DEVENDRA BHAI SHANKAR MEHTA

v.

RAMESHCHANDRA VITHALDAS SHETH AND ANR.

APRIL 22, 1992

[N. M. KASLIWAL AND G. N. RAY, JJ.]

Advocates Act, 1961:

Sections 35, 36, 36-B, 38—Advocate—Professional misconduct—Allegations of defrauding and cheating aspirant loanees—Proceedings before State Bar Council and Bar Council of India—Findings of Disciplinary Committee that concerned advocate and financier being parties to racket defrauded aspirant loanee in receiving large sum of money on pretext of legal expenses and other incidental costs for advancing proposed loan—Punishment—Removal of name of advocate from Roll of State Bar Council—Validity of.

Bar Council of India—Disciplinary Committee—Proceeding against advocate—Findings based on facts—Standard of proof required to establish.

The appellant was an Advocate practising in Bombay. Respondent No.1 (the complainant) made a complaint to the Bar Council of Maharashtra alleging professional misconduct against the appellant. His case was that he was a proprietor of a firm engaged in a business of manufacturing. He was in need of financial accommodation and a financier impressed upon him that on examination of his papers by a solicitors' firm run by the appellant, he would be given loan. He was also told that the appellant was also one of the investors. The complainant on such representation agreed to get loan through the financier. On inspection of properties of the complainant the financier told him that a loan upto Rs.7 lakh would be advanced to him provided he would pay at the rate of 5-1/2% on the advance of amount of loan towards legal and other expenses. In a meeting held at the residence of the appellant in connection with the proposed loan the appellant told the complainant that he was an advocate of a certain firm and he worked only for the genuine financiers and would look to the interests of the loan seekers. He also told that he was himself a member of the internal group of the financiers. The appellant induced the complainant to part with certain money for legal expenses and in-

A formed him that out of 5-1/2% of the amount of loan required to be paid by him by way of legal expenses the appellant would keep 3-1/2% for the stamp duty payable to the Government. He also told that the disbursement could be expedited only if the complainant paid cash to the financier before certain date. On the stipulated date the complainant paid Rs.25,000 to the financier. He also paid the balance of Rs.13,500 to the appellant. There-
B after the appellant made all attempts to delay the disbursement and asked the complainant to pay Rs.10,000 more which the latter paid. However, the proposed loan was not disbursed and instead of it, the financier made a complaint against the complainant in the Social Security Branch.

C The complainant made a complaint to the CID Branch of Bombay Police against the financier and the appellant. The financier was charge-sheeted. On the advice of the police the complainant made an application to the Maharashtra Bar Council. He also alleged that the appellant had indulged in fraudulent activities in respect of other persons and attached
D a list of witnesses to the complaint. The appellant challenged the proceedings before the High Court, but the Writ Petition was dismissed and the proceedings before the State Bar Council continued.

The complaint before the State Bar Council could not be disposed
E of within the statutory period and the case stood transferred to the Disciplinary Committee of the Bar Council of India. Meanwhile the financier died. The Disciplinary Committee analysing the evidences dispassionately and considering the affidavits filed on behalf of both the parties as also the affidavits filed by some witnesses alleging that they had also
F become the victim of fraudulent action and cheating by the financier and the appellant, held that there was a racket for defrauding and/or cheating to aspirant loanees, and the financier and the appellant-advocate were parties to such racket; that the appellant in connivance with the financier defrauded the complainant in receiving large sum of money on the pretext of legal expenses and other incidental costs for advancing the proposed
G loan to the complainant, but such loan was never advanced to him; that the appellant had received Rs.10,000 from the complainant; that a case of professional misconduct under section 35 of the Advocates Act had been established against the appellant. The Committee, therefore, ordered the name of the appellant to be removed from the State Roll of the Bar Council
H of Maharashtra.

In the appeal to this Court, it was contended on behalf of the appellant that he had no role in the matter of alleged fraudulent activities of cheating by the financier and/or some other persons as he was engaged by the financier for preparing the document of mortgage after inspection of records of the complainant for advancing the proposed loan and he had only rendered the professional service as an advocate in a fair and proper manner; that the appeallant had only received his professional fees from the financier and did not receive any amount from the complainant; that the finding of the Disciplinary Committee that the appellant had been a member of the racket and had taken part in defrauding and cheating the complainant was based on surmises and conjectures; and that the Disciplinary Committee committed a grave error in law in considering the evidence of witnesses who were total strangers to the case of alleged fraud and cheating.

Dismissing the appeal, this court,

HELD: 1.1. The appellant advocate has not only misused the trust reposed in him but has played an active part in defrauding or cheating the complainant who on the basis of the false representation of the appellant had to part with substantial amount to his serious loss and prejudice.

[p.704 E-G]

1.2. A perusal of the entire evidence placed on record leads to the irresistible conclusion that the appellant was not only having full knowledge about the racket but was also an active member of such racket and was getting substantial financial advantage. The appellant was not a silent spectator merely giving his legal advice, but was an important link in the *modus operandi* of running a racket by the financier. [p. 704 C-D]

1.3. The evidence of many other applicants seeking loan showing that they were also duped and met the same fate as the complainant, speaks volumes against the conduct of the appellant. [p. 704 B]

1.4. An advocate indulging in such nefarious activities is not entitled to continue as a member of legal profession which is based on the implicit faith and confidence in the mind of the client. [p. 704 B-C]

A **1.5. It is not the case of a lapse to take appropriate steps by an advocate and/or a case of negligence in discharging the duties so that any lenient view may be taken against the concerned advocate. [p. 704 F]**

1.6. An advocate enrolled under the Advocates Act, 1961, having a licence to represent the case of litigants is expected to maintain a high B **standard of morality and unimpeachable sense of legal and ethical propriety. [p.704 E]**

2. The complainant specifically alleged that there was a racket to which the appellant and the financier were parties. He indicated the *modus* C *operandi* by which he became victim of the fraudulent activities of the said members of the racket. To bring home the case of racket, the depositions of other persons who had also approached the financier for advancement of loan and had been dealt with by him and the appellant in similar manner and though they had to part with substantial amount towards legal and other expenses for getting the proposed loan, such loan had not D **been ultimately sanctioned to them, became relevant and necessary to be looked into. [p. 701 B-D]**

3.1. It is always permissible to draw reasonable inference from the facts established in a proceeding and such reasonable inference cannot be E **termed as finding based on surmises and conjectures. There is no manner of doubt that in any proceeding, judicial or quasi judicial, there is requirement of proof and such requirement cannot be substituted by surmise and conjecture. But proof may be established directly on the basis of the evidence adduced in the proceeding or the allegation of fact may be established by drawing reasonable inferences from other facts established** F **by evidence. [p. 703 B-D]**

3.2. In the instant case, the Committee, has referred to the admitted facts and also the facts established in evidence and on a proper analysis of the facts so established and/or admitted, it has drawn reasonable G **inference. The Committee was alive to various aspects of the case and has taken care in meticulously scrutinising and analysing the evidence on record and the materials, and the Committee has based its finding by giving cogent reasons and the inferences drawn from the established facts also appear quite reasonable. The Disciplinary Committee deserves commendation in disposing of the complainant's case fairly and dispassionate-** H **ly. In the matter of imposition of punishment, the Disciplinary Committee**

has referred to the relevant decisions of this Court and has imposed the penalty by recording good reasons for the same. [p. 703 A; D-E] A

Re: *P an Advocate* AIR 1963 SC 1313 and *M. Veerbhadra Rao* v. *Tak Chand,* AIR 1985 SC 28, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4437 of 1990. B

From the Order dated 30.6.1990 of the Diciplinary Committee of the Bar Council of India in B.C.I. TR Case No. 127 of 1988.

Satish Chandra, V.B. Joshi and Umesh Bhagwat for the Appellant. C

Respondent-in-person (NP)

The Judgment of the Court was delivered by

G. N. RAY, J. This Civil Appeal is directed against the order dated June 30, 1990 passed by the Disclipinary Committee of the Bar Council of India under Section 36B of the Advocates Act, 1961 in BCI Tr. Case No. 127 of 1988 arising out of the complaint made before the Bar Council of Maharashtra in D.C. No.22 of 1987. Shri Ramesh Chandra Vithaldas Sheth made a complaint on February 9, 1987 to the D.C. No.21 of Bar Council of Maharashtra against the respondent Devendra Bhaishankar Mehta, an Advocate practising in Bombay *inter alia* alleging professional misconduct against the said advocate. It was alleged by the respondent complainant, that he carries on business of manufacturing at Jhalod and he owns a proprietary firm named as M/s Ravi Dyechem Manufacturing Industries and M/s Vithaldas Dye Stuff Manufacturing Company. The complainant was in need of financial accommodation and was in search of a reliable financier and one Mr. Balu Bhai Modi impressed the complainant that they would give financial accommodation on being satisfied about the documents of security. It was represented to the complainant that a firm of Solicitors run by the said Shri Devendra Bhaishankar Mehta would examine the papers for the purpose of financing and the said Shri Devendra Bhai Mehta was also an investor. The complainant on such representation agreed to get financial loan through the said Balu Bhai Modi. The complainant alleged that an inspection of factory and other premises at Jhalod was made by Shri Balu Bhai and he was informed that the said properties were in excellant condition and the estimated value was Rs.12 lakhs. He D E F G H

A was also assured that since the properties were valuable and in excellant condition a lower rate of interest would be considered and he was also told that a loan up to Rs.7 lakhs would be advanced to him provided the complainant would be advanced to him provided the complainant would pay a draft or cash at the rate of 5 and 1/2% on the advance of the amount of loan towards legal and other expenses. He was also informed that a B meeting of the financiers would be held including Mr. Devendra Bhai Mehta who was one of such financiers. Thereafter a meeting was arranged at the residence of the said Shri Devendra Bhaishankar Mehta and in such meeting Shri Devendra Bhaishankar Mehta falsely represented to the complaint that he was an advocate of the firm of solicitors M/s Dayalji and C Deepchand and he worked only for the genuine financiers and he would look to the interests of the loan seekers. Shri Devendra Bhaishankar Mehta also represented to the complainant that he was himself a member of the internal group of the financiers who would advance the loan and hence he was not only preparing the mortgage deed for the proposed loan but also D scrutinising it for his own satisfaction. He also assured the complainant that once the mortgage deed was drafted by him the complainant would get loan within ten days because thereafter only the formalities were required to be gone into. The said Shri Mehta induced the complainant to part with money for legal expenses and informed the complainant, that out of 5, and 1/2% of the amount of loan required to be paid by the complainant by way E of legal expenses, Shri Devendra Bhaisnanknar Mehta would keep 3 and 1/2% for the stamp duty payable to the Government and he also represented that the disbursement could be expedited only if the complainant would pay cash to Balubhai Modi on April 10, 1986. Shri Devendra Mehta also promised that he would see that the loan proposal was passed in the F internal group of meeting of the financiers of which he himself was one of the financiers and he would ensure that Shri Balu Bhai Modi would sanction the loan as early as possible. Thereafter Shri Devendra Mehta had inspected the documents and returned most of the original documents and assured the complainant that he would get loan in a few days. On April 10, 1986 the complainant went to the office of Shri Balu B. Modi and handed G over to him a sum of Rs.25,000 for the loan of Rs.7 lakhs @ 14%. Shri Balu B. Modi told the typist to prepare the stamp receipt and also informed the complainant to arrange for the payment of balance of Rs.13,500. The complainant informed him that he would pay the balance to Shri Devendra Mehta at the time of disbursement of loan. Shri Balu Bhai Modi told the

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complainant to pay to Shri Devendra Mehta within a week and he instructed the typist to put the date as April 17, 1986 by which date the complainant would pay the balance sum of Rs.13,500.

The complainant alleged that thereafter he had contacted Shri Devendra Bhaishankar Mehta who represented to the complainant that if the complainant could not pay the balance of Rs.13,500 in a week, how internal group of financiers would believe that the complainant would repay the loan of Rs.7 lakhs. He, therefore, advised the complainant that he should pay a balance of Rs.13,500 and the complainant accordingly paid the said balance sum. Shri Devendra Bhaishankar Mehta, thereafter, made all attemps to delay the advancement of loans by unending demands and the complainant had to forward about 200 documents to Shri Devendra Bhaishankar Mehta, but Shri Mehta ultimately conveyed to the complainant through Shri Balu Bhai Modi that as the clearance certificate under Section 230 A(i) of the Income Tax Act had not reached the Office of the concerned authorities and as the said advancement of loan was very heavy, he would neither advance his share of finance nor he would agree to the disbursement until a sum of Rs.10,000 would be handed to Shri Devendra Bhaishankar Mehta. The complainant caused an enquiry and came to know that the Certificate under Section 230 A(i) had reached the office on June 5, 1986. He, however, paid Rs.10,000 in July, 1986 to Shri Devendra Bhaishankar Mehta in the presence of Shri Balu Bhai Modi, when Shri Devendra Bhaishankar Mehta told the complainant that he would issue the receipt at the time of the disbursement of the loan and he should be trusted. The complainant further alleged that despite such payment and other steps taken by the complainant, instead of disbursing the proposed loan, Shri Balu Bhai Modi lodged a false complaint against the complainant in Social Security Branch of Bombay Police on September 5, 1986. The complainant thereafter made an application to the C.I.D. Branch of Bombay Police on September 8, 1986. The complainant alleged that because of the friendly relationship by the racketeers including the said Shri Balubhai Modi and Shri Devendra Bhaishankar Mehta with the police, nothing was heard about his complaint but ultimately on the personal intervention by the Commissioner of Police, Bombay, his application was duly registered and Shri Balubhai Modi was chargesheeted in Criminal Case No. 1110/86. The complainant was advised by the Police to make an application to the Bar Council against Shri Devendra Bhai Mehta. The complainant also alleged in his petition of complaint to the State Bar

A Council that Shri Devendra Bhai Mehta had indulged in fraudulent activities in respect of other persons and a list of witnesses was attached to the said letter of complaint. As the complainant case before the State Bar Council, could not be disposed of within the statutory period, the complaint stood transferred to the Disciplinary Committee of the Bar Council of
B India and numbered as B.C.I. Tr. Case No.127/88. As aforesaid, the judgment dated June 30, 1990 in the B.C.I. Tr. Case No.127 of 1988 is the subject matter of Civil appeal No. 4437 of 1990.

When the complaint case was pending before the Disciplinary Committee of the State Bar Council of Maharashtra, the said Disciplinary
C Committee called upon the appellant to file an affidavit. Pursuant to the direction of the State Bar Council of Maharashtra, the appellant filed an affidavit dated November 26, 1987 indicating therein the particulars of the documents drafted by the appellant at the instance of the said Shri Balubhai Modi for advancing loans to different persons intending to get loan
D accommodation. The complainant-respondent also deposed before the Disciplinary Committee of the State Bar Council and had applied for issuing summons to the witnesses namely to the deponents of the affidavits affirmed by Shri Munjibhai M. Shah and Shri Devendra Shashikant Dyanmhotre, who had stated in their affidavits that they had also become victim of fraudulent action and cheating by the said Shri Balubhai Modi in
E connivance with the appellant Devendra Mehta. The appellant opposed examination of such persons as witnesses in the proceedings *inter alia* on the ground that the said affidavits had disclosed independent grievances of the deponents and the said deponents had not complained before the Bar Council. It, however, appears that the State Bar Coucil of Maharashtra
F overruled such objections of the appellant. The appellant in an attempt to stall the proceeding before the State Bar Council moved a Writ Petition under Articles 226 and 227 of the Constitution of India being Writ Petition No. 1897 of 1988 in the High Court of Bombay *inter alia* challenging the legality and validity of the said complaint proceeding before the State Bar
G Council. Such Writ Petition, however, was rejected by the Bombay High Court on April 27, 1988 and the matter thereafter proceeded before the State Bar Council and then stood transferred to the Disciplinary Committee of Bar Council of India. The Disciplinary Committee of Bar Council of India examined and recorded evidences of Prafulchandra Shah (CW 2), Munjibhai M. Shah (CW 3), Shashikant D. Dyanmhotre (CW 5), Bhawanji
H Bharot (CW 6) and Mahesh Ramanlal Shah (CW 4). It may be noted here

that Mahesh R. Shah (CW 4) an advocate had acted for Prafulchandra Shah in Criminal Case. The appellant and complainant had also deposed in the said disciplinary proceeding before the Bar Council of India and their respective statements were also recorded.

The Disciplinary Committee of the Bar Council of India scrutinised and analysed the evidences and materials on record and by giving elaborate reasoning, the Disciplinary Committee *inter alia* came to the finding that it was established beyond reasonable doubt that there was a racket for defrauding and/or cheating to aspirant loanees and Shri Balubhai Modi and the appellant advocate were parties to such racket. The Disciplinary Committee had also come to the finding that it was established that the appellant had received Rs. 10,000 from the complainant-respondent on July 11, 1986. The Disciplinary Committee also came to the finding that the appellant in connivance with the complainant defrauded the complainant in receiving large sum of money on the pretext of legal expenses and other incidental costs for advancing the proposed loan to the complainant but such loan was never advanced to the complainant and instead of disbursing the loan, Shri Balubhai Modi got a false complaint lodged against the complainant in Social Security Branch on September 5, 1986. The Disciplinary Committee also came to the finding that a case of professional misconduct under Section 35 of the Advocates Act, 1961 had been established against the appellant. On the question of punishment to be imposed on the appellant, the Disciplinary Committee of the Bar Council of India *inter alia* came to the finding that in the facts and circumstances of the case, the offence of misconduct committed by the concerned Advocate was of a very serious nature. The Advocate had no feeling of regret and remorse. There was no extraneous circumstances on the basis of which the members of the Committee could persuade themselves to take a lenient and liberal view about the punishment and a lenient view would not be justified in the facts of the case. The Committee felt that the name of the said Advocate should be removed from roll of the Advocates. The Disciplinary Committee has noted that the Committee has taken into consideration the guidelines given by the decisions of this court in several cases namely in *Re: P an Advocate* [AIR 1963 SC 1313] and in *M. Veerbhadra Rao* v. *Tek Chand* AIR 1985 SC 28 for imposing the punishment on the concerned Advocate. The Disciplinary Committee therefore passed the following order in exercise of power under Section 35(3)(d) read with Section 36 and 36 B under Section 43 of Advocates' Act, 1961.

A ORDER:

"The name of respondent-Advocate Mr. Devendra Bhaishankar Mehta, Advocate on the State Roll of the Bar Council of Maharashtra be removed from its Roll. He shall pay Rs.2,000 as costs of these proceedings to complainant Mr. Rameshchandra Vithaldas Sheth."

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At the hearning of this appeal, it has been very strongly contended before us by the learned counsel for the appellant that the Disciplinary Committee of the Bar Council of India had proceeded with a closed mind presumably being influenced by the serious nature of complaint made by the complainant-respondent without appreciating properly that the appellant had no role in the matter of alleged fraudulent activities and of cheating by Shri Balubhai Modi and/or some other persons. The appellant had only rendered the professional service as an Advocate in a fair and proper manner. It has been contended by the learned counsel for the appellant that the appellant is a practising counsel and he was engaged by the said Shri Balubhai Modi for preparing the documents of mortgage, on inspection of the records of the complainant for advancing the proposed loan for Rs. Seven lakhs. The appellant in his professional capacity had to give his advice. Accordingly, he had looked into the documents placed before him by Shri Balubhai Modi and the complainant and prepared the draft deed for mortgage and he had also advised his client Shri Balubhai Modi for compliance of the conditions mentioned in the draft deed before advancement of loan so that his client Shri Modi was properly secured. The learned counsel has also contended that such action on the part of the appellant was only fair and proper and any responsible Advocate when engaged by a client was expected to do in the manner in which he had acted. The learned counsel has further contended that it is not a case of the complainant or anybody that the appellant had given any advertisement for advancing loan to any person and it is also nobody's case that he on his own had induced persons to seek such loan and/or he had referred the complainant or any other person to Shri Balubhai Modi or to any other person for getting such loan. It has been contended by the learned counsel that it is the positive case of the complainant-respondent that pursuant to the advertisement given by Shri Balubhai Modi he had approached Shri Balubhai Modi for a loan for running his business and Shri Balubhai Modi had clearly stated to the complainant that such loan could be advanced if

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on inspection of the properties of the complainant the financiers would decide that such loan could be advanced to the complainant and such loan would be advanced on the basis of advice to be taken from the lawyer of the financiers and on execution of proper mortgage deed, on scrutiny of the relevant papers and documents. The appellant did not come into the picture at all when the complainant pursuant to the advertisement had contacted Shri Balubhai Modi. It has also been submitted by the learned counsel that admittedly the complainant was referred to the appellant in his capacity as a legal practitioner engaged by the said Shri Balubhai Modi and/or the financiers. The learned counsel has contended that only in the capacity of an Advocate engaged by a client, the appellant had drafted the deed of mortgage and he had also clearly indicated to the complainant and also to the said Shri Balubhai Modi when the Conference was held in his place that for advancement of loan, the mortgage deed as drafted by him should be executed and the complainant should fulfil the terms and conditions indicated by the appellant in the draft deed. Since the complainant failed to satisfy the terms and conditions as drafted by the appellant, he had advised Shri Balubhai Modi that he could not approve the advancement of loan. The learned counsel has further submitted that it is an admitted case that thereafter the complainant got another document prepared by somebody else and the appellant refused to approve such document because the same was not drafted by him and he did not want to take any responsibility in the matter on the basis of a document not drafted by him. The learned counsel has contended that such action on the part of the appellant clearly indicates that the appellant was a responsible lawyer who wanted to safeguard the interest of his client and despite request he did not agree to approve any document not drafted by him. It has been submitted by the learned counsel for the appellant that if the appellant had real intention to defraud the complainant and to be a party to the alleged racket, he would not have dealt in a straightcut manner and would not have washed his hands in the matter of execution of the document of mortgage. The learned counsel for the appellant has further submitted that the case of payment of any money directly by the complainant to the appellant as sought to be made was not true and should not be accepted. The appellant had received his professional fees only from his client namely, Shri Balubhai Modi. He had further submitted that the complainant-respondent falsely stated before the Bar Council that the appellant had extorted Rs.10,000 from him and such payment of Rs.10,000

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A was made by the complainant directly to the appellant. He has submitted that such case was not made out by the complainant in his complaints before the Police. The complainant made embellishment to his case by falsely alleging that the appellant had asked the complainant to pay a sum of Rs.10,000 on the assurance that on such payment mortgage deed would be executed without any delay so that the complainant would get the loan B of Rs. Seven lakhs and the appellant had actually received Rs.10,000 from him. The learned counsel has contended that such uncorroborated testimony of the complainant about payment of Rs.10,000 by him to the appellant is not at all convincing and should not be accepted more so when such case had not been made out in the beginning and a false case of C payment of Rs.10,000 was sought to be introduced at a later stage. The learned counsel has contended that if the judgment/order under appeal is scrutinised in the proper perspective, it will clearly reveal a closed mind and a biased approach of the members of the Disciplinary Committee. The Committee unfortunately presumed various facts against the appellant on mere surmise and conjecture for the purpose of coming to the finding that D the appellant had been a member of the racket and he had taken part in defrauding and cheating the complainant a large sum of money by assuring him that a loan of Rs. Seven lakhs would be advanced to him. The learned counsel has also contended that the Disciplinary Committee has committed a grave error in law in considering the evidences of four witnesses who were E total strangers to the case of alleged fraud and cheating of the complainant. Such witnesses had no knowledge whatsoever about the alleged deal relating to the case of the complainant and they claimed to be aspirants of getting loans individually in different transactions. The learned counsel has also submitted that the Disciplinary Committee has committed a grave F error in law in considering the evidences of CW 2 Prafulchandra Shah, CW 3 Munjibhai M. Shah, CW 5 Shashikant D Dyanmohtre and CW 6 Bhawanji Bharot because the alleged case of complicity of the appellant in being a member of the racket to cheat the said aspiring loanees had not been put to the appellant when he was under cross examination.

G The learned counsel had further submitted that the appellant is a practising advocate and he has a status and respect in the Society. In discharge of his professional duties, he has acted as a responsible member of the legal profession when he was engaged by Shri Balubhai Modi. It is neither possible nor desirable for an Advocate to cause enquiries about the H real intention of the client in the proposed transaction between the client

and a third party. Even if it is accepted that Shri Balubhai Modi gave advertisements to dupe the intending loanees for the purpose of cheating them on false assurance of loans, the Disciplinary Committee should have adverted to the real question in issue as to whether or not the appellant himself made any false representation to the complainant and had taken part in defrauding or cheating the complainant. The mere fact that he was engaged by a dishonest person cannot be any ground to hold that the appellant himself was guilty of misconduct only because he had acted as an advocate of a party who may be quilty of the offence of fraud or cheating. The part played by the appellant as an advocate was required to be analysed with an open mind and with reference to the documents and evidences on record but unfortunately the Disciplinary Committee miserably failed and neglected to discharge the responsibilities and the duties and functions entrusted to the Committee. The Committee has accepted inadmissible evidences and uncorroborated testimony of the complainant, which in the facts and circumstances of the case were requried to be discarded. It has been submitted by the learned counsel for the appellant that it is only unfortunate that instead of holding that the complainant unjustly tried to implicate the appellant by falsely alleging against him that he was guilty of misconduct, the Disciplinary Committee, on mere suspicion has drawn adverse inferences against the appellant and based its finding which really lay in the realm of surmise and conjecture. The learned counsel has submitted that this being a statutory appeal, this Court should intrinsically consider the facts and circumstances of the case and should make proper evaluation of the evidences on record and in doing so should discard the improper and unjust finding made by the Disciplinary Committee. The learned counsel for the appellant has contended that the Court may have a concern to ensure that the professional morality and standard are maintained by the members of the profession but at the same time the Court should not loose sight of the fact that any finding based on surmise and conjecture against the appellant will not only do a great harm to his avocation in life and professional career but will also cause immense harm in the matter of his standing and repute in the society and to his friends and relatives and such harms cannot be compensated in any manner. In the facts and circumstances of the case, the learned counsel for the appellant has contended, that the complainant has misreably failed to establish the complaint made to the Disciplinary Committee and the disciplinary proceeding was liable to be dismissed with exemplary cost. This

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A Court should therefore allow the appeal and dismiss the complaint with cost.

After giving careful consideration to the facts and circumstances of the case and materials on record and arguments advanced at the hearing B of this appeal, we, however, do not subscribe to the view that the Disciplinary Committee of the Bar Council has proceeded with a closed mind and with a definite bias presumably being influenced by the serious nature of allegation as sought to be contended by the learned counsel for the appellant. The Judgment and Order under appeal clearly reveal that the Disciplinary Committee has taken pains in scrutinising and analysing the C facts of the case as dispassionately as practicable. It also appears to us that the weaknesses in the case of the complainant was not lost sight of and has been specifically adverted to by the Disciplinary Committee even when such infirmity was not pointed out by the appellant at the hearing. It was contended that Rs.10,000 was not advanced by the complainant and the D case of such advancement of Rs.10,000 to the appellant-advocate by the complainant himself was false and after thought. The Disciplinary Committee has not only considered the case of the appellant as argued but has also taken into consideration the other possible argument in favour of the appellant though not argued. It was on consideration of all aspects of the matter, the Disciplinary Committee has come to the finding by giving E cogent reasons therefor. To illustrate this aspect, reference may be made to paragraph 18 of the judgment under appeal:-

> "If really A was not merely an advocate, but also a financier, F would D utter the words: "I will pay Rs.10,000 fees to A only after the registration of the documents", and even if he so utters these words, would C not feel suspect about the same? In fairness to A. We have addresed this question to ourselves though A did not address us on this. But in the predicament in which C was placed, in the situation in which he was made G to drive himself from pillar to post and particularly having gone out of pocket to the tune of Rs.40,000 after complying with the necessary formalities so far and keen as he was to get the loan of Rs.7,00,000 as early as possible, it is quite possible that his conduct might not be that of a person who would be one of H the accurate calculation and assessment."

It has been strongly contended by the learned counsel for the appellant before us that the other aspirant loanees who had also approached Shri Balubhai Modi and were referred to Shri Devendra Mehta for taking legal steps to enable the said aspirant loanees to get the proposed loan should not have been examined in the case of Shri Devendra Mehta because they were not witnesses to the case of fraud and cheating of the complainant and they had no personal knowledge of the case and they had also not made any complaint to the Bar Council in respect of their cases. Such contention, in our view, is devoid of any merit and should be discarded. The complainant specifically alleged that there was a racket to which the concerned advocate and Shri Balubhai Modi were parties. The complainant has indicated the *modus operandi* by which he became victim of the fraudulent activities of the said members of the racket. To bring home the case of racket, the depositions of other persons who had also approached Shri Balubhai Modi for advancement of loan and had been dealt with by Shri Modi and Shri Devendra Mehta in similar manner and though they had to part with substantial amount towards legal and other expenses for getting the proposed loan, such loan had not been ultimately sanctioned to them, became relevant and necessary to be looked into. As a matter of fact, before the Bombay High Court the appellant also challenged the propriety and correctness of the Disciplinary Committee of the State Bar Council to examine other loanees dealt with by Shri Balubhai Modi and Shri Devendra Mehta but the High Court of Bombay did not accept such contention by holding *inter alia* that, read in proper context, it cannot be said that the allegation of racket was totally absent. It may be noted here that the Disciplinary Committee was anxious to independently assess the facts and circumstances of the case in a dispassionate manner without being influenced by any observation of the Bombay High Court in disposing of the Writ Petition of Shri Devendra Mehta. Such anxiety is clearly demonstrated by the observation of the Disciplinary Committee in paragraph 2 (c) of the Judgment/order under appeal which may be quoted hereunder:

> "2 (c) The High Court also went through C's evidence before the State D.C. and opined that read in proper context it cannot be said that the allegation of a "a racket" was totally absent therein. All said and done, when the State D.C. properly exercised its discretion, the High Court thought it improper to entertain the Writ Petition under Art. 227 of the Constitution.

A We must say at this stage that at the time of assessing the whole evidence at the end of full dress inquiry we have taken sufficient care and caution to see that the findings of the State D.C. on the preliminary issue and the High Court's dismissal in limine of A's writ petition declining to interfere with the said findings do not weigh with us for the said assessment. Suffice it to say, we have briefly narrated the details for keeping the record straight."

It has also been contended by the learned counsel for the appellant that the Disciplinary Committee could not appreciate the facts and circumstances of the case in their proper perspective in view of the fact that the Committee proceeded with a preconceived notion. It was precisely on account of such a pre conceived view and bias, the Disciplinary Committee failed to appreciate that the appellant had only acted in responsible manner expected of an advocate engaged by a client. The learned counsel has contended that it was nobody's case that the appellant had floated a proposal to advance loan and he had given any advertisement in response to which the complainant had come in contact of Shri Balubhai Modi. It is an admitted case that in response to an advertisement by Shri Balubhai Modi, the complainant had approached Shri Balubhai Modi for loan and only then he was referred to the appellant by Shri Modi because the appellant was engaged by Shri Modi as a counsel. Although the appellant had always dealt with the complainant only in his capacity as an advocate engaged by Shri Modi, a false complaint was lodged by the complainant that the appellant had assured him and represented him that he himself was a financier and he should pay the amount in question to Shri Balubhai Modi and also to the appellant towards legal expenses and other expenses so that loan for Rs.7 lakhs would be advanced to him without delay. Such case, according to the learned counsel, could not be established by any corroborative evidence but has been accepted by the Disciplinary Committee on mere surmise and conjecture. We are, however, unable to accept the said contention of the learned counsel. We have carefully considered the materials on record and the reasonings of the Disciplinary Committee in the impugned judgment and we are unable to hold that the findings of the Disciplinary Committee are outcome of any closed mind or bias on the part of the Committee and/or findings of the Committee really lay in the realm of surmise and conjecture. We have already indicated the anxiety of the Disciplinary Committee to dispassionately assess the facts of the case

without being influenced by any observation of the High Court of Bombay. The Committee was alive to various aspects of the case and has taken care in meticulously scrutinising and analysing the evidence on record and the materials and the Committee has based its finding by giving cogent reasons and the inferences drawn from the established facts also appear to us quite reasonable. It may be indicated at this stage that Shri Balubhai Modi had died during the pendency of the proceedings before the Disciplinary Committee of the Bar Council of India and there was no occasion to proceed further with the criminal proceeding initiated against him and/or to examine him in the instant case. It is always permissible to draw reasonable inference from the facts established in a proceeding and such reasonable inference cannot be termed as finding based on surmises and conjectures. There is no manner of doubt that in any proceeding, judicial or quasi judicial, there is requirement of proof and such requirement cannot be subsituted by surmise and conjecture. But proof may be established directly on the basis of the evidence adduced in the proceeding or the allegation of fact may be established by drawing reasonable inferences from other facts established by evidence. In the instant case, the Committee, in our view, has referred to the admitted facts and also the facts established in evidence and on a proper analysis of the facts so established and/or admitted, it has drawn reasonable inference. The Disciplinary Committee deserves commendation in disposing of the complainant's case fairly and dispassionately. In the matter of imposition of punishment, the Disciplinary Committee has referred to the relevant decisions of this Court and has imposed the penalty by recording good reasons for the same.

We are not oblivious of the fact that a member of legal profession should not be permitted to be exposed to the hazards of false and malicious allegations against such member and extreme care and caution is required to be taken in dealing with the case of allegation of unfair and improper conduct on the part of a member of legal profession. There is no manner of doubt that the impugned decision of the Disciplinary Committee has a very serious implication on the reputation and standing of the appellant in the society and to the members of his family, friends and relatives. The impugned decision has also a serious bearing on the professional career of the appellant and avocation of life in future. But giving out anxious thought and consideration in the matter, we have not been able to come to the finding that the impugned order was improper and unjust and the findings

A are not tenable in law and/or the decision has resulted in a failure of justice to the appellant. During the course of arguments before us, we had pointedly asked the learned counsel for the appellant to show us any material on record that in any other case on the advice tendered by the appellant any loan was in fact given by Mr. Balu Bhai Modi in order to
B dispel the inference that the appellant was not a member of the racket and was only discharging his professional duty. The learned counsel for the appellant was unable to show any evidence worth the name to prove the innocence of the appellant. The evidence of many other applicants seeking loan shows that they were also duped and met the same fate as the complainant speaks volumes against the conduct of the appellant. An
C advocate indulging in such nefarious activities is not entitled to continue as a member of legal profession which is based on the implicit faith and confidence in the mind of the client. From a perusal of the entire evidence placed on record and read before us, leads us to the irresistible conclusion that the appellant was not only having full knowledge about the racket but
D was also an active member in the complicity of such racket and was getting substantial financial advantage. The appellant was not a silent spectator merely giving his legal advice, but was an important link in the *modus operandi* of running a racket by Balu Bhai Modi. It is really unfortunate that a member of a legal profession has indulged in fraudulent activities in a calculated manner for financial gain at the cost of an innocent person.
E To say the least, an Advocate enrolled under the Advocates Act, 1961, having a licence to represent the case of litigants is expected to maintain a high standard of morality and un-impeachable sense of legal and ethical propriety. It is not the case of a lapse to take appropriate steps by an Advocate and/or a case of negligence in discharging the duties so that any
F lenient view may be taken against the concerned advocate. The concerened advocate has not only misused the trust reposed in him but has played an active part in defrauding or cheating the complainant who on the basis of the false representation of the concerned advocate had to part with substantial amount to his serious loss and prejudice. In such facts and circumstances of the case, we do not find any reason to reduce the
G punishment imposed on the appellant. This appeal, therefore, fails and is dismissed with costs.

R.P. Appeal dismissed.

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