

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 15130 of 2021**

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SANJAY RAJARAM GUPTA

Versus

THE BAR COUNCIL OF GUJARAT

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Appearance:

TIRTH NAYAK(8563) for the Petitioner(s) No. 1

for the Respondent(s) No. 1,2

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CORAM:**HONOURABLE MS. JUSTICE SANGEETA K. VISHEN****Date : 06/10/2021****ORAL ORDER**

1. Mr.Navin Pahwa, learned senior counsel appearing with Mr.Tirth Nayak, learned advocate for the petitioner submitted that Section 35 of Chapter V of the Advocates Act, 1961 (hereinafter referred to as "the Act") provides that 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. It is submitted that the petitioner is not aware about the reasons recorded by the Bar Council of Gujarat. The reference by the Bar Council of Gujarat implies that there are reasons recorded. It is submitted that the reasons recorded by the Bar Council of Gujarat have not been provided to the petitioner and such action on its part is in violation of the principles of natural justice.

2. It is further submitted that the edifice on which the reference has been made by the Bar Council of Gujarat is the complaint dated 16.03.2021 filed by Rajat Krishna Gaur against the petitioner under Section 35 of the Act. It is submitted that the petitioner, was advocate representing the wife of the complainant. All the proceedings, were contested on the basis of the instructions and

information provided by his client. It is also submitted that the disputes and litigation which were between the complainant and his wife were settled; however, the complainant has filed the complaint with the Bar Council of Gujarat alleging professional misconduct against the petitioner. It is submitted that the petitioner was never the advocate of the complainant.

3. Reliance is placed on the judgment of the High Court of Judicature at Madras in the case of *R. Swaminathan v. V.Kubaran* reported in 2014-5-L.W. 540. In the said case, the complaint was filed by the respondent therein against the advocates, who had never represented the complainant. The Madras High Court, in para 11, has observed thus:

“11. As pointed out earlier, the second respondent herein did not engage the services of the petitioners, for rendering any professional assistance. On the contrary, the petitioners were engaged by persons against whom the second respondent herein is actually waging a war over a property. Therefore, if any action is initiated against the petitioners, on a complaint made by a person like the second respondent, against whose interests the petitioners are engaged as advocates, no advocate can carry out his professional duties and responsibilities without fear. A professional is obliged to render services to his client. The services rendered by an advocate to his client, would naturally invite the displeasure and wrath of such client's opposite party. Therefore, if parties to a litigation are allowed to take up the battle to the door steps of the counsel for the opposite party, the profession itself will be in jeopardy.”

In para 22, the judgment of the Hon'ble Apex Court in the case of *Pandurang Dattatraya Khandekar v. Bar Council of Maharashtra, Bombay* reported in (1980) 2 SCC 556 has been relied upon wherein, it has been held that professional can be held liable for negligence only on one of the two findings, namely (i) either that he was not possessed of the requisite skill that he professed to have possessed or (ii) that he did not exercise with reasonable

competence, the skill which he did possess.

4. It is therefore submitted that the filing of complaint would arise only when the petitioner would have represented the complainant; however, the petitioner was representing the wife of the complainant and not the complainant.

5. Having regard to the submissions made by the learned counsel appearing for the petitioner, issue notice, returnable on 29.10.2021.

6. In the meantime, ad-interim relief is granted in terms of para 7.B.(ii).

7. Direct service is permitted.

RAVI P. PATEL

(SANGEETA K. VISHEN, J)