



SRI LANKA PUBLICATIONS TWIST JUDICIAL REPRIMAND TO DEFAME VISUVANATHAN RUDRAKUMARAN

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NEW YORK - A disciplinary sanction which a court imposed against a respected New York attorney early last year has recently become a pretext for online character assassination against the attorney by websites that appear to be opposed to the attorney's politics.

The attorney, Visuvanathan Rudrakumaran, was admitted to the New York bar in 1993. Since that time, he has represented an estimated 2000 to 3000 clients, mainly in immigration removal defense. His practice has resulted in numerous published judicial decisions.

He is a past co-chair of the Committee on International Law and Comparative Law of the New York County Bar Association, and has presented papers and participated in panel discussions at the Yale Law School, before the American Bar Association Committee on International Human Rights, and at forums in New York, Washington, DC, London, Ottawa, Canberra, Norway, and elsewhere.

A native of Sri Lanka, Mr. Rudrakumaran was legal advisor to the LTTE1 delegation to the 2002 - 2006 peace talks that sought to negotiate an end to the Sri Lankan Civil War, and since November, 2010, he has served as the elected Prime Minister of the Transnational Government of Tamil Eelam, a government-in-exile of the transnational Tamil diaspora.

In that position, Mr. Rudrakumaran has been, and continues to be, a critic of the Government of Sri Lanka.

He also filed a lawsuit in the United States against a visiting Sri Lankan President on behalf of the surviving wife of an LTTE commander who was killed by Sri Lankan security forces.

Mr. Rudrakumaran's activities on behalf of the Tamil people have made him a political target for many people in Sri Lanka, including the Government of Sri Lanka. During the past month, two Sri Lanka - based web "news" sites have used a year-old judicial disciplinary decision to spread lies about Mr.

Rudrakumaran.

The fact that a Sri Lankan military website published an account of the decision at approximately the same time adds to the evidence that the two publications were politically motivated, and raises a question as to whether all three publications may have been coordinated by the Sri Lankan Government.

On February 15, 2013, a panel of the United States Court of Appeals for the Second Circuit, a federal appellate court that sits in New York City, issued an order reprimanding Mr. Rudrakumaran publicly for, inter alia, missing filing deadlines and ignoring judicial scheduling orders during the time period 2006 - 2010.

The court's order adopted a disciplinary committee report that attributed Mr. Rudrakumaran's defaults to his "negligent practice management and apparently overwhelming obligations between his practice and his public service commitments." The report also noted Mr. Rudrakumaran's "general zealotry and apparent competence in the representation of his clients" and stated, on the record, that:

The evidence shows that [Mr. Rudrakumaran] has often been an effective advocate and has obtained successful results for his clients, sometimes on a pro bono basis. The Committee found his testimony regarding his unwavering and heartfelt commitment to his clients credible, and his testimony evidenced a grasp of immigration law and a creativity and persistence that undoubtedly serves his clients well.

The committee's report noted that the Court has the power to impose "a range of sanctions, including disbarment, suspension, public or private reprimand, monetary sanction, removal from pro bono or Criminal Justice Act panels, referral to other disciplinary bodies, supervision by a special master, counseling or treatment, or "such other disciplinary or corrective measures as the circumstances may warrant.""

The committee recommended that the Court impose a "more lenient" sanction upon Mr. Rudrakumaran, and that phrase accurately characterizes the sanction that the court imposed upon him last year.

The court's disciplinary order required Mr. Rudrakumaran to devote eight hours of his biennial mandatory continuing legal education (CLE) requirement to classes on law practice management, to file reports concerning his compliance with judicial scheduling orders, and to make good on his voluntary offer to refund one client's legal fee, either by finding the client (who has voluntarily left the United States) and paying him, or by depositing the fee with the Lawyers' Fund for Client Protection maintained by the State of New York.

Since the order was issued last year, Mr. Rudrakumaran has filed reports on his compliance with judicial deadlines and other matters, has taken the required CLE courses on law practice management, and has deposited the required client refund with the New York State Client protection fund, in full compliance with the order.

A New York State court subsequently issued a parallel order, according to its uniform practice in such situations, which established no additional facts and imposed no additional duties upon Mr. Rudrakumaran.

Mr. Rudrakumaran's political foes, however, appear to have recently discovered the order, and have published two web articles (at least, two that are known to us; more may have been published that are

not known to us) that misrepresent Mr. Rudrakumaran's attorney discipline and use it to publish lies about him.

1 The acronym "LTTE" stands for the Liberation Tigers of Tamil Eelam. The LTTE was the Tamil rebel movement that was militarily defeated by Sri Lankan Government forces in the Sri Lankan civil war that ended in May 2009. The LTTE was designated as a Foreign Terrorist Organization by the US Department of State in 1997. However, as representatives of the Tamil rebel cause, the LTTE participated in peace talks that were internationally sponsored. The committee accepted Mr. Rudrakumaran's testimony that his activities as legal advisor to the LTTE during these negotiations were not considered by the US Government to constitute support for terrorist activity.

The Lankaenews.com Article is "Delusional"

In an article entitled "Delusional Prime Minister of the Transnational Government of Tamil Eelam V. RUDRAKUMARAN PUBLICLY REPRIMANDED for misconduct of New York Court of Appeals/ US court defiantly punishes and stigmatizes transnational Eelam govt. Premier Rudrakumaran" (hereinafter, "Delusional"), a website, lankaenews.com, appears to have been the first Sri Lanka news source to publish a report concerning the Second Circuit's order on or about January 8, 2014.

The Delusional article refers to Rudrakumaran's disciplined conduct as "fraud" and "a second-grade crime." Both of these descriptions are completely false. The court order and committee report do not charge the attorney with criminal or fraudulent conduct of any type.

To the contrary, the committee found that Mr. Rudrakumaran faced "overwhelming" demands on his time and attention, due to the competition between Mr. Rudrakumaran's legal practice and his public commitments during the 2006 - 2010 time period, when he traveled internationally on at least thirty occasions.

As a result, he was negligent in some cases in meeting scheduling orders that were imposed by the court, he failed to withdraw some cases after he determined that they should not be further pursued, and he delayed longer in attempting to contact one missing client about the dismissal of his case than he should have done.

Mr. Rudrakumaran's conduct violated court rules and scheduling orders; they did not violate criminal law or work frauds on his clients. The Delusional article's accusations of criminal and fraudulent conduct cast a vile and false slur on the reputation of Mr. Rudrakumaran.

The Delusional article accuses Mr. Rudrakumaran of "not filing action[s] on time after fleecing... Tamils of their monies," and of acting with "the goal of plundering monies from the Tamil diaspora." These accusations are also entirely false.

Nothing in the court order or in the committee report accuses the attorney of failing to file actions with the court. Indeed, the problem cited by the committee was the opposite: on occasion, Mr. Rudrakumaran failed to withdraw petitions for review that he filed with the Court of Appeals after it became apparent that the clients no longer intended to pursue the matters.

Rudrakumaran never failed to file a brief required in his clients' cases, although in some instances briefs were filed late. Nor did anyone accuse the attorney of "fleecing" or "plundering" his clients.

The committee and court did not find that Rudrakumaran ever unduly enriched himself at the expense of his clients. In one sole situation, the court ordered Mr. Rudrakumaran to refund his client's fee,

which the attorney had volunteered to do in his meetings with the committee, but was unable to do, his client having left the country, without a court order directing him to pay the moneys into the client protection fund. One client refund provides no evidence that an attorney is “fleecing” clients.

Indeed, the committee commended Mr. Rudrakumaran for “his unwavering and heartfelt commitment to his clients,” and cited his commitment to performing pro bono work for some of them. The latin phrase pro bono publico refers to legal work that is performed without payment of fees.

The Delusional article observed that the court required Mr. Rudrakumaran to devote eight hours of continuing legal education to the study of law practice management, and then claimed that “[i]n other words he had been ordered to learn the law again” This claim is also false.

Every experienced lawyer who is licensed to practice in New York is required to complete at least 24 hours of continuing legal education courses during each two-year period. The CLE regulations require only that at least 4 of these credit hours must be in the Ethics and Professionalism category. The remaining credit hours may be in any category including, inter alia, law practice management. Thus, the court order did not impose any additional CLE hours upon Mr. Rudrakumaran; and they certainly did not “order him to learn the law again.” To the contrary, they simply directed him to complete 8 of his 24 CLE hours in law practice management, in person, within one year.

The Delusional article falsely states that “an adverse report has been prepared against [Rudrakumaran] considering him as an LTTE terrorist.” No such report was discussed anywhere in the committee report or court order and, to the contrary, the court and committee accepted Rudrakumaran’s statement that he had conducted his activities completely in compliance with U.S. law.

The Island Article Distorts the Facts

On or about January 10, 2014, a second web news source, The Island Online, found online at www.island.lk, published an article entitled “Spotlight on Rudrakumaran and Channel 4: US Law and UK public expose pro-LTTE voices.” This article also contained multiple false statements relating to Rudrakumaran’s disciplinary order.

The Island article claimed that the disciplinary order purportedly “exposed” Rudrakumaran’s “gross illegal activity and dangerous misleading of the public.” This claim is totally unsupported by the actual decision issued by the court in Mr. Rudrakumaran’s case. Nowhere in its opinion did the court find that Mr. Rudrakumaran committed anything that could be described as “gross illegal activity” or “misleading of the public.”

The attorney was not charged with any crime, any fraud, or any deceptive activity. The committee and court never challenged the attorney’s integrity or credibility. To the contrary, the committee expressly found Mr. Rudrakumaran to be credible.

The worst that could be said about Mr. Rudrakumaran’s conduct is that, during a period when he faced “overwhelming” demands, Mr. Rudrakumaran missed deadlines and failed to obey judicial scheduling orders and that the court found, in two cases, “a lack of reasonable diligence causing injury or potential injury to the client,” and in one case, that Mr. Rudrakumaran “acted recklessly because he knew the relevant facts and unreasonably failed to appreciate the high degree of risk involved.”

The Island article also plays with words to put a false face on the facts. According to his testimony to

the committee, when Mr. Rudrakumaran advised the LTTE negotiating team during the Sri Lankan civil war, he acted as a legal advisor for the negotiators who were acting as representatives of the Tamil cause in trying to negotiate an end to the war. This did not make Mr. Rudrakumaran an "advocate [] of separatist terror" as the article alleges.

The article plays similar games with words when it refers to the committee that advised the court in Mr. Rudrakumaran's disciplinary matters as the "United States' Courts Committee on Admissions and Grievances for Serious Misconduct." In fact, the committee is simply called the "Committee on Admissions and Grievances."

Another example of the Island's deceptive phrasing is found in the article's suggestion that readers should "see in [Mr. Rudrakumaran's] violation of the ethics of the judiciary his continued commitment to the cause of terrorism that the LTTE will remain to be known for."

Nothing in the court's opinion or the committee report supports any inference that Mr. Rudrakumaran is, or has ever been, committed to "the cause of terrorism," or that the "ethical" violation involved was caused by anything other than a very human inability to cope perfectly with "overwhelming" demands during a period of extraordinary activity.

Discipline, "Disgrace" and Defamation

Both articles appear to use the court's disciplinary order for partisan purposes, in order to undermine both Mr. Rudrakumaran's leadership and the Tamil cause which he serves.

Thus, the Island article stresses that "[s]uch humiliation is hard to match." The Lankaenews article goes even farther along this line. It argued that "[w]hen a lawyer in the legal profession is 'publicly reprimanded,' it is to underline their disgraceful acts for which they are publicly brought to disgrace and stigmatized," and claimed that "[t]he court ... emphasized it shall be public and a mark of disgrace" Yet the court did not say that Mr. Rudrakumaran should be "disgraced."

To the contrary, the court expressly adopted the committee's report, which noted Mr. Rudrakumaran's zealotry for his clients' causes, his competence, his effectiveness, his commitment to pro bono service to indigent clients, his creativity, persistence, knowledge of immigration law, and his "unwavering and heartfelt commitment to his clients," a rare combination of qualities "that undoubtedly serves his clients well."

Mr. Rudrakumaran continues to practice, in good standing, before the United States Supreme Court, the immigration tribunals of the U.S. Government, and in the federal courts of appeal for eleven of the thirteen federal circuits, and remains in good standing with the courts of New York State.

He continues to participate actively in the activities of numerous bar associations, and is a member in good standing of the New York City Bar Association, New York County Lawyers' Association, American Immigration Lawyers Association, American Society of International Law, and International Law Association (American Branch).

Under the laws of New York State and the United States, written statements (including statements that are published on a website) are considered to be libel when they contain a false and defamatory assertion of fact concerning a plaintiff, which is published to a third party, causing harm to the plaintiff. Defamatory written statements concerning a person's business or professional reputation constitute libel even without proof of damages. The articles published by Lankaenews and The Island clearly cross the line. Both articles appear to be motivated by malice toward Mr. Rudrakumaran personally

and toward the Tamil cause, generally. In my opinion, they are libelous.

AUTHOR:

The author is an attorney practicing in New York City. The author represented Visuvanathan Rudrakumaran in attorney disciplinary proceedings before the U.S. Court of Appeals for the Second Circuit. The statements made herein represent the opinions of the author. Readers may verify the statements by referring to the documents and articles referenced herein, and decide for themselves.

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