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PAWAN KUMAR SHARMA

v.

GURDIAL SINGH

SEPTEMBER 23, 1998

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[DR. A.S. ANAND AND V.N. KHARE, JJ.]

*Bar Council of India Rules :*

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*Rules 47 and 48—Advocate—Professional misconduct—Nature of charge—Complaint filed against Advocate that he was engaged in “taxi business”—Advocate admitting that prior to his enrolment, he was engaged in the business, but after the issuance of licence he had started winding up the said business and was not doing any business—Held, charge of professional misconduct is in the nature of quasi-criminal charge—It is required to be established not by preponderance of probabilities but beyond a reasonable doubt—In the instant case, the evidence led only shows that the appellant owned four taxis—Mere ownership of taxis cannot lead to any irresistible conclusion that he was engaged in taxi business after his enrolment as an Advocate—The evidence does not establish the charge of misconduct—Order of Disciplinary Committee of Bar Council of India holding the appellant guilty of professional misconduct and suspending him from practising for one year is set aside.*

*Words and Phrases :*

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*Expression “personally engaged in any business” occurring in R. 47 of Bar Council of India Rules—Meaning of.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3407 of 1998.

From the Judgment and Order dated 11.4.98 of the Disciplinary Committee of the Bar Council of India, in B.C.I.T.P. Code No. 9 of 1994.

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M.R. Sharma, B. Kanta Rao, Ms. Anjana Sharma and Ms. Sudha Gupta for the Appellant.

L. Nageshwar Rao and D. Mahesh Babu for the Respondent.

The following Order of the Court was delivered :

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Appellant has called in question the order of the Disciplinary Committee

of the Bar Council of India dated 11.4.1998 vide which he was punished by suspension from practice for one year with effect from the date of receipt of a copy of the order. The circumstances which led to the filing of this appeal need a brief notice : A

Respondent is the complainant against the appellant - advocate. On 28.8.1991, he filed a complaint alleging that the appellant was doing "taxi business" and had at the relevant time four taxis in his ownership. It was alleged that since the appellant was practising as a Lawyer, he could not have carried on the taxi business without the permission of the Bar Council and since no such permission had been obtained by him, he was guilty of committing professional misconduct. This complaint was filed initially with the State Bar Council but since it could not be disposed of within a period of one year from the date of the complaint, the same was transferred to the Bar Council of India under Section 36-B of the Advocates Act for its disposal. Before the Disciplinary Committee of the Bar Council of India, evidence was led on the issue viz. "whether respondent has committed the professional misconduct, as mentioned in the complaint?" B C D

The evidence led on behalf of the complainant as well as that of the appellant shows that the appellant had himself enrolled as an Advocate with the Punjab and Haryana Bar Council in January, 1990. At the time when he so enrolled himself his family was doing taxi business and he himself also owned four taxis. The case of the appellant was that after his enrolment as an Advocate, he transferred all the taxis to different persons and handed over their possession to them and that he did not carry on with the "taxi business" thereafter. He filed copies of the affidavits by which transfers had been made by him in favour of different persons. E

The Disciplinary Committee after considering the evidence on the record, came to the conclusion that the appellant was guilty of professional misconduct and suspended him from practice for one year. F

We have heard counsel for the parties.

Rule 47 of the Bar Council of India Rules reads as follows : G

"Rule 47 - An Advocate shall not *personally engage in any business*; but he may be a sleeping partner in a firm doing business provided that, in the opinion of the appropriate State Bar Council, the nature of the business is not inconsistent with the dignity of profession.

Rule 48 reads thus : H

A “Rule 48 - An Advocate may be Director or Chairman of the Board of Directors of a company with or without any ordinary sitting fee, provided none of his duties are of an executive character. An Advocate shall not be a Managing Director or a Secretary of any company.”

B A bare perusal of the aforesaid two Rules shows that an Advocate shall not personally engage “in any business” though he may be a sleeping partner in a firm doing business. He may also act as a Director or Chairman of the Board of Directors of a Company with or without any ordinary sitting fee, provided none of his duties are of an executive character.

C Charge of professional misconduct is in the nature of a quasi-criminal charge. It is required to be established, not by preponderance of probabilities but beyond a reasonable doubt. In the entire evidence led on behalf of the complainant, there is not a whisper that after the enrolment of the appellant in January, 1990 he engaged himself or carried on the taxi business. The evidence led in the case only shows the appellant *owned* four taxis. Even if D we ignore the evidence led by the appellant to the effect that he had disposed of those taxis after his enrolment as an advocate, the mere *ownership* of the taxis cannot lead to any irresistible conclusion that he was engaged in “taxi business” after his enrolment as an Advocate. In his deposition, the appellant appearing as RW-2, stated that after the issuance of the licence of the Bar Council, he had started winding up his business in which he was engaged E prior to his enrolment as an Advocate and that he was not doing any “taxi business” after his enrolment. This statement has remained unrebutted and has also gone unchallenged in the cross-examination. Even the complainant in his evidence did not depose that the appellant carried on with his taxi business after his enrolment as an advocate.

F In the face of this material on the record, it is not possible to say that the complainant has established that after the enrolment of the appellant as an Advocate, he was personally engaged in taxi business. The evidence on the record is vague, indefinite and scanty. It does not establish the charge of misconduct against the appellant. The disciplinary committee of the Bar G Council of India, thus, fell in error in holding the appellant guilty of professional misconduct. The charge against the appellant has not been established at all, let alone being established beyond reasonable doubt. Consequently, we allow this appeal and set aside the order of the Disciplinary Committee of the Bar Council of India dated 11-4-1998. No costs.