

07.08.2024
Item No.5
gd/ssd

MAT/2549/2023
IA NO: CAN/1/2024
RAJA SATYAJIT BANERJEE
VS
BAR COUNCIL OF WEST BENGAL AND ORS.

Mr. Sourav Sengupta,
Ms. Krishnika Chatterjee
..for the Appellant.

Mr. Arabinda Chatterjee,
Mr. Prasun Kumar Datta,
Mr. Sanatan Deb Roy
..for Bar Council of West Bengal.

Mr. Avinash Kankani
..for Bar Council of India.

Mr. Abhay Charan Basu
..Respondent No.4 (In Person).

1. This intra court appeal by the writ petitioner is directed against the order dated 23.11.2023 in WPA 24119 of 2023 by which the writ petition was disposed of.

2. In the said writ petition the appellant had challenged an order passed by the West Bengal Bar Council dated 26.06.2023 in and by which the appellant was held to have committed professional misconduct under Section 35 of the Advocates Act, 1961 (the Act) and his enrolment being WB/1319F/2012 as an advocate with the West Bengal Bar Council was suspended for a period of two years.

3. The contention raised before the learned Single Bench was that there was a violation of principles of natural justice and the order passed by the State Bar Council requires to be set aside.

4. Before us it is contended by the learned advocate for the appellant that by operation of law, namely, Section 36B of the Act on and after one year the State Bar Council loses its jurisdiction and the matter should be transferred to the Bar Council of India in its entirety.

5. It is not in dispute that as on the date when the State Bar Council passed the final order, namely, on 26.06.2023, the period of one year had not expired.

6. Therefore, the plea with regard to the applicability of Section 36B of the Act cannot be entertained in this case.

7. Consequently, the decision relied on by the learned advocate for the appellant in the case of *Brojo Gopal Bhattacharyya v. Bar Council of West Bengal and Ors.* in (2000) 1 CALLT 77 (HC) has no application to the facts and circumstances of the case.

8. The State Bar Council in its order dated 23.06.2023 has recorded that both parties have agreed to settle the case and the complainant has agreed to withdraw the complaint on payment of Rs.1,25,000/- being the amount claimed to have been paid by the

respondent/complainant to the appellant/advocate. Further, the order records that the appellant, respondent before the State Bar Council agreed to pay a sum of Rs.1,25,000/- in full and final settlement of his claim and will give an account payee cheque on 26.06.2023 at 4.15 hours to the complainant before the disciplinary committee of the Bar Council of West Bengal. Accordingly, the disciplinary committee adjourned the matter to 26.06.2023. On 26.06.2023 there is another order recorded by the disciplinary committee recording that the appellant has failed to appear in terms of the assurance given during the course of hearing on 26.06.2023 wherein he agreed to pay a sum of Rs.1,25,000/- by account payee cheque. It is further recorded that this assurance was in the presence of the disciplinary committee of the Bar Council of West Bengal and the complainant agreed to settle the matter after receiving the said payment. On 26.06.2023, the disciplinary committee records that the appellant failed to appear on the said date as promised along with the cheque and the appellant was called thrice by mobile phone no.9830646207 and the appellant did not respond to the telephone calls. Therefore, the disciplinary committee reserved orders and as per the Bar Council of India Rules, the order was to be passed on 26.06.2023 and, therefore, the disciplinary committee recorded that it cannot be wait

any more for the appellant to respond and accordingly, proceeded to pass the order.

9. In the order the factual position has been brought out more importantly that the cheque which was given for a sum of Rs.1,25,000/- was drawn by the complainant in favour of the appellant advocate and amount according to the appellant was required to be paid to discharge a loan which the complainant had availed with the bank. It is also recorded that the cheque was encashed by the appellant advocate but the amount was not remitted to the bank concerned.

10, We are of the prima facie view that accepting a cheque in the name of an advocate for the purpose of depositing it into a court or a tribunal itself will not meet the standard prescribed under the Advocates Act or the Regulations of the Bar Council of India.

11. However, considering the manner in which the learned writ court has disposed of the writ petition, we do not wish to foreclose the avenues open to the appellant as the appellant can always prefer an appeal under Section 37 of the Advocates Act in terms of the observations contained therein.

12. The learned advocate for the appellant placed reliance on the decision of the Hon'ble Supreme Court in *Dhanraj Singh Choudahry v. Nathulal Vishwakarma* in AIR 2012 SC 628.

13. The learned advocate referred to paragraph 24 of the said judgment wherein the court was dealing with two interlocutory applications filed in the said case where the complainant along with the appellant advocate wanted to compromise the matter.

14. The Hon'ble Supreme Court held that they were unable to accede to the request as settlement with the complainant does not mitigate or wipe out professional misconduct and must not prevent adequate punishment to the advocate and, therefore, the interlocutory applications were dismissed.

15. We have failed to understand as to how the said decision would support in any manner rather the decision would be against the appellant.

16. Thus, for all the above reasons, we find no grounds to interfere with the order passed by the learned Single Bench.

17. Accordingly appeal fails and dismissed.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)