Supreme Court of India
Nilgiris Bar Association vs Tk Mahalingam And Another on 8 December, 1997
Author: Thomas
Bench: M.K. Mukherjee, K.T. Thomas

PETITIONER:
NILGIRIS BAR ASSOCIATION

Vs.

RESPONDENT:
TK MAHALINGAM AND ANOTHER

DATE OF JUDGMENT: 08/12/1997

BENCH:
M.K. MUKHERJEE, K.T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Thomas, J.

Nilgiris Bar Association (Tamil Nadu) is in no mood to reconcile with the easy escape made by an imposter in the legal profession from the penal clutches of law. Without enrollment with any Bar Council and without any academic qualification to practise law he manage to get entry into the legal profession by wangling a membership from the Nilgiris Bar Association, and flourished in his practice as an advocate before all the courts including session courts in the district for a long period of eight years. But his hay days did not last longer as the vigilant Bar discovered that he was an interloper in the profession. A complaint was lodged with the police and after investigation a charge-sheet was laid before the Judicial Magistrate concerned. He then adopted a strategy to skip out of the penal tentacles by pleading guilty to the charge and praying for mercy of the Court. The strategy worked as the magistrate released him under Section 4 of the Probation of Offenders Act 1958 (for short `the Act') The concerned Bar Association aggrieved by the manner in which they and the litigant public were hood-winked by the said person for a pretty long period, approached the High Court of Madras in revision challenging the order of the magistrate. A single judge of the High Court, after about ten years, passed the impugned order declining to interfere, but made an endeavour to console the Bar by directing the delinquent person to donate a sum of Rs. 15,000/- to the Association for buying books to their library. The accused person promptly dispatched a bank

draft containing the amount to the Bar Association but they with matching promptness spurned down the ill-gotten money and rushed to this Court with the Special Leave Petition seeking redressal of their grievances. Special leave granted.

A few more facts may be necessary. Respondent (TK Mahalingam) approached the Nilgiris Bar Association in the year 1978 for admitting him as a member therein by representing that he was a qualified legal practitioner having enrolled himself with the State Bar Council. Without suspecting the bona fides of the application he was admitted to the membership of the Bar Association.

He started his practice at the new station and built up a good clientele and involved himself in all the activities of the Association. He contested for the post of Secretary and won it. In this way, he continued till 1985. But by then some members of the Bar who developed suspicion of his credential made secret inquiries and discovered that he was imposturing as an advocate and his credentials were bogus. So they brought it to the notice of the Bar Association who, in an emergent meeting, decided to launch prosecution against him. Respondent, sensing the developments against him ducked out of the scene. A complaint was filed with the local police for offences of false personation and cheating etc. The police, after investigation, charge-sheeted the case of for offences under Sections 419 and 420 of the Indian Penal Code.

Learned single Judge of the Court, while disposing of the revision, expressed appreciation for the stand adopted by the Bar and praised their alacrity and perseverance for restoring the reputation of that Bar "by cleansing itself from the dupe practised by the respondent." However, learned single judge advised the Bar to forget the past and conveyed his view that if such an act of magnanimity was shown, then "the revered nobility of the legal profession will certainly be enhanced". After administering the said advise learned single judge made the following observations:

> "While appreciating the stand takne by the Nilgiris Bar Association, 'to maintain purity in the procession,' I am satisfied, that this is an apt case where the petitioner has been rightly given an opportunity to reform himself and that such process of reform has commenced is evident from the conduct of the second respondent, who has expressed his repentance in writing before this Court, apart from offering to the Nilgiris Bar Association, a decent sum of money as a compensation for the harm he had caused, by his unbecoming conduct in the past."

We find considerable force in the submission of the appellant Bar Association that if they had conveniently forgotten the conduct of the respondent after receiving some pittance from a bogus practitioner the revered nobility of the legal profession would not have enhanced, instead it would only have further tarnished their image and lowered them further in the estimation of the public. We cannot, therefore, persuade ourselves to approve the advise tendered by the learned single judge to the appellant-Bar Association and to ignore the serious impairment inflicted by the respondent who cheated the seats of justice as well as the litigant public continuously for a long period of eight years.

Learned single judge seemed to have been persuaded by two subsequent developments as for the respondent. One is that the respondent joined a course of law education later and passed a law a degree in year 1988 and got himself as an advocate in the Karnataka State Bar Council. Second is that respondent expressed repentance over his conduct and has since been conducting properly.

Appellant disputed the above two premises, and according to them even the law degree which respondent claims to have obtained later is shrouded in doubtful authenticity as the same was managed from an institution which "issues law degrees without attendance in violation of the Bar Council of India Rules (para iv) regarding legal education." Appellant further submitted that respondent was subsequently involved in a criminal case for assaulting an advocate in open court. Of course, these two allegations have been repudiated by the respondent. Even otherwise we do not think it necessary to go into the correctness of the claim of the respondent regarding the subsequent conduct nor the stand adopted by the appellant-Bar Association on it. They are not germane for consideration on the question whether respondent should have been allowed to enjoy the benefits of the ameliorative reliefs provided in that Act.

Section 4 of the Act empowers of the Court to release the convicted person on his entering into a bond when the person is found quilty of having committed an offence not punishable death or imprisonment for life. But the provision is saddled with certain conditions for invoking the reliefs thereunder. Sub-section (1) of Section 4 reads thus:

> "When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the Court by which the person is found guilty is one opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour."

By the words so couched in the sub-section Parliament has taken care to emphasize that before the relief (envisaged in the provision) is granted court must take into account the circumstances of the case, among which "the nature of the offence and the character of the offender" must have overriding considerations. After bestowing judicial consideration on those factors, the court must form an opinion as to whether it would be appropriate in that case to release the particular accused therein as envisaged in the sub-section. This Court has observed time and again through decisions that the benefits mentioned in Sections 3 and 4 are subject to the limitations laid down in those provisos and that the word 'may' in Sections 4 of the Act is not be understood as `must' in Section 4 of the Act is not be understood as `must' in Section 4 of the Act is not be understood as `must." Ramji Missar vs. State of Bihar: AIR 1963 SC 1088; Rattan Lal vs. State of Punjab; 1964 (7) SCR 676 Isher Das vs. State of Punjab : AIR 1972 SC 1295; Ram Parkash vs. State of Himachal Pradesh: AIR 1973 SC 780.

When considering the nature of the offence the court must have a realistic view on the gravity of the offence, the impact which the offence could have had on the victims and whether considerations of deterrence can be overlooked etc. No fixed yard-stick can be laid down to measure the nature of the offence for affording or denying the relies envisaged in Section 4 of the Act. However, as the court is enjoined to take into consideration the character of the offender it is well to remember that character is not the abstract opinion in which the offender is held by others. The word "character" si not defined in the Act. Hence, it must be given the ordinary meaning. According to Webster's New International Dictionary "character" means "an attribute, or quality especially a trait or characteristics which serves as an index to the essential or intrinsic nature of a person". In Black's Law Dictionary "character" is defined as "the aggregate of the moral qualities which belong to and distinguish an individual person; the general result of the one's distinguished attributes". The celebrated lexicographer has at the same time pointed out the following aspects also about the subject:

> "Although character and reputation are often used synonymously, the terms are distinguishable. `Character's is what a man is, `reputation' is what he is supposed to be in what people say he is, `Character' depends on attributes possessed and `reputation' on attributes which others believe one to possess. The former signifies reality and the latter merely what is accepted to be reality at present."

Character of the offender in this case reflects in the modality in which he was inveigling in a noble profession duping everybody concerned. In such a view of the matter the two courts could not have formed an opinion in favour of the character of the respondent. It is apposite to observe here that learned single judge did not mention anything about the character of the respondent qua the accusations found against him.

While advertising to the nature of the offence we bear in mind the necessity to weed out imposters in the profession which require special learning and training particularly at a time when such imposters are proliferating in the society. Any leniency shown to such wiles would certainly tend to sprout up weeds at meaning scales. The case of the respondent is not one of single lapse or even multiple delinquencies confined to a few days. The long period of 8 years during which the moun-te-bank had successfully indulged in interloping as a qualified and learned counsel would have considerably eroded public confidence in the probity of the legal profession particularly in that area and besmirched the reputation of that Bar as the public might be looking upon every other member of the profession with suspectful eyes. The trial magistrate and the learned single judge, who found a repenting mind in the respondent, have failed to notice that repentance had dawned on him, even if that also was not a pretension, only when he reached a cul-de-sac. When he was masquerading himself every day in sartorial costumes prescribed only for accredited members of the legal profession it did not occur to him even once during the long period of eight years to think of repentance. On the contrary, he was flourishing at large and had even become the Secretary of the Bar Association. If the vigilant Bar has not discovered the trickery, perhaps he would still have persisted in his art of cheating. For all these reasons we are of the definite opinion that the crimes committed by him should have been dealt with deterrently and the ameliorative reliefs envisaged in Section 4 of the Act should been kept at bay.

We, therefore set aside that part of the impugned judgments by which respondent was released under Section 4 of the Act. For determining the measure of sentence to be passed on him we are not against taking into account those factors which the learned single judge has found as mitigating grounds. Added to them is the long interval of time between the date of his conviction by the trial court and now. For all these, imprisonment for six months and a fine would be sufficient to meet the ends of justice in this case.

We, therefore sentence him to undergo rigorous imprisonment for six months under each count (Section 419 and 420 IPC) and to pay a fine Rs. 5,000/- each (total Rupees ten thousand). In default of payment of which he shall undergo a further period of imprisonment for three months. The fie, if collected, shall be added to the fund of the Legal Service Board in the State of Tamil Nadu.

We direct the trial Magistrate (Judicial First Class Magistrate, Udhagmandalam) to take necessary steps to put the respondent in jail for undergoing the sentence imposed on him. Appeal is allowed accordingly.