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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

HARISH CHANDRA TIWARI

VERSUS BAIJU

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INTRODUCTION:

The Hon'ble Supreme Court of India addressed the problem of the attorneys' professional misconduct in the case HARISH CHANDRA TIWARI V. BAIJU and established some guidelines that the Bar Council can take into consideration when determining the severity of the punishment. The Court further stated that the theft of a client's funds by an attorney is thought to be the most serious offence, and that there is no justification for reducing the severity of the punishment because it clearly violates the client's trust and tarnishes the reputation of the noble profession of advocacy.

FACTS OF THE CASE:

In this instance, Mr. Baiju engaged Mr. Harish Chandra Tiwari for a land acquisition case. Mr. Tiwari has been working in the district courts of Uttar Pradesh, primarily in the Lakimpur Keri District, since 1982 and is registered as an advocate with the Bar Council of UP. Mr. Baiju was the plaintiff in the case for which the State submitted a compensation of Rs. 8118 in the court after Mr. Baiju prevailed. Mr. Baiju was an elderly, defenceless, and impoverished imbecile. On September 2, 1987, Mr. Harish Chandra Tiwari took the specified sum from the Court on behalf of his client without informing him and without returning the money to Mr. Baiju, to whom it was due.

After learning about this over a lengthy period of time and being unable to get his lawyer to reimburse him, Mr. Baiju filed a complaint with the Bar Council of UP, asking them to look into the situation and take appropriate disciplinary action against the Appellant. On July 12, 1988, the Appellant acknowledged that he had been hired to represent the Respondent in a land acquisition case. He took the money from the court but later gave it back to the Respondent after deducting the necessary costs and legal fees.

A compromise between the appellant and the respondent has been reached, and there is no need to take any further action on the complaint that the respondent filed, according to an affidavit that the appellant filed on the respondent's behalf before the Bar Council of UP on August 3, 1988, without the respondent's knowledge. The State Bar Council summoned the Respondent for the verification of the aforementioned affidavit after being unpersuaded and learning that the Respondent had denied the contents of the affidavit, claimed that the Appellant and the Respondent had not reached a compromise, and denied receiving any compensation.

Following the aforementioned incident, the case was handed over to the Bar Council of India pursuant to Section 36B (2) of the Advocates Act of 1961 in order to begin the disciplinary procedures against the Appellant. After reviewing the case materials, the Disciplinary Committee came to the conclusion that the statement submitted by the appellant was false and forged. Due to Mr. Harish Chandra Tiwari's actions and his evasive, imprecise testimony, it is clear that Mr. Harish neglected to compensate Mr. Baiju, an uneducated, impoverished man whose money had been stolen by the lawless Advocate, after accepting the check from the land acquisition officer in his own name.¹

The factual situation is still against the appellant because he was unable to demonstrate that he had made the payment to the respondent. The appellant committed professional misconduct, damaged the standing of the entire moral vocation, and betrayed confidence when he withdrew the money and kept it from his client for more than 11 years. After the Disciplinary Committee found Mr. Harish guilty of breach of trust for misappropriating the client's funds and sentenced him to a 3-year suspension from the practise of law. Displeased with the Disciplinary Committee's ruling, the Petitioner has filed an appeal with the Supreme Court of India in accordance with Section 38 of the Advocates Act of 1961.²

ISSUES:

1. Will the advocate's name be struck from the Bar Council of Uttar Pradesh's Roll as an additional penalty or not?
2. What criteria must be taken into account when the Disciplinary Committee decides on a penalty for misconduct that has been proven?

¹ <https://www.legalserviceindia.com/legal/article-12663-harish-chandra-tiwari-v-s-baiju-misappropriation-of-client-s-money.html>

² <https://indiankanoon.org/doc/1815097/>

3. Can the Supreme Court change or modify the sanction imposed by the Bar Council of India's Discipline Committee?

LAWS APPLICABLE:

- Supreme Court appeal under Section 38 of the Advocates Act of 1961.³
- Disposal of Disciplinary Actions, Section 36B (2) of the Advocates Act of 1961.⁴
- Punishment of Counsel for Misconduct under Section 35 of the Advocates Act of 1961.⁵

ARGUMENTS FROM BOTH THE PARTIES:

The appellant argued that he is not at all deserving of punishment and argued that he had returned the funds to his customer. The appellant further argued that he took the money out of court to return it to his client after deducting his fees and expenses, and he also filed an affidavit saying that he and his client had reached a compromise.

Additionally, the Appellant mentioned two citations in his favour in which the sanction imposed did not result in the Advocate's removal from the Roll. The appellant referenced Prahlad Saran Gupta vs. Bar Council of India and Others, in which the dishonest lawyer held onto a sum of money worth Rs. 1500 without adequate justification for a period of 4 years before submitting the money to the court without paying his client any of it. As a result, it was determined that the advocate's actions did not comport with professional standards, and the court censured the offending advocate.

The Appellant also cites the case of BR Mahalkari vs. YB Zurange, in which the attorney kept the amount of Rs. 1176, which he later returned to the client before the disciplinary committee proceedings began. As a result, the committee determined that the advocate had engaged in improper conduct and barred him from the field for three years.

JUDGEMENT:

The Supreme Court stated in the subsequent case that the cases cited by the appellant are of no assistance because the circumstances of each case are completely distinct and speak for

³ <https://indiankanoon.org/doc/1460739/>

⁴ <https://indiankanoon.org/doc/1175974/>

⁵ <https://indiankanoon.org/doc/1590252/>

themselves. As a result, the Supreme Court determined that the Appellant's wrongdoing is extensive. The Petitioner was punished by having his name removed from the list of attorneys and was declared ineligible to practise law in any Indian court or before any government agency or individual. The Supreme Court ruled that the cases the appellant mentioned would not be helpful in reducing the severity of punishment.

CASE COMMENTRY:

I agree with the judgement made in this case. The Supreme Court addressed and made a decision on the aforementioned issues in this specific case while also considering the case's facts and circumstances. In his appeal, the appellant argued that he is not subject to punishment and that he had given the customer his money back. However, in the Supreme Court's ruling, the Appellant was unable to establish and was unable to present even one piece of evidence to support his innocence. The Appellant, on the other hand, was found to have had the sum of Rs. 8118 in his possession for more than 11 years, which constitutes professional misconduct. In addition, the Appellant denigrated the reputation of the noble field of advocacy and engaged in criminal breach of trust.

In addition to the aforementioned facts, the appellant also submitted a forged statement on behalf of his client claiming that they had reached a settlement before the Disciplinary Committee in an effort to stop the disciplinary action being taken against him.

Therefore, in this case the advocate has purely violated ethics and his duty towards the client. It is to be noted that the primary duty of the advocate is towards the client and his act is purely the exploitation of the client.