

1958 *Present* : Basnayake, C.J., Weerasooriya, J., and Sansoni, J.

THE SOLICITOR-GENERAL, Applicant, and A. N. A. ABDUL CADER, Respondent

APPLICATION APN/2/58—IN THE MATTER OF A RULE ISSUED ON A PROCTOR UNDER SECTION 17 OF THE COURTS ORDINANCE, ON THE APPLICATION OF THE SOLICITOR-GENERAL

Proctor—Misconduct—Removal from office—Courts Ordinance (Cap. 6), s. 17.

The respondent was convicted of criminal breach of trust of a sum of Rs. 28/50 entrusted to him as a Proctor. His conduct in the transaction showed that he did not realise the responsibilities of his office.

Held, that in the circumstances the respondent's name should be struck out of the Roll of Proctors.

RULE issued on a Proctor on the application of the Solicitor-General.

A. C. Alles, Acting Solicitor-General, with Arthur Keuneman, Crown Counsel, and H. L. de Silva, Crown Counsel, for Applicant.

N. K. Choksy, Q.C., with M. Markhani, A. Nagendra and G. E. de Pinto, for Respondent.

Cur. adv. vult.

July 18, 1958. BASNAYAKE, C.J.—

In the instant matter the respondent does not seek to shew cause against the exercise of the disciplinary powers of this Court. Learned counsel on his behalf submits that having regard to the circumstances of his case the respondent's conduct does not merit removal from office. The only question we have therefore to decide is whether the respondent should be suspended from practice or whether he should be removed from office.

The material facts shortly are as follows : The respondent who was admitted as a proctor of the Supreme Court in the year 1952 was convicted on 21st October 1957 by the District Court of Colombo of the offence of criminal breach of trust of a sum of Rs. 28·50 entrusted to him in his capacity as a proctor by one Candappa who sought his professional services. This sum was sent by cheque on 8th September 1955 to the respondent in reply to a post card from him dated 18th May 1955. The post card reads—

“ Notice under section 219 was served on the defendant. He failed to appear in court on the 13th instant. I have therefore moved for attachment which is returnable on the 1st of July. If you want me to issue the attachment please send me a money order for Rs. 28·50 being stamp fees and subsistence money for the arrest and production of the defendant. Please attend to this early.”

The cheque was cashed on 13th September 1955. As the respondent had not, for nearly two months after he had remitted the necessary expenses, taken steps to have a warrant for the arrest of the judgment-debtor issued, his client wrote to him the following letter on 10th November 1955 :—

“ Dear Mr. Abdul Cader,

I regret to inform you that nothing was heard of re my case with Percy Perera. I saw him on Monday near your office. Will you please let me know why this delay in executing the attachment after my giving you all the particulars where and when to arrest him. If you cannot get the Fiscal to execute the attachment, please let me know and oblige.”

As the respondent continued not only to take no action but also to be silent his client again wrote to him on 19th November 1955 in the following terms :—

“ Dear Sir,

I have to draw your immediate attention to my letter dated the 10th instant. Please let me know if you are unable to attend to this matter and oblige.”

The respondent paid no heed even to this letter. His client then met him in person at his office on 18th January 1956, and he undertook to attend to this matter and asked his client to meet him at his office the next day. From 9.30 in the morning till 3.30 in the afternoon of the following day his client waited for him in his office ; but he failed to turn up. Displeased at the treatment meted out to him by the respondent, his client wrote the following letter on 24th January 1956 and sent it by registered post :—

“I am writing this letter as a final warning to you and I trust that you will not overlook the seriousness of this matter. Since I sent you the cheque to cover the cost of Fiscal charges to obtain the attachment I repeatedly wrote to you to expedite the matter but to my great surprise and regret you not only neglected entirely to take out the attachment you have failed to deposit the Fiscal charges sent to you by me and further you even did not care to reply any of my letters sent to you.”

“ You will also remember when I met you in Colombo at your office on the 18th instant you told me that you will attend to the business and asked me to meet you on the following day at 9.30 a.m. You did not turn up as promised. I waited until 3.30 p.m. That was an insult to injury. However I must plainly tell you that you cannot attend to this as I see that you are in sympathy with the defendant as you said that he came to see you more than five times. Please therefore refund the monies I have entrusted to you in this case and cancel the proxy. But remember that you have to pay me all the stamp fees for filing the new proxy because the fault is yours.

“ I hope that you will not give the unpleasantness to go further in the matter.”

Seeing that the respondent persisted in taking no notice of his letters his client wrote to him on 16th February 1956 as follows:—

“Will you please deposit the Rs. 28·50 entrusted to you as stamp fees and subsistence money for the arrest and production of the defendant. It is nearly six months you are keeping the money without depositing. You have overtaxed my patience. You have treated me very badly. Do not blame me if you get into trouble. This is my last warning.”

Even this letter neither evoked a reply nor moved the respondent to action.

On 1st March 1956 the respondent was appointed President of the Rural Court of Vavuniya. This appointment meant that he could no longer practise as a proctor. But even then the respondent did not inform his client of his appointment and ask him to revoke his proxy and appoint another proctor. As his efforts to get the respondent to attend to his case were of no avail Candappa complained of the respondent's conduct by letter to the Solicitor-General. The Police then began to investigate the complaint. After Inspector Jusey recorded his statement in July 1956 the respondent called on Candappa along with another proctor by name Leslie Peiris at Ratnapura and offered to pay back the sum of Rs. 28·50 and a sum of Rs. 200 of the judgment-debt obtained from Percy Perera. Candappa refused to accept the money as his complaint was under investigation.

The respondent gave evidence on his own behalf at the trial. The learned trial Judge has not only rejected his evidence but has also found him to be untruthful.

The learned counsel for the respondent has drawn our attention to instances¹ in which this Court has taken the course of suspension from office, and the learned Solicitor-General has referred us to instances² in which the course of removal from office has been taken. It is unnecessary to discuss these cases as each case must depend on its merits.

The respondent's conduct in the transaction which resulted in his conviction of the offence of criminal breach of trust shows that he does not realise the responsibilities of his office. The respondent has not only appropriated to his own use money entrusted to him in his professional capacity; but he has to the detriment of his client also neglected his professional duties and prevented him from pursuing his legal remedy against his judgment-debtor for over two years.

A proctor is an officer of this Court whom this Court holds out to suitors as a person who can be trusted to advise them, and to undertake their affairs, or in whom they may with safety place their confidence. Can

¹ *In re Senaratne*, (1953) 55 N. L. R. 97.

In re a Proctor, (1933) 36 N. L. R. 9.

In re a Solicitor, 61 L. T. (N. S.) 842.

In re Hill, 18 L. T. (N. S.) 564 at 566.

In re Mohamed, (1946) 48 N. L. R. 29.

² *In re Cooke*, (1939) 41 N. L. R. 206.

In re Weare, (1893) 2 Q. B. D. 439.

In re Abeydeera, (1932) 1 C. L. W. 369.

this Court any longer hold out the respondent to suitors as such a person? There can be only one answer to that question, and that is that it can no longer do so.

We therefore order that Ahmed Niyaz Alavi Abdul Cader, Proctor of the Supreme Court, be removed from his office and direct that his name be struck out of the Roll of Proctors of this Court.

WEERASOORIYA, J.—I agree.

SANSONI, J.—I agree.

Respondent's name struck out of the Roll of Proctors.
