

ARUMUGAM
v.
THE ATTORNEY-GENERAL AND ANOTHER

SUPREME COURT,
COLIN-THOME, J.,
RANASINGHE, J. AND
RODRIGO, J.
RE-ENROLMENT NO. A 8189,
11 OCTOBER 1984

Attorney-at-Law – Application for re-enrolment – Conditions necessary.

Held:

A petitioner who seeks re-enrolment must adduce cogent proof that he has redeemed his character which he had once lost. The period of good character preceding application must be long enough. An application prematurely made will not be allowed.

Cases referred to:

1. *In Re Monerasinghe* 4 CWR 370.
2. *In the matter of an application of C. J. J. Seneviratne* for re-admission as an Advocate 30 NLR 209.
3. *In re S. V. Ranasinghe* 45 CLW 26, 27.

APPLICATION for re-admission and re-enrolment as an Attorney-at-Law.

S. Sinnatamby with *M. Wimalaswaram* for petitioner.

K. M. M. B. Kulatunga, P.C. Solicitor-General with *Sarath Silva D.S.G.* for Attorney-General.

Eric Amerasinghe, P.C. with *W. P. Gunatilake* for Bar Association.

Cur adv vult.

26th October, 1984.

COLIN-THOME, J.

This is an application by the petitioner for re-admission and re-enrolment as an Attorney-at-Law.

N. Sivaguru by petition dated 27th January 1967 complained to the Magistrate of Vavuniya that he had retained the petitioner in June, 1964 for the purpose of filing an action to exercise his right of pre-emption in regard to an undivided portion of land co-owned by him and his sister of which the undivided share of the sister had been sold by her to another, and that he had for the purpose of making a deposit in that action for pre-emption handed over to the petitioner a sum of Rs. 5000/- on the 20th of June, 1964 for which the petitioner gave him a receipt but that the petitioner had not deposited that sum of money or any part thereof in the action.

The Disciplinary Committee of the Law Society held an inquiry into this allegation under section 17A of the Courts Ordinance and held that the petitioner had misappropriated and converted the sum of Rs. 5000/- to his own use and that he was guilty of an offence and/or malpractice. The Committee recommended to the Supreme Court that disciplinary action be taken against the petitioner. The Supreme Court granted the petitioner time to refund this money but the petitioner did not avail himself of the opportunity of refunding this money in full.

When this case came up before the Supreme Court on the 14th of June 1977 Counsel appearing for the petitioner informed Court that he was not contesting the facts as found by the Disciplinary Committee and he asked for two months time to pay the balance due.

When this matter came up before the Supreme Court again on the 31st March of 1978 Learned Counsel for the petitioner resiled from his earlier position and submitted that the facts as found by the Disciplinary Committee did not warrant disciplinary action. This submission was rejected by the Supreme Court and the Learned Chief Justice in his judgment dated 31st March 1978, with which the other two judges agreed, held that the Disciplinary Committee came

to a correct finding. The Learned Chief Justice took a serious view of this case and ordered that the petitioner be removed from office and his name be struck off the roll of Attorneys-at-Law of this Court.

In the present application by the petitioner he has attached an affidavit (P4) of the complainant N. Sivaguru, who avers that on the 31st March of 1978 the petitioner paid him the balance amount of the principal sum and that on the same date the petitioner gave him a cheque dated 3rd July 1978 for the sum of Rs. 2000/- which was due to him as interest on the principal of Rs. 5000/-. On 1st July 1978 the petitioner paid him in cash a sum of Rs. 2000/- and he returned the cheque to the petitioner.

In support of his application for re-admission the petitioner filed two certificates, one from Mr. S. R. Kanaganayagam, President of the Bar Association of Jaffna and another from Mr. C. C. Somasegeram, Attorney-at-Law, Jaffna.

Mr. S. R. Kanaganayagam, stated in his certificate dated 7th January 1984 that during the last five years the petitioner was actively interested in social work and that he was a Trustee of the Kokuvil Nanthavil Katpulathu Manonmany Amman Temple and Patron of the Rural Development Society of Kokuvil and that he also helps junior practitioners. Mr. Somasegeram in his undated certificate has stated that there was a misunderstanding between the petitioner and his client and that as the petitioner lost the sight of both eyes there was a delay in refunding the sum of Rs. 5000/-. The petitioner however in his affidavit has stated that he lost the sight of one eye and had a cataract operation on the other eye and was disabled for six months. In the opinion of Mr. Somasegeram the petitioner would conduct himself with professional propriety if re-enrolled.

A long line of decisions of the Supreme Court in applications for re-enrolment has followed the dicta in *In Re Monerasinghe* ⁽¹⁾ where Wood Renton, C.J. held that:-

"The view has been adopted that a Court which has the right to remove the name of a solicitor from the Rolls has also an inherent discretionary power to re-admit him, where he has

subsequently expiated the offence of which he may have been guilty and redeemed his character . . . The material now before us shows that Mr. Monerasinghe has atoned for any errors that he may have committed in 1897 by an unbroken subsequent career of honesty and industry."

In this case the application for re-enrolment was made twenty years after the applicant was struck off the Rolls. It was allowed.

In the matter of an application of C. C. J. Seneviratne to be admitted and enrolled an Advocate of the Supreme Court,⁽²⁾ the petitioner was convicted and sentenced for cheating. On 22nd February 1922 he was struck off the Rolls. His application for re-admission was made in December 1929, only six years later. He annexed twelve certificates to his petition testifying that he devoted himself to social service work and had reconstructed his life. It was held that the application was premature. Although his conviction might have had the salutary effect of awakening in the applicant a higher sense of honour or duty, the period during which his conduct was testified to by the certificates as being irreproachable was not long enough to be deemed to be a guarantee sufficient for him to be safely entrusted again with the affairs of clients and admitted to an honourable profession without that profession suffering degradation.

In re S. V. Ranasinghe ⁽³⁾ Gratiaen, J. observed that:-

"All of them (judicial decisions) remind us that this Court, in dealing with these applications, must not be influenced either by punitive or by sympathetic considerations. Our duty must be measured by the rights of litigants who may seek advice from a professional man admitted or re-admitted 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 of degradation to the reputation of the Bar."

It was also held in this case that the petitioner had to offer cogent proof that he had redeemed his character which he had once lost.

Bearing these principles in mind and applying them to the circumstances of this case, I hold that this application is premature. I also hold that the material placed before this Court that the petitioner has redeemed his character is inadequate. The petitioner has taken nearly fourteen years to refund the sum of Rs. 5000/- in full. The material before this Court falls far short of the cogent proof necessary to support an application for re-enrolment.

The application is refused.

RANASINGHE, J. – *I agree.*

RODRIGO, J. – *I agree.*

Application refused.