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VIKAS DESHPANDE

v.

BAR COUNCIL OF INDIA AND ORS.

NOVEMBER 29, 2002

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[V.N. KHARE AND ASHOK BHAN, JJ.]

Advocates Act, 1961; Sections 35, 36(B) & 38:

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Complaint of professional misconduct against Advocate for obtaining signature on documents/executing power of Attorney to sell the land of complainants on misrepresentation—Advocate promised to fight case of complainants without charging any fee but misappropriated the amount obtained in sale proceeds of land in lieu of fee—State Bar Council could not complete the disciplinary proceedings within prescribed time limit—Matter transferred to BCI—BCI found Advocate guilty of grave professional misconduct and permanently debarred him from practising as Advocate. On appeal, held: Since Advocate obtained power of attorney by misrepresentation in his favour and sold the property of the complainants and misappropriated sale proceeds for his fee though it was established that fees was not settled, he has committed a grave professional misconduct.

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Complainants were accused in a murder case. They could not engage Advocate due to poverty, and on their request, Sessions Court appointed Amicus-Curiae to defend them. Sessions Court awarded death penalty to them. Appellant-Advocate met the accused-complainants in prison and offered to fight their case in the High Court without charging any fee and obtained their signatures on Vakalatnama and subsequently on some stamp papers and executed power of attorney, and fraudulently sold lands of the complainants and misappropriated the sale proceeds in lieu of fee. High Court dismissed the appeal and confirmed death sentence. Appellant again contacted them to fight their case in appeal before Supreme Court but complainants declined and filed a complaint against the said Advocate before State Bar Council for professional misconduct by fraudulently executing power of attorney in his favour and misappropriating sale proceeds for his gain. State Bar Council referred the matter to its Disciplinary Committee. Since it could not complete its proceedings within the prescribed time limit, matter was transferred to the Bar Council of

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India under the provisions of Advocates Act.

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On the recommendation of Disciplinary Committee, Bar Council of India found appellant-advocate guilty of gross professional misconduct and permanently debarred him from practising as Advocate and also imposed cost. Hence this appeal.

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Dismissing the appeal, the Court

HELD: 1.1. With regard to the plea of appellant that he could not be proceeded ex-parte, it is on record that the appellant had been duly served notices four times and in spite of the notices having been served on the appellant he did not choose to appear before the Disciplinary Committee at any point of time. The Disciplinary Committee had no other option but to proceed to hear the matter ex parte. [404-E-F]

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1.2. The power of attorney was obtained by the appellant on misrepresentation. On the basis of the said power of attorney, he sold the land of the complainants fraudulently. It is also established that fees of the appellant had not been settled. He was neither entitled nor justified in selling the land of the complainants on the basis of the alleged power of attorney for the recovery of his fees. The only evidence on record is the statement of complainant whose testimony fully establishes the charge of professional misconduct against the appellant. [404-F; 405-A-B]

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1.3. Appellant took advantage of the situation that the complainants were facing death sentence and obtained power of attorney on misrepresentation in his favour and sold the property of the complainants. Further, the appellant fraudulently appropriated the sale proceeds for his gain. He has committed a grave professional misconduct.

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The Court observed thus:

[Relationship between an advocate and his client is of trust and therefore sacred. Such acts of professional misconduct and the frequency with which such acts are coming to light distresses as well as saddens us. Preservation of the mutual trust between the advocate and the client is a must otherwise the prevalent judicial system in the country would collapse and fail. Such acts do not only affect the lawyers found guilty of such acts but erode the confidence of the general public in the prevalent judicial system.

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- A It is more so, because today hundred percent recruitment to the Bench is from the Bar starting from the subordinate judiciary to the higher judiciary. You cannot find honest and hard working judges unless you find honest and hard working lawyers in their chambers. Time has come when the Society in general, respective Bar Council of the States and the Judges should take note of the warning bells and take remedial steps and nip the evil or the curse, if we may say so, in the bud.] [405-C-F]
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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4003 of 2001.

- C From the Judgment and Order dated 3.1.2001 of the Disciplinary Committee of the Bar Council of India, New Delhi in B.C.I. Tr. C. No. 51 of 1995.

In-persons for the Appellant.

- D V.B. Joshi, Adv. for the Respondent No. 2.

The Judgment of the Court was delivered by

- E **BHAN, J.** This appeal has been filed by Vikas Deshpande, advocate, hereinafter referred to as 'the appellant', under Section 38 of the Advocates Act, 1961 [for short 'the Act'] against the final order passed by the Disciplinary Committee of the Bar Council of India in BCI/TRC No.51 of 1995 dated 3rd January, 2001. By the impugned order the Bar Council of India has permanently debarred the appellant from practising as an advocate for the commission of a grave professional misconduct and also imposed the cost of
- F Rs. 25,000.

Facts:

- G Ramrao Chandoba Jadhav, Vidyadhar Ramrao Jadhav, and Chandrakant Ramdeo Jadhav (all deceased), hereinafter referred to as "the complainants", were prosecuted for committing murder of six persons on 16th December, 1990 at village Mandgi, Taluka-Degloor, District-Nanded. Complainants requested the Sessions Court for appointment of an advocate as amicus curiae to defend them as they were unable to engage an advocate because of their poverty. Sessions Court appointed Shri S.V. Ardhapurkar, Advocate as amicus curiae to defend the complainants. Sessions Court after trial found the
- H complainants guilty of the offence charged with and awarded them death

penalty by an order dated 30th August, 1991. On the same date the appellant contacted the complainants in Yervada Central Prison where they were lodged. Appellant took the copies of the judgment from the complainants and obtained their thumb impression and signatures on the Vakalatnama to prefer an appeal in the High Court of Bombay at Aurangabad Bench. Appellant told the complainants that he would not be charging any fee as he was doing this to make a name for himself. A B

On 10th October, 1991 appellant visited the Yervada Central Prison again and obtained their signatures on some stamp papers. The deed was not read over to the complainants nor the contents were made known to them. Complainants signed and put their thumb impression on the documents in good faith. C

In January, 1992 the High Court dismissed the appeal of the complainants and confirmed the death sentence and subsequently complainants were hanged to death. On 16th February, 1992, appellant met the complainants in Yervada Central Prison again and told them that he had sold their land on the basis of power of attorney executed in his favour by them authorising him to sell the land. That he had appropriated the money received by him towards his fees. Further the appellant asked the complainants to authorise him to prefer an appeal to the Supreme Court which they declined. Thereafter the complainants filed a complaint with the Chairman, State Bar Council to the effect that the appellant who was practising as an advocate at Nanded, Maharashtra committed an act which amounted to professional misconduct within the meaning of Section 35 of the Advocates Act and for the said act disciplinary action be taken. D E

It was stated in the complaint that applicant No.1 who was 60 years of age had a living mother, applicant No.2 had a wife and 4 minor daughters and applicant No.3 had a wife, 3 daughters and a son who were all minors. They had requested for the appointment of an advocate as amicus curiae to defend them to leave their property for the surviving members of the family in case the complainants were sentenced to death. They wanted to leave some property for their family members to survive lest they die of starvation. That they had never authorised the appellant to sell their land. That the appellant had played fraud on them and sold the property on the basis of the alleged power of attorney obtained by him through misrepresentation. F G

Appreciating the seriousness of the complaint made by the complainants, State Bar Council took *suo motu* cognizance and issued notice to the appellant H

- A who filed his reply. In the reply filed by the appellant he accepted that the complainants were in death cell of Yervada Central Prison. He further admitted that the trial of the aforesaid complainants were conducted by an amicus curiae and the death sentence was imposed by the Sessions Judge, Nanded. He described himself to be an expert criminal lawyer as he had conducted many sessions trials and appeals. It was pleaded by him that he had also engaged some other lawyers as well and he was trying his best to pay the fees of the said advocates by selling the land of the complainants. It was further stated that on the request of the complainants on 30th August, 1991 he accepted the vakalatnama on behalf of the complainants on an oral agreement that the complainants would pay Rs.50,000 to the appellant for conducting the confirmation case and the appeal before the High Court. That the complainants agreed to pay a sum of Rs.50,000 as fees and authorised him to dispose of their land to recover and appropriate the money received by way of sale towards his fees. That out of 16 acres of land owned by the complainants the appellant had sold only 6 acres and 30 gunthas of land to meet the expenses.

- D Another fact which needs to be mentioned is that the government valuation of the land was 1,35,000 but the appellant had settled the final consideration at Rs.75,000 out of which Rs.30,000 was paid at the time of the agreement to sell and the remaining amount was to be paid before 1st March, 1992. Later on a sum of Rs.17,000 was paid to the appellant. The remaining amount of Rs.28,000 could not be obtained by the appellant as the power of attorney executed in his favour was cancelled by the complainants.

- E The complaint was taken cognizance of and the matter was referred to the Disciplinary Committee of the State Bar Council. On 25th of March, 1993 the following issues were framed:

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- G "1. Do Petitioners prove that the respondent advocate met them on 30.8.1991, obtained the copy of the judgment, obtained their thumb impression and signatures on Vakalatnama and told them he would prefer original appeal on their behalf in the High Court.
 - H 2. Do petitioners prove that the respondent advocate solicited brief for no remuneration.
 3. Do petitioners prove that the respondent advocate on 10th October, 1991 met petitioners and obtained their signatures on the stamp paper without explaining the contents of the stamp paper.

4. Do petitioners prove that the respondent advocate met them on 16th Feb. 1992 and told them that he had sold their land under the power of attorney executed by them and told them that he would prefer an appeal in the Supreme Court challenging the judgment and order of the High Court. A
5. Do the petitioners prove that the act of the sale of their land by respondent advocate, in the given circumstances constitute, the professional or any other misconduct of advocate respondent. B
6. Does the respondent prove that the petitioners executed the power of attorney in his favour to alienate their land to the extent of six acres 30 gunthas situated at Village Manngi, Taluka Deglur, district Nanded voluntarily and with full knowledge. C
7. Does respondent advocate prove that his fee to conduct criminal appeal and confirmation case decided by the High Court, Aurangabad was settled at Rs.50,000 . D
8. Does respondent advocate prove that he was entitled to and justified in recovering the fees by selling the land belonging to the petitioners.
9. What orders?"

Vidhyadhar son of Ramrao Jadhav, complainant No.2 was examined on oath. He, in his deposition, reiterated that what had been stated by him in his complaint. He specifically stated that he and his two other associated had not executed any power of attorney in favour of the appellant authorising him to sell their land and appropriate the sale consideration towards his fees. That their signatures had been obtained on blank papers. That the power of attorney had been obtained by misrepresenting the facts in order to defraud them. This witness was cross-examined but nothing of substance could be brought out from his cross-examination. E F

As the State Bar Council could not complete the proceedings within a period of one year, the complaint was transferred to the Bar Council of India under section 36B of the Act. The matter was entrusted for further action to the Disciplinary Committee of the Bar Council of India. In spite of repeated notices sent to the appellant which were duly served on him (4 times) the appellant did not put in appearance. He was proceeded ex-parte. The Disciplinary Committee of the Bar Council of India found the appellant guilty of soliciting brief from the complainants and obtaining their signatures H

A and thumb impressions on certain documents on the basis of which power of attorney was executed in his favour authorising him to sell the land of the complainants. It was found that the appellant had failed to prove that the complainants had executed the power of attorney in his favour to sell the land. It was also held that the appellant had failed to prove that his fees at the relevant time to conduct the criminal appeal was settled at Rs. 50,000 .

B That he has failed to prove that he was entitled to and justified in recovering the fees by selling the land belonging to the complainants. The Disciplinary Committee found the appellant guilty of gross professional misconduct as defined under Section 35 of the Advocates Act and directed the State Bar Council of Maharashtra and Goa to remove the name of the appellant from the roll of the Bar Council of Maharashtra and Goa under section 35(3d) of the Act. Cost of Rs.25,000 were imposed and made payable to the heirs of the complainants because by that time the complainants had already been put to death in execution of the sentence imposed on them. A lien was created on the property of the appellant for the recovery of costs.

D Appellant who had appeared in person and the counsel appearing for the Bar Council of India have been heard at length.

We do not find any substance in the submission made by the appellant that he could not be proceeded ex-parte. It is evident from the perusal of the record that there are four acknowledgements on the record which show that the appellant had been duly served four times and in spite of the notices having been served on the appellant he did not choose to appear before the Disciplinary Committee at any point of time. The Disciplinary Committee had no other option but to hear the matter. Secretary of the State Bar Council who was appointed as a prosecutor also did not lead any evidence because

E in the meantime all the three complainants were hanged in execution of the sentence imposed on them. The only evidence which remains and which has come on the record is the statement of Vidhyadhar, complainant. Vidhyadhar's testimony fully establishes the charge of professional misconduct against the appellant.

G We agree with the findings recorded in the impugned order. Appellant has failed to lead any evidence to displace the testimony of Vidhyadhar, complainant to the effect that the appellant had solicited a brief for himself from them and they had not executed any power of attorney in his favour for the purpose of the sale of their land. He had obtained signatures and thumb impressions of the complainants on some documents. Without informing and

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to the knowledge of the complainants a power of attorney was got executed in favour of the appellant to sell of the land. The power of attorney was obtained by the appellant on misrepresentation. In pursuance of the alleged power of attorney in his favour the appellant sold the land of the complainants fraudulently. It is also established that fees of the appellant had not been settled at Rs. 50,000 . He was neither entitled nor justified in selling the land of the complainants on the basis of the alleged power of attorney for the recovery of his fees. Had the intention of the complainants been to sell the land then they would not have requested for appointment of an amicus curiae to defend them before the Sessions Court. A B

Appellant took advantage of the situation that the complainants facing death sentence and obtained the power of attorney on misrepresentation in his favour and sold the property of the complainants. Further, the appellant fraudulently appropriated the sale proceeds for his gain. He has committed a grave professional misconduct. C

Relationship between an advocate and his client is of trust and therefore sacred. Such acts of professional misconduct and the frequency with which such acts are coming to light distresses as well as saddens us. Preservation of the mutual trust between the advocate and the client is a must otherwise the prevalent judicial system in the country would collapse and fail. Such acts do not only affect the lawyers found guilty of such acts but erode the confidence of the general public in the prevalent judicial system. It is more so, because today hundred percent recruitment to the Bench is from the Bar starting from the subordinate judiciary to the higher judiciary. You cannot find honest and hard working judges unless you find honest and hard working lawyers in their chambers. Time has come when the Society in general, respective Bar Council of the States and the Judges should take note of the warning bells and take remedial steps and nip the evil or the curse, if we may say so, in the bud. D E F

For reasons stated above, we do not find any merit in this appeal accordingly the appeal is dismissed. There will be no order as to costs in this appeal. G

S.K.S.

Appeals dismissed.