

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

In the matter of a Rule against an Attorney-at-Law in terms of Section 42(2) of the Judicature Act, No. 2 of 1978 against Mr. Sampath Karunathilaka, Attorney-at-Law.

Negombo Magistrate's Court Lawyers'
Welfare Association,

Ms. Nilmini Madonza,
The President,

Supreme Court Rule No. 15/2023
Negombo Magistrate's Court Lawyers'
Welfare Association,

Mr. Nelson Kumaranayake,
The Secretary,
Negombo Magistrate's Court Lawyers'
Welfare Association,

All at

Negombo Magistrate's Court Lawyers'
Welfare Association,
First Floor,
Court Complex,
Negombo.

COMPLAINANTS

Against

Mr. R. A. S. Sampath Karunathilaka,
Attorney-at-Law,
No. 10/B, Palawa,
Muruthalawa,
Kandy.

RESPONDENT

BEFORE: **S. THURAIRAJA, PC, J.**

A. H. M. D. NAWAZ, J. &
ARJUNA OBEYESEKERE, J

COUNSEL: Saliya Pieris, PC with Kaneel Maddumage, Praveen Premathilaka and Ms. Kavindi Weerasekara for the Respondent.

Asthika Devendra with Ms. Chamarie Sandunika and Vimukthi Karunaratne for the Complainant.

Rohan Sahabandu, PC with Ms. Chathurika Elvitigala for the Bar Association of Sri Lanka.

Ms. Hashini Opatha, SSC with Ms. Abigail Jayakody, SC for the Hon. Attorney-General.

INQUIRY ON: 28 March 2024

DECIDED ON: 04 April 2024

THURAIRAJA, PC, J.

1. The complaint against the Respondent Attorney-at-Law was made by a group of lawyers styling themselves as *the Negombo Magistrate's Court Lawyers' Welfare Association* setting out allegations of, *inter alia*, touting and malpractice.
2. Pursuant to an Inquiry held by the Disciplinary Committee of the Bar Association of Sri Lanka, this Rule was issued against the Respondent Attorney-at-Law. The Report of the said Committee sets out that a number of complaints have been made on like grounds against the Respondent by other members of the Bar, along with Affidavits from certain litigants to whom the Respondent had provided services as an Attorney-at-Law.
3. The Committee therein has *prima facie* observed the conduct of the Respondent to be unbecoming of an Attorney-at-Law and as detrimental to the well-being of the profession, and that he has made no attempts to put his errant ways right and desist from such malpractices in spite of many a forewarning by senior members of the Bar.
4. The impugned conduct of the Respondent Attorney-at-Law is set out in the Rule in the following manner:

"WHEREAS, His Lordship the Chief Justice and other Judges of the Supreme Court have examined a complaint dated 26 November 2018 made by the President of the Negombo Magistrate's Court Lawyers' Welfare Association; Ms. Nilmini Medonza and the Secretary of the said association; Mr. Nelson Kumaranayake alleging that you have directly or indirectly resorted to the practice of touting in contravention of Rule 39 of the Supreme Court Rules;

AND WHEREAS, upon examination of the said complaint His Lordship the Chief Justice and the other Judges of the Supreme Court are of the view that the said complaint discloses *inter alia* that:

- 1) On or about 10 June 2018 you had through Mr. Bandara; office of the Crimes Branch of the Negombo Police Station sought to or engaged in the practice of touting in respect of Mr. Mohammed Nawab Mohammed Naushan;
- 2) On or about 20 August 2018 you had through Mr. Lawrence; a police officer attached to the District Court of Negombo, sought to or engaged in the practice of touting in respect Mr. Sujith Priyantha Fernando;
- 3) On or about 11 July 2018 you had through a police officer present in the Negombo Court Complex premises sought to or engaged in the practice of touting in respect of Mr. Shivarasa Sathyaraj;
- 4) On or about 16 September 2018 you had through a police officer attached to the Magistrate's Court, Negombo sought to or engaged in the practice of touting in respect of Mr. Mohammed Aslam Mohammed Wasseem;
- 5) On or about 5 November 2018 you and Mr. K. D. Chathuranga Attorney-at-Law had, with the assistance of CID officer Mr. Nishantha, in the absence of a Prisons Official, using vehicle bearing number CP KV 6586 transported three foreign nationals who had been ordered to be placed under remand custody by the Acting Magistrate Mr. Gunadasa, to the Magistrate Court, Negombo and thereby sought to or engaged in the practice of touting in respect of the said foreign nationals;
- 6) On or about 17 October 2018 you and had through the person in charge of a private carpark, situated opposite the Negombo Court Complex, sought to or engaged in the practice of touting in respect of Mr. Pradeep Nishantha De Mel;

7) On or about 18 October 2018 you had through an officer of the CID sought to or engaged in the practice of touting in respect of Shiroman Prabath;

AND WHEREAS in the circumstances above mentioned; His Lordship the Chief Justice and the other Judges of the Supreme Court considering the serious and untenable nature of your conduct and further upon examining the matters submitted by the Complainant and submitted by you find that:

- a) By engaging in the activities relevant to paragraphs 1) -7) above you have engaged the services of another for a commission, payment or consideration to solicit clientele and advertised for the purposes of unfairly attracting clientele for yourself therefore engaged in practice of touting and as stated breached Rule 39 of the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules 1988 made by the Chief Justice and other Judges of the Supreme Court of Sri Lanka under Article 136 of the Constitution;
- b) By reason of the aforesaid, you have committed an act of deceit, malpractice and/or offence as set out in Section 42(2) of the Judicature Act No. 2 of 1978 read with the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules 1988;
- c) Furthermore, by reason of the above, you have conducted yourself in a manner which would be reasonably regarded as disgraceful or dishonorable by the Attorneys-at-Law of good repute and competency or render you unfit to remain an Attorney-at-Law which is inexcusable and such as to be regarded as deplorable by your fellows in the profession and have thus committed a breach of Rule. 60 of the said Rules and have conducted yourself in a manner unworthy of an Attorney-At-law and have thus committed a breach of Rule. 61 of the said Rules, which renders you unfit to remain as an Attorney-at-law;

"AND WHEREAS this Court has decided that proceedings for suspension from practice or removal from the office of Attorney-at-Law should be taken against you under Section 42(2) of the Judicature Act No. 2 of 1978 read with the Supreme Court (Conduct of Etiquette for Attorney-at-Law) Rules 1988 made under Articles 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka."

5. The Respondent pleaded guilty to the said Rule when it was read out in open court on 28 March 2024, and therefore, this Court need only concern itself with the nature of the order to be issued against the Respondent with due regard to the mitigatory circumstances, if any.
6. Employing one tout, let alone as many as the Respondent has, is a severe ethical violation.

As Macdonell, CJ said in ***Re A.V. de Silva, Advocate***,¹

"...The Bar and its traditions exist by reason of the independence of each advocate. He must succeed in accordance with his merits, and it would be subversive of all the traditions of the Bar if he were to employ any such assistance as that of a tout to obtain him practice. The proposition seems to us an obvious one, and it is difficult to take seriously the contention that employing a tout can under any circumstances be a venial offence.

.... [T]he conduct proved against the Respondent does show moral turpitude and an entire forgetfulness of the duties and traditions of the profession to which he belongs. It would be wrong to allow any advocate who has so far misbehaved as to employ a tout to remain on the roll of advocates and if so the order must be that the respondent be removed from that roll."²

¹ (1934) 37 NLR 99

² Ibid at 101

7. However, the Respondent did not attempt to justify his conduct, as was done in ***Re A.V. de Silva***, when the Rule was taken up for inquiry. The fault on his part was readily accepted, but then, the learned President's Counsel appearing for the Respondent pleaded with this Court to be cognizant of many mitigatory circumstances.
8. On the 25th day of January 2017, the Respondent, Ranasingha Arachchilage Susantha Sampath Karunathilaka, was admitted and enrolled as an Attorney-at-Law of the Supreme Court of the Democratic Socialist Republic of Sri Lanka. It was submitted that the Respondent Attorney-at-Law comes from humble beginnings and that he followed and completed his legal education in spite of such hardship.
9. Immediately after being admitted to the Bar, the Respondent had begun his independent private practice, chiefly in the area of criminal law, having opened a law chamber in the Negombo area with three of his contemporaries. Despite being born and raised in Kandy, the Respondent had chosen Negombo as the locality of his legal practice owing to the time he served his pupillage as apprentice to a senior practitioner in Negombo.
10. In light of this, the learned President's Counsel invited this Court to consider the fact that the Respondent had only been in practice for approximately two years at the time of the acts complained of. Furthermore, it was brought to the cognizance of this Court that he, being the father of a child of two years, is the sole breadwinner for his family as well as the primary caretaker for his elderly parents. It was further submitted that the Respondent is very remorseful of his conduct.
11. While the circumstances so set out by the learned President's Counsel for the Respondent by no means excuse or justify the Respondent's conduct, I cannot in good conscience close my mind to the same in issuing this ruling.

12. Approximately four thousand nine hundred and forty-eight persons have been enrolled as Attorneys-at-Law over the past five years. In the same period, thirty-four Rules have been issued against Attorneys-at-Law by the Supreme Court following the myriad of complaints received by this Court as well as the Bar Association, resulting in the suspension or disenrollment of eleven Attorneys, with much of such cases still pending before the Court.
13. As it is often said, legal practice is not an occupation or a trade but a profession. While it is neither convenient nor necessary to precisely define what these terms mean, the fact that there is a vital distinction must not be forgotten. In one of his acclaimed publications, **Professional Ethics and Responsibilities of Lawyers**, A.R.B. Amerasinghe, J observes the assistance given by professionals towards the organized functioning of society as one of the more prominent distinguishing factors, for non-professional services are of little to no consequence in that regard.³
14. Among such professions, the legal profession and by extension the Bar, as a professional organization, for its vital positioning in the administration of justice, occupy a central place. It is natural and justifiable for a profession of such solemnity and significance to demand of its members a high level of professionalism and integrity in all facets of their lives.
15. In order to understand the ambit of ethical obligations and commitments associated with the noble profession, A.R.B. Amerasinghe, J recognizes the following, *inter alia*, as its features:

³ ARB Amerasinghe, *Professional Ethics and Responsibilities of Lawyers* (2018, Stamford Lake) at 43

- "(1) The members of the profession are persons with certain minimum standards of high intelligence, skill and learning of the law acquired after extensive intellectual training.*
- (2) The trained ability of an attorney provides an essential service in society founded on respect for the rule of law in that it contributes to the organized functioning of a society by helping individuals to realize certain personal and social values they cherish, including personal freedoms and rights which they are entitled to as citizens, and by helping the State to tender justice and maintain law and order. Persons who are admitted to the legal profession recognize and respect its function in society.*
- (3) The members of the legal profession hold themselves out as willing to provide that service to all members of the public who may need it.*
- (4) The State accords a virtual monopoly to the members of the legal profession to provide legal services...*
- (6) Each member of the legal profession is independent in the exercise of his professional judgment, which must be sound and faithful, and in the exercise of his duties, he is personally responsible for his actions.*
- (7) Members of the legal profession voluntarily submit themselves to standards beyond those required of the ordinary citizen by law in private and professional conduct..."⁴*
16. This is precisely why this Court insists upon the strict adherence to ethical codes of conduct when it comes to Attorneys-at-Law. Those incapable of self-restraint and cannot govern themselves by what is right and good are simply unfit to perform the function of

⁴ Ibid at 24-25

an Attorney-at-Law. How can one advise as to the conduct of individuals if he is unable to guide himself in accordance with the well-established norms of the profession to which he has committed? How can one help individuals to realize personal and social values when he himself fails in upholding the values he is bound by?

17. Such unfit persons do not just affect the rights of an individual litigant who retains them, but in the long term, their conduct culminates in the corrosion of the profession and its values which in turn disturbs the organized functioning of society itself.
18. As Amerasinghe, J further notes, "*[t]he rule of law makes it necessary that every person in our society should have ready access to the independent professional services of a lawyer of assured integrity and competence and it is necessary to ensure that the public should be protected from those who are not qualified to be lawyers by reason of a deficiency in education or moral standards or of other relevant factors but who nevertheless seek to practice law.*"⁵
19. The number of professionals leaving the Law College and entering the legal profession has caused the maintenance of standards in the profession to become increasingly difficult. Under these circumstances, the stage has been well and truly set for the tenderfeet to be enticed by the promise of quick success via sleight of hand.
20. However, true integrity, typified by the veritable legal professional, means standing by that which is right even when the circumstances are trying. This quality comes not with a single lecture given as an afterthought at the hindermost point of students' professional training but with their proper integration into a culture of ethical and responsible practice of law.

⁵ Ibid at 101

21. The Sri Lanka Law College, as the sole gateway into the legal profession, in my view has the foremost role to play in fostering this culture by way of quality admission as well as comprehensive training of its student body. While I am not oblivious to the recent well-meaning efforts taken by the Council of Legal Education and the Bar Association to ensure quality admission, there is, still, something to be desired in regard to the training provided to the pupils so admitted insofar as professional ethics and practical competence are concerned.
22. The Bar Association, as the collective body representing the interests of the profession, has lately shown an encouraging commitment towards continuous legal education. Despite this, professional ethics is a subject infrequently seen taking the stage. It is tragic if errors of judgement, be it from lack of training or intuition, were to cause some of these professionals, new entrants in particular, to be stripped of the fruits of years of hard work.
23. This Court wishes to propose that the Bar Association of Sri Lanka initiate proper training and a manual or guideline for young legal professionals and apprentices, so that they may effectively circumnavigate these pitfalls.

Orders of the Court

24. Considering the facts surrounding the case, we are of the view that the offence committed by the Respondent is of a very serious nature and must not be tolerated.
25. Having carefully considered all the mitigatory circumstances including his age, family background, and the submissions made by all the Counsel as well as the fact that he has pleaded guilty at the very outset of the inquiry, this Court rules that the Respondent Attorney-at-Law be suspended effective from today, 04th of April 2024, until the 30th of November 2024.

26. The Registrar is directed to take necessary steps accordingly.

Rule Affirmed.

Respondent Suspended until 30th November 2024.

Judge of the Supreme Court

A.H.M.D. NAWAZ, J.

I agree.

Judge of the Supreme Court

ARJUNA OBEYESEKERE, J.

I agree.

Judge of the Supreme Court