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..H.A. Ratnayake

SC Rule 04/2022

H.A. Mahinda Ratnayake
No. 26/13, Madarata Housing, Uplands,
Aruppola

Respondent

Before	:	Jayantha Jayasuriya, PC, CJ S. Thurairaja, PC, J. Mahinda Samayawardana, J.
Counsel	:	Anura Maddegoda, PC with Ms. Nadeesha Kannangara & Isuru Deshapriya for the Respondent Attorney-at-Law. Ms. W. Hettige, SDSG. for the Hon. Attorney General. Rohan Sahabandu PC, with Ms. S. Senanayake for the Bar Association of Sri Lanka.
Written submissions filed		On behalf of the Hon. Attorney General on 09.02.2023.
Inquiry on	:	14.07.2023
Decided on	:	10.08.2023

Jayantha Jayasuriya, PC, CJ

The Registrar of the High Court of the Central Province sitting in Kandy acting in terms of section 42(4) of the Judicature Act communicated to the registrar of the Supreme Court, that the respondent attorney-at-law was sentenced by the learned High Court judge having found him guilty of four counts on which he stood indicted. A fine of five hundred rupees had been imposed

on one count and he had been sentenced to a term of one-year rigorous imprisonment for 3 counts. Those terms of imprisonment had been ordered to run concurrently.

On 20th September 2022, the respondent attorney-at-law who was represented by counsel appeared on notice issued by this Court and the registrar of this Court read over the charges against him in open court. Thereafter the show cause notice along with the charges was served on him. The aforesaid charges allege, that the respondent attorney-at-law fraudulently conspired to attest the deed bearing no 387 dated 05.02.1999, made a false statement in attesting the said deed and committed forgery in attesting the said deed. Furthermore, the respondent attorney-at-law had acted in breach of the rules set out in section 31 of the Notaries Ordinance. Thereby, the respondent attorney-at-law had conducted in a manner which would reasonably be regarded as disgraceful or dishonourable by attorneys-at-law of good repute and competency as well as in a manner which is regarded as deplorable by fellow members of the profession. The respondent attorney-at-law thereby breached Rule 60 of the Supreme Court (Conduct and Etiquette for Attorneys-at-Law) Rules, 1988 as well as Rule 61 of the said Rules as he had conducted in such a manner that is unworthy of an attorney-at-law.

This Court acting in terms of section 42(4) of the Judicature Act, suspended the respondent attorney-at-law from practice in terms of section 42(3) pending the final determination of these proceedings. The learned President's Counsel for the respondent attorney-at-law submitted that no appeal has been made against the conviction or the sentence of the High Court and that the respondent attorney-at-law had already served the term of imprisonment and paid all fines. The respondent attorney-at-law pleaded guilty to the charges and sought time to show cause and plead in mitigation by way of an affidavit as to why he should not be either removed or suspended from practice, by this Court.

The respondent attorney-at-law by his affidavit dated 12th December 2022 pleaded not to suspend or remove him from practice. The learned President's Counsel in his submissions drew the attention of the Court to several mitigatory factors averred in the affidavit of the respondent attorney-at-law and pleaded the Court to act with clemency. Expression of regret and remorse,

the old age, previous good conduct and the fact that he had already served the term of imprisonment were pleaded as mitigatory factors.

The respondent was admitted and enrolled by the Supreme Court as an attorney-at-law on 17th November 1988 and on 01st March 1996 he had obtained the license to practice as a notary public. He had been in public service for nearly three decades before he commenced practicing as an attorney-at-law and a notary public. He holds a degree in Bachelor of Arts and a Diploma in Education. He had served as a teacher and a principal during his career in the public service. He plays an active role in many social service organisations and village societies. He is married with three children and is eighty-three years old.

The learned Deputy Solicitor-General who appeared to assist Court drew the attention of the Court to *inter alia* curses curiae relating to situations where the attorneys-at-law were found guilty of criminal conduct and thereafter subjected to disciplinary proceedings.

Basnayake CJ in **In Re Fernando** 63 NLR 233 at 235 observed that:

> *"There are many instances [In re Ellawala (1926) 29 N. L. R. 13 (acceptance of a bribe). In re Ranasinghe (1931) 1 Q. L. W. 47 (Criminal breach of trust by advocate). In re Kandiah (1932) 25 O. L. W. 87 (offence against the Opium Ordinance No. 5 of 1910), In re Ariyaratne (1932) 34 N. L. R. 196 (culpable homicide not amounting to murder). In re W. A. P. Jayatilleke (1933) 35 N. L. R. 376 (unlawful assembly, house-trespass and hurt). In re Brito (1942) 43 N. L. R. 529 (offence under the Post Office Ordinance sliding indecent or grossly offensive post cards)] in our reports of advocates and proctors having been removed from office for convictions which though quite unconnected with their professional duties have made them unfit to be entrusted thereafter with the office of advocate or proctor as the case may be".*

The learned Deputy Solicitor-General further contended that the conduct of the respondent attorney-at-law that led to the conviction for offences pleaded in the indictment has a direct link to the discharge of professional duties as a notary public and therefore is an aggravating factor

that needs to be given due regard in determining the nature of disciplinary sanctions that should be imposed on him.

It is pertinent to note that the attorney-general indicted the respondent attorney-at-law along with two others in the High Court. The indictment contained eight counts. All three accused were indicted for conspiracy to commit an offence punishable under section 34 read with section 31(3) of the Notaries Ordinance. In addition, there were two counts on which the respondent was indicted for committing an offence under section 39(c) of the same Ordinance and another count for committing forgery, an offence punishable under section 454 of the Penal Code. All counts in the indictment revolved around an incident where the respondent attorney-at-law attested a deed of transfer. While attesting the said deed he claimed that he did not know the transferor but was known to the two attesting witnesses.

The third accused who stood indicted along with the respondent and the second accused, had pleaded guilty. Thereafter the trial had proceeded against the respondent and the second accused. Evidence presented at the trial revealed that the second accused who was a clerk attached to the respondent's office had been one of the attesting witnesses to the deed in question. The third accused had been the other attesting witness. Even though, the second accused claimed that he knew the transferor, the evidence presented at the trial revealed that transferor is a fictitious person. Investigations revealed that no occupants were in the purported address of this fictitious transferor. Both the respondent attorney-at-law and the second accused had testified in the High Court. The learned High Court Judge having considered all the evidence presented at the trial found both the respondent attorney-at-law and the second accused, guilty of all counts framed against each of them, including the count for forgery framed against the respondent and the count for aiding and abetting the respondent to commit forgery, framed against the second accused. None of the accused namely the respondent attorney-at-law who was the first accused and his clerk the second accused appealed against the judgment of the High Court.

Section 3 of the Notaries Ordinance as amended, provides that an attorney-at-law who had passed the prescribed examination in conveyancing shall be entitled on application to a warrant authorizing him to practice as a notary. Therefore, the respondent's licence to practice as a

notary is granted primarily on the strength of him being admitted as an attorney-at-law. Therefore, the foundation of his notarial practice is based on him being an attorney-at-law and no distinction can be made in his conduct between discharging of professional duties as an attorney-at-law and as a notary public. Ill-effects of any dishonourable conduct in discharging professional duties as a notary public will inevitably make an adverse impact on the good name and repute on the legal profession. In the eyes of the general public no distinction will be made between the duties of the two professions in the context of good behaviour. Therefore, the fact that the wrongful conduct of the respondent attorney-at-law is arising from his discharge of duties as a notary public is not a factor that could either absolve or mitigate the respondent's breach of the duty to be of good repute and conduct, the duty arising as a member of the legal profession.

It is also pertinent to note that a conviction by a court of law is not a necessary prerequisite to initiate disciplinary proceedings against an attorney-at-law based on his alleged criminal conduct. Justice Amarasinghe in **Chandrathileke v Moonesinghe** (1992) 2 SLR 303 at 329 observed,

> *"An attorney whose misconduct is criminal in character, whether it was done in pursuit of his profession or not, (this Court has wider powers than those affirmed by section 4 of the Penal Code), may be struck off the roll, suspended from practice, reprimanded, admonished or advised, even though he had not been brought by the appropriate legal process before a court of competent criminal jurisdiction and convicted; and even though there is nothing to show that a prosecution is pending or contemplated. [See Edgar Edema- (1877) Ramanathan 380, 384; Re Isaac Romey Abeydeera - (1932) 1 CLW 358, 359; In re a Proctor - (1933) 36 NLR 9; In re C.E. de S. Senaratne - (1953) 55 NLR 97, 100; Re Donald Dissanayake - Rule 3 of 1979 S.C. Minutes of 31.10.1980; Re P.P.Wickremasinghe - Rule 2 of 1981, S.C. Mins. of 19.7.82 ; Re Rasanathan Nadesan - Rule 2 of 1987 S.C. Mins. of 20.5.1988; Stephens v Hill - (1842) 10 M & W 28 Vol. 152 ER (1915 Ed.) 368 (supra); Anon (supra) ; Re Hill - (1868) LR 3 QB 543, 545, 548 Re Vallance ; Anon (1894) 24 L.Jo 638 But cf. Short v Pratt - (1822) 1 Bing. 102 Vol. 130 (1912 Ed.) ER 42 and Re Knight - (1823) 1 Bing 142.]*

I might go further: If Moonesinghe had been charged with the commission of an offence in a competent court and acquitted, he could and ought, nevertheless, to have been dealt with by this Court, as the proctor was in Re Thirugnanasothy - (1973) 77 NLR 236, 239. See also Re Garbett - (1856) 18 CB 403; R v. Southerton - (1805) 6 East 126; Re W.H.B. - (1842) 17 L. Jo. 165. In Re Thirugnanasothy a proctor had been acquitted of criminal misappropriation by a District Court. He was, nevertheless, struck off the roll, G. P. A. Silva, SPJ., explaining at p.239 that although the reasons for the acquittal were "sound", they were technical in nature".

In **Re Brito** 43 NLR 529, it was held that a conviction for an offence *per se* is not a ground for disciplinary action against a proctor but is a prima facie reason for such action. It was further held that when there is a conviction, the fact that the conduct which led to such conviction is not qua attorney is immaterial in deciding whether the attorney concerned should be dealt with for such conduct.

It is the persons of "good repute and of competent knowledge and ability" who could be admitted as attorneys-at-law as provided under section 40(1) of the Judicature Act. Therefore, if a person of good repute after admission as an attorney-at-law engages in any conduct that changes the quality of his character and makes him no longer a person of good repute, such a person is liable to be subjected to disciplinary action as provided under the Judicature Act and the Rules of the Supreme Court.

The respondent attorney-at-law in these proceedings was admitted to the legal profession in the year 1988. He commenced his practice as an attorney-at-law three years later after retirement from his twenty-eight years long service in the public service. He commenced his career as a teacher and had retired from service in the year 1991 after serving as a principal. Within the first eight years of his practice as an attorney-at-law, he had engaged in the conduct for which he was convicted and sentenced for the commission of offences under the Notaries Ordinance and the Penal Code. The indictment for the offences committed in 1999 had been served in the year 2003 and the conviction was entered in the year 2020.

Pleading in mitigation before this court, it was submitted that the respondent who had engaged in the legal profession for more than thirty years is now eighty-three years of age and is actively engaged in social service and religious activities. He is the president of several social service organisations and his wife is seventy-five years old. The respondent prays for clemency and pleads not to suspend or remove him from the office of attorney-at-law allowing him to spend the rest of his life with dignity and respect enjoying the love and care of his wife, children and grandchildren. However, in response to a question by court the respondent attorney said that he also desires to continue with his practice.

In this regard, it is pertinent to observe that the respondent had chosen to enter the legal profession in the brink of his retirement from the public service. This Court having being satisfied with his credentials had granted his application having accepted inter alia that he is a person of good repute. However, within the first eight years of his admission to the Bar itself he had conducted in a manner that compromised his good repute. Such conduct of the respondent led to the conviction entered by the High Court. Eventhough, a conviction *per se* should not result in any sanctions in disciplinary proceedings, the mitigatory factors urged by the respondent fail to provide any explanation as to the conduct that breached not only the Notaries Ordinance but also amounted to the commission of an offence under the Penal Code. All the mitigatory factors urged by the respondent relate to his personal and social life. The respondent despite the conviction expressed his desire to continue in the legal profession in response to a question posed by Court. It is pertinent to observe that the proceedings initiated under the Judicature Act and Rules of the Supreme Court in relation to removal or suspension of attorneys-at-law from practice are not *"criminal or penal in nature but are intended to protect the public, litigants and the legal profession itself"* – [vide **In Re Dematagodage Don Harry Wilbert** (1989) 2 SLR 18 at 28]. The long period of time between the wrongful conduct and the conviction is not a ground that warrants any leniency towards the respondent as the conviction is in relation to the wrongful conduct in discharging professional duties. The respondent's desire to continue in the legal profession is to reap the benefits and privileges attached to the profession. However, in my view this Court is unable to act in sympathy based on factors surrounding the personal life of the respondent. The respondent had failed to honour the trust placed on him by this Court. He failed to maintain the good repute and therefore can no longer continue to enjoy the benefits as a

member of this noble profession. In this regard it is pertinent to echo the following views expressed by Justice Mukerjee, in- **Emperor v. Rajani Kanta Bose et.al** [49 Calc.p.804], that were cited with approval by Howard CJ in **Re Brito** (supra, at page 532)

> *"The practice of the law is not a business open to all who wish to engage in it; it is a personal right, or privilege limited to selected persons of good character with special qualifications duly ascertained and certified; it is in the nature of a franchise from the State conferred only for merit and may be revoked whenever misconduct renders the person holding the licence unfit to be entrusted with the powers and duties of his office. Generally, speaking the test to be applied is whether the misconduct is of such a description as shows him to be an unfit and unsafe person to enjoy the privileges and to manage the business of others as a proctor, in other words, unfit to discharge the duties of his office and unsafe because unworthy of confidence."*

For the foregoing reasons the Rule made against the respondent is made absolute and make order that the respondent Hettiarachchige Mahinda Ratnayake shall be forthwith struck out of the roll of attorneys-at-law.

Registrar of the Supreme Court is directed to take necessary steps and also to transmit a copy of this judgement to the Registrar General.

Chief Justice

S. Thurairaja, PC, J.
I agree.

Judge of the Supreme Court

Mahinda Samayawardana, J.
I agree.

Judge of the Supreme Court