PETITIONER:
IN THE MATTER OF Mr. 'G'A SENIOR ADVOCATE OF THE SUPREME COU

Vs.

RESPONDENT:

DATE OF JUDGMENT:
27/05/1954

BENCH:
DAS, SUDHI RANJAN
BENCH:
DAS, SUDHI RANJAN
MUKHERJEA, B.K.
BOSE, VIVIAN
HASAN, GHULAM
JAGANNADHADAS, B.

CITATION:
1954 AIR 560 1955 SCR 501

ACT:
Supreme Court Rules--Order IV, rule 30-Advocate-Supreme Court-Agreement between him and his client for sharing recoveries in the legal proceedings-Whether professional misconduct-Professional conduct of Advocate of Supreme Court in view of his special privileges and status.

HEADNOTE:
The act of an Advocate of the Supreme Court in entering into an agreement with a client whereby the client undertakes to pay him a part of any recoveries he might make in the legal proceedings in respect of which he is employed, amounts to professional misconduct and makes him liable for disciplinary action and to this extent the ordinary legal rights of contract do not apply to an Advocate as such.
Such agreements are not permissible to advocates under the rigid rules of conduct enjoined by the profession so that their integrity, dignity and honour may be placed above the breath of scandal.
An Advocate of the Supreme Court is governed by 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 other men and which do not even attach to an Advocate while acting otherwise than as Advocate.
An Advocate is therefore bound to conduct himself in a manner befitting the high and honourable profession the privileges of which he enjoys and if he departs from the high standards which that profession has set for itself and demands of him he renders himself liable to disciplinary action.

JUDGMENT:
Original (Disciplinary) Jurisdiction.
In the matter of summons issued to Mr. "G" under rule 30 of Order IV, Supreme Court Rules, to show cause to this Court

why disciplinary action should not be taken against him.
The material facts of the case are stated in the Judgment
Order IV rule 30 of the Supreme Court rules runs as follows;-
" Where on the complaint of any person or otherwise, the Court is of opinion that an Advocate has been guilty of misconduct or of conduct unbecoming an Advocate, the Court may debar him from practising before the Court either permanently or for such period as the Court may think fit, and the Registrar shall thereupon report his name to his own High Court
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" Provided that the Court shall in the first instance direct a summons to issue returnable before the Court or before a Special Bench to be constituted by the Chief Justice, requiring the Advocate to show cause against the matter alleged in the summons, and the summons shall, if possible, be served personally upon him with copies of any affidavit or statement before the Court at the time of the issue of the summons."
G in person:
Amarnath was the client. He had admittedly a just cause and the High Court has held that the terms came from him and were accepted out of compassion. I submit that in such circumstances the agreement was neither professionally nor morally improper. English law of Champerty and Maintenance does not apply to India; Please see Ram Coomar Coondoo v. Chunder Canto Mookerjee (1876) L.R. 4 I.A. 23; Bhagwat Dayal Singh v. Debi Dayal Sahu (1907) L.R. 35 I.A. 48. Prior to 1926 there was a distinction between Pleaders, Advocates and barristers. Barristers could nod enter into contractual relationship. They could not sue or be sued: Deo Kisen v. Budh Prakash (1833) I.L.R. 25 All. 509 F.B. This was in accordance with the English rules of professional etiquette among Barristers, but Pleaders and Advocates could enter into contractual relations. Contingent fees have been known and recognised in India at any rate since 1814. Please see sec. 25, Bengal Regulation XXVII of 1814, and see. 52, Bombay Regulation II of 1827. Contractual rights were extended in 1846. Please see Pleaders Act I of 1846; Please see sec. 7 as to fees. But agreements had to be registered with the Court to be enforceable. Wide changes in all these matters came about by legislation in 1926 (Legal Practitioners' Fees Act, 1926). Barristers, Attorneys, Advocates, Pleaders all came within the definition of Legal Practitioners, who may now sue and be sued and may enter into and may settle with their clients the terms of their engagement and the fees to be paid. Section 3 of the Act is sufficiently wide to include the impugned agreement with Amarnath. Contingent fees have been known in India for more than a century. In Madras in the case of Achamparambath Cheria Kunhammu v. William Sydenham Gantz (1881) I.L.R. 3 Mlad. 138 F.B. a contrary view was expressed but Madras bad framed a special rule by Circular Order of the Sudder Adulet dated 18-8-53. In Bombay a contrary view was also taken: In re Bhandara (1901) 3 Bom. L.R. 102 F.B. But the contract of the Advocate there was clearly improper and facts of that case were totally different from the facts of the present case. The observations of the Learned Chief Justice were obiter. In Bombay, Inampatra, which was in substance a fee payable and contingent on success has, however, been held enforceable: Shivram Hari v. Arjun (1881) I.L.R. 5 Bom. 258; Parshram Vaman v. Hiraman Fatu (1884) I.L.R. 8 Bom. 413.
GHULAM HASAN J.: In U.P. they were referred to as Shukriana.
G: In the Punjab they were known as "back fees"

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and were held valid and enforceable: 5 P.R. 1878 F.B. Beechy v. Faiz Mahomed until the Full Court's decision by majority disapproved of the practice: 61 P.R. 1907 Ganga v. Devi Das. But strong reasons in support of the practice will be-found in the judgments of Lalchand & Chatterjee JJ. in 61 P.R. 1907. Contingent fees in a just cause have found approbation in England. Please see Wiggins V. Lavy (1928) 44 T.L.R. 721 ; Bich v. Cook (1900) 110 L.T.J.D. 94 C.A. per Lord Russell L.J.

In America, contingent fees are expressly recognised in the canons of professional ethics of the American Bar Association (Canon 12); See " Legal Ethics" by Henry S. Drinker (Columbia University Press page 99) and Hoffman's Resolutions (Ibid at page 343). The Supreme Court of the U.S.A. in several cases has held such agreements as enforceable.

1. Wylie v. Coxe 14 L. Ed. 753.
2. Barnes v. Alexander 58 L. Ed. 530.
3. McGowan v. Parish 59 L. Ed. 955.
4. Morris v. Giddings 29 L. Ed. 403.
5. Ball v. Halsell 40 L. Ed. 622.
6. Ingersoll v. Coram 53 L. Ed. 208.

The substance of the American law will be found in the foot note to McMicken v. Perin, 15 L. Ed. 504.

The High Court based its decision in the present case (1954) 56 Bombay L.R. 838 in re K.L. G on a question of Public Policy as void under sec. 23 of the Contract Act, but Public Policy has been held to be a treacherous ground for legal decision [Lord Davey in Tanson v. Driefontein Consolidated Mines [1901] A.C. 484 at page 500.]

GHULAM HASAN J. Public Policy is an " unruly horse."

MUKHERJEA J. You need not press this point.

M. C. Setalvad, Attorney-General for India (G. N. Joshi and P. G. Gokhale with him) Conditions of the Bar in America and in India are very different. American authorities have therefore no relevance (Please see observations of Rattigan J. in 61 P.R. 1907 Ganga Ram v. Devi Das). An agreement though not void in law, may nevertheless amount to professional misconduct. Our Courts have held that agreeing to a share in the fruits of litigation is unprofessional. Please see (1874) 21 W.R. 297: In the matter of Moung Htoon Oung, an Advocate at Bangoon ; (1900) 4 C.L.J. 259 -In the matter of an Advocate; (1901) 3 Bom. L.R. 102-In re N. F. Bhandara and the majority judgments of the Full Court in 61 P.R. of 1907. The facts in the case in 3 Bom. Law Reporter 102 may be different but the rules of professional conduct were clearly laid down in the observations of Sir Lawrence Jenkins. Rigid notions of Champerty and Maintenance are not applicable to India but such contracts are prohibited by professional rules of conduct.

G. in reply: The law cannot approbate and reprobate in the same breath. The Rulings earlier than the Legal Practitioners

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Fees Act of 1926 and expressing a contrary view are now obsolete. A contract which is not vitiated by fraud, misrepresentation or some illegality or is not void under any recognised head of public policy, cannot amount to professional misconduct. The misconduct must fall within the definitions and limitations of misconduct laid down by the Bombay High Court in (1934) 36 Bom. L.R. 1136 F.B. Sir Jamshed Byramji Kanga v. Kaikhushru Bomanji Bharucha; and Anant Vishnu Chitre v. Pitamberdas Goculdas Mehta.

’ G’ in person.
M.C. Setalvad, Attorney-General for India (G.,N. Joshi and P. G. Gokhale, with him) for the Hon’ble Chief Justice and other Hon’ble Judges of the Bombay High Court.
1954. May 27. The Judgment of the Court was delivered by
BOSE J.-This matter arises out of a summons issued to Mr. G, a Senior Advocate of this Court under Order IV, rule 30, of the Supreme Court Rules, to show cause why disciplinary action should not be taken against him.
Mr. G was called to the Bar in England and was later enrolled as an Advocate of the Bombay High Court. He is also an Advocate of this Court. On 20th December, 1952, he entered into an agreement with a client whereby the client undertook to pay him 50 per cent. of any recoveries he might make in the legal proceedings in respect of which he was engaged. On this being reported to the High Court the matter was referred to the Bombay Bar Council and was investigated by three of its members under section 1 1 (1) of the Bar Councils Act. They recorded their opinion that this amounted to professional misconduct. The High Court agreed and suspended Mr. G from practice as an Advocate of the Bombay High Court for six months. The learned Judges considered that they had no power to affect his position as an Advocate of this Court, so directed that a copy of their judgement be submitted to this Court to enable this Court to take such action on it as it thought fit. ’Acting on this report this Court issued notice to the petitioner under Order IV, rule 30, to show cause why discipliner y action should not be taken against him. About the same time Mr. G filed a petition for a writ
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under article’32 of the Constitution. We are confining ourselves in this order to the matter raised in the summons.
There is no dispute about the facts. They are set out in Mr. G’s petition under article 32 and\are as follows:
On the 23rd of July, 1951, Air. G’s client is said to have entered into an agreement with the Baroda Theatres Ltd., for work on a picture which they intended to produce. The remuneration agreed on was Rs. 15,000. Of this Rs. 3,000 was paid at once and the balance, Rs. 12,000, was to be paid on the completion of the picture. It is said that at the date of the dispute the Barods Theatres admitted that Rs. 9,400 was due, but as they did not pay up, the client consulted Mr. G about the best way to recover his money and wanted to know what the expenses and fees would be. After examining the matter in detail and talking it over with his client, Mr. G advised him that two courses were open to him. First, there was a civil suit. He said the cost of this would be about Rs. 800 for Court fees and expenses and about Rs. 1,250 for fees. The other alternative was winding up proceedings. The client was told that in these the Court fees would be lower but Mr. G’s fees would have to be higher as winding up proceedings are usually protracted.
The client preferred the latter course but said that he could not pay more than Rs. 200 towards the expenses and as regards the fees he said he was too poor to pay and so made a proposal which he reduced to writing. It is embodied in the following letter dated 20th December, 1952, addressed to Mr. G:
I hereby engage you with regard to my claim against the Baroda Theatres Ltd., for a sum of Rs. 9,400 (balance due to me).
Out of the recoveries you may take 50% of the amount recovered. I will by Wednesday deposit Rs. 200 in your account or give personally towards expenses."

Mr. G said that he was unwilling to work on these terms but when he was pressed to do so and when he
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realised that unless he agreed the client would probably lose a just claim he reluctantly agreed.

Rs. 200 was thereupon paid towards expenses and Mr. G at once entered into correspondence with the solicitors of the Baroda Theatres Ltd. A winging up petition was drawn up and declared but was not filed because the matter was compromised at that stage. The Baroda Theatres undertook to pay Mr. G's client Rs. 6,400 in full satisfaction of his claim.

The client then paid Mr. G a further Rs. 800. (He had already paid Rs. 200, part of which was spent for expenses). Mr. G claimed the balance which was roughly Rs. 2,200.

We are not concerned with the proceedings in the Bombay High Court and before the Tribunal of the Bar Council in the summons matter with which we are dealing at the moment, as we are acting here under Order IV, rule 30, of the Rules of this Court. The only question is whether, on the facts and circumstances set out above (all of which are admitted by Mr. G), his engagement of 20th December, 1952, amounts to professional misconduct.

Mr. G argued the matter at length, and to his credit be it said, objectively and with restraint, but it is not necessary to cover the wide field he did because we are not concerned with ordinary rights of contract, nor 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 there privileged status, are subject to certain disabilities which do not attach to other men and which do not attach even to them in a non-professional character. 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." In the Army it is a military offence to do otherwise (see section 45 of the Army Act, 1950) though no notice would be taken of ungentlemanly conduct under the ordinary law of the land, and none in the case of a civilian. So here, he is bound to conduct himself in a manner befitting the high and-
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honourable profession to whose privileges he has so long been admitted; and if he departs from the high standards which that profession has set for itself and demands of him in professional matters, he is liable to disciplinary action.

Now it can be accepted at once that a contract of this kind would be legally unobjectionable if no lawyer was involved. The rigid English rules of champerty and maintenance do not apply in India, so if this agreement had been between what we might term third parties, it would have been legally enforceable and good. It may even be that it is good in law and enforceable as it stands though we do not so decide because the question does not arise; but that was argued and for the sake of argument even that can be conceded. It follows that there is nothing morally wrong, nothing to shock the conscience, nothing against public policy and public morals in such a transaction per se, that is to say, when a legal practitioner is not concerned. But that is not the question we have to consider. However much these agreements may be open to other men what we have to decide is whether they are permissible under the rigid rules of conduct enjoyed by the members of a very close professional preserve so that their integrity, dignity and honour may be

placed above the breath of scandal. That is part of the price one pays for the privilege of belonging to a kind of close and exclusive "and enjoying in it privileges and immunities' denied to less fortunate persons who are outside its fold. There is no need to enter its portals and there is no need to stay, but having entered and having elected to. stay and enjoy its amenities and privileges, its rules must be obeyed or the disciplinary measures which it is entitled to take must be suffered. The real question therefore is whether this kind of conduct is forbidden to the elect or whether, if it was once forbidden, the ban has since been removed, either directly or by implication, by legislative action.

Now it was not disputed that, so far as English Barristers are concerned, this sort of agreement was once taboo both in England and in India. Even when

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they worked in the mofussil in India and did the kind of work that would be done by solicitors in England and in the Presidency Towns in India, they could not enter into an engagement of this kind, for even solicitors in England are forbidden from making such bargains (see Cordery's Law Relating to Solicitors, fourth edition, page 342). But, it was argued, this rule only applied to members of the English Bar, and in any event it was abrogated in India in 1926.

We will first examine whether there was a difference between Barristers and other classes of lawyers. This point was raised in the Punjab in 1907 but was rejected by a majority of seven Judges to two in a Full Bench of nine Judges in Ganga Ram v. Devi Das(1). But it is to be observed that even the two dissenting Judges agreed that an engagement of the present kind was not open to a member of the Punjab Bar. Lal Chand J. (who dissented) said at page 331 :

"I am in perfect accord with the Hon'ble Chief Judge that stipulation to receive a share in the result of the litigation is different from a stipulation to be, paid a fee contingent on success."

The other dissenting Judge, Chatterji J., agreed with him but even as regards the practice which these two learned Judges thought permissible at the date of their decision, Chatterji J. said at page 299

"It must not be supposed, however, that I am in favour of the practice. I should on the whole prefer its abolition..... "

We agree with Chitty J. at page 326 that there was no justification even at that date for seeking to apply one set of rules to one branch of the profession and another to another. As he said-

"What is right or wrong for the one must be right or wrong for the other,"

or, as Sir Lawrence Jenkins C. J. put it in In re. N.F. Bhandara(2),

"For common honesty there must be no sliding scale even in the mofussil.....

(1) 61 P. R. (Of 1907), P. 280. (2) 3 Bom, L. R. 102 at I. I. J.

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Reading "standards of professional conduct" for the word "honesty", the quotation is apt here. In any case, the decisions to which we shall refer deal with "Advocates" and even where these "Advocates" were Barristers the matter touched them as "Advocates" of an Indian High Court and not because of their special status as Barristers. It is true that at one time Advocates were mainly Barristers, but that

was not always the case and the rule laid down in these decisions governed all "Advocates," whether Barristers or otherwise.

The learned Judges in the Punjab Record case collected all the available authorities up to the year of their decision and they show that this kind of agreement was condemned in Calcutta in 1874 and 1900: In the matter of Moung Htoon Qung(1) and In the matter of an Advocate of the Calcutta High Court(2) ; in Bombay in 1901: In re. N. F. Bhandara(3) ; and in Madras in 1881 and again in 1939 : Achamparambath Cheria Kunhammu v. William Sydenham Ganty(1) and In re. an Advocate of the Madras High Court(5). As the Bombay High Court is the one in which Mr. G normally practices and as the engagement was entered into in Bombay, we think it proper to quote the following passage at page 113 from the judgment in the Bombay case (In re. N. F. Bhandara)

I consider that for an Advocate of this Court to stipulate for, or receive, a remuneration proportioned to the results of litigation or a claim whether in the form of a share in the subject-matter, a, percentage, or otherwise, is highly reprehensible, and I think it should be clearly understood that whether his practice be, here or in the mofussil he will by so acting offend the rules of his profession and so render himself liable to the disciplinary jurisdiction of this Court."

Mr. G argued that even if this was once the law, section 3 of the Legal Practitioners (Fees) Act, 1926,
(Act XXI of 1926)changed it and that now. every legal Practitioner is competent to settle the terms

(1) 21 W.R. 297. (4) I. L. R. 3 Mad. 138.
(2) 4 Cal. L. J. 259. (5) 1, L, R. 1940 Mad. 17.
(3) Bom, L. R. 102 at 113
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his engagement and his fees by private agreement with his client. This, Mr. G said, entitles him to enter into any agreement which the law permits in the case of ordinary persons. Legal practitioners, according to him, are now governed by the law of contract and not by rules imported from other countries with different ideas and different social customs and imposed on the Bar ha India mainly by English Judges. We do not agree, because this Act is not concerned with professional misconduct. That is dealt with by the Bar Councils Act which was passed in the same year (1926). The Bar Councils Act makes no modification in the disciplinary jurisdiction of the High Court or of the sense in which professional misconduct had been understood throughout India up to that time.

The. only Indian decision which Mr. G, could quote in his favour was Muthoo Lail v. Budree Pershad (1). But that was not a case in which disciplinary action was being taken against a legal practitioner for professional misconduct. The question there was whether an, agreement which might be objectionable on the ground of professional misconduct could be enforced by suit. Two Bombay decisions on which Mr. G relies are to be distinguished in the same way : Shivram Hari v. Arjun(2) and Parshram Vaman v. Hiraman Fatu(3). Whether these cases were rightly decided or whether they would also be hit on the ground of public policy as Chitty J. thought of a similar matter in the Punjab Record case, is something which does not arise for decision here. It is enough to say that those cases are distinguishable on the around that the Judges there were not considering a case of disciplinary action.

Mr. G relied on the practice in some of the American States where an agreement by an attorney to purchase part of

the subject-matter of the litigation is upheld. The class of cases to which he refers are summarised in a footnote to McMicken v. Perin(1). He relied on this to show that contracts of this kind cannot be dismissed as reprehensible or morally wrong. We do not propose to enter into this because what may be

(1) I N. W. P. H. C. R. I.
(2) 1. L. R. 5 Bom. 258.
(3) I. L. R. 8 BOm. 413.
(4) 15 Law. Edn. 504 & 505.

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harmless in one country may not be so in another. We will however pause to observe that Rattigan J. collected a large volume of 'American authority at pages 318-321 of his opinion in Ganga Ram v. Devi Das(1) to show that even in those States where this is permitted it is regretted and frowned upon. For historical reasons obtaining there, the practice may have come to stay however much it is regretted; but in 1937 the American Bar Association adopted the following canon of Professional Ethics:

"The lawyer should not purchase any interest in the subject-matter of the litigation which he is conducting."

In India history tells the converse tale. We see no reason why we should import what many feel if; a mistake, even in the country of its origin, from another country and seek to perpetuate their error here when a sound and healthy tradition to the contrary already exists in our Bar. The reasons for exacting these high standards in this country, where ignorance and illiteracy are the rule, are even more important than they are in England where the general level of education is so much higher. We hold that the conduct of Mr. G amounts to professional misconduct and as it was committed in the face of the Bombay view expressed by Sir Lawrence Jenkins in 1901 disciplinary action is called for.

Now had Mr. G been as restrained and objective in his petition under article 32 as he was while arguing the case before us, we might have considered a warning enough seeing that this is the first time this question has been considered in this Court, but, in view of his personal attacks on the learned Chief Justice in his petition where he has questioned his good faith and attributed malice to him, we are not able to deal with him as lightly. We therefore direct that he be suspended from practising in this Court for a period which will expire on the same date as his period of suspension in-the Bombay High Court.

There will be no order about costs.

Order accordingly.

(1) 61 P. R. (of 1907), P. 280.

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