**HOW TO PROCEED AGAINST AN ADVOCATE**

An advocate who has switched sides in a case can be **charged under Section 420 of the IPC for Cheating and Section 406 for Criminal Breach of Trust.**

**FILING AN FIR**

**Section 420**- Cheating and dishonestly inducing delivery of property.—“Whoever cheats and thereby dishonestly induces the person de­ceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”[[1]](#footnote-1)

**Section 405** defines Criminal Breach of trust as “Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes off that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.

**Section 406** of the IPC prescribes punishment for criminal breach of trust- “The accused shall be liable to imprisonment for 3 years, or with fine or with both, as the case may be.”[[2]](#footnote-2)

We can approach the **jurisdictional police station** for registering the FIR under the following sections. If the police officers refuse to register the complaint, we can file a **Zero FIR** in any police station. Unlike an FIR, which is restricted by jurisdiction, a zero FIR can be filed in any police station, regardless of whether the offence was committed under the jurisdiction of that particular police station. After a police station registers a zero FIR, it has to **transfer the complaint** to the police station that has the jurisdiction to investigate the alleged offence. Once a zero FIR is transferred, the police station with the appropriate jurisdiction assigns it a serial number, thereby converting it into a regular FIR. The concept of a zero FIR is relatively new and was introduced on the recommendation of the **Justice Verma Committee** in the aftermath of the Nirbhaya gang rape case in 2012 to put a legal obligation on police to take quick action and prevent them from using the excuse of absence of jurisdiction.

**WRITING A COMPLAINT TO THE DELHI BAR COUNCIL.**

The procedure to write the complaint is as follows:

→ Write the **complaint in the form of a plaint** and also write the **enrolment number, address and contact number of the advocate** against whom you are complaining.

→ Submit **55 copies** of your complaint in Hindi/English and shall contain the verification part. Last page of each and every copy of the complaint shall be **signed by the Complainant**. Also required to submit a **colour photograph of the Complainant on the first page of the Original Complaint** and its copies on the rest of 54 sets.

→ **Contact Number/Email I.D**. of Complainant and Respondent, if any.

→ The complaint must also contain an **affidavit on non-judicial stamp paper of Rs. 10/- only attested by an Oath Commissioner/Notary** in support of complaint.

→ **Remit Rs. 500/- as complaint fee** in cash or demand draft in favour of Bar Council of Delhi.

→ **Identity proof** of the Complainant.

After the completion of the above stated formalities, your complaint will be taken up for consideration in its meeting, for which notice will be sent to you.

**Section 35 of the Advocates Act 1961** talks about punishment of advocates for misconduct- “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.”[[3]](#footnote-3)

(1A) 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.

**PRECEDENTS- 1. STATE V. LALIT MOHAN NANDA[[4]](#footnote-4)**

This case arises out of proceedings under Sections 10 and 12 of the Indian Bar Councils Act (Act XXXVIII of 1926), wherein an enquiry was made regarding the professional misconduct of Mr. Lalit Mohan Nanda, Advocate, Bolangir, for appearing against his former client in a directly connected litigation, arising out of a family dispute between step-brothers of a Hindu family.

The point for consideration, in this case, was, whether Mr. Nanda is guilty of professional misconduct for a breach of rules relating to the professional conduct of Advocates made under Section 15(a) of the Indian Bar Councils Act, 1926.

“15. General power of Bar Councils to make rules.—A Bar Council may, with the previous

sanction of the High Court for which it is constituted, make rules consistent with this Act to provide for and regulate any of the following matters, namely:—

(a) The rights and duties of the advocates of the High Court and their discipline and professional

conduct.”[[5]](#footnote-5)

The relevant rules of Bar Council in connection with this case are, for convenience of ready reference, set out below:

**“Rule 15: In the absence of instructions to the contrary from his first client an Advocate may act, appear for, or advise the opposite party in a subsequent or other legal proceedings which is not directly connected with, or in continuation of the first proceeding.**

Rule 16: These rules are not exhaustive of the subject of professional etiquette, even as regards the specific matter with which they deal”.

The penalty for breach of rules of professional conduct is provided under Section 10(1) of the Indian Bar Councils Act, 1926 which provides that the High Court may reprimand, suspend or remove from practice any Advocate of the High Court whom it finds guilty of professional or other misconduct Section 12 lays down the procedure in enquiries providing that the High Court shall make rules to prescribe the procedure to be followed by Tribunals and by District Courts respectively, in the conduct of inquiries under S. 10.

The Honourable Orissa High Court had observed that Advocate Lalit Mohan Nanda was guilty for professional misconduct, as he was found guilty of changing sides, which means that he had appeared for the opposite party in the same case after appearing for the first party. The duty of upholding the interest of a client was breached.

**2. RAJIV HIRANANDANI V. NAMRATA ZAKARIA[[6]](#footnote-6)**

In this case, the petitioner and the respondent are both divorcees. They were married on 21.03.2011. In the previous divorce proceeding, initiated by the respondent against her former husband, Arif Zakaria, the petitioner had requested his Advocate, Mrs. Edith Dey, a friend of the petitioner to help the respondent. Accordingly, Mrs. Dey filed a petition on behalf of the respondent, seeking divorce from her ex-husband, Mr. Arif Zakaria.

According to the petitioner, his Advocate Mrs. Dey appeared on his behalf, in the anticipatory bail proceedings. Thereafter, the respondent filed proceedings under the Domestic Violence Act and other reliefs in December, 2012 in the Court of the learned Metropolitan Magistrate, Mazgaon, Mumbai, being proceeding No. 27/DVN/2012. In the said proceedings, Mrs. Dey is representing the petitioner. In December, 2012, the respondent preferred another petition in the Family Court, seeking maintenance under the Hindu Adoptions and Maintenance Act, 1956 as well as under the provisions of the Domestic Violence Act. In the said petition, again Mrs. Dey was representing the petitioner.

According to the petitioner, thereafter, in May, 2013, a petition for divorce was filed by the petitioner as against the respondent - wife on the ground of adultery. During the pendency of the proceedings in the Family Court i.e. the petition for maintenance, an application came to be preferred by the Advocate for the respondent praying therein, that Mrs. Dey, Advocate, for the petitioner had appeared for the respondent in a previous divorce proceedings and as such was conversant with the facts of her case i.e. of her previous divorce.

The family court had set aside the advocate’s appointment and directed the second husband to appoint another advocate to represent him. Mrs. Dey contended that the two proceedings were distinct and were not connected and therefore, the findings recorded by the learned Judge were erroneous and were contrary to the facts on record. She submitted that there was no conflict of interest. She relied on the Bar Council of India Rules in particular rule 23:

**“23. Not appear for opposite parties- An advocate who has advised a party in connection with the institution of a suit, appeal or other matter or has drawn pleadings, or acted for a party, shall not act, appear or plead for the opposite party in the same matter.”**

On the other hand, the wife’s advocate Taubon Irani emphasized that advocates must maintain their clients’ confidentiality. After listening to arguments on both sides, the Court noted that nowhere had the wife contended that the said advocate was aware of any confidential information. The Court also observed that the family court had failed to take into consideration that the divorce case where the Advocate Dey had represented the respondent-wife was converted into a petition for divorce by mutual consent in the first hearing itself. The Court also clarified that the said family court order did not decide on whether the advocate can or cannot appear for the second husband; instead, the judge held merely observed that **under Section 13 of the Family Court Act, 1984, there is no inherent right in an Advocate to appear**. After discussing **Rule 23 of Bar Council of India rules and Section 34(1) of Advocate Act, 1961**, the Court came to a conclusion that **an advocate cannot switch sides and appear for the opposite side in the “same proceedings”.**

Applying the ratio of this case, we can say that since the advocate was aware of the facts of the case and helped both the parties in the same proceedings, he should be liable for breach of the provisions of the Advocates Act 1961 and the Bar Council of India Rules.

Thus in case an advocate changes sides in a case, the following options can be exercised:

* Giving an application in the district court where the case is pending and requesting the court to remove the advocate from the case.
* Approaching the State Bar Council under Section 35 of the Advocates Act, which will look into the matter through a disciplinary committee and suggest the further course of action.
* Reporting the offence of cheating and criminal breach of trust by the advocate, by filing an FIR in the nearest police station.
1. Indian Penal Code, 1960 [↑](#footnote-ref-1)
2. Indian Penal Code, 1960 [↑](#footnote-ref-2)
3. Advocates Act, 1961 [↑](#footnote-ref-3)
4. 1960 SCC OnLine Ori 16 [↑](#footnote-ref-4)
5. Indian Bar Councils Act, 1962 [↑](#footnote-ref-5)
6. 2014 SCC OnLine Bom 1032 [↑](#footnote-ref-6)