IN RE. SRILAL HERATH

SUPREME COURT.
G. P. S. DE SILVA, C.J.,
KULATUNGA, J. AND
RAMANATHAN, J.
S.C. RULE NO. 3/93 (D).
MAY 8, 1995.

Attorney-at-Law – Disciplinary Rule – Deceit – Order of Magistrate compounding the connected criminal case – whether it bars disciplinary proceedings – Section 42(2) of the Judicature Act.

One Ran Banda complained to the Bar Association of Sri Lanka that Srilal Herath, Attorney-at-Law, (hereinafter referred to as the respondent) obtained a sum of Rs. 80,000/- from him in two instalments of Rs. 40,000/- each as consideration for securing foreign employment for his son-in-law, but failed to obtain employment as promised. The respondent issued a receipt for the first instalment but not for the second. A criminal case which was instituted in this connection before the Magistrate's Court was compounded, the respondent agreeing to pay a sum of Rs. 40,000/-. However, he failed to make payment on the agreed date; and it took about 1 1/2 years for the Magistrate to compel the respondent to complete payment, in instalments. At the inquiry held by a Committee of the Bar Association, the respondent accepted liability for the balance Rs. 40,000/- as well and undertook to pay it in three instalments, but failed to honour that undertaking. Consequently a Rule was issued against the respondent on the ground of deceit and the offence of cheating. At the inquiry into the Rule, the respondent submitted that once the charge against him was compounded there was no basis to issue a Rule against him.

Held:

The respondent is guilty of "deceit" within the meaning of Section 42(2) of the Judicature Act. The Disciplinary proceedings against the respondent were not superseded by the result of the case before the Magistrate.

Cases referred to:

1. *In re. Thirugnanasothy* – 77 NLR 236, 279, 240.
2. *In re. Advocate* – 52 NLR 559, 560.

Proceedings on Rule Nisi to remove Attorney-at-Law from Roll of Attorneys.

Manik Kanakaratnam for the Bar Association.

C. R. de Silva, D.S.G., with *Aluvihare, S.C.*, for the Attorney-General.

Respondent in person.

Cur. adv. vult.

May 23, 1995.
KULATUNGA, J.

A Rule was issued on the respondent, an Attorney-at-Law, to show cause why he should not be suspended from practice or removed from the office of Attorney-at-Law in terms of S.42(2) of the Judicature Act No. 2 of 1978 on the grounds of deceit and the offence of cheating. It was alleged that the respondent had deceived one T. M. G. Ran Banda (now deceased) and induced him to part with a total sum of Rs. 80,000/- as a consideration for obtaining employment in Japan, for his son-in-law; but the respondent failed to secure employment as promised.

This Rule is the sequal to an inquiry conducted by the Bar Association of Sri Lanka against the respondent on a complaint made by Ran Banda by his affidavit dated 19.11.91 (P1). According to P1, the aforesaid Rs. 80,000/- was paid to the respondent in two instalments the first of which was an "advance" of Rs. 40,000/- for which the respondent gave him the receipt P2 dated 20.03.90 in the name of Lanka International Development Association and admittedly signed by the respondent as "Managing Director, Srilal Herath, Attorney-at-Law". It is also signed by one Gunawardena as "Chairman". Ran Banda says that one week later he paid a further Rs. 40,000/- to the respondent for which no receipt was given.

The inquiry proceedings by the BASL (P5) and the evidence led before this Court show that on 06.12.90 Ran Banda made a complaint to the Peliyagoda Police against the respondent. On 17.02.91, the respondent appeared at the Police Station and undertook to refund a sum of Rs. 40,000/- by 17.05.91. This was not done; and criminal proceedings were instituted against him in *M.C. Gampaha case No. 22515* for an offence under S.64(b) of the Bureau of Foreign Employment Act No. 21 of 1985 (Vide the record of proceedings marked P3). Whilst that case was pending, Ran Banda also made his complaint to the BASL on 19.11.91.

On 06.12.91 the charge against the respondent was amended to one under Section 386 of the Penal Code. The case was compounded, the respondent agreeing to pay a sum of Rs. 40,000/-. He paid Rs. 5000/- on that day and was directed to pay the balance on 31.01.92 on which date he paid only Rs. 5000/-. On the next date i.e. 28.02.92 he was absent and submitted a medical certificate.

On 17.03.92 the respondent sent his observations (P4) to the BASL on Ran Banda's complaint, denying that he had obtained a sum of Rs. 80,000/-. He said that the sum of Rs. 40,000/- was paid not to him but to Gunawardena, the co-signatory on the receipt P2. He added that the case in the Magistrate's Court had been compounded by an undertaking to pay Rs. 40,000/- and he was in the process of paying that sum in instalments as ordered. It is significant that this statement was not true because the case was compounded on condition that the respondent completed refunding Rs. 40,000/- by 31.01.92. The respondent had failed to comply with that condition.

The respondent was eluding the Magistrate's Court even after he tendered his observations to the BASL; he was absent and a warrant was issued. He surrendered on 08.05.92 but was absent on the next date viz. 29.05.92. Consequently, the Magistrate issued warrant and his attendance was secured only on 17.07.92, on which date he was enlarged on cash bail in a sum of Rs. 25,000/- in addition to security bail for the same amount. It was only thereafter that he completed the payment, which he did, in periodical instalments, ending on 21.05.93.

The Committee of the Bar Association which held the inquiry against the respondent on 10.10.92 was apprised of the above situation. In the circumstances, it decided to continue the inquiry regarding the respondent's conduct with reference to the payment of Rs. 40,000/- (without a receipt) even though the matter had been settled in the M.C. for Rs. 40,000/- , on the advice of lawyers. At the inquiry, the respondent accepted liability for that sum too and undertook to pay the same in three instalments ending on 13.03.93. He was informed that in default, he would be reported to the Supreme Court. He signed the record accepting the said settlement. However, he failed to honour the settlement whereupon the Chairman of the Committee "reported" the matter to this Court (Vide P5(b)).

Ran Banda's son-in-law was never sent to Japan as promised by the respondent. The respondent did not give evidence at the hearing before us. He marked in evidence the statement he made on 17.02.91 to the Peliyagoda Police (D1). In this statement he does not say that he made any arrangements or took any steps whatsoever to send Ran Banda's son-in-law to Japan. No material whatsoever has been placed before this Court even to remotely suggest that the complaint of Ran Banda is not well founded.

Both Mr. C. R. de Silva DSG and Manik Kanakaratnam who appeared for the Bar Association submitted that the acts of "deceit" have been established. On a consideration of the documents P1, P2, P3, P5 and D1 and the fact that even after two years of the settlement before the Bar Association, the respondent has failed to repay the second instalment of Rs. 40,000/- . I hold that the respondent is guilty of "deceit" within the meaning of S.42(2) of the Judicature Act.

There remains to consider the nature of the order that should be made in the facts and circumstances of this case. The DSG representing the Attorney-General submitted that the respondent is not a fit and proper person to be entrusted with the affairs of litigants. Mr. Kanakaratnam associated himself with the submissions of the DSG and added that the respondent conducted a "fictitious" organisation, as Managing Director and an Attorney-at-Law, which was tantamount to selling his title as a member of an honourable profession, for the purpose of attracting customers. The respondent submitted that once the charge against him in the sum of Rs. 80,000/- was compounded, there was no basis to issue a Rule against him. He said that the case was concluded in the Magistrate's Court.

Disciplinary proceedings before this Court cannot be so superseded by the result of a case in the Magistrate's Court. Thus it was held in *In re Thirugnanasothy*[1] by G. P. A. de Silva SPJ (Wijayatilake, J. and Pathirana, J. agreeing) that where a proctor is guilty of misappropriating money due to his client he may be removed from office under S.17 of the Courts Ordinance. It is immaterial for this purpose that he has been acquitted on an indictment containing a charge relating to this identical transaction, when the reasons for the acquittal, though sound, are technical in nature. G. P. A. de Silva SPJ said – (239,240)

> "As we are conscious of the consequences which an order in terms of Section 17 of the Courts Ordinance would involve for a professional man, we have given this matter our, most anxious consideration, remembering at the same time that the public interest and the honour of the profession must remain in the forefront of our decision. The question that the Court has to ask itself is whether a person who has been guilty of misappropriation of his client's money and has aggravated his offence by his refusal

to make good that amount despite repeated requests, can safely be entrusted with the interests of unsuspecting clients who may have recourse to him. There can be no two answers to this question. Hence there is only one course open to us, namely to strike off the respondent from the rolls"

In the instant case the respondent's conduct, though not in respect of a professional matter, has throughout been dishonourable. Even the compounding of the criminal case has been secured on a misrepresentation namely, that he would refund Rs. 40,000/- by 31.01.92. He failed to honour the settlement. He was virtually coerced by the Court over a period of nearly 1 1/2 years to finalise that payment. Next he undertook before a committee of the Bar Association to refund the second instalment of Rs. 40,000/-. He failed to make any payment thereafter. This shows that he is a man who can make a promise without intending to honour it. He was admitted to the Bar on the basis that he was a person of good character and repute. He appears to have lost that quality and it does not seem that he will redeem his character in the near future.

In Re an Advocate[2] Gratiaen, J. said –

"Our duty must be measured by the rights of litigants who may seek advice from a professional man admitted or readmitted to the Bar by the sanction of the Judges of the Supreme Court. It is also measured by the right of the profession, whose trustees we are, to claim that we should satisfy ourselves that re-enrolment will not involve some further risk or degradation to the reputation of the Bar"

These words are of intense relevance here, though this is not a case of re-enrolment.

For the foregoing reasons, the Rule is made absolute and I direct that the respondent be removed from office as an Attorney-at-Law and that his name be struck off from the Roll of Attorneys-at-Law.

G. P. S. DE SILVA, C. J. – I agree.

RAMANATHAN, J. – I agree.

Rule made absolute.