

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 23.07.2019
CORAM
THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN
W.P. No. 19387 of 2018
&
W.M.P. No. 22789 of 2018

K.V. Vijayakumar ..Petitioner

Vs.

1. The Secretary,
Bar Council of Tamil Nadu and
Puducherry,
Chennai - 600 104.
2. The Registrar,
Disciplinary Committee,
Bar council of Tamil Nadu and
Puducherry,
Chennai - 600 104.

3. G. Purushothaman ..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the proceedings in Resolution No. 85 of 2018 dated 24.01.2018 on the file of the 1st respondent herein, now pending in D.C.C. No. 62 of 2018 on the file of the 2nd respondent and quash the same.

For Petitioner :: Mr.S. Subbiah,
Senior Counsel for
Ms. Elizabeth Ravi

For Respondents:: Mr.Fakkir Mohideen
Standing Counsel for R1 & R2
Mr.V.Nithyanandam for R3

O R D E R

(Order of the Court was made by N. KIRUBAKARAN,J.)
This matter is heard through 'video conferencing'.

2. The petitioner, who is a practising advocate is challenging the resolution passed in Resolution No. 85 of 2018 dated 24.01.2018 by the Bar Council of Tamil Nadu and Puducherry by which a complaint given by the 3rd respondent has been referred to the Disciplinary Committee to enquire into the same.

3. Heard Mr.S.Subbiah, learned Senior Counsel appearing for the petitioner and Mr. Fakkir Mohidden, learned counsel appearing for respondents 1 and 2. Though the 3rd respondent has been served and name is printed in the cause list, none appears. Even on previous occasions, there was no appearance on behalf of the 3rd respondent. Therefore, this Court is inclined to pass orders on merits even in the absence of the 3rd respondent.

4. The petitioner was requested by the 3rd respondent through his counsel at Chennai to file a caveat on his behalf in an expected SLP to be filed against the Judgment dated 25.04.2014 in S.A. No. 1101 of 2009. According to the 3rd respondent, there was a delay in filing the SLP and the SLP was listed on 24.11.2014 and the said information was promptly communicated by the petitioner by his letter dated 22.11.2014. The said letter reached V. Raghupathi, the counsel for the 3rd respondent at Chennai only after 24.11.2014. If prior intimation had been given, the 3rd respondent stated that he would have informed about the death of the 1st petitioner in the Special Leave Petition, namely, S. Padmavathi, even before the date of filing of SLP and the SLP would have been dismissed. Moreover, on 02.02.2015, when the matter was listed, notice was ordered by the Honourable Supreme Court and according to the 3rd respondent, the petitioner took notice on behalf of one T. Kalaivani and because of the petitioner taking notice on behalf of said Kalaivani, the Honourable Supreme Court had ordered status quo. Further, steps have not been taken within one week as per the order of the Apex Court by the petitioners in the Special Leave Petition. That apart, the petitioner has committed professional misconduct by writing letters to the 3rd respondent after giving change of vakalath. Therefore, a complaint in Complaint No. 112 of 2016 dated 12.04.2016 was lodged before the Bar Council of Tamil Nadu and Puducherry and prima facie, on being satisfied, the matter was referred by the Bar Council to the Disciplinary Committee by Resolution No. 85 of 2018 dated 24.01.2018. The said resolution is being challenged before this Court.

5. A perusal of the records would show that the petitioner had already filed caveat in the expected SLP against the decree and Judgement dated 25.04.2014 in S.A. No. 1101 of 2009. In the SLP, it has been stated that G. Purushothaman, who is the complainant/3rd respondent herein has been shown as respondent No.2 and T. Kalaivani has been shown as respondent No.1. Therefore, it is clear that the petitioner took notice only on behalf of the 3rd respondent/complainant and not on behalf of T. Kalaivani as alleged by the 3rd respondent. Therefore, the contention made by the 3rd respondent is false and is liable to be rejected.

6. As regards the contention of the 3rd respondent that no caveat was filed by the petitioner on his behalf, records have been filed before this Court to show that caveat was filed along with vakalath by the petitioner on 07.05.2014 before the Honourable Supreme Court. The certificate issued by the Honourable Supreme Court would also confirm the same. Therefore, the contention that no caveat was filed by the petitioner on behalf of the 3rd respondent is also false. Therefore, the said contention is also liable to be rejected. Accordingly, it is rejected.

7. The contention of the 3rd respondent that the petitioner has committed professional misconduct by writing letters even after giving change of vakalath is also liable to be rejected since the petitioner's name continued to appear in the cause list on behalf of the 3rd respondent, after giving change of vakalath, left with no other go, he was compelled to inform the 3rd respondent/complainant. Therefore, there is nothing wrong on the part of the petitioner. The whole complaint is misconceived and devoid of merits.

8. In the result, the writ petition is allowed and Resolution No.85 of 2018 dated 24.01.2018 and the complaint are quashed. No costs. Connected W.M.P. is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
Bar Council of Tamil Nadu and
Puducherry,
Chennai - 600 104.
2. The Registrar,
Disciplinary Committee,
Bar council of Tamil Nadu and
Puducherry,
Chennai - 600 104.

+1cc to Ms. Elizabeth Ravi, Advocate sr.63002

W.P. No. 19387 of 2018

pvs(co)
nr 16/12/2019