PART - A : STANDARDS OF ETIQUETTE AND PROFESSIONAL ETHICS

An Advocate v. *Bar Council of India*

1989 Supp (2) SCC 25

M.P. THAKKAR, J. - A host 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not only for the advocate who has been suspended from practising his profession for 3 years on the charge of having withdrawn a suit (as settled) without the instructions from his client, but also for the members of the legal profession in general have arisen in this appeal: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) 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 dishonesty or mens rea a finding of guilt and a punishment of this nature can be inflicted on him?

(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?

(5) Whether an advocate acting bona fide and in good faith on the basis of oral instructions given by someone 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?

2. The suit was a suit for recovery of Rs 30,098 (Suit No. 65 of 1981 on the file of Additional City Civil Judge, Bangalore). It appears that the complainant had entrusted the brief of the appellant which he in his turn had entrusted to his junior colleague (Respondent 2 herein) 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 At the point of time when the suit was withdrawn, Respondent 2 was practising on his own having set up his separate office.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 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 paras 1 and 2 of his complaint:

(1) The petitioner submits that he entrusted a matter to Respondent 2 to file a case against Shri A. Anantaraju for recovery of a sum of Rs 30,098 with court costs and current interest in Case No. OS 1965 of 1981 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 Respondent 2. 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 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 later learnt that even the half of the institution court fee is also taken by the first respondent within 10 days.

3. The version of the appellant may now be unfolded:

(1) One Gautam Chand (RW 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 Rs 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 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 deed. 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 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 appellant and his colleague Respondent 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 steps to induce Anantaraju to execute the sale deed in his favour.

(5) A suit being OS No. 1965 of 1981 was instituted on behalf of the complainant Haradara claiming an 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 interlocutory application was moved on behalf of Haradara by Respondent 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 Gautam 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 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 27-11-1981 in favour of Gautam Chand. The 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.

(7) Gautam Chand (RW 3) and the complainant Haradara acted in mutual interest and secured 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 this interest in the property.

(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 2 Ashok advocate (Ex. R-l-A at p. 14 Additional Documents). The papers were delivered to Respondent 2 Ashok advocate by Gautam Chand (RW 3).

(9) After satisfying himself, Respondent 2 Ashok advocate appeared in court on 10-12-1981 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, OS No. 1965 of 1981.

(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 1½ 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 16-7-1982. Thus Misc. 16 of 1982 (Application for restoration of suit) is pending in civil court.

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

(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 roll 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 practice 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 Section 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[2] 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.

4. 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:

(*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 practise 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 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 apartheid. A disciplinary proceeding by a statutory body of the members of the profession which is statutorily empowered to impose a punishment including a punishment of such immense proportions is quasi-criminal in character;

(*ii*) as a logical corollary it follows that the Disciplinary Committee 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 preponderance of evidence or on the basis of surmise, conjecture 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) 1 SCC 354], wherein Ray, C.J., speaking 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 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.

5. The State Bar Council, after calling for the comments of the appellant in the context of the complaint, straightway proceeded to record the evidence of the parties. No charge was framed specifying the nature and content of the professional misconduct attributed to the appellant. Nor were any issues framed or points for determination formulated. The Disciplinary Committee straightway 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.

6. 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?

(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?

(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 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 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 can expect from his own professional brethren, 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*** [AIR 1957 SC 149], this Court framed a charge 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 the 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.

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.

7. 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 context. 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.

8. In the light of the foregoing discussion the questions arising in the present appeal may now 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 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 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 Anantaraju. The decision to file a suit on behalf of the complainant against RW 4 Anantaraju 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 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 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 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.

9. Even on the admission of the complainant himself he was taken to the office of the appellant for instituting the suit, by RW 3 Gautam Chand, an 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 admissions. The defence of the appellant being the suit was withdrawn under the oral instructions of the complainant in the presence of RW 3 Gautam Chand and RW 4 Anantaraju 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 presence of the complainant was not considered acceptable, the question 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 requires 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.

10. 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 the 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.

11. In the order under appeal the Disciplinary Committee has addressed itself to 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?
>
> (*ii*) Whether report of settlement was made without instruction or knowledge of the complainant?
>
> (*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 para 22 quoted herein, the Disciplinary Committee was not only making recourse to conjecture, 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:

> "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 is clear that RW 2 had acted illegally in directing RW 1 to report settlement."

12. 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 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 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 light of the aforesaid considerations and the exact nature of the professional 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. *District Judge, Delhi*** [(1971) 2 SCR 11], 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 or 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, C.J., in ***Mohindroo*** 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 at least 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*** 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*** case deserves to be quoted in this connection:

> 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 debarring him from practice set aside.

13. 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 insofar 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.

14. 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 sub judice and fairness demands that the name should not be specified. The matter can be referred to as ***An Advocate*** **v.** ***Bar Council*** **or** ***In re an Advocate*** without naming the appellant. The appeal is disposed of accordingly.

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Salil Dutta* v. *T.M. and M.C. (P) Ltd.

(1993) 2 SCC 185

B.P. JEEVAN REDDY, J. - 2. The appeal is preferred by the plaintiff against the judgment and order of a Division Bench of the Calcutta High Court allowing the appeal preferred by the respondent/defendant. The appeal before the High Court was directed against an order of the city civil court, Calcutta dismissing an application filed by the defendant to set aside the ex parte decree passed against him, under Order 9 Rule 13 of the Civil Procedure Code. The relevant facts may be noticed briefly.

3. The plaintiff/appellant filed a suit for ejecting the defendant-tenant on the ground of default in paying rent and also on the ground that the such premises are required for his own use and occupation. The suit was posted for final hearing on June 9, 1988 - seven years after its institution. On an earlier occasion, the defendant had filed two interlocutory applications, one under Order 14 Rule 5 and the other under Order 6 Rule 16 CPC. On May 19, 1988 the city civil court had passed an order on the said applications observing that the said applications shall be considered at the final hearing of the suit. According to the defendant (as per his statement made in the application filed by him for setting aside the ex parte decree) his advocate advised him that he need not be present at the hearing of the suit on June 9, 1988, and thereafter till the applications filed by him under Order 14 Rule 5 and Order 6 Rule 16 CPC are disposed of. Be that as it may, on June 9, 1988, the advocate for the defendant prayed for an adjournment till the next day. It was adjourned accordingly. On June 10, neither the advocate for the defendant nor the defendant appeared, with the result the defendant was set ex parte. Hearing of the suit was commenced and concluded on June 11, 1988. The suit was posted for delivery of judgment to June 13, 1988. On June 11, 1988, an application was made on behalf of the defendant stating the circumstances in which his advocate had to retire from the case. This application, however, contained no prayer whatsoever. The suit was decreed ex parte on June 13, 1988. Thereafter the defendant filed the application to set aside the ex parte decree. In this application he referred to the fact of his filing two interlocutory applications as aforesaid, the order of the court thereon passed on May 19, 1988 and then stated "due to the advice of the learned advocate-on-record that your petitioner need not be present at the hearing of the suit on June 9, 1988 and thereafter till the disposal of the application filed under Order 6 Rule 16 and Order 14 Rule 5 read with Section 151 of the Code of Civil Procedure in the above suit," the defendant did not appear before the Court. It was stated that Mr Ravindran the Principal Officer of the defendant-company was out of town on that date. It was submitted that because the defendant had acted on the basis of the advice given by the advocate-on-record of the defendant, there was sufficient cause to set aside the ex parte decree within the meaning of Order 9 Rule 13 CPC. The trial court dismissed the said application against which an appeal was preferred by the defendant to the Calcutta High Court. The appeal was heard by a Division Bench and judgment pronounced in open court on

July 8, 1991 dismissing the appeal. However, it appears, before the judgment was signed by the learned judges constituting the Division Bench, an application was moved by the defendant for alteration or modification and/or reconsideration of the said judgment mainly on the ground that the defendants' counsel could not bring to the notice of the Division Bench the decision of this Court in ***Rafiq* v. *Munshilal*** [AIR 1981 SC 1400] and that the said decision clearly supports the defendants' case. The counsel for the plaintiff opposed the said request. He submitted that once the judgment was pronounced in open court, it was final and that matter cannot be reopened just because a relevant decision was not brought to the notice of the Court. After hearing the counsel for both the parties, the Division Bench reopened the appeal on the ground that "technicalities should not be allowed to stand in the way of doing justice to the parties". The Bench observed that when they disposed of the appeal, their attention was not invited to the decision of this Court in ***Rafiq* v. *Munshilal*** and that in view of the said judgment they were inclined to reopen the matter. The Division Bench was of the opinion that "after a judgment is delivered by the High Court ignoring the decision of the Supreme Court or in disobedience of a clear judgment of the Supreme Court, it would be treated as non-est and absolutely without jurisdiction .... when our attention has been drawn that our judgment is per incuriam, it is our duty to apply this decision and to hold that our judgment was wrong and liable to be recalled". (We express no opinion on the correctness of the above premise since it is not put in issue in this appeal.) Accordingly, the Division Bench heard the counsel for the parties and by its judgment and order dated March 3, 1992 allowed the appeal mainly relying upon the decision of this Court in ***Rafiq***.

5. Since the judgment under appeal is exclusively based upon the decision of this Court in ***Rafiq*** it is necessary to ascertain what precisely does the said decision say. The appellant, Rafiq had preferred a second appeal in the Allahabad High Court through an advocate. His advocate was not present when the second appeal was taken up for hearing with the result it was dismissed for default. The appellant then moved an application to set aside the order of dismissal for default which was dismissed by the High Court. The correctness of the said order was questioned in this Court. The matter came up before a Bench comprising D.A. Desai and Baharul Islam, JJ. D.A. Desai, J. speaking for the Bench observed thus:

> The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned Advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job.

6. It was then argued by the counsel for the respondent in that appeal that a practice has grown up in the High Court of Allahabad among the lawyers to remain absent when they did not like a particular Bench and that the absence of the appellant's advocate in the High Court was in accordance with the said practice, which should not be encouraged. While expressing no opinion upon the existence or justification of such practice, the learned Judge observed that if the dismissal order is not set aside "the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented," and then made the following further observations:

> The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. Maybe that the learned advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted.

7. The question is whether the principle of the said decision comes to the rescue of the defendant respondent herein. Firstly, in the case before us it was not an appeal preferred by an outstation litigant but a suit which was posted for final hearing seven years after the institution of the suit. The defendant is a private limited company having its registered office at Calcutta itself. The persons in charge of the defendant-company are not rustic villagers nor they are innocent illiterates unaware of court procedures. Prior to the suit coming up for final hearing on June 9, 1988 the defendant had filed two applications whereupon the court ordered that they will be considered at the time of the final hearing of the suit. The plaintiff's case no doubt is that the said applications were part of delaying tactics being adopted by the defendant-tenants with a view to protract the suit. Be that as it may, the defendant thereafter refused to appear before the court. According to the defendant, their advocate advised them that until the interlocutory applications filed by them are disposed of, the defendant need not appear before the court which means that the defendants need not appear at the final hearing of the suit. It may be remembered that the court proposed to consider the said interlocutory applications at the final hearing of the suit. It is difficult to believe that the defendants implicitly believed their advocate's advice. Being educated businessmen they would have known that non-participation at the final hearing of the suit would necessarily result in an adverse decision. Indeed we are not prepared to believe that such an advice was in fact tendered by the advocate. No advocate worth his salt would give such advice to his client. Secondly, the several contradictions in his deposition which are pointed out by the Division Bench in the impugned order go to show that the whole story is a later fabrication. The following are the observations made in the judgment of the Division Bench with respect to the conduct of the said advocate: "We found that the said learned advocate conducted the proceedings in a most improper manner and that his absence on June 10, 1988 and on subsequent date was not only discourteous but possibly a dereliction of duty to his client ... the learned advocate had forgotten his professional duty in not making inquiry to the court as to what happened on June 10, 11 and 13, 1988 ... the learned advocate acted in a most perfunctory

manner in the matter and the learned advocate dealt with the matter in a most unusual manner. We have also found that the said learned advocate had made serious contradiction in the deposition before the court below. The learned advocate in his deposition stated that he did not file an application for adjournment on June 9, 1988. But from the record it was evident that it was on the basis of the application filed on June 9, 1988, the case was adjourned for cross-examination of the witnesses whose examination was called on the next date." The above facts stated in the deposition of the advocate show that he indeed made an application for adjournment on June 9, 1988 to enable him to cross-examine the witnesses on the next date. Therefore, his present stand that he advised his client not to participate in the trial from and including June 9, 1988 onwards is evidently untrue. We are, therefore, of the opinion that the story set up by the defendant in his application under Order 9 Rule 13 is an after-thought and ought not to have been accepted by the Division Bench in its order dated March 3, 1992 - more particularly when it had rejected the very case in its earlier judgment dated July 8, 1991.

8. The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engaged him. It is true that in certain situations, the court may, in the interest of justice, set aside a dismissal order or an ex parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult. The observations made in ***Rafiq*** must be understood in the facts and circumstances of that case and cannot be understood as an absolute proposition. As we have mentioned hereinabove, this was an on-going suit posted for final hearing after a lapse of seven years of its institution. It was not a second appeal filed by a villager residing away from the city, where the court is located. The defendant is also not a rustic ignorant villager but a private limited company with its head-office at Calcutta itself and managed by educated businessmen who know where their interest lies. It is evident that when their applications were not disposed of before taking up the suit for final hearing they felt piqued and refused to appear before the court. Maybe, it was part of their delaying tactics as alleged by the plaintiff. May be not. But one thing is clear - they chose to non-cooperate with the court. Having adopted such a stand towards the court, the defendant has no right to ask its indulgence. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory which cannot be accepted and ought not to have been accepted.

9. For the above reasons, the appeal is allowed.

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State of Maharashtra* v. *Budhikota Subbarao (Dr)

(1993) 3 SCC 71

R.M. SAHAI, J. - Strictures of 'sharp practice', suppression of facts, obtaining orders by playing fraud upon the court against State by Mr Justice Saldanha of the Bombay High Court, while deciding criminal miscellaneous petition filed by the opposite party, accused of leaking official secrets and violating provisions of the Atomic Energy Act, 1962 and awarding Rs 25,000 as compensation, for consultancy loss, suffered by him, due to ex parte order obtained by the State against order of the trial Judge permitting the opposite party to go abroad, compelled the State to file this appeal and assail the order not only for legal infirmities but factual inaccuracies.

2. Reasons to quote the learned Judge which, 'compelled the conscience of court to pass' the impugned order were, 'the unfortunate proceedings that bristled(s) with mala fides'. Basis for these inferences was, the conclusion by the learned Judge, that the State, deliberately, procured the interim order by another learned Judge by filing a separate writ petition, when it knew that the main petition for quashing of the proceedings was pending before the Division Bench (Puranik and Saldanha, JJ). The learned Judge felt, strongly, against the public prosecutor as she being aware of the proceedings before the Division Bench failed in her duty of apprising the learned Judge of correct facts.

3. Was this so? Did the State procure the order by concealing facts? Was the public prosecutor guilty of violating professional ethics or her duty as responsible officer of the court? What led to all this was an application filed by the opposite party, in the writ petition pending for quashing the charge-sheet framed under [The Indian] Official Secrets Act, 1923 and the Atomic Energy Act, 1962, for release of his passport on which the Division Bench of which Mr Justice Saldanha was a member, passed the order on February 13, 1991 that it may be presented before the trial Judge. On the very next day the Additional Sessions Judge, ('ASJ') after hearing the parties, directed that the passport and identity card of the opposite party be returned. He, further, permitted the opposite party to leave India and travel abroad as per the itinerary during the period from February 17, 1991 to February 22, 1991 on executing a personal bond of Rs 50,000. The State was, obviously, disturbed by this order as serious charges had been levelled against the opposite party who had been arrested, earlier, just when he was about to leave the country and board the plane, for leakage of official secrets and whose bail had, even, been cancelled by this Court, appeared to be in danger of leaving the country again. Since the order was passed on February 14, 1991 and the opposite party was to fly on February 17, 1991 and February 16, 1991 was Saturday, the State challenged the correctness of the order passed by the ASJ by way of a writ petition under Article 227 of the Constitution read with Section 482 of Criminal Procedure Code and the learned Judge, who under the rules was entitled to hear such a petition, passed an ex parte order on February 15, 1991 staying that part of the order which permitted the opposite party to leave the country and directed the application to be listed for further orders on February 18, 1991. On coming to know of this order, in the evening, the opposite party approached the Division Bench where the main petition was pending on February 16, which after making an

observation that the public prosecutor ought to have brought it to the notice of the learned Single Judge that the main matter was pending before the Division Bench and the trial Judge had passed the order in pursuance of the direction issued by the Division Bench, directed that the matter, being urgent, it should be placed before the same learned Single Judge. Consequently parties appeared before the learned Judge on February 16, who, after hearing, confirmed the interim order passed, a day earlier.

4. With confirmation of interim order the proceedings which had commenced on the application filed by the opposite party to leave the country came to an end. But the writ petition in which the interim order was passed remained pending. And when the revision filed by the State, directed against the order acquitting the accused, was taken up for hearing by Mr Justice Saldanha, and observations were made, during course of judgment dictated in open court from October 5 to 12, 1991 against the public prosecutor and the State, the opposite party appears to have made a mention on October 10, that the writ petition filed by the State against the order of the trial Judge releasing his passport and permitting him to travel abroad may be summoned and disposed of. The request was accepted and on direction of the learned Judge the office listed the case before him on October 11. When the petition was taken up, on October 11, and the public prosecutor was asked if she had any objection to hearing it was stated by her that it did not survive. But the learned Judge after completion of judgment in criminal revision on October 12, appears to have, taken up the writ petition. It was pointed out by the learned senior counsel for the State that since the criminal revision filed by the State against the order acquitting the accused had been dismissed, the writ petition had become infructuous and orders may be passed accordingly.

5. Yet the learned Judge passed the impugned order. What weighed with the learned Judge to infer mala fides against the State was that the order dated February 14, 1991 having been passed in open court in presence of the opposite party and counsel for the State, permitting the opposite party to leave the country on February 17, 1991, the opposite party, genuinely expected and according to the learned Judge, rightly, that any further application which the State would make could only be addressed to the Bench, namely, the Bench of Puranik and Saldanha, JJ., before whom the petition was pending, therefore, the opposite party, justifiably, waited and watched in the Bench, whole day for moving of any application but the State instead of moving any such application filed a fresh writ petition and obtained an ex parte order, the information of which was given to opposite party in the evening. The learned Judge was of opinion that it was deliberate as it was known to the public prosecutor that the Bench on February 13, 1991 after scrutinising the papers was of opinion that it was a genuine case in which the passport should be released and the opposite party should be permitted to travel abroad but due to paucity of time the Bench instead of passing the order directed the opposite party to approach the trial Judge. The learned Judge further held that even though the public prosecutor and the Inspector of Police knew these facts and that the opposite party was to fly on February 17, 1991 yet the notice was obtained from the learned Judge returnable on February 18, 1991 by which time the delegation from Reliance Industries of which the accused was to be a member was to have left the country.

Since the effect of the interim order and the fixing of the petition on February 18, 1991 nullified the opposite party's going to United States of America, the court felt that the order was obtained not only unfairly, but that it constituted a sharp practice. The motive of the public prosecutor and the State was further attempted to be shown to be dishonest and motivated as the averments in the petition on which the interim order was obtained were false to their knowledge. The falsity found was that the State had deliberately tried to mislead the court by alleging that the trial was fixed for hearing on February 18, 1991 and the same had been adjourned to February 24, 1991. The court found that the learned Single Judge was misled in passing the order as was clear from ground No. 6 which was to the effect that the trial being fixed for February 18, 1991, the trial Judge was not justified in issuing the orders in favour of opposite party. The learned Judge also felt aggrieved by the conduct of the public prosecutor in not informing the learned Single Judge that the main writ petition was already listed for hearing before the Division Bench and that the direction to the ASJ to consider the application for return of passport had been issued by the Bench. The learned Single Judge was not satisfied with explanation of the State that a petition under Article 227 of the Constitution read with Section 482 of Criminal Procedure Code being maintainable before the learned Single Judge under the High Court rules it had no option but to proceed in accordance with law. The learned Single Judge pointed out that if the State would have pointed out to the Registry the correct facts then the case could not have been listed before the learned Single Judge.

6. That any party aggrieved by an order passed by a court is entitled to approach the higher court cannot be disputed nor can it be disputed that a petition under Article 227 of the Constitution read with Section 482 of the Criminal Procedure Code against the order of trial Judge was maintainable and under rules of the court it could be listed before the learned Single Judge only. The State, therefore, in filing the petition against the order of the Sessions Judge did not commit any illegality or any impropriety. A copy of the writ petition, has been annexed to this special leave petition which, does not show any disclosure of incorrect facts or any attempt to mislead the court. Even the learned Single Judge did not find that the trial was not fixed for February 18, 1991. Disclosing correct facts and then obtaining order in favour is not same as procuring an order on incorrect facts. Former is legitimate being part of advocacy, latter is reprehensible and against profession. But if the State persuaded the court to stay the operation of the order passed by the trial Judge while mentioning the details about the pendency of the earlier petition before the Division Bench and issuing of directions to the Sessions Judge to decide the application for release of passport etc. it is difficult to imagine how any inference of obtaining order on incorrect facts could be drawn. During arguments the opposite party attempted to highlight averments in paragraph 6 of the writ petition to the effect that the Division Bench had dismissed the application of the opposite party when no such order was passed. The sentence, in fact, reads as under:

> "The application was dismissed and directed the respondent to move trial court and further directed the trial court to consider the same in accordance with law."

True, the application was not dismissed. But the sentence had to be read in its entirety. No court could be misled from the use of the word dismissed as the directions issued by the court were mentioned correctly. The inference drawn by court and the finding recorded by it of obtaining the order by 'suppression of facts and making positively false statements' is factually incorrect and legally unsound. The grief of the opposite party in missing an opportunity of going to the United States and the grievance against functionaries of the State, namely, public prosecutor and prosecuting Inspector can be appreciated. We can, also, visualise the vehemence and eloquence of the opposite party, of which he is capable of, as appeared from his submission when he appeared in person in this Court, but what has baffled us that the learned Judge was persuaded to record the finding of suppression of facts on such weak and insufficient material.

7. Mala fides violating the proceedings may be legal or factual. Former arises as a matter of law where a public functionary acts deliberately in defiance of law without any malicious intention or improper motive whereas the latter is actuated by extraneous considerations. But neither can be assumed or readily inferred. It requires strong evidence and unimpeachable proof. Neither the order passed by the learned Single Judge granting ex parte order of stay preventing opposite party from going abroad was against provisions of law nor was the State guilty of acting mala fides in approaching the learned Single Judge by way of writ petition. The order of the trial Judge could not be challenged before the Division Bench. Under the rules of the court, the correctness of, the order could be assailed only in the manner it was done by the State. Any party aggrieved by an order is entitled to challenge it in a court of law. Such action is neither express malice nor malice in law.

8. The opposite party was charged with very serious offence. He was arrested when he was about to leave the country. The State was possessed of material that he had, even, applied for matrimonial alliance in response to an advertisement issued from New York. The order of the trial Judge, therefore, permitting opposite party to leave the country without trial must have created a flutter in the department. It was by all standards a sensational and a sensitive case. The public prosecutor and the prosecuting Inspector who were entrusted with responsibility to prosecute the opposite party must have felt worked up by the order permitting the opposite party to leave the country. Decision must have been taken to prevent the opposite party by approaching the High Court by way of a writ petition instead of approaching the Division Bench. Assuming that the State took recourse to this method, as it might have been apprehensive that it would not get any order from the Division Bench, the State could not be accused of mala fides so long it proceeded in accordance with law. Apart from that once it was brought to the notice of the Division Bench that the State had procured an ex parte order from the learned Judge who was requested by the Division Bench to treat the matter urgent and hear parties and the application was heard on February 16 and the learned Judge refused to vacate the interim order and confirmed it, the entire basis of mala fide stood demolished. The learned Judge was not justified in blaming the State for getting the notice returnable on February 18. That was order of the court. In any case the opposite party having appeared on 16th yet the learned Judge having refused to modify his order it was too much to hold the State or public prosecutor responsible for it.

9. Sharp practice is not a court language. We are sorry to say so. Facts did not justify it. Legal propriety does not countenance use of such expressions favourably. The learned Judge, to our discomfort, used very harsh language without there being any occasion for it. A State counsel with all the aura of office suffers dual handicap of being looked upon by the other side as the necessary devil and the courts too at times, find it easier to frown upon him. The moral responsibility of a State counsel, to place the facts correctly, honestly and fairly before the court, having access to State records, coupled with his duty to secure an order in favour of his client requires him to discharge his duty responsibly and sensibly. Even so if a State lawyer who owes a special duty and is charged with higher standard of conduct in his zeal or due to pressure, not uncommon in the present day, adopts a partisan approach that by itself is not sufficient to warrant a finding of unfairness or resorting to sharp practice. In this case too not more than this appears to have happened. May be the public prosecutor may have exhibited more zeal. But that could not be characterised as unfair. Maybe it would have been proper and probably better to inform the learned Single Judge about the earlier order passed by the Division Bench. But assuming the public prosecutor did not inform and remained content with its disclosure in the body of the petition she could not be held to have acted dishonestly.

10. We are constrained to observe our unhappiness on the manner in which the writ petition was summoned by Mr Justice Saldanha from the office, heard and decided. As stated earlier the writ petition was directed by the learned Judge to be listed before him, on a mention made by the opposite party in course of dictation of judgment in criminal revision wherein he had made observations against the public prosecutor. A Judge of the High Court may have unchallenged and unfettered power to direct the office to list a case before him. But that by itself restricts the exercise of power and calls for strict judicial discipline. We do not intend to make any comment but we are of opinion that if the learned Judge would have avoided sending for and deciding the petition, which as pointed out by the learned senior counsel for the State had become infructuous, it would have been more in keeping with judicial culture.

11. For reasons stated above by us this appeal succeeds and is allowed. The order dated October 28, 1991 passed in civil miscellaneous writ petition is set aside. It shall stand dismissed as infructuous. The Intervention Application No. 943 of 1992 of the Public Prosecutor is allowed. We make it clear that all the observations and remarks made by the learned Judge against the State and Public Prosecutor shall stand expunged.

* * * * *

C. Ravichandran Iyer* v. *Justice A.M. Bhattacharjee

(1995) 5 SCC 457

K. RAMASWAMY, J. - The petitioner, a practising advocate, has initiated the public interest litigation under Article 32 of the Constitution seeking to issue an appropriate writ, order or direction restraining permanently the Bar Council of Maharashtra and Goa (BCMG), Bombay Bar Association (BBA) and the Advocates' Association of Western India (AAWI), Respondents 2 to 4 respectively, coercing Justice A.M. Bhattacharjee (the 1st respondent), Chief Justice of Bombay High Court, to resign from the office as Judge. He also sought an investigation by the Central Bureau of Investigation etc. (Respondents 8 to 10) into the allegations made against the 1st respondent and if the same are found true, to direct the 5th respondent, Speaker, Lok Sabha to initiate action for his removal under Article 124(4) and (5) read with Article 218 of the Constitution of India and Judges (Inqui3ry) Act, 1968 (for short, 'the Act'). This Court on 24-3-1995 issued notice to Respondents 2 to 4 only and rejected the prayer for interim direction to the President of India and the Union of India (Respondents 6 and 7 respectively) not to give effect to the resignation by the 1st respondent. We have also issued notice to the Attorney General for India and the President of the Supreme Court Bar Association (SCBA). The BBA filed a counter-affidavit through its President, Shri Iqbal Mahomedali Chagla. Though Respondents 2 and 4 are represented through counsel, they did not file any counter-affidavit. The SCBA informed the Court that its newly elected office-bearers required time to take a decision on the stand to be taken and we directed them to file their written submission. Shri F.S. Nariman, learned Senior Counsel appeared for the BBA and Shri Harish N. Salve, learned Senior Counsel, appeared for AAWI, the 4th respondent. The learned Attorney General also assisted the Court. We place on record our deep appreciation for their valuable assistance.

3. The petitioner in a well-documented petition stated and argued with commitment that the news published in various national newspapers does prove that Respondents 2 to 4 had pressurised the 1st respondent to resign from the office as Judge for his alleged misbehaviour. The Constitution provides for independence of the Judges of the higher courts, i.e., the Supreme Court and the High Courts. It also lays down in proviso (*a*) to clause (2) of Article 124; so too in Article 217(1) proviso (*a*) and Article 124(4), procedure for voluntary resignation by a Judge, as well as for compulsory removal, respectively from office in the manner prescribed therein and in accordance with the Act and the Rules made thereunder. The acts and actions of Respondents 2 to 4 are unknown to law, i.e., removal by forced resignation, which is not only unconstitutional but also deleterious to the independence of the judiciary. The accusations against the 1st respondent without proper investigation by an independent agency seriously damage the image of judiciary and efficacy of judicial adjudication and thereby undermine credibility of the judicial institution itself. Judges are not to be judged by the Bar. Allowing adoption of such demands by collective pressure rudely shakes the confidence and competence of judges of integrity, ability, moral vigour and ethical firmness, which in turn, sadly destroys the very foundation of democratic polity. Therefore, the pressure tactics by the Bar requires to be nipped in the bud. He,

therefore, vehemently argued and requested the Court to adopt such procedure which would safeguard the independence of the judiciary and protect the judges from pressure through unconstitutional methods to demit the office.

4. Shri Chagla in his affidavit and Shri Nariman appearing for the BBA explained the circumstances that led the BBA to pass the resolution requesting the 1st respondent to demit his office as a Judge in the interest of the institution. It is stated in the affidavit that though initially he had in his custody the documents to show that the 1st respondent had negotiated with Mr S.S. Musafir, Chief Executive of Roebuck Publishing, London and the acceptance by the 1st respondent for publication and sale abroad of a book authored by him, viz., ***Muslim Law and the Constitution*** for two years at a royalty of US $ 80,000 (Eighty thousand US Dollars) and an inconclusive negotiation for US $ 75,000 (Seventy-five thousand US Dollars) for overseas publishing rights of his book ***Hindu Law and the Constitution*** (2nd Edn.), he did not divulge the information but kept confidential. From about late 1994, there was considerable agitation amongst the members of Respondents 3 and 4 that certain persons whose names were known to all and who were seen in the court and were being openly talked about, were bringing influence over the 1st respondent and could "influence the course of judgments of the former Chief Justice of Bombay". "The names of such persons though known are not being mentioned here since the former Chief Justice of Bombay has resigned as Chief Justice and Judge of the Bombay High Court." It was also rumoured that "the former Chief Justice of Bombay has been paid a large sum of money in foreign exchange purportedly as royalty for a book written by him, viz. ***Muslim Law and the Constitution***. The amount of royalty appeared to be totally disproportionate to what a publisher abroad would be willing to pay for foreign publication of a book which might be of academic interest within India (since the book was a dissertation of Muslim Law in relation to the Constitution of India). There was a growing suspicion at the Bar that the amount might have been paid for reasons "other than the ostensible reason". He further stated that the 1st respondent himself had discussed with the Advocate General on 14-2-1995 impressing upon the latter that the Chief Justice "had decided to proceed on leave from the end of February and would resign in April 1995". The Advocate General had conveyed it to Shri Chagla and other members of the Bar. By then, the financial dealings referred to above were neither known to the public nor found mention in the press reports. Suddenly on 19-2-1995 the advocates found to their surprise a press interview published in *The Times of India* said to have been given by the 1st respondent stating that "he had not seriously checked the antecedents of the publishers and it was possible that he had made a mistake in accepting the offer". He was not contemplating to resign from judgeship at that stage and was merely going on medical leave for which he had already applied for and was granted. The BCMG passed a resolution on 19-2-1995 seeking "resignation forthwith" of the 1st respondent. On 21-2-1995 the BBA received a requisition for holding its general body meeting to discuss the financial dealings said to have been had by the 1st respondent "for a purpose other than the ostensible purpose thereby raising a serious doubt as to the integrity of the Chief Justice". The meeting was scheduled to be held at 2.15 p.m. on 22-2-1995 as per its bye-laws. The 1st respondent appears to have rung up Shri Chagla in the evening on 21-2-1995 but

he was not available. Pursuant to a contact by Shri W.Y. Yande, the President of AAWI, at the desire of Chief Justice to meet him, Shri Chagla and Shri Yande met the 1st respondent at his residence at 10.00 a.m. in the presence of two Secretaries of the 1st respondent, who stated thus to Shri Chagla as put in his affidavit:

> The Bar Council of Maharashtra and Goa had already shot an arrow and that the wound was still fresh and requested me to ensure that he would not be hurt any further by a resolution of the Bombay Bar Association. The 1st respondent informed me that he had already agreed to resign and in fact called for and showed me a letter dated 17-2-1995 addressed by him to the Honourable the Chief Justice of India in which he proposed to go on medical leave for a month and that at the end of the leave or even earlier he proposed to tender his resignation.

5. They had reminded the 1st respondent of the assurance given to the Advocate General expressing his desire to resign and he conveyed his personal inconveniences to be encountered etc. The 1st respondent assured them that he would "resign within a week which resignation would be effective some 10 or 15 days thereafter and that in the meanwhile he would not do any judicial work including delivery of any judgment". Shri Chagla appears to have told the 1st respondent that though he would not give an assurance, he would request the members of the Association to postpone the meeting and he had seen that the meeting was adjourned to 5.00 p.m. on 1-3-1995. On enquiry being made on 1-3-1995 from the Principal Secretary to the 1st respondent whether the 1st respondent had tendered his resignation, it was replied in the negative which showed that the 1st respondent had not kept his promise. Consequently, after full discussion, for and against, an overwhelming majority of 185 out of 207 permanent members resolved in the meeting held on 1-3-1995 at 5.00 p.m. demanding the resignation of the 1st respondent.

6. Since the 1st respondent has already resigned, the question is whether a Bar Council or Bar Association is entitled to pass resolution demanding a Judge to resign, what is its effect on the independence of the judiciary and whether it is constitutionally permissible. Shri Nariman contended that the Supreme Court and the High Court are two independent constitutional institutions. A High Court is not subordinate to the Supreme Court though constitutionally the Supreme Court has the power to hear appeals from the decisions or orders or judgments of the High Courts or any Tribunal or quasi-judicial authority in the country. The Judges and the Chief Justice of a High Court are not subordinate to the Chief Justice of India. The constitutional process of removal of a Judge as provided in Article 124(4) of the Constitution is only for proved misbehaviour or incapacity. The recent impeachment proceedings against Justice V. Ramaswami and its fall out do indicate that the process of impeachment is cumbersome and the result uncertain. Unless corrective steps are taken against Judges whose conduct is perceived by the Bar to be detrimental to the independence of the judiciary, people would lose faith in the efficacy of judicial process. Bar being a collective voice of the court concerned has responsibility and owes a duty to maintain the independence of the judiciary. It is its obligation to bring it to the notice of the Judge concerned the perceived misbehaviour or incapacity and if it is not

voluntarily corrected they have to take appropriate measures to have it corrected. Bar is not aware of any other procedure than the one under Article 124(4) of the Constitution and the Act. Therefore, the BBA, instead of proceeding to the press, adopted democratic process to pass the resolution, in accordance with its bye-laws, when all attempts made by it proved abortive. The conduct of the Judge betrayed their confidence in his voluntary resignation. Consequently, the BBA was constrained to pass the said resolution. Thereby it had not transgressed its limits. Its action is in consonance with its bye-laws and in the best tradition to maintain independence of the judiciary. Shri Nariman also cited the instance of non-assignment of work to four Judges of the Bombay High Court by its former Chief Justice when some allegations of misbehaviour were imputed to them by the Bar. He, however, submitted that in the present case the allegations were against the Chief Justice himself, and so, he could not have been approached. He urged that if some guidelines could be laid down by this Court in such cases, the same would be welcomed.

7. The counsel appearing for the BCMG, who stated that he is its member, submitted that when the Bar believes that the Chief Justice has committed misconduct, as an elected body it is its duty to pass a resolution after full discussion demanding the Judge to act in defence of independence of the judiciary by demitting his office.

9. The learned Attorney General contended that any resolution passed by any Bar Association tantamounts to scandalising the court entailing contempt of the court. It cannot coerce the Judge to resign. The pressure brought by the Chief Justice of India upon the Judge would be constitutional but it should be left to the Chief Justice of India to impress upon the erring Judge to correct his conduct. This procedure would yield salutary effect. The Chief Justice of India would adopt such procedure as is appropriate to the situation. He cited the advice tendered by Lord Chancellor of England to Lord Denning, when the latter was involved in the controversy over his writing on the jury trial and the composition of the black members of the jury, to demit the office, which he did in grace.

***Rule of Law and Judicial Independence -Why need to be preserved*?**

10. The diverse contentions give rise to the question whether any Bar Council or Bar Association has the right to pass resolution against the conduct of a Judge perceived to have committed misbehaviour and, if so, what is its effect on independence of the judiciary. With a view to appreciate the contentions in their proper perspective, it is necessary to have at the back of our mind the importance of the independence of the judiciary. In a democracy governed by rule of law under a written constitution, judiciary is sentinel on the *qui vive* to protect the fundamental rights and to poise even scales of justice between the citizens and the State or the States inter se. Rule of law and judicial review are basic features of the Constitution. As its integral constitutional structure, independence of the judiciary is an essential attribute of rule of law. In ***S.P. Gupta* v. *Union of India*** [1981 Supp SCC 87], this Court held that if there is one principle which runs through the entire fabric of the Constitution it is the principle of the rule of law, and under the Constitution it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the rule of law

meaningful and effective. Judicial review is one of the most potent weapons in the armoury of law. The judiciary seeks to protect the citizen against violation of his constitutional or legal rights or misuse or abuse of power by the State or its officers. The judiciary stands between the citizen and the State as a bulwark against executive excesses and misuse or abuse of power by the executive. It is, therefore, absolutely essential that the judiciary must be free from executive pressure or influence which has been secured by making elaborate provisions in the Constitution with details. The independence of judiciary is not limited only to the independence from the executive pressure or influence; it is a wider concept which takes within its sweep independence from any other pressure and prejudices. It has many dimensions, viz., fearlessness of other power centres, economic or political, and freedom from prejudices acquired and nourished by the class to which the judges belong.

***Judicial individualism - Whether needs protection*?**

11. Independent judiciary is, therefore, most essential when liberty of citizen is in danger. It then becomes the duty of the judiciary to poise the scales of justice unmoved by the powers (actual or perceived) undisturbed by the clamour of the multitude. The heart of judicial independence is judicial individualism. The judiciary is not a disembodied abstraction. It is composed of individual men and women who work primarily on their own. Judicial individualism, in the language of Justice Powell of the Supreme Court of United States in his address to the American Bar Association, Labour Law Section on 11-8-1976, is "perhaps one of the last citadels of jealously preserved individualism ...."

14. The arch of the Constitution of India pregnant from its Preamble, Chapter III (Fundamental Rights) and Chapter IV (Directive Principles) is to establish an egalitarian social order guaranteeing fundamental freedoms and to secure justice - social, economic and political - to every citizen through rule of law. Existing social inequalities need to be removed and equality in fact is accorded to all people irrespective of caste, creed, sex, religion or region subject to protective discrimination only through rule of law. The Judge cannot retain his earlier passive judicial role when he administers the law under the Constitution to give effect to the constitutional ideals. The extraordinary complexity of modern litigation requires him not merely to declare the rights to citizens but also to mould the relief warranted under given facts and circumstances and often command the executive and other agencies to enforce and give effect to the order, writ or direction or prohibit them to do unconstitutional acts. In this ongoing complex of adjudicatory process, the role of the Judge is not merely to interpret the law but also to lay new norms of law and to mould the law to suit the changing social and economic scenario to make the ideals enshrined in the Constitution meaningful and a reality. Therefore, the Judge is required to take judicial notice of the social and economic ramification, consistent with the theory of law. Thereby, the society demands active judicial roles which formerly were considered exceptional but now a routine. The Judge must act independently, if he is to perform the functions as expected of him and he must feel secure that such action of his will not lead to his own downfall. The independence is not assured for the Judge but to the judged. Independence to the Judge, therefore, would be both essential and proper. *Considered judgment of the court*

would guarantee the constitutional liberties which would thrive only in an atmosphere of judicial independence. Every endeavour should be made to preserve independent judiciary as a citadel of public justice and public security to fulfil the constitutional role assigned to the Judges.

15. The Founding Fathers of the Constitution advisedly adopted a cumbersome process of impeachment as a mode to remove a Judge from office for only proved misbehaviour or incapacity which implies that impeachment process is not available for minor abrasive behaviour of a Judge. It reinforces that independence to the Judge is of paramount importance to sustain, strengthen and elongate rule of law. Parliament sparingly resorts to the mechanism of impeachment designed under the Constitution by political process as the extreme measure only upon a finding of proved misbehaviour or incapacity recorded by a committee constituted under Section 3 of the Act by way of address to the President in the manner laid down in Article 124(4) and (5) of the Constitution, the Act and the Rules made thereunder.

16. In all common law jurisdictions, removal by way of impeachment is the accepted norm for serious acts of judicial misconduct committed by a Judge. Removal of a Judge by impeachment was designed to produce as little damage as possible to judicial independence, public confidence in the efficacy of judicial process and to maintain authority of courts for its effective operation.

17. In United States, the Judges appointed under Article III of the American Constitution could be removed only by impeachment by the Congress. The Congress enacted the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (the 1980 Act) by which Judicial Council was explicitly empowered to receive complaints about the judicial conduct "prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such a judge or magistrate is unable to discharge all the duties of office by reason of mental or physical disability".

18. Jeffrey N. Barr and Thomas E. Willging conducted research on the administration of the 1980 Act and in their two research volumes, they concluded that "several Chief Judges view the Act as remedial legislation designed not to punish Judges but to correct aberrant behaviour and provide opportunity for corrective action as a central feature of the Act". From 1980 to 1992, 2388 complaints were filed. 95 per cent thereof resulted in dismissal. 1.7 per cent of the complaints ended in either dismissal from service or corrective action of reprimands - two of public reprimands and one of private reprimand. Two cases were reported to judicial conference by the judicial councils certifying that the grounds might exist for impeachment.

19. Our Constitution permits removal of the Judge only when the motion was carried out with requisite majority of both the Houses of Parliament recommending to the President for removal. In other words, the Constitution does not permit any action by any agency other than the initiation of the action under Article 124(4) by Parliament. In ***Sub-Committee on Judicial Accountability*** **v.** ***Union of India*** [(1991) 4 SCC 699], this Court at p. 54 held that the removal of a Judge culminating in the presentation of an address by different Houses of Parliament to the President, is committed to Parliament alone and no initiation of any investigation is possible

without the initiative being taken by the Houses themselves. At p. 71 it was further held that the constitutional scheme envisages removal of a Judge on proved misbehaviour or incapacity and the conduct of the Judge was prohibited to be discussed in Parliament by Article 121. Resultantly, discussion of the conduct of a Judge or any evaluation or inferences as to its merit is not permissible elsewhere except during investigation before the Inquiry Committee constituted under the Act for this purpose.

20. Articles 124(4) and 121 would thus put the nail squarely on the projections, prosecutions or attempts by any other forum or group of individuals or Associations, statutory or otherwise, either to investigate or inquire into or discuss the conduct of a Judge or the performance of his duties and on/off court behaviour except as per the procedure provided under Articles 124(4) and (5) of the Constitution, and Act and the Rules. Thereby, equally no other agency or authority like the CBI, Ministry of Finance, the Reserve Bank of India (Respondents 8 to 10) as sought for by the petitioner, would investigate into the conduct or acts or actions of a Judge. No mandamus or direction would be issued to the Speaker of Lok Sabha or Chairman of Rajya Sabha to initiate action for impeachment. It is true, as contended by the petitioner, that in ***K. Veeraswami* v. *Union of India*** [(1991) 3 SCC 655], majority of the Constitution Bench upheld the power of the police to investigate into the disproportionate assets alleged to be possessed by a Judge, an offence under Section 5 of the Prevention of Corruption Act, 1947 subject to prior sanction of the Chief Justice of India to maintain independence of the judiciary. By interpretive process, the Court carved out primacy to the role of the Chief Justice of India, whose efficacy in a case like one at hand would be considered at a later stage.

***Duty of the Judge to maintain high standard of conduct. Its judicial individualism — Whether protection imperative*?**

21. Judicial office is essentially a public trust. Society is, therefore, entitled to expect that a Judge must be a man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the court would be deleterious to the efficacy of judicial process. Society, therefore, expects higher standards of conduct and rectitude from a Judge. Unwritten code of conduct is writ large for judicial officers to emulate and imbibe high moral or ethical standards expected of a higher judicial functionary, as wholesome standard of conduct which would generate public confidence, accord dignity to the judicial office and enhance public image, not only of the Judge but the court itself. It is, therefore, a basic requirement that a Judge's official and personal conduct be free from impropriety; the same must be in tune with the highest standard of propriety and probity. The standard of conduct is higher than that expected of a layman and also higher than that expected of an advocate. In fact, even his private life must adhere to high standards of probity and propriety, higher than those deemed acceptable for others. Therefore, the Judge can ill-afford to seek shelter from the fallen standard in the society.

22. In ***Krishna Swami* v. *Union of India*** [(1992) 4 SCC 605], one of us (K. Ramaswamy, J.) held that the holder of office of the Judge of the Supreme Court or the High Court should, therefore, be above the conduct of ordinary mortals in the society. The standards of judicial behaviour, both on and off the Bench, are normally high. There cannot, however, be any fixed or set principles, but an unwritten code of conduct of well-established traditions is the guidelines for judicial conduct. The conduct that tends to undermine the public confidence in the character, integrity or impartiality of the Judge must be eschewed. It is expected of him to voluntarily set forth wholesome standards of conduct reaffirming fitness to higher responsibilities.

23. To keep the stream of justice clean and pure, the Judge must be endowed with sterling character, impeccable integrity and upright behaviour. Erosion thereof would undermine the efficacy of the rule of law and the working of the Constitution itself. The Judges of higher echelons, therefore, should not be mere men of clay with all the frailties and foibles, human failings and weak character which may be found in those in other walks of life. They should be men of fighting faith with tough fibre not susceptible to any pressure, economic, political or of any sort. The actual as well as the apparent independence of judiciary would be transparent only when the office-holders endow those qualities which would operate as impregnable fortress against surreptitious attempts to undermine the independence of the judiciary. In short, the behaviour of the Judge is the bastion for the people to reap the fruits of the democracy, liberty and justice and the antithesis rocks the bottom of the rule of law.

Scope and meaning of 'misbehaviour' in Article 124(4)

24. Article 124(4) of the Constitution sanctions action for removal of a Judge on proved misbehaviour or incapacity. The word 'misbehaviour' was not advisedly defined. It is a vague and elastic word and embraces within its sweep different facets of conduct as opposed to good conduct. In the *Law Lexicon* by P. Ramanatha Aiyar, 1987 Edn. at p. 821, collected from several decisions, the meaning of the word 'misconduct', is stated to be vague and relative term. Literally, it means wrong conduct or improper conduct. It has to be construed with reference to the subject-matter and the context wherein the term occurs having regard to the scope of the Act or the statute under consideration. In the context of disciplinary proceedings against a solicitor, the word misconduct was construed as professional misconduct extending to conduct "which shows him to be unworthy member of the legal profession". In the context of misrepresentation made by a pleader, who obtained adjournment of a case on grounds to his knowledge to be false a Full Bench of the Madras High Court in ***First Grade Pleader, Re*** [AIR 1931 Mad 422], held that if a legal practitioner deliberately made, for the purpose of impeding the course of justice, a statement to the court which he believed to be untrue and thereby gained an advantage for his client, he was guilty of gross improper conduct and as such rendered himself liable to be dealt with by the High Court in the exercise of its disciplinary jurisdiction. Misconduct on the part of an arbitrator was construed to mean that misconduct does not necessarily comprehend or include misconduct of a fraudulent or improper character, but it does comprehend and include action on the part of the arbitrator which is, upon the face of it, opposed to all rational and reasonable principles that should govern the procedure of any person who is called upon to decide upon

questions in difference and dispute referred to him by the parties. Misconduct in office was construed to mean unlawful behaviour or include negligence by public officer, by which the rights of the party have been affected. In ***Krishna Swami*** case, one of us, K. Ramaswamy, J., considered the scope of 'misbehaviour' in Article 124(4) and held in para 71 that:

> Every act or conduct or even error of judgment or negligent acts by higher judiciary per se does not amount to misbehaviour. Wilful abuse of judicial office, wilful misconduct in the office, corruption, lack of integrity, or any other offence involving moral turpitude would be misbehaviour. Misconduct implies actuation of some degree of mens rea by the doer. Judicial finding of guilt of grave crime is misconduct. Persistent failure to perform the judicial duties of the Judge or wilful abuse of the office *dolus malus* would be misbehaviour. Misbehaviour would extend to conduct of the Judge in or beyond the execution of judicial office. Even administrative actions or omissions too need accompaniment of mens rea.

25. Guarantee of tenure and its protection by the Constitution would not, however, accord sanctuary for corruption or grave misbehaviour. Yet every action or omission by a judicial officer in the performance of his duties which is not a good conduct necessarily, may not be misbehaviour indictable by impeachment, but its insidious effect may be pervasive and may produce deleterious effect on the integrity and impartiality of the Judge. Every misbehaviour in juxtaposition to good behaviour, as a constitutional tautology, will not support impeachment but a misbehaviour which is not a good behaviour may be improper conduct not befitting to the standard expected of a Judge. Threat of impeachment process itself may swerve a Judge to fall prey to misconduct but it serves disgrace to use impeachment process for minor offences or abrasive conduct on the part of a Judge. The bad behaviour of one Judge has a rippling effect on the reputation of the judiciary as a whole. When the edifice of judiciary is built heavily on public confidence and respect, the damage by an obstinate Judge would rip apart the entire judicial structure built in the Constitution.

26. Bad conduct or bad behaviour of a Judge, therefore, needs correction to prevent erosion of public confidence in the efficacy of judicial process or dignity of the institution or credibility to the judicial office held by the obstinate Judge. When the Judge cannot be removed by impeachment process for such conduct but generates widespread feeling of dissatisfaction among the general public, the question would be who would stamp out the rot and judge the Judge or who would impress upon the Judge either to desist from repetition or to demit the office in grace? Who would be the appropriate authority? Who would be the principal mover in that behalf? The hiatus between bad behaviour and impeachable misbehaviour needs to be filled in to stem erosion of public confidence in the efficacy of judicial process. Whether the Bar of that Court has any role to play either in an attempt to correct the perceived fallen standard or is entitled to make a demand by a resolution or a group action to pressurise the Judge to resign his office as a Judge? The resolution to these questions involves delicate but pragmatic approach to the questions of constitutional law.

***Role of the Bar Council or Bar Associations - Whether unconstitutional*?**

27. The Advocates Act, 1961 gave autonomy to a Bar Council of a State or Bar Council of India and Section 6(1) empowers them to make such action deemed necessary to set their house in order, to prevent fall in professional conduct and to punish the incorrigible as not befitting the noble profession apart from admission of the advocates on its roll. Section 6(1)(*c*) and rules made in that behalf, Sections 9, 35, 36, 36-B and 37 enjoin it to entertain and determine cases of misconduct against advocates on its roll. The members of the judiciary are drawn primarily and invariably from the Bar at different levels. The high moral, ethical and professional standards among the members of the Bar are preconditions even for high ethical standards of the Bench. Degeneration thereof inevitably has its eruption and tends to reflect the other side of the coin. The Bar Council, therefore, is enjoined by the Advocates Act to maintain high moral, ethical and professional standards which of late is far from satisfactory. Their power under the Act ends *thereat* and extends no further. Article 121 of the Constitution prohibits discussion by the members of Parliament of the conduct of any Judge of the Supreme Court or of High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as provided under Article 124(4) and (5) and in the manner laid down under the Act, the Rules and the rules of business of Parliament consistent therewith. By necessary implication, no other forum or fora or platform is available for discussion of the conduct of a Judge in the discharge of his duties as a Judge of the Supreme Court or the High Court, much less a Bar Council or group of practising advocates. They are prohibited to discuss the conduct of a Judge in the discharge of his duties or to pass any resolution in that behalf.

28. Section 2(*c*) of the Contempt of Courts Act, 1971, defines “criminal contempt” to mean publication whether by words spoken or written, signs, visible representations or otherwise of any matter or the doing of any act whatsoever which scandalises or tends to scandalise, lowers or tends to lower the authority of any court or prejudices or interferes or tends to interfere with the due course of any judicial proceeding, or interferes or tends to interfere with or obstructs or tends to obstruct the administration of justice in any other manner.

Freedom of expression and duty of Advocate

31. It is true that freedom of speech and expression guaranteed by Article 19(1)(*a*) of the Constitution is one of the most precious liberties in any democracy. But equally important is the maintenance of respect for judicial independence which alone would protect the life, liberty and reputation of the citizen. So the nation’s interest requires that criticism of the judiciary must be measured, strictly rational, sober and proceed from the highest motives without being coloured by partisan spirit or pressure tactics or intimidatory attitude. The Court must, therefore, harmonise constitutional values of free criticism and the need for a fearless curial process and its presiding functionary, the Judge. If freedom of expression subserves public interest in reasonable measure, public justice cannot gag it or manacle it; but if the court considered the attack on the Judge or Judges scurrilous, offensive, intimidatory or malicious, beyond condonable limits, the strong arm of the law must strike a blow on him who challenges the supremacy of the rule of the

law by fouling its source and stream. The power to punish the contemner is, therefore, granted to the court not because Judges need the protection but because the citizens need an impartial and strong judiciary.

32. It is enough if all of us bear this in mind while expressing opinions on courts and Judges. But the question that still remains is when the Bar of the Court, in which the Judge occupies the seat of office, honestly believes that the conduct of the Judge or of the Bench fouls the fountain of justice, or undermines or tends to undermine the dignity expected of a Judge and the people are tending to disbelieve the impartiality or integrity of the Judge, who should bear the duty and responsibility to have it/them corrected so as to restore the respect for judiciary?

33. In ***Brahma Prakash Sharma* v. *State of U.P***. [AIR 1954 SC 10], the Bar Association passed resolutions and communicated to the superior authorities that certain judicial officers were incompetent due to their conduct in the court and High Court took action for contempt of the court. The question was whether the members of the Executive Committee of the Bar Association had committed contempt of the court? This Court held that the attack on a Judge is a wrong done to the public and if it tends to create apprehension in the minds of the people regarding the integrity, ability or fairness of the Judge and to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice, or if it is likely to cause embarrassment in the mind of the Judge himself in the discharge of his judicial duties, it would be scandalising the court and be dealt with accordingly.

34. The threat of action on vague grounds of dissatisfaction would create a dragnet that would inevitably sweep into its grasp the maverick, the dissenter, the innovator, the reformer - in one word the unpopular. Insidious attempts pave way for removing the inconvenient. Therefore, proper care should be taken by the Bar Association concerned. First, it should gather specific, authentic and acceptable material which would show or tend to show that conduct on the part of a Judge creating a feeling in the mind of a reasonable person doubting the honesty, integrity, impartiality or act which lowers the dignity of the office but necessarily, is not impeachable misbehaviour. In all fairness to the Judge, the responsible office-bearers should meet him in camera after securing interview and apprise the Judge of the information they had with them. If there is truth in it, there is every possibility that the Judge would mend himself. Or to avoid embarrassment to the Judge, the office-bearers can approach the Chief Justice of that High Court and apprise him of the situation with material they have in their possession and impress upon the Chief Justice to deal with the matter appropriately.

Primacy of the Chief Justice of India

35. It is true that this Court has neither administrative control over the High Court nor power on the judicial side to enquire into the misbehaviour of a Chief Justice or Judge of a High Court. When the Bar of the High Court concerned reasonably and honestly doubts the conduct of the Chief Justice of that Court, necessarily the only authority under the Constitution that could be tapped is the Chief Justice of India, who in common parlance is known as the head of the judiciary of the country. It is of importance to emphasise here that impeachment is meant to be a

drastic remedy and needs to be used in serious cases. But there must exist some other means to ensure that Judges do not abuse the trust the society has in them. It seems to us that self-regulation by the judiciary is the only method which can be tried and adopted. Chief Justice of India is the first among the Judges. Under Articles 124(2) and 217(1), the President of India always consults the Chief Justice of India for appointment of the Judges in the Supreme Court and High Courts. Under Article 222, the President transfers Judges of High Courts in consultation with the Chief Justice of India. In ***Supreme Court Advocates-on-Record Assn.* v. *Union of India*** [(1993) 4 SCC 441], it was reinforced and the Chief Justice of India was given centre stage position. The primacy and importance of the office of the Chief Justice was recognised judicially by this Court in ***Veeraswami*** case. This Court, while upholding power to register a case against a retired Chief Justice of the High Court, permitted to proceed with the investigation for the alleged offence under Section 5 of the Prevention of Corruption Act. The Constitution Bench per majority, however, held that the sanction and approval of the Chief Justice of India is a condition precedent to register a case and investigate into the matter and sanction for prosecution of the said Judge by the President after consultation with the Chief Justice of India.

36. In ***Sub-Committee on Judicial Accountability*** also the same primacy had been accorded to the Chief Justice at p. 72 thus:

> "It would also be reasonable to assume that the Chief Justice of India is expected to find a desirable solution in such a situation to avoid embarrassment to the learned Judge and to the institution in a manner which is conducive to the independence of judiciary and should the Chief Justice of India be of the view that in the interests of the institution of judiciary it is desirable for the learned Judge to abstain from judicial work till the final outcome under Article 124(4), he would advise the learned Judge accordingly. It is further reasonable to assume that the concerned learned Judge would ordinarily abide by the advice of the Chief Justice of India."

40. Bearing all the above in mind, we are of the considered view that where the complaint relates to the Judge of the High Court, the Chief Justice of that High Court, after verification, and if necessary, after confidential enquiry from his independent source, should satisfy himself about the truth of the imputation made by the Bar Association through its office-bearers against the Judge and consult the Chief Justice of India, where deemed necessary, by placing all the information with him. When the Chief Justice of India is seized of the matter, to avoid embarrassment to him and to allow fairness in the procedure to be adopted in furtherance thereof, the Bar should suspend all further actions to enable the Chief Justice of India to appropriately deal with the matter. This is necessary because any action he may take must not only be just but must also appear to be just to all concerned, i.e., it must not even appear to have been taken under pressure from any quarter. The Chief Justice of India, on receipt of the information from the Chief Justice of the High Court, after being satisfied about the correctness and truth touching the conduct of the Judge, may tender such advice either directly or may initiate such action, as is deemed necessary or warranted under given facts and circumstances. If circumstances permit, it

may be salutary to take the Judge into confidence before initiating action. On the decision being taken by the Chief Justice of India, the matter should rest at that. This procedure would not only facilitate nipping in the bud the conduct of a Judge leading to loss of public confidence in the courts and sustain public faith in the efficacy of the rule of law and respect for the judiciary, but would also avoid needless embarrassment of contempt proceedings against the office-bearers of the Bar Association and group libel against all concerned. The independence of judiciary and the stream of public justice would remain pure and unsullied. The Bar Association could remain a useful arm of the judiciary and in the case of sagging reputation of the particular Judge, the Bar Association could take up the matter with the Chief Justice of the High Court and await his response for the action taken thereunder for a reasonable period.

41. In case the allegations are against Chief Justice of a High Court, the Bar should bring them directly to the notice of the Chief Justice of India. On receipt of such complaint, the Chief Justice of India would in the same way act as stated above qua complaint against a Judge of the High Court, and the Bar would await for a reasonable period the response of the Chief Justice of India.

42. It would thus be seen that yawning gap between proved misbehaviour and bad conduct inconsistent with the high office on the part of a non-cooperating Judge/Chief Justice of a High Court could be disciplined by self-regulation through in-house procedure. This in-house procedure would fill in the constitutional gap and would yield salutary effect. Unfortunately, recourse to this procedure was not taken in the case at hand, may be, because of absence of legal sanction to such a procedure.

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P.D. Gupta* v. *Ram Murti

(1997) 7 SCC 147

D.P. WADHWA, J. - The appellant is an advocate practising in Delhi. He has filed this appeal under Section 38 of the Advocates Act, 1961 ("the Act") against order dated 4-5-1996 of the Disciplinary Committee of the Bar Council of India holding him guilty of misconduct and suspending him from practice for a period of one year. This order by the Bar Council of India was passed as the Disciplinary Committee of the Bar Council of Delhi could not dispose of the complaint received by it within a period of one year and proceedings had thus been transferred to the Bar Council of India under Section 36-B of the Act. Section 36-B enjoins upon the Disciplinary Committee of the State Bar Council to dispose of the complaint received by it under Section 35 of the Act expeditiously and in any case to conclude the proceedings within one year from the date of the receipt of the complaint or the date of initiation of the proceedings if at the instance of the State Bar Council. Under Section 35 of the Act where on the receipt of a complaint or otherwise the State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its Disciplinary Committee.

2. One Srikishan Dass died on 5-1-1980 leaving behind extensive properties, both moveable and immovable. One Vidya Wati claiming to be the sister and the only legal heir of Srikishan Dass filed a petition under Section 276 of the Indian Succession Act in the Court of District Judge, Delhi for grant of probate/letters of administration to the estate of deceased Srikishan Dass. This she filed in February 1980. It is not that there was any Will. The complainant Ram Murti (who is now respondent before us) and two other persons also laid claim to the properties of Srikishan Dass claiming themselves to be his heirs and propounding three different Wills. They also filed separate proceedings under Section 276 of the Indian Succession Act before the District Judge, Delhi. Since there was dispute regarding inheritance to the properties of Srikishan Dass, Vidya Wati also filed a civil suit in the Delhi High Court for declaration and injunction against various defendants numbering 23, including the complainant Ram Murti who is Defendant 21. This suit was filed on 10-2-1982. Vidya Wati had prayed for a decree of injunction against the defendants restraining them from trespassing into property bearing No. 4852 Harbans Singh Street, 24 Daryaganj, New Delhi or from interfering with or disturbing peaceful possession and enjoyment of immovable properties detailed in Schedule A to the plaint. She also sought a declaration that she was the absolute owner of the properties mentioned therein in the Schedule. It is not necessary for us to detail the properties shown in Schedule A except to note two properties at 24 Daryaganj, New Delhi bearing No. 4852 and 4852-A. It is stated that this suit is still pending in the Delhi High Court and all the proceedings under Section 276 of the Indian Succession Act filed by various persons relating to the estate of Srikishan Dass have also been transferred from the Court of District Judge, Delhi to the High Court and are being tried along with the suit filed by Vidya Wati as aforesaid.

3. It would appear that Vidya Wati also filed various other proceedings respecting the properties left by deceased Srikishan Dass against the occupants or otherwise. P.D. Gupta, Advocate, who is the appellant before us had been her counsel throughout in all these proceedings. The complaint alleged against him is that though he knew that there was doubt cast on the right of Vidya Wati inheriting the properties of Srikishan Dass on account of pendency of various proceedings and further that the complainant and others had alleged that she was in fact an impostor and her claim to be sister of Srikishan Dass was false yet P.D. Gupta purchased the ground floor of property bearing No. 4858-A, 24 Daryaganj from Vidya Wati by a sale deed dated 30-12-1982. The complainant also alleged that Vidya Wati had been describing herself either as the real sister, stepsister or even half-blood sister of Srikishan Dass which fact was well known to P.D. Gupta, her counsel.

4. It is not for us to go into the merits or demerits of the controversy raised by the parties in various proceedings pending in the courts and still awaiting adjudication, the grievance of the complainant is as to how an advocate could purchase property from his client which property is the subject-matter of dispute between the parties in a court of law. During the course of hearing of this appeal it was also brought to our notice that the second floor of the property bearing No. 4858-A, 24 Daryaganj was purchased by Suresh Kumar Gupta, son-in-law of Advocate P.D. Gupta from Vidya Wati. Then again it was brought to our notice that Advocate P.D. Gupta sold the property purchased by him in November 1987 for a consideration of Rs 3,40,000 when he himself had purchased the property for Rs 1,80,000 in December 1982. It is pointed out that the facts relating to purchase of different portions of property No. 4858-A, 24 Daryaganj and subsequent sale by P.D. Gupta were not brought on record of the said suit filed by Vidya Wati.

5. Be that as it may the Bar Council of India has commented upon the conduct of P.D. Gupta in buying the property from Vidya Wati in the circumstances aforesaid who had been describing herself sometimes as a half-blood sister and sometimes as real sister or even stepsister of Srikishan Dass. The explanation given by P.D. Gupta is that though Vidya Wati was the stepsister of Srikishan Dass but the latter always treated her like his real sister and that is how Vidya Wati also at times described herself as his real sister.

6. There are some more facts which could also be noted. Vidya Wati herself has died and she is stated to be survived by her only daughter Maya Devi who is also now dead. Before her death Vidya Wati allegedly executed a Will in favour of her grandson Anand Prakash Bansal who is stated to be the son of Maya Devi bequeathing all her properties to him. Vidya Wati died on 26-10-1991 and Maya Devi on 13-4-1992. It is stated that P.P. Bansal, husband of Maya Devi and father of Anand Prakash Bansal, has been acting as General Attorney of Vidya Wati and instructing P.D. Gupta.

7. In support of his case P.D. Gupta filed affidavit of Anand Prakash Bansal wherein it is claimed that sale deeds executed by Vidya Wati in favour of P.D. Gupta and his son-in-law Suresh Kumar Gupta were without any pressure from anyone and were by free will of Vidya Wati. P.D. Gupta has claimed that the complaint filed by Ram Murti is motivated and he himself

had no title to the properties of Srikishan Dass being no relative of his and the Will propounded by him had been found to be forged as opined by the CFSL/CBI laboratory. The fact that the Will propounded by Ram Murti is forged or not is still to be decided by the Court. In the affidavit filed by P.D. Gupta, in answer to the complaint of Ram Murti, he has stated that "Lala Srikishan Dass left behind his sister Smt Vidya Wati who succeeded to the estate on the death of Lala Srikishan Dass and took over the entire moveable and immovable estate. Thereafter the complainant and two other persons propounded the Will of Lala Srikishan Dass". This statement of P.D. Gupta has been verified by him as true and correct to his knowledge. It does appear to us to be rather odd for a lawyer to verify such facts to his knowledge. It is claimed that when Srikishan Dass died, subject immovable property was plot bearing No. 4858-A, 24 Daryaganj measuring 1500 sq. feet and the same was got mutated in the name of Vidya Wati in the records of the Municipal Corporation of Delhi and then she got plans sanctioned from the Municipal Corporation of Delhi for construction of the house on this plot and which she did construct and got completion certificate on 28-8-1981. It is peculiar, rather astounding, how Vidya Wati could get the property of Srikishan Dass mutated in her name when she is yet to be granted letters of administration or declaration to her title.

8. We examined the two sale deeds transferring this property, one executed in favour of P.D. Gupta and the other in favour of his son-in-law Suresh Kumar Gupta and we have also examined the proceedings on the basis of which the Bar Council of India came to the conclusion that P.D. Gupta was guilty of misconduct and he be debarred from practising for the period of one year. When Ram Murti complained that P.D. Gupta had fraudulently purchased the property of deceased Srikishan Dass being the entire ground floor property bearing No. 4858-A, 24 Daryaganj, Delhi as per sale deed executed on 30-12-1982 from Vidya Wati as also in the name of his son-in-law Suresh Kumar, son of Suraj Bhan, knowing fully well that Vidya Wati was not the owner of the property, the reply given by P.D. Gupta is as under:

> "*5*. Para 5 as stated is false, misleading and ill-motivated, in view of the above submissions. This respondent did purchase the ground floor portion from Smt Vidya Wati by a registered sale deed and sold the same by a registered sale deed in November 1987, and has no longer any concern with any of the properties of Smt Vidya Wati. (As per) the information of the respondent, no proceedings disputing the title of Smt Vidya Wati or cancellation of sale deed in favour of any of the buyers from Smt Vidya Wati who are more than 20 in number, has been filed so far. One of such buyers is Shri P.P. Sharma, the ex-Registrar of the Delhi High Court. This respondent believed Smt Vidya Wati as the right owner according to the facts and law and sold it as aforesaid. The applicant is in no way concerned with the rights of the respondent and the matter pending for adjudication is between the complainant and the parties concerned."

9. In the sale deed which is dated 30-12-1982 executed in favour of P.D. Gupta recitals show that the agreement for sale was entered into on 3-9-1980. The completion certificate of the building was obtained on 28-8-1981, payment of Rs 1,50,000 made before execution of the sale deed on various dates from 3-8-1980 to 20-11-1981 by means of cheques except one

payment of Rs 10,000 made by cash on 3-9-1980. Balance amount of consideration of Rs 30,000 was paid at the time of registration of the sale deed. In the sale deed there is no mention of any civil suit respecting this property pending in the High Court. Rather it is stated that the vendor had constructed various floors and had assured/represented to the vendee that she had a good and marketable title to the property and the same was free from all sorts of liens, charges, encumbrances or other like burdens, and in case any defect in the title of the vendor was later on proved, the vendor undertook to compensate the vendee for all losses, damages and claims, which might be caused to him in this regard. In the other sale deed dated 2-12-1982 executed in favour of the son-in-law of P.D. Gupta, which was filed during the course of the hearing of this appeal, it is mentioned that after obtaining completion certificate on 28-8-1981 Vidya Wati let out the second floor of the property comprising five rooms, kitchen, two bathrooms on a monthly rent of rupees five hundred to Suraj Bhan Gupta. Recitals to this deed show that in order to fetch a better price Vidya Wati agreed to sell the property being on the second floor which according to her was not giving good returns for consideration of Rs 1,75,000 to Suresh Kumar Gupta. Now this Suresh Kumar Gupta, son-in-law of P.D. Gupta, is no other person than the son of Suraj Bhan Gupta, the tenant. There is no mention of any agreement to sell in this sale deed but what we find is that first payment of Rs 20,000 towards consideration was made on 5-11-1981, second payment of Rs 25,000 on 20-2-1982 and third of Rs 30,000 on 26-4-1982. Balance payment has been made at the time of execution of the sale deed on 2-12-1982.

10. The Bar Council of India has taken note of the following facts:

1. P.D. Gupta claims to know Vidya Wati since 1980 when Srikishan Dass was alive. He knew Vidya Wati closely and yet contradictory stands were taken by Vidya Wati when she varyingly described herself as half-blood sister, real sister or stepsister of Srikishan Dass. These contradictory stands in fact cast doubt on the very existence of Vidya Wati herself. This also created doubt about bona fides of P.D. Gupta who seemed to be a family lawyer of Vidya Wati.

2. P.D. Gupta knew that the property purchased by him from Vidya Wati was the subject-matter of litigation and title of Vidya Wati to that property was in doubt.

3. Huge property situated in Daryaganj was purchased by P.D. Gupta for a mere sum of Rs 1,80,000 in 1982.

4. The agreement for sale of property was entered into as far back on 3-9-1980 and P.D. Gupta had been advancing money to Vidya Wati from time to time which went to show that as per the version of P.D. Gupta he knew Vidya Wati quite well. When P.D. Gupta knew Vidya Wati so closely how could Vidya Wati take contradictory stands vis-à-vis her relationship with Srikishan Dass?

11. The Bar Council of India was thus of the view that the conduct of P.D. Gupta in the circumstances was unbecoming of professional ethics and conduct. The Bar Council of India also observed:

> "It is an acknowledged fact that a lawyer conducting the case of his client has a commanding status and can exert influence on his client. As a member of the Bar it is in our common knowledge that lawyers have started contracting with the clients and enter into bargains that in case of success he will share the result. A number of instances have been found in the cases of Motor Accident Claims. No doubt there is no bar for a lawyer to purchase property but on account of common prudence specially a law-knowing person will never prefer to purchase the property, the title of which is under doubt."

Finally it said:

> "But for the purpose of the present complaint, having regard to all the facts and circumstances of the case, the Committee is of the opinion that the conduct of the respondent is patently unbecoming of a lawyer and against professional ethics. Consequently, we feel that as an exemplary punishment, Shri P.D. Gupta should be suspended from practice for a period of one year so that other erring lawyers should learn a lesson and refrain themselves from indulging in such practice."

12. The question which arises for consideration is:

> In view of the aforementioned facts is P.D. Gupta guilty of professional or other misconduct and if so is the punishment awarded to him disproportionate to the professional or other misconduct of which he has been found guilty?

13. Mr Y.K. Jain, learned counsel appearing for the appellant P.D. Gupta, submitted that if in a case like this it was held that a lawyer was guilty of professional misconduct particularly on a complaint filed by an interested person like Ram Murti no lawyer would be able to conduct henceforth the case of his client fearlessly. Mr Jain said that the aggrieved person, if any, in this case would have been either Vidya Wati, her daughter Maya Devi or her grandson Anand Prakash Bansal and neither of them had complained. It was also submitted that though the property was purchased by P.D. Gupta in late 1982 the complaint by Ram Murti was filed only on 16-12-1992. Mr Jain explained that as to how Vidya Wati had been varyingly described in various litigations was on account of instruction from her or her attorney and it was no fault of P.D. Gupta on that account. Then it was submitted that no specific charges had been framed in the disciplinary proceedings which had caused prejudice to P.D. Gupta in the conduct of his defence. Lastly, it was contended that P.D. Gupta was no longer concerned with the property as he had sold away the same.

14. There appears to be no substance in the submissions of Mr Jain. P.D. Gupta was fully aware of the allegations he was to meet. It was not a complicated charge. He has been

sufficiently long in practice. The argument that a charge had not been formulated appears to be more out of the discontentment of P.D. Gupta in being unable to meet the allegation. Now, P.D. Gupta says that he has washed his hands off the property and thus he is not guilty of any misconduct. That is not the issue. It is his conduct in buying the property, the subject-matter of litigation between the parties, from his client on which he could exercise undue influence especially when there was a doubt cast on his client's title to the property. Had P.D. Gupta sold the property back to Vidya Wati and got the sale deed in his favour cancelled something could have been said in his favour. But that is not so. He sold the property to a third person, made profit and created more complications in the pending suit. P.D. Gupta purchased the properties which were the subject-matter of the dispute for himself and also for his son-in-law at almost throw-away prices and thus he himself became a party to the litigation. The conduct of P.D. Gupta cannot be said to be above board. It is not material that Vidya Wati or anyone claiming through her has not complained against him. We are concerned with the professional conduct of P.D. Gupta as a lawyer conducting the case for his client. A lawyer owes a duty to be fair not only to his client but also to the court as well as to the opposite party in the conduct of the case. Administration of justice is a stream which has to be kept pure and clean. It has to be kept unpolluted. Administration of justice is not something which concerns the Bench only. It concerns the Bar as well. The Bar is the principal ground for recruiting Judges. No one should be able to raise a finger about the conduct of a lawyer. While conducting the case he functions as an officer of the court. Here, P.D. Gupta in buying the property has in effect subverted the process of justice. His action has raised serious questions about his fairness in the conduct of the trial touching his professional conduct as an advocate. By his action he has brought the process of administration of justice into disrepute.

15. The Bar Council of India and the State Bar Councils are statutory bodies under the Act. These bodies perform varying functions under the Act and the rules framed thereunder. The Bar Council of India has laid standards of professional conduct for the members. The code of conduct in the circumstances can never be exhaustive. The Bar Council of India and the State Bar Councils are representative bodies of the advocates on their rolls and are charged with the responsibility of maintaining discipline amongst members and punishing those who go astray from the path of rectitude set out for them. In the present case the Bar Council of India, through its Disciplinary Committee, has considered all the relevant circumstances and has come to the conclusion that P.D. Gupta, Advocate is guilty of misconduct and we see no reason to take a different view. We also find no ground to interfere with the punishment awarded to P.D. Gupta in the circumstances of the case.

17. The appeal is dismissed.

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