

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST**  
**REPUBLIC OF SRI LANKA**

In the matter of a Rule in terms of Section 42(2) of the Judicature Act No. 02 of 1978 against Mr. Nizam Mohammed Shameem, Attorney-at-Law.

SC Rule No. 6/2021

H.M.B.P. Herath,

Secretary,

Presidential Commission of Inquiry to Investigate and Inquire into and Report or take Necessary Action on the Bomb Attacks on 21<sup>st</sup> April 2019,

1<sup>st</sup> Floor, Block No. 05,

Bandaranaike Memorial International Conference Hall,

Buddhaloka Mawatha, Colombo 07.

**COMPLAINANT**

**Vs.**

Nizam Mohammad Shameem,  
Attorneys-at-Law,  
104 C, Godawaththa Road,  
Godapitiya,  
Akuressa.

**RESPONDENT**

**Before:** Buwaneka Aluwihare PC, J.  
Thurairaja PC, J.  
Mahinda Samayawardhena, J.

**Counsel:** Faiz Musthapha PC with N.M. Shaheid PC and M.A. Zaid for the Respondent Attorney-at-Law.  
Rohan Sahabandu PC with Chathurika Elvitigala for the Bar Association of Sri Lanka.  
Ganaga Wakishta Arachchi DSG for the Attorney General.

**Inquiry on:** 21.06.2023.

**Decided on:** 24.10.2023.

**Aluwihare PC J.**

The respondent, who is an Attorney-at-law, has been called upon to show cause as to why he should not be suspended or removed from office on the ground of conduct that would be regarded as disgraceful or dishonourable by an Attorney-at-law.

When this matter was taken up for inquiry on 21.06.2023, the Respondent Attorney-at-law sought permission of the court to withdraw his earlier plea of, 'not guilty' and he intimated that he wishes to plead guilty to the Rule. Accordingly, the application was allowed and the Rule being read for the second time, the Respondent Attorney pleaded guilty to the Rule.

The Respondent Attorney-at-Law [hereinafter referred to as the Respondent] engaged himself to represent the All Ceylon Jamiyyathul Ulama (hereinafter the 'ACJU') in the proceedings conducted on 9<sup>th</sup> September 2020 before the Presidential Commission of Inquiry to Investigate and Inquire into and Report or take Necessary Action on the Bomb Attacks on 21<sup>st</sup> April 2019 (hereinafter the 'PCoI'). Moulavi Murshid Marsa Mullaffar was attending the proceedings of the PCoI on 9<sup>th</sup> September 2020 representing the ACJU in his capacity as the acting Secretary. The Respondent is accused of conveying the mobile telephone of Moulavi Mullaffar, the said representative of the ACJU, bearing Subscriber Identification Number [SIM] 0777 988 395 into the venue of the proceedings and aiding Moulavi Mullaffar to record a part of the proceedings of PCoI on the said date, contrary to the rules of the procedure of the PCoI.

By the aforesaid conduct the Respondent was alleged to have been in breach of Rules 60 and 61 of the Supreme Court (Conduct of and Etiquette for Attorney-at-Law) Rules 1988, made in terms of Article 136 of the Constitution of the Republic of Sri Lanka.

The Respondent Attorney-at-Law has stated his case by affidavit dated 25<sup>th</sup> November 2020. The Respondent has admitted that he carried the mobile telephone of his client, the said Moulavi Mullaffar into the venue of the proceedings. It is averred that Moulavi Mullaffar had requested the Respondent to keep his mobile phone as he was not permitted to take it into the premises. Only Attorneys-at-Law were allowed to take their mobile telephones into the premises where the hearing of the Commission was taking place.

The Respondent has stated that out of respect for the Moulavi as a member of the clergy of the Respondent's faith and trusting his word, he agreed to keep the mobile phone in his custody. The Moulavi had indicated to him that the mobile phone was on 'flight mode'.

The Respondent in his affidavit has maintained that while the proceedings were ongoing a mild sound had emanated from the mobile phone and it had started vibrating. Failing to switch it off by pressing the power button, the Respondent has stated that he passed the phone to the Moulavi who was seated two rows behind him, so that the Moulavi could switch it off. As the proceedings were ongoing and the Respondent was assisting his Senior Mr. Javed Yousuf to cross-examine Ven. Galaboda Aththe Gnanasara Thero who was giving evidence before the Commission on that day and taking notes he states that he was unable to retrieve the phone from the Moulavi after he passed it over to him. Furthermore, he states that he had no reason to doubt that the Moulavi would not follow his instructions and not switch off the mobile phone.

The Respondent has stated that he was completely unaware of the alleged conduct of the Moulavi and that, had he known of the intention of the Moulavi to record the proceedings he would have declined to take the mobile phone into the venue of the proceedings. He has further stated that he did not intend to abuse the privilege offered to him as an Attorney-at-Law.

The Respondent has stated that he returned the mobile phone to the Moulavi during the proceedings with the indication to turn it off, that he had no knowledge of any ulterior motive on the part of the Moulavi and that he personally had no intention of recording the proceedings of the PCoI. He has further stated that he was unaware that recording of public hearings and/or hearings that were not conducted *in camera* before the PCoI is prohibited.

On the other hand, the Moulavi Mulaffar in his statement to the police dated 09.09.2020 has stated that he had inquired from the Respondent about the possibility of recording

the proceedings on the mobile phone of the Respondent, which the Respondent had allegedly refused to do stating that his mobile phone did not have sufficient memory to record the proceedings. The Moulavi has stated that thereafter, he asked the Respondent whether he can record from the Moulavi's phone and the Respondent had asked him to give the mobile phone to the Respondent after putting it on flight mode and switching on the recording.

The Moulavi has further stated that at one point the Respondent returned the mobile phone to him as it was not working and that thereafter the Moulavi has switched on the recording and kept the mobile phone with him.

The inquiries made by the police unit attached to the PCoI, affirmed the fact that the evidence led before the Commission in the afternoon session in fact had been recorded making use of the mobile phone concerned. Sequel to this revelation, The Chairman of the PCoI had referred this matter to the Supreme Court to consider whether the Respondent was in breach of the Rules relating to 'Conduct of and Etiquette for Attorneys -at -Law'.

The Professional Purpose / Ethics Inquiry Committee of the Bar Association which conducted an inquiry into this matter has observed that the Respondent Attorney had knowledge of the notices placed at the Commission regarding preventive measures put in place to prevent litigants and witnesses taking telephones inside the Commission Hall where the proceedings were held. The said Inquiry Panel has observed that adhering to Rules applicable to the PCoI relating to its proceedings forms part and parcel of responsibilities and obligations towards the Supreme Court Rules applicable to Attorneys.

Pleading in mitigation, the learned President's Counsel on behalf of the Respondent-Attorney, submitted to the court that the court should take cognizance of the fact that the Respondent expressed his unreserved regret and remorse over this incident without wasting the time of the court. The learned President's Counsel urged this court to consider that the Respondent is a young practitioner of law and is a father of an infant child and

that he solely relies on the income of his legal practice to support the family. It was also pointed out that the Respondent had come up in life from humble beginnings. It was submitted that due to this social disparity, he was overawed by the presence of the Secretary of the ACJU which is considered a prestigious body of the people that belong to the Islamic faith. Mr. Musthapha PC contended that it was due to these reasons that the Respondent had agreed to take the phone of the Secretary of the ACJU as the request was overbearing and he could not put the request of the Secretary down. The learned President's Counsel further submitted that the Respondent Attorney had no intention whatsoever to record the proceedings as averred in paragraph 31 of his affidavit furnished to the Supreme Court. Mr. Musthapha appealed to the court to consider that the proceedings before the Commission was public hearings with the presence of several journalists covering the proceedings.

The learned DSG pointed out that Moulavi Mullaffar attended the proceedings on the previous day [i.e. 8<sup>th</sup> September] as well and on that day his phone was left with the officers who were in charge of the security of the Commission.

The Respondent belongs to the noble profession from which one is entitled to expect a conduct appropriate to the profession which should be of a very high degree with utmost honesty. We share the view of the Disciplinary Committee that the Respondent had full knowledge of the notices placed at the Commission and therefore the restrictions that were put in place. The complaint against the Respondent is a serious one. The degree of punishment that should be imposed in cases of this nature is always a difficult decision to make. We have taken into account the mitigating factors mentioned by the learned President's Counsel and are also not unmindful of the consequences that our order would have on the Respondent's life and future. We however feel that we must mark our disapproval of the conduct of the Respondent in no uncertain terms and are of the view that the professional misconduct that has been disclosed in this case calls for his suspension from the roll of attorneys for a period of eight months.

The suspension of the Respondent from the practice will come into effect from 1<sup>st</sup> January 2024. The period of eight months will be reckoned from that date.

JUDGE OF THE SUPREME COURT

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S. THURAIRAJA PC, J.

I agree.

JUDGE OF THE SUPREME COURT

MAHINDA SAMAYAWARDHENA, J.

I agree.

JUDGE OF THE SUPREME COURT