

1953 Present : Rose C.J., Nagalingam S.P.J. and K. D. de Silva J.

In re C. E. DE S. SENARATNE

IN THE MATTER OF A RULE ON A PROCTOR

Proctor—Misconduct.

The respondent, a Proctor, who had been entrusted with a sum of Rs. 4,000 by a client on February 12, 1949, for the purpose of discharging a mortgage bond executed by the client, falsely represented to the client on November 22, 1949, that he had got the bond discharged and had sent it for registration. In fact, however, he failed to return the discharged mortgage bond and title deeds until December 6, 1952, after the conclusion of an inquiry by the Disciplinary Committee of the Law Society.

Held, that by his conduct the respondent had fallen short of that standard of conduct that, in the public interest, was required of a professional man.

RULE on a Proctor.

N. E. Weerasooria, Q.C., with *M. M. Kumarakulasingham, G. T. Samerawickreme* and *O. S. M. Seneviratne*, for the respondent.

N. K. Choksy, Q.C., with *E. R. S. R. Coomaraswamy*, for the Incorporated Law Society of Ceylon.

M. Tiruchelvam, Crown Counsel, with *R. S. Wanasundera*, Crown Counsel, for the Attorney-General as *amicus curiae*.

Cur. adv. vult.

October 27, 1953. ROSE C.J.—

In this matter the Chairman and one of the other two members of the Disciplinary Committee have found that Mr. C. E. de S. Senaratne, Proctor, appropriated to his own use a sum of Rs. 4,000 entrusted to him on the night of 12th February, 1949, by a Mrs. Wanasinghe for the purpose of discharging mortgage bond No. 1757 executed by her. They also found that Mr. Senaratne practised a deceit when by his letter dated 22nd November, 1949, (P20), he informed Mr. Wanasinghe, the lady's husband, that he had got the bond discharged on or about the 13th November, 1949, and had sent it for registration.

The third member of the Committee agreed with those two findings but held in addition that Mr. Senaratne "without any justification deliberately withheld the petitioner's title deeds and bond to her loss and detriment".

As no prosecution has been instituted or is contemplated against the respondent for misappropriation of the monies in question, the respondent was required to show cause only in respect of those representations in the letter of 22nd November, 1949, and of his failure and neglect to return the discharged mortgage bond No. 1757, until the conclusion of the inquiry by the Disciplinary Committee on the 6th of December, 1952.

The Committee found, and it is not in dispute, that the two sums of Rs. 1,000 and 3,000 were paid to and accepted by the respondent for the purpose of redeeming the Rs. 4,000 loan on mortgage bond No. 1757. The discharged bond and title deeds not having been received by Mrs. Wanasinghe or her husband by November, 1949, the letter (P15) dated 3rd November, 1949, was written to the respondent by the husband of Mrs. Wanasinghe. This letter requested a prompt discharge of the deeds. By (P16) dated the 4th November, the respondent replied to this letter in the following terms :—

“ Dear Mr. Wanasinghe,

I received your registered letter today. I have not yet got the bond signed by the man and I am writing to him to come and discharge same immediately in order to give the deeds to you. I have got his receipt for the money paid. As soon as the bond is signed by the man I'll send you the title deeds. I do not know you wanted these in a hurry. Why did you not tell me so before ?

Yours sincerely,
_____ ”

No explanation is given as to why the bond was not cancelled on payment of the Rs. 4,000.

Two further letters were written by Mr. Wanasinghe (P17 and P18) on the 11th and 16th November, 1949, asking for the documents to be dispatched without delay. No replies were sent by the respondent to either of these letters. On 21st November, 1949, the letter (P19) was sent by Mr. Wanasinghe in the following terms :—

“ Dear Mr. Senaratne,

I haven't received replies from you to my letters. My wife is worried over this matter and I wanted to go and see Haramanis Appuhamy and bring him to you. But on my way I went to Uncle R. S. and he told me that he would talk to you and make arrangements to send the deeds on or before Thursday. In failing I will have to take the trouble to go and see the man on Friday. I hope you will be so good as to send the deeds before Friday.

(Sgd.) D. T. Wanasinghe. ”

The uncle “R. S.” referred to is apparently Mr. R. S. Perera who is a Proctor who practises in partnership with the respondent. It was in reply to this letter (P19) that the respondent sent the letter of 22nd November, 1949 (P20) that is under inquiry. (P20) is in the following terms :—

“ Dear Mr. Wanasinghe,

I received all your letters yesterday when I came to office. I was absent from office the whole of last week. I got your letter today. I got your bond discharged about nine days ago and sent it for registration. At no time, till you wrote to me, did you tell me that the deeds were required by you urgently. You saw me twice after you paid the money, and on both occasions you saw me about a transfer, and only casually asked me about the deeds. Your attitude now is

very unfair to me. I paid you money to the mortgage a four days . . . gave same to me. If you were in a hurry, I would have attended to the matter immediately.

Yours sincerely,
 _____,

The position taken up by the respondent before the Disciplinary Committee appears to have been that the letter of 22nd November, 1949, was written owing to some incorrect information which was supplied to him by his clerk, and that the true reason for the delay was that the mortgagee was raising difficulties about some interest which was alleged to be due on the bond.

The Committee have rejected both those explanations and we see no reason to differ from their conclusions. Moreover, the correspondence which was produced at the inquiry included some letters from Mr. R. S. Perera, which lends no support to the respondent's contention. In the letter (P26) written on 14th December, 1949, to Mr. Wanasinghe, Mr. R. S. Perera says, "Nothing concrete seems to have happened *re* your matter . . . I believe it is his (respondent's) intention now to do it immediately he is in a position to do it; it is very difficult to say just now . . . Things can't be very different from what I told you when I met you last." In a letter (P27) dated 28th December, 1949, also written to Mr. Wanasinghe, Mr. R. S. Perera says, "I am afraid the (respondent) could have done it last week—now that it has not happened he will have to wait till January to get the money he expected early this month. However I think you need not worry just at present . . ."

At the inquiry the mortgagee, one Haramanis Appuhamy, gave evidence in favour of the respondent, and the respondent in fact produced two receipts (R1 and R2) alleged to have been given by the mortgagee in 1948 and 1949 respectively in respect of two payments for Rs. 1,000 and Rs. 3,000. The Committee seem to have disbelieved the oral evidence of Haramanis Appuhamy and to have regarded the receipts (R1 and R2) as fabricated. They point out, as is indeed the case, that no mention of these receipts was made in any of the letters written by the respondent at the relevant time either to Mr. or Mrs. Wanasinghe, and that such an omission would seem to be inexplicable if in fact these receipts were genuine and were in his possession at the time. So far, indeed, from having endeavoured to give a rational explanation on the lines of what the respondent indicated to the Committee was the true position, it appears from the correspondence that the respondent had adopted an attitude of resentment and even of truculence.

Upon a careful consideration of all these matters I see no reason to disagree with the findings of the Disciplinary Committee and consider that the respondent has failed to explain or to excuse his false representations on the 22nd of November, 1949, and his failure to return the discharged mortgage bond No. 1757 until after the conclusion of the inquiry by the Disciplinary Committee of the Law Society. I also agree with the view of the Disciplinary Committee that by his conduct in this matter the respondent has fallen short of that standard of conduct that, in the public interest, is required of a professional man.

The question of punishment is always difficult in matters of this kind. While paying full regard to the fact that the mortgage bond and title deeds have now been returned to Mrs. Wanasinghe, and that it may therefore be the position that she and her husband have suffered nothing more than inconvenience, annoyance and anxiety, I consider that the interests of the profession and the public demand a suitable recognition of the respondent's misconduct. The respondent will therefore be suspended from the practice of the profession of proctor for three years from this date. The respondent will pay the costs of these proceedings to the Law Society in the sum of Rs. 262.50.

NAGALINGAM S.P.J.—I agree.

K. D. DE SILVA J.—I agree.

Respondent suspended from practice for 3 years.
