

MOOT COURT PROBLEM -1

**BEFORE THE HONOURABLE JUDICATURE OF THE A.P. HIGH COURT AT
CHITTOOR**

W.P.No. _____/2008

Between :

Advocate Amarnath **Plaintiff**

Vs.

Bar Council of Andhra Pradesh **Defendant**

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Facts of the case : -

Andhra Pradesh is a State in the Indian Union. Amarnath is a Lawyer practicing in the High Court of Andhra Pradesh. In 1995 Amarnath opened a web page in the internet. The webpage at <http://www.lawindia.com> provides information regarding the Academic Qualification of Advocate Amarnath. Areas of specialization facilities available in his office. Telephone numbers and fax numbers, particulars of the legal services produced by him etc.

In 1998 Amarnath appeared before the High Court for the petitioner in an election case. One of the contentions in the election petition was that the returned candidate had promoted enmity and hatred between Hindus and muslim by way of circulating a computer floppy disc containing speeches of a Hindu fundamentalist. A floppy disc was submitted that before the court and the court accepted it Ext.18 during the trial of the petition one Mr. Lokesh deposed the Ext.18 was not one circulated by the returned candidate, but one fabricated by advocate Amarnath himself. Relying on the oral; evidence given by Lokesh. The High Court dismissed the election petition.

On 20-03-1999 one Mr. Sarath filed a complaint before the Bar council of A.P. Alleging the Advocate Amarnath had committed professional misconduct. It was pointed out the Amaranth had violated Rule 36 of the Bar council of Indian rules dealing with the standards of professional conduct and etiquette by way of giving advertisements in the internet under the pretext of opening a web page. In addition he had committed the offence of fabricating false evidence under section 192 of I.P.C. through his action in the election case.

The disciplinary committee of State Bar council conducted enquiry in accordance with provision of Advocate Act 1961 and the Bar Council rules and on 16-09-2000. It was decided to suspend Mr. amaranth from practice for a period of 5 years.

On 12-12-2000 Amarnath filed a writ petition before the High Court challenging the decision of the disciplinary committee.

ISSUES INVOLVED IN THE PROBLEM

- 1) Whether the petitioner Advocate Amarnath had committed an Act of professional misconduct or not.?
- 2) Whether the decision of disciplinary committee was violative of Article 14. 19(1)(a) and 19 (1) (g) and 21 of the constitution ?
- 3) Whether the petition filed by amaranth is maintainable or not? and to what other relief the petitioner is entitled ?
- 4) Whether the petitioner had committed on offence under section 192 of I.P.C. or not ?

AGREEMENTS ON BEHALF OF THE PETITIONER :

My contention for the first issue is ?

- 1) Whether the petitioner Advocate Amarnath had committed on Act of professional misconduct or not?

Your Honour, The petitioner Advocate Amarnath had not committed an act of professional misconduct. Here the contention was that the petitioner had committed professional misconduct by way of giving advertisement in the internet under the pretext of opening a web page does not amount to an advertisement.

All professionals use visiting cards in their daily life. It is for their identification only. So printing and giving visiting cards to other persons is not a violation of any Act.

In this same way the petitioner opened a web page for their identification only. It is just like visiting card not as advertisement. The petitioner opened a webpage only for providing information with regard to his qualification. Office address, telephone numbers, fax etc. So above all these particulars come not to be treated as professional misconduct.

In Bhatarraju Nageswara Rao

Vs.

Judges of Madras High Court (AIR 1955 SC 223)

In this case also dose the some thing. The petitioner was not punished under professional misconduct because there is no clear proof that opening a web page is amounts to an advertisement. So it does not comes under professional misconduct.

So, the court held that an advocate should not be punished for misconduct unless the proof of his misconduct is free from doubt.

My contention for the next issue is

2) Whether the decision of disciplinary committee was violative of Article 14, 19(1)(a) and 19 (1) (g) and 21 of the Indian Constitution or not - ?

Your Honour the disciplinary committee was violative of Article 14 19(1) (a), 19 (1) (g) and 21 of the constitution.

Here the disciplinary committee violated the Article 14 19 (1)(a) and 19 (1) (g) and 21 of the constitution. Here utilizing is the right of every citizen under Article 14. So, in the some way the petitioner opened a webpage. Article 14 of the constitution gives right to equality. Every person has a right to open a webpage in internet and gives information about

himself and to acquire others information. But an advocate is prohibited to open a webpage according to disciplinary committee decision it shows inequality between advocates and others. So, it is violative of Article 14 of the constitution.

Article 19 (1)(a) of the constitution deals with freedom of speech and expression freedom of speech and expression means the right to express ones own opinions freely by words of mouth, writing, printing, pictures or any other mode. It includes the expression of one is ideas through any communicable medium or visible representation etc.

But according to the disciplinary committee decision an advocate has no right to express his views through internet by way of opening a web page. So it is violative of Article 14 19 (1)(a) of the constitution.

Here I would like to relay upon one case :

Cricket Association of Bengal and others

Vs

Union of India. (AIR 1995 SC 1236).

According to the Article 19(1)(a) every one has a right to communicate through any media, electronic etc., But according to disciplinary committee decision An Advocate has no right to communicate through internet it would be violative of Art 19 (1) (a) of the constitution.

So, In this case the court held that freedom of speech and expression includes right to acquire and includes right to communicate through any media, print, electronic or audio visual.

Here Art 19 (1) (g) guarantees to practice any profession and also Article 21 of the constitution guaranteed right to life and personal liberty is the most important fundamental

right. Every Indian citizen has the personal liberty to open a web page in internet. But in this case the disciplinary committee violated his right. So, the decision of the disciplinary is violative of Article 21 of the constitution.

So, according to the above arguments it is clear that the decision of disciplinary committee was violative of Article 14, 19 (1) (a) and 19 (1) (g) and also 21 of the constitution.

So your Honour, please to set aside the disciplinary committee decision as the Indian constitutional.

My Contention for the IIIrd Issue is

(3) Whether the petition filed by Amarnath is maintainable or not? and to what other relief the petitioner is entitled ?

A person who's fundamental rights are infringed he has a right to go for writ petition under Article 226 before the High Court and under Article 32 before the Supreme Court. In this case the petitioner fundamental rights are infringed by way of decision of disciplinary committee i.e. Rule 36 prohibits opening of a web page by an advocate. It is violative of Article 14, 19(1) (a), 19 (1) (g) and 21 of the constitution.

Here I would like – 10 rely upon one case.

In Kumar Velu Vs. Bar Council of India (AIR 1997 SC 1014)

In this case also done the same thing. The disciplinary committee suspended advocate the period of 5 years.

The court held that the disciplinary committee was violating the Article 14, 19(1)(a), 19 (1) (g) and 21 of the Indian constitution.

So, according to the above arguments it is clear that the petition filed by amaranth is maintainable and also the disciplinary committee of the State Bar Council suspend the petitioner from practice unlawfully. So the petitioner has a right to do practice and he is also entitled to get the compensation from the disciplinary committee and also the disciplinary committee of the State Bar Council suspend the petitioner from practice unlawfully. So the petitioner has a right to do practice and he is also entitled to get the compensation from the disciplinary committee.

My contention for the Next Issue is

IV. (Your) Whether the petitioner had committed an offence under section 192 of Indian Penal or not ?

Your Honour the petitioner had not committed an offence under section 192 of I.P.C.

Section 192 of I.P.C. is not applicable to the present case. Because electronic Evidence would not come with in the purview of section 192. Section 91 of Information Technology” Act makes an Amendment to Section 192 of I.P.C. that the words makes “any false entry in any book or record containing a false statement”. But since on the date of commission of the alleged offence the Information Technology Act was not in force. The I.T. Act come into force on 9th June, 2000 and it is not a retrospective law no where in the Act mentioned about retrospective effect. So section 192 of Indian Penal code is not applicable to the present case.

PRAYER

May I please your lordship. I pray the Honourable court may be pleased to allow the petition and there by to set aside the disciplinary committee decision and give judgment in favour of petitioner.