IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHARTERED ACCOUNTANT REFERENCE NO. 1 OF 2019

The Institute of Chartered Accountants of India … Petitioner

Versus

Shri. Deepak Laxman Gore … Respondent

Mr Prerak Choudhary a/w Ms. Regina David for Petitioner.
Mr. V. S. Kapse a/w Mr. Freddy Bhadha for Respondent.

CORAM K. R. SHRIRAM &
DR. N. K. GOKHALE, JJ.
DATED: 6th September 2023

P.C. :

1. This is a reference under Section 21(5) of the Chartered Accountants Act, 1949 ("**the Act**") in respect of Respondent. The report of the Council of Institute of Chartered Accountants of India ("**Council**") states that on perusal of a letter received from Dena Bank and a news item published in "Mid-Day" newspaper dated 1st August 1998 under the heading 'Chartered Accountant dupes clients of Rs. 1.5 crores', Respondent was called upon to offer his explanation vide a letter dated 13th July 2004. The Council found the letter/reply dated 28th July 2004 received from Respondent to be not satisfactory. The Council decided to treat the matter as 'information' falling within the meaning of 'other misconduct' under Section 22 read with Section 21 of the Act. Basically, in the opinion of the Council, the act or omission of Respondent brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.

2. In the news item published in Mid-Day, it was alleged that Respondent has been arrested for cheating clients and evading sales tax liability to the tune of Rs. 1.5 crores, Respondent used to overwrite the names of his clients' sales tax return cheques or having obtained cheques without name, would fill any name and deposit it in a new account at Vijaya Bank, Respondent would pay small amounts of tax in the treasury and then change the figures on the sales tax challans and then use fake State Bank of India's stamps as proof of payment, which Respondent would then show to his clients.

3. The Council also received a letter from Dena Bank alleging that Respondent was altering cheques received from his client M/s. Modern Corrugators. Respondent was, thereafter, depositing fraudulently altered cheques for collection in some fictitious accounts with State Bank of India and Vijaya Bank. Respondent was altering the name of the beneficiary from 'S. B. India' to 'S. B. Indra' and authenticating the alterations by forging the signature of drawer.

4. Subsequently, the Institute of Chartered Accountants Association ("**Institute**") conducted disciplinary enquiry under Section 21(1) of the Act. During the course of such enquiry witnesses were examined. Though the Disciplinary Committee wanted to examine Central Bureau of Investigation ("**CBI**"), the Manager of Vijaya Bank, Palghar Branch and Mr. Gandhi (who operated the bank account in question), only the witness from Vijaya Bank appeared before the Disciplinary Committee. The Mid-Day reporter or any one from State Bank of India, whose rubber stamp was allegedly used, was not examined. We would say that the report of Council is not very happily worded, but it appears that even a witness from Dena Bank appeared. We should also note that in the course of examination of the witness from Dena Bank, the Disciplinary Committee has recorded its displeasure and unhappiness with the non-cooperation from Dena Bank.

5. It appears that, simultaneously an FIR was lodged by Mr. Gandhi, Partner of M/s. Modern Corrugators, which was registered as 'Regular Criminal Case No. 291 of 1999' before Judicial Magistrate First Class, Palghar. By an order passed on 28th February 2019, after recording the evidence of complainant, the learned Magistrate was pleased to pass an order of acquittal against Respondent on the grounds viz.

a) The informant/complainant was examined by the prosecution and it could not prove that the cheque issued by informant was manipulated at the instance of Respondent.

b) If Respondent filled or manipulated the cheque to 'S. B. Indra', then it is not clear as to who was preparing and bringing the challan as paid into State Bank of India.

c) There is no report of any handwriting expert on manipulation of cheques.

6. Since the order of acquittal was passed after the disciplinary enquiry was concluded, the same has not been considered by the Disciplinary Committee.

7. We have considered the report of the Disciplinary Committee as well as the evidence etc. recorded.

8. The Disciplinary Committee in its report to the Council records that the documents filed by Vijaya Bank did not indicate Respondent was operating the alleged fake account. It is also recorded that Vijaya Bank informed the Disciplinary Committee that it was a benami account and there was no signature even in the account opening form. There is also a finding that the witness of Vijaya Bank stated that the account was opened by some Subhash Banu Indra. The witness also states to a query posed as to "what was the role of Respondent in opening the bank account?". The answer was "directly there was no role". Even the Manager of Dena Bank did not say anything on the direct role of Respondent. There is nothing to indicate any link between Respondent and Subhash Banu Indra. In the findings, the Disciplinary Committee states that they received certain documents to examine the role of Respondent in respect of Vijaya Bank and Dena Bank and there is no direct evidence which can show that Respondent has opened or introduced the said account with Dena Bank. The findings also indicate that the witness from Vijaya Bank also unable to prove the role of Respondent in opening and introducing the said fake account. The whole basis to take action against Respondent was relying on the *ex-parte* orders passed by the National Consumer Dispute Redressal Commission ("**NCDRC**") on complaint filed by Mr. Gandhi, Partner of M/s. Modern Corrugators and State Consumer Dispute Redressal Commission ("**SCDRC**") on complaint filed by one M/s. Tubecone Paper Product

Co. Mr. Gandhi, Partner of M/s. Modern Corrugators, who had filed a complaint before NCDRC, it is noted in the findings of the Committee 'is not traceable'. Strangely he was appearing in his criminal complaint before the Magistrate. No witness from M/s. Tubecone Paper Product Co. also has been summoned. There is not even a reference in the findings that he should also have been summoned.

9. In the Criminal Complaint filed against Respondent, he has been acquitted on the ground that there was no evidence against Respondent to show that he had opened the bank account or that, he had committed any of the offences as charged against him.

10. In the notes of hearing also, it is recorded when the witness from Vijaya Bank was being examined that, the witness informed the Disciplinary Committee that there was no proof that the accounts were operated by Respondent. The witness also states that there was no direct role of Respondent to show that the cheques were issued by him where the word 'Indra' or 'Indu' is written by Respondent.

11. In the circumstances, in our view, the Council was not correct in coming to the conclusion purely relying on the *ex-parte* orders of NCDRC and SCDRC that Respondent is guilty of 'other misconduct' under Section 22 read with Section 21 of the Act.

12. In the circumstances, we are not inclined to accept the recommendations of the Council. The Reference is dismissed.

(DR. N. K. GOKHALE, J.) **(K. R. SHRIRAM, J.)**

GITALAXMI KRISHNA KOTAWADEKAR Digitally signed by GITALAXMI KRISHNA KOTAWADEKAR Date: 2023.09.11 14:55:32 +0545