

*Present* : Schneider A.C.J., Lyall Grant and Jayewardene JJ.

1928.

In the Matter of the Application of C. C. J. SENEVIRATNE to be admitted and enrolled an Advocate of the Supreme Court.

*Advocate—Application for reinstatement—Power of the Supreme Court—Expiation of offence—Period of atonement—Courts Ordinance, No. 1 of 1889, s. 19.*

The Supreme Court has power to reinstate an Advocate, who has been disbarred, when he expiated his offence and redeemed his character. But the Court must be satisfied, before such readmission, that the period of atonement has been long enough to provide a guarantee sufficient for him to be allowed, with propriety, to return to the practice of an honourable profession.

**T**HIS was an application by the petitioner to be readmitted and enrolled as an Advocate of the Supreme Court. At a sessions of the Supreme Court held at Kandy in April, 1920, the petitioner and another Advocate were jointly tried and convicted of cheating under section 403 of the Penal Code and sentenced to undergo rigorous imprisonment for a period of three years. In July, 1921, they were released from imprisonment by the order of

1928. His Excellency the Governor. On February 22, 1922, the Supreme Court removed from office the petitioner and the other Advocate on the ground of their conviction.

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of  
Seneviratne  
to be admitted  
an Advocate*

*Hayley, K.C. (with Amarasekera), in support.*

*S. Obeyesekere, Acting Solicitor-General (with Fonseka, C.C.), for the Crown.*

December 18, 1928. SCHNEIDER A.C.J.—

This application by the petitioner above named that he be readmitted and enrolled as an Advocate was made in the following circumstances.

After he had practised as a Proctor for a period of nearly seven years he was duly admitted and enrolled as an Advocate in February, 1917. At a sessions of this Court held at Kandy in April, 1920, he and another Advocate were jointly tried and convicted of cheating under section 403 of the Penal Code and sentenced to undergo rigorous imprisonment for a term of three years. In July, 1921, both of them were released from imprisonment by an order of His Excellency the Governor. It is alleged in the petition and the supporting affidavit, upon which this application is made, that they were so released in consequence of a pardon, but the Acting Solicitor-General who appeared at the argument and opposed the application stated that the order was nothing more than a remission of the unexpired term of the sentence. I will accept that statement in the absence of proper proof of a pardon.

In February, 1922, this Court, acting presumably in the exercise of the powers conferred by section 19 of the Courts Ordinance, 1889, to use the language of that section, "removed from office" both the petitioner and the other Advocate on the ground of their conviction.

The present application was made in October, 1926, that is to say, within a period of less than five years from the date of that order.

The offence of which they were convicted related to a sum of Rs. 1,000 which should have been paid to two persons with whom the petitioner and his fellow-Avocate had been brought into contact in their professional capacity. The accuracy of certain allegations in the petition was challenged by the Acting Solicitor-General. Beyond the affidavit of the petitioner there is no proof of those allegations. No report of the trial was produced. I will therefore leave those statements out of consideration with the remark that even if those statements had been accepted it would have made no difference to the order referred to below which we made on this application.

The ground upon which the application for restoration to office was made is that the petitioner had conducted himself honourably in all his undertakings since his release from jail and had endeavoured to "reconstruct his life" and that he had re-established his good character. He has annexed twelve certificates to his petition. All of them appear to have been obtained for the purpose of the present application. Two of them might be referred to together as they were given by persons with first-hand knowledge and are otherwise closely connected. One of them is by Mr. G. T. Pieris, who says that he employed the petitioner within a few months of his release and eventually appointed him manager of his business affairs, including his tea, rubber, and coconut estates. He certifies that the petitioner had conducted himself with honour and efficiency in a position involving many responsibilities during a period of nearly five years, that he devoted all his spare time to Social Service work, and that when he was in Europe on a visit that he spent a part of his time in making himself acquainted with such work there with a view to utilizing the knowledge so gained in similar work in this Island. The other certificate is from Mr. Hopkins, who signs for Carson & Co., Ltd. He states that the petitioner had been acting as Mr. Pieris' agent during a period of four years during which the Company had the management of Mr. Pieris' estates, that he found the petitioner "thoroughly honest," and the petitioner had found investments which had turned out "quite satisfactory" for several lakhs of rupees.

The next certificate I would refer to is from Sir Antom Bertram, recently Chief Justice of this Court, who, presumably from information, states that the petitioner had "fully expiated" the lapse he had been guilty of some years before the date of the certificate and had applied himself with preserverance to the establishment of his character, identifying himself with Social Service work, and that he had heard the efforts made by the petitioner for the amelioration of the lot of discharged prisoners spoken of very highly. The certificate from the Hon. Mr. Wille, the President of the Colombo Discharged Prisoners Aid Society, should be taken with this certificate. Mr. Wille testifies to the keen interest evinced by the petitioner as a member of the Executive Committee of the Society in helping in the drafting of the dscheme of the Society and in its organization and establishment.

Six of the other certificates might be regarded as falling into a group. They are from the Right Rev. Bede Beekmeyer, Bishop of Kandy; the Very Rev. Father Nicholas Perera, Principal of St. Joseph's College in Wellawatta; the Very Rev. Father Le Jeune, Rector of St. Joseph's College in Colombo; Mrs. Jayasekere, the Hony. Secretary of the Borella Social Service Circle; Mrs. Rutman, President of the Women's Christian Temperance Union of Colombo;

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and the Director of Statistics. In these certificates testimony is borne to the activities of the petitioner in Social Service work, and some of the signatories express the opinion that the petitioner had reconstructed his life.

The remaining certificates are from two members of the Civil Service holding judicial appointments as District Judges. They say that the petitioner had tried honourably to retrieve his lost position.

In my opinion all these certificates prove that the petitioner had conducted himself honourably in a position of responsibility since his release and had devoted a portion of his time and some of his energy to Social Service work.

Upon the conclusion of the argument we forthwith made our order refusing the application and intimated that a statement of our reasons would be given in writing after inquiries had been made from the General Council of the Bar (of England). The substantial reason for our refusal to grant the application was that we were all of opinion that the application was premature. We deferred stating the reasons for our order fully till information had been sought for and obtained, because the present application is the first of its kind in our Court; and it appeared to us that it would be helpful to obtain information about similar applications which might have been made to the Inns of Court in England.

The Registrar obtained the following information from the Secretary of the General Council of the Bar (of England):—

“ There appears to be no precedent at Gray’s Inn of a Barrister being reinstated after being disbarred.

“ Two Barristers—one of the Inner Temple and the other of Lincoln’s Inn—were removed from the Roll of Advocates in New Zealand in October, 1894, disbarred by their respective Inns, and reinstated four or five years later

“ There are two cases from the Middle Temple—

“ 1. A Barister practising in South Africa disbarred in 1902 was reinstated in 1921.

“ 2. A Barrister practising in Burma disbarred in 1914 reinstated in 1924.”

The present application raises two questions. First, whether this Court has the power to reinstate an Advocate who has been disbarred when the atonement of a period of years is offered, and secondly, if it has the power, whether it should be exercised in the circumstances of this case.

Although the records of our Court must contain many instances in which Proctors had been suspended or altogether disbarred from practice, not a single case was cited to us as affording a reference to any principle which would be of assistance in the decision of the

present application. But in that connection I would refer to a dictum of Phear C.J. to be found in a case not cited before us.<sup>1</sup> While ordering the name of a Proctor to be struck off from the Roll of Proctors, he said, in 1877 :—

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“ We can no longer hold him out to suitors as a person qualified to advise them, and to undertake their affairs or in whom they may in safety place their confidence.”

The two local cases cited before us are of modern date. The earlier of these is *In re Moonesinghe*.<sup>2</sup> This Proctor was struck off the Rolls in April, 1897, but was restored to office in 1917, that is, after a lapse of twenty years. Wood Renton C.J., who delivered the judgment of the Court, which consisted, besides himself, of Ennis and de Sampayo JJ., cites *In re Poole*,<sup>3</sup> *In re Brandreth*,<sup>4</sup> two decisions which were also cited to us, and other authorities and holds that although no express power of reinstatement is conferred on us by section 19 of the Courts Ordinance, the view has been adopted in England and South Africa that a—

Court which has the right to remove the name of a Solicitor from the Rolls has also an inherent discretionary power to readmit him where he has subsequently expiated the offence of which he may be guilty and redeemed his character.

These observations must be regarded as applicable equally to the case of an Advocate.

The other case is *In re Salgado*.<sup>5</sup> It is not reported. The judgment of the Court, which consisted of Bertram C.J. and three other Judges, was delivered by the Chief Justice in February, 1925. The Proctor had been debarred from practice fourteen years prior to the making of the application for restoration. The judgment expressly refers to *In re Poole (supra)* already mentioned, and says :—

“ In the case brought to our notice the grounds for such a proceeding have been recognized as being in the first place a palpable and definite repentance and a manifestation of an honest career during a considerable period of time, and in the second place, adequate reparation or at any rate an offer of all possible reparation in the man's power.”

I am indebted to my late brother Jayewardene, who was one of the members of the Bench before which this application was argued, for a reference to a very useful case of the Calcutta High Court

<sup>1</sup> *Ram. Rep.* 1877, 380 at p. 384.<sup>3</sup> (1869) *L. R.* 4 *C. P.* 350.<sup>2</sup> (1917) 4 *C. W. R.* 370.<sup>4</sup> (1891) 6 *L. J. Q. B.* 500.<sup>5</sup> *Supreme Court Minutes*, 17, 2, 25.

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given by him to me some time after this application had been heard. It is *In re Abiruddin Ahmed*.<sup>1</sup> Mokerjee J. delivered a learned judgment showing an extensive research into authorities in the English, American, Australian, and Indian Courts from very early times. After discussing the law in the light of the authorities, he sums up—

“ These cases amply establish the position that in so far as the English and American Courts are concerned, though the name of a legal practitioner may have been removed from the Rolls by reason of professional misconduct or criminal conviction, the Court may in its discretion re-admit him, if satisfied that during the interval which has elapsed since the order of removal was made, he has borne an unimpeachable character and may with propriety be allowed to return to the practice of an honourable profession.”

I regarded the application premature as I considered that although his conviction might have had the salutary effect of awakening in the applicant a higher sense of honour and duty, the period during which his conduct is testified to by the certificates as having been irreproachable was not long enough to be deemed to be a guarantee sufficient for him to be safely entrusted once again with the affairs of clients and admitted to an honourable profession without that profession suffering degradation.

LYALL GRANT J.—I agree.

*Application refused.*



<sup>1</sup> (1910) 12 Cal. L. J. 625.