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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	25.03.2022
DELIVERED ON	12.04.2022

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

and

THE HON'BLE MR. JUSTICE A.A. NAKKIRAN

W.P. No.20601 of 2021 & W.M.P. Nos.21856, 21857 & 21859 of 2021

W.P. No.20606 of 2021 & W.M.P. Nos.21863, 21865, 21866 & 21867
of 2021

1 K.J. Sumathy
2 S.J. Viswanathan
3 J. Nithyasree ...Petitioners in both WPs
vs.

1 The Chairman
The Bar Council of Tamil Nadu & Puducherry
High Court Campus
Chennai 600 104

2 The Secretary
The Bar Council of Tamil Nadu & Puducherry
High Court Campus
Chennai 600 104

3 The Disciplinary Committee No.VI
The Bar Council of Tamil Nadu & Puducherry
High Court Campus
Chennai 600 104 ...RR 1-3 in both WPs

4 P.V. Ravi
Advocate
No.15, Kandasamy Vathiyar Street
Dharmapuri
Dharmapuri District ...R4 in W.P. No.20601 of 2021



4

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P.K. Muthusamy
Advocate
Near Vinayaka Matriculation Hr. Sec. School
Erangadu, Dasampatti Road
Pannagaram
Dharmapuri District
(D.C.C. No.73 of 2019)

...R4 in W.P. No.20606 of 2021

Prayer in W.P. No.20601 of 2021:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records relating to the impugned orders of the third respondent committee proceedings in I.A. No.1 of 2020 in D.C.C. No.375 of 2018 dated 06.03.2021 and quash the same and consequently, allow I.A. No.1 of 2020 in D.C.C. No.375 of 2018 and appoint independent Committee headed by Mr. R. Singgaravelan, Senior Advocate, in conducting enquiry in D.C.C. No.375 of 2018 and dispose the same on merits and in accordance with law within a time limit.

Prayer in W.P. No.20606 of 2021:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records relating to the impugned orders of the third respondent Committee proceedings in I.A. No.1 of 2020 in D.C.C. No.73 of 2019 dated 06.03.2021 and quash the same and consequently, allow I.A. No.1 of 2020 in D.C.C. No.73 of 2019 and appoint independent Committee headed by Mr. R. Singgaravelan, Senior Advocate, in conducting enquiry in D.C.C. No.73 of 2019 and dispose the same on merits and in accordance with law within a time limit.

For petitioners
in both WPs

Mr. A. Ilayaperumal

For RR 1 - 3
in both WPs

Mr. C.K. Chandrasekar

For R4 in
WP No.20601/2021

Mr. Arun Anbumani

For R4 in
WP No.20606/2021

Mr. N. Manokaran



ORDER

P.N. PRAKASH, J.

These writ petitions have been preferred challenging the common order dated 06.03.2021 passed by the third respondent/Disciplinary Committee in I.A.No.1 of 2020 in D.C.C. No.375 of 2018 and I.A. No.1 of 2020 in D.C.C.No.73 of 2019 and for a direction to appoint an independent Committee headed by Mr.R.Singgaravelan, Senior Advocate, in conducting enquiries in D.C.C. Nos.375 of 2018 and 73 of 2019 and dispose the same on merits and in accordance with law within a time frame.

2 The legal issue that is required to be decided in the instant writ petitions lies in a very narrow compass.

2.1 One T.S. Varadhammal was owning 25 acres of land in S.No.867/2 in Adhiyamankottai Village, which lands would be referred to as the subject property, for the sake of convenience. The said Varadhammal gave a power of attorney to her son Jagannathan to manage the subject property.

2.2 While so, one Nagaraj, a local politician, entered into a loan agreement dated 05.04.2004 with one Rajendran projecting that the former is the owner of the subject property and that the former is giving the subject property as a collateral security for a loan of Rs.4 lakhs received from the latter. The loan agreement dated 05.04.2004 contained an arbitration clause. On a contrived premise that a dispute has arisen between the said Nagaraj and Rajendran, a collusive arbitration proceeding was initiated in conspiracy with some advocates and a fictitious award was passed on 31.10.2014 in the said arbitration proceeding, viz., AR.O.P. No.36 of 2014 in respect of the subject property. The said fake award directed Nagaraj to execute a sale deed in respect of the subject property in favour of Rajendran.

2.3 On coming to know of this, Jagannathan approached the police and lodged a complaint, based on which, a case in Dharmapuri D.C.B. Cr. No.1 of 2018 was registered. Enquiries conducted by Jagannathan revealed that Nagaraj and Rajendran were not alone in this adventure and that they were actively assisted by three advocates, viz., Rajaram, Ravi and Muthusamy. Therefore, Jagannathan lodged complaints against these three advocates in the Bar Council of Tamil Nadu and Puducherry (for short "the Bar Council").



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2.4 The Bar Council, by order dated 03.09.2019, suspended Rajaram, Ravi and Muthusamy from practice, pending disposal of the disciplinary proceedings in D.C.C. Nos.74 of 2019, 375 of 2018 and 73 of 2019 as against Rajaram, Ravi and Muthusamy, respectively.

2.5 Apprehending that the proceedings before the Bar Council will not be fair, Jagannathan filed a writ petition being W.P. No.29861 of 2019 for a mandamus to constitute an independent Committee under Mr. R. Singgaravelan, Senior Advocate, for conducting enquiries in D.C.C. Nos. 375 of 2018, 73 of 2019 and 74 of 2019 in an impartial manner.

2.6 During the pendency of the said writ petition, Ravi and Muthusamy filed interlocutory applications in their respective disciplinary proceedings before the Bar Council for revoking the order of suspension.

2.7 Apprehending that the Bar Council is likely to revoke their suspension, Jagannathan filed W.P. Nos.5778 and 5781 of 2020 for a prohibition restraining the Disciplinary Committee of the Bar Council from revoking the suspension order of Ravi and Muthusamy, respectively.

2.8 A Division Bench of this Court heard W.P. Nos.5778 and 5781 of 2020 and noticing the seriousness of the allegations against the advocates, by order dated 13.03.2020, stayed the two interlocutory applications that were filed by Ravi and Muthusamy before the Bar Council, thereby, restraining the Bar Council from revoking the suspension order of Ravi and Muthusamy. The Division Bench also directed the Disciplinary Committee to proceed with the disciplinary proceedings against the said advocates.

2.9 While that being so, Jagannathan died on 04.10.2020. Therefore, his widow and two children filed two applications before the Bar Council for getting themselves substituted in the name of Jagannathan and for continuing the disciplinary proceedings in D.C.C. Nos.375 of 2018 and 73 of 2019 against Ravi and Muthusamy, respectively.

2.10 The interlocutory applications that were filed by the legal heirs of Jagannathan were numbered as I.A. No.1 of 2020 in D.C. No.375 of 2018 (Ravi's case) and I.A. No.1 of 2020 in D.C.C. No.73 of 2019 (Muthusamy's case).



2.11 These interlocutory applications were dismissed on 06.03.2021 by the third respondent, viz., the Disciplinary Committee of the Bar Council, by holding that the legal heirs of Jagannathan cannot step into the shoes of Jagannathan and continue the disciplinary proceedings against the said two advocates. In view of the dismissal of the interlocutory applications filed by the legal heirs of Jagannathan, viz., the petitioners herein, to continue the disciplinary proceedings against the two advocates, the disciplinary proceedings stood closed and as a sequel, the suspension order also came to an end and consequently, the two advocates have resumed their practice.

2.12 Challenging the said common order dated 06.03.2021, the legal heirs of Jagannathan have filed the instant writ petitions seeking the relief stated in the opening paragraph.

3 On notice, Mr. Arun Anbumani, learned counsel, entered appearance for Ravi, fourth respondent in W.P. No.20601 of 2021 and a counter affidavit dated 10.03.2022 has been filed by Ravi. Likewise, Mr. N. Manokaran, learned counsel, entered appearance for Muthusamy, fourth respondent in W.P.No.20606 of 2021 and a counter affidavit dated 28.01.2022 has been filed by Muthusamy.

4 Heard Mr.A. Ilayaperumal, learned counsel for the petitioners, Mr.C.K. Chandrasekar, learned counsel for the Bar Council, Mr. Arun Anbumani, learned counsel for Ravi, the fourth respondent in W.P. No.20601 of 2021 and Mr.N. Manokaran, learned counsel for Muthusamy, the fourth respondent in W.P.No.20606 of 2021.

5 Mr. Ilayaperumal, learned counsel for the petitioners, submitted that the reasons assigned by the Bar Council are ex facie unsustainable because even in a criminal proceeding, only if the accused dies, can the prosecution abate and not when the complainant dies. He further submitted that the death of the complainant can, by no stretch of imagination, enure to the advantage of the fourth respondents/advocates.

6 Mr. Arun Anbumani, learned counsel for Ravi, placed reliance upon the judgment of the Supreme Court in An Advocate vs. Bar Council of India and another [1989 Supp. (2) SCC 25] in support of the reasons assigned by the Disciplinary Committee in the impugned order that the disciplinary proceedings before the Bar Council are quasi-criminal in nature. The relevant portion from the said judgment reads thus:



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"4. At this juncture it is appropriate to articulate some basic principles which must inform the disciplinary proceedings against members of the legal profession in proceedings under Section 35 of the Advocates Act, read with the relevant Rules:

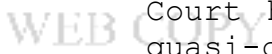
(i)

(ii) as a logical corollary it follows that the Disciplinary Committee empowered to conduct the enquiry and to inflict the punishment on behalf of the body, in forming an opinion must be guided by the doctrine of benefit of doubt and is under an obligation to record a finding of guilt only upon being satisfied beyond reasonable doubt. It would be impermissible to reach a conclusion on the basis of preponderance of evidence or on the basis of surmise, conjecture or suspicion. It will also be essential to consider the dimension regarding mens rea."

7 Mr. N. Manokaran, learned counsel for Muthusamy, submitted that the substitution petition that was filed by the petitioners under Order XXII Rule 3 C.P.C. cannot be maintained as that provision would not apply to proceedings before the Bar Council. According to him, the Disciplinary Committee has only the powers of a Civil Court that have been enumerated in Section 42 of the Advocates Act, 1961 and Order XXII has not been enumerated in Section 42, *ibid*. He further submitted that Muthusamy had no role to play in the fake arbitration proceedings and that he had only filed E.P. No.36 of 2016 based on the arbitral award, for which, he cannot be made to face disciplinary proceedings. That apart, placing reliance on the judgment of the Supreme Court in *Sundaram Finance Ltd. vs. Abdul Samad and another* (2018) 3 SCC 622, he contended that an arbitral award can be enforced in the place where the property is located and that is why, Muthusamy had filed the execution petition in the jurisdictional Court for enforcing the arbitral award.

8 This Court gave its anxious consideration to the rival submissions.

9 At the outset, it is made clear that this Court is not examining the merits of the complaint against the two advocates/fourth respondents and is confining itself to deciding on the legal validity of the impugned common order disallowing



10 It is true that in An Advocate (supra), the Supreme Court Court has held that the proceedings before the Bar Council are quasi-criminal in character. It was held so in the idea of importing the doctrine of benefit of doubt, which governs criminal prosecutions, into disciplinary proceedings before the Bar Council. This is evident from a reading of paragraph 4(ii) of An Advocate (supra). Be it noted, in An Advocate (supra), the Supreme Court was not dealing with a case in which the complaint was dismissed on the ground that the complainant had died.

"This Forum hold that the disciplinary proceedings before the Bar Council are Quasi-Criminal in nature. In fact there is no estate to claim in proceedings as in civil case to include the legal heirs to inherit estate. Hence, legal heirs of the complainant cannot be impleaded into the present complaint as the disciplinary proceedings are Quasi-Criminal in nature."

12 Rule 11 of Chapter I in Part VII of the Bar
Council of India Rules reads as follows:

(2) (a) In the case of an enquiry against only one advocate, on his death the Disciplinary Committee shall record the fact of such death and drop the proceedings.



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(b) Where the enquiry is against more than one advocate, on the death of one of them, the Disciplinary Committee may continue the enquiry against the other advocate unless it decides otherwise."

13 From a mere perusal of Rule 11(1), it is limpid that the Disciplinary Committee is not powerless to proceed with the enquiry even in a case where the complainant dies and there is no legal representative who is willing to conduct the case. In other words, where the legal representatives of the complainant do not come forward to substitute themselves in place of the deceased complainant, the Disciplinary Committee is given the discretion to either proceed with the enquiry or to drop it. Thus, even where there is none to prosecute a case before the Disciplinary Committee, the complaint cannot be mechanically dropped on the technical ground that it has abated. The logical sequitur is that where the legal heirs have come forward to prosecute the complaint in place of the deceased, the Disciplinary Committee is not powerless to order substitution and, at any rate, cannot reject their request on the specious ground of abatement.

14 That apart, under Rule 11(2)(a), the enquiry can be dropped only in cases where the enquiry is against one Advocate who has died during the enquiry. This is for the obvious reason that even if the enquiry is completed and misconduct is proved, the various punishments prescribed under Section 35(3)(b) (c) and (d) of the Advocates Act, 1961, cannot be inflicted if the Advocate is dead. This conclusion is fortified by Rule 11(2)(b) which makes it clear that where the enquiry is against more than one advocate, on the death of one of them, the Disciplinary Committee may still continue the enquiry against the other advocate(s), unless it decides otherwise.

15 In the case at hand, the Disciplinary Committee appears to have been greatly swayed by the fact that the proceedings before them were quasi-criminal in nature, and that the legal heirs of the complainant cannot be substituted in place of the original complainant for that reason. This conclusion betrays woeful ignorance of the settled position in criminal law that the legal heirs can apply for continuation of the proceedings against the accused upon the death of the original complainant. The issue is no longer res integra in view of the decision of the Supreme Court in *Rashida Kamaluddin Syed vs. Shaikh Saheblal Mardan*, [(2007) 3 SCC 548] wherein it was observed as under:



of three months from the date of its reconstitution by the first respondent.

With the aforesaid observations and directions, both the writ petitions are allowed. Costs made easy.

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s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

cad

To

- 1 The Chairman
The Bar Council of Tamil Nadu & Puducherry
High Court Campus
Chennai 600 104
- 2 The Secretary
The Bar Council of Tamil Nadu & Puducherry
High Court Campus
Chennai 600 104
- 3 The Disciplinary Committee No.VI
The Bar Council of Tamil Nadu & Puducherry
High Court Campus
Chennai 600 104
- 4 The Public Prosecutor
Madras High Court
Chennai 600 104

+1 CC to Mr. Arun Anbumani, Advocate sr 25827
+1 CC to Mr.N. Manokaran, Advocate sr 25438
+2 Ccs to Mr.A.Ilayaperumal, Advocate sr 25280, 25281

W.P. Nos.20601 & 20606 of 2021

AD(CO)
SP(22/04/2022)