

CWP-20661-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-20661-2024

Reserved on: 13.01.2025

Date of Decision : January 29, 2025

Naresh Dilawari

...Petitioner

V/S

Bar Council of Punjab and Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI**

Present : Mr. Naresh Dilawari (Petitioner in person)

Mr. B.S. Rana, Senior Advocate with
Mr. Nayandeep Rana, Advocate and
Mr. Manav Dhull, Advocate
for respondents No.1 and 3.

Mr. Ashutosh Gupta, Advocate
for respondent No.2.

Mr. Yogesh Goel, Advocate
for respondent No.5 (in person)

Mr. Deepak Goyal, Advocate
for respondent No.6 (in person)

Mr. Vipul Goel, Advocate
for respondent No.7 (in person).

SURESHWAR THAKUR, J.

1. Through the instant writ petition the petitioner prays for the quashing of the complaint No.CC/162/2022 (Annexure P-1) titled as '*Om Parkash V/s Naresh Dilawari, Advocate*'. The (supra) complaint became filed before DC VIII i.e. respondent No.2. He further seeks the quashing of

the impugned notice dated 12.11.2022 (Annexure P-2) and of all consequential proceedings arising therefrom.

2. The petitioner received notice dated 12.11.2022 (Annexure P-2) issued by respondent No.1, calling for reply/comments within fortnight, thus on a complaint filed by respondent No.4 (Om Parkash). The petitioner filed reply (Annexure P-3) which was duly received in the office of respondent No.1, and the petitioner received notice from respondent No.3 i.e. Disciplinary Committee VIII, asking the petitioner to appear before it, as the complaint titled '*Om Parkash V/s Naresh Dilawari*', had been referred to it for hearing.

3. The learned counsel for the petitioner submits, that there is no relationship of counsel and client between the petitioner and the complainant. In fact, the complainant is proxy of Mr. Yogesh Goel, Advocate who is blackmailing the petitioner, since the year 2018, owing to his influence in the Punjab and Haryana High Court Bar Association and in the Bar Council of Punjab and Haryana. As such, the complainant has filed, the instant complaint, without any locus standi.

4. He further submits that the impugned complaint (Annexure P-1) was referred to the Disciplinary Committee, but without thus formation of the required "reason to believe", whereas, the formation(s) of "reason to believe", becomes ordained in Section 35 of the Advocates Act, 1961 (hereinafter referred to as the 'Act of 1961') provision whereof becomes extracted hereinafter, to be the pre-requisite statutory requirement or a necessary statutory precursor rather for subsequently a valid reference being made to the disciplinary committee.

“35. Punishment of advocates for misconduct.—(1) Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.”

5. Though the (supra) statutory necessities as become embodied in Section 35 of the Act of 1961, though are purportedly stated to become embodied in the impugned notice (Annexure P-2). However, for the reasons to be assigned hereinafter, the prior thereto (supra) statutory necessities, as become enjoined to become performed by the State Bar Council, inasmuch as, before it, referring the complaint (Annexure P-1) to the disciplinary committee of the State Bar Council, thus the State Bar Council forming “reason to believe”, that the present petitioner is guilty of professional or other misconduct, but obviously remain unperformed.

6. The reasons for the incorporation of the (supra) statutory pre-requisites or the (supra) statutory precursors, for therebys a valid relevant reference being made by the State Bar Council, to its disciplinary committee rather for the latter, making a hearing upon the alleged professional misconduct or other misconduct, as becomes indulged into by the advocate concerned, thus is to ensure that unnecessary and frivolous complaints, rather do not become lodged against any counsel. If so, when the said holistic objective, thus is behind the incorporation of the above statutory necessity, inasmuch as, on receipt of the complaint by the State Bar Council concerned, the latter initially forming “reasons to believe” about the advocate, on its rolls being prima facie guilty of professional or other misconduct, whereafters alone the apposite reference, to the disciplinary

committee concerned, for an adjudication being made on the relevant complaint, but would be a validly made reference.

7. Therefore, reiteratedly since prior to the making of Annexure P-2, there was but the necessity of complete compliance or completest adherence being made to the statutory necessity (supra). However, yet when there exists no evidence on record, suggesting that prior to the issuance of Annexure P-2, the State Bar Council had formed “reason to believe”, that the petitioner who was on its rolls, thus was prima facie guilty of professional or other misconduct.

8. The consequent effect of the said statutory necessities remaining unadhered to, is but that, there was no empowerment in the disciplinary committee of the State Bar Council concerned, to issue the impugned notice (Annexure P-2) upon the petitioner. As such the issuance of the impugned notice (Annexure P-2) is a defectively issued notice upon him. The reason for so stating becomes grooved in the obvious ground, that it remains unprecedented by adherence being made, to the (supra) statutory precursor, inasmuch as, no reason to believe becoming formed by the State Bar Council concerned, thus unfolding that the complaint (Annexure P-1) discloses that the present petitioner is prima facie guilty of professional or other misconduct. Resultantly, the (supra) lack makes the impugned show cause notice to be completely vitiated.

9. In coming to the above conclusion, this Court finds support from the judgment passed by Apex Court, in case Civil Appeal No.1876 of 1977, titled as ‘Nandlal Khodidas Barot V. Bar Council of Gujarat and others’, reported in 1980 (supp) SCC 318, relevant paragraph whereof

“2. Section 35(1) of the Advocates Act, 1961, reads:

xxx

*In **Bar Council of Maharashtra v. Dabholkar** this Court having examined the scheme and the provisions of the Advocates Act observed: (SCC pp. 709, 711 & 712, paras 24, 29 and 31.*

It is apparent that a State Bar Council not only receives a complaint but is required to apply its mind to find out whether there is any reason to believe that any advocate has been guilty of professional or other misconduct. The Bar Council of a State acts on that reasoned belief....

...The Bar Council acts as the sentinel of professional code of conduct and is vitally interested in the rights and privileges of the advocates as well as the purity and dignity of the profession.

...the function of the Bar Council in entertaining complaints against advocates is when the Bar Council has reasonable belief that there is a prima facie case of misconduct that a disciplinary committee is entrusted with such inquiry...”

10. In aftermath, this Court finds merit in the instant writ petition and with the observation(s) aforesaid, the same is allowed. Resultantly, the complaint No.CC/162/2022 (Annexure P-1), besides the impugned notice dated 12.11.2022 (Annexure P-2) and all consequential proceedings arising therefrom, are quashed and set aside.

(SURESHWAR THAKUR)
JUDGE

29.01.2025

Ithlesh

(VIKAS SURI)
JUDGE

Whether speaking/reasoned:-
Whether reportable:

Yes/No
Yes/No