

VIJAYSINGH RATHORE

v.

MURARILAL & ORS.

August 3, 1979

[V. R. KRISHNA IYER, D. A. DESAI AND A. D. KOSHAL, JJ.]

Advocates Act 1961—S. 35—Rule 10, Chapter II, Part 6 of the Rules for professional misconduct—Scope of—Reprimand whether meets ends of justice.

Rule 10, Chapter II, Part 6 of the Rules framed by the Bar Council of India for professional misconduct provides that an advocate shall not stand a surety, or certify the soundness of a surety, for his client required for the purposes of any legal proceedings.

The appellant, a practising advocate, was suspended for one month by the Disciplinary Tribunal of the Bar Council of India on the ground that in violation of the rules, he had certified the solvency of a surety in a bailable offence in which the accused was his client. The appellate body dismissed his appeal.

On the question whether a reprimand would meet the ends of justice,

Allowing the appeal in part,

HELD : (1) Section 35 of the Advocates Act permits reprimand provided the ends of public justice are met by this leniency. Ordinarily this Court does not interfere with a punishment imposed by the Disciplinary Tribunal except where strong circumstances involving principle are present. Censure has a better deterrent value on the errant brethren in the profession in some situations than suspension for a month from professional practice.

In the present case the lawyer was young, the offence was not tainted with turpitude and the surety whose solvency he certified was found to be good. These circumstances are amelioratory and hardly warrant cognate punishment. Public admonition is an appropriate sentence in the present case.

Public professions which enjoy a monopoly of public audience have a statutorily enforced social accountability for purity, probity and people-conscious service. In our country bail has become a logey and an instrument of unjust incarceration. This harasses the poor and leads to corruption. A smart lawyer who appears for an indigent accused may commiserate and enquire whether the surety is solvent. If he is satisfied that the surety is sufficiently solvent, he may certify the solvency of the surety. In some cases the detainee may be a close relation or close friend or a poor servant of his. In that capacity, not as a lawyer, he may know the surety and his solvency or may offer himself as a surety. In such cases he violates the rule all the same. The degree of culpability in such cases depends on the total circumstances and the social milieu.

The rule under consideration is a wholesome one in the sense that lawyers should not misuse their role for making extra perquisites by standing surety for their clients or certifying the solvency of such sureties. The Court may not

▲ frown upon a lawyer who helps out the person, not by false pretences, but on the strength of factual certitude and proven inability to substantiate solvency.

The Court reprimanded the appellant and directed that he shall not violate the norm of professional conduct and shall uphold the purity and probity of the profession generally.

■ CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1922 of 1979.

From the Judgment and Order dated 7-5-1979 of the Disciplinary Committee of the Bar Council of India in D.C. Appeal No. 19/78.

Appellant in Person and *S. S. Khanduja* for the Appellant.

The Order of the Court was delivered by

■ KRISHNA IYER, J. The Appellant, a fledgling in the legal profession, has been punished by the Tribunal of the Bar Council for eating the forbidden fruit of dubious professional conduct by improperly certifying the solvency of a surety for an accused person, his client. Suspension from practice for one month is the punishment awarded by the trial tribunal and in appeal. Counsel for the appellant Shri Khanduja, has pleaded for an admonitory sentence by the Court *ex-misericordium*. Of course, the punitive pharmacopoeia of the Advocates Act, in Section 35, does permit reprimand provided the ends of public justice are met by this leniency. After all, public professions which enjoy a monopoly of public audience have a statutorily enforced social accountability for purity, probity and people-conscious service. In our Republic, Article 19(1) (g) vests a fundamental right to practise any profession only subject to reasonable restrictions in the interests of the general public (vide Art. 19(6)). The law forbids the members of the legal or other like professions from converting themselves into a conspiracy against the laity and all regulations necessary for ensuring a people-oriented bar without exploitation potential are permissible, nay necessary. Rule 10, chapter 2 part six of the Rules of Bar Council of India for Professional Misconduct framed for disciplinary purposes is stated to have been violated by the appellant for which dispensatory punishment has been meted out.

■ The factual setting gives an insight into the degree of deviance of the delinquent appellant. Punishment must be geared to a social goal, at once deterrent and reformatory. In the present case, the appellant is charged with certifying the solvency of a surety in aailable offence. Obviously, the accused, who was the client of the appellant, was entitled to be enlarged on bail because the offence for which he was in custody was admittedlyailable. Even so, it is a common phenomenon in our country that bail has too often become a bogey and an instrument of unjust incarceration. There are

some magistrates who are never satisfied about the solvency of sureties except when the property of the surety is within their jurisdiction and Revenue Officers have attested their worth. This harasses the poor and leads to corruption as pointed out by this Court in *Moti Ram's case*⁽¹⁾. It may, therefore, be quite on the cards that some sympathetic lawyer who appears for an indigent accused may commiserate and enquire whether the surety is solvent. If he is satisfied, on sure basis, that the surety is sufficiently solvent, then he may salvage the freedom of the accused by certifying the solvency of which he has satisfied himself. It is also possible that the detainee is a close relation or close friend or a poor servant of his. In that capacity, not as a lawyer, he may know the surety and his solvency or may offer himself as a surety. If a lawyer's father or mother is arrested and the Court orders release on bail, it is quite conceivable and perhaps legitimate, if the son appears for his parent and also stands surety. He violates the rule all the same. The degree of culpability in a lawyer violating Rule 10, chapter 2, part six depends on the total circumstances and the social milieu.

This Court has held, taking cognizance of the harassment flowing from sureties being insisted upon before a person is enlarged or bailed out, that the Court has the jurisdiction to release on his own bond without the necessity of a surety. The question, therefore, is whether the circumstances of the offence and offender are venial or venial.

The Rule with which we are concerned is a wholesome one in the sense that lawyers should not misuse their role for making extra perquisites by standing surety for their clients or certifying the solvency of such sureties. That is a bolt on the bar, an exploitative stain on the profession. At the same time, the punishment is flexible in the sense that where the situation cries for the help of the lawyer in favour of a client who is languishing in jail because his surety is being unreasonably rejected, we may not frown upon a lawyer who helps out the person, not by false pretences, but on the strength of factual certitude and proven inability to substantiate solvency. In the present case, the circumstances are amelioratory and hardly warrant condign punishment.

The lawyer is young, the offence is not tainted with turpitude and the surety whose solvency he certified was found to be good. The most that may be justified is perhaps a public reprimand since censure has a better deterrent value on the errant brethren in the

(1) *Moti Ram & Ors. v. State of M.P.* [1969] 1 SCR 335.

A profession in some situations than a suspension for a month from professional practice which may pass unnoticed in the crowd of lawyers and the delinquent himself may be plying his business except for appearance in Court. In suitable cases, of course, even severity of suspension or disbarment may be justified.

B This Court should not interfere ordinarily with a punishment imposed by the Disciplinary Tribunal except where strong circumstances involving principle are present. In our vast country of illiterate litigants and sophisticated litigation, the legal position must be so explained as to harmonise the interests of the indigents who are marched into Court and the professional probity of the Bar which is an extended instrument of justice.

C We hold that public admonition is an appropriate sentence in the present case and proceed to administer it in open court to the appellant! We hereby reprimand him and direct that he shall not violate the norms of professional conduct and shall uphold the purity and probity of the profession generally, and, in particular, as spelt out in the rules framed by the Bar Council of India. We condone his deviance this time and warn him that he shall not violate again.

D The appeal is, to this extent, allowed and the sentence of reprimand substituted for the sentence of suspension.

E P.B.R.

Appeal allowed in part.