

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

In the matter of an Application made under
Article 105 (3) of the Constitution of the
Democratic Socialist Republic of Sri Lanka
For Contempt of Court.

- 1) Hee Jung Kim Alias Kim Hee Jung
No. 51A-24/2~23rd Floor
Empire Tower
Baybrooke Place,
Colombo 2
And also

Supreme Court No;
SC Contempt No. 03/16

No 47, Alexandra Place,
Colombo 07

And

Hoiryong Poonglin Iwant Apt 203-
701
Howon-dong 308 139
Uijeongbusi Kyeongkido
South Korea

- 2) Some Rupali Jayasinghe
No 8/5, Pansalahena Road
Kolonnawa

Petitioners

Vs

Don Bandumali Jayasinghe [nee
Welikala]
No. 40/19 Longden Place,
Colombo 7

Respondent

BEFORE: Buwaneka Aluwihare PC, J.
Murdu N.B. Fernando PC, J.
P. Padman Surasena J.

Counsel: Kuvera de Zoysa PC with Piume Kulatilake and Ameer
Maharroof on the instructions by Sanjay Fonseka for the
Petitioner.
Razik Zarook PC, Seevali Amithirigala PC with Sazana
Karunathilake, Dharani Sirisena for the Respondent.

Argued on: 10.07.2020

Decided on: 15.07.2021

Judgement of the Court

Aluwihare PC.J.,

A Rule issued by this Court on 26th July 2016, called upon the Respondent, Don Bandumali Jayasinghe (hereinafter sometimes referred to as “Bandumali Jayasinghe”) to show cause as to why she should not be dealt with for an offence of contempt of the Supreme Court, punishable under Article 105 (3) of the Constitution, committed, intentionally and/or willfully, by making false statements to this Court.

The Rule

In the exercise of the Jurisdiction vested in the Supreme Court in terms of Article 105 (3) of the Constitution the Rule issued against Bandumali Jayasinghe was to show cause as to why she should not be punished for having committed the following offences of contempt of the Supreme Court;

That the respondent-;

- . (a) Submitted a written complaint to this Court against Ms. Amarathunga Arachchige Niduk Wasana Perera, Attorney-at-Law (hereinafter sometimes referred to as Niduk Perera) relating to her professional conduct in the District Court of Colombo case bearing No: DDV/0054/2008 and in the complaint did willfully make the following false statements:
 - (i) That she never received any notice, summons and/or any decree in the said divorce action.
 - (ii) That she never instructed Niduk Perera to file proxy on her behalf and/or to appear and tenders an answer and/or to take any notice of the said divorce action.
 - (iii) That Niduk Perera AAL had tendered a forged proxy on her behalf in the said divorce action and had filed an answer without her instructions.

2. In the Affidavit [dated 27th June 2014] submitted to this Court in SC Petition No:P/19/2014 relating to the said complaint against Niduk Perera, the Respondent did willfully make the following false statements;

(i) That she had had no knowledge of the District Court of Colombo Case No.DDV/00054/2008 until she became aware of the Testamentary Proceedings bearing number DTS/00151/2012 in the District Court of Colombo and had never instructed Ms. Niduk Perera to appear in that divorce action on her behalf.

(ii) That she never received any summons in the said divorce action No:DDV/00054/2008 and that the signature claiming to be hers at page 43 of the document marked as “X1” is not her signature.

(iii) That she had never met Niduk Perera and did not even know her by name.

(3) On or about 28th May 2014, when questioned by the Supreme Court in SC Petition No: P/19/2014 relating to the same complaint, she did willfully and falsely state that she had never seen Niduk Perera before and that it was the first time that she was seeing her.

Facts

On 21st January 2014, Bandumali Jayasinghe by way of a letter addressed to His Lordship the Chief Justice made a complaint against Attorney-at-Law Ms. Niduk Perera (hereinafter sometimes referred to as “Niduk Perera”). In the said complaint Bandumali Jayasinghe claimed that after having perused the case record of the Testamentary Action bearing No. DTS/00151/2012 which had been instituted by the 1st Petitioner to these proceedings, Hee Jung Kim *alias* Kim Hee Jung (hereinafter sometimes referred to as “Kim Hee Jung”) in respect of the estate of one Dharman Sathanath Jayasinghe (hereinafter sometimes referred to as “Dharman Jayasinghe”), she was shocked to discover that a decree of divorce had been obtained against her by Dharman Jayasinghe in the case bearing No. DDV.00054/2008 in the District Court of Colombo.

She further claimed in her letter that having examined a certified copy of the case record of the said divorce action, she found that;

- a) Dharman Jayasinghe, her ex-husband had filed action on 1st February 2008 seeking a divorce from her.
- b) On 15th May 2008 Niduk Perera had tendered a proxy for and on behalf of her and had also filed answer claiming that instructions had been given by her to do so.
- c) The case was fixed for trial for 3rd July 2008 and had been taken up *ex-parte* since there had been no appearance and/or representation on her behalf .
- d) The Court had entered a Decree *nisi* and ordered it to be served through registered post and the Fiscal.
- e) On 10th October 2008 the Fiscal had reported to the Court that the Decree *nisi* had not been served on her.
- f) On the same day, an Attorney-at-Law called Ms. Nilu Perera (hereinafter sometimes referred to as “Nilu Perera”) had appeared as her Attorney and had informed the Court that she was accepting the notice of the Decree *nisi* on behalf of the Respondent.
- g) On 30th January 2009, the District Court had made the Decree *nisi* absolute on the basis that the said Attorney-at-Law had accepted the Decree *nisi* on behalf of her.

Bandumali Jayasinghe had further asserted in the complaint that;

- a) She had no knowledge of the divorce action No. DDV/00054/2008 until she became aware of the testamentary proceedings bearing No. DTS/00151/2012.
- b) She had never received any summons, notice and/or any decree in the divorce action.
- c) She had never met Niduk Perera nor had she ever retained the services of Niduk Perera in a divorce action.

- d) She had never instructed Niduk Perera to file a proxy on her behalf and/or to appear and tender an answer and/or to take any notice in the divorce action.
- e) Niduk Perera had tendered a forged proxy on her behalf and had filed answer without her instructions. She had also permitted Dharman Jayasinghe to obtain an *ex-parte* decree in his favour.
- f) One Attorney-at-Law named Nilu Perera had accepted the notice of the Decree nisi without any instructions having been given by her.
- g) She had been severely prejudiced by the illegal conduct of the said Niduk Perera and/or Nilu Perera and therefore prays that the Supreme Court takes necessary steps to grant her relief in respect of the injustice caused to her due to the aforesaid illegal conduct.

In pursuance of this complaint, proceedings commenced in the Supreme Court under reference No. P/19/2014.

The Court then referred the said matter to the Bar Association [BASL] to hold an inquiry. The Professional Purposes Committee of the Bar Association of Sri Lanka (hereinafter sometimes referred to as “The Committee”) had held an extensive inquiry into the complaint and reported to the Supreme Court of their findings by their report dated 27th January 2015. (“P27”)

The Committee observed that it was unable to come to a finding of any professional misconduct or breach of professional etiquette on the part of Attorney -at- Law Niduk Perera and that it could neither accept Bandumali Jayasinghe as a truthful witness nor believe in her assertions. The Committee recommended to this Court that no further action should be taken against Niduk Perera and that action should be taken to issue a Rule on Bandumali Jayasinghe to show cause as to why she should not be dealt with for contempt of court by intentionally making false statements to the Supreme Court in the said Inquiry [SC/P19/2014].

However, on 15th November 2014, Bandumali Jayasinghe on the advice of her legal representatives, withdrew the aforementioned complaint she made to the Supreme Court against Niduk Perera.

Thereafter, by way of a Petition dated 2nd June 2016, the Petitioners in the instant case invoked the Contempt of Court jurisdiction of the Supreme Court praying that the Court be pleased to in the first instance issue a Rule on Bandumali Jayasinghe to show cause as to why she should not be punished or dealt with for contempt of court by intentionally and/or willfully making false statements to the Supreme Court.

Accordingly, a Rule was issued by this Court against Bandumali Jayasinghe on 26th July 2016 and the inquiry commenced.

Evidence led at the Contempt Proceedings No.03/16 at the Supreme Court

Niduk Perera was called as a witness on behalf of the Petitioners and was questioned before the Supreme Court on 22nd June 2018 and 24th July 2018.

On 22nd June 2018 she identified Bandumali Jayasinghe in court. (at page 11 of the Contempt proceedings dated 22nd June 2018).

She claimed that up to the 28th of May 2014, which was the day on which Bandumali Jayasinghe had claimed to have seen her for the very first time, she had in fact met Bandumali Jayasinghe on more than 10 occasions. She further argued that Bandumali Jayasinghe was lying in stating that she had never met her and had never instructed her to file a proxy in the divorce action.

On being questioned, Niduk Perera related the following facts;

She had first come to know Bandumali Jayasinghe in 2008 after having been recommended to Bandumali Jayasinghe by Varners Law Firm.

She received a telephone call from Bandumali Jayasinghe asking to be represented by her in the divorce action No.DDV/54/2008.

She had a consultation with Bandumali Jayasinghe at her office prior to summons being served and she had asked her to meet her again after the summons had been served.

On being informed by Bandumali Jayasinghe that she had received summons, she had told her to come and meet her with the summons and the other documents she had received with it.

She had gone through the summons and prepared a printed proxy which she got Bandumali Jayasinghe to sign and write her NIC Number.

She had compared the number written by Bandumali Jayasinghe with her National Identity Card and had made a correction as an extra digit [of the ID number] had been written by Bandumali.

She had told the trial court that Bandumali Jayasinghe was not contesting the divorce

She was told by Bandumali Jayasinghe that there was a written agreement between her and Dharman Jayasinghe prior to the divorce action under which they had agreed to divide their assets.

She stated that Bandumali Jayasinghe had in fact communicated with her through her mobile phone no 0773186901 and produced detailed call records reflecting large number of calls between the parties, from 14th March 2008 to October 2008. (Statements marked as P25, P26 and P27)

She stated that even after the conclusion of the divorce action Bandumali Jayasinghe had maintained a professional relationship with her.

This was evidenced by;

1.The Power of Attorney No.147, dated 13th December 2009, attested by Niduk Perera and executed by Bandumali Jayasinghe's son Ashan Jayasinghe of which Bandumali Jayasinghe was the first witness. The protocol copy of the Power of Attorney dated 13th December 2009 No.147 was produced before the Court as evidence.

(at page 15 of the proceedings of 22nd June 2018 and proceedings dated 24th July 2018)

2.Niduk Perera's services had been retained to draft a Trust Agreement in respect of a Trust that Bandumali Jayasinghe and her former husband Dharman Jayasinghe wanted to establish in the name of their deceased sons, Hiran and Ashan Jayasinghe.

(evidenced by a Letter dated 08th June 2014 from Mr. Nihal Jayewardene, PC whose advice was sought during the drafting of the Trust Agreement) marked as P34.

3. Emails had been sent by Bandumali Jayasinghe to Niduk Perera regarding the Trust matter (P36)

4. A ‘friend request’ sent to Niduk Perera by Bandumali Jayasinghe on the social media platform ‘Facebook’ to add her as a Friend. (The email notification of the friend request is marked as P35).

These instances clearly establish the fact that Bandumali Jayasinghe knew who Niduk Perera was and had a professional relationship with her even after the divorce had been finalized.

Evidence given in SC Proceedings No. P/19/2014 with respect to Bandumali Jayasinghe’s complaint against Niduk Perera.

After the complaint was filed by Bandumali Jayasinghe against Niduk Perera, the latter gave a detailed account of her professional relationship with Bandumali Jayasinghe by way of two affidavits, i.e. Observations to the Supreme Court dated 10th June 2014 (marked as “P20”) and an affidavit tendered to the Inquiry Committee of the Bar Association of Sri Lanka dated 31st October 2014 (marked as “P23”)

Although this material pertains to the issue of determining whether Niduk Perera was guilty of professional misconduct, it is pivotal in the present action for this court to determine whether Bandumali Jayasinghe’s allegations are in fact true.

As was stated in Niduk Perera’s two Affidavits;

She had first come to know Bandumali Jayasinghe in 2008 when Bandumali Jayasinghe had contacted her via phone and had asked her to represent her (Bandumali Jayasinghe) in the divorce action No. DDV/0054/08.

Then on or about 2nd April 2008, Bandumali Jayasinghe had come to meet her at her office and had instructed her on the said divorce action.

She had been informed by Bandumali Jayasinghe that she and Dharman Jayasinghe had agreed to dissolve their marriage and had already negotiated and executed a divorce settlement, as to how the assets were to be divided between them. Bandumali Jayasinghe had also related that she received monies from Dharman Jayasinghe and that she had already executed certain deeds, acting in terms of the post-nuptial agreement. (*vide* Paragraph 5a of P20)

Regarding the divorce action, Bandumali Jayasinghe had instructed her that she would not be contesting the action and had asked for a speedy conclusion of the action without her having to participate in the legal proceedings. This was, according to her, the first professional duty, she had performed on behalf of Bandumali Jayasinghe in respect of this case. (*vide* page 10 of the proceedings dated 22nd June 2018)

Thereafter, Bandumali Jayasinghe had met her again at her office and had handed over the said summons and the Plaint which had been delivered along with the summons. (at paragraph 5c of P20).

She had then prepared a printed proxy and had obtained Bandumali Jayasinghe's signature and had got her to write down her National Identity Card number in her own handwriting. She had then checked the number by comparing it with the National Identity Card and having seen that Bandumali Jayasinghe had written an extra digit got her to delete the same. (Proxy is marked as 'P17'). The place where Bandumali Jayasinghe's signature appears is marked as P17 (a) and where the NIC number of Bandumali Jayasinghe appears is marked as P17 (b))

Niduk Perera maintained that she then drafted the Answer on Bandumali Jayasinghe's instructions denying the allegations contained in the Plaint and had made a plea of counter divorce as Bandumali Jayasinghe wanted to end the marriage as well. (*vide* paragraph 5(d) of P20)

When the case was called in the District Court of Colombo, she had appeared on behalf of Bandumali Jayasinghe and had filed her proxy as well as the Answer. (paragraph 5e P20)

Thereafter, she had sought further instructions from Bandumali Jayasinghe as to whether she wished to pursue a divorce in her favour or refrain from contesting her husband's action. (*vide* Paragraph 24 of P23). She claims that Bandumali Jayasinghe had instructed her that she did not wish to contest the case and wanted her to take the necessary steps to expedite the divorce.

On 28th May 2008 she had appeared on behalf of Bandumali Jayasinghe and had informed the court that she would not be contesting the action, after which the court fixed the case for trial on 3rd July 2008. (journal entry no. 3 at page 3 of annexure x1) (paragraph 25 of P23)

On 3rd July 2008, she had appeared in the District Court of Colombo on behalf of Bandumali Jayasinghe and the case was refixed for 29th August 2008 (Journal Entry No.4) (paragraph 27 of P23). However, after she had left, the case had been taken up again and an *ex parte* decree *nisi* had been entered in favour of Dharman Jayasinghe.

She had then informed Bandumali Jayasinghe about the *ex parte* proceedings. Bandumali Jayasinghe not having been too concerned, had insisted on having the action concluded as soon as possible as there was a sum of money that she was to receive once the case was over, in terms of a post-nuptial agreement between her and Dharman Jayasinghe. (Para 30 P23)

Sometime later Bandumali Jayasinghe had informed her that an officer of the court had visited her house in Dompe but had not been able to serve the Decree *Nisi* as she was then residing at Longden Place, Colombo 07. However, she had gone on to say that the Decree *Nisi* that had been sent to her under registered cover, had reached her.

Bandumali Jayasinghe had then specifically instructed her to appear in Court on the next date and to consent to conclude the divorce action which would assure her receiving the balance payment promised under the divorce agreements. (Para 31 P23)

Accordingly, she had appeared in court on 10th October 2008 and took notice of the decree *nisi* and thereafter the case had been re-fixed for 30th January 2009 to make the decree *nisi* absolute. (paragraph 32 of P23)

She had called Bandumali Jayasinghe the day before the decree *nisi* was to be made absolute to make sure she had not changed her mind (Paragraph 32 p23) (detailed bill of outgoing calls from Niduk Perera to Bandumali Jayasinghe from 15th September 2008 to 14th October 2008 R47 (a) (b))

On 30th January 2009 she had appeared once again in court and the decree *nisi* had been made absolute. Certified copies of the decree *nisi* and decree absolute had been handed over to Bandumali Jayasinghe. (para 33 p23)

(Statements marked as P25, P26 and P27)

This evidence clearly and unequivocally demonstrates the client-lawyer relationship between these two individuals, and that Niduk Perera's services had been obtained by Bandumali Jayasinghe to appear on her behalf in the divorce action No. DDV/00054/08 and had appointed her as her attorney on record by duly signing the proxy.

Bandumali Jayasinghe's evidence

The evidence given by Bandumali Jayasinghe in order to support the allegations she had made against Niduk Perera warrant an extensive examination in order to ascertain whether she did in fact attempt to mislead the Supreme Court and thereby interfere with the administration of justice, thereby committing the offence of Contempt of court.

Despite Bandumali Jayasinghe's contention in the written submission dated 21st August 2020 tendered on her behalf, regarding the powers of the Committee to conduct an inquiry, the Supreme Court will not delve into the matter of whether or not the Committee had the mandate to carry out an inquiry and make recommendations. The fact of the matter is that Bandumali Jayasinghe did attend the said inquiry and give evidence before it. Therefore, we see no reason why the Supreme Court, independent of the findings of the Committee, could not take into

account the aforesaid evidence in order to ascertain whether she came before the Supreme Court and made false representations.

The Court will therefore inquire into the contents of her complaint to the Supreme Court dated 21st January 2014, her Affidavit to the Supreme Court dated 27th June 2014 (marked as P21), as well as her Affidavit to the Inquiry Committee of the Bar Association of Sri Lanka dated 25th August 2014 (P22) and the proceedings of the BASL inquiry (marked as P24(a), P24 (b), P24(c), P24(d), P24(e), P24(f)). All of this evidence pertains to the proceedings relating to the complaint she had made against Niduk Perera, but nevertheless warrants examination in the present case, given the fact that the key issue is whether she made false representations to the Supreme Court and is therefore guilty of contempt of court.

Evidence given by Bandumali Jayasinghe in support of her allegations.

(i) That she had never met Niduk Perera and did not even know her by name.

One claim made by Bandumali Jayasinghe against Niduk Perera was that she had never met her and had never retained her services in the divorce action. (*vide* Paragraph 8 of the Complaint).

She reiterated this in her Affidavit to the Supreme Court (“P21”) (para 4 and para 13) as well as in her Affidavit to the Professional Purposes Committee of the Bar Association of Sri Lanka (hereinafter sometimes referred to as “The Committee”) (P21 at paragraph 43). Furthermore, when the Supreme Court confronted Bandumali Jayasinghe in open Court as to whether she had met Niduk Perera previously, she replied by saying that she had never seen her and that it was the first time that she was seeing her. (SC Proceedings of 28th May 2014). Even at the inquiry conducted by the Committee, on 30th August 2014 she claimed that it was at the Supreme Court that she had seen Niduk Perera for the first time. (Pages 4, 25-26)

However, on 6th September 2012 Bandumali Jayasinghe admitted to the Committee, under cross-examination, that she had met Niduk Perera or someone resembling her before on several occasions. (page 40)

(ii) That Niduk Perera had tendered a forged proxy on her behalf in the said divorce action and had filed answer without her instructions.

The crux of Bandumali Jayasinghe's complaint is that, unbeknown to her, Niduk Perera had acted and appeared on her behalf in the divorce action bearing No. DDV/00054/2008. She claimed that Niduk Perera had tendered a forged proxy and an answer without having received any instructions from her to do so.

She has reaffirmed this allegation in her Affidavit to the Supreme Court (P21) (*vide* Paragraph 19) and in her Affidavit to the Committee (P22) (*vide* paragraph 40).

However, during the inquiry, she not only admitted to signing the proxy (proceedings dated 31.08.2014 at page 31), but it was also discovered that the photocopies of a certified copy of the proxy that had been tendered by her as evidence to the Supreme Court had been tampered with (proceedings dated 6th September 2014). Bandumali Jayasinghe could not vouch for the genuineness of the document she produced as the proxy and did not answer when asked whether she could swear that it hadn't been tampered with. (proceedings of 30th August 2014 page 28)

(iii) That she never received any notice, summons and/or any decree in the said divorce action.

In Bandumali Jayasinghe's affidavit to the Supreme Court (P21), she affirmed that she did not receive summons and that although the signature placed on the "precept to fiscal to serve" appears to be hers it was in fact not hers. (*vide* paragraph 7)

She has reiterated this assertion in her Affidavit to the Committee (P22). (Paragraph 41-42)

However, under cross-examination on 13th September 2014, she has admitted that she did receive the summons, had signed it and did not take it seriously. (at page 27). This is further established by Journal Entry No.2 of the Case record of DDV-00054-08 which states that summons had been personally served on Bandumali

Jayasinghe by the Fiscal on 2nd May 2008, as well as by the Fiscal's affidavit dated 2nd May 2008.

in June 2012, Bandumali Jayasinghe instituted a testamentary case No. DTS-00134-12 in respect of the estate of the deceased Ashan Jayasinghe in the District Court of Colombo. During the course of the testamentary proceedings, Bandumali Jayasinghe's lawyers had submitted the decree absolute of her divorce from Dharman Jayasinghe by way of a motion on 27th June 2012. She has denied all knowledge of that motion. (page 20 of the proceedings dated 13th September 2014)

The contradictory position taken by Bandumali Jayasinghe on material points, is a clear indication of the fact that she had not been truthful, that her version lacks credibility and that she has wantonly misrepresented facts to the Supreme Court

(iv) That she had no knowledge of the Divorce case

All of her allegations against Niduk Perera are fundamentally based not only on her assertion that she did not grant a proxy to her, but also on her claim that she knew nothing about the divorce action instituted by her husband Dharman Jayasinghe.

Her assertion that she had no knowledge of the fact that the divorce action No. DDV/00054/2008 was filed by Dharman Jayasinghe and that she only found out about it when the testamentary action bearing No. DTA 15/2012 was filed by Kim Hee Jung with regard to his estate, has been restated in her Affidavit to the Supreme Court (at paragraph 4 of P21) as well as in her Affidavit to the Committee (at paragraphs 29 read with 31 -33 of P22).

Despite her claim that she was unaware of the divorce proceedings against her, there is ample circumstantial evidence which points to the fact that she was aware of the divorce action;

On 26th November 2007, Dharman Jayasinghe and Bandumali Jayasinghe had entered into a Non-Notarial Agreement (marked as “P4”). It had been described as a mutually created settlement to divorce/ collaborative divorce agreement.

For the same purpose of dissolving their marriage amicably they had entered into a second agreement in the style of a post-nuptial agreement, dated 28th December 2007 (marked as “P6”).

In pursuance of the aforesaid agreements Bandumali Jayasinghe had;

- Gifted the premises No. 40/19, Longden Place premises to Dharman Jayasinghe by Deed No. 3924 dated 28th December 2007. (P7)
- Gifted a land called “Alubogahakumbura” by Deed No. 3932 dated 2nd January 2008 to Ashan Jayasinghe. (P8)
- Gifted a land along with Dharman Jaysinghe, called “Mahabim Mukalana” by Deed No. 3925 dated 28th December 2007 to Ashan Jayasinghe. (P9)
- Accepted Rs. 12.5 million as the first instalment of the Rs. 25 million agreed upon by the parties with a specific condition that the remaining balance of Rs. 12.5 million shall only be paid when the decree *nisi* is made absolute. (Clause 4 of P6)
- Resigned as a Director of Dinu Construction (Pvt) Ltd (Letter of Resignation dated 4th December 2007 marked as ‘P5 (a)’), a company which was incorporated in 1987 by Dharman Jayasinghe with co-ownership and co-directorship with Bandumali Jayasinghe and another

The only explanation she could give to the Committee for signing the aforementioned agreements was that she was not aware of the nature and significance of those documents and that she signed whatever documents Dharman Jayasinghe wanted her to, in order to obtain money for the education of her son, Ashan Jayasinghe.

From the foregoing, the irresistible conclusion one can draw is that Bandumali Jayasinghe had ‘lied’ to the Supreme Court with the objective of persuading the court to take action against Niduk Perera, based on those lies.

Following the death of her younger son Ashan Jayasinghe, Bandumali Jayasinghe in her statement to the Cinnamon Gardens Police Station on 29th January 2011 had specifically stated that, according to her late son, he had not been pleased with the food prepared by the ‘Korean Lady’ who was the wife of his father (Dharman Jayasinghe) and that his father had once warned Ahsan Jayasinghe that the Korean Lady was not a servant but his lawful wife. However, in her Affidavit to the Supreme Court dated 27th June 2014, while admitting that she did make a statement to the Cinnamon Gardens Police Station on 29th January 2011 with regard to the death of her son, she has claimed that she was unaware that her husband had divorced her, which certainly was not the truth.

Later, in June 2012, Bandumali Jayasinghe instituted a testamentary case No. DTS-00134-12 in respect of the estate of the deceased Ashan Jayasinghe in the District Court of Colombo. In the caption in the said testamentary action she was named as “Don Bandumali Welikala” and not as “Don Bandumali Jayasinghe”, “Welikala” being her maiden name. She had also claimed ½ of Ashan Jayasinghe’s estate, when she could have claimed ¾ of it if her marriage to Dharman Jayasinghe still subsisted. She did not, however, provide a reasonable explanation for her abovementioned course of conduct.

Furthermore, as mentioned earlier, on 27th June 2012 her lawyers had by way of motion submitted the decree absolute of her divorce from Dharman Jayasinghe, of which she denied all knowledge. (page 20 of the proceedings dated 13th September 2014)

Four months after the death of Dharman Jayasinghe, the Condominium Unit belonging to the late Ashan Jayasinghe was leased out to Colombo International Container Terminals Limited by Bandumali Jayasinghe and Kim Hee Jung who acted as joint-lessors and owners of the said property. In the lease agreements Bandumali Jayasinghe’s status was described as ‘divorced’ and Kim’s was described as the wife of Dharman Jayasinghe. (Lease Agreement No. 3284 dated 4th July 2012 and Lease Agreement No. 3541 dated 18th June 2013 both dates anterior to the complaint made against Niduk Perera by Bandumali Jayasinghe)

At the inquiry conducted by the Committee, Bandumali Jayasinghe admitted to signing the said lease agreements (at page 18 of the proceedings dated 3rd August 2014 and at page 13 of the proceedings dated 6th September 2014) however she insisted that in addition to her it was the mother of Dharman Jayasinghe, Soma Rupali Jayasinghe (the 2nd Petitioner in the instant case), who had signed and that Kim Hee Jung had not been present. On the perusal of the agreements, it is clear that Soma Rupali Jayasinghe had signed only as a witness and that the power of attorney holder of Kim Hee Jung had signed on her behalf as a joint lessor.

Kim Hee Jung could not have been a joint lessor if she did not inherit Ashan Jayasinghe's property through Dharman Jayasinghe. And she could only inherit from Dharman Jayasinghe if she was his wife.

In addition to all of this evidence, Bandumali Jayasinghe failed to give an adequate explanation for the telephone calls and email messages between her and Niduk Perera. When examining the supplementary evidence pertaining to her knowledge of the said divorce action it is evident that Bandumali Jayasinghe has not been honest in her representations.

The inference that can be drawn from the above is that Bandumali Jayasinghe having full knowledge of her dealings with Niduk Perera has made false representations to the Supreme Court by way of an affidavit, the contents of which for all intents and purposes ought to be treated as evidence.

The Attorneys-at-Law appearing on behalf of Bandumali Jayasinghe in the present action have stated that they do not wish to challenge the fact that the allegations made against Niduk Perera are untrue. Their only contention is that the statements made do not amount to contempt of court. (written Submissions on behalf of the Respondent in Contempt No.03/16 dated 21st August 2020)

Thus, at this point this court needs to consider whether the Respondent Bandumali Jayasinghe's conduct, namely placing 'false evidence' before the Supreme Court, amounts to contempt of court.

Contempt of Court

Contempt of court is a multifaceted offence, for which it is difficult to lay down a precise definition. In English Common Law, contempt of court is an act or omission calculated to interfere with the due administration of justice.

Lord Radcliffe in the case of **Reginald Perera v. The King** stated;

“There must be involved some act done or writing published calculated to bring a Court or a Judge of the Court into contempt or to lower his authority or something calculated to obstruct or interfere- with the due course of justice or the lawful-process of the Courts.”

According to Lord Cross of Chelsea, *“Contempt of court means an interference with the administration of justice....”* **Attorney-General v. Times Newspapers** (1973) 2 All ER 54,]

In **Attorney-General v. Leveller Magazine Ltd.**, [1979] AC 440 at page 449, Lord Diplock defined the offence as follows,

“Although criminal contempt of court may take a variety of forms, they all share a common characteristic: they involve an interference with the due administration of justice, either in a particular case or more generally as a continuing process. It is justice itself that is flouted by contempt of court, not the individual court or judge who is attempting to administer it.”

In **Attorney-General v. Newspaper Publishing PLC** [1988] Ch.333, 368; it was held that, *“The law of contempt is based on the broadest principles, namely that the courts cannot and will not permit interference with the due administration of justice. Its application is universal.”* [per Sir John Donaldson MR]

If the people are to be governed by the rule of law, the judicature administering it should not only be credible, but should also command the confidence of the public; without which it loses its ability to perform its functions. The court is required to adjudicate on the rights of litigants based on the material placed before it in the form of evidence. Since the court necessarily has to rely on such evidence, the

reception of accurate and credible evidence has a significant bearing on the court arriving at correct decisions.

One of the main reasons, in my view, for almost all jurisdictions world over to visit instances of giving false evidence with penal sanctions is to ensure the due administration of justice; for failure on the part of the court to do so would impact on the credibility of the court and thereby lower the reputation of the court as an impartial adjudicator of disputes.

Commenting on the principles of the offence of ‘Giving false evidence’ under Section 191 of the Indian Penal Code, Dr. Sri Hari Singh Gour says *“The giving of false evidence is thus the practicing of fraud upon the court by making it believe as true that which the deponent does not believe to be true.. As such the offence belongs the genus of offences concerned with due discharge of their duties by public servants. **The offence is thus a contempt of court...**”* [Gour’s Penal Law of India 11th Edition Vol 2-page 1724]

Giving false evidence has received statutory recognition as ‘contempt of court’ in the form of Section 449 of the Code of Criminal Procedure Act No.15 of 1979. hereinafter the CPC] Section 449 of the CPC reads thus;

*449 (1); “If any person giving evidence on an subject in open court in any judicial proceeding under this Code gives, in the opinion of the court before which the judicial proceeding is held, false evidence within the meaning of section 188 of the Penal Code, it shall be lawful for the court, if such court be **the Supreme Court or Court of Appeal or High Court, summarily to sentence such witness as for a contempt of the court to imprisonment either simple or rigorous for any period not exceeding two years or to fine such witness in any sum not exceeding one thousand rupees; or.....”***

Although Section 449 of the CPC has no application to the instant situation the point, I wish to make is that, giving or presenting false evidence could be treated as an instance of ‘contempt of court’.

In the instant case the Respondent had clearly, by misrepresenting facts which were false or she knew to be false had made use of such facts in her attempt to obtain from the court the order, she desired.

Powers of the Supreme Court to deal with instances of contempt.

The Constitution vests the Superior Courts *inter alia*, with the power to punish for contempt of court. The power of the Supreme Court to do so is contained in Article 105 (3) of the Constitution which reads as follows:

Article 105 (3)

“The Supreme Court of the Republic of Sri Lanka and the Court of Appeal of the Republic of Sri Lanka shall each be a superior court of record and shall have all the powers of such court, including the power to punish for contempt of itself, whether committed in the court itself or elsewhere, with imprisonment or fine or both as the court may deem fit. The power of the Court of Appeal shall include the power to punish for contempt of any other court, tribunal or institution referred to in paragraph 1 (c) of this Article, whether committed in the presence of such court or elsewhere.”

In the Matter of D.M.S.B. Dissanayake S.C. Rule, 1/2004, S.C. Minutes of 7th December 2004 (unreported) S. N. Silva C.J. emphasized that

“... this Court, as the highest and final superior court of the Republic, forms part of the administration of justice and necessarily attracts the power to take cognizance of and punish offences of contempt.”

Hence the jurisdiction to punish as contempt, any act of interference with the administration of justice is vested with the Supreme Court as a Superior Court of Record. It is part of the inherent jurisdiction of the Supreme Court and an essential adjunct for safeguarding the rule of rule of law.

Making false representations to the Supreme Court

Judges do not have personal knowledge of the cases brought before them and in fact, they are not supposed to have such personal knowledge. Therefore, to mete out justice Judges must depend on documents and the testimonies of individuals that are submitted to the court. As such, if a document or testimony is false, then

there is every likelihood of injustice resulting due to the falsity of the material before the court.

The plea made by the Petitioners in this action is that Bandumali Jayasinghe has made a series of false statements to mislead the Supreme Court and has thereby committed the offence of Contempt of Court punishable under Article 105 (3) of the Constitution.

The three essential elements required to establish that an individual has given false evidence can be identified as,

1. The legal obligation to state the truth. (arising out of the binding nature of an oath, an express provision of law to state the truth, or a formal declaration required to be made by law.)
2. The making of a false statement.
3. The belief in its falsity.

In the instant case, there are numerous instances that establish without doubt, that Bandumali Jayasinghe has suppressed facts and has given statements which she knew or had reason to believe to be untrue. For instance, she vehemently denied retaining or having ever seen Niduk Perera, but evidence suggests otherwise; she affirmed to this Court that she never received summons, but on being cross-examined she admitted that she did; she complained that Niduk Perera had tendered a forged proxy, but she later admitted that she did in fact sign the proxy; she claimed to know nothing about Dharman Jayasinghe divorcing her and going on to marry Kim Hee Jung, but all evidence supports the assumption that she did know.

The irresistible inference that can be drawn is that Bandumali Jayasinghe has deliberately presented an account which is demonstrably false, with a view to mislead and deceive the court to achieve her personal objectives.

When a person misleads the Supreme Court or for that matter any court, it amounts to interference with the due course of justice by attempting to obstruct

the Court from reaching a correct conclusion. (**The Secretary, Hailakandi Bar Association v. State of Assam**, A.I.R. 1996 S.C. 1925 at pp. 1930,1931).

Therefore, making false representations to the Supreme Court knowing them to be false, giving evidence knowing it to be false- and thereby attempting to mislead the Court amounts to Contempt of Court as it is a direct interference with the administration of justice.

Despite the fact that Bandumali Jayasinghe was given the opportunity to establish the veracity of her account, she has failed to do so. The submissions made by her in support of her allegations against Niduk Perera are laden with contradictions, inaccuracies and falsehood.

Her assertion that the allegations made by her were not made with the intention of influencing the court as to the final outcome of the case, but were made in order to establish the charge against Niduk Perera is not an acceptable justification for her actions. (A *video* written submissions of Bandumali Jayasinghe to the Supreme Court dated 21st August 2020). It is clear that her conduct created a real risk to the due administration of justice and was therefore a “calculated conduct”. (*Attorney General v. Times Newspapers* (1974) AC 273)

Furthermore, the allegations levelled against Niduk Perera which included the filing of a forged proxy, appearing and filing answer for a party without receiving instructions, and allowing the action to proceed *ex parte*, all done without any instructions from the party purported to be represented, are extremely grave. In pursuance of these allegations Bandumali Jayasinghe had thought it fit to make a complaint to the Chief Justice and thereafter tender a false affidavit and supplementary evidence to support her false allegations. As was reiterated earlier, In the matter of **D.M.S.B. Dissanayake** (*supra*) S.N. Silva C.J. emphasized that the Supreme Court as the most superior court of the country forms part of the administration of justice and attracts the power to recognize and punish offences for contempt.

Therefore, the Supreme Court possesses the power in proceedings relating to contempt of court, a power which, if properly exercised can be a salutary influence on the administration of justice. The Constitution itself has vested the Supreme

court with the power to hold an individual, who as in this instance, had blatantly lied to it, guilty of contempt.

Bandumali Jayasinghe has by way of her false representations interfered with the due administration of justice, by attempting to obstruct the Supreme Court from reaching a correct conclusion. Her intention has clearly been to deceive and mislead the Court and her conduct can be described as an attempt to make a mockery of the law as well as of this Court in her attempt to achieve her personal objectives. Therefore, it can be held that she calculated conduct to interfere with and obstruct the due course of justice constitutes contempt of court which is punishable under Article 105 (3) of the Constitution.

We have considered the submissions made on behalf of the Respondent in this matter.

Accordingly, we affirm the Rule served on the Respondent; convict the Respondent of the offence of contempt of Court, punishable under Article 105 (3) of the Constitution.

In the course of the hearing the Learned President's Counsel Razik Zarook PC maintaining the highest traditions of the Bar did submit that "the allegations made against Niduk Perera had certainly not been well thought of and indeed not correct and in view of it, the Respondent unreservedly apologise to this Court".

Upon consideration of all relevant facts the Respondent is sentenced to a term of two years rigorous imprisonment, however, taking into account the mitigatory factors pleaded on her behalf, the operation of the sentence is suspended for a period of five years. In addition, a fine of Rs. 300,000/ [Three hundred thousand] is also imposed on the Respondent, with a default sentence of two years rigorous imprisonment. The fine is to be paid on a date to be determined by this court.

The Respondent is further directed to tender a written apology to Attorney -at-Law Ms. Niduk Perera with regard to the false and /or baseless allegations made against her.

Although it may not have a direct bearing on the issue before us, I would be failing in my duty if this court does not make an observation with regard to the discharge

of her professional duties by Attorney- at- Law Ms. Niduk Perera. Having gone through the material placed before us in the course of the inquiry, it was evident that the Attorney-at Law Ms. Niduk Perera had discharged her professional duties diligently and in the best interest of the Respondent, Bandumali Jayasinghe and the allegations made against Ms. Niduk Perera is bereft of any merit whatsoever. It is indeed unfortunate that the Attorney-at-Law concerned had to face the ignominy of going through the inquiry held before the Professional Purposes Committee of the Bar Association as a result of the complaint made by the Respondent Bandumali Jayasinghe, to the Supreme Court.

JUDGE OF THE SUPREME COURT

JUSTICE MURDU FERNANDO PC

I agree

JUDGE OF THE SUPREME COURT

P Padman Surasena J

I have had the benefit of reading in draft form, the judgment of His Lordship Justice Buwaneka Aluwihare PC. I agree with the Judgement of His Lordship which affirms the rule served on the Respondent and convicts the Respondent of the offence of contempt of court punishable under Article 105 (3) of the Constitution.

The Respondent now stands convicted of willfully making the false statements set out in the Rule which His Lordship Justice Aluwihare PC has dealt with, in detail, in the judgment.

The Respondent, when the rule was read out to her in Court, had pleaded not guilty. That was the reason why this Court had to engage in a protracted inquiry in which the complainant Ms. Niduk Perera Attorney-at-Law also had to give evidence on several dates. As has been mentioned by His Lordship Justice Aluwihare PC in his draft judgment, that was in addition to the burden on the complainant Ms. Niduk Perera having to participate in an inquiry held before the Professional Purposes Committee of the Bar Association of Sri Lanka.

His Lordship Justice Aluwihare PC has held in the Judgment that the Respondent has deliberately lied to the Supreme Court with a view of moving Court, to take action, on the basis of her falsehood, against Ms. Niduk Perera Attorney-at-Law.¹ The Judgment has further held that the Respondent has failed to give an acceptable reason for the afore-stated deliberate lie.

It is my view, that the act of the Respondent misrepresenting facts which she knew were false, and placing such falsehood deliberately before this Court with a view of attempting to obtain from this Court, an order she had desired,² is a very serious issue. Such acts have serious adverse effects on the due process of administration of justice by the Court. The Respondent has had no regard whatsoever when she placed this falsehood before the Apex Court of the land.

In the light of the above circumstances, I impose a sentence of 03 years rigorous imprisonment on the Respondent. I agree with His Lordship Justice Aluwihare PC that in addition to the aforesaid sentence of 03 years rigorous imprisonment, a fine of Rs. 300,000 (Three Hundred Thousand) with a default sentence of two years rigorous imprisonment be imposed on the Respondent. I also agree with His Lordship Justice Aluwihare PC that the Respondent must tender a written apology to Attorney-at-law Ms. Niduk Perera with regard to the false and/or baseless allegations made against her.

¹ Page 16 of the draft judgment.

² As stated by Hon. Justice Aluwihare PC at page 20 of the draft judgment.

I also agree with the last paragraph of His Lordship Justice Aluwihare PC that Ms. Niduk Perera Attorney-at-Law had discharged her professional duties diligently and in the best interest of the Respondent.

JUDGE OF THE SUPREME COURT