

**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. 2 of 1978 against Punnya
Kumari Palaketiya, Attorney-at-Law.*

Hon. Judge S.A.I.S. Suraweera,
Provincial High Court Judge,
Provincial High Court,
Polonnaruwa,

COMPLAINANT

Vs.

SC Rule No. 01/2021

Punnya Kumari Palaketiya,
14/18, Onegama
Polonnaruwa.

RESPONDENT

BEFORE: **S. THURAIRAJA, PC, J.**
A. L. SHIRAN GOONERATNE J. &
JANAK DE SILVA, J.

COUNSEL: Punya Kumari Paleketiya Respondent appeared in person.
Rohan Sahabandu, PC for the Bar Association of Sri Lanka.
Rajitha Perera, DSG for the Hon. Attorney-General.

INQUIRY ON: 08 August 2023, 01 March 2024, 18 June 2024

DECIDED ON: 31 July 2024

THURAIRAJA, PC, J.

1. The Rule against the Respondent Attorney-at-Law, Punnya Kumari Palaketiya, was preferred pursuant to the order of the Provincial High Court of Polonnaruwa dated 07th February 2019, directing that her conduct, revealing details of deceit, malpractice, and dishonourable conduct unbecoming of an Attorney-at-Law, be brought to the notice of the Registrar of this Court.
2. The Rule so issued details the allegations against the Respondent Attorney-at-Law as follows:

***"WHEREAS,** upon an application made by the Learned State Counsel prosecuting in the Provincial High Court of Polonnaruwa in Provincial High Court of Polonnaruwa Case no HC 05/2017, the Learned Judge of the Provincial High Court by order dated 07.02.2019 has thought it fit and appropriate to bring to the notice of the Registrar of the Supreme Court of the Democratic Socialist Republic of Sri Lanka (hereinafter referred to as the Complainant) of the alleged deceit and malpractice on your part;*

***AND WHEREAS** the said complaint discloses that:*

- 1) *You on or around 03rd of July 2018, whilst being the duly appointed Attorney for the Accused in Provincial High Court of Polonnaruwa Case No HC 05/2017, inquired for and/or provided instructions that are of a professional nature to Prosecution Witness No 1 (hereinafter referred to as PW 1) in order to prepare an affidavit by PW 1 to be filed in the above proceedings.*
- 2) *You on or around 03rd of July 2018, whilst being the duly appointed Attorney for the Accused in High Court of Polonnaruwa Case No HC 05/2017, agreed with PW 1 to prepare an affidavit for PW 1 to be filed in the above proceedings.*

- 3) *You on or around 03rd of July 2018, whilst being the duly appointed Attorney for the Accused in High Court of Polonnaruwa Case No HC 05/2017, accepted and received a stamped blank sheet of paper signed by PW 1 from PW 1, in order to prepare an affidavit to be filed in the above proceedings.*
- 4) *You on or around 03rd of July 2018, whilst being the duly appointed Attorney for the Accused in High Court of Polonnaruwa Case No HC 05/2017, provided instructions that are of a professional nature to PW 1 in relation to the affidavit filed by PW 1 in the above proceedings.*

AND WHEREAS, *the aforesaid complaint disclose that you have by reasons of the aforesaid acts of misconduct, committed:*

- a) *Deceit and/or malpractice with the ambit of Section 42(2) of the Judicature Act (read with Rule 79 of the Supreme Court Rules of 1978), which renders you unfit to remain as an Attorney-at-Law;*
- b) *By reason of the aforesaid acts, you have conducted yourself in a manner which would reasonably be regarded as disgraceful or dishonourable of Attorney-at-Law of good repute and competence and have thus committed a breach Rule No. 60 of the Supreme Court (Conduct of and Etiquette of Attorney-at-Law) Rules of 1988 made under Article 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka;*
- c) *By reason of the aforesaid acts, you have conducted yourself in a manner which is inexcusable and such as to be regarded as deplorable by your fellows in the profession and have committed a breach of Rule 60 of the said Rules; and*
- d) *By reason of the aforesaid acts and conduct, you have conducted yourself in a manner unworthy of an Attorney-at-Law and have thus committed a breach of Rule No. 61 of the said Rules..."*

3. The aforesaid complaint against the Respondent Attorney-at-Law was preferred by the Learned Judge for the manner in which she conducted herself as Counsel for the accused in High Court of Polonnaruwa Case No. HC 05/2017. The said case involves a charge of grave sexual abuse of a thirteen-year-old girl by the accused, her uncle, which is an offence punishable under Section 365B(2)(b) of the Penal Code. The case record reveals how the victim had gone to spend the night at her uncle's residence on the fateful night, as she often did whenever her parents were away. The abuse had taken place as she slept on her uncle's bed, having found no room beside her aunt's. After a period of silence, the abuse had come to light following an attempt by the victim to take her own life.
4. The Respondent, retained by the Accused when the incident came before the High Court, is accused of having provided the PW 1 (who is also the Prosecutrix) of the said case with professional instructions in preparing an affidavit conveying her intention to conclude the case expeditiously. She is further accused of obtaining a signed blank sheet of paper in order to prepare the same. According to the proceedings of the HC Polonnaruwa Case No. 05/2017 dated 07th February 2019, the Prosecutrix has testified before the High Court Judge to this effect.
5. The content of this affidavit dated 31st July 2018, purportedly prepared on behalf of the Prosecutrix, paints the accused in a relatively positive light stating that the Prosecutrix used to frequent her uncle's place and that the accused never sexually harassed or coerced her. It further states that she willingly and knowingly visited the accused's house on the night in question and voluntarily, without any compulsion, went on to sleep on her uncle's bed as there was no room on her aunt's. In addition, it claims that there had not been any sexual contact between them except for the instance relating to the High Court case. Having stated the above, it is averred in the affidavit that she does not object to finishing the case using an expeditious method (often referred to as a 'shortcut' in practice, somewhat inappropriately) as she is now married with a productive family life.

6. In the inquiry before this Court, the Respondent Attorney-at-Law initially pleaded guilty on 31st March 2021, and then again changed her plea to not guilty on 14th February 2023. The Rule was thereafter fixed for inquiry on 24th March 2023, and the Registrar of the Supreme Court as well as the Registrar of the High Court of Polonnaruwa were all led in evidence. Thereafter, the defence was called and the Respondent gave evidence-in-chief. Once the said evidence was led, the Respondent once again opted to change her plea and pleaded guilty on 18th June 2024.
7. There is no need for this Court to consider the circumstances of the instant case in detail as the Respondent opted to plead guilty. In her plea of mitigation, she noted that this is the first allegation of misconduct levelled against her and appealed this Court to consider her age, the fact that her husband is a retired school principal with medical needs as well as that she is a mother of two, both of whom have finished schooling. She further pleaded with this Court to consider her past service as a teacher and her *pro bono* work providing legal aid.
8. While I take full cognisance of this plea, I can hardly overlook the fact that a considerable amount of judicial time has been invested by the point she pleaded guilty. Moreover, the gravity of her misconduct and the bearing such conduct would have on the judicial process and, more importantly, the victim cannot be gainsaid.
9. A defence counsel has to understandably act in the best interest of those who retain them. This often proves more difficult a task than one could bargain for, as this duty is one that must be counterpoised by the overriding duty of such counsel towards the court and the cause of justice. Surely, then, being officers of the court, defence counsel are not to act as apathetic devil's advocates in achieving whatever the unscrupulous thing that may be demanded of them. They must at all times act within honest, honourable, legitimate and lawful means.

10. Considering her plea, and especially the fact that she pleaded guilty and accepted responsibility, albeit belatedly, I am inclined to impose a sentence of extreme leniency. Accordingly, the Rule is affirmed and the Respondent is suspended for a period of ten years from the date of this Ruling. The Register is directed to take all necessary steps in furtherance of this Ruling.

Rule Affirmed.

Judge of the Supreme Court

A. L. SHIRAN GOONERATNE J.

11. I have had the privilege of reading the judgment of my brother Hon. Justice S. Thuraiaraja P.C. in draft and to consider the views expressed therein and I disagree that for the reasons set out hereinafter, the sentence imposed on the Respondent Attorney-at-Law should be varied. To avoid any repetition, I will refrain from a detailed discussion of the facts relevant to the Rule application.
12. I am possessed with the mitigatory circumstances pleaded before this Court by the Respondent Attorney-at-Law. The said Respondent has publicly expressed her remorse and apology before this Court and has undertaken to refrain from any conduct which would reasonably be regarded as disgraceful or dishonourable of an Attorney-at-Law of good repute and competence.
13. Justice and fairness require that the offender be entitled to a punishment in the facts and circumstances of the offence, the situation of the victim and the situation of the offender.

14. Taking into consideration the Rule affirmed against the Respondent Attorney-at-Law, I am of the view that in the light of its objective circumstances, suspending the said Respondent for a period of 5 years from the date of this ruling is justified to be an appropriate and proportionate sentence, The Registrar is directed to act accordingly.

Judge of the Supreme Court

JANAK DE SILVA, J.

15. I have had the benefit of reading in draft the orders proposed to be delivered by my brothers Justice Thurairaja and Justice Gooneratne. I am inclined to agree with the sentence proposed by my brother Justice Gooneratne. While agreeing with my brother Justice Gooneratne that suspending the Respondent for a period of 5 years from the date of this ruling is justified to be an appropriate and proportionate sentence and his reasons for the sentence, I wish to set out my own reasons.
16. In my view, the gravity of the breach of professional ethics must be considered upon the facts and circumstances of each case.
17. The Respondent was acting for the accused in the Provincial High Court of Polonnaruwa case No. HC 05/2017. The indictment was served on the accused on 22.06.2017. He pleaded not guilty. On 03.07.2018, the lawyer representing PW1 ("victim") informed Court that she was now married and a mother of two children, one of whom was two months old. The incident had happened eleven years ago and it was difficult for the victim to recollect the events. The need for the victim to come for the case in Polonnaruwa is affecting her marriage. Therefore, the lawyer representing the victim informed Court that she does not have any objections to finishing the case in an expeditious manner.

18. The Respondent informed Court that the accused also wanted to conclude the case in an expeditious manner without going to trial. The accused was willing to pay the victim compensation.
19. As at this date, no evidence had been led. Thereafter, the learned High Court Judge directed the victim to file an affidavit setting out her position and warned her to appear on the next day. He made further order that the affidavit of the victim should be tendered to Court through her lawyer. A date was given for the State to inform of its position. The case was postponed to 31.07.2018.
20. On that day the victim was represented by another lawyer who tendered her affidavit to Court. Thereafter, the Court granted the State further time to inform of its position. The affidavit tendered to Court by the lawyer for the victim on 31.07.2018 forms the basis for the Rule issued against the Respondent.
21. When this matter was called on 07.02.2019, the Respondent, who continued to appear on behalf of the accused, informed Court that the victim had filed an affidavit and that it was possible to conclude this matter in an expeditious manner by pleading guilty. At that point, the learned State Counsel informed Court that he wished to lead the evidence of the victim about a matter that occurred that morning. This application was allowed by the learned High Court Judge.
22. The evidence of the victim was then led by the learned State Counsel. She repeated what her lawyer had informed Court previously, namely that she was married, it was difficult for her to come, she also wants to conclude the matter expeditiously, the two parties had discussed this and had met the Respondent together. She testified that she had to tender an affidavit and because it was difficult for her to come, she had signed on a stamp pasted on a blank half sheet and given it to the Respondent. The complete evidence of the victim, with certain redactions to maintain the anonymity of the victim, is as follows:

ප්‍ර: [REDACTED] අද දින උදේ අධිකරණයට ආවේ කීයටද?

උ: 7.30 ට පමණ.

ප්‍ර: ඔබ බොරු කියන කෙනෙක්ද?

උ: නැහැ.

ප්‍ර: අද ගරු අධිකරණයට පැමිණියේ කාත් සමගද?

උ: මහත්තයන් එක්ක.

ප්‍ර: මහත්තයා අද පැමිණ තිබෙනවා නේද?

උ: ඔව්.

ප්‍ර: මෙම ගරු අධිකරණයට පැමිණියාට පසුව මෙම වූදින තැනැත්තා හෝ ඔහුගේ යැතිගෙකු හමු වුණාද?

උ: ඔව්.

ප්‍ර: කාචද?

උ: ලොකු අම්මා.

ප්‍ර: ලොකු අම්මා කියන්නේ මේ වූදින තැනැත්තාගේ කවුද?

උ: බිරිඳ.

ප්‍ර: ඇයගේ නම සඳහන් කරන්න?

උ: [REDACTED]

ප්‍ර: වූදින තැනැත්තාගේ නම සඳහන් කරන්න?

උ: [REDACTED]

ප්‍ර: ඔහුව නැවත දැක්කොත් අදහ ගන්න පුළුවන්ද?

උ: පුළුවන්.

ප්‍ර: පෙන්වා සිටින්න?

උ: එන්නි කුඩුවේ සිටින එන්නිකරු පෙන්වා සිටී හඳුනා ගනී.

ප්‍ර: ලොකු අම්මා ඔබට උදේ මොකටද කතා කරේ?

උ: අපි ගිය පාර ආවට පස්සේ කතා කර ගන්නා මේක අවසන් කර ගන්න. ඒ කියන්නේ මම විවාහකයි. මට එන්න අපහසුයි. ඒ පැත්තෙන් ප්‍රශ්න හින්දා. මටත් අවශ්‍යතාවයක් තිබෙනවා මේක ඉවර කර ගන්න. ඒ හින්දා අපි දෙගොල්ලෝ කතා වුණා. ඒ කල්ලා අපි එයාලා සමග ලෝයර් හමු වුණා. කලින් ආවට පස්සේ දිවුරුම් ප්‍රකාශයක් ඉදිරිපත් කරන්න මට තිබ්බා. මට එන්න අපහසු හින්දා මුද්දරයක් පිට මම හාප්පිටි කොළයක අත්සන් කරලා එ ලෝයර්ට බාර දීලා ගිහින් තිබ්බා. මට ඒක බලා ගන්න එන්න කියලා තිබ්බා. මම ඒක බලා ගන්න උදේ ගියා. ඒ කල්ලා ආයේ ආවා.

ප්‍ර: ඔබ මුද්දරයක් පිට අත්සන් කළේ කිසිවක් නොමැති ලේඛනයක් ද?

උ: ඔව්. මට එන්න අපහසු හින්දා ඒකේ අත්සන් කරලා ගියා.

ප්‍ර: කවුද එම ලේඛනය අත්සන් කරන්න කිව්ව නීතීඥතුමිය?

උ: මම නම දන්නැ.

ප්‍ර: දැක්කොත් අඳුන ගන්න පුළුවන්ද?

උ: ඔව්.

ප්‍ර: බලන්න ඉන්නවාද කියල ගරු ඇධිකරණයේ?

උ: ඇධිකරණයේ පෙනී සිටින නීතීඥ පුණ්‍යා පලකැටිය මිය පෙන්වා සිටී. හඳුනා ගනී.

ප්‍ර: නීතීඥතුමිය ඔබට සඳහන් කළේ කුමක්ද?

උ: විශේෂයෙන් දෙයක් කිව්වේ නැහැ. ඒක මොනවා හරි කරලා දෙන්නම් කියලා කිව්වා. දිවුරුම් ප්‍රකාශයක් හඳුලා දෙන්නම් කියලා කිව්වා.

ප්‍ර: ඔබෙන් දිවුරුම් ප්‍රකාශයට අඩංගු එන්න ඕනේ මොනවාද කියලා ඇහුවාද?

උ: මගෙන් ඇහුවා විවාහකද ඇහුවා. දරුවන් ඉන්නවාද කියලා ඇහුවා. එන්න යන්නේ කොතොමද ඇහුවා. විශේෂයේ දෙයක් ඇහුවේ නැහැ.

ප්‍ර: අද උදෑසන ලොකු අම්මා එක්ක ගිහින් කවුරු හරි හමිබ වුණාද?

උ: ඔව්.

ප්‍ර: අද උදෑසන කවුද හමිබ වුණේ ලොකු අම්මත් එක්ක ගිහිල්ලා?

උ: ඒ මැඩමිමයි. ලෝයර්මයි.

ප්‍ර: ඒ දැන් ඔබ අඳුරා ගන්න නීතියද මහත්මියද හමිබ වුණේ?

උ: ඔව්.

ප්‍ර: අද මොකටද හමිබ වුණේ?

උ: දිවුරුම් ප්‍රකාශය මට ලබා ගන්න කිව්වා. ඒ කල්ලා මම කිව්වා මට මේක ඉවර කර ගන්න ඕන. ඔයාලාගේ පැත්තෙන් සහාය දෙන්න කිව්වා. එයාලා ඒක කරලා දෙන්නම් කියලා කිව්වා.

ප්‍ර: ඔබ දන්නවාද මේ වනවිට මේ නීතියද මහත්මිය කවුරු නියෝජනය කරන කෙනෙක්ද කියලා?

උ: ඔව්.

23. Based on this evidence, the learned State Counsel made an application for the matter to be referred to the Supreme Court which was allowed by the learned High Court Judge. Subsequently, the Rule was issued on the Respondent.

24. When the criminal case was called on the next day, 25.04.2019 the Respondent continued to appear for the accused. At that point the learned State Counsel informed Court that the accused should be asked to inform Court as to whether he has any objections to the Respondent continuing to appear for him if the matter was to be concluded expeditiously. Upon inquiries been made by Court, the accused informed that he has no objections to the Respondent continuing to appear for him.

25. Thereafter, Court allowed the accused to withdraw his earlier plea of not guilty and to plead guilty and sentenced him to eight (8) years rigorous imprisonment. In addition, a fine of Rs. 5000/= was imposed, in lieu of which six (6) months simple imprisonment imposed. Compensation of Rs. 300,000/= was awarded to the victim in lieu of which five (5) years rigorous imprisonment was imposed.
26. Hence it is clear that at the end of the day, the High Court acted on the contentious affidavit of the victim and determined that the victim was also desirous of concluding the matter in an expeditious manner and acted accordingly. The victim had gone and met the Respondent on her own volition in order to bring an early end to the issue.
27. For these, and the reasons given by my brother Justice Gooneratne, I am of the view that in the light of the objective circumstances of this matter, suspending the Respondent for a period of 5 years from the date of this ruling is justified to be an appropriate and proportionate sentence. The Registrar is directed to act accordingly.

Judge of the Supreme Court