



BAR COUNCIL OF KERALA

(Statutory Body constituted under the Advocates Act, 1961)

Bar Council Bhavan, High Court Campus, Kochi-682031

BEFORE THE DISCIPLINARY COMMITTEE NO.2

BAR COUNCIL OF KERALA

Chairman : SRINATH GIRISH. P, ADVOCATE

Member : PRAMOD S.K, ADVOCATE

(Wednesday the 31st Day of March 2021)

CP No.94/2015

DC No. 29 / 2019

Deepak Aswani,

Managing Partner of M/s Lachmandas & Sons,

'Devi Complex', Doraiswamy Iyer Road,

Kochi - 682 035.

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Complainant

V.J. Ruby,

Advocate,

Prayer Home, Door No.44/1154,

Convent Road, Vyttila,

Kochi - 682 019.

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Respondent

Complaint under Section 35 (1) of the Advocates Act, 1961 (Referred to the Disciplinary Committee as per Resolution No.13 of the Bar Council of Kerala dated 22-9-2019)

This complaint having come up before the Disciplinary Committee on the 23rd day of March 2021 in the presence of Adv. Sampath V. Toms, Counsel for the Complainant and the respondent in person, the Committee hereby passes the following

ORDER

The case of the complainant, as seen in the complaint filed by him before the Secretary of the Bar Council of Kerala on 16-7-2015, is as follows: The complainant had engaged the respondent Advocate for conducting various cases. The respondent had issued various bills to the complainant, towards her fees, court fee expenses and other

items. As per the said bills, a total sum of Rs.6,48,351.71 (Rupees Six Lakhs Forty Eight Thousand Three Hundred and Fifty One Paise Seventy One Only) was paid to the respondent by the complainant. The respondent had also availed of a hand loan of Rs.2,00,000/- (Rupees Two Lakhs Only) from the complainant on 23-2-2013, promising to repay the same with interest within two months, but did not repay the same. The respondent has not spent the amounts taken from the complainant for the purposes specified and has misappropriated the same. Though the complainant repeatedly requested her for copies of the complaints, etc. in the cases and details of the progress in the same, she did not comply with his request. The complainant has reasons to believe that the respondent has not filed the cases entrusted to her. He had sent a registered legal notice dated 11-4-2015 to the respondent, asking her to furnish the case details and return the case records, but she did not respond even though she received it. A further notice dated 5-6-2015 was issued to her, but evoked no response. Since the case numbers, details of courts and other particulars are not given to the complainant, he is unable to ascertain the said details through other counsel. The respondent has committed professional misconduct. She is liable to return the case files to the complainant, with all particulars thereof. The complainant thus seeks appropriate action against the respondent.

The respondent did not respond to the notices of the complaint issued on behalf of the Bar Council of Kerala or file any written statement before the Council. The matter was thus referred to the Disciplinary Committee as per the Resolution No.13 of the Bar Council of Kerala dated 22-9-2019.

Notice was issued to the respondent to appear before the Disciplinary Committee. The matter was posted on 17-11-2019, 8-12-2019, 2-1-2020 and 14-1-2020. The complainant was present on the first two postings, but the respondent had not been served. The complainant was directed to produce the correct address of the respondent. On 2-1-2020 and 14-1-2020, both parties were absent. A reminder was issued to the complainant to produce the correct address of the respondent and the matter was posted to 23-2-2020. On the said day, a representation was made on behalf of the respondent seeking time for her statement. Thereafter, the matter could be taken up only on 13-2-2021 due to the situation following the outbreak of the COVID19 pandemic.

On 13-2-21, Adv. Sampath V. Toms filed vakalath for the complainant, along with a detailed statement of facts and supporting documents. The respondent appeared in person and filed a representation that a settlement had been entered into. This was disputed by the counsel for the complainant. The matter was posted to 28-2-2021, on which day the respondent filed her statement in the matter. The case was posted for framing charge on 14-3-21.

On 14-3-2021, the Memorandum of Charges was read over to the respondent, who denied the same. The case was posted to 23-3-2021 for evidence.

Based on the pleadings, the following points of dispute arise for consideration:

1. Whether there is any Client-Advocate relationship between the complainant and the respondent?
2. Whether the respondent has committed any professional misconduct?
3. If so, what punishment is to be meted out to the respondent?

When the matter was taken up for evidence on 23-2-2021, the complainant filed his affidavit-in-chief. However, the respondent submitted that she has no cross examination to offer to the complainant. She also stated that she has no objection to the documents produced by the complainant, which were sought to be marked as exhibits in evidence on his side. She endorsed the same on the proof affidavit filed by the complainant.

The complainant was examined as PW1. Exhibits C1 to C22 were marked in evidence on his side. No cross examination was offered by the respondent. Evidence on the side of the complainant was closed.

The respondent thereafter submitted that she has no oral evidence to tender and endorsed the same.

Both sides were heard.

Points No.1 & 2 : For convenience's sake, both these points are considered together. The grievance of the complainant is that he had entrusted several cases to the respondent and paid more than Rs. Six Lakhs to her towards her fees, court fee, expenses, etc. Exts.C1 to C20 are the true copies of the bills issued by the respondent to the complainant in respect of the said cases. In all the said documents, she has certified that the amounts claimed by her have been received. PW1 states that the respondent, having sought for and obtained amounts towards court fee from the complainant for filing civil cases against various customers, had filed only private criminal complaints against the parties and no suits and has appropriated the amounts paid towards court fee. In certain instances, the amounts claimed and received towards court fee were exorbitant, much more than that payable on the amount due from the defaulters. If indeed, any civil cases were filed, she has failed to contest them. She has caused a power of attorney to be executed by the complainant in favour of her brother, which prevented the complainant from knowing whether the cases had been filed as stated by her and following up the same. She failed to provide any details of the cases to the complainant when requested to do so and stopped contacting the complainant. Exts.C21 & C22 lawyer notices were issued to her on behalf of the complainant, which she received but did not respond to. Thereafter she shifted her residence and could not be traced. After she was located pending the above complaint, she stated to the

complainant that almost all the cases had been decreed in his favour, but failed to provide details of the case numbers, courts or judgments. The loan granted to her has not been fully repaid. On these grounds, he contended that the acts of the respondent amount to misconduct and sought penal action against her.

Though the exhibits marked on the side of the complainant are only photocopies, the respondent has not disputed their authenticity or correctness. She has also not cross examined PW1 as to the veracity of any of his contentions.

The respondent has also not adduced any contra evidence in the matter. In her statement dated 13-2-2021, she has stated that the matter had been talked over between the complainant and herself that that it was decided to settle the matter if the pending cases are disposed of within six months, depending on the payments made by the opposite parties in the said cases. She further stated that the loan would be repaid in instalments of Rs.25,000/- per month and that a sum of Rs.35,000/- had been paid by her towards the same. This was disputed by the complainant's counsel.

In her statement dated 28-2-2021, she admitted that the cases specified by the complainant were entrusted to her and the bills produced by him were issued by her. She claimed that she had received an amount of Rs.32,000/- as fees after deducting tax at source. She stated that due to some personal inconvenience, a delay of 4-5 years has occurred, but after informing the complainant, she has restarted and continued the cases entrusted to her. She also reaffirmed that she would repay the loan as promised. She is taking efforts to trace out the clients in the cases and does not have any dispute regarding the completion of the work entrusted.

It is pertinent to note that the respondent does not provide any details of the cases and their current status in her statement. As such, the complainant is still in the dark as to the same. When the matter was heard, the counsel for the complaint averred that the respondent has committed grave breach of trust and dereliction of duty to her client, the complainant. He pressed for appropriate punishment for professional misconduct to be meted out to her. The respondent stood by her statement and submitted that she would clear the issue within the time specified in her statement. However, she has not provided any details of the cases to the complainant, which she could very well have done if in fact, such cases had actually been filed by her.

The fact that amounts have been paid by the complainant to the respondent is amply proved by Exts.C1 to C20. As there is no contra evidence and in view of the admissions made by the respondent in her statements and her giving up her right to cross examine the complainant, this Committee accepts the case of the complainant as true.

In *L.C Goyal Vs. Mrs. Suresh Joshi & Others* reported in 1999(3) SCC 376, the Honourable Supreme Court of India held that misappropriation of a client's money taken

towards Court Fee would amount to professional misconduct. An Advocate is bound to uphold the high traditions of the legal profession and serve the society with sincerity and honesty. If an Advocate falls from such standards, he deserves punishment commensurate with the gravity of his misconduct.

In AIR 1993 SC 1608 (*D.S. Dalal Vs. State Bank of India*), misappropriation by an Advocate of amounts paid by a bank to him towards filing a suit and 1/3rd of his professional fees was held to be professional misconduct. The punishment of removal from the Roll imposed by the Bar Council of India to the erring lawyer was upheld by the Honourable Apex Court.

In *P.D Gupta Vs. Ram Murti* reported in 1997(7) SCC 147, it was held that where an Advocate demanded and received money from his client on a false representation that it was needed to deposit it in Court and thereafter misappropriated it, he was guilty of professional misconduct.

In this case, the reluctance of the respondent to provide the details of the cases filed to the complainant justifies the conclusion that she has committed professional misconduct. The burden of proof was on the respondent to establish that she had indeed filed the cases entrusted to her by the complainant. Even though she has stated her willingness to resume the work and conclude the same within six months, that cannot take away from her liability to undergo punishment for professional misconduct.

Thus Points 1 & 2 are answered in favour of the complainant. There was a Client-Advocate relationship between the complainant and the respondent. The respondent has committed professional misconduct.

Point No.3 : The powers of the Disciplinary Committee under Section 35 (3) of the Advocates Act include the power to reprimand the erring Advocate, to suspend him from practice for such period as it may deem fit or to remove his name from the State Roll of Advocates.

It is the opinion of the Committee that removal of the respondent's name from the State Roll is too harsh a punishment to be imposed on the respondent in the instant case. At the same time, a mere reprimand will not suffice.

The Disciplinary Committee is of the opinion that to meet the ends of justice, the respondent should be suspended from practice for an appropriate period. On consideration of the facts of the case, the Disciplinary Committee feels that a period of three months would be sufficient for such suspension.

However, to meet the ends of justice, an opportunity to reduce the period of suspension must be granted to the respondent. It is made clear that in the event that the respondent provides the details of the cases to the satisfaction of the complainant within the period of the suspension, the complainant shall report the same to the Bar

Council of Kerala and the punishment of suspension meted out to the respondent shall stand vacated forthwith.

In the result, the Disciplinary Committee No.2 of the Bar Council of Kerala hereby orders that:

- A) The respondent Advocate shall be suspended from practice for a period of three (3) months from the date of this Order and that during the period of suspension, the respondent Advocate shall be debarred from practicing in any Court or before any authority or person in India.
- B) In the event that the respondent provides the details of the cases entrusted to her by the complainant to his satisfaction within the period of suspension imposed, the complainant shall report the same to the Bar Council of Kerala and the punishment of suspension imposed on the respondent shall stand vacated forthwith.

Dated this the 31st day of March 2021,

Sd/-

Srinath Girish. P,
Advocate
Chairman, Disciplinary Committee
No.2,
Bar Council of Kerala.

Sd/-

Pramod S K
Advocate
Member, Disciplinary Committee No.2,
Bar Council of Kerala.

Complainant's Witnesses :

PW1 : Deepak Aswani L

Complainant's Exhibits:

- Ext.C1 - Copy of Bill dated 5-03-2011
- Ext.C2 - Copy of Bill dated 14-03-2011
- Ext.C3 - Copy of Bill dated nil
- Ext.C4 - Copy of Bill dated 18-04-2011
- Ext.C4 (a) - Copy of Bill dated 27-08-2011
- Ext.C4 (b) - Copy of Bill dated 17-10-2011
- Ext.C4 (c) - Copy of Bill dated 2-01-2012
- Ext.C5 - Copy of Bill dated 21-04-2011

Ext.C6 - Copy of Bill dated 25-07-2011
Ext.C7 - Copy of Bill dated 22-09-2011
Ext.C8 - Copy of Bill dated 2-11-2011
Ext.C9 - Copy of Bill dated 2-11-2011
Ext.C10 - Copy of Bill dated 16-08-2011
Ext.C11 - Copy of Bill dated 11-08-2011
Ext.C11 (a) - Copy of Bill dated 18-06-2013
Ext.C12 - Copy of Bill dated 12-06-2013
Ext.C13 - Copy of Bill dated 12-06-2013
Ext.C14 - Copy of Bill dated 4-07-2013
Ext.C15 - Copy of Bill dated 18-06-2013
Ext.C16 - Copy of Bill dated 12-06-2013
Ext.C17 - Copy of Bill dated 27-09-2010
Ext.C18 - Copy of Bill dated 28-09-2010
Ext.C19 - Copy of Bill dated 29-09-2011
Ext.C20 - Copy of Bill dated 3-11-2011
Ext.C21 - Copy of registered notice dated 11-04-2015
Ext.C22 - Copy of lawyer notice dated 5-6-2015

Respondent's Witnesses : Nil

Respondents's Exhibits : Nil