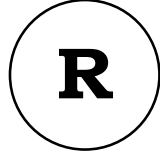


Reserved on : 26.03.2024
Pronounced on : 07.06.2024



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 07TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.20076 OF 2023 (GM – RES)

BETWEEN:

SRI PARAS JAIN
ADVOCATE
S/O LATE SRI. P.BHAWARLAL DHARIWAL
AGED ABOUT 71 YEARS
R/AT 38, 5TH CROSS
GANDHINAGAR,
BENGALURU – 560 009.

... PETITIONER

(BY SRI PARAS JAIN, PARTY-IN-PERSON)

AND:

- 1 . KARNATAKA STATE BAR COUNCIL
OLD ELECTION COMMISSIONER OFFICE
DR. AMBEDKAR VEEDHI
BENGALURU – 560 001
REPRESENTED BY ITS CHAIRMAN.
- 2 . SRI A RAMACHANDRA REDDY
S/O LATE SRI. ANJAN REDDY
AGED ABOUT 65 YEARS

R/AT NO.41, II CROSS, MALLESHWARAM
BENGALURU – 560 003
SINCE DECEASED REP. BY WIFE
SMT. RAJALAKSHMI RAMACHANDRA
MAJOR.

... RESPONDENTS

(BY SRI GANGADHARAPPA A. V., ADVOCATE FOR R1;
SRI R.NEELAKANTA SWAMY, ADVOCATE FOR LR'S OF R2
ON IA 1/2024)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTICE DTD 22.07.2023 ISSUED THE KARNATAKA STATE BAR COUNCIL, BENGALURU-560001 FILED AS ANNEXURE-B AND QUASH THE COMPLAINT FILED BY THE R2 FILED AS ANNEXURE-A.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 26.03.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question a notice dated 22-07-2023 issued by the Karnataka State Bar Council, Bengaluru ('the Bar Council' for short) and seeks quashment of the complaint so registered before the Bar Council by the 2nd respondent.

2. *Sans* details, facts in brief, germane are as follows:-

The petitioner is an Advocate practicing at Bangalore for the last 44 years. The petitioner becomes a counsel for the decree holder Sri Jinender Kumar Gandhi and his family members in Execution Case Nos.458 of 2007 and 459 of 2007 which were at that point in time pending before the City Civil Court at Bengaluru. In the Execution petitions, the 2nd respondent/A. Ramachadnra Reddy is the Judgment Debtor No.3, against whom decree of possession had been passed in O.S.Nos. 9077 of 1996 and 9078 of 1996, along with two other Judgment Debtors who were his parents. The decree was passed on 21-12-2006 and the appeal filed against the said decree by the Judgment Debtors before this Court comes to be rejected in the year 2009. The Judgment Debtors then challenge the decree before the Apex Court, which also comes to be dismissed in the year 2010. The decree, thus, attained finality. The Judgment Debtor No.3 then appears to have taken a contention that the suit schedule property does not exist as it is not identifiable and is said to have protracted the proceedings for decades before the Executing Court. Finally on 03-11-2021 in

the final decree proceedings, delivery warrant was issued pursuant to which, the decree holders received possession of the property on 26-11-2021 through the Court Commissioner appointed by the Executing Court.

3. The 2nd respondent takes compensation amount, which the decree holders were supposed to receive it, by filing a false indemnity bond and an affidavit, in collusion with the Land Acquisition Officer is the allegation of the petitioner in the averment of the petition. It appears that against the receipt of compensation, proceedings were brought up before this Court which reached the Division Bench and the Division Bench directed all the transferee *pendente lite*, including the 2nd respondent to deposit the amount together with interest. This was not complied with and proceedings in C.C.C.No.280 of 2011 were instituted. It is the allegation that the Judgment Debtor No.3 has to deposit more than 75/- lakhs compensation towards the amount received by him.

4. The petitioner is an Advocate who appears for the decree-holders in the aforesaid execution cases. A complaint comes to be

registered before the 1st respondent/Bar Council upon which a notice is sent to the petitioner seeking to reply as to why the matter should not be referred to the Disciplinary Committee. The matter was referred to the Disciplinary Committee and the Disciplinary Committee initiates D.C.E.No.29 of 2023 and again issued notice to the petitioner on 22-07-2023 calling upon him to file his defence. This is the impugned notice. The petitioner files his statement of defence. After participating in the proceedings to the stage of filing of defence, the petitioner has knocked at the doors of this Court challenging entire proceedings before the Disciplinary Committee of the Bar Council.

5. Heard Sri Paras Jain, party in-person, the petitioner; Sri A.V. Gangadharappa, learned counsel appearing for respondent No.1 and Sri R. Neelakantaswamy, learned counsel appearing for the legal representatives of respondent No.2.

6. The petitioner who appears in person submits that he was appearing for the decree-holders in Execution Case Nos. 458 of 2007 and 459 of 2007. Appearance by itself cannot be a

professional misconduct. What is alleged is that the petitioner has entered into a transaction with the decree holders. It is the case of the petitioner that the petitioner has never appeared for the 2nd respondent. There is no jural relationship of client and Advocate *qua* the 2nd respondent. If he has not appeared for a particular party, it is the case of the petitioner that the said client cannot file a complaint alleging professional misconduct. It is his further case that the State Bar Council should have appreciated that the petitioner has a legal right to represent his client before any competent Court of law and cannot contend that he is barred from practice. If the decree holders had complained to the Bar Council it would have been a circumstance altogether different. The complainant is the Judgment Debtor. The Judgment Debtors, if permitted to register a complaint against Advocates appearing for the decree holders, it would have a disastrous effect on every Advocate's practice. He would submit that the complainant has no locus to register the complaint.

7. Per contra, the learned counsel Sri A.V. Gangadharappa representing the Bar Council would submit that the complaint is

appropriately taken as it came to the notice of the complainant that decree of partition was secured by the decree holders among themselves and the present petitioner got arrayed as defendant No.4 in the suit for partition of decree and received compensation for part of a property which was the subject matter of decree. Several other allegations are made in the complaint. It is his submission that the averments in the complaint necessitated reference of the petitioner's case to the Disciplinary Committee and no fault can be found with the said reference.

8. The learned counsel appearing for the 2nd respondent/ complainant who dies during the pendency of proceedings and his legal representative is brought on record would submit that the petitioner becomes a part of the compromise petition in O.S.No.6629 of 2017 which was a compromise arrived at after the aforesaid decree in favour of the decree holders. A portion of the property measuring 6533 sq.ft. is allotted to the petitioner in the said compromise. Therefore, it is the case of the complainant that he has transacted with the client and if he has transacted with the client even in the partition pursuant to the decree, it would amount

to professional misconduct. Therefore, being the Judgment Debtor, the complainant had all the right to register the complaint. He would seek dismissal of the petition.

9. I have given my anxious consideration to the submissions made by the petitioner and the learned counsel appearing for the respondents and have perused the material on record.

10. The afore-narrated facts are not in dispute. The threshold submission of the petitioner-in-person is that the complainant has no locus to initiate proceedings against him. Since the issue of locus would cut at the root of the matter, I deem it appropriate to consider the same at the outset. Section 35 of the Advocates Act, 1961 deals with punishment of advocates for misconduct and reads as follows:

"35. Punishment of advocates for misconduct.—(1) Where on receipt of a complaint or otherwise a 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.

(1-A) The State Bar Council may, either of its own motion or on application made to it by any person interested, withdraw a proceeding pending before its disciplinary committee and

direct the inquiry to be made by any other disciplinary committee of that State Bar Council.

(2) The disciplinary committee of a State Bar Council shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the advocate concerned and to the Advocate-General of the State.

3) The disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate-General an opportunity of being heard, may make any of the following orders, namely:—

- a) dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;*
- (b) reprimand the advocate;*
- (c) suspend the advocate from practice for such period as it may deem fit;*
- (d) remove the name of the advocate from the State roll of advocates.*

(4) Where an advocate is suspended from practice under clause (c) of sub-section (3), he shall, during the period of suspension, be debarred from practising in any court or before any authority or person in India.

(5) Where any notice is issued to the Advocate-General under sub-section (2), the Advocate-General may appear before the disciplinary committee of the State Bar Council either in person or through any advocate appearing on his behalf.

Explanation.—In this section, Section 37 and Section 38, the expressions "Advocate-General" and "Advocate-General of the State" shall, in relation to the Union territory of Delhi, mean the Additional Solicitor General of India."

(Emphasis supplied)

Section 35 directs that on receipt of a complaint or otherwise a State Bar Council has reason to believe that any Advocate on its roll is guilty of professional or other misconduct shall refer the case for disposal to its Disciplinary Committee.

11. To consider whether the 2nd respondent had locus or otherwise, it is necessary to notice the dates and events. The issue in the case at hand arises from O.S.Nos.9077 and 9078 of 1996. The said civil suits were decreed in favour of the plaintiffs, clients of the petitioner in the year 2006. This is an undisputed fact. Execution petitions in Execution Nos. 458 and 459 of 2007 were filed by the decree-holders as the decree had become final as it travelled up to the Apex Court. This is again an undisputed fact. Final Decree Proceedings were initiated by the clients of the petitioner in the year 2015 claiming mesne profits and the same came to be drawn on 31-03-2015. A delivery warrant was issued against the Judgment Debtors one of whom was the 2nd respondent in Execution case Nos. 458 and 459 of 2007. The property was delivered to the decree holders in the year 2017.

12. A suit in O.S.No.6629 of 2017 was filed seeking partition of the schedule properties in the decree by the decree holders amongst themselves. Here enters the petitioner as one of the defendants and the share of the petitioner was 22.05 per cent. On 08-02-2018 a compromise was entered into between the plaintiffs and the defendants therein in which portion of the petitioner was 22.05%. On the said compromise final decree is drawn up on 16-02-2018 indicating shares of the parties and the petitioner as found in O.S.No.6629 of 2017. Long after drawing up of final decree, the 2nd respondent who was not a party in the compromise or settlement in O.S.No.6629 of 2017 registers the impugned complaint on 15-07-2021. Since the genesis of the problem is from the complaint, I deem it appropriate to notice the complaint. It reads as follows:

**"COMPLAINT UNDER SECTION 35 OF THE
ADVOCATES ACT, 1961**

The complainant above name begs to state us under, in respect of the Professional Misconduct committed by the respondent and prays for necessary action as per law.

1. I A.Ramachandra Reddy, JDR No.3 in all the below mentioned suits would like to state that Learned Advocate Mr. Paras Jain (Enrolment No.51/1980) appears for the Decree Holders in Ex. Case No. 458/2007 and Ex Case No. 459/2007 arising out of Possession Suit O.S. No. 9077/1996 and O.S. No.

9078/1996. He appears for the Decree Holders right from the date of suits and also for all Collateral, Miscellaneous and SLP proceedings. Copies of the Decree, Execution Petition, Supreme Court order are enclosed in this regard.

2. I have come to know that he has secured a decree in a partition suit No.6629/2017 filed by the Decree Holders among themselves and the learned Advocate Mr.Paras Jain, has got arraigned as Defendant No.4 in this suit for partition of Decree schedule and obtaining property to an extent of 1) 22.5% of the area as marked in sketches, 2) 22.5% in compensation amount to be received from Bangalore Metro Rail Corporation, 3) Mesne profits. All these Amounts to obtaining more than 9.00 Crores towards share of Adv. Mr. Paras Jain alone. Copies of Order sheet, Plaint, Amended Plaint, Compromise Petition with 4 sketch in O.S. No. 6629/2017 are enclosed.

3. It is evident from the Decree in O.S. No. 9077/1996 and O.S. No. 9078/1996 and Execution Case No. 458/2007 and Ex Case No. 459/2007 that the description of the suit schedule property as in above Decrees and O.S. No. 6629/2017 are one and the same. The schedule of property involved in the compromise decree entered by the Learned Advocate with his clients is shown as the same in Execution Petition Schedule property. I am advised to submit that the securing of interest in the suit schedule property by Adv. Mr. Paras Jain is in utter violation of Rule 9 Section I "DUTY TO THE COURT of Chapter II Standards of Professional Conduct of Etiquette Part VI Rules Governing Advocate, Bar Council of India Rules.

The learned Advocate Sri. Paras Jain has even gone to the extent of threatening the presiding Officer on 10.08.2016 in Ex.458/2007 and Ex.459/2007 to issue a delivery warrant forthwith at the time of arguments. He has also made personal remarks again JDR Adv. Sri.P.S.Gurumurthy. Both these incidents have been recorded by the Presiding officer in his order sheet dt. 10.08.2016. ORDER sheets dt. 10.08.2016 are produced herewith (Pages 96-105).

4. It is clear from the above facts that the learned advocate has committed professional misconduct. He continues to appear for Decree Holders inspite of having Pecuniary Interest in the Execution Petition Schedule Property, which amounts to professional misconduct under Rule 22, Section II "DUTY TO THE CLIENT of Chapter II, Standards of Professional Conduct of Etiquette, Part VI, Rules Governing Advocate, Bar Council of India Rules.

5. In view of the above mentioned facts please take appropriate disciplinary action against Advocate Mr.Paras Jain (Enrolment No.51/1980) in accordance with law and oblige.

A complaint fee of Rs.3000/- (Rupees Three Thousand only) is paid by Cash on 15.07.2021."

(Emphasis added)

A bare reading of the complaint would indicate that it is filed by the Judgment Debtor. Judgment Debtor not in O.S.No.6629 of 2017 in which the petitioner becomes a defendant, but Judgment Debtor in Execution case Nos. 458 and 459 of 2007. Therefore, the petitioner is projecting the issue of locus as none of the parties to the compromise entered into in O.S.No.6629 of 2017 have registered any complaint nor the decree holders whom the petitioner represented have filed any complaint. It is filed by the Judgment Debtor. *Whether he has locus or not is what is required to be considered.*

13. It is not in dispute that the entire proceedings have sprung from the complaint. This Court considering the issue of *locus* in the case of **MOHAMMED BASHU v. HOSPET BAR ASSOCIATION¹**, has held as follows:

"... .."

19. *At this stage it is relevant to state that the genesis and the cause for the plaintiffs expulsion is the plaintiff himself who gave a complaint against another advocate to the Bar Association and also against the Presiding Officer which ultimately led to his expulsion from the Defendant Bar Association. Any professional mis-conduct by an advocate has to be complained by persons who have the locus standi to complain against the said mis-conduct and the Bar Council of the State is a statutory authority empowered to enquire into any mis-conduct of an advocate and pass appropriate orders and a member of the Bar has no locus standi to complain about any other member of the bar in the realm of professional mis-conduct unless the said member of the bar is a litigant himself."*

(Emphasis supplied)

This Court holds that any professional misconduct of an Advocate has to be complained by persons who have locus to complain, as the Bar Council of a State being a statutory authority is empowered to enquire into any misconduct of an Advocate and pass appropriate

¹ 2008 SCC OnLine Kar. 748

orders. The Apex Court considering the *locus* of a person to register a complaint not concerning professional misconduct of an Advocate, in the case of **AYAAUBKHAN NOORKHAN PATHAN v. STATE OF MAHARASHTRA**², holds as follows:

"....

10. A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardised. (Vide *Shanti Kumar R. Canji v. Home Insurance Co. of New York* [(1974) 2 SCC 387: AIR 1974 SC 1719] and *State of Rajasthan v. Union of India* [(1977) 3 SCC 592: AIR 1977 SC 1361].)

... ..

17. In view of the above, the law on the said point can be summarised to the effect that a person who raises a grievance, must show how he has suffered legal injury. Generally, a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others."

(Emphasis supplied)

The Apex Court holds that a passer-by cannot complaint on a caste certificate issued to a particular person unless he becomes a person aggrieved. It becomes apposite to refer to the judgment of the

² (2013) 4 SCC 465

Apex Court in the case of **BHARAT LAL PANDEY v. RAMJI PRASAD YADAV**³ wherein the Apex Court has held as follows:

"1. Heard the learned counsel for the parties. The Uttar Pradesh Bar Council allowed the complaint filed by the respondent and suspended the licence of the appellant, who was practising as an advocate in the civil court at Deoria for a period of ten years. The said order has been confirmed in appeal filed by the All-India Bar Council. Hence, this appeal.

2. From a bare perusal of the impugned order, it would appear that the only allegation against the appellant was that he had filed a large number of cases on behalf of the wife of the respondent against the respondent. In our view, this allegation does not amount to any professional misconduct and the State Bar Council was not justified in suspending the licence of the appellant and the appellate authority has committed an error in confirming the same.

3. Accordingly, the appeal is allowed, the impugned orders are set aside and the complaint filed by the respondent is dismissed."

(Emphasis supplied)

The Apex Court holds that the Advocate is alleged to have filed large number of cases on behalf of the wife of the respondent against the respondent. This would not amount to professional misconduct. The High Court of Madras in the case of **N.S.**

³ (2009) 17 SCC 644

VARADACHARI v. BAR COUNCIL OF TAMIL NADU⁴, holds as follows:-

".... .."

5. *The profession of an Advocate is a dignified profession. Undoubtedly, it is noble. Their role in the justice delivery cannot be underestimated. Their participation in the nation building cannot go unnoticed. They play a vital role in the preservation of the independence of the judiciary which is one of the basic structures of the constitution. **The Advocates are expected to conduct themselves in a dignified manner without losing even a very small amount of reputation and the confidence which the public, more particularly, their clients repose in them. Their conduct, be it professional or otherwise, should be above board.** Whenever there is a complaint regarding the conduct of an Advocate alleging that such conduct is a misconduct, either professional or otherwise, the Bar Council of Tamil Nadu has to act upon the said complaint under Section 35 of The Advocates Act, 1961 [hereinafter referred to as "the Act"]. Sub-section (1) of Section 35 of the Act reads as follows:-*

"35. Punishment of advocates for misconduct.- (1) Where on receipt of a complaint or otherwise a 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."

6. A close reading of the above provision would make it clear, without any doubt, that there are to be two essential ingredients available on record which form the basis for the reasons to believe that such Advocate is guilty of professional or other misconduct. The term "reasons to believe" in the given context is stronger than the term "mere satisfaction". In order to find out whether there are reasons to have such belief, the Bar Council is required to apply its mind. The requirement of 'reasons to believe' cannot be converted into a formalised

⁴ W.P.No.14284 of 2000 decided on 23-12-2010

procedural road block, it being essentially a barrier against frivolous inquiries [Vide Bar Council of Maharashtra v. M.V.Dabholkar, AIR 1975 SC 2092]. There should be some rational and intelligible nexus between the reasons and belief. The belief entertained by the Bar Council should not be either arbitrary or irrational. But, it must be reasonable and in other words it must be based on reasons which are based on relevant materials [Vide Nandlal Khodidas Barot v. Bar Council of Gujarath and others, AIR 1981 SC 477].

7. Then, what is misconduct either professional or otherwise needs to be understood. The term "misconduct" has not been defined anywhere in the Act. However, it came up for consideration before a Full Bench of this court in **U.Dakshinamoorthy v. The Commission of Inquiry, 1980 (1) MLJ 121** wherein the Full Bench of this Court has held as follows:-

"26. As misconduct has not been defined, we have to be guided by the meaning which is obtainable for the expression in ordinary and common parlance. 'Misconduct', as explained in the dictionary, is improper conduct. The propriety of the conduct of the Advocate is to be inquired into by the Commission. Whether it is professional misconduct or misconduct otherwise has to be judged by the Bar Council which has to be satisfied about the commission of such misconduct, as technically understood under the Advocates Act. Every misconduct may not be professional misconduct or other misconduct contemplated by Section 35."

8. When a similar question arose before the Hon'ble Supreme Court in **Ratnam v. Kanikaram A.I.R. 1965 S.C. 244** wherein the Hon'ble Supreme Court has held as follows:-

" From the resume of the understanding of the term "professional or other misconduct", as it appeared in the Bar Councils Act, or, as it is found in the Advocates Act, it appears that the term 'misconduct' appearing in the respective sections has to be examined, with the lens of propriety, decency and worthy living and the fitness of the person to be on the rolls as an Advocate. It therefore appears that an accent is laid at every stage by the highest Court of our land on the fitness of the person to continue on the rolls, which has to be decided with reference to his

conduct in general or with reference to his conduct touching upon a particular incident."

9. I do not wish to refer to the other judgements cited at the bar on this aspect because the same would only add to the length of this order. From the above judgements, it is crystal clear that it is not every conduct of an advocate which shall be the subject matter of disciplinary proceedings against him under Section 35 of the Act. But, it is a conduct, either professional or otherwise, which will render him unfit to be a part of the dignified fraternity of legal profession shall alone be the subject matter of disciplinary proceedings.

10. In this case, the allegation is that the opinion offered by the petitioner to Mr.V.G.Jayaraman regarding the so-called title claimed by Mr.V.G.Jayaraman was wrong. Now, the question is as to whether this will amount to misconduct or conduct unbecoming of an Advocate. In this regard I may refer to a judgement of the Hon'ble Supreme Court in **Noratanmal chouraria v. M.R.Murli and another , AIR 2004 SC 2440** wherein, after having analysed various judgements on this aspect right from the year 1957, the Hon'ble Supreme Court in para 12 has held as follows:-

"12. Section 35 of the Advocates Act, however, refers to imposition of punishment for professional or other misconduct. A member of legal profession which is a noble one is expected to maintain a standard in dignified and determined manner. The standard required to be maintained by the member of the legal profession must be commensurate with nobility thereof. A Lawyer is obligated to observe those norms which make him worthy of the confidence of the community in him as an officer of the court."

11. In **Pandurang Dattatraya Khandekar v. The Bar council of Maharashtra, Bombay and others, AIR 1984 SC 110**, the Hon'ble Supreme Court in para 9 has held as follows:-

"9. Nothing should be done by any member of the legal fraternity which might tend to lessen in any degree the confidence of the public in the fidelity, honesty and integrity of the profession. For an advocate to act towards his client

otherwise than with utmost good faith is unprofessional. It is against professional etiquette for a lawyer to give out that an advocate should accept employment with such motive, or so long as his client has such understanding of his purpose. It is professionally improper for a member of the bar to prepare false documents or to draw pleadings knowingly that the allegations made are untrue to his knowledge. Thus the giving of improper legal advice may amount to professional misconduct. That however may not be so by the giving of wrong legal advice."

In the above judgement, the Hon'ble Supreme Court has referred to a Full Bench of this court in In Re a Vakil, AIR 1926 Mad 568 (FB) wherein the FB has held as follows:-

"Negligence by itself is not professional misconduct; into that offence there must enter the element of moral delinquency. Of that there is no suggestion here, and we are therefore able to say that there is no case to investigate, and that no reflection adverse to his professional honour rests upon Mr. M."

12. In the case on hand, first of all, the petitioner did not offer any opinion to the respondents 3 to 7, and in no way, he is connected with them as they had not engaged him for professional opinion. Instead, legal opinion was given only to Mr.V.G.Jayaraman. That opinion is also based on judgements of the civil courts and certain other deeds. The said opinion cannot be stated to be baseless. Further, when the said opinion was offered only to Mr.V.G.Jayaraman and he has got no grievance over the said opinion, the respondents 3 to 7, who are utter strangers to the petitioner cannot make any allegation that the opinion amounts to professional misconduct. Further, it is not known as to how the said opinion offered by the petitioner is stated to be wrong. Assuming that it is a wrong opinion, as held by the Full Bench of this Court in the judgement cited supra and the Hon'ble Supreme Court that will not amount to professional misconduct warranting proceedings under Section 35 of the Act. But, the 1st respondent has not applied its mind at all into the allegations made against the petitioner to find out whether there was any

professional misconduct or other misconduct or not. From the materials available on record, I have got no hesitation to hold that there is total non application of mind on the part of the Bar Council. When there are no materials available on record to form the basis for reasons to believe that the petitioner had committed anything unbecoming of an Advocate amounting to a misconduct either professional or otherwise, the 1st respondent ought not to have referred the matter to the 2nd respondent - Disciplinary Committee for enquiry. Thus, the impugned disciplinary proceedings is unwarranted and the same is liable to be quashed."

(Emphasis supplied)

The High Court of Madras holds after analyzing the facts that the petitioner therein did not offer any opinion to respondents 3 to 7 and is in not connected with them as they had not engaged him for his professional opinion. Therefore, the complaint could not have been maintained before the Bar Council. The High Court of Madras, in a subsequent judgment, in the case of ***R.SWAMINATHAN v. BAR COUNCIL OF TAMIL NADU HIGH COURT CAMPUS CHENNAI***⁵, elaborates the issue and holds no client can be permitted to intimidate the Advocate, as follows:

"... .."

6. *At the outset, it should be pointed out that the second respondent, who was the complainant before the Bar Council, was not the client of the writ petitioners. Even according to his*

⁵ 2014 SCC OnLine Mad 12777

*complaint, he was only one of the several shareholders of a Company, whose property was purchased by another Company, on the basis of the legal opinion tendered by the writ petitioners. **In other words, the petitioners were not the complainant's Lawyers. The petitioners and the second respondent never had any jural or contractual relationship of lawyers and litigant. Therefore, I do not know how the second respondent could make a complaint of professional misconduct of giving a wrong opinion against the petitioners herein, when the clients of the petitioners were satisfied with such an opinion and have not raised an issue so far. This is an aspect which the Bar Council appears to have completely overlooked before passing a Resolution to refer the matter to the Disciplinary Committee.***

*7. As and when a complaint is made against any Advocate, by a litigant alleging professional misconduct, the Bar Council is obliged to consider at least, prima facie, whether the allegations constitute a professional or other misconduct. Sections 35 of the Advocates Act, 1961, enables the Bar Council to inquire into (i) complaints of professional misconduct and (ii) complaints of other misconduct. **In the case on hand, the second respondent has not alleged against the petitioners, any "other misconduct". He has alleged professional misconduct against the petitioners. But he did not have any relationship with the petitioners.***

*8. The expression "misconduct" is not defined in the Act. Therefore, the Supreme Court held in *R.D. Saxena v. Balram Prasad Sharma* [2001-1-L.W. 284 : (2000) 7 SCC 264] that the word "misconduct" is a relative term and that it had to be considered with reference to the subject matter and the context in which it appears.*

*9. It is true that in *R.D. Saxena*, as well as in *D.P. Chadha v. Triyugi Narain Mishra* [(2001) 2 SCC 221], the Supreme Court held the expression "misconduct" to have a wide connotation. It need not necessarily involve moral turpitude. But it has to be understood with reference to the subject matter and the context in which it is employed.*

10. In *Noratanmal Chouraria v. M.R. Murli* [2005-2-L.W. 772 : (2004) 5 SCC 689], an Advocate was a party litigant in a Rent Control Proceeding. The opposite party made a complaint to the Bar Council that as a party appearing in the Rent Control Proceedings, the Advocate entered into an altercation with him. The Bar Council refused to entertain the complaint, as the conduct complained of, was not against any act of omission or commission by the Advocate in his professional capacity. The opposite party appealed. The Supreme Court dismissed the appeal, pointing out that to constitute misconduct, there must be improper behaviour or intentional wrong doing or deliberate violation of a rule or a standard of behaviour.

11. As pointed out earlier, the second respondent herein did not engage the services of the petitioners, for rendering any professional assistance. On the contrary, the petitioners were engaged by persons against whom the second respondent herein is actually waging a war over a property. Therefore, if any action is initiated against the petitioners, on a complaint made by a person like the second respondent, against whose interests the petitioners are engaged as advocates, no advocate can carry out his professional duties and responsibilities without fear. A professional is obliged to render services to his client. The services rendered by an Advocate to his client, would naturally invite the displeasure and wrath of such client's opposite party. Therefore, if parties to a litigation are allowed to take up the battle to the door steps of the counsel for the opposite party, the profession itself will be in jeopardy.

...

...

...

24. In *Central Bureau of Investigation v. K. Narayana Rao* [(2012) 9 SCC 512], the Supreme Court was concerned with an appeal filed by the Central Bureau of Investigation against a decision of the Andhra Pradesh High Court, quashing the criminal proceedings against an Advocate, who was arrayed as sixth accused in a special case filed for various offences punishable under Sections 120(b), 419, 420, 467, 468, 471, IPC, read with Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988. The gist of the complaint against several officers of the bank and the borrowers of the bank was that the officers of the bank, the borrowers and the advocate colluded

with each other and defrauded the bank by getting housing loans sanctioned and disbursed to about 22 borrowers. The specific charge against the advocate was that he was a panel advocate for Vijaya bank and that he gave a false legal opinion in respect of 10 housing loans. The advocate filed a petition under Section 482, Cr. P.C. on the file of the Andhra Pradesh High Court for quashing the proceedings and the High Court allowed the petition. When the Central Bureau of Investigation took the matter on appeal to the Supreme Court, the Supreme Court pointed out in paragraph 23 of its decision that a lawyer does not tell his client that he shall win the case in all circumstances. Like a surgeon who cannot and does not guarantee the result of any surgery, a lawyer does not guarantee the result. The only assurance that a professional can give is that he is possessed of the requisite skill in that branch of profession which he is practising and that while undertaking the performance of the task entrusted to him he would be exercising his skill with reasonable competence. Therefore, the Supreme Court, after referring to the decision in Pandurang Dattatraya Khandekar, held that a professional can be held liable for negligence only on one of the two findings, namely (a) either that he was not possessed of the requisite skill that he professed to have possessed, or (b) that he did not exercise with reasonable competence, the skill which he did possess. Not stopping at that, the Supreme Court pointed out in paragraph 27 that a lawyer owes an "unremitting loyalty" to the interests of his client and that it is the lawyer's responsibility to act in a manner that would best advance the interest of his client. The Supreme Court pointed out that even if his opinion may not be acceptable (to his own client) he cannot be mulcted with liability. When such is the case, the second respondent cannot accuse the petitioners of misconduct merely because their opinion to their own clients, was not palatable or in tune with his own interests.

25. *As I have pointed out earlier, what the second Respondent expected from the petitioner in W.P. No. 18479 of 2009, is spelt out by him in paragraph 7 of his counter affidavit to that writ petition, which reads as follows:—*

"It is not my case that the petitioner rendered any professional service to me and that there is counsel-client relationship between the petitioner and myself. The

petitioner gave legal opinion in respect of the property in which I am having a share and based on that legal opinion, sale transaction took place and they are promoting flats in the above property involving innocent public. Therefore, due to the legal opinion given by the petitioner, I was put to severe hardship since it affects my rights in the property."

26. *Similarly, what the second Respondent expected from the petitioner in W.P. No. 18478 of 2009, is spelt out by him in paragraph 25 of his counter affidavit to that writ petition, which reads as follows:*

"...The petitioner do admit that the company is the owner of the property in which I am having a share. Therefore, he should have advised the purchasers to have negotiations with me with regard to the sale of the property before giving legal opinion. The petitioner cannot claim that he is a counsel appearing for the company defending in the cases. Admittedly based on the wrong legal opinion given by the petitioner, the sale deeds were executed. The sale deeds were drafted by Mr. N. Kishorekumar, who is appearing for the petitioner in the present writ petition. Therefore it is not known as to whether the counsel for the petitioner who drafted the sale deeds and who is also involved in all the transactions, can represent the petitioners in the present writ petition...."

27. *From the portion of the counter affidavits of the second Respondent extracted above, it is clear that the second Respondent is unhappy about the petitioners continuing to appear for their clients. This shows that the complaint made by the second Respondent against the petitioners before the Bar Council, is motivated, with a desire to keep the petitioners away from their clients. The Bar Council ought to have seen this game plan on the part of the second Respondent. No litigant can be permitted to intimidate a lawyer appearing for his opponent. If a litigant does so, it will pollute the stream of administration of justice. Allowing the Bar Council to proceed with the enquiry into the complaint lodged by the second Respondent against the petitioners will only weaken the morale of the petitioners and prevent them from the honest and courageous discharge of their duties*

to their own clients. Such a sinister move on the part of the second Respondent cannot be permitted.”

(Emphasis supplied)

The aforesaid judgments of the High Court were considering Section 35 of the Advocates Act, the soul of which is ‘reason to believe’.

14. In the light of afore-said judgments of the Apex Court, this Court and that of the High Court of Madras, the considered view of this Court is that the complainant had no locus to file the complaint against the petitioner, as he was neither his Advocate nor there was any engagement of the petitioner by the 2nd respondent at any point in time. He was the counsel who had appeared against the 2nd respondent. The complaint, at best, was maintainable by the decree holders, if there was any allegation against the petitioner and not at the instance of Judgment Debtor. Since the issue of *locus* cuts at the root of the matter and the root is found to be contrary to law, all other submissions of the petitioner in-person that there should be reason to believe, for initiation of proceedings under Section 35 of the Act, need not be gone into, notwithstanding the fact that certain judgments which *inter alia* consider the issue of

reason to believe, found in Section 35 of the Act, are noted hereinabove, as the complaint was not even maintainable at the hands of the complainant before the Bar Council. Therefore, no other contention advanced either by the petitioner or the respondent on the merit of the matter has been gone into.

15. For the aforesaid reasons, the following:

ORDER

- (i) Writ Petition is allowed.
- (ii) The notice dated 22-07-2023 issued by the Karnataka State Bar Council, Bengaluru pursuant to proceedings initiated against the petitioner stands quashed.
- (iii) The quashment of proceedings will not come in the way of any proceedings pending between the parties.

Consequently, pending applications also stand disposed.

**Sd/-
JUDGE**

bkp/CT:SS