**CASE LAW ON PROFESSIONAL MISCONDUCT- SHAMBHU RAM YADAV Vs. HANUMAN DAS KHATRY (JUDGEMENT BY J. YK. SABHARWAL)**

**FACTS:-**

* Complaint filed by the appellant against the advocate Mr. Hanuman Das Khatry (respondent) before the Bar Council of Rajasthan.
* Allegation- The advocate wrote a letter to his client that the Judge who had to decide his case accepts bribe and to give Rs. 10,000/- for a favourable decision.
* Contentions of respondent-advocate- No bribe was actually given to the Judge, the Judge was himself terminated on charges of taking illegal gratification. Hence there was no serious misconduct by the advocate.
* Appeal made to the BCI under Sec 37 of the Advocates Act 1961. BCI directed his name to be struck off and he be permanently debarred from practicing.
* Advocate filed a review under Sec 44 of Advocates Act and the BCI accepts the review application. (Sec 44 states that the disciplinary committee of the BCI may review its order within 60 days from the date of passing the order).
* Appeal made to Supreme Court under Sec 38 of Advocates Act.

**ISSUE:** Whether the disciplinary committee, in exercise of its review powers, could alter the initial order of suspension?

**DECISION:** 1.The duties of an Advocate are prescribed under Part VI of the BCI Rules and one of the foremost duty is to conduct the functions and plead or act in a dignifies manner, to respect & maintain dignity of the court and uphold client’s interests.

2. The legal profession is based on honesty and integrity of an Advocate and the Advocates Act 1961 has cast a responsibility on the authorities to take action wherever it seems that the credibility & reputation of the profession is eroded by certain persons or members of the Bar Associations.

3. The advocate had spent more than 50 years in legal profession and he is expected to have high moral standards instead of dishonouring the profession. The Supreme Court held that the earlier decision of the BCI was based on cogent evidences and relevant considerations.

4. Also, in review petition the BCI cannot take a different view upon the same facts as done by it in this case. Hence, original order of the BCI was restored by the Apex Court and he was permanently restrained from practicing.

**BHUPINDER KUMAR SHARMA Vs. BAS ASSOCIATION OF PATHANKOT (JUDGEMENT BY JUSTICE SHIVRAJ V. PATIL)**

**Facts:-**

* Complaint made to the Bar Association that an advocate (appellant) was carrying on and engaged in a full-fledged business viz, he carried on a photocopy shop in the court compound and he also had a PCO/STD booth
* Contentions of advocate- After being enrolled in the State Bar roll of advocates, he had transferred the business to his father and brother.
* The State Bar Council of Punjab & Haryana found his guilty of misconduct and debarred him.
* Appeal made to BCI , the BCI dismissed the appeal.
* Appeal made to Supreme Court.

**Issue:-** Whether the appellant is guilty of professional misconduct?

**Decision**:- The Supreme Court held that there were convincing reasons to suffice that he was guilty beyond all reasonable doubt. This was supported by the Senior Telecommunication Office Assistant who deposed in the court that the PCO booth was allotted to the appellant in the handicap quota and no intimation was given by him to transfer the PCO booth to his brother. There was no material or evidence placed to show that the members of the BAR have any sort of ill-will towards the advocate.

Holding him guilty of professional misconduct, the Supreme Court altered the gravity of punishment because the punishment awarded to him was found too harsh, the appellant being a handicapped person. It is a rule that the punishment awarded has to be proportionate with the offence and prevalent conditions of the accused.

Hence, the Supreme Court modified the BCI order to the extent that he was suspended from practicing till December 2006 and not forever.