legally enforceable debt. The appellant having already paid a sum of Rs.10 lakhs towards fee, the cheque was taken from the appellant by way of abuse of position and the transaction was void under Section 23 of the Indian Contract Act, 1872 ('Contract Act'). Claim for fee based on percentage of the decretal amount was unethical. It was submitted that the appellant, as a client, being in fiduciary relationship, burden to prove that the fee was reasonable and had been voluntarily agreed to be paid was on the Advocate. The Advocate by using his professional position could not be allowed to exploit a client by taking signatures on a cheque and no presumption of enforceable debt arises, specially when no account maintained in regular course of business was furnished.

3. Reference may be briefly made to the facts on record. The appellant's husband died in a motor accident on 30 th July, 1998. She along with her children and parents of the deceased filed a claim before the Motor Accident Claims Tribunal (MACT) through the respondent as an advocate. The MACT awarded compensation. The appellant paid a sum of Rs.10 lakhs towards fee on various dates. However, the respondent forced the appellant to sign another cheque of Rs.3 lakh on 25th October, 2014 despite her stating that she was unable to pay more fee as she had no funds in her account. The respondent sent e-mail dated 2 nd November, 2014 claiming his fee to be 16% of the amount received by the appellant.

4. Complaint dated 11th December, 2014 was filed before the Court under Section 138 of the Act stating inter alia that the cheque which was issued in discharge of liability having been returned unpaid for want of funds, the appellant committed the offence for which she was liable to be punished. The appellant was summoned by the Court against which she approached the High Court stating that there was no legally enforceable debt as fee claimed was exorbitant and against law. The claim was in violation of Advocates Fee Rules and Ethics as fee could not be demanded on percentage of amount awarded as compensation to the appellant. Her signatures were taken when she was under

distress.

5. The petition was contested by the respondent by submitting that the appellant having agreed to pay the professional fee and having availed his professional services, she could not contest the claim for fee. It was submitted that the respondent had engaged services of other senior advocates and paid huge amount for their services at various courts including the Supreme Court.

6. The appellant, in support of her prayer for quashing, inter alia, argued before the High Court that the fee claimed by the respondent was against the A.P. Advocates' Fee Rules, 2010 of Subordinate Courts. It was also submitted that the claim of the respondent was against ethics and public policy and hit by Section 23 of the Contract Act.

7. The High Court held that Advocates' Fee Rules are only for guidance and there was no bar to fee being claimed beyond what is fixed under the Rules. The claim of the respondent was that the amount included his fee for engaging an advocate in the High Court and the Supreme Court. Thus, the High Court dismissed the quashing petition.

8. We have heard learned counsel for the parties and perused the record.

9. The main contention raised on behalf of the appellant is that charging percentage of decretal amount by an advocate is hit by Section 23 of the Contract Act being against professional ethics and public policy, the cheque issued by the appellant could not be treated as being in discharge of any liability by the appellant. No presumption arose in favour of the respondent that the cheque represented legally enforceable debt. In any case, such presumption stood rebutted by settled law that claim towards Advocate's fee based on percentage of result of litigation was illegal. Signing of the cheque was by way of exploitation of fiduciary relationship of Advocate and the client.

10. In support of his submission that charging of exorbitant fee and calculating the sum with reference to the result of the litigation was against public policy, reliance has been placed on judgments of this Court in *In the matter of Mr. G., a Senior Advocate of the Supreme Court*¹, *R.D. Saxena versus Balram Prasad Sharma*², *V.C. Rangadurai versus D. Gopalan*³

11. Learned counsel for Respondent No.2-complainant supports the impugned order. He submitted that the cheque of the appellant having dishonored, statutory presumption was available in his favour and no ground was made out for quashing. There was no legal bar to the claim of the complainant towards his 1 (1955) 1 SCR 490 at 494 2 (2000) 7 SCC 264, para 41 3 (1979) 1 SCC 308 professional fees. Learned counsel for the complainant did not dispute that a sum of Rs.10 lakhs has already been received towards fee. There was no written agreement about the quantum of fee nor any account was maintained. He also did not dispute the e-mail dated 2nd November, 2014 wherein basis of the claim of fee is 16% of the decretal amount received by the appellant.

12. The first question which needs consideration is whether fee can be determined with reference to percentage of the decretal amount. Second question is whether the determination of fee can be unilateral⁴ and if the client disputes the quantum of fee whether the burden to prove the contract of fee will be on the advocate or the client. Third question is whether the professional ethics require regulation of exploitation in the matter of fee.

13. One of the issues was dealt with by a single Bench Judgment of the Madras High Court in *C. Manohar versus B.R. Poornima*⁵. *R. Banumathi, J* (as her Lordship then was) held that no presumption could arise merely by issuance of a cheque that amount stipulated in the cheque was payable towards fee. In absence of independent proof, issuance of cheque could not furnish cause of

action under Section 138 of the Act in the context 4 J.S. Vasu versus State of Punjab (1994) 1 SCC 184, para 20 5 (2004) CrL.L.J 443 of an advocate or client. The observations relevant in the context are as follows :

“The case in hand is an example of the present day trend of the legal profession. Legal profession is essentially service oriental. Ancestor of today's lawyers was no more than a spokesperson, who rendered his services to the needy members of the society, by putting forth their case before the authorities. Their services were rendered without regard to remuneration received or to be received. With the growth of litigation, legal profession became a full time occupation. The trend of the legal profession has changed ... profession has almost become a trade. There is no more service orientation.

12. The relationship between the lawyer and the client is one of trust and confidence. The client engages a lawyer for personal reasons and is at liberty to leave him for the same reasons.

Considering the relationship between the lawyer and the client and the present day trend in the profession, it has to be carefully seen whether the complainant has proved that the amount due of Rs. 43.600/- is being payable towards him.

13. To attract the penal provisions under Section 138 N. I. Act, a cheque must have been drawn by the accused on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge in whole or in part, of any debt or other liability due. That means, the cheque must have been issued in discharge of debt or other liability wholly or in part. The cheque given for any other reasons not for the satisfaction of any debt or other liability, even if it is returned unpaid-, will not meet with penal consequences.

14. Case of the complainant is that on behalf of the accused, he has filed claim petitions in M. C. O. P. Nos. 2339 of 1992 and 246 of 1993. Two civil cases were also filed. There is nothing to show that the complainant/Advocate himself has paid the stamp duty and bore the legal fees. The complainant has not produced any agreement showing as to what was the arrangement between him and the accused, as to how much is the fee payable and whether the accused agreed for payment of stamp duty by her counsel itself. In the absence of any agreement, Ex. P-1 cheque cannot be said to have been issued for the purpose of discharge of any substantial debt or liability. Urging the Court to raise the presumption under Section 139 N. I. Act, the learned counsel for the appellant has relied upon M/s. Modi Cements Ltd. versus Kuchil Kumar Nandi [(1998) 3 SCC 249] wherein the Supreme Court has held that once the cheque is issued by the drawer a presumption under Section 139 N. I. Act must follow and merely because the drawer issues a notice to the drawee (Payee) or to the Bank for stoppage of the payment it will not preclude an action under Section 138 of the Act by the drawee (Payee) or the holder of a cheque in due course. Of course, under Section 139 N. I. Act, there is a presumption that unless the contrary is proved, the holder of the cheque received the cheque for the discharge in whole or in part of any debt or other liability. But even in Section 139 N. I. Act, the legal presumption is created only for the cheque so received for the discharge in whole or in part of any

debt or other liability. In the case on hand, the complainant being a practising advocate, has not proved the debt amount payable towards him by the accused, who has engaged him as his lawyer to conduct the case. The finding of the trial Court that there is no debt or legally enforceable liability' does not suffer from any infirmity warranting interference.”

14. The Bombay High Court in *Re: KL Gauba*⁶ held that fees conditional on the success of a case and which gives the lawyer 6 AIR 1954 Bom 478 an interest in the subject matter tends to undermine the status of the profession. The same has always been condemned as unworthy of the legal profession. If an advocate has interest in success of litigation, he may tend to depart from ethics.

15. In the matter of *Mr. G.: A Senior Advocate of the Supreme Court*⁷, this Court held that the claim of an advocate based on a share in the subject matter is a professional misconduct.

16. In *VC Rangadurai versus D. Gopalan*⁸, it was observed that relation between a lawyer and his client is highly fiduciary in nature. The advocate is in the position of trust.

17. Rule 20 of Part VI, Chapter II, Section II of the Standard of Professional Conduct and Etiquette reads as follows :

“An advocate shall not stipulate for a fee contingent on the results of litigation or agree to share the proceeds thereof.”

18. Thus, mere issuance of cheque by the client may not debar him from contesting the liability. If liability is disputed, the advocate has to independently prove the contract. Claim based on 7 (1955) 1 SCR 490 8 (1979) 1 SCC 308, para 31 percentage of subject matter in litigation cannot be the basis of a complaint under Section 138 of the Act.

19. In view of the above, the claim of the respondent advocate being against public policy and being an act of professional misconduct, proceedings in the complaint filed by him have to be held to be abuse of the process of law and have to be quashed.

20. We may note that after the hearing was concluded, learned counsel for Respondent No.2 mentioned the matter to the effect that Respondent No.2 wanted to withdraw the complaint. An e-mail to this effect was also handed over to Court. The same has been kept on the record. However, we did not permit this prayer. Having committed a serious professional misconduct, the respondent No.2 could not be allowed to avoid the adverse consequences which he may suffer for his professional misconduct. The issue of professional misconduct may be dealt with at appropriate forum.

21. Thus, while proceedings against the appellant will stand quashed, the issue of professional misconduct is left to be dealt with at the appropriate forum.

22. However, apart from the present individual case, the general issue, having been highlighted, may need further consideration by this Court in the larger interest of the legal profession and the system

of administration of justice.

23. Undoubtedly, the legal profession is the major component of the justice delivery system and has a significant role to play in upholding the rule of law. Significance of the profession is on account of its role in providing access to justice and assisting the citizens in securing their fundamental and other rights. Can justice be secured with the legal professionals failing to uphold the professional ethics? This Court has even earlier expressed the concern on the falling professional norms in the legal profession⁹. In *Tahil Ram Issardas Sadarangani versus Ramchand Issardas Sadarangani*¹⁰, this Court noted the trend of increasing element of commercialization and decreasing element of service. In *VC Rangadurai (supra)*¹¹, this Court observed that confidence of the public in the legal profession was integral to the confidence of the public in the legal system. Commercialization to the extent of exploiting the litigant and misbehavior to the extent of *9 R.K. Anand v. Delhi High Court (2009) 8 SCC 106*, para 333; *Sanjiv Datta, Deputy Secretary, Ministry of Information and Broadcasting, In Re. (1995) 3 SCC 619*, para 20. ¹⁰ 1993 Supp. (3) SCC 256, 11 Paras 30 to 32 browbeating the Court, breach of professional duties to the court and the litigant on the part of some members of the legal profession, affecting the right of the litigants to speedy and inexpensive justice, need to be checked. This has also been observed earlier in the decisions of this Court¹².

24. In its 131st Report dated 31st August, 1988, the Law Commission of India, examined the role of the legal profession in strengthening the system of administration of justice. The issue considered included :

- (i) the state of profession and its public image;
- (ii) profession's attitude towards the policy of social change intended under the Constitution;
- (iii) the functioning of the Bar Councils and the question of disciplinary jurisdiction;
- (iv) the strike by lawyers, its implications and fall out;
- (v) the question of hobnobbing between the Bar and politicians, between the Bar and the Judiciary;
- (vi) regulation and standardization of fees chargeable by the members of the profession in relation to the

Balram Prasad Sharma (2000) 7 SCC 264, paras 14,28,41,42 monopolistic character of the profession.”

25. It was observed that recurring strikes by the bar had contributed to the piling up of arrears jeopardizing the consumers of justice and has thus led to weakening the system of administration of justice¹³. While considering the mounting cost of litigation, it was observed that fee charged by some senior advocates are astronomical in character. The corporate sector is willing to retain talent at a high cost. It develops into a culture and it permeates down below¹⁴. Role of the legal profession in strengthening the administration of justice must be in consonance with the mandate of Article 39A to ensure equal opportunity for access to justice. The legal profession must make its services available to the needy by developing its public sector. It was observed that like public hospitals for medical services, the public sector should have a role in providing legal services for those who cannot afford fee¹⁵. Maintenance of irreducible minimum standards of the profession is a must for ensuring accountability of the legal profession¹⁶. The methodology was required to be devised ¹³ Para 2.17 ¹⁴ Paras 2.22, 2.24 ¹⁵ Para 3.30 ¹⁶ Paras 3.4, 3.8, 3.25 as a part of social audit of the profession wherein consumers of justice were required to be given role¹⁷.

26. Referring to the lawyers' fee as barrier to access to justice, it was observed that it was the duty of the Parliament to prescribe fee for services rendered by members of the legal profession. First step should be taken to prescribe floor and ceiling in fees ¹⁸.

27. With regard to the role of the legal profession for strengthening the administration of justice, it was observed that members of the legal profession could have a decisive say in law making being largest group in legislative bodies¹⁹. They could contribute to reduce the litigation instead of perpetuating disputes by counseling the parties and could contribute to reduce the delay in proceedings²⁰. Alternative modes of resolution of disputes should be explored and one such may be pre-trial conciliation proceedings²¹. Reducing the number of witnesses to be examined by deleting the irrelevant witnesses reducing the length of cross-examination by avoiding unnecessary questions ²² and avoiding adjournments could help the administration of justice. ¹⁷ Para 3.31 ¹⁸ Para 3.28 ¹⁹ Para 3.6 ²⁰ Para 3.11, 3.13 ²¹ Para 3.21 ²² Para 3.17

28. Though the 131st Report was submitted in the year 1988, no effective law appears to have enacted to regularize the fee or for providing the public sector services to utmost needy litigants without any fee or at standardized fee. Mechanism to deal with violation of professional ethics also does not appear to have been strengthened. Success of administration of justice to a great extent depends on successful regulation of legal profession in the light of mandate under Article 39A for access to justice. Deficiency in the working of the present regulatory mechanism has been acknowledged by this Court in several decisions ²³. Mandate for the Bench and the bar is to provide speedy and inexpensive justice to the victim of justice and to protect their rights. The legal system must continue to serve the victims of injustice.

29. In view of this mandate, this Court requested the Law Commission to have a re-look at the regulatory mechanism and expressed the hope that the Government of India will consider the recommendation of the Law Commission. In its 266 th Report dated 23rd March, 2017 submitted in the light of decision of this Court in Mahipal Singh Rana (supra), it was noted that conduct of members of the legal profession who do not follow ethics ²³ Mahipal Singh Rana Advocate versus State of Uttar Pradesh (2016) 8 SCC 335, para 56 contributes to the pendency of cases. Element of

public service has to remain predominant. The Commission noted that there was a huge loss of working days by call of unjustified strikes in jurisdiction of various High Courts resulting in denial of justice to the litigant in public²⁴. Such dilatory tactics including seeking adjournments on unjustified grounds affect the speedy disposal of cases. The Commission also noted the instances of browbeating the courts for getting favourable orders obstructing administration of justice²⁵. The Law Commission also noted the contemptuous conduct of some members of the legal profession²⁶.

30. The Law Commission thereafter considered the issue of review of regulatory framework of the legal profession. Referring to the developments in other countries it was observed that there was dire necessity of reviewing regulatory mechanism not only in the matter of discipline and misconduct but also in other areas. It was suggested that constitution of the Bar Council required a change for which an Amendment Bill was also recommended²⁷.

31. We hope that the concerned authorities in the Government will take cognizance of the issue of introducing requisite legislative 24 Para 6.3 25 Paras paras 8.7 to 8.12, 8.14 to 8.19 26 Chapter IX 27 Para 17.10 changes for an effective regulatory mechanism to check violation of professional ethics and also to ensure access to legal services which is major component of access to justice mandated under Article 39A of the Constitution.

32. The appeal stands disposed of accordingly.

.....J. [ADARSH KUMAR GOEL]J. [UDAY UMESH
LALIT] NEW DELHI;

5TH DECEMBER, 2017.