AN ADVOCATE

v.

B.B. HARADARA & ORS.

SEPTEMBER 29, 1988

[M.P. THAKKAR AND B.C. RAY, JJ.]

Advocate's Act—Sec. 38—Professional misconduct standard of proof—Required of—Section 35—Procedure to be followed at the inquiry by Bar Council.

The appellant is an Advocate. Gautam Chand was one of his old clients. The complainant-Respondent No. 1 engaged the appellant on being introduced by Gautam Chand to file a Suit against Shri S. Anantaraju for recovery of a sum of Rs.30,098 with Court costs and interest in the Court of City Civil Judge at Bangalore. The appellant passed on the papers to his junior advocate to file the Suit which he did. The complainant's allegation is that the matter in dispute in the suit had not been settled at all and the appellant without the knowledge and without his instructions filed a memo in the Court to the effect that the matter has been settled out of Court and accordingly got the suit dismissed and also received half of the institution court fee; about which the complainant was not aware, nor was he informed by the appellant. The complainant's allegation is that he was not informed about the dates of hearing of the suit; when inquired he was simply told that the case is posted for filing written-statement where his presence was not necessary. When nothing was heard by the complainant from the appellant about the progress of his suit, he personally made inquiries and came to learn to his great surprise that the suit in question had in fact been withdrawn as settled out of Court.

The version of the appellant Advocate is that Gautam Chand, his old client, had business dealings with the plaintiffs, Haradara (Complainant) and the defendant Anantaraju. Anantaraju had also executed an agreement on 9.8.80 to sell his house property to Gautam Chand. He received earnest money amounting to Rs.35,000 from Gautam Chand. Anantaraju however did not execute the sale deed within the specified time. Gautam Chand approached the appellant for legal advice. The appellant caused the issue of notice to Anantaraju calling upon him to execute the sale deed. A notice was also issued on behalf of the complainant calling upon the defendant Anantaraju demanding certain amounts due on 3 self bearer cheques amounting to

A Rs.30,098 issued by him in course of their mutual transactions.

Gautam Chand and the complainant were friends having no conflict of interests Gautam Chand instructed the appellant and his junior Ashok that he was in possession of the said cheques issued by Anantaraju and that no amount was actually due from Anantaraju to
B Haradara Complainant. Gautam Chand desired Anantaraju to execute the sale deed. Anantaraju executed the sale deed on 27.11.81 in favour of Gautam Chand, even though an order of attachment before judgment in respect of the said property was in existence. Consequent on the execution of the sale deed, the object of the suit was achieved. The complainant did not at any time object. In this back ground, the appel-
C lant had reasons to believe the information re: settlement of dispute conveyed by the three together on 9.12.81. Acting on the said information, the appellant asked Ashok his erstwhile junior to take steps to withdraw the suit, which he did on 10.12.81 as per instructions received from the appellant noted on the docket of the brief.

D The State Bar Council, called for the comments of the appellant relating to the complaint. No charge was framed specifying the nature and content of the professional misconduct attributed to the appellant. Nor were any issues framed or prints for determination formulated. Instead thereof the Bar Council proceeded to record evidence. As the case could not be concluded within the time limit, the matter came to be
E transferred to the Bar Council of India. The Bar Council of India addressed itself to the three questions, viz.

(i) Whether the complainant was the person who entrusted the brief to the appellant and whether the brief was entrusted by the complainant to the appellant?

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(ii) Whether report of settlement was made without instructions or knowledge of the complainant?

(iii) Who was responsible for reporting settlement and instructions of the complainant?

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The Disciplinary Committee of the Bar Council of India after considering the matter found appellant guilty of professional misconduct and suspended him for practising his profession for 3 years on the charge of having withdrawn a suit (not settled) without the instructions of the clients.

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The appellant has filed the appeal u/s 38 of the Advocates Act. The following questions arose for consideration by this Court. A

(i) Whether a specific charge should have been framed apprising the appellant of the true nature and content of the professional misconduct ascribed to him;

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(ii) Whether the doctrine of benefit of doubt and the need of establishing the basic allegations were present in the mind of the Disciplinary Authority in recording the finding of guilt or in determining the nature and extent of the punishment inflicted on him;

(iii) Whether in the absence of the charge and finding of dishonesty against him the appellant could be held guilty of professional misconduct even on the assumption that he had acted on the instructions of a person not authorised to act on behalf of his client if he was acting in good faith and in a *bona fide* manner. Would it amount to lack of prudence or non-culpable negligence or would it constitute professional misconduct. C D

Disposing of the appeal, the Court,

HELD: That the appellant was not afforded reasonable and fair opportunity of showing cause inasmuch as he 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. [376E-F] E

That in recording the finding of facts on the three questions, referred to above, the applicability of the doctrine of benefit of doubt and the need for establishing the facts beyond reasonable doubt were not realized. Nor did the Disciplinary Committee consider the question as to whether the facts established that the appellant was acting with *bona fides* or *mala fides*, whether the appellant was acting with any oblique and 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. [376F-H; 377A] F G

The Court, in view of the fact that "the matter is one of the ethics of the profession which the law has entrusted to the Bar Council of India" and it is in their opinion, "a case which must receive due H

weight" did not consider it appropriate to examine the matter on merits without first having the opinion of the Bar Council of India. [377D]

Remanding the matter to the Bar Council of India the Court directed it 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*. [377H; 378A]

L.D. Jaisinghani **v.** *Naraindas N. Punjabi,* **[1976] 3 S.C.R. 354 and** *Re: M.* **v.** *Distt. Judge Delhi,* **[1956] S.C.R. P. 811 (814), referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 316 of 1987.

From the Judgment and Order dated 31.12.1986 of the Disciplinary Committee of the Bar Council of India in B.C.I. Transfer Case No. 407 of 1985.

S.S. Javali and Raju Ramachandra for the Appellant.

Ravinder Bhat, N. Ganapathy and Promod Swarup for the Respondents.

The Judgment of the Court was delivered by

THAKKAR, J. A hast of questions of seminal significance, not only for the Advocate who has been suspended from practising his profession for 3 years on the charge of having withdrawn a suit (as settled) without the instructions from his client, but also for the members of the legal profession in general have arisen in this appeal[1]:

(1) Whether a charge apprising him specifically of the precise nature and character of the professional misconduct ascribed to him needs to be framed?

(2) Whether in the absence of an allegation or finding of dis-

1. Appeal under section 38 of the Advocates Act, 1961.

honesty or mens rea a finding of guilt and a punishment of this nature can be inflicted on him? A

(3) Whether the allegations and the finding of guilt require to be proved beyond reasonable doubt?

(4) Whether the doctrine of benefit of doubt applies? B

(5) Whether an Advocate acting *bona fide* and in good faith on the basis of oral instructions given by some one 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? C

The suit was a suit for recovery of Rs.30,098 (Suit No. 65/81 on the file of Additional City Civil Judge, Bangalore). It appears that the complainant had entrusted the brief to the appellant which he in his turn had entrusted to his junior colleague (respondent No. 2 herein) D 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 No. 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. A sketch was drawn on the back of the cover to E enable the person carrying the brief to the junior colleague to locate his office in order to convey the instructions as per the endorsement made by the appellant. The allegations made by the complainant against the appellant are embodied in paragraphs 1 & 2 of his complaint:

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1. The petitioner submits that he entrusted a matter to the Second Respondent to file a case against Shri S. Anantaraju for recovery of a sum of Rs.30,098 with Court costs and current interest in Case No. O.S. 1965/81 on the file of the City Civil Judge at Bangalore. The Petitioner submits that the said suit was filed by the first respondent who was then a Junior of the G Second respondent. The petitioner submits that the matter in dispute in the suit was not settled at all and the first respondent without the knowledge and without the instructions of the petitioner has 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 H

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.

2. The petitioner submits that when the case was posted for filing of written statement itself the first respondent has filed such a memo stating that the suit was settled out of Court. The petitioner submits that in fact, the respondents did not even inform the petitioner about the dates of hearing and when the petitioner asked the dates of hearing the respondents informed the petitioner stating that his presence is not required in the Court since the case was posted for filing of written statement and therefore, the petitioner did not attend the Court on that day. The petitioner submits that when he enquired about the further date of hearing the respondents did not give the date and said that they would verify the next date of hearing since they have not attended the case since the case was posted for filing written statement by the defendant. The petitioner submits that when he himself went to the Court and verified he found to his great surprise that the suit is dismissed as settled out of court and latter learnt that even the half of the institution court fee is also taken by the first respondent within 10 days.

The version of the appellant may now be unfolded:

(1) One Gautam Chand (R.W. 3) has been a longstanding client of the appellant. Gautam Chand had business dealings with the plaintiff Haradara and the Defendant Anantaraju. Besides, Anantaraju executed an agreement dated 9.8.1980 to sell his house property to Gautam Chand. He received earnest money in the sum of rupees 35,000 from Gautam Chand. Anantaraju, however, did not execute the sale deed within the stipulated period and during the extended period. It was in these circumstances that Gautam Chand (RW 3) approached the appellant for legal advice.

(2) It is the common case of parties that Gautam Chand introduced the complainant Haradara to the appellant and his colleague Advocate respondent No. 2.

(3) The appellant caused the issue of notice dated 1.6.1981

(Ex. R/15) on behalf of Gautam Chand addressed to the seller Anantaraju calling upon him to execute the sale dead. On the same date, a notice was separately issued on behalf of the complainant Haradara addressed to Anantaraju demanding certain amounts due on the three 'self' bearer cheques aggregating Rs.30,098 issued by Anantaraju in course of their mutual transactions. This notice was issued by the Advocate respondent No. 2 acting on behalf of the complainant Haradara.

(4) Gautam Chand (RW 3) and Haradara (PW 1) were friends. Anantaraju was their common adversary. There was no conflict of interests as between Gautam Chand and Haradara. Gautam Chand instructed the appellants and his colleague respondent No. 2. Ashok, that he was in possession of the said cheques issued by Anantaraju and that no amount was actually due from Anantaraju to the complainant Haradara. Gautam Chand was desirous of stops to induce Anantaraju to execute the sale deed in his favour.

(5) A suit being O.S. No. 1965 of 1981 was instituted on behalf of the complainant Haradara claiming on amount of Rs.30,000 and odd, from the defendant Anantaraju on the basis of the aforesaid cheques. It was instituted on 30.6.1981. An interlocutary application was moved on behalf of Haradara by respondent No. 2 as his Advocate seeking the attachment before judgment of the immovable property belonging to the defendant Anantaraju. The property was in fact the subject of an agreement to sell between Anantaraju and Gautam Chand (RW 3). The Court initially declined to grant an order of attachment. In order to persuade the Court, certain steps were taken through the said Gautan Chand. He caused the publication of a notice stating that the property in question was the subject matter of an agreement between Anantaraju and himself and it should not be dealt with by anyone. The publication of this notice was relied upon subsequently on behalf of the complainant Haradara by his advocate (respondent No. 2). Ashok in seeking an order of attachment. The Court accepted his submissions and passed the order of attachment.

(6) Subsequently the defendant Anantaraju executed the sale deed dated 27th Nov., 1981 in favour of Gautam Chand. The

A object of the suit was achieved. The sale deed was in fact executed during the subsistance of the order of attachment concerning the same property. The plaintiff Haradara has not objected to it at any time. Consistently, the appellant had reasons to believe the information of settlement of dispute conveyed by the three parties together on 9.12.1981.

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(7) Gautam Chand (RW 3) and the complainant Haradara acted in interest and scoured the attachment of property which was the subject matter of an agreement to sell in favour of Gautam Chand. The suit instituted in the name of the complainant Haradara was only for the benefit of Gautam Chand by reference to his interest in the property.

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(8) The appellant conveyed information of the settlement of dispute by his note made on the docket. He drew a diagram of the location of residence of the respondent No. 2 Ashok Advocate. (Ex. R-1A at page 14 Additional Documents). The papers were delivered to respondent No. 2 Ashok Advocate by Gautam Chand (PW 3).

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(9) After satisfying himself, respondent No. 2 Ashok advocate appeared in Court on 10.12.81 and filed a Memo prepared in his handwriting recording the fact of settlement of dispute and seeking withdrawal of the suit. The Court passed order dated 10.12.1981 dismissing the suit, O.S. No. 1965 of 1981.

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(10) Even though the plaintiff Haradara gained knowledge of the disposal of suit, he did not meet the appellant nor did he address him for over 1-1/2 years until May, 1983. He did not also immediately apply for the restoration of suit. An application for restoration was filed on the last date of limitation on 11.1.1982. The application Misc. 16 of 1982 was later allowed to be dismissed for default on 30.7.1982. It was later sought to be revived by application Misc. No. 581 of 1982. Necessary orders were obtained on 16.7.1988. Thus Misc. 16 of 1982 (Application for restoration of suit) is pending in Civil Court.

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On a survey of the legal landscape in the area of disciplinary proceedings this scenario emerges:

H (1) In exercise of powers under section 35 contained in Chapter

V entitled "conduct of Advocates", on receipt of a complaint against an Advocate (or suo motu) if the State Bar Council has 'reason to believe' that any Advocate on its role has been guilty of "professional or other misconduct". Disciplinary proceeding may be initiated against him.

(2) Neither section 35 nor any other provision of the Act defines the expression 'legal misconduct' or the expression 'misconduct'.

(3) The Disciplinary Committee of the State Bar Council is authorised to inflict punishment, including removal of his name from the rolls of the Bar Council and suspending him from practise for a period deemed fit by it, after giving the Advocate concerned and the 'Advocate General' of the State an opportunity of hearing.

(4) While under section 42(1) of the Act the Disciplinary Committee has been conferred powers vested in a Civil Court in respect of certain matters including summoning and enforcing attendance of any person and examining him on oath, the Act which enjoins the Disciplinary Committee to "afford an opportunity of hearing' (Vide Sec. 35) to the Advocate does not prescribe the procedure to be followed at the hearing.

(5) The procedure to be followed in an Enquiry under Section 35 is outlined in Part VII of the Bar Council of India Rules (1) made under the authority of section 60 of the Act.

(6) Rule 8(1) of the said Rules enjoins the Disciplinary Committee to hear the concerned parties that is to say the complainant and the concerned Advocate as also the Attorney General or the Solicitor General or the Advocate General. It also enjoins that if it is considered appropriate to take oral evidence the procedure of the trial of civil suits shall as far as possible be followed (2).

At this juncture it is appropriate to articulate some basic principles which must inform the disciplinary proceedings against members of the legal profession in proceedings under Section 35 of the Advocates Act, read with the relevant Rules:

1. Published in Gazette of India on September 6, 1975 in Part III Section 4 (pages 1671 to 1697).

A (i) essentially the proceedings are quasi-criminal in character inasmuch as a Member of the profession can be visited with penal consequences which affect his right to practice the profession as also his honour; under Section 35(3)(d) of the Act, the name of the Advocate found guilty of professional or other misconduct can be removed from the State Roll of Advocates. This extreme B penalty is equivalent of death penalty which is in vogue in criminal jurisprudence. The Advocate on whom the penalty of his name being removed from the roll of Advocates is imposed would be deprived of practising the profession of his choice, would be robbed of his means of livelihood, would be stripped of the name and honour earned by him in the past and is liable to become a social aparthied. A disciplinary proceeding by a statu- C tory body of the Members of the profession which is statutorily empowered to impose a punishment including a punishment of such immense proportions in quasi-criminal in character;

(ii) as a logical corollary it follows that the Disciplinary Com- D mittee empowered to conduct the enquiry and to inflict the punishment on behalf of the body, in forming an opinion must be guided by the doctrine of benefit of doubt and is under an obligation to record a finding of guilt only upon being satisfied beyond reasonable doubt. It would be impermissible to reach a conclusion on the basis of preponderence of evidence or on the basis of E surmise, conjucture or suspicion. It will also be essential to consider the dimension regarding mens rea;

This proposition is hardly open to doubt or debate particularly having regard to the view taken by this Court in *L.D. Jaisinghani* v. *Naraindas N. Punjabi,* [1976] 3 SCR 354 wherein Ray, CJ., speaking F for the Court has observed:

> "In any case, we are left in doubt whether the complainant's version, with which he had come forward with considerable delay was really truthful. *We think that, in a case of this nature, involving possible disbarring of the advocate concerned, the evidence should be of a character which*

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2. Rule 8(1) "The Disciplinary Committee shall hear the Attorney General or the Solicitor General of India or the Advocate General, as the case may be or their Advocate, and parties or their Advocate, if they desire to be heard, and determine the matter on documents and affidavits unless it is of the opinion that it should be in the interest of justice to permit cross examination of the deponents or to take oral evidence, in which case the procedure H for the trial of civil suits, shall as far as possible be followed."

should leave no reasonable doubt about guilt. The Disciplinary Committee had not only found the appellant guilty but had disbarred him permanently."

(Emphasis added).

(iii) in the event of a charge of negligence being levelled against an Advocate, the question will have to be decided whether negligence simpliciter would constitute misconduct. It would also have to be considered whether the standard expected from an Advocate would have to answer the test of a reasonably equipped prudent practitioner carrying reasonable workload. A line will have to be drawn between tolerable negligence and culpable negligence in the sense of negligence which can be treated as professional misconduct exposing a Member of the profession to punishment in the course of disciplinary proceedings. In forming the opinion on this question the standards of professional conduct and etiquette spelt out in Chapter 2 of Part VI of the Rules governing Advocates, framed under Section 60(3) and Section 49(1)(g) of the Act, which form a part of the Bar Council of India Rules may be consulted. As indicated in the preamble of the Rules, an Advocate shall, at all times compose himself in a manner befitting his status as an Officer of the Court, a privileged member of the community and a gentleman bearing in mind what may be lawful and moral for one who is not a member of the bar may still be improper for an Advocate and that his conduct is required to conform to the rules relating to the duty to the Court, the duty to the client, to the opponent, and the duty to the colleagues, not only in letter but also in spirit.

It is in the light of these principles the Disciplinary Committee would be required to approach the question as regards the guilt or otherwise of an Advocate in the context of professional misconduct levelled against him. In doing so apart from conforming to such procedure as may have been outlined in the Act or the Rules, the Disciplinary Authority would be expected to exercise the power with full consciousness and awareness of the paramount consideration regarding principles of natural justice and fair play.

The State Bar Council, after calling for the comments of the appellant in the context of the complaint, straightaway proceeded to record the evidence of the parties. No charge was framed specifying the nature and content of the professional misconduct attributed to the

A appellant. Nor were any issues framed or points for determination formulated. The Disciplinary Committee straightaway proceeded to record evidence. As the case could not be concluded within the prescribed time limit the matter came to be transferred to the Bar Council of India which has heard arguments and rendered the order under appeal.

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The questions which have surfaced are:

(1) Whether a specific charge should have been framed apprising the appellant of the true nature and content of the professional misconduct ascribed to him?

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(2) Whether the doctrine of benefit of doubt and the need for establishing the basic allegations were present in the mind of the Disciplinary Authority in recording the finding of guilt or in determining the nature and extent of the punishment inflicted on him?

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(3) Whether in the absence of the charge and finding of dishonesty against him the appellant could be held guilty of professional misconduct even on the assumption that he had acted on the instructions of a person not authorised to act on behalf of his client if he was acting in good faith and in a *bona* E *fide* manner. Would it amount to lack of prudence or non-culpable negligence or would it constitute professional misconduct?

Now so far as the procedure followed by the State Bar Council at the Enquiry against the appellant, is concerned it appears that in order to F enable the concerned Advocate to defend himself properly, an appropriate specific charge was required to be framed. No doubt the Act does not outline the procedure and the Rules do not prescribe the framing of a charge. But then even in a departmental proceeding in an enquiry against an employee, a charge is always framed. Surely an Advocate whose honour and right to earn his livelihood are at stake G can expect from his own professional brethern, what an employee expects from his employer? Even if the rules are silent, the paramount and overshadowing considerations of fairness would demand the framing of a charge. In a disciplinary proceeding initiated at the level of this Court even though the Supreme Court Rules did not so prescribe, in re: Shri 'M' an Advocate of the Supreme Court of India [1956] SCR page H 811 (814) this Court framed a charge after making these observations:

"We treated the enquiry in Chambers as a preliminary enquiry and heard arguments on both sides with reference to the matter of that enquiry. We came to conclusion that this was not a case for discharge at that stage. We accordingly reframed the charges framed by our learned brother, Bhagwati J., and added a fresh charge. No objection has been taken to this course. But it is as well to mention that, in our opinion, the terms of Order IV, rule 30 of the Supreme Court Rules do not preclude us from adopting this course, including the reframing of, or adding to, the charges specified in the original summons, where the material at the preliminary enquiry justifies the same. The fresh enquiry before us in Court has proceeded with reference to the following charges as reframed and added to by us."

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It would be extremely difficult for an Advocate facing a disciplinary proceeding to effectively defend himself in the absence of a charge framed as a result of application of mind to the allegations and to the question as regards what particular elements constituted a specified head of professional misconduct.

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The point arising in the context of the non-framing of issues has also significance. As discussed earlier Rule 8(1) enjoins that "the procedure for the trial of Civil suits, shall as far as possible be followed." Framing of the issues based on the pleadings as in a Civil suit would be of immense utility. The controversial matters and substantial questions would be identified and the attention focussed on the real and substantial factual and legal matters in contest. The parties would then become aware of the real nature and content of the matters in issue and would come to know (1) on whom the burden rests (2) what evidence should be adduced to prove or disprove any matter (3) to what end cross examination and evidence in rebuttal should be directed. When such a procedure is not adopted there exists inherent danger of miscarriage of justice on account of virtual denial of a fair opportunity to meet the case of the other side. We wish the State Bar Council had initially framed a charge and later on framed issues arising out of the pleadings for the sake of fairness and for the sake of bringing into forefront the real controversy.

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In the light of the foregoing discussion the questions arising in the present appeal may now to be examined. In substance the charge against the appellant was that he had withdrawn a suit as settled without the instructions from the complainant. It was not the case of the

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A complainant that the appellant had any dishonest motive or that he had acted in the matter by reason of lack of probity or by reason of having been won over by the other side for monetary considerations or otherwise. The version of the appellant was that the suit which had been withdrawn had been instituted in a particular set of circumstances and that the complainant had been introduced to the appellant for B purposes of the institution of the suit by an old client of his viz. RW 3 Gautam Chand. The appellant was already handling a case on behalf of RW 3 Gautam Chand against RW 4 Anantharaju. The decision to file a suit on behalf of the complainant against RW 4 Anantharaju was taken in the presence of RW 3 Gautam Chand. It was at the instance and inspiration of RW 3 Gautam Chand that the suit had been instituted by the complainant, but really he was the nominee of C Gautam Chand and that the complainant himself had no real claim on his own. It transpires from the records that it was admitted by the complainant that he was not maintaining any account books in regard to the business and he was not an Income-tax assessee. In addition, the complainant (PW 1) Haradara himself has admitted in his evidence D that it was Gautam Chand who had introduced him to the appellant, and that he was in fact taken to the office of the appellant for filing the said suit, by Gautam Chand. It was this suit which was withdrawn by the appellant. Of course it was withdrawn without any written instructions from the complainant. It was also admitted by the complainant that he knew the defendant against whom he had filed the suit for E recovery of Rs.30,000 and odd through Gautam Chand and that he did not know the defendant intimately or closely. He also admitted that the cheques used to be passed in favour of the party and that he was not entitled to the entire amount. He used to get only commission.

Since even on the admission of the complainant himself he was F taken to the office of the appellant for instituting the suit, by RW 3 Gautam Chand, and old client of the appellant whose dispute with the defendant against whom the complainant had filed the suit existed at the material time and was being handled by the appellant. The defence of the appellant that he had withdrawn the suit in the circumstances mentioned by him required to be considered in the light of his admis- G sions. The defence of the appellant being that the suit was withdrawn under the oral instructions of the complainant in the presence of RW 3 Gautam Chand and RW 4 Anantharaju and inasmuch as RWs 3 and 4 supported the version of the appellant on oath, the matter was required to be examined in this background. Assuming that the evidence of the appellant corroborated by RWs 3 and 4 in regard to the H presence of the complainant was not considered acceptable, the ques-

tion would yet arise as to whether the withdrawal on the part of the appellant as per the oral instructions of RW 3 Gautam Chand who had taken the complainant to the appellant for instituting the suit, would amount to professional misconduct. Whether the appellant had acted in a *bona fide* manner under the honest belief that RW 3 Gautam Chand was giving the instructions on behalf of the complainant required to be considered. If he had done so in a *bona fide* and honest belief would it constitute professional misconduct, particularly having regard to the fact that no allegation regarding corrupt motive was attributed or established? Here it has to be mentioned that the appellant had acted in an open manner in the sense that he had in his own hand made endorsement for withdrawing the suit as settled and sent the brief to his junior colleague. If the appellant had any oblique motive or dishonest intention, he would not have made the endorsement in his own hand.

No doubt Rule 19 contained in Section 2 captioned 'Duty to the clients' provides that an Advocate shall not act on the instructions of any person other than his client or his authorised agent. If, therefore, the appellant had acted under the instructions of RW 3 Gautam Chand *bona fide* believing that he was the authorised agent to give instructions on behalf of the client, would it constitute professional misconduct? Even if RW 3 was not in fact an authorised agent of the complainant, but if the appellant *bona fide* believed him to be the authorised agent having regard to the circumstances in which the suit came to be instituted, would it constitute professional misconduct? Or would it amount to only an imprudent and unwise act or even a negligent act on the part of the appellant? These were questions which directly arose to which the Committee never addressed itself. There is also nothing to show that the Disciplinary Committee has recorded a finding on the facts and the conclusion as regards the guilt in full awareness of the doctrine of benefit of doubt and the need to establish the facts and the guilt beyond reasonable doubt. As has been mentioned earlier, no charge has been formulated and framed, no issues have been framed. The attention of the parties was not focussed on what were the real issues. The appellant was not specifically told as to what constituted professional misconduct and what was the real content of the charge regarding the professional misconduct against him.

In the order under appeal the Disciplinary Committee has addressed itself to three questions viz.

A (i) Whether the complainant was the person who entrusted the brief to the appellant and whether the brief was entrusted by the complainant to the appellant?

(ii) Whether report of settlement was made without instruction or knowledge of the complainant?

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(iii) Who was responsible for reporting settlement and instructions of the complainant?

In taking the view that the appellant had done so probably with a view to clear the cloud of title of RW 3 as reflected in paragraph 22 quoted herein, the Disciplinary Committee was not only making recourse to C conjucture, surmise and presumption on the basis of suspicion but also attributing to the appellant a motive which was not even attributed by the complainant and of which the appellant was not given any notice to enable him to meet the charge:

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> "It is not possible to find out as to what made PW 2 to have done like that. As already pointed out the house property which was under attachment had been purchased by RW 3 during the subsistence of the attachment. Probably with a view to clear the cloud of title of RW 3, PW 2 might have done it. This is only our suspicion. Whatever it might be, it E is clear that RW 2 had acted illegally in directing RW 1 to report settlement."

In our opinion the appellant has not been afforded reasonable and fair opportunity of showing cause inasmuch as the appellant was not apprised of the exact content of the professional misconduct F 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 G 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 H light of the aforesaid considerations and the exact nature of the profes-

sional misconduct established against the appellant. The impugned order passed by the Disciplinary Committee, therefore cannot be sustained. 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. As observed by this Court in *O.N. Mohindroo* v. *The District Judge, Delhi and Anr., Supreme Court Bar Association,* [1971] 3 SCC 5 in paragraph 23 quoted hereinbelow, we have no doubt that the Disciplinary Committee will approach the matter with an open mind:

> "From this it follows that questions of professional conduct are as open as charges of cowardice against Generals for reconsideration of the conviction of persons convicted of crimes. Otherwise how could the Hebron brothers get their conviction set aside after Charles Peace confessed to the crime for which they were charged and held guilty?"

We must explain why we consider it appropriate to remit the matter back to the Bar Council of India. This matter is one pertaining to the ethics of the profession which the law has entrusted to the Bar Council of India. It is their opinion of a case which must receive due weight because in the words of Hidayatullah, CJ, in *Mohindroo's* case:

> "This matter is one of the ethics of the profession which the law has entrusted to the Bar Council of India. It is their opinion of a case which must receive due weight."

It appears to us that the Bar Council of India must have an opportunity to examine the very vexed and sensitive question which has arisen in the present matter with utmost care and consideration, the question being of great importance for the entire profession. We are not aware of any other matter where the apex body of the profession was required to consider whether 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 being given under the authority of his client, would be guilty of misconduct. It will be for the Bar Council of India 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 atleast 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. In the facts and circumstances of the present case, it will also be necessary to re-examine the version of the complainant in the light of the foregoing discussion keeping in mind the admission made by the complainant that he was not maintaining any books of accounts and he was not an Income-tax assessee and yet he was the real plaintiff in the suit for Rs.30,000 and odd instituted by him, and in the light of the admission that it was RW 3 Gautam Chand who had introduced him to the appellant and that he was in fact taken to the office of the appellant, for filing the suit, by RW 3 Gautam-Chand. The aforesaid question would arise even if the conclusion was reached that the complainant himself was not present and had not given instructions and that the appellant had acted on the instructions of RW 3 Gautam Chand who had brought the complainant to the appellant's office for instituting the suit and who was a close associate of the complainant. Since all these aspects have not been examined at the level of the Bar Council, and since the matter raises a question of principle of considerable importance relating to the ethics of the profession which the law has entrusted to the Bar Council of India, it would not be proper for this Court to render an opinion on this matter without the benefit of the opinion of the Bar Council of India which will accord close consideration to this matter in the light of the perspective unfolded in this judgment both on law and on facts. We are reminded of the high degree of fairness with which the Bar Council of India had acted in *Mohindroo's* case. The Advocate concerned was suspended from practice for four years. The Bar Council had dismissed the appeal. Supreme Court had dismissed the Special Leave Petition summarily. And yet the whole matter was reviewed at the instance of the Bar Council and this Court was persuaded to grant the review. A passage extracted from *Mohindroo's* case deserves to be quoted in this connection:

> "37. We find some unusual circumstances facing us. The entire Bar of India are of the opinion that the case was not as satisfactorily proved as one should be and we are also of the same opinion. All processes of the Court are intended to secure justice and one such process is the power of review. No doubt frivolous reviews are to be discouraged and technical rules have been devised to prevent persons

from reopening decided cases. But as the disciplinary committee themselves observed there should not be too much technicality where professional honour is involved and if there is a manifest wrong done, it is never too late to undo the wrong. This Court possesses under the Constitution a special power of review and further may pass any order to do full and effective justice. This Court is moved to take action and the Bar Council of India and the Bar Association of the Supreme Court are unanimous that the appellant deserves to have the order disbarring him from practice set aside."

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 in so far 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 is understood that an application for restoration of the suit which has been dismissed for default in the City Civil Court at Bangalore has been made by the complainant and is still pending before the Court. 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 subjudice and fairness demands that the name should not be specified. The matter can be referred to as an *Advocate* v. *The Bar Council* or in re. an Advocate without naming the appellant.

The appeal is disposed of accordingly. No order regarding costs.

Y. Lal Appeal disposed of.