

1950

Present: Jayatileke C.J., Dias S.P.J. and Swan J.

IN RE AIYADURAI

IN THE MATTER OF AN APPLICATION UNDER SECTION 17 OF
THE COURTS ORDINANCE (CAP. 6), AND IN THE MATTER
OF KANDAVANAM AIYADURAI, A PROCTOR OF THE
SUPREME COURT—RESPONDENT

Proctor—Conviction for criminal breach of trust—Application for removal from Roll of Proctors—Factors to be considered—Courts Ordinance (Cap. 6), s. 17.

The respondent, who had been practising as a proctor for 27 years, was convicted of criminal breach of trust in respect of a sum of Rs. 1,000 entrusted to him not in his capacity as a proctor but in his capacity as a public servant, to wit, the Chairman of an Urban Council. There was evidence that he restored the money to the owner and that at the time he misappropriated it he intended to restore it after a time.

In an application to have the name of the respondent removed from the Roll of Proctors—

Held, that, in the circumstances, it would be sufficient to suspend the respondent from practising as a proctor for a period of six months.

THIS was an application by the Incorporated Law Society of Ceylon to have the name of the respondent, a Proctor of the Supreme Court, removed from the Roll of Proctors.

C. V. Ranawake; for the Incorporated Law Society of Ceylon.

N. E. Weerasooria, K.C., with *H. W. Tambiah, V. K. Kandaswamy* and *A. Nagendra*, for the respondent.

R. R. Crossette-Thambiah, K.C., Solicitor-General, with *H. A. Wijemanne*, Crown Counsel, on notice issued by Court.

Cur. adv. vult.

August 2, 1950. JAYATILAKE C.J.—

This is an application by the Incorporated Law Society of Ceylon to have the name of the respondent, a proctor of this Court removed from the roll of Proctors entitled to practise before this Court.

On May 16, 1945, the respondent was convicted, in the District Court of Jaffna, of criminal breach of trust in respect of a cheque for Rs. 1,000 entrusted to him by Dr. S. Subramaniam, in his capacity as a public servant, to wit, the Chairman of the Urban Council of Jaffna, to be utilised for the establishment of a public park and sentenced to imprisonment till the rising of the Court and to pay a fine of Rs. 500.

The evidence led at the trial shows that Dr. Subramaniam had entrusted to the defendant a cheque for Rs. 1,000 on July 3, 1943, to be utilised by the Council for paying the labourers engaged in laying out a park for public recreation, and that the respondent had temporarily misappropriated the cheque. The amount of the cheque was paid by the respondent to the Council in three instalments of Rs. 25, Rs. 475, and Rs. 500 on July 30, August 11, and August 18, 1943, respectively. The respondent seems to have intended to restore the money after a time when he misappropriated the cheque. It is, of course, no answer for a trustee who misappropriates trust money to say that he intended to restore it. But it is a circumstance which enables us to treat him with some degree of leniency.

The only question before us is whether we should strike the respondent off the rolls or suspend him for a period. On this question we are not left without guidance from the reported cases. In *In re a Solicitor ex parte The Incorporated Law Society*¹ the respondent was convicted of criminal breach of trust in respect of an attiyal. At the trial he gave the complainant an attiyal, which the latter accepted, though it was not the attiyal she had entrusted to him. This Court took the view that the most important consideration to which weight should be given was the fact that the attiyal was not entrusted to the respondent in his capacity as a proctor. Having regard to the fact that the respondent was nearly 50 years of age and had been in practice for 17 years, the learned Judges thought that it would be sufficient if they marked their sense of his misconduct by ordering that he be suspended from practising as a proctor for a period of twelve months.

The affidavit that has been filed in this case shows that the respondent is 62 years of age and has been in practice for 27 years. He has also been engaged in social and educational work for a considerable period. We have considered the facts of the case very carefully and we have come to the conclusion that it will be sufficient if we order that the respondent be suspended from practising as a proctor for a period of six months.

DIAS S.P.J.—I agree.

SWAN J.—I agree.

Respondent suspended
from practising as a
proctor for six months.

¹ 43 N. L. R. 367.