

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1403 of 2010

Jagannath Hota

....

Petitioner

Mr. Yeeshan Mohanty, Senior Advocate

-Versus-

Aswini Kumar Padhee

....

Opposite Party

Mr. M. Kanungo, Senior Advocate

CORAM:

JUSTICE R.K. PATTANAIK

DATE OF JUDGMENT:11.11.2022

1. A litigation of decade old is before this Court involving senior members of the Bar of Sambalpur and so to say the aggrieved person is a lawyer by profession so also his counterpart which is with regard to an action moved for disobedience by filing a complaint for an offence punishable under Section 45 of the Advocates Act, 1961 (hereinafter referred to as 'the Act') and in that regard, the challenge is as to the legality and judicial propriety of the impugned order dated 20th March, 2010 under Annexure-2 in Criminal Revision No.18/4 of 2009 passed by the learned Additional Sessions Judge, Sambalpur for having confirmed order dated 12th May, 2009 under Annexure-1 of the learned S.D.J.M., Sambalpur in ICC No.106 of 2004.

2. The parties are lawyers and members of Sambalpur Bar Association having rich experience of more than 50 years as regular practitioners. As the facts unfolded, the petitioner lodged a complaint against the opposite party before the Orissa State Bar CRLMC No.1403 of 2010

Council alleging professional misconduct in accordance with Section 35 of the Act whereafter a disciplinary proceeding in D.C. Enquiry No.14 of 2002 was initiated and on its completion, the Disciplinary Committee of the Bar Council found the latter guilty of the charges levelled and by order dated 30th March, 2003 suspended him from practice as an Advocate for a period of one year. The petitioner pleaded that opposite party being aggrieved by the said decision appealed to the Bar Council of India challenging the suspension which was registered as D.C. Appeal No.35 of 2003 but the same was disposed of confirming the decision by its order dated 31st October, 2003 and against the said order, a further appeal was carried to the Supreme Court in Civil Appeal No.13 of 2004 which was also dismissed by a judgment dated 19th January, 2004 which was sought to be reviewed in Review Petition No.774 of 2004, however, it yielded no result and hence, the order of suspension was upheld and remained in force. According to the petitioner, the opposite party despite the suspension order, commenced his practice and started appearing in courts before expiry of the period of one year in defiance to the order of the State Bar Council, Bar Council of India and Supreme Court and therefore, the complaint was filed by him in consonance with Section 35(4) of the Act and Rule 6 of the Bar Council of India Rules, 1975 (in short 'the Rules of 1975'). In other words, the complaint was filed to penalize the opposite party for having committed an offence under Section 45 of the Act.

3. The learned S.D.J.M., Sambalpur passed the order dated 12th May, 2009 under Annexure-1 and dismissed the complaint filed under Section 35 of the Act on maintainability ground which was

challenged by the petitioner in revision which was disposed of under Annexure-2 confirming the order of dismissal.

4. Mr. Yeeshan Mohanty, learned Senior Advocate for the petitioner submits that learned courts below could not have dismissed the complaint filed under Section 35 of the Act since because any person could file a complaint and therefore, such an action at the instance of the petitioner was perfectly maintainable and while contending so, the definition of 'complaint' in Section 2(d) Cr.P.C. has been referred to. It is further contended that there is no express or implied bar in the Act or the Rules of 1975 from lodging a complaint against another Advocate before a court of competent jurisdiction for an offence under Section 45 of the Act and therefore, the learned revisional court as well as learned S.D.J.M., Sambalpur fell into serious error declaring the petitioner to be incompetent to bring the criminal action against the opposite party. The challenge is also on couple of other grounds like the court of first instance could not have dismissed the complaint after having taken cognizance of the offence, etc.

5. It is pleaded that Rule 6 (i) of the Rules of 1975 stipulates that an Advocate, who has been removed from the roll of practice by the orders of the Supreme Court, High Court or the Bar Council as the case may be, shall not be entitled to practice the profession before the courts and authorities mentioned in Section 30 of the Act or in chambers or otherwise. The instant case, there was an order of suspension against the opposite party and it is further pleaded that according to Rule 6(ii) of the said Rules, he shall be disabled during the period of suspension as an Advocate whose name has been removed from the roll and likewise, Section 35(4) of the Act reads that where an Advocate is suspended from

practice under clause(c) of sub-section (3) thereof shall during the suspension period be barred from practice in any court or before any authority or person in India.

6. The learned S.D.J.M., Sambalpur held that the complaint is not maintainable since there is no provision in the Act to entertain the same. The aforesaid decision under Annexure-1 was upheld by the learned Sessions court in Criminal Revision No.18/4 of 2009 with a conclusion that the criminal court though has the jurisdiction to deal with such a complaint but dismissed the plea of the petitioner that he was competent to file the same on the ground that it has to be only by and at the behest of the State Bar Council and no other person, considering the scheme of the Act. With that conclusion, the revisional court confirmed the dismissal of the complaint.

7. In the Act, a procedure is prescribed as to in what manner for any professional misconduct, disciplinary action may have to be initiated against an Advocate enrolled with the State Bar Council. If a complaint is submitted or otherwise received by the State Bar Council, the same shall be referred to a Disciplinary Committee which takes up the matter and decides and finally passes the orders and in the instant case, order of suspension was directed against the opposite party which was confirmed by the Bar Council of India and also by the Supreme Court. So to say, the suspension order stood confirmed vis-à-vis opposite party who was having no right to appear before any court or authority or person during the suspension period of one year on account of the statutory disability as specified in Section 35(4) of the Act read with Rule 6(ii) of the Rules, 1975.

8. Seminal question involved in the present case is confined to the competence of the petitioner to initiate the criminal action by filing the complaint which has been negatived by both the courts below. In fact, there is no specific provision in the Act as to who shall file a complaint under Section 45 of the Act. The provisions of the Act are related to the jurisdiction of the State Bar Council and the role of the Disciplinary Committee and its decision with the findings and the appeals which may be filed against such decisions before the Bar Council of India and Supreme Court. Section 45 of the Act envisages that there shall be substantive imprisonment for a term which may extend to six months with which a person may be imposed and inflicted upon who is not entitled to do or engage himself in practice before any court or authority or person in India. However, the Act is silent regarding the person competent to lodge the complaint.

9. If the scheme of the Act is read and understood, it would suggest that for professional misconduct, an Advocate may be subjected to disciplinary action which may be initiated on a complaint received or otherwise by the State Bar Council. In so far as a complaint to be filed, in a case covered and punishable under Section 45 of the Act is concerned, the question is, whether, it should be by any person or only the State Bar Council as has been held by the learned Sessions court. There is no quarrel over the fact that a court is to try an offence punishable under Section 45 of the Act in absence of any indication in the said Act as in such case one is to fall back upon Section 4(2) Cr.P.C. So there is no doubt about the competence of a criminal court to entertain a complaint in relation to matters pertaining to the Act. The action under the Act against the petitioner was taken on a

complaint of the opposite party, a fact which is again not in dispute. The order of suspension is passed by the State Bar Council which is alleged to have been violated by the petitioner. Such a fact is alleged by the opposite party, a local practitioner, for which, he filed the complaint. Normally, in the present set of facts, a private person would not be interested to pursue and maintain any such action under Section 45 of the Act even after having lodged a complaint of professional misconduct before the State Bar Council. The opposite party being an Advocate and having had lodged the initial complaint under Section 35 of the Act set in motion the action before the learned S.D.J.M., Sambalpur under Section 45 thereof after he noticed the defiance or disobedience of the suspension order by the petitioner. The Court does not have the comfort to know the nature of allegations levelled by the opposite party against the petitioner before the State Bar Council. In any case, there is no dispute over the fact that the opposite party took the action and initiative to penalize the petitioner for professional misconduct. As earlier mentioned, no private party unless otherwise aggrieved is most unlikely to file complaint of the present nature. The opposite party being the initiator of the action, since had the knowledge about the disobedience of the suspension order, appears to have filed the complaint before the court. If Section 35 of the Act stipulates that a complaint on being received by the State Bar Council, an action may follow suit, to claim that only the Bar Council can initiate and file a complaint under Section 45 of the Act seems quite incompatible. It can be said that the person who may be allowed to initiate action could be interested to see that the lawyer indulged in unfair practice to be proceeded with and penalized under Section 45 of the Act. An action under Section 35

may be withdrawn by any person interested in view of sub-section (1-A) thereof and if that be so, a question may be posed, why not then that person not to have the rights or competence to prosecute the Advocate under Section 45 of the Act. Anyways, it is a case involving two senior lawyers of the local Bar, one of whom was the complainant before the State Bar Council. So to hold that it is only the State Bar Council alone to have the authority to file a complaint under Section 45 of the Act may not be wholly justified.

10. That apart, the learned S.D.J.M., Sambalpur could not have usurped the jurisdiction to dismiss the complaint in the manner it has been done which also escaped the attention of the revisional court. It is glaringly evident from Annexure-1 that the court had already taken cognizance of the offence which was challenged by the petitioner and considered by order dated 24th February, 2006 and rejected and thereafter, while the complaint was to begin with the trial, the question of maintainability was raised and entertained by the court which, in the humble view of this Court, is a procedure unheard of and not contemplated in the scheme of the Cr.P.C. either. Any such dismissal of a complaint would have to be in terms of Section 203 Cr.P.C. and not in the manner accomplished by the learned S.D.J.M., Sambalpur which has resulted in review of order of having taken cognizance of the offence and also for being a final order which is clearly interdicted in view of Section 362 Cr.P.C.

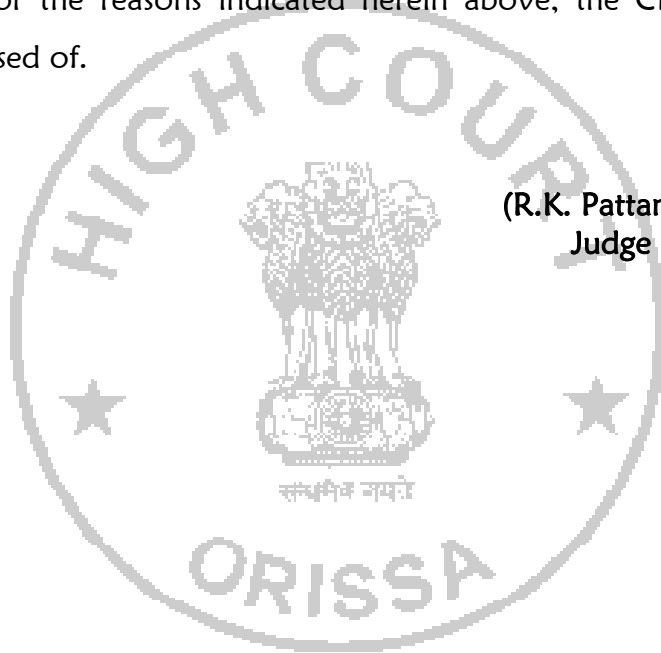
11. However, this Court notwithstanding the above conclusion is of the opinion that the litigation being more than 10 years old involving two senior and respected members of the local Bar of Sambalpur should be laid to rest in peace, a decision which has

been reached at after due deliberation as according to it to forget and forgive would be the best served purpose at this distant point of time. In other words, the Court is not inclined to exercise inherent jurisdiction in the peculiar facts and subject matter in dispute. So to say, even though the Court is not in agreement with the reasoning of the courts below in some respect but is not persuaded to disturb the end result.

12. Accordingly, it is ordered.

13. For the reasons indicated herein above, the CRLMC stands disposed of.

U.K. Sahoo



(R.K. Pattanaik)
Judge