

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.**

CWP No. 3987 of 2019
Order reserved on: 13.11.2020.
Date of decision: 20.11.2020

Nirmla Devi ...Petitioner.
Versus
State of H.P. ...Respondent.

Coram:

Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?¹ Yes

For the Petitioner: Mr. B.B.Vaid, Advocate.

For the Respondents: Mr. Ashok Sharma, Advocate General, with Mr. Vinod Thakur, Mr. Shiv Pal Manhans, Additional Advocate Generals, Mr. Bhupinder Thakur, Ms. Seema Sharma and Mr. Yudhbir Singh Thakur, Dy. Advocate Generals for the respondent/State. Mr. N.S. Chandel, Senior Advocate, with Mr. Vijender Katoch, Advocate, for Mr. Adhiraj Singh Thakur. Mr. N.K. Thakur, Senior Advocate, with Mr. Divya Raj Singh Thakur, Advocate, for Mr. Maneesh Kumar Bali. Mr. Rakesh Raghuvanshi, Oath Commissioner.

Justice Tarlok Singh Chauhan, J.

The instant petition has been filed by the mother of the alleged prosecutrix for the grant of following substantive reliefs:

“It is, therefore, prayed that this writ petition be allowed with costs and by issuing a

¹ Whether reporters of the local papers may be allowed to see the judgment? yes

writ in the nature of mandamus or any other writ, direction or order, the respondents be directed to constitute a special investigation team for the investigation of the case FIR No.151 of 2019 dated 20.7.2019 registered with Police Station Sadar, Shimla, under Sections 376 and 506 of the IPC read with Section 3(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to take all appropriate steps for procuring the presence of the accused in India and to complete the investigation of the case promptly and properly."

2. It is averred that the prosecutrix is a brilliant child, who in the year 2009 went to Australia for securing a better future and for becoming a helping hand to her family.

3. In January, 2018 the prosecutrix came in contact with one Vikram Singh, who expressed his willingness to marry her. In January and February, 2019 Vikram Singh allured the prosecutrix and developed physical relations with her with a promise to marry her. Not only this, Vikram Singh met the petitioner and her son at Chandigarh in the month of March, 2019 and expressed his willingness to marry

the prosecutrix and even stayed at the house of the petitioner at Shimla where he committed sexual intercourse with the prosecutrix in absence of the petitioner and her family members.

4. The prosecutrix and Vikram Singh returned to Australia in the end of March, 2019 and in May, 2019, the prosecutrix learnt that she had become pregnant from the loins of Vikram Singh. Therefore, she requested him to marry her, but he flatly refused. Thereafter, repeated requests were made by the prosecutrix, but the same fell on deaf-ears, constraining her to lodge a complaint with the Superintendent of Police at Shimla against Vikram Singh and in consequence thereof, an FIR No.151 of 2019 dated 20.7.2019 was registered with Police Station Sadar, Shimla under Sections 376 and 506 of the IPC read with Section 3(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5. Thereafter, the FIR alongwith records of investigation were transferred to Kullu. It was during the course of hearing of this petition that it was noticed

that the aforesaid Vikram Singh had filed a bail application being Cr.MP(M) No.706 of 2020 and another petition under Section 482 Cr.P.C. being Cr.MMO No. 246 of 2020, wherein the petitioner (Vikram Singh) was shown to be a permanent resident of 8, Becharry Road, Blacktown New South Wales (Australia), but the affidavit that was filed in support of the petition dated 15.7.2020 showed that the same was attested at Shimla. This led to the passing of the orders dated 28.8.2020 and 15.9.2020, which read as under:

“CWP No.3987 of 2019

*28.8.2020: Presence: Mr. Aman Parth Sharma and Mr. Rakesh Sharma, Advocates, vice Mr. B.B.Vaid, Advocate, for the petitioner.
Mr. Ashok Sharma, Advocate General with Mr. Vinod Thakur, Mr. Desh Raj Thakur, Addl. AGs and Ms. Seema Sharma, Dy.A.G., for the respondent.*

In the successive status reports filed by the Sub Divisional Police Officer, Manali, it has been stated that accused Vikram Singh is residing in Australia, whereas learned Counsel for the petitioner would state that if that was so, then there was no question of the accused having filed application for bail as also for quashing of the FIR, which have been prepared and thereafter filed by the accused being at Shimla.

He has invited our attention to the bail application being Cr.MP (M) No. 706 of 2020. We have gone through the bail application, which appears to

be registered on the basis of online, but we are not in a position to find out whether the affidavit accompanying the petition was attested at Shimla or not. We have called for the hard copy, but the same as per requirement has not been submitted.

Nonetheless, a perusal of the affidavit accompanying Cr.MMO No. 246 of 2020 clearly goes to indicate that even though the petitioner is mentioned therein to be a permanent resident of 8, Becharry Road, Blacktown New South Wales (Australia), but on 15.7.2020 the affidavit that has been duly signed by the petitioner was attested at Shimla and the same date appears on the power of attorney.

It is not possible that the accused could have been at Shimla on 15.7.2020 and on the same day in Australia.

Therefore, issue notice to the Counsel representing the accused in Cr.MMO i.e. Mr. Adhiraj Singh Thakur, Advocate, Chamber No. 332, Near H.P. High Court Shimla and Mr. Maneesh Kumar Bali, Advocate, H.No. 2408 Sector 71, Mohali (Punjab).

In addition thereto, notice be issued to the Oath Commissioner Mr. Rajesh Raghuwanshi, who has attested the affidavit on 15.7.2020. The respective Advocates and Oath Commissioner are directed to explain their position.

List along with Cr.MMO No.246 of 2020, on **11.9.2020** in the open Court. In the meanwhile fresh status report be filed.”

**“CWP No.3987 of 2019 a/w
Cr.MMO No.246 of 2020**

15.09.2020: Present: Mr. B.B.Vaid, Advocate, for the petitioner.

Mr. Ashok Sharma, Advocate
Geeneral with Mr. Ranjan Sharma,
Mr. Vikas Rathore, Mr. Vinod
Thakur, Mr. Desh Raj Thakur, Addl.

Advocate Generals and Ms. Seema Sharma, Mr. Bhupinder Thakur and Ms. Svaneel Jaswal, Dy. Advocate Generals, for respondents No.1 and 2-State.

Mr. N.S. Chandel, Senior Advocate with Mr. Vinod Gupta, Advocate, for Mr. Adhiraj Singh Thakur.

Mr. N.K.Thakur, Senior Advocate, with Mr. Divya Raj Singh Thakur, Advocate, for Mr. Maneesh Kumar Bali.

Mr. Rakesh Raghuvanshi, Oath Commissioner, in person.

(Through Video Conferencing)

Heard. Let a fresh status report be filed on the personal affidavit of the Superintendent of Police, Kullu, as to the steps taken by the Police for securing the presence of the accused and how the said accused managed to get a bridging visa despite the pendency of criminal cases.

For this limited purpose, list on 22nd September, 2020. Thereafter, Mr. Maneesh Kumar Bali, Mr. Adhiraj Singh Thakur and Mr. Rakesh Raghuvanshi, Advocates to file their affidavits, if not already filed, in terms of order passed on 28.08.2020, which shall be considered on 6th October, 2020, when Mr. Maneesh Kumar Bali, Advocate shall personally remain present before this Court."

6. In compliance to the aforesaid orders, Sh. Rakesh Raghuvanshi, Advocate, who attested the affidavit in his capacity as Oath Commissioner, has filed personal reply, which reads as under:

"1. That the Hon'ble Court was pleased to issue the notice to the Oath Commissioner (Rakesh

Raghuwanshi) to explain the position of affidavit attested in Cr.MMO No.246 of 2020.

2. *That it is humbly submitted that on 15.7.2020 an Advocate in fully dressed enter in the Bar Room to get the petition attested and he disclosed his name as Munish Bali, Advocate. When he presented petition before the Oath Commissioner to get it attested, to different addresses of the deponent appear in the affidavit(one from Haryana and other from Australia), when the Oath Commissioner enquired about the deponent, Advocate told that his client is sitting out side the Court premises as he was not permitted to enter the Bar Room due to Covid 19 pandemic. That on believing the Advocate, Oath Commissioner attested the affidavit on the identification of Advocate in good faith believing his version as correct.*

3. *That it is humbly submitted that the Oath Commissioner attested the affidavit without any malice extraneous reason but in good faith.*

It is, therefore, most respectfully prayed that notice dated 28.8.2020 issued by the Hon'ble Court to the Oath Commissioner may very kindly be dropped in the interest of justice."

7. Thereafter, Sh. Maneesh Kumar Bali, Advocate, filed his personal affidavit dated 8.10.2020, which reads as under:

“I, Maneesh Kumar Bali S/o Lt. Sh. Surinder Nath Bali, aged about 39 years, occupation Advocate, R/o House No. 2408, Sector 71, SAS Nagar, Mohali, Punjab, do solemnly affirm and declare on oath:

1. That at the very outset deponent without any explanation/justification humbly tenders his sincere, un-conditional and un-qualified apology to the Hon’ble Court, for his mistakes/conduct, which led the Hon’ble Court to issue notice at the cost of the valuable time of the Hon’ble Court.

2. That deponent with a sense of deep repentance of his conduct which caused inconvenience to the local Counsel also, seeks the indulgence of the Hon’ble Court for condonation of the mistake occurred.

3. That deponent being responsible officer of the Court admits the mistake and undertakes to be cautious and vigilant in future and prays for the discharge of the notice.

Verified at Shimla on 08.10.2020.”

8. Lastly, the so called local Counsel Mr. Adhiraj Singh Thakur, Advocate filed his affidavit, which reads as under:

“I, Adhiraj Thakur, Advocate, aged 38 years, S/o Sh. Raghuraj Thakur R/o Village Berkiser, P.O. Chambaghat, Tehsil and District Solan, H.P., do

hereby solemnly declare and affirm on oath as under:

1. That I was enrolled as an Advocate with Bar Council of Himachal Pradesh in the year 2009. After my enrolment as Advocate the deponent joined practice in the Honourable High Court of Himachal Pradesh and District Courts, Solan. In the year 2016, I was empanelled as Centre Government Panel Counsel in Armed Forces Tribunal, Chandimandir, Panchkula, Haryana. After my empanelment as such, the deponent started practice in Armed Forces Tribunal, where I came in contact with Mr. Maneesh Kumar Bali, Advocate, who was also practising there as empanelled counsel for the Centre Government.

2. On 12/13th July, Shri M.K.Bali, contacted me on either of my mobile numbers 9736528033 & 7018965409, I do not remember exactly on which number he called me as both the numbers (SIM Cards) are in the same Mobile. Mr. Bali asked me to give contact number of some clerk as he intended to file some petition in the Honourable High Court of Himachal Pradesh. On 13th July, 2020, I supplied him the mobile number of Nitin Munshi through my whatsapp No.9736528033. Nitin Munshi is not my Munshi, rather he is Munshi of Mr. Rajinder Dogra, Advocate, who is also Senior Panel Counsel at Armed Forces Tribunal, Chandimandir, Panchkula, Haryana.

3. On 28.8.2020, I was informed telephonically by one of my colleagues in High Court (Mrs. Tim Saran Sharma) that notice has been issued to me by the Honourable Court in the matter figuring at Sr.No. 516 titled as Nirmla Devi versus State. Thereafter, I checked the cause list, downloaded the order and was shocked and surprised, as to why this Honourable Court has issued notice to me as I had no concern with the said case. On 31.8.2020, I inspected the file of CWP No. 3987 of 2020 and CrMMO No.246 of 2020 in the office of Advocate General where I came to know that a petition u/s 482 Cr.P.C. having case No.CRMMO No.246 of 2020 has been filed by Shri M.K. Bali in Honourable Court, wherein I have been shown as local counsel.

4. I was shocked that my signatures have been forged on the petition and vakalatnama in case No.CRMMO 246 of 2020. I have never signed the said petition nor the power of attorney. Till the date of inspection of the file, I was not aware that Mr. Bali has filed the said petition before the Hon'ble High Court by forging my signatures and misuse by HIM No. I am neither the counsel nor I know anything about the present case. It is being made clear here that till the inspection of the file in Advocate General office, I was not aware that any such petition

has been filed by Mr. Bali in the Honourable High Court.

5. That during the court proceedings the deponent happened to inspect the file and the perusal of the objection sheet indicates that there was objection on 23.07.2020 that the "HIM no of advocate not registered". This objection was raised by the registry as the petition indicated the enrolment no of Maneesh Kumar Bali advocate as P-1456-2009 which was not registered with the High Court. This makes one thing very clear till 23.07.2020 the forged signatures of the deponent were not there on the power of attorney. Thereafter the petition was filed again on 11.08.2020 and on the same day objection was raised by the registry at Sr.No.3 that the application has not been signed by one of the Ld.Counsel. In order to remove the said objection my signatures were again forged on the application and the objections were removed by Mr. Bali and petition was refilled again. This fact is further fortified from the perusal of power of attorney that in the power of attorney only the name of Maneesh Kumar Bali is reflected at the top in the column where the name of advocate is reflected for appointment as advocate for the party and the name of deponent has been reflected at the bottom in the power of attorney, the placement for signing of the advocate. Another fact which proves the innocence of the

deponent is that the name of Maneesh Kumar Bali is typed whereas the name of deponent is hand written. These all facts go to prove only one fact that the signatures of deponent have been forged only to wriggle out with the objection of local counsel behind the back of deponent. Without going into the further details, it is humbly submitted that Sh. Maneesh Kumar Bali has admitted his fault in affidavit dated 8.10.2020 and has tendered apology for his illegal acts. In the light of aforesaid submissions, it is humbly requested that the deponent may kindly be ordered to be discharged from the notice so issued by this Honourable Court.

It is further affirmed on oath that the contents of this affidavit of mine are correct and true to the best of my knowledge and belief and nothing material has been concealed therefrom.

Verified at Shimla on this the 9th day of November, 2020."

9. At the outset, we need to observe that it is not at all in dispute that Vikram Singh was not in India on the date when the affidavit was sworn before the Oath Commissioner. As per the reply of the Oath Commissioner (Rakesh Raghuvanshi), it was Sh. Maneesh Kumar Bali, Advocate, who told him that his client was sitting outside the Court premises and

was not being permitted to enter the Bar Room due to Covid-19 pandemic. It was only thereafter that Oath Commissioner believing the Advocate, attested the affidavit on the identification of Sh. Maneesh Kumar Bali in good faith.

10. In the given circumstances, the conduct of Mr. Rakesh Raghuvanshi cannot be viewed with suspicion. Even though we need to convey a word of caution that attestation of an affidavit is not an empty formality as held by the three Judges' Bench of the Hon'ble Supreme Court in ***M. Veerabhadra Rao vs. Tek Chand AIR 1985 SC 28.***

11. As regards the conduct of Sh. Adhiraj Singh Thakur, he has unnecessarily been dragged into this controversy, as is evident from his reply, which has not at all been rebutted by Sh. Maneesh Kumar Bali, Advocate.

12. Adverting to the role of Sh. Maneesh Kumar Bali, Advocate, he in his affidavit (supra) has clearly without any explanation/justification tendered his sincere, unconditional and unqualified apology for his

mistakes/conduct which led to this Court for issuing notice. But then merely because the Advocate has pleaded guilty, the same would not absolve him of the professional misconduct.

13. Section 35 of the Advocates Act, 1961 (for short 'Act'), reads as under:

"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.

(1-A) The State Bar Council may, either of its own motion or on application made to it by any person interested, withdraw a proceeding pending before its disciplinary committee and direct the inquiry to be made by any other disciplinary committee of that State Bar Council.

2. The disciplinary committee of a State Bar Council, shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the advocate concerned and to the Advocate General of the State.

3. The disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate General an opportunity of being

heard, may make any of the following orders, namely:-

(a) dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;

(b) reprimand the advocate;

(c) suspend the advocate from practice for such period as it may deem fit;

(d) remove the name of the advocate from the State roll of advocates.

(4) Where an advocate is suspended from practice under clause (c) of sub-section (3), he shall, during the period of suspension, be debarred from practising in any Court or before any authority or person in India.

(5) Where any notice is issued to the Advocate General under sub section (2), the Advocate General may appear before the disciplinary committee of the State Bar Council either in person or through any advocate appearing on his behalf.

Explanation. -In this Section, [Section 37 and section 38], the expressions "Advocate General" and Advocate General of the State" shall, in relation to the Union Territory of Delhi, mean the Additional Solicitor General of India."

14. The Court while interpreting Section 35 of the Act, cannot be oblivious of the necessity of the

standard and ethics that a member of the legal profession should maintain, to retain the nobility of this profession. Any contrary approach to the issue would prove the legendary American lawyer Clarence Darrow's (1857-1930) (widely renowned as the Attorney for the Damned) statement, "the trouble with law is lawyers" true.

15. Noticeably, misconduct as envisaged in the aforesaid Section, is not defined. However, this provision has come up for consideration before the Hon'ble Supreme Court on number of occasions and we may at this stage refer to the judgment rendered by Hon'ble Supreme Court in **R.D. Saxena vs. Balram Prasad Sharma (2000) 7 SCC 264** wherein while considering the expression misconduct, it was observed as under:

"19. Misconduct envisaged in [Section 35](#) of the Advocates Act is not defined. The section uses the expression "misconduct, professional or otherwise". The word "misconduct" is a relative term. It has to be considered with reference to the subject matter and the context wherein such

term occurs. It literally means wrong conduct or improper conduct.

20. *Corpus Juris Secundum*, contains the following passage at page 740 (vol.7):

Professional misconduct may consist in betraying the confidence of a client, in attempting by any means to practise a fraud or impose on or deceive the court or the adverse party or his counsel, and in fact in any conduct which tends to bring reproach on the legal profession or to alienate the favourable opinion which the public should entertain concerning it.

21. The expression "professional misconduct" was attempted to be defined by Darling, J., in *A Solicitor ex parte the Law Society* [(1912) 1 KB 302] in the following terms:

"If it is shown that an Advocate in the pursuit of his profession has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency, then it is open to say that he is guilty of professional misconduct."

22. In this context it is to be mentioned that the aforesaid definition secured approval by the Privy Council in *George Frier Grahame vs. Attorney-General*, AIR 1936 PC 224). We are also inclined to take that wide canvass for understanding the import of the expression "misconduct" in the context in which it is referred to in [Section 35](#) of the Advocates Act."

16. The Scope of Section 35 of the Act was considered by the Hon'ble Supreme Court in **N.G. Dastane vs. Shrikant S. Shivde and another (2001) 6 SCC 135** and while approving the ratio laid down in **R.D. Saxena** case (supra) held as under:

“15. Chapter V of the Advocates Act 1961 (for short the Act) contains provisions for dealing with the conduct of Advocates. The word misconduct is not defined in the Act. Section 35 of the Act indicates that the misconduct referred to therein is of a much wider import. This can be noticed from the wordings employed in sub-section (1) of that Section. It is extracted herein:

“35. (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.”

16. The collocation of the words “guilty of professional or other misconduct” has been used for the purpose of conferring power on the Disciplinary Committee of the State Bar Council. It is for equipping the Bar Council with the binocular as well as whip to be on the qui vive for tracing out delinquent advocates who transgress the norms or standards expected of them in the discharge of their professional duties. The central function of the legal

profession is to help promotion of administration of justice. Any misdemeanor or misdeed or misbehaviour can become an act of delinquency, if it infringes such norms or standards and it can be regarded as misconduct.

17. In Blacks Law Dictionary “misconduct” is defined as:

“A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, willful in character, improper or wrong behaviour; its synonyms are misdemeanor, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness.”

18. The expression professional misconduct was attempted to be defined by Darling J. in *A Solicitor ex p the Law Society, in re* [1912 (1) KB 302] in the following terms:

“If it is shown that an advocate in the pursuit of his profession has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency, then it is open to say that he is guilty of professional misconduct.”

19. In *RD Saxena vs. Balram Prasad Sharma* [2000 (7) SCC 264] this Court has quoted the above definition rendered by Darling J., which was subsequently approved by the Privy Council in *George Frier Grahame vs. Attorney General*

(AIR 1936 PC 224) and then observed thus: (SCC p.275, para 19)

“19. Misconduct envisaged in [Section 35](#) of the Advocates Act is not defined. The section uses the expression ‘misconduct, professional or otherwise’. The word ‘misconduct’ is a relative term. It has to be considered with reference to the subject matter and the context wherein such term occurs. It literally means wrong conduct or improper conduct.”

17. Expression “misconduct” came up for consideration before three Judges Bench of the Hon’ble Supreme Court in **Noratanmal Chouraria vs. M.R. Murli and another (2004) 5 SCC 689** wherein it was observed as under:

“Misconduct:

7. Misconduct has not been defined in the [Advocates Act](#), 1961. Misconduct, inter alia, envisages breach of discipline, although it would not be possible to lay down exhaustively as to what would constitute conduct and indiscipline, which, however, is wide enough to include wrongful omission or commission whether done or omitted to be done intentionally or unintentionally. It means, “improper behaviour intentional wrong doing or deliberate violation of a rule of standard or behaviour”.

8. Misconduct is said to be a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand; it is a violation of definite law.

9. In **Delhi Cloth & General Mills Co. Ltd. vs. Its Workmen** reported in AIR 1970 SC 919 (SC), Shah, J. stated that misconduct spreads over a wide and hazy spectrum of industrial activity; the most seriously subversive conducts rendering an employee wholly unfit for employment to mere technical default covered thereby.

10. This Court in **State of Punjab and Others vs. Ram Singh Ex. Constable**, reported in 1992 (4) SCC 54, noticed: (SCC pp. 57-58, paras 5-6)

"5. Misconduct has been defined in Black's Law Dictionary, sixth Edition at Page 999 thus:-

"A Transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, its synonyms are misdemeanor, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness".

Misconduct in offence has been defined as:

"Any unlawful behaviour by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly and failure to act in the face of an affirmative duty to act".

Aiyar P.Ramanath Law Lexicon, Reprint Edition 1987 at Page 821 defines 'misconduct thus:-

"The term misconduct implies a wrongful intention, and not a mere error of judgment, Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskillfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act and is necessarily indefinite. Misconduct in office may be defined

as unlawful behaviour or neglect by a public official, by which the right of party have been affected.”

6. Thus it could be seen that the word 'misconduct' though not capable of precise of definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order.” [See also **Probodh Kumar Bhowmick Vs. University of Calcutta (1994 (2) Calcutta Law Journal 456** and **B.C. Chaturvedi Vs. Union of India [1995 (6) SCC 749]**].

11. [Section 35](#) of the Advocates Act, however, refers to imposition of punishment for professional or other misconduct. A member of legal profession which is a noble one is expected to maintain a standard in dignified and determined manner. The standard required to be maintained by the member of the legal

profession must be commensurate with the nobility thereof. A Lawyer is obligated to observe those norms which make him worthy of the confidence of the community in him as an officer of the court. This Court in [Bar Council, Maharashtra V. M.V.Dabholkar](#) [AIR 1976 SCC 242] observed: (SCC p.300, para 20.

"The high moral tone and the considerable public service the bar is associated with and its key role in the developmental and dispute-processing activities and, above all, in the building up of a just society and constitutional order has earned for it a monopoly to practise law and an autonomy to regulate its own internal discipline."

12. *Although the power of the Bar Council is not limited, the thrust of charge must be such which would necessitate initiation of disciplinary proceedings. A professional or other misconduct committed by a member of the profession should ordinarily be judged qua profession. To determine the quantum of punishment which may be imposed on an advocate, the test of proportionality shall be applied which would also depend upon the nature of the acts complained of. No universal rule thus can be laid down as regard initiation of a proceeding for misconduct of a member of the profession.*

13. *In 'M' an Advocate (supra), however, this court emphasized the requirement of maintaining a high standard stating: (AIR p.163, para 14)*

"As has been laid down by this Court in the matter of 'G', a Senior Advocate of the Supreme Court AIR 1954 SC 557, the Court, in dealing with cases of professional misconduct is "not concerned with ordinary legal rights, but with the special and rigid rules of professional conduct expected of and applied to a specially privileged class of persons who, because of their privileged status, are subject to certain disabilities which do not attach to their men and which do not attach even to them in a non-professional character ...he (a legal practitioner) is bound to conduct himself in a manner befitting the high and honourable professional to whose privileges he has so long been admitted; and if he departs from the high standards which that professional has set for itself and demands of him in professional matters, he is liable to disciplinary action."

18. It is more than settled that practice of law is not akin to any other business or profession as it involves a dual duty – nay a primary duty to the Court and then a duty to the litigant with the privilege to address the Court for the client.

19. The legal profession is a noble profession. A person practising law has to practise in the spirit of honesty and not in the spirit of mischief-making or money-getting.

20. In **Satish Kumar Sharma vs. Bar Council of H.P. (2001) 2 SCC 365**, the Hon'ble Supreme Court observed as under:

“10. The profession of law is called a noble profession. It does not remain noble merely by calling it as such unless there is a continued, corresponding and expected performance of a noble profession. Its nobility has to be preserved, protected and promoted. An institution cannot survive in its name or on its past glory alone. The glory and greatness of an institution depends on its continued and meaningful performance with grace and dignity. The profession of law being noble and honourable one, it has to continue its meaningful, useful and purposeful performance inspired by and keeping in view the high and rich traditions consistent with its grace, dignity, utility and prestige. Hence the provisions of the Act and Rules made thereunder inter alia aimed at to achieve the same ought to be given effect to in their true spirit and letter to maintain clean and efficient Bar in the country to serve cause of justice which again is noble one.”

21. In **Dhanraj Singh Choudhary vs. Nathulal Vishwakarma (2012) 1 SCC 741**, the Hon'ble Supreme Court observed as under:

“23. The legal profession is a noble profession. It is not a business or a trade. A person practising law has to practise in the spirit of honesty and not in the spirit of mischief-making or money-getting. An Advocate’s attitude towards and dealings with his client have to be scrupulously honest and fair.”

22. The legal position is best set out by the Constitution Bench of the Hon’ble Supreme Court in ***Mohit Chaudhary, Advocate, IN RE (2017) 16 SCC 78***, wherein it was observed as under:

“19. That the practice of law is not akin to any other business or profession as it involves a dual duty – nay a primary duty to the Court and then a duty to the litigant with the privilege to address the Court for the client is best enunciated in the words of Justice Mookerjee in [Emperor vs. Rajanikantha Bose](#), 1922 SCC Online Cal 15:

“.....The Practice of Law is not a business open to all who wish to engage in it. It is a personal right or privilege... It is in the nature of a Franchise from the State.....”

That you are a member of the legal profession is your privilege; That you can represent your client is your privilege; that you can in that capacity claim audience in Court is your privilege. Yours is an exalted profession in which your privilege is

your duty and your duty is your privilege. They both coincide.

20. *Warvelle's Legal Ethics, 2 nd Edition at page 182 sets out the obligation of a lawyer as:*

"A lawyer is under obligation to do nothing that shall detract from the dignity of the court, of which he is himself a sworn officer and assistant. He should at all times pay deferential respect to the Judge, and scrupulously observe the decorum of the courtroom".

22. *Now turning to the "Standards of Professional Conduct and Etiquette" of the Bar Council of India Rules contained in Section I of Chapter II, Part VI, the duties of an advocate towards the Court have been specified. We extract the 4th duty set out as under:*

"4. An advocate shall use his best efforts to restrain and prevent his client from resorting to sharp or unfair practices or from doing anything in relation to the Court, opposing counsel or parties which the advocate himself ought not to do. An advocate (1995) 3 SCC 619 shall refuse to represent the client who persists in such improper conduct. He shall not consider himself a mere mouthpiece of the client, and shall exercise his own judgment in the use of restrained language in correspondence, avoiding scurrilous attacks in pleadings, and using intemperate language during arguments in Court."

23. In the aforesaid context the aforesaid principle in different words was set out by Crampton, J. in *R. vs. O'Connell* 7 Irish Law Reports 313 as under:

“The advocate is a representative but not a delegate. He gives to his client the benefit of his learning, his talents and his judgment; but all through he never forgets what he owes to himself and to others. He will not knowingly misstate the law, he will not willfully misstate the facts, though it be to gain the case for his client. He will ever bear in mind that if he be an advocate of an individual and retained and remunerated often inadequately, for valuable services, yet he has a prior and perpetual retainer on behalf of truth and justice and there is no Crown or other license which in any case or for any party or purpose can discharge him from that primary and paramount retainer.”

24. The fundamentals of the profession thus require an advocate not to be immersed in a blind quest of relief for his client. The dignity of the institution cannot be violated in this quest as “law is no trade, briefs no merchandise” as per Krishna Iyer, J in *Bar Council of Maharashtra vs. M.V.Dabholkar* (1976) 2 SCC 291(SCC p.301, para 23).

25. It is also pertinent to note at this point, the illuminating words of Vivian Bose, J. in ‘G’ a Senior Advocate of the Supreme Court, in AIR

1954 SC 557, who elucidated: (AIR p. 558, para 10)

“10.To use the language of the army, an Advocate of this Court is expected at all times to comport himself in a manner befitting his status as an “officer and a gentleman”.

26. It is as far back as in 1925 that an Article titled ‘The Lawyer as an Officer of the Court’ published in the Virginia Law Review, Vol.11 No.4 (Feb 1925) pp:263-77, lucidly set down what is expected from the lawyer which is best set out in its own words:

“The duties of the lawyer to the Court spring directly from the relation that he sustains to the Court as an officer in the administration of justice. The law is not a mere private calling, but is a profession which has the distinction of being an integral part of the State’s judicial system. As an officer of the Court the lawyer is, therefore, bound to uphold the dignity and integrity of the Court; to exercise at all times respect for the Court in both words and actions; to present all matters relating to his client’s case openly, being careful to avoid any attempt to exert private influence upon either the judge or the jury; and to be frank and candid in all dealings with the Court, “using no deceit, imposition or evasion,” as by misreciting witnesses or misquoting precedents. “It must always be understood,” says Mr.Christian Doerfler, in an address before the Milwaukee County Bar Association, in December, 1911, “that the profession of law is

instituted among men for the purpose of aiding the administration of justice. A proper administration of justice does not mean that a lawyer should succeed in winning a lawsuit. It means that he should properly bring to the attention of the Court everything by way of fact and law that is available and legitimate for the purpose of properly presenting his client's case.

His duty as far as his client is concerned is simply to legitimately present his side of the case. His duty as far as the public is concerned and as far as he is an officer of the Court is to aid and assist in the administration of justice."

In this connection, the timely words of Mr. Warvelle may also well be remembered:

"But the lawyer is not alone a gentleman; he is a sworn minister of justice. His office imposes high moral duties and grave responsibilities, and he is held to a strict fulfillment of all that these matters imply. Interests of vast magnitude are entrusted to him; confidence is imposed in him; life, liberty and property are committed to his care. He must be equal to the responsibilities which they create, and if he betrays his trust, neglects his duties, practices deceit, or panders to vice, then the most severe penalty should be inflicted and his name stricken from the roll."

That the lawyer owes a high duty to his profession and to his fellow members of the Bar is an obvious truth. His profession

should be his pride, and to preserve its honor pure and unsullied should be among his chief concerns. "Nothing should be higher in the estimation of the advocate," declares Mr. Alexander H. Robbins, "next after those sacred relations of home and country than his profession. She should be to him the 'fairest of ten thousand' among the institutions of the earth. He must stand for her in all places and resent any attack on her honor – as he would if the same attack were to be made against his own fair name and reputation. He should enthrone her in the sacred places of his heart, and to her he should offer the incense of constant devotion. For she is a jealous mistress."

Again, it is to be borne in mind that the judges are selected from the ranks of lawyers. The purity of the Bench depends upon the purity of the Bar.

"The very fact, then, that one of the coordinate departments of the government is administered by men selected only from one profession gives to that profession a certain pre-eminence which calls for a high standard of morals as well as intellectual attainments. The integrity of the judiciary is the safeguard of the nation, but the character of the judges is practically but the character of the lawyers. Like begets like. A degraded Bar will inevitably

produce a degraded Bench, and just as certainly may we expect to find the highest excellence in a judiciary drawn from the ranks of an enlightened, learned and moral Bar.”

27. *He ends his Article in the following words:*

“No client, corporate or individual, however powerful, nor any cause civil or political, however important, is entitled to receive, nor should any lawyer render, any service or advice involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation. Correspondingly, he advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, though until a statute shall have been construed and interpreted by competent adjudication, he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But, above all, a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.”

29. *It was not an innocent act, an innocuous endeavor but a well thought out decision to tread an unfortunate path which the existing Advocate-on-Record was unwilling to do. The objective was only to assist the client by somehow seeking shifting of the Bench. The allegations made against the Registry were false and there were innuendoes against the Court. The endeavor failed. Every action has to have an outcome. The contemnor thus must face some consequences of his conduct.”*

23. Thus, what can be taken to be settled is that any compromise with law's nobility as a profession is bound to affect faith of people in rule of law and, therefore, unprofessional conduct by an advocate has to be viewed seriously. A person practising law has an obligation to maintain probity and high standard of professional ethics and morality.

24. In our country, admittedly, a social duty is cast upon the legal profession to show the people beckon (sic beacon) light by their conduct and actions. The poor, uneducated and exploited mass of the people need a helping hand from the legal profession,

admittedly, acknowledged as a most respectable profession.

25. Reverting back to the facts, it would be noticed that even though Vikram Singh was not in the country when the instant petition or for that matter Cr.MP(M) No.706 of 2020 and Cr.MMO No. 246 of 2020 were filed before this Court. Yet, the affidavit on behalf of Vikram Singh filed in support of Cr.MMO No. 246 of 2020 reveals that the same is attested at Shimla showing his physical presence simply to obtain unfair advantage from this Court, that too, by misleading the Oath Commissioner Sh. Rakesh Raghuvanshi, who we have no reasons to doubt, attested the same believing the version putforth by Sh. Maneesh Kumar Bali, Advocate, that his client (Vikram Singh) was very much present outside the Court premises as he was not being permitted to enter the Bar Room due to Covid-19 pandemic.

26. As regards Sh. Adhiraj Singh Thakur, Advocate, he has unnecessarily been dragged into this controversy and thereby put to great inconvenience. In fact, the entire action of Sh. Maneesh Kumar Bali has

put the careers of both these Advocates at stake and even the precious time of the Court which could have been better utilised, has been wasted only because of the reckless and wanton act of Sh. Maneesh Kumar Bali, Advocate.

27. We, therefore, are clearly of the view that the action of Sh. Maneesh Kumar Bali, Advocate amounts to misconduct under Section 35 of the Act. Hence, Sh. Maneesh Kumar Bali is liable to be punished for such misconduct. However, regarding the quantum of punishment, we would take into account the unconditional and unqualified apology which has been expressed by Mr. Maneesh Kumar Bali, Advocate for his mistakes and conduct. Moreover, taking into account the current pandemic, we are of the considered view that it is not necessary to inflict harsh punishment on Sh. Maneesh Kumar Bali, Advocate, a strong reprimand would be sufficient in the interest of justice on the special facts of the case

28. We, therefore, while strongly reprimanding Sh. Maneesh Kumar Bali, Advocate, make it clear that in case he commits this kind of professional

misconduct in future, he would be liable to such quantum of punishment as the Bar Council will determine on reference being made by this Court and we, however, further make it clear that lesser punishment being imposed by us, will not be treated as a precedent in future.

29. Therefore, taking into account the peculiar facts and circumstances, we deem it proper to direct Sh. Maneesh Kumar Bali, Advocate, to pay costs of Rs.50,000/- to Sh. Rakesh Raghuvanshi and Rs.1,00,000/- to Sh. Adhiraj Singh Thakur and further costs of Rs.1,00,000/- for wasting the valuable and precious time of the Court by depositing the same with the H.P. High Court Advocates' Welfare Fund, within a period of four weeks from today.

30. For compliance and fresh status report, to come up on 18.12.2020.

(Tarlok Singh Chauhan)
Judge

(Jyotsna Rewal Dua)
Judge

20th November, 2020.
(GR)