

CHAPTER –IV

SELECTED CASES RELATING TO PROFESSIONAL MISCONDUCT AND CONTEMPT OF COURT

1.Powen Kumar Sharma v.Gurdial Singh (AIR 1999 SC 98)

Sharma enrolled as an Advocate in the Punjab & Haryana Bar Council in January 1990. At the time of his enrolment his family was doing taxi business and he himself having 4 taxies in his name. A complaint was filed against him alleging professional misconduct that he is running taxi business.

Since the State Bar Council could not able to dispose off the complaint within one year, it was transferred to the Bar Council Of India. Sharma denied this allegation and showed documents proving that he has sold the Taxies after the enrolment. But the Bar Council of India did not accept this documents and finally passed an order suspending him from practice for one year for professional misconduct on the ground that he was running a taxi business after enrolment.

He challenged the order before the Supreme Court contending that though he had 4 taxies in his name before his enrolment he had sold the taxies after the enrolment and discontinued the taxi business. The Supreme accepted the argument and passed the following orders.

1. Simply because a person is the owner of the taxies, he cannot be treated as directly doing the business.
2. Rule 47 of the bar Council permits an Advocate to act as a sleeping partner in any business which is not inconsistent with any profession.
3. The charge of professional misconduct is a quasi-criminal charge, so it should be proved beyond reasonable doubt. In this case the person filed the complaint has failed to prove the charge beyond reasonable doubt.
4. The appellatant has produced documents showing the sale of the taxies after enrolment. The respondant has failed to prove that it is untrue.

5. The order of the Bar Council of India is set aside because professional misconduct is not approved.

2.Mahabir Prasad Singh v. M/S Jack Aviation (AIR 1999 SC 287)

The plaintiff filed a suit against the defendant for recovery of possession of the building. During the pendency of the suit on 15-5-1998

the Delhi Bar Association passed a resolution boycotting that court due to his improper behavior towards the lawyers. Taking advantage of this boycott resolution the defendant filed a petition asking the judge to transfer the case, suo motu, to another court because his advocate will not appear in the court in the future. The transfer petition was dismissed.

This order was challenged before the High court. The High Court stayed the proceedings and the case was adjourned for long period. Aggrieved by the stay of proceedings and the long adjournment the plaintiffs filed an appeal before the Supreme Court.

In the appeal the Supreme Court gave the following orders.

1. If any counsel does not want to appear in the court, that too for justifiable reasons, the case should be returned to the party so that the party can engage in another counsel.
2. Retaining the case without returning it to the client and abstaining from conducting the case in the court amounts to professional misconduct.
3. The court should not adjourn the case on the ground of Advocates strike or Advocates decision of boycott the court.
4. During the court hours even if the Advocates are not appearing the court should proceed with the trial of the case.
5. Court should not yield to the pressure tactics of boycott or any kind of brow beating.
6. Judicial officers should behave cordially towards the Advocates.

3. Supreme court Bar Association v. union of India (AIR 1998 SC 1995)

V.C. Mishra, then the Chair Man of the Bar Council of India was punished by the Supreme court for contempt of court and he was suspended from the practice for a period of 3 years.

The charges against him was that in the court by using insulting, disrespectful and threatening language he has threatened the judges. His act has hurt the judges and he has acted in such way to obstruct the course of justice.

The Supreme Court Bar association challenged this order and raised the following issues.

1. The Supreme Court while dealing with the contempt proceedings cannot suspend Advocate from the practice.
2. Bar Council alone can pass the order suspending an Advocate from practice.

3. For professional misconduct original jurisdiction is vested with the Bar Council.

4. Supreme court vested with only appellate jurisdiction to hear the appeal against the order of the Bar Council of India.

5. Art. 129 of the constitution does not confer any original Jurisdiction to the Supreme court in the matters of professional misconduct.

The main question before the court was whether for contempt of court committed by an Advocate the Supreme Court can pass an order suspending his practice for a specified period.

The Constitution bench of the Supreme Court allowed the petition and issued the following orders.

1. Supreme court's power to punish for contempt is quite wide, yet it is limited.
2. In the contempt of the court proceedings, the court cannot simultaneously enquire into the professional misconduct also by adopting summary procedure.
3. Professional misconduct should be enquired only by following the prescribed procedure mentioned in the Advocates Act.
4. Supreme court can award punishment only for contempt of court and not for professional misconduct.
5. For the contempt of the court, simple imprisonment of 6 weeks is given.
6. This punishment is suspended for 4 years.
7. The punishment shall be activated, if V.C. Misra again indulges in any other act of contempt of court within the said period of 4 years.

4 .P.D. Gupta v.Rammurthi (AIR 1998 SC 283)

One Mr. Krishnan died on 5-6-1980. His sister Vidyawati filed a suit for declaration of title in her favour for certain properties of Mr. Krishnan, Ramamurthi and others resisted the suit claiming title in their favour. P.D.Gupta was the Advocate of Vidyawati. When the suit was pending P.D. Gupta purchased part of the disputed property for Rs.18000 and sold it for 34000 immediately.

Mr. ramamurthi filed a complaint against P.D.Gupta before the Delhi Bar Council alleging professional misconduct. The main allegation

is that he has purchased the part of the disputed property from his client during the pendency of the suit.

Since the enquiry was not completed within one year the matter is transferred to the Bar Council of India. After hearing both the parties, the Bar Council of India passed an order suspending him from the practice for a period of one year. The court held that a shadow of undue influence is present when an Advocate buys property of his own client.

Against this order P.D. Gupta filed an appeal before the Supreme court. In the appeal his main contention was that his client or her legal heirs has not filed any complaint regarding professional misconduct, and the enquiry conducted based on the complaint by some other person is wrong.

The Supreme Court did not accept this argument and passed the following orders.

1. Any person shall file a complaint regarding professional misconduct against an Advocate.
2. Bar council shall enquire into the allegation of professional misconduct, though the complaint is filed by a stranger, because, the Bar council is concerned with the conduct of Advocates.
3. The order passed by the Bar Council of India is confirmed.

5.Robtas Singh v.Commissioner, Agra Division
(AIR 1997 All 278)

The commissioner of Agra Division, and certain other officials have violated the order of Allahabad High Court dated 6-9-93. Consequently the Allahabad High court issued notice to show cause why action cannot be taken against them for contempt of court. In this matter the additional standing counsel of the State Mr. Kazim appeared for the officials.

An objection was raised by the State law Officer and some criminal Advocates, regarding the appearance of the govt.Standing council for the accuseds in the contempt of court proceedings.

In support of their claim they submitted the Legal Remuneration Manual of U.P which deals with the duties of a Govt. Advocate. It says that the Government Advocate shall not appear for the defense or any criminal or quasi-criminal case; nor shall he advise any party against the prosecution in any criminal case. After hearing the objection the Allahabad high Court passed the following orders.

1. Contempt proceedings are quasi-criminal in nature so it is the duty of the state to prosecute the contemner even if they are govt. officials.
2. Govt. Advocates should not appear for the persons charged with the contempt of court.
3. Govt. officials should engage other Advocates in the contempt proceedings and they should pay for them from their pocket.
4. If the Govt. officials are acquitted then they shall claim the amount spent by them for spending the case from the Govt.

6.Harish Chandra Singh v.S.n.Tripathi
(AIR 1997 SC 879)

Mr.Daya Ram engaged Mr. Harish Chandra as a lawyer in a consolidation proceeding pending before the consolidation officer. Since Daya Ram could not attend the case regularly, harish Chandra asked him to appoint a mukhtar. Daya Ram appointed one mr. Syed Hussain, a junior Advocate of harish Chandra as the mukhtar (power agent).

Syed Hussain in the capacity as mukhtar sold certain properties of Daya Ram to the father of Harish Chandra (This he did under the pressure of his senior Harish Chandra).

Daya Ram filed a complaint against both Harish Chandra and his junior Syed Hussain before the Local Bar Association. The president of the Bar Association forwarded the complaint to the U.P.State Bar Council. Since the matter was not disposed off within one year it was transferred to the Bar Council of India. During the enquiry Daya Ram submitted the following.

1. The mukhtar was obtained fraudulently.
2. Therefore, the sale deed executed by using the mukhtar should be treated as void.
3. The act of Harish Chandra and Syed Hussain amounts to professional misconduct, So they should be punished for that.

Syed Hussain confessed the guilt stating that being a junior, by obeying his senior, he did these things and asked for pardon.

Harish Chandra contented that his father was living separately and he did not have any contact with him. He also contented that Syed Hussain is not his junior.

The Bar Council of India held that Harish Chandra is Guilty of professional misconduct and he was suspended from the practice for two years. His junior Syed Hussain was pardoned.

Against this order Harish Chandra filed an appeal before the Supreme court. The Supreme court dismissed the appeal and affirmed the decision of the Bar Council of India.

**7.Hikmat Alikhan v.Ishwar Prasad Arya
(AIR 1977 SC 864)**

Ishwar Prasad Arya was an Advocate practicing in Badann, U.P. He stabbed his opponent with the knife for that he has convicted 3 years rigorous imprisonment. On appeal the High court also confirmed the punishment.

Thereafter, by using a forged letter of the Governor asking the court to suspend his sentence under art. 161 of the constitution he got his conviction suspended and he was released. Later the sessions Judge found the letter as forged one and he lodged a complaint with the Bar Council of U.P. for necessary action against him. The State Bar Council debarred him from practice for 2 years. On appeal the Bar Council of India set aside this order on the ground that there is no clear evidence to show that the Advocate himself has prepared that forged letter.

Subsequently by taking into account of the bad conduct of the Advocate ie. Conviction for the offence under S.307 of I.P.C and his name being entered by the police in a register which contains the list of persons with bad character he was debarred for the practice for a period of 3 years by the State Bar Council. On appeal this order was also set aside by the Bar Council of India because it is interconnected with the earlier matter. Hikmit Ali Khan preferred an appeal before Supreme Court against this order.

The Supreme court held that the second order of the State Bar Council was based on totally a different ground not connected with the grounds of the first order and the Bar Council of India was erroneous in setting aside the second order of the U.P. Bar Council. Further Supreme court held that the gravity of the misconduct committed by him is so serious and the punishment of suspending him from practice for 3 years is not sufficient and ordered the removal of his name from the roll of Advocates.

8.Prahalad Saran Gupta v. Bar Council of India (AIR 1997 Sc 1338).

Gupta was practicing Advocate at Gaziabad . He was appearing for the decree-holder in an execution case between Atma Ram manak Chand v.Shriram in the Ghaziabad court.

The degree holder has filed a complaint in the State Bar Council against his Advocate (Gupta) alleging the following professional misconduct.

1. He has colluded with the judgement debtor and accepted Rs. 1500 out of the total decreed amount and allowed time for the payment of the remaining balance.
2. The amount so received is not given to the degree holder.
3. He has helped the judgement Debtor to get the execution stayed by the High Court.
4. When he was Acting as a standing counsel for the railways ,he drafted the notice under S.80.C.P.C to be served to the railways on behalf of M/s. Agerwal traders who was the complainant against the Railways. This is a serious professional misconduct. The draft prepared by his own handwriting was produced before the disciplinary committee.

Gupta denied all the allegations and informed that he was holding the amount of Rs.1500 as trustee on behalf of his client. Since the enquiry was not completed within one year the matter was transferred to the Bar Council of India.

The Bar council of India has found the appellant guilty of serious professional misconduct and passed an order suspending him from the practice for a period of one year.

Gupta challenged this order before the Supreme court. The Supreme court passed the following orders.

1. It is not advisable for the Disciplinary Committee to base its conclusion purely on the basis of its own comparison of the handwriting of Gupta with the alleged draft prepared by him. The court held that the charge of professional misconduct is quasi-criminal in nature requires proof beyond reasonable doubt.
2. Addressing a letter to the counsel of the opposite party (judgement debtor) in the execution proceedings amounts to professional misconduct.

3. Holding the money with him which he has received in the execution proceedings without any sufficient reason amounts to professional misconduct.
4. For this misconduct suspending him from practice for 1 year is too much , So the Bar Council of India's order is set aside and he was reprimanded with strong words.

**9.Dr.Haniraj I.Chulani v. Bar Council of Maharashtra
(AIR 1996 SC 1708)**

Dr. Haniraj was a medical practitioner studied law and wanted to enrol as an Advocate and to continue the medical profession also. He applied to the Bar Council of Maharashtra to enrol himself as an advocate. The State Bar Council rejected his application because the Bar Council rules prohibits a person to enrol as an Advocate if he is already carrying on some other profession.

He challenged this rule before the High Court and prayed for an order to declare that the said rule as arbitrary, unreasonable and violative of Art 21. The High Court summarily dismissed the petition. Thereafter he filed a special leave petition before the Supreme Court.

In the Supreme Court he submitted the following arguments

1. Advocates act has delegated excessive and unlimited power of rule making power to the Bar Council. This is against the principles of rules of law.
2. Rules made by the Bar Council by using this delegation should be declared as void.
3. He should be treated equally along with the other law graduates.
4. The protection of equality before law should be given to him (Art 14).

The Supreme court has not accepted these arguments and dismissed the petition and passed the following orders.

Bar Council is justified in framing rules prohibiting persons carrying on the other business to enrol as an Advocate.

1. Legal profession requires full time attention hence, An Advocate cannot be allowed to do any other business or profession.
2. Bar Council rules is intervires to the constitution and it is not violative of Art. 14,19 (1) (g) and 21.

10. Dr.D.C.Saxena v. Hon'ble chief justice of India

(AIR 1996 SC 2481)

Dr.D.C.Saxena was a professor of English University. He filed a writ petition in the Supreme Court by way of public interest litigation seeking to recover from the Prime Minister Mr.P.V.Narasima Rao the expenditure incurred for his private use of Indian Air Force AirCRAFT and Helicopters. The writ petition was dismissed summarily without going into the merits by the bench consisting of Honable chief Justice Mr.A.M.Ahmedi and others.

Thereafter,Dr.D.C. Saxena filed a second writ petition against the chief justice of India. In this petition he contented that his first writ petition was dismissed by Chief Justice by receiving brief and he prayed for the following.

1. The respondant be declared as unfit to hold the office of chief justice of India.
2. His citizenship should be withdrawn and a case be registered against him for forgery and fraud.
3. Direction to prosecute the Respondent under the prevention of Corruption Act.
4. Direction to the Chief Justice of India to give from his pocket the expenses incurred for filling this writ petition.

The Supreme court issued a show cause notice against him for contempt of court because several averments in the writ petition are scandalous, and the allegation made are reckless attack on the chief justice of India.

Sexena denied all the allegations. He pleaded that he had filed this petition only on public interest and there is no bad intention in filing this petition. He even pleaded that if the court wants, he is ready to withdraw the petition or ready to make the necessary changes in the petition.

The court did not accept this argument and held that withdrawal or making changes in the petition cannot cure the contempt already committed by the scandalous remarks made in the petition. The court passed an order of three months simple imprisonment and a fine of Rs.2000 for contempt of court and the writ petition was also dismissed.