* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **<u>CHAT.A.REF 3/2014</u>**

% **Date of decision : 5th November, 2015**

COUNCIL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA ..... Petitioner

Through: Mr. Rakesh Agarwal and Mr. Pulkit Agarwal, Advs.

versus

C A RAMESH KUMAR SONI & ANR ..... Respondent

Through: Mr. K.K. Jha, Adv. for R-1

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE I.S.MEHTA

<u>JUDGMENT (ORAL)</u>

<u>GITA MITTAL, J</u>

1. By way of the present order, we propose to decide the present reference under Section 21(5) of the Chartered Accountants Act, 1949 in respect of Sh. Ramesh Kr. Soni-respondent no. 1 herein. It appears that one Sh. Jitender Garg, (hereafter referred to as the complainant) made a complaint dated 5th January, 2007 that he was holding 8000 shares of M/s Abodana Hotels Pvt. Ltd.; that his share certificates remained in the custody of his real brothers Sh. Dinesh Kumar Garg; and Sh. Yajesh Kumar Garg and that his brothers in connivance have transferred his shareholding to the name of Smt. Neeta Garg W/o Sh. Yajesh Kumar Garg by forging his signatures on a transfer deed dated 15th October, 1998. It was further alleged that the respondent had witnessed the share transfer deed and thereby assisted the illegal

transfer of shares.

2. On receipt of the complaint, the respondent initiated proceedings against the respondent no.1 and he was called upon to file a written statement. A rejoinder was filed by the complainant. The matter thereafter was placed before the Disciplinary Council of the Institute of Chartered Accountants for its prima facie opinion. The council recorded its prima facie opinion in its 281st meeting held between 3rd to 5th October, 2008 when it decided to cause an inquiry into the complaint.

3. The matter was consequently referred to the Disciplinary Committee which proceeded to conduct an inquiry in accordance with Regulation 15(2) of the Chartered Accounts Regulations, 1988. The report of the Disciplinary Committee dated 27th January, 2011 discloses that the respondent informed the Committee that the expert had not stated that it was forged rather he has stated that the signatures were not tallying. The respondent had informed the Committee that he knew the complainant since 1996, that the complainant signed the share transfer deed on 15th October, 1998 in his office in front of him alongwith his brother Sh. Dinesh Kumar Garg. The respondent also signed share transfer deed as a witness in good faith without having any interest in the said dealing. The respondent stated that the complainant used two to three different signatures. The committee however accepted the allegations in the complaint and concluded that the respondent was guilty of "other misconduct" falling under Section 22 read with Section 21 of the Chartered Accountants Act, 1949.

4. On 16th May, 2012, this report of the Disciplinary Committee

was placed before the Council of the Institute when it accepted the report of the Disciplinary Committee concluding that the respondent no. 1 was guilty of other misconduct falling under Section 22 read with Section 21 of the Chartered Accountants Act, 1949 was accepted.

5. In the written statement, the respondent no. 1 had specifically asserted that the complainant had adopted a practice of signing in a different manner at different places. We find that the Disciplinary Committee of the Institute in the report dated 27th January, 2011 has found the respondent no. 1 as guilty of "other misconduct" falling under Section 22 read with Section 21 of the Chartered Accounts Act, 1949. In so concluding the Disciplinary Committee has relied only on the report of the Forensic Expert. Placing reliance thereon, it has disbelieved the categorical statement of the respondent no. 1 that the complainant had in fact appeared in his office alongwith his brother Sh. Dinesh Kumar Garg and affixed the signatures on the transfer deed in his presence.

6. After so concluding, the Council of the Institute has recommended to this court that the punishment of reprimand be imposed on the respondent no.1.

7. It is essential to notice some background facts which are revealed in the written statement dated 23rd May, 2007 by the respondent no.1. M/s Abodana Hotels Pvt. Ltd. was acquired by the deceased father of the complainant and his two brothers, all of whom were holding equity therein. After the demise of the father, disputes arose between these brothers with regard to the division of his estate

and other family assets. These culminated in a family settlement, (terms whereof were incorporated) dated 23rd October, 1998 executed by the complainant including inter alia the following:-

> "5. That I have received the following items in final settlement of family assets movable or immovable on 23/10/98 :-
> a). Cash & Bank balance Rs.22,75,000/-.
> b). All the Income Tax Papers files belonging to me.
> c). All the shares and debentures in my name.
> d). All L.I.C. policies in my name.
> e). All Pass Books & the Cheque Books.
> 6. That my other brothers and mother shall not be liable for my any profit or loss of any kind whatsoever.
> 7. That the settlement has been executed by me with my assurance and solemn undertaking that I shall not claim anything from my brothers and mother and their future rights tangible or intangible.
> 8. That I am executing this declaration-settlement without any force or pressure and in sound mind in the presence of the following panches and who have also signed in my presence."

8. The respondent no.1 has stated that the complainant turned dishonest after receipt of the above settlement assets. On 17th November, 2000, he lodged a complaint with the DCP (Economic Offences Wing) alleging that his brothers had forged his signatures and transferred his aforesaid shareholding in the said hotel to the wives of one of the brothers. It was alleged therein that the respondent no. 1 herein was a witness on the said share transfer deed.

9. The transfer deed was sent for a forensic examination to the Forensic Science Laboratory, Government of NCT of Delhi.

10. In the meantime, the complainant filed W.P.(Crl.) No.

1137/2001 dated 4th October, 2001 in this court seeking a direction to the police to register a First Information Report. After notice was issued in the writ petition, it appears that the complainant Sh. Jitender Kumar Garg settled the issue with his sister-in-law Neeta Garg as well as his brothers. It is to be noted that as part of the settlement, this time the complainant took a sum of Rs.5 lakhs from Smt. Neeta Garg by way of a demand draft and stated that he had no claim left again in respect of the 8000 shares in any manner. It was further stated in the settlement deed that he had amicably resolved all issues without any pressure from any corner and was withdrawing the complaint dated 17th December, 2000. This statement was fully acted upon and the complainant addressed a letter dated 8th December, 2001 to the Deputy Commissioner of Police, Crime Branch unconditionally withdrawing his complaint dated 17th November, 2000.

11. It appears that the complainant was acting in pursuance of a dishonest design. Despite the family settlement in 1998 and having extracted further money from his sister-in-law on 17th November, 2000, the complainant now initiated a complaint under Section 200 of the CrPC on 26th March, 2002 before the criminal court on the same allegations which had been unconditionally withdrawn. It appears that Yajesh Kumar Garg, brother of the complainant, could not bear the pressure of this kind of litigation and expired on 20th June, 2011. Thereafter, on 25th August, 2011, the complainant informed the learned ACMM/II who was seized of his complaint, that the offence stands compounded in favour of the accused persons and that the complainant had again unconditionally withdrawn his allegations. In

this background, the brothers of the complainant against whom allegations of forgery had been made, were acquitted in this case.

12. The above narration of facts would show that the complaint made to the Chartered Accountants of Institute on 5th January, 2007 was thus long after the complainant had unconditionally withdrawn on 8th December, 2001 his allegations of forgery of his signatures against his brother. It is noteworthy that the complainant makes no allegations of dishonesty, malafide or forgery on the part of the respondent no.1. This being the position, where is there any question of maintenance of the allegation that the respondent no.1 was a witness on a forged document?

13. In the written statement dated 23rd May, 2007, the respondent no. 1 has set out the complete narration of the facts and circumstances. The respondent no.1 has also placed certified copies of the relevant court orders, statements etc on record.

14. Our attention is drawn by learned counsel for the respondent no. 1 to the statement of the complainant recorded by the Disciplinary Committee of the Institute which manifest the grievance that no opportunity to cross examine the complainant has been afforded to him. It is also submitted that no opportunity to lead evidence in defence was given to the appellant. In the light of the clear defence of the respondent no. 1, it was essential to meet the ends of justice and compliance with principles of natural justice to afford him a reasonable and fair opportunity to lead evidence in support of his defence as well.

15. The fallacy in the consideration of the Disciplinary Committee

lies in the facts that it has treated a report of the Forensic Laboratory as sacrosanct ignoring the fact that it is merely in the nature of opinion of an expert and that the authority was required to apply its own mind to the facts and circumstances of the case. This reliance assumes importance in the light of the contention of the respondent no. 1 to the effect that the complainant had affixed his signatures in the office of respondent no. 1 in presence of his brother. The further factual assertion that the complainant adopted different signatures at different times ought to have been another material consideration while assigning weightage and importance to the forensic opinion.

16. We have noted above as to the illegalities in the procedure which was followed in the proceedings conducted against the respondent no.1. Even otherwise, it is on record that the complainant has unconditionally and unequivocally withdrawn all identical allegations made by him on previous occasions, firstly, before the police and, thereafter, before the learned ACMM.

17. It is also to be noted that the complaint to the Institute relates to transfer of shares effected on 15th October, 1998. It has thus been made almost nine years after the event. There is no explanation at all for the delay in approaching the Institute with such a complaint. This circumstance by itself ought to have persuaded the Institute not to initiate any proceeding. The delay by itself, lends much substance to the contention that the complaint was malafide and motivated. It is submitted by learned counsel for the respondent no. 1 that the complainant is a practicing Advocate by profession and was fully conscious of all his rights and remedies. Therefore, there appears to

be substance in the claver design which appears to be adopted in order to make complaints and extract money from his brothers as well as the respondent no. 1 who is a professional.

18. In view of the above discussion, we are not inclined to accept the reference. We find that the complaint is completely devoid of any legal or factual merit. The complaint against the respondent no. 1 as a consequence is dismissed.

GITA MITTAL, J

I.S.MEHTA, J

NOVEMBER 05, 2015

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