

**IN RE ATTORNEY-AT-LAW**

SUPREME COURT  
JAYASINGHE, J.  
UDALAGAMA, J.  
DISSANAYAKE, J.  
SC RULE 2, 2004 (D)  
NOVEMBER 17, 2004  
MAY 3, 2005  
JUNE 27, 2005  
SEPTEMBER 14, 2005  
OCTOBER 5, 18, 2005  
NOVEMBER 7, 22, 2005  
DECEMBER 5, 2005  
JANUARY 20, 2006  
FEBRUARY 21, 2006  
MARCH 24, 2006  
APRIL 28, 2006  
JUNE 16, 2006  
JULY 18, 2006  
SEPTEMBER 12, 27, 2006  
OCTOBER 23, 2006

*Rule against an Attorney-at-Law – Rule 60, 61 of SC (Rules) Conduct of Etiquette for Attorneys-at-Law – Judicature Act S44 (2). What amounts to professional misconduct ? – disgraceful dishonourable conduct – Should an Attorney-at-Law who is before Court on allegation of criminal misconduct be precluded from appearing in Court?*

**Held:**

- (1) The Rule is not based on the professional conduct as an Attorney-at-Law but on a personal relationship with his wife.
- (2) As regards charge (c) which relates to Criminal Misconduct – Bigamy – it will not be gone into as Magistrate Courts proceedings are still pending.

*Per Nihal Jayasinghe, J.*

**"Where an Attorney-at-Law is before Court on allegation of criminal misconduct, such Attorney-at-Law should be precluded from appearing**

before Court for the reason that his integrity is being assailed and consequently suffers in his reputation as an Attorney-at-Law."

- (3) Suspension of the respondent will not be removed until the Magistrate's Court proceedings are terminated.

Rule against an Attorney-at-Law.

*K.A.P. Ranasinghe* SSC for Attorney-General

*Manohara de Silva* PC for respondent

*Rohan Sahabandu* for the Bar Association of Sri Lanka

December 6, 2006

**NIHAL JAYASINGHE, J.**

This Rule was issued on the respondent calling upon him to show cause why he should not be suspended from practice or removed from the office of attorney-at-law of the Supreme Court in terms of Section 42(2) of the Judicature Act read with Rule 60 and 61 of the Supreme Court (Conduct of Etiquette for attorneys-at-law) Rules. The complaint was made by one Athula Munasinghe.

The rule issued contained eight allegations classified as (a) to (h). On 28.4.2006 the Senior State Counsel informed Court that as no evidence in respect of the charges of misconduct alleged in counts (b), (f) and (g) has been led, the respondent was called upon to meet the allegations in respect of charges (a), (c), (d), (e) and (h).

We have very carefully considered the evidence placed before us in respect of charge (a) We are in agreement with the submissions of the learned President's Counsel that the rule is not based on his professional conduct as an attorney-at-law but on a personal relationship with his wife. We are also mindful of the fact that his estranged wife Vasantha Munasinghe had never taken any positive step against the petitioner even though she was very explicit regarding the treatment she received at the hands of the respondent. We are also mindful of the fact that these proceedings were initiated on a complaint by the brother of the said Vasantha Munasinghe.

The charge (c) relates to the marriage to one Pushpa Chandani. The said Pushpa Chandani had obtained a divorce from the respondent on the ground of malicious desertion. The said Pushpa Chandani did not give evidence at the inquiry. This charge has nothing to do with the respondent's responsibility as an attorney-at-law.

Charge (d) consists of two limbs. Firstly, it alleges that the respondent fraudulently enticed two women through advertisements and secondly abused them both sexually and physically. There was no evidence before us the advertisement was placed by the respondent nor was the paper notice produced. One Gnanawathie who gave evidence denied any sexual assault.

On consideration of the evidence placed in respect of charges (a), (c) and (d) we are unable to hold that the conduct of the respondent could reasonably be regarded as disgraceful or dishonourable of an attorney-at-law of good repute and competency and to hold that this respondent has acted in breach of rule 60 and consequently unfit to remain an attorney-at-law.

However charge (e) relates to criminal misconduct, in that the respondent entered into a marriage with one Thilaka Malini Bope Weeratunga when the divorce action in respect of the previous marriage was infact pending in the District Court of Mount Lavinia. We will not go into the charge (h) as case No. 47297 is yet pending in the Magistrate's Court of Galle.

We have given serious consideration to the written submissions of Mr. Rohan Sahabandu appearing for the Bar Association of Sri Lanka. He has strenuously argued citing authorities where, an attorney-at-law is before Court on the allegation of criminal misconduct, such attorney-at-law should be precluded from appearing before Court for the reason that his integrity is being assailed and consequently suffers in his reputation as an attorney-at-law and strenuously objects to the present suspension of the respondent being removed until the Magistrate's Court proceedings are terminated. We are of the view that there is merit in this submission.

While we clear the respondent of the allegations set out in (a), (c), and (d) we are of the view that no finding be made in respect

of the allegations set out in (e) as the respondent is being charged in respect of the allegations set out in (h). We accordingly direct the Magistrate of Galle to conclude the trial against the accused within three months hereof. If the accused is acquitted by the Magistrate these proceedings will be treated as terminated. In the event the respondent is found guilty the Supreme Court will take appropriate steps.

**UDALAGAMA, J.** - I agree.

**DISSANAYAKE, J.** - I agree.

*Respondent cleared of all allegations, no finding is made in respect of the allegations which are pending before the Magistrate's Court (charge of Bigamy).*

*Directions given to Magistrate's Court to conclude the trial within 3 months.*

**Editor's Note**

*The Attorney-at-Law was subsequently acquitted in the Magistrate's Court. The State lodged an appeal. The Rule was discharged by the Supreme Court.*