IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.424 of 2014

Arising Out of PS.Case No. -430 Year- 2013 Thana -Jakkanpur District- PATNA

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1. Most. Munni Kuwar wife of Late Mathura Prasad, Resident of Mohalla - Kajipura, ward No.23, Sasaram, P.O. and P.S. Sasaram, District - Rohtas (Bihar)

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Home, Govt. of Bihar, Patna
3. The Director General of Police, Patna, Bihar
4. The Superintendent of Police, Patna Distt. - Patna
5. The Station House Officer, Jakkanpur, Police Station, Patna Sadar, Patna
6. Sri Krishna Mohan Murari son of Late Ramekbal Prasad resident of Mohalla - West Jai Prakash Nagar, P.O. G.P.O., P.S. Jakkanpur, District - Patna - 800001 (Bihar)
7. The Law Secretary, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nageshwar Prasad Singh, Adv.
For the State : Mr. Mritunjay Kumar, A.C. to SC- 23
For Respondent No.6 : Mr. Yogesh Chandra Verma, Sr. Adv.
Mr. Vikramdeo Singh, Adv.
Mr. Birendra Kumar, Adv.
Mr. Krishna Mohan Murari (in person)

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
CAV JUDGMENT
Date: 29 -03-2016

By way of the present application preferred under Articles 226 and 227 of the Constitution of India, the petitioner had initially prayed for quashing of the First Information Report vide Patna Sadar Jakkanpur P.S.Case No. 430 of 2013 dated 10.12.2013 registered under Sections 406, 420 and 120-B of the Indian Penal Code (for short 'IPC'). However, during pendency of the writ application since the Police completed investigation of the case and submitted its report under Section 173(2) of the Code of Criminal

Procedure (for short 'CrPC') in the court of the Judicial Magistrate, 1st Class, Patna vide Police Report No. 219/14 dated 25.07.2014, pursuant to which the learned Judicial Magistrate 1st Class, Patna took cognizance for the offence punishable under Section 420/34 IPC and summoned the petitioner and her son-in-law Surendra Sah to face trial vide order dated 11.08.2014, the petitioner has filed an Interlocutory Application, vide I.A. No. 1316 of 2015, seeking quashing of the aforesaid police report dated 25.07.2014 and the order dated 11.08.2014 passed by the learned Judicial Magistrate 1st Class, Patna.

2. The Respondent No.6, Mr. Krishna Mohan Murari (for short 'the complainant'), an 'Advocate on Record' of this court bearing AOR No.03955, had initially filed a complaint under Section 200 of the CrPC in the court of the Chief Judicial Magistrate, Patna vide Complaint Case No.2851(C) of 2013. The complaint was thereafter made over to the court of jurisdictional Magistrate, who forwarded the same to the Officer-in-Charge of Jakkanpur Police Station, Patna for investigation in exercise of power conferred under sub-section (3) of Section 156 CrPC vide order dated 23.10.2013 pursuant to which the FIR of Jakkanpur P.S.Case No.430 of 2013 dated 10.12.2013 was registered under Sections 406, 420 and 120-B of the IPC against the petitioner Most. Munni Kuwar and her son-in-

law Surendra Sah and investigation was taken up.

3. In the aforesaid complaint the complainant has alleged that an unmarried son of the petitioner, namely, Santosh Kumar @ Santosh Kumar Gupta died in a rail accident on 10.07.2004 at Dehri-on-Sone Junction while he was traveling by a passenger train viz. Varanasi-Asansol train bearing Train No. 302 Dn from Sasaram Railway Station to Anugrah Narain Railway Station with proper and valid journey ticket. After the death of her son, the petitioner approached the complainant on 11.09.2004 along with her well-wishers to file a claim application for grant of compensation on account of death of her son. She handed over the entire Police papers relating to the death of her son and also executed an agreement with regard to payment of fee in favour of the complainant. The said agreement annexed with the complaint petition reads to the effect that the petitioner shall pay to the advocate Sri Krishna Mohan Murari at the rate of 10% and $12^1/_2$ % of the decretal amount in terms of compensation for conducting the case at the stage of the lower court and at the stage of the High Court respectively. It is further stated in the complaint petition that pursuant to the aforesaid agreement dated 11.09.2004 a claim application for grant of compensation was filed on 13.09.2004 in the Railway Claims Tribunal, Patna Bench at Patna vide Case No. 0A000122/2004. After hearing the parties, the Railway

Claims Tribunal dismissed the claim application vide order dated 06.02.2009 whereafter, a Miscellaneous Appeal was filed before the Patna High Court challenging the impugned order dated 06.02.2009, vide M.A.No.231 of 2009. The said Miscellaneous Appeal was ultimately allowed in favour of the petitioner vide order dated 09.02.2012 and the respondents were directed to pay a compensation of Rs.4 lakhs with interest @ 6% to the petitioner from the date of filing the claim application before the Railway Claims Tribunal, Patna till the date of actual payment.

4. It is further stated in the complaint petition that pursuant to the aforesaid order dated 09.02.2012 passed by this Court in the aforesaid M.A. No.231 of 2009, the respondent Railway made payment of Rs.05,85,096/- in the savings account of the petitioner maintained with the Bank of India, Sasaram. It has been further stated that after the Miscellaneous Appeal was disposed of, when the petitioner and her son-in-law came to the office of the complainant on 04.03.2012, they were served with the bill of fee amounting to Rs.73,125/- prepared in the light of the agreement arrived at between the parties, but after receiving entire amount of compensation, the petitioner, in connivance with her son-in-law Surendra Sah, sat silent and did not make payment of the fee. On 22.08.2012, a legal notice was served upon the petitioner, but she refused to accept it. In the

background of the aforesaid facts, it has been alleged that under criminal conspiracy the accused persons including the petitioner have retained the fee of the complainant illegally which amounts to an offence punishable under Sections 406, 420 and 120-B of the IPC.

5. Mr. Nageshwar Prasad Singh, learned Counsel for the petitioner has made the following submissions :-

(a) That the petitioner had not executed any agreement for payment of any amount to the advocate in case of success in the claim case;

(b) That the said agreement paper is false, forged and fabricated and the same is absolutely without her knowledge. The petitioner came to know for the first time about the forged agreement when she obtained the certified copy of the complaint petition filed by the complainant in the complaint petition;

(c) That the alleged bill as shown by the complainant in the complaint petition has not been received by the petitioner and the signature shown in the bill is not of the petitioner, rather, it is a forged signature purported to cheat the petitioner;

(d) That the allegation that the legal notice was sought to be served upon the petitioner but the petitioner refused to accept it is replete with falsehood and no such notice was ever sent to the petitioner;

(e) That the complainant filed the complaint case against the petitioner with an ulterior motive to build up pressure, threat and induce fear in the petitioner to make her pay the desired amount to him in the name of professional fee sought to be charged from her;

(f) That the professional fee of the complainant has already been paid by the petitioner and nothing remains due to be paid to him under any terms and conditions;

(g) That no criminal case is made out against the petitioner as the allegations contained in the complaint petition do not constitute any offence much less any cognizable offence for commencing lawful investigation against the petitioner;

(h) That by instituting the complaint against the petitioner the complainant has committed gross professional misconduct for which he needs to be prosecuted;

(i) That without understanding the intricacies involved in the present case the Police have mechanically submitted charge-sheet against the petitioner and her son-in-law Surendra Sah;

(j) That the learned jurisdictional Magistrate has not at all applied his mind to the facts and the law involved in the case and took cognizance of the offence mechanically.

6. On the other hand, Mr. Mritunjay Kumar, learned A.C.

to SC-23, appearing for the State, has contended that during investigation it came to light that an agreement came to be executed between the parties and as per the agreement Advocate's fee was not entrusted to the complainant and accordingly after investigation the Police have submitted charge-sheet in the case. He has further contended that the genuineness of the document in question has not been examined by the Police during investigation and the same may be tested by the court during trial.

7. The complainant was being represented through Advocate on Record, namely, Mr. Birendra Kumar. The arguments were advanced initially by Mr. Yogesh Chandra Verma, learned Senior Advocate and, Mr. Vikramdeo Singh, learned Advocate. On query made by the court, both Mr. Yogesh Chandra Verma, learned Senior Advocate and Mr. Vikramdeo Singh, learned Advocate conceded that the contingent fee arrangement depending on the result of the case is not permissible in India. They also conceded that the institution of the Complaint/FIR by the complainant against his own client cannot be justified. When they took such a stand, the complainant filed an affidavit seeking withdrawal of his *Vakalatnama* executed in favour of Mr. Birendra Kumar, learned Advocate and sought for permission of the court to place his case in person. Though no order permitting withdrawal of the *Vakalatnama* was passed by

the court, the complainant was allowed to make his submissions in person before the court.

8. The complainant firstly took a stand that he has not committed any professional misconduct as alleged by the petitioner in this case rather he has conducted the case of the petitioner before the Railway Claims Tribunal and before this court with best of his ability, sincerity and devotion and due to his sincere efforts the petitioner succeeded in the claim case and has been paid the claim amount. He has contended that the petitioner under unknown circumstances failed to perform her part of obligation of making payment of his professional fee and expenses incurred by him during pendency of the claim case since the date of filing till the date of disposal of Miscellaneous Appeal as during the entire case proceedings he has not been paid a single farthing by the petitioner and even filing cost and other litigation expenses have also been borne by him from his own pocket and hence, he is legally entitled for getting the payment of the entire cost and expenses made by him in conducting the case of the petitioner along with his professional fees and the petitioner is under bounden duty and obligation to make payment of the same. However, subsequently under the advice of his learned senior colleagues and counsel, namely, Mr. Yogesh Chandra Verma, Senior Advocate and Mr. Vikramdeo Singh, the complainant has reluctantly

tendered his unconditional and unqualified apology for the acts of omission or commission on his part in discharge of his professional act and duty in conducting the claim case of the petitioner before the Railway Claims Tribunal by way of filing a supplementary counter affidavit.

9. In the supplementary counter affidavit, the complainant has stated in paragraphs no. 2 and 3 as under :-

> "2. That at the very outset this answering respondent no.6 tenders his unconditional and unqualified apology for any inconvenience caused to this Hon'ble court and for any omission or commission occurred on his part in discharge of his professional act and duty in conducting the claim case of petitioner before the learned Railway Claims Tribunal and before this Hon'ble court.
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> 3. That in fact this deponent has not committed any professional misconduct as alleged by the writ petitioner in this case rather this deponent has conducted case of the petitioner before the learned Railway Claims tribunal and before this Hon'ble court with best of his ability, sincerity, devotion. And it is at the sincere efforts of this answering respondent no.6 the petitioner succeeded in the claim case and has been paid entire claim amount. Unfortunately the petitioner under unknown circumstances failed to perform obligation on her part in making payment of professional fee and expenses incurred by this deponent during pendency of the claim case since date of filing till the date of disposal before this Hon'ble court as during the entire case proceeding this respondent has not been paid single farthing by the petitioner and even the filing cost and other litigation expenses has also been borne by this answering respondent from his own pocket and hence this deponent was/is legally entitled for getting payment of entire cost and expenditures made by him in conducting the case of the petitioner along with his

professional fees and petitioner is under bounden duty and obligation to make payment of the same to this respondent along with his professional fee for conducting her claim case before learned RCT and this Hon'ble court with effect from 13.09.2004 to 09.02.2012. But unfortunately ignoring these facts, the answering respondent is advised by his learned Senior colleagues and counsels engaged in this case by this deponent namely Mr. Yogesh Chandra Verma, learned Sr. Advocate and Mr. Vikramdeo Singh, learned Advocate to tender apology from this Hon'ble court in view of anguish and grief expressed by this Hon'ble court for the professional misconduct alleged against him."

10. I have heard respective counsel for the parties and the complainant in person and perused the record.

11. Primarily, the questions, which arise for consideration in the present application, are as under :

(a) Whether or not the allegations made in the Complaint/FIR attract the ingredients of any offence ?

(b) Whether or not the action of the complainant in filing the complaint against his own client and charging fee contingent on the outcome of the case amounts to professional misconduct ?

12. In order to examine the aforesaid issues, it would be necessary to examine the provisions prescribed under Section 23 of the Indian Contract Act, 1872, which reads as under :-

> **"23. What consideration and objects are lawful, and what not.-** The consideration or object of an agreement is lawful, unless –
>
> it is forbidden by law; or

is of such nature that, if permitted, it would defeat the provisions of any law; or
is fraudulent; or
involves or implies injury to the person or property of another; or
the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

13. It would be evident from the perusal of the Section 23 of the Contract Act that every claim of which the object or consideration is unlawful is void.

14. Now, in the present case, it is to be seen as to whether the object or consideration of the aforesaid agreement dated 11.09.2004 executed by the petitioner in favour of the complainant is lawful whereby it has been stipulated that the petitioner shall pay to the advocate, Sri Krishna Mohan Murari at the rate of 10% and $12^1/_2$ % of the paid amount in terms of compensation for conducting the case at the stage of lower court and at the stage of High Court respectively.

15. The word lawful applies to what is sanctioned by law or in conformity with the law. It is relevant to note that contingency fee arrangement is permissible in the United States of America and England. The contingent fee in the United States and conditional fee in England is fee for services provided where fee is payable only if

there is a favourable result. Such an agreement allows the plaintiff, who has been injured and is seeking legal remedy to obtain legal representation even if he does not have money to pay to a lawyer at the beginning of the case. The client does not have to pay contingent fee upfront, agreeing instead to pay an attorney the percentage of award in case he wins the case or loss is favourably settled out of the court. In England Legal System, it is generally referred to as ‘no win no fee’.

16. However, practice of charging a fee contingent on the outcome of the case is strictly illegal in so far as legal profession in India is concerned. This has been the position in the Indian Legal System right from 1907 when the first case on the point of legality of contingency fee agreements was decided upto 2002 in which the Supreme Court conclusively held that contingency fee agreement entered into by advocates in India amounted to professional misconduct and called for severe disciplinary action against the concerned Advocate.

17. Since 19th May 1961, the Advocates in India are governed by the Advocates Act of India, 1961. Even before the Advocates Act, 1961 came into existence, in ***Ganga Ram Vs. Devi Das [33 Pun. L.R. 1907]***, the legality of contingent fee was called into question. A Full Bench of nine Judges heard the matter and held

that the agreement between legal practitioners and their clients making remuneration dependent on the result of the case, was illegal as they were contrary to public policy and therefore legal practitioners entering into such an agreement were guilty of professional misconduct.

18. In ***re K.L.Gauba [AIR 1954 Bombay 478]***, the client, had entered into an agreement with the Baroda Theatres, Ltd., to work in their production for a remuneration of Rs. 15,000. Out of this amount of agreed remuneration the client had received only Rs. 3,000 and the balance of Rs. 12,000 still remained to be paid. The client demanded this balance from the Baroda Theatres, Ltd. The claim of the client to the extent of Rs. 9,400 was admitted and in fact a cheque for Rs. 2,000 towards part-payment was issued by the Baroda Theatres, Ltd. on October 15, 1952, but it was dishonoured on December 15, 1952. A notice was then served on the company by the client's attorneys, Messrs. Nandlal and Co. on December 17, 1952. At this stage the client approached Mr. Gauba on December 20, 1952. He explained his case to Mr. Gauba and pleaded that he was keen on taking immediate action against the company in order to safeguard his interest. The client inquired about fees of Mr. Gauba for a suit in the City Civil Court for Rs. 9,400. Mr. Gauba told him that the out of pocket expenses for the suit and for a motion for attachment before

judgment would be about Rs. 750 to Rs. 800, and that he would charge Rs. 1,250 as his professional remuneration. The client expressed his financial difficulty and urged that it was utterly impossible for him to pay the fees or the expenses of the civil suit. He appealed to Mr. Gauba to take his fees out of the realizations of his claim. Mr. Gauba yielded to the appeal of the client, but told him that he would have to find a part of his fees immediately and that the expenses of the suit could not be put off. The client expressed his total Inability to raise anything more than Rs. 200 and again appealed to Mr. Gauba to take up his cause. Mr. Gauba then explained to the client that an alternative and cheaper remedy available to him would be a winding up petition. The client then stated that he would prefer to adopt this alternative remedy and he begged Mr. Gauba again and again to take up his case on the basis that whatever was recovered from his debt, Mr. Gauba might recover half towards his fees for his labours. Mr. Gauba then asked the client to put down the proposal and its terms in his own words. Thereafter, the client wrote to Mr. Gauba as under :-

> "Dear, Mr. Gauba,
>
> I hereby engage you with regard to my claim against the Baroda Theatres Ltd. for a sum of Rs. 9,400 (the balance due to me).
>
> Out of recoveries, you may take 50 per cent of the amount recovered. I will by Wednesday deposit Rs. 200 in your account or give personally towards expenses.
>
> (Sd.) Amar Nath
> 20-12-1952."

19. The aforesaid agreement being reported to the Bombay High Court, the matter was referred to the Bombay Bar Council and was investigated by three of its members under Section 11(1) of the Bar Council Act, 1926. They held that this amounted to professional misconduct. The High Court agreed and suspended Mr. Gauba from practice as an advocate of Bombay High Court for six months. The High Court, however, considered that it had no power to affect his position as an advocate of the Supreme Court so it directed that a copy of the judgment be submitted to the Supreme Court to take such action on it as it thought fit.

20. Acting on this report, the Supreme Court issued notice to Mr. Gauba under Order IV, Rule 30, to show cause why disciplinary action should not be taken against him. At the same time, Mr. Gauba also filed a writ petition under Article 32 of the Constitution of India.

21. A Constitution Bench of the Supreme Court, after giving a detailed hearing to Mr. Gauba ***In the matter of Mr. 'G' a Senior Advocate of the Supreme Court [AIR 1954 SC 557]***, relied on the earlier judgments and held that even though the rigid English rules of champerty and maintenance do not apply in India, this kind of conduct amounted to professional misconduct and it upheld the suspension of Mr. G. It considered the American position where such practice is allowed and came to the conclusion that it was not ready to

apply the same in this country where ignorance and illiteracy are the rule, are even more important than they are in England where general level of education is so much higher. It held that the conduct of Mr.G amounts to professional misconduct. It held that he be suspended from practicing before the Supreme Court for a period which would expire on the same date as his period for suspension in the Bombay High Court.

22. As noted above, since 19th May 1961, legal practice laws in India are governed by the Advocates Act, 1961, an Act passed by the Parliament which provides for laws relating to legal practitioner and to provide for the constitution of the Bar Council of India and State Bar Councils. The Bar Council of India is a statutory body that regulates and represents the Bar.

23. Section 49(1)(c) of the Advocates Act, 1961 empowers the Bar Council of India to make rules so as to prescribe the standards of professional conduct and etiquette to be observed by the Advocates. Chapter II of Part VI of the Rules framed by the Bar Council of India deals with the standards of professional conduct and etiquette. It contains several regulations which specify duties of an Advocate to the Court, client, opponent and colleagues etc. Rule 11 to 33 mentioned in Chapter II of Part VI of the Rules deals with duties of an Advocate to his client, which are as under :-

11. An advocate is bound to accept any brief in the Courts

or Tribunals or before any other authorities in or before which he proposes to practice at a fee consistent with his standing at the Bar and the nature of the case. Special circumstances may justify his refusal to accept a particular brief.

12. An advocate shall not ordinarily withdraw from engagements, once accepted, without sufficient cause and unless reasonable and sufficient notice is given to the client. Upon his withdrawal from a case, he shall refund such part of the fee as has not been earned.

13. An advocate should not accept a brief or appear in a case in which he has reason to believe that he will be a witness, and if being engaged in a case, it becomes apparent that he is a witness on a material question of fact, he should not continue to appear as an Advocate if he can retire without jeopardising his client's interests.

14. An advocate shall at the commencement of his engagement and during the continuance thereof, make all such full and frank disclosure to his client relating to his connection with the parties and any interest in or about the controversy as are likely to affect his client's judgment in either engaging him or continuing the engagement.

15. It shall be the duty of an advocate fearlessly to uphold the interests of his client by all fair and honourable means without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused, bearing in mind that his loyalty is to the law which requires that no man should be convicted without adequate evidence.

16. An advocate appearing for the prosecution of a criminal trial shall so conduct the prosecution that it does not lead to conviction of the innocent. The suppression of material capable of establishment the innocence of the accused shall be scrupulously avoided.

17. An advocate shall not, directly or indirectly, commit a breach of the obligations imposed by Section 126 of the Indian Evidence Act.

18. An advocate shall not, at any time, be a party to fomenting of litigation.

19. An advocate shall not act on the instructions of any person other than his client or his authorised agent.

20. An advocate shall not stipulate for a fee contingent on the results of litigation or agree to share the proceeds thereof.

21. An advocate shall not buy or traffic in or stipulate for or agree to receive any share or interest in any actionable claim. Nothing in this rule shall apply to stock, shares and debentures of government securities, or to any instruments which are, for the time being, by law or custom, negotiable or to any mercantile document of title to goods.

22. An advocate shall not, directly or indirectly, bid for or purchase, either in his own name or in any other name, for his own benefit or for the benefit of any other person, any property sold in the execution of a decree or order in any suit, appeal or other proceeding in which he was in any way professionally engaged. This prohibition, however, does not prevent an advocate from bidding for or purchasing for his client any property which his client may himself legally bid for or purchase, provided the Advocate is expressly authorised in writing in this behalf.

22A. An advocate shall not directly or indirectly bid in court auction or acquire by way of sale, gift, exchange or any other mode of transfer either in his own name or in any other name for his own benefit or for the benefit of any other person any property which is subject matter of any suit appeal or other proceedings in which he is in any way professionally engaged.

23. An advocate shall not adjust fee payable to him by his client against his own personal liability to the client, which liability does not arise in the course of his employment as an advocate.

24. An advocate shall not do anything whereby he abuses or takes advantage of the confidence reposed in

him by his client.

25. An advocate should keep accounts of the client's money entrusted to him, and the accounts should show the amounts received from the client or on his behalf, the expenses incurred for him and the debits made on account of fees with respective dates and all other necessary particulars.

26. Where moneys are received from or on account of a client, the entries in the accounts should contain a reference as to whether the amounts have been received for fees or expenses and during the course of the proceeding, no advocates shall, except with the consent in writing of the client concerned, be at liberty to divert any portion of the expenses towards fees.

27. Where any amount is received or given to him on behalf of his client, the fact of such receipt must be intimated to the client, as early as possible.

28. After the termination of the proceeding, the advocate shall be at liberty to appropriate towards the settled fee due to him, any sum remaining unexpended out of the amount paid or sent to him for expenses or any amount that has come into his hands in that proceeding.

29. Where the fee has been left unsettled, the advocate shall be entitled to deduct, out of any moneys of the client remaining in his hands, at the termination of the proceeding for which he had been engaged, the fee payable under the rules of the Court, in force for the time being, or by then settled and the balance, if any, shall be refunded to the client.

30. A copy of the client's account shall be furnished to him on demand provided the necessary copying charge is paid.

31. An advocate shall not enter into arrangements whereby funds in his hands are converted into loans.

32. An advocate shall not lend money to his client for the purpose of any action or legal proceedings in which he is engaged by such client.

> Explanation. An advocate shall not be held guilty for a breach of this rule, if in the course of a pending suit or proceeding, and without any arrangement with the client in respect of the same, the advocate feels compelled by reason of the rule of the Court to make a payment to the Court on account of the client for the progress of the suit or proceeding.
>
> 33. An advocate who has, at any time, advised in connection with the institution of a suit, appeal or other matter or has drawn pleadings, or acted for a party, shall not act, appear or plead for the opposite party.
>
> (underlining is mine)

24. Rule 20, quoted above, would make it evident that an Advocate cannot stipulate for fee contingent on the results of the litigation or agree to share the proceeds thereof. In India, even before enactment of the Advocates Act, 1961 and the Bar Council of India Rules, an agreement by an advocate to share the result of litigation was considered to be illegal.

25. Further Rule 24, quoted above, mandates an Advocate not to do anything whereby he abuses or takes advantage of the confidence reposed in him by his client.

26. Apparently, in the present case, the FIR is based on an alleged agreement said to have been executed by the petitioner in favour of the complainant whereby it is alleged that the petitioner had agreed to pay the Advocate at the rate of 10% and $12^1/_2$ % of the paid amount in terms of compensation for conducting the case at the stage of the lower court and at the stage of the High Court respectively.

Such an agreement of charging fee contingent on the outcome of the case clearly violates Rule 20 of the Bar Council of India Rules.

27. In that view of the matter, there is no hesitation in my mind that the consideration or object of the aforesaid agreement as narrated in the complaint, in question, in the present case is unlawful and hence it is void.

28. Once, this Court has come to a conclusion that the very agreement in question was void in terms of Section 23 of the Indian Contract Act, 1872, the non-performance of the same would not attract the ingredients of any offence and certainly not a cognizable offence. In that view of the matter, the very institution of the complaint which led to institution of the FIR and subsequent submission of a report by the police before the court under Section 173(2) of the CrPC and the order impugned passed by the jurisdictional Magistrate pursuant to the aforesaid police report cannot be justified in law.

29. For the reasons, discussed above, I am also of the opinion that the action of the complainant in filing the complaint against his own client is contrary to Rule 24 of the Bar Council of India Rules as the complainant has apparently abused his position as an advocate by taking advantage of the confidence reposed in him by the petitioner.

30. Regard being had to the discussions made, hereinabove, this court is of the opinion that the complaint filed against the petitioner in the present case which led to institution of the FIR is nothing but an abuse of the process of the Court. While exercising power under Section 156(3) CrPC, the learned Judicial Magistrate 1st Class, Patna ought to have taken note of the allegations in entirety and considered whether any offence much less cognizable offence was remotely made out. He ought to have an attitude of more care, caution and circumspection while issuing direction to the police to investigate the case. The police officers, who have investigated the case, have also shown complete lack of sensitivity towards the matter and the Investigating Officer has filed an erroneous police report under Section 173(2) CrPC on completion of investigation before the court. This court is also of the opinion that the order taking cognizance of the offence and summoning the accused persons to face trial in the matter after receipt of the police report warrants application of judicial mind. This court is also of the view that the complainant has not approached the court with clean hands. It is unfortunate that a patent abuse of the process of the court has gone unnoticed both by the learned Judicial Magistrate and the Police.

31. In that view of the matter, the FIR of Patna Sadar Jakkanpur P.S.Case No. 430 of 2013, police report no.219/14 dated

25.07.2014 and the consequential order dated 11.08.2014 passed by the learned Judicial Magistrate 1st Class, Patna, summoning the petitioner and another accused to face trial, are hereby quashed. Consequently, the entire proceedings arising out of Patna Sadar Jakkanpur P.S.Case No. 430 of 2013 are also hereby quashed.

32. However, before parting with the case, this court would like to examine the second issue as to whether the action of the complainant in filing the complaint against his own client and charging fee contingent on the outcome of the case amounts to professional misconduct.

33. “Misconduct” has been defined in Black’s Law Dictionary, Sixth Edition, at p 999, thus :

> “A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness.”

34. In P. Ramanatha Aiyar's Law Lexicon, 3rd Edition, at page 3027, the term 'misconduct' has been defined as under:-

> “The term 'misconduct' implies, a wrongful intention, and not involving error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word 'misconduct' is a relative term, and 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 statute which is being construed. 'Misconduct' literally means wrong conduct or improper conduct.”

35. It is well known that the practice of law is not merely a trade or means of earning a livelihood for the members of this Hon'ble profession. The advocates are bound to conduct themselves in a manner befitting the legal profession and if they depart from the standards, they are liable to disciplinary action.

36. Section 35 of the Advocates Act, 1961 empowers the State Bar Council to take disciplinary action against the Advocate, who has committed misconduct. This Section providing for punishment of advocates reads thus :

> "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.
>
> (1A) 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 practicing 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."

37. In ***R.D. Saxena Vs. Balram Prasad Sharma [(2000) 7 SCC 264]***, the Hon'ble Supreme Court has observed thus :

> "Misconduct envisaged in Section 35 of the Advocates Act is not defined. The Section uses the expression "misconduct, professional or otherwise". The word "misconduct" is a relative term. It has to be considered with reference to the subject matter and the context wherein such term occurs. It literally means wrong conduct or improper conduct."

38. In ***Rajendra Pai* Vs. *Alex Fernandes and Ors. [(2002) 4 SCC 212],*** there was a large scale land acquisition proceedings in the village of the appellant Mr. Rajendra Pai. There were about 150 villagers whose lands were involved. Some of the land owned by the family members of the appellant also suffered acquisition. The appellant was an advocate and was also personally interested in defending against the proposed acquisition of land belonging to his

family members. Some of the villagers either on their own or on persuasion confided in the appellant who played a leading role in contesting the land acquisition proceedings and later in securing the best feasible quantum of compensation. There were around 150 claimants, of whom only three complained against the appellant that he solicited professional work from the villagers and that he settled a fee contingent depending upon the quantum of the compensation awarded to each claimant.

39. When a complaint was lodged before the State Bar Council of Maharashtra and Goa, the matter was referred to the Disciplinary Committee, which came to the conclusion that by charging a contingent fee the appellant had violated Rule 20 of the Bar Council of India Rules, which specifically prohibits the charging fee contingent on the result of the litigation. It ordered the removal of the appellant's name from the roll of the Bar Council of Maharashtra and Goa. The order was subsequently confirmed by the Bar Council of India. An appeal was preferred by the appellant against the order passed by the Disciplinary Committee of the Bar Council of India before the Supreme Court. The Supreme Court did not interfere with the findings of the State Bar Council and the Bar Council of India. However, it reduced the punishment from a life time bar to suspension of the right to practice for a period of seven years.

40. In the matter of ***O.P.Sharma & Ors. Vs. High Court of Punjab & Haryana [(2011)6 SCC 86]***, the Hon'ble Supreme Court has made the following observations in paragraphs 37 to 39 relating to ethical standard in the judicial system :-

> "37. A Court, be that of a Magistrate or the Supreme Court is sacrosanct. The integrity and sanctity of an institution which has bestowed upon itself the responsibility of dispensing justice is ought to be maintained. All the functionaries, be it advocates, judges and the rest of the staff ought to act in accordance with morals and ethics.
>
> **Advocate's role and ethical standards**
>
> 38. An advocate's duty is as important as that of a Judge. Advocates have a large responsibility towards the society. A client's relationship with his/her advocate is underlined by utmost trust. An advocate is expected to act with utmost sincerity and respect. In all professional functions, an advocate should be diligent and his conduct should also be diligent and should conform to the requirements of the law by which an advocate plays a vital role in the preservation of society and justice system. An advocate is under an obligation to uphold the rule of law and ensure that the public justice system is enabled to function at its full potential. Any violation of the principles of professional ethics by an advocate is unfortunate and unacceptable. Ignoring even a minor violation/misconduct militates against the fundamental foundation of the public justice system.
>
> 39. An advocate should be dignified in his dealings to the Court, to his fellow lawyers and to the litigants. He should have integrity in abundance and should never do anything that erodes his credibility. An advocate has a duty to enlighten and encourage the juniors in the profession. An ideal advocate should believe that the legal profession has an element of service also and associates with legal service activities. Most importantly, he should faithfully abide

by the standards of professional conduct and etiquette prescribed by the Bar Council of India in Chapter II, Part VI of the Bar Council of India Rules."

41. In ***Dhanraj Singh Choudhary Vs. Nathulal Vishwakarma, [(2012) 1 SCC 741]***, the Hon'ble Supreme Court highlighting the nobility of the profession of lawyers has made the following observations in paragraph 25 :-

> "25. Any compromise with the law's nobility as a profession is bound to affect the faith of the people in the rule of law and, therefore, unprofessional conduct by an advocate has to be viewed seriously. A person practising law has an obligation to maintain probity and high standard of professional ethics and morality."

42. In ***Noratanmal Chouraria vs M.R. Murli & Anr [(2004) 5 SCC 689],*** a three-judge Bench of the Supreme Court has held that misconduct has not been defined in the Advocates Act, 1961. Misconduct, inter alia, envisages breach of discipline, although it would not be possible to lay down exhaustively as to what would constitute conduct and indiscipline, which, however, is wide enough to include wrongful omission or commission whether done or omitted to be done intentionally or unintentionally. It means, "improper behaviour, intentional wrongdoing or deliberate violation of a rule or standard of behaviour". Misconduct is said to be a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand; it is a violation of definite

law.

43. In view of the law laid down by the Hon'ble Supreme Court in its various decisions cited hereinabove, it is amply clear that an advocate should not only be dignified in his relationship with his client but also act with utmost sincerity towards his client. He should have integrity in abundance and should never do anything which erodes his credibility. His relationship with his client is underlined by utmost trust. He shall in the exercise of his profession safeguard both in his own actions and in the actions of those who act on his or her behalf.

44. However, the conduct of the complainant, an advocate of this court, in prosecuting his own client by instituting a frivolous case and that too for not paying the contingent fee is completely unbecoming of his profession and unacceptable as norm of conduct of an advocate.

45. The apology tendered by the complainant is not at all with a sense of genuine remorse and repentance. It is also not for the act of charging fee contingent on the outcome of the complaint case or for launching a frivolous criminal prosecution against his own client. While tendering apology, the complainant has tried to justify all his actions. This court is of the opinion that the apology of the complainant is hollow. It is neither genuine nor sincere.

46. A reading of Section 35(1) of the Advocates Act shows that, where on receipt of a complaint or otherwise, a State Bar Council has reason to believe that an advocate on its roll is guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.

47. In the light of the above legal and factual position, this court is of the view that the complainant advocate was involved in very serious professional misconduct as his action in the capacity of a lawyer has certainly undermined the purity, dignity and nobility of legal profession. In that view of the matter, this court refers the issue to the Bihar State Bar Council for appropriate action. The Registry is directed to send a copy of the judgment along with photo copy of entire record of the case to the Secretary, Bihar State Bar Council forthwith for the needful.

48. This court is further of the view that the filing of the criminal case by the complainant against the petitioner manifests abuse of the judicial process of the worst kind. A widow, who lost her young son in an accident, has been subjected to enormous mental and physical harassment by none else but her own lawyer. It has been brought to my notice that since a warrant of arrest was issued against the petitioner, she had to apply for pre-arrest bail in the court of Sessions Judge, Patna, who appropriately granted her pre-arrest bail

whereafter she furnished bail bond to the satisfaction of the Magistrate. The petitioner, who has been driven to the court by the illegal acts of the complainant, deserves to be compensated as also the complainant needs to be suitably imposed with cost for abusing the process of the court. In that view of the matter, this court directs the complainant to deposit Rs.50,000/- as cost by way of a demand draft payable in the name of Registrar General, Patna High Court within three months from today. Out of such deposit, the learned Registrar General, Patna High Court shall ensure payment of Rs.30,000/- to the petitioner as litigation cost and compensatory cost against mental and physical harassment and transfer of the remaining amount of Rs.20,000/- to the account of the Patna High Court Legal Services Committee.

49. With the aforesaid observations and directions, the application stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-
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