

An Advocate v. Bar Council of India
1989 Supp (2) SCC 25

M.P. Thakkar, J

Facts/Background

- In this case the bona fide act of an advocate who in good faith acted under the instructions of someone closely connected with his client and entertained a bona fide belief that the instructions were given under the authority of his client.
- The suit was a suit for recovery of Rs 30,098. The complainant (client) had entrusted the brief to the appellant which he in his turn had entrusted to his junior colleague (Respondent 2) who was attached to his office and was practising along with him at his office at the material time. At the point of time when the suit was withdrawn, Respondent 2 was practising on his own having set up his separate office. On the docket of the brief pertaining to the suit, the appellant made an endorsement giving instructions to withdraw the suit as settled.
- (Client version of facts) The petitioner had entrusted a matter to Appellant to file a case against Shri Anantaraju for recovery of a sum of Rs 30,098 with court costs and current interest .The said suit was filed by the R2. The matter in dispute in the suit was not settled at all and the Appellant without the knowledge and without his instructions had filed a memo stating that the matter is settled out of court and got the suit dismissed and he has also received half of the institution court fee within 10 days since the date of the disposal of the suit. The petitioner submits that he has not received either the suit amount or the refund of court fee and he is not aware of the dismissal of the suit as settled out of court.

Key aspects/issues

- Whether an advocate acting bona fide and in good faith on the basis of oral instructions given by someone purporting to act on behalf of his client, would be guilty of professional misconduct or of an unwise or imprudent act, or negligence simpliciter, or culpable negligence punishable as professional misconduct?
- Whether a charge apprising him specifically of the precise nature and character of the professional misconduct ascribed to him needs to be framed?
- Whether in the absence of an allegation or finding of dishonesty or mens rea a finding of guilt and a punishment of this nature can be inflicted on him?
- Whether the allegations and the finding of guilt is required to be proved beyond reasonable doubt?
- Whether the doctrine of benefit of doubt applies?

Decision/Observations of the Supreme court on the questions raised in this appeal

- “In our opinion the appellant was not apprised of the exact content of the professional misconduct attributed to him and was not made aware of the precise charge he was required to rebut.
- The conclusion reached by the Disciplinary Committee in the impugned order further shows that in recording the finding of facts on the three questions, **the applicability of the doctrine of benefit of doubt and need for establishing the facts beyond reasonable doubt were not realised. Nor did the Disciplinary Committee consider the question as to whether the facts established that the appellant was acting with bona fides or with mala fides, whether the appellant was acting with any oblique or dishonest motive, whether there was any mens rea, whether the facts constituted negligence and if so whether it constituted culpable negligence. Nor has the Disciplinary Committee considered the question as regards the quantum of punishment in the light of the aforesaid considerations and the exact nature of the professional misconduct established against the appellant.**
- The impugned order passed by the Disciplinary Committee, **therefore cannot be sustained**”

Contd.

- Since we do not consider it appropriate to examine the matter on merits on our own without the benefit of the finding recorded by the Disciplinary Committee of the apex judicial body of the legal profession, we consider it appropriate to remit the matter back to the Disciplinary Committee. Ref: *O.N. Mohindroo v. District Judge, Delhi* [(1971) 2 SCR 11
- The Bar Council of India must have an opportunity to consider whether it would constitute an imprudent act, an unwise act, a negligent act or whether it constituted negligence and if so a culpable negligence, or whether it constituted a professional misconduct deserving severe punishment, even when it was not established or at least not established beyond reasonable doubt that the concerned advocate was acting with any oblique or dishonest motive or with mala fides. This question will have to be determined in the light of the evidence and the surrounding circumstances taking into account the doctrine of benefit of doubt and the need to record a finding only upon being satisfied beyond reasonable doubt.

Held

- “We have therefore no doubt that upon the matter being remitted to the Bar Council of India it will be dealt with appropriately in the light of the aforesaid perspective. We accordingly allow this appeal, set aside the order of the Bar Council insofar as the appellant is concerned and remit the matter to the Bar Council of India”
- “We, however, wish to make it clear that it will not be open to the complainant to amend the complaint or to add any further allegation. We also clarify that the evidence already recorded will continue to form part of the record and it will be open to the Bar Council of India to hear the matter afresh on the same evidence.It will be open to the Bar Council of India to consider whether the hearing of the matter has to be deferred till the application for restoration is disposed of. The Bar Council of India may give appropriate consideration to all these questions.”
- “We further direct that in case the judgment rendered by this Court or any part thereof is reported in law journals or published elsewhere, the name of the appellant shall not be mentioned because the matter is still sub judice and fairness demands that the name should not be specified. The matter can be referred to as *An Advocate v. Bar Council* or *In re an Advocate* without naming the appellant. The appeal is disposed of accordingly.”