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THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2078 of 2024

(In the matter of an application under Section 482 of the Criminal Procedure Code, 1973)

Sambit Samal *Petitioner*

-Versus-

State of Odisha *Opposite Party*

For the Petitioner : Mr. Surya Narayan Biswal, Advocate

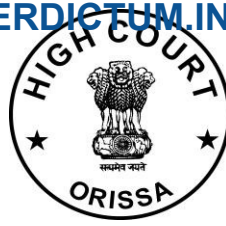
For the Opp. Party : Mr. Sangram Keshari Mishra,
Additional Standing Counsel

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 11.09.2024 : Date of Judgment: 29.10.2024

S.S. Mishra, J. The petitioner herein has approached this Court under Section 482 of the Code of Criminal Procedure, 1973 with a prayer seeking quashing of the F.I.R. dated 11.11.2021 registered as Mangalabag P.S. Case No.268 of 2021 corresponding to G.R. Case No.1515 of 2021 pending in the Court of the learned J.M.F.C. (City),Cuttack.

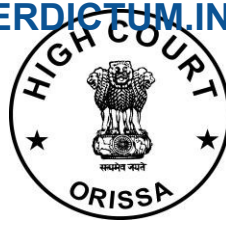


2. The facts of the present case, as alleged, are that the informant in the present case is the wife of an accused in a case under the OPID Act and had approached this Court on earlier occasion seeking bail. It has been alleged in the F.I.R. that the informant has paid a total of Rs.16,35,000/- (Rs.8,35,000/- through bank transfer to his account and Rs.8,00,000/- in cash) through a person named as Anil Kumar Patra of Bhubaneswar as per the petitioner's instruction. It is thereafter alleged that as per the petitioner's instruction, the informant gave him one gold chain of 65 grams and one gold bracelet of 50 grams for the daughter's marriage of the then Judge, who was supposed to hear the bail matter of her husband. The name of the Hon'ble Judge of this Court (then was) written in the complaint. Further, it has been alleged that two mobile phones were handed over to the petitioner as per his instructions. It has been stated in the F.I.R. that the corresponding phone chats between the informant and the petitioner as well as some pictures have also been enclosed herewith. It is alleged that, the petitioner also asked for handing over some original title deeds/land record for the purpose of securing bail pursuant which two original land deed of mouza-Kaushallya were



handed over to him. It is further alleged that, after the informant's husband's bail matters were dismissed, the petitioner thereafter demanded additional sum of Rs.16 lakhs to file a fresh bail application. The informant further alleged that on requisitioning the return of their case file, original land documents and money, the petitioner denied the same and threatened them that he will lodge false case against them and also threatened them that he would destroy their Court cases as he has good links with many Judges of the High Court and lower Courts. The petitioner also allegedly threatened the informant that he has many friends in judiciary so he will put them to task and the informant's husband will never get bail from any Court.

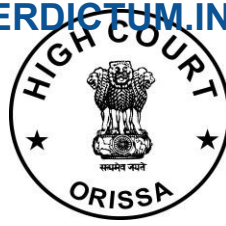
It is further alleged that despite request for returning the documents, money etc., the same has been denied by the petitioner. In the meantime, the informant states to have consulted some advocates and has come to know that two false cases, i.e., bail applications have been filed by the Petitioner by using the blank papers signed by the informant's husband. The informant thereafter alleges to have consulted some advocates in Calcutta and upon advise, informed the present Petitioner that they



would write about it to Bar Council upon which the Petitioner assured the informant that he would withdraw the said cases and also assured them to return the money, file and documents, which eventually was not honoured. Being thus placed, the informant being helpless and finding no other way, came to Cuttack in a final attempt to get back the money, original documents, mobiles, gold ornaments and case files etc. upon which they were threatened with dire consequences by the Petitioner.

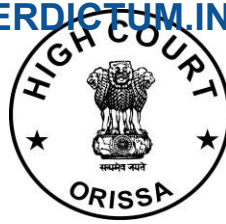
3. The aforesaid narration as set out in the F.I.R. makes up for sordid reading. The advocate enjoys the implicit faith of the court, each and every advocate practicing in a particular court not only an officer of that court but also acts as an ambassador of the law to the society at large. Therefore, such conduct is unbecoming of an advocate.

4. The facts of the present case, as alleged, would show that the Petitioner has insinuated and attributed wrong doing to a former judge of this Court. The allegations even taken at face value show that the informant has meticulously described certain events and named specific items that have been demanded by the Petitioner. The informant



is aware of the social status of the Petitioner as an advocate. No common person would normally dare to make false allegations of such grim nature against a member of the bar knowingly fully well that there would be dire consequences in case the allegations are found to be false or motivated. It is even inconceivable that a common litigant would cook up such a grave allegation as has been made in the present case against a high constitutional functionary. Of course, the entirety of the truth of the matter can only be unearthed during the course of a detailed investigation, all that can be said that at this stage is that given the grave allegations of impropriety which touch upon the sanguineness of the judicial edifice, the present case needs a thorough and impartial investigation to get to the bottom of the matter.

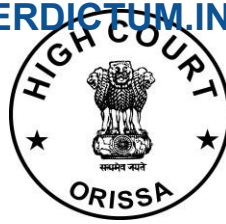
5. The other aspect of the matter is that of “professional and other misconduct” as provided for under the Advocates Act, 1961 and defined by a series of judicial pronouncements. A seven-Judge Bench of the Hon’ble Supreme Court in the case of *Bar Council of Maharashtra v. M.V. Dabholkar and others* reported in (1975) 2 SCC 702 while dealing with an appeal filed under Section 38 of the 1961 Act by the Bar Council



of Maharashtra, V.R. Krishna Iyer, J. in his concurring opinion made, the following observations with regard to the Bar and its members and the onerous duty cast on the member of the profession:

“52. The Bar is not a private guild, like that of ‘barbers, butchers and candlestick-makers’ but, by bold contrast, a public institution committed to public justice and pro bono publico service. The grant of a monopoly licence to practice law is based on three assumptions: (1) There is a socially useful function for the lawyer to perform, (2) The lawyer is a professional person who will perform that function, and (3) His performance as a professional person is regulated by himself not more formally, by the profession as a whole. The central function that the legal profession must perform is nothing less than the administration of justice (‘The Practice of Law is a Public Utility’— ‘The Lawyer, The Public and Professional Responsibility’ by F. Raymond Marks et al — Chicago American Bar Foundation, 1972, p. 288-89). A glance at the functions of the Bar Council, and it will be apparent that a rainbow of public utility duties, including legal aid to the poor, is cast on these bodies in the national hope that the members of this monopoly will serve society and keep to canons of ethics befitting an honourable order. If pathological cases of member misbehaviour occur, the reputation and credibility of the Bar suffer a mayhem and who, but the Bar Council, is more concerned with and sensitive to this potential disrepute the few black sheep bring about? The official heads of the Bar i.e. the Attorney General and the Advocates General too are distressed if a lawyer ‘stoops to conquer’ by resort to soliciting, touting and other corrupt practices.”

6. A similar view as to the nature of the profession and the responsibility of the members of the bar was expressed by the Hon’ble Apex Court in the case of **V.C. Rangadurai v. D. Gopalan and others**

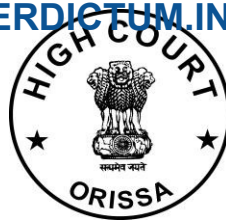


reported in (1979) 1 SCC 308 in a majority judgment in an appeal filed under Section 38 of the 1961 Act speaking through V.R. Krishna Iyer, J. observed as follows :

“4. Law is a noble profession, true; but it is also an elitist profession. Its ethics, in practice, (not in theory, though) leave much to be desired, if viewed as a profession for the people. When the Constitution under Article 19 enables professional expertise to enjoy a privilege and the Advocates Act confers a monopoly, the goal is not assured income but commitment to the people — the common people whose hunger, privation and hamstrung human rights need the advocacy of the profession to change the existing order into a Human Tomorrow. This desideratum gives the clue to the direction of the penance of a deviant geared to correction. Serve the people free and expiate your sin, is the hint.

5. Law's nobility as a profession lasts only so long as the members maintain their commitment to integrity and service to the community. Indeed, the monopoly conferred on the legal profession by Parliament is coupled with a responsibility — a responsibility towards the people, especially the poor. Viewed from this angle, every delinquent who deceives his common client deserves to be frowned upon. This approach makes it a reproach to reduce the punishment, as pleaded by the learned counsel for the appellant.

6. But, as we have explained at the start, every punishment, however has a functional duality — deterrence and correction. Punishment for professional misconduct is no exception to this 'social justice' test. In the present case, therefore, from the punitive angle, the deterrent component persuades us not to interfere with the suspension from practice reduced 'benignly' at the appellate level to one year. From the correctional angle, a gesture from the Court



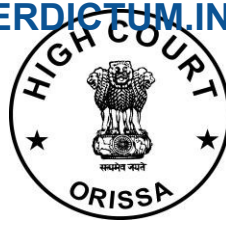
may encourage the appellant to turn a new page. He is not too old to mend his ways. He has suffered a litigative ordeal, but more importantly he has a career ahead. To give him an opportunity to rehabilitate himself by changing his ways, resisting temptations and atoning for the serious delinquency, by a more zealous devotion to people's causes like legal aid to the poor, may be a step in the correctional direction.

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11. Wide as the power may be, the order must be germane to the Act and its purposes, and latitude cannot transcend those limits. Judicial 'Legisputation' to borrow a telling phrase of J. Cohen [Ed.: Dickerson: The Interpretation and Application of Statutes, p. 238.] is not legislation but application of a given legislation to new or unforeseen needs and situations broadly falling within the statutory provision. In that sense, 'interpretation is inescapably a kind of legislation' [Ed. : Dickerson : The Interpretation and Application of Statutes, p. 238.]. This is not legislation stricto sensu but application, and is within the court's province.

12. We have therefore sought to adapt the punishment of suspension to serve two purposes — injury and expiation. We think the ends of justice will be served best in this case by directing suspension plus a provision for reduction on an undertaking to this Court to serve the poor for a year. Both are orders within this Court's power."

7. In the case of ***M. Veerabhadra Rao v. Tek Chand*** reported in ***1984 (Supp) SCC 571***, a three-Judge Bench of the Hon'ble Supreme Court considered the relevant provisions contained in the Bar Council of India Rules with reference to standards of professional conduct and



etiquette and also sub-section (3) of Section 35 of the 1961 Act. The

Hon'ble Apex Court observed thus:

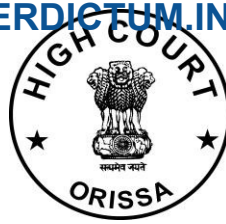
“28. Adjudging the adequate punishment is a ticklish job and it has become all the more ticklish in view of the miserable failure of the peers of the appellant on whom jurisdiction was conferred to adequately punish a derelict member. To perform this task may be an unpalatable and onerous duty. We, however, do not propose to abdicate our function howsoever disturbing it may be.

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30.If these are the high expectations of what is described as a noble profession, its members must set an example of conduct worthy of emulation. If any of them falls from that high expectation, the punishment has to be commensurate with the degree and gravity of the misconduct.”

Thus, the yardstick or standard as expected from members of the bar while dealing with the litigants who come to the doorsteps of justice has been set to be of a high standard, what is also set out is that corresponding high standard of professional integrity expected of advocates.

8. In the case of *An Advocate vrs. Bar Council of India and another*, reported in *1989 Supp (2) SCC 25*, the Hon'ble Apex Court has

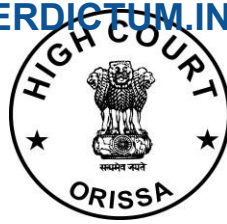


dealt with the principle to be followed in Disciplinary proceedings and has held that;

“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) essentially the proceedings are quasi-criminal in character inasmuch as a member of the profession can be visited with penal consequences which affect his right to practise the profession as also his honour; under Section 35(3)(d) of the Act, the name of the advocate found guilty of professional or other misconduct can be removed from the State Roll of Advocates. This extreme penalty is equivalent of death penalty which is in vogue in criminal jurisprudence. The advocate on whom the penalty of his name being removed from the roll of advocates is imposed would be deprived of practising the profession of his choice, would be robbed of his means of livelihood, would be stripped of the name and honour earned by him in the past and is liable to become a social apartheid. A disciplinary proceeding by a statutory body of the members of the profession which is statutorily empowered to impose a punishment including a punishment of such immense proportions is quasi-criminal in character;

(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



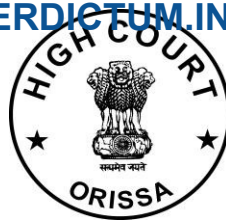
surmise, conjecture or suspicion. It will also be essential to consider the dimension regarding mens rea.”

This proposition is hardly open to doubt or debate particularly having regard to the view taken by this Court in the case of ***L.D. Jaisinghani v. Naraindas N. Punjabi*** reported in (1976) 1 SCC 354 wherein Ray, C.J., speaking for the Court has observed: (SCC p. 358, para 9)

“9. In any case, we are left in doubt whether the complainant's version, with which he had come forward with considerable delay was really truthful. We think that in a case of this nature, involving possible disbarring of the advocate concerned, the evidence should be of a character which should leave no reasonable doubt about guilt. The Disciplinary Committee had not only found the appellant guilty but had disbarred him permanently.”

(emphasis added)

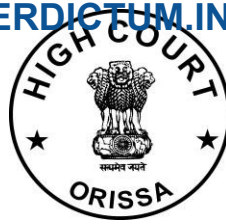
(iii) in the event of a charge of negligence being levelled against an advocate, the question will have to be decided whether negligence simpliciter would constitute misconduct. It would also have to be considered whether the standard expected from an advocate would have to answer the test of a reasonably equipped prudent practitioner carrying reasonable workload. A line will have to be drawn between tolerable negligence and culpable negligence in the sense of negligence which can be treated as professional misconduct exposing a member of the profession to punishment in the course of disciplinary proceedings. In forming the



opinion on this question the standards of professional conduct and etiquette spelt out in Chapter 2 of Part VI of the Rules governing advocates, framed under Section 60(3) and Section 49(1)(g) of the Act, which form a part of the Bar Council of India Rules may be consulted. As indicated, in the preamble of the Rules, an advocate shall, at all times compose himself in a manner befitting his status as an officer of the court, a privileged member of the community and a gentleman bearing in mind that what may be lawful and moral for one who is not a member of the Bar may still be improper for an advocate and that his conduct is required to conform to the rules relating to the duty to the court, the duty to the client, to the opponent, and the duty to the colleagues, not only in letter but also in spirit.

It is in the light of these principles the Disciplinary Committee would be required to approach the question as regards the guilt or otherwise of an advocate in the context of professional misconduct levelled against him. In doing so apart from conforming to such procedure as may have been outlined in the Act or the Rules, the Disciplinary Authority would be expected to exercise the power with full consciousness and awareness of the paramount consideration regarding principles of natural justice and fair play.”

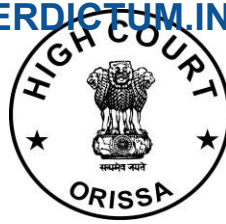
9. The Hon’ble Apex Court from time to time has also dealt with instances of professional or other misconduct. An advocate owes a duty to the client as well as to the court. In cases where an advocate has violated the confidence of the Client have been dealt with sternly by the courts. In the case of ***Pandurang Dattatraya Khandekar Vs. Bar***



Council of Maharashtra, Bombay and others, reported in (1984) 2 SCC 556 dealt with a case where false affidavits had been drawn; *Harish Chander Singh Vs. S.N. Tripathi*, reported in (1997) 9 SCC 694 dealt with a case where the advocate had misused the signatures of his client; another dimension of misconduct has been highlighted in the case of *V.C. Rangadurai Vs. D. Gopalan and others*, reported in (1979) 1 SCC 308.

10. There are also allegations against the Petitioner that he has acted without authority i.e., by using some blank papers with the signatures of the husband of the informant which amount to professional misconduct as well, as has been held by the Hon'ble Apex Court in the cases of *Byram Pestonji Gariwala Vs. Union Bank of India and others* reported in (1992) 1 SCC 31 and *Narain Pandey Vs. Pannalal Pandey* reported in (2013) 11 SCC 435. In any view of the matter, at the present stage the allegations albeit be grave need to be looked into by a body empowered and competent to do so.

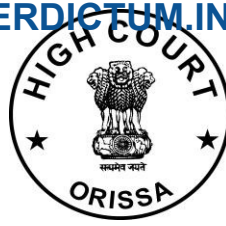
11. The case in hand reminds the memorable words of the Chief Justice Marshall on Legal Ethics which are not only global but also



eternal, he said:

“The fundamental aim of Legal Ethics is to maintain the honour and dignity of the Law Profession, to secure a spirit of friendly co-operation between the Bench and the Bar in the promotion of highest standards of justice, to establish honourable and fair dealings of the council with his client opponent and witnesses; to establish a spirit of brotherhood in the Bar itself, and to secure that lawyers discharge their responsibilities to the community generally.”

12. The Hon’ble Supreme Court in the case of ***Shambhu Ram Yadav vs. Hanuman Das Khattry***, reported in ***(2001) 6 SCC 1 : 2001 SCC (Cri) 949 : 2001 SCC OnLine SC 867*** have dealt with the similar case where an advocate was accused of demanding bribe from the client allegedly to influence the judge ceased of the matter. The Hon’ble Supreme Court held that it is the most heinous form of professional misconduct and had severely dealt with the issue. It was held that one expects from advocates at the bar a very high standard of morality and unimpeachable sense of legal and ethical propriety. Since the Bar Councils under the Advocates Act have been entrusted with the duty of guarding the professional ethics, they have to be more sensitive to the potential disrepute on account of action of a few black sheep which



may shake the credibility of the profession and thereby put at stake other members of the Bar.

13. In *R. Muthukrishnan vs. Registrar General, High Court of Judicature at Madras*, reported in (2019) 16 SCC 407 : (2020) 2 SCC (Cri) 300 : (2020) 2 SCC (Civ) 502 : 2019 SCC OnLine SC 105 the Hon'ble Supreme Court has quoted Alexander Cockburn that "the weapon of the advocate is the sword of a soldier, not the dagger of the assassin". It is the ethical duty of lawyers not to expect any favour from a Judge. He must rely on the precedents, read them carefully and avoid corruption and collusion of any kind, not to make false pleadings and avoid twisting of facts. In a profession, everything cannot be said to be fair even in the struggle for survival. The ethical standard is uncompromisable. Honesty, dedication and hard work is the only source towards perfection. An advocate's conduct is supposed to be exemplary. In case an advocate causes disrepute of the Judges or his colleagues or involves himself in misconduct, that is the most sinister and damaging act which can be done to the entire legal system. Such a



person is definitely deadwood and deserves to be chopped off. It has further been held (supra) that;

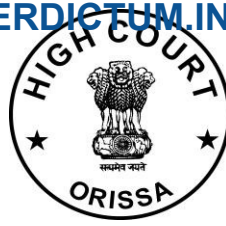
“26. The high values of the noble profession have to be protected by all concerned at all costs and in all the circumstances cannot be forgotten even by the youngsters in the fight of survival in formative years. The nobility of the legal profession requires an advocate to remember that he is not over attached to any case as advocate does not win or lose a case, real recipient of justice is behind the curtain, who is at the receiving end. As a matter of fact, we do not give to a litigant anything except recognizing his rights. A litigant has a right to be impartially advised by a lawyer. Advocates are not supposed to be money guzzlers or ambulance chasers.”

14. In the case of *Vikas Deshpande vs. Bar Council of India and others*, reported in (2003) 1 SCC 384 : 2003 SCC (Cri) 321 : 2002 SCC OnLine SC 1134, the Hon'ble Supreme Court has held that the relationship between an advocate and his client is of trust and therefore sacred. Such acts of professional misconduct and the frequency with which such acts are coming to light distresses as well as saddens the court. Preservation of the mutual trust between the advocate and the client is a must otherwise the prevalent judicial system in the country would collapse and fail. Such acts do not only affect the lawyers found guilty of such acts but erode the confidence of the general public in the



prevalent judicial system. It is more so, because today hundred percent recruitment to the Bench is from the Bar starting from the subordinate judiciary to the higher judiciary. Honest and hard-working Judges cannot be found unless honest and hard-working lawyers are groomed. Time has come when the society in general, respective Bar Councils of the States and the Judges should take note of the warning bells and take remedial steps and nip the evil or the curse in the bud.

15. The discussions as hereinabove would reveal that in the facts and circumstances of the present case, a strong action needs to be taken in order to maintain the faith of the litigant and the society at large. Provisions under Chapter-V of the Advocates Act, 1961 and the Bar Council of India Rules, 1975 provide for a mechanism of dealing with cases of professional misconduct on the part of advocates. It also provides for an opportunity of hearing to both the sides to arrive at a conclusion either way. As discussed hereinabove the nature of the allegation levelled in the present F.I.R. make out a case which need to be looked into by the Disciplinary Committee of the Bar Council to examine whether a case of professional “misconduct” is made out or not



on the part of the Petitioner herein.

16. In view of the discussion hereinabove, before disposing of this application, this Court deem it necessary to issue directions, in the facts of the present case, as required to subserve the cause of justice. This Court, therefore, directs the Bar Council of Orissa to hold an inquiry into the allegations. The Registrar (Judicial) of this Court is directed to forward a copy of this judgment to the Secretary, Bar Council of Orissa. The Bar Council of Orissa shall hold Disciplinary Proceedings uninfluenced by any observations made above and by affording ample opportunity to all concerned to participate in the proceedings.

17. In so far as the prayer to quash the F.I.R. as sought in the present petition is concerned, this Court is not inclined to do so as the allegations are not only at a nascent stage of investigation but also as quite serious in nature as the name of a former Judge of this Court has been soiled. The informant has given meticulous details of the demands made which correlate to the period when the matter was pending before this Court. Therefore, the present petition deserves no merit. Hence, the CRLMC is dismissed with a cost of Rs.10,000/- (Rupees ten thousand) to be



deposited by the Petitioner before the District Legal Services Authority,
Cuttack within two weeks.

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S.S. Mishra
(Judge)

The High Court of Orissa, Cuttack
Dated the 29th October, 2024/Swarna

Signature Not Verified

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Signed by: SWARNAPRAVA DASH
Reason: Authentication
Location: High Court of Orissa
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