

A

R. JANARDHANA RAO

v.

G. LINGAPPA

JANUARY 12, 1999

B

[S.B. MAJMUDAR AND U.C. BANERJEE, JJ.]

Advocates Act, 1961 : Sections 35 and 38.

C

Professional misconduct—Act not amounting to—Relief for—Advocate persuaded complainant, the opposite party in a civil suit, pursuant to a compromise to give him a hand loan of Rs. 3,000 against a post dated cheque—The cheque bounced and Advocate did not refund the amount despite repeated requests of the complainant—Held, The said act of the Advocate does not amount to professional misconduct—But civil remedy or criminal litigation under S. 138 of the Negotiable Instruments Act, 1881 is available to the complainant—However Rs. 3,000 already deposited by the Advocate in the Registry of the Supreme Court permitted to be withdrawn by the complainant towards his dues—In addition Rs. 1,000 by way of cost awarded to the complainant to be paid by the Advocate—Negotiable Instruments Act, 1881—Practice and Procedure.

D

E

F

The respondent-complainant, one of the parties in a civil suit, after its compromise was persuaded to give a hand loan of Rs. 3,000 to the appellant-Advocate of the other side against a post dated cheque. The said cheque bounced and despite repeated requests of the respondent the appellant did not refund the said amount. Therefore, the respondent filed a complaint before the State Bar Council, which came to the conclusion that the appellant was guilty of professional misconduct and suspended the appellant from practising as an Advocate for a period of two years. The Bar Council of India dismissed the appeal filed by the appellant. Hence this appeal.

G

Allowing the appeal, this Court

H

HELD : 1. The appellant while taking the loan from the respondent on any pretext was not acting in his professional capacity qua the complainant. He was acting as a needy person and persuaded the creditor to give him an amount of Rs. 3,000. If that amount was not paid back, civil remedy was

available to the complainant and if the cheque had bounced after coming into force of Section 138 of the Negotiable Instruments Act, 1881, it might have resulted in criminal litigation, but the appellant qua the complainant had not committed any professional misconduct. [68-G-H] A

M.B. Mirzan v. Disciplinary Committee of the Bar Council of Maharashtra, [1972] 4 SCC 412, referred to. B

2. It is a fit case to award by way of cost to the respondent-complainant an amount of Rs. 1,000 to be paid by the appellant-Advocate in addition to the amount of Rs. 3,000 already deposited by the appellant-Advocate in the Registry of the Supreme Court which the respondent is permitted to draw towards his dues. [70-A-B] C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4224 of 1989.

From the Judgment and Order dated 30.7.89 of the Disciplinary Committee of the Bar Council of India in Misc. P. No. 1/89 in D.C.A. No. 15 of 1988. D

A. Subba Rao for the Appellant.

Anjani Kumar Jha for the Respondent. E

The Judgment of the Court was delivered by

S.B. MAJMUDAR, J. The appellant who is a practising Advocate has brought in challenge the order passed by the Bar Council of India under the provisions of Advocates Act, 1961 holding him guilty of professional misconduct and ordering his suspension from practice for a period of two years. F

A few facts leading to this appeal deserve to be noted.

One G. Rami Reddy had filed a suit against the respondent-complainant, G. Lingappa and another being O.S. No. 173 of 1983 on the file of Assistant Civil Judge, City Civil Court, Hyderabad for dissolution of partnership. In the suit, the appellant represented the opponent of the present respondent-complainant. In the suit, the parties negotiated for compromise. As per the terms of agreement dated 2.7.1984 a compromise H

A memo was filed in the Court. On the day of compromise, the complainant however was paid an amount of Rs. 12,000 cash though he had to receive Rs. 3,000 more meaning Rs. 15,000. It is the case of the complainant-respondent before the Bar Council of the State of Andhra Pradesh that after the said compromise was entered into, the appellant- Advocate for the other side called him for a cup of tea in the canteen and persuaded him to give him a hand loan of Rs. 3,000 as he was in urgent need for providing furniture for the School run by his wife. It is the further case of the respondent that accordingly he parted with Rs. 3,000 against a post dated cheque dated 8.3.1984 given by the appellant to him. The said cheque being presented bounced. Despite repeated requests of the complainant-respondent, the appellant did not refund the said amount. Hence, according to him, the appellant was guilty of professional misconduct. A complaint was filed before the State Bar Council of Andhra Pradesh. The appellant contested the proceedings. After hearing the parties and recording the evidence offered by them, the State Bar Council came to the conclusion that the appellant was guilty of professional misconduct and hence he was ordered to be suspended from practising as an Advocate for a period of two years from the date of receipt of the order. Appellant's appeal before the Bar Council of India failed as its Disciplinary Committee was not inclined to take a contrary view.

E Having heard learned counsel for the parties, it is found that all that the complainant alleged was to the effect that the appellant being an Advocate of the other side and after settling the civil dispute between the parties by way of compromise had persuaded the complainant to part with an amount of Rs. 3,000 by way of a hand loan. The post dated cheque given by him to the complainant bounced and the appellant did not repay the amount even thereafter despite repeated request. In our opinion, these type of allegations even taken at the highest, would show that the complainant was persuaded to give a hand loan of Rs. 3,000 to the appellant and that amount was not repaid by him. It is pertinent to note that the appellant while taking the loan from the respondent on any pretext was not acting in his professional capacity qua the complainant. He was acting as a needy person and persuaded the creditor to give him an amount of Rs. 3,000. If that amount was not paid back, civil remedy was available to the complainant and if the cheque had bounced after coming into force of Section 138 of the Negotiable Instruments Act, it might have resulted in criminal litigation, but however so far as the professional misconduct is

concerned, we fail to appreciate as to how the Disciplinary Committee of the State Bar Council held that the appellant qua the complainant had committed any professional misconduct because he had taken a hand loan from the complainant- respondent and not repaid it. It is also to be noted that against the order of the Disciplinary Committee of the Bar Council of India, this court as early as on 8.11.1989 issued notice and suspended the order of the Bar Council of India. The said order is continuing althroughout and we are informed by learned counsel for the appellant that the appellant is still practising. By an order dated 9.9.1991 in presence of learned counsel for the respondent this Court had directed that the appellant shall take steps to deposit a sum of Rs. 3,000 in the Registry of this Court within a period of four weeks for payment to the respondent. Office report shows that the amount was already deposited as early as on 25.9.1991. Learned counsel for the respondent states that this amount is still not withdrawn. Under these circumstances, in our opinion, the appellant cannot be said to be guilty of any professional misconduct. It is also interesting to note that in the very examination-in-chief before the Disciplinary Committee of State Bar Council the complainant stated that if Rs. 3,000 is paid to him, he is prepared to withdraw the complaint. We fail to appreciate how the appellant being a practising Advocate did not take up this opportunity to close the chapter as admittedly he had taken the loan and had not repaid the same to the complainant - creditor. That shows an inadvertant conduct on the part of the appellant but still it does not make out any professional misconduct. We would have understood if the appellant was alleged to have misused his position and had taken any money from his own client and had retained that amount. That would have been a clear case of professional misconduct in view of the decision of this Court in the case of *N.B. Mirzan v. The Disciplinary Committee of the Bar Council of Maharashtra and Anr.*, reported in [1972] 4 SCC 412. But this is not one case. There was no professional obligation or duty of the appellant qua respondent-complainant who was a third party and who was no better than a third party creditor qua the appellant.

In the result, the order passed by the State Bar Council of Andhra Pradesh and the Disciplinary Committee of the Bar Council of India are set aside and the complaint filed by the complainant is dismissed. However, an amount of Rs. 3,000 which is lying in the Registry of this Court shall be permitted to be withdrawn by the respondent towards his dues. We deem it fit to award by way of cost to the respondent-complainant an amount of

- A Rs. 1,000 which shall additionally be paid by the appellant to the respondent within a period of four weeks from today, meaning thereby the respondent will be entitled to withdraw Rs. 3,000 which is lying in the Registry of this Court and an additional amount of Rs. 1,000. Learned counsel for the appellant is permitted to deposit this amount of cost of Rs. 1,000 in the Registry of this Court which will be permitted to be withdrawn
- B by the respondent on due identification along with already deposited amount towards full and final satisfaction of his money claim against the appellant. The appeal is allowed accordingly subject to the order of cost as aforesaid directed to be paid to the respondent.

V.S.S.

Appeal allowed.