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

IN THE MATTER OF AN APPLICATION UNDER AND IN TERMS OF SECTION 10 OF THE OFFENSIVE WEAPONS ACT NO 18 OF 1966.

C.A.(B.A.) No.43/2011

Mohamed Usub Mohamed Albi

No.408 A, Thaika Road,

Kalmunaikuddy 8.

Petitioner

Vs

(1) The Hon. Attorney General

(2) The Officer in Charge,

Police Station, Kalmunai

Respondents

Before: W.L.Ranjith Silva, J. & D.S.C.Lekamwasam, J.

Counsel: Dr.Ranjith Fernando A-A-L for the petitioner

Lasantha Kodagoda DSG for the Respondent

Argued : 21-03-2011

W/Sub : 28-03-2011

Decided: 01-04-2011

ORDER

W.L.Ranjith Silva, J.

When this matter came up before this court on 29th March 2011 the Learned Deputy Solicitor General raised the following issue;

Should the Court of Appeal continue to exercise jurisdiction regarding applications filed in the Court of Appeal prior to the 28 January 2011 seeking bail for persons charged with or accused of having committed offences in terms of the Offensive Weapons Act No.18 of 1966 as amended by act No.2 of 2011.

Counsel for the petitioner contended that notwithstanding the coming into operation of the Offensive Weapons Amendment Act number 2 of 2011, the Court of Appeal should continue to exercise jurisdiction in respect of pending matters on such applications, filed before the appointed date and where the court has issued notices in that behalf, by virtue of section 6 (3) (c) of the interpretation ordinance.

The position taken by the Deputy Solicitor General on behalf of the Attorney General was that the Court of Appeal does not have jurisdiction to entertain, proceed or determine applications under and in terms of section 10 of the Offensive Weapons Act as amended by the act number 2 of 2011 with effect from 28 January 2011 and that the provisions of section 6 (3) (c) of the Interpretation Ordinance does not have any application to the matter in hand.

The learned Deputy Solicitor General contended that this court possessed the exclusive jurisdiction of the first instance to entertain and consider applications seeking bail in respect of persons charged with or accused of having committed offences in terms of the Offensive Weapons Act till January 2011, that in early January 2011 the Offensive Weapons Act was amended by Parliament by enacting the Offensive Weapons Amendment Act. Number 2 of 2011 and that the new law was certified by the Hon

speaker on 28th of January 2011 and that it became operative on the day on which the new law was certified by the Speaker, i.e. 28 January 2011.

Section 10 of the Offensive Weapons Act as it was, reads thus;

Not withstanding any thing to the contrary in the Code of Criminal Procedure Act or any other written Law, no person charged with or accused of an offence under this Act shall be released on bail except on orders of the Supreme Court.

In Attorney general Vs Nilanthi reported in 2 SLR 1997 it was held that the reference to the Supreme Court in Act number 18 of 1966 should be deemed and read as a reference to the Court of Appeal. The revised legislative enactments of 1980 omitted to refer to the Supreme Court and instead has referred to the Court of Appeal as the court which has the jurisdiction to deal with applications made under and in terms of section 10 of the of the Offensive Weapons Act.

Section 2 of Act No.2 of 2011 reads as follows;

"Section 10 of the Offensive Weapons Act No.18 of 1966 is hereby repealed and the following section substituted therefore;

Se.10. No *person charged with, or accused of, an offence under this act, shall be released on bail except on the order of the High Court of the province established under Article 154p of the Constitution, for such province."*

The Deputy Solicitor General contended that the law can be amended in numerous ways;

(a) by allowing the law which was brought into force for a specified period of time to lapse (expiration)

(b) by suspending the operation of law

(c) by repealing a law (only)

(d) by repealing a law and substituting the repealed provision by a new provision.

(e) by introducing a new provision in addition to the existing provisions.

He contended that section 10 of the Offensive Weapons Act has been amended using this fourth mechanism that is by repealing section 10 of Act number 18 of 1966 and by substituting therefore a new section.

Section 6 (3) of the interpretation ordinance reads as follows;

Whenever any written law repeals either in whole or part a former written law, such repealing shall not, in the absence of any express provision to that effect, affect or would be deemed to have affected-

(a) the past operation of any thing duly done or suffered under the repealed written law;

(b) any offence committed, any right, liberty, or penalty acquired or incurred under the repealed written law;

(c) any action, proceeding, or thing pending or incomplete when the repealing written law comes into operation, but every such action, proceeding, or thing may be carrying on and completed as if there had been no such repeal."

The Learned Deputy Solicitor General admitted that the meaning or the primary purpose of Se.6 (3) of the Interpretation Ordinance was to prevent ex post facto enforcement of new legislation and to protect against having to terminate ongoing proceedings prematurely and haphazardly. He has cited **A.G. Vs Francis 47 NLR 467 and DPP Vs Lamb 2 AER 499** which have no bearing or relevance to the facts and circumstances of the instant case.

The counsel went on to argue strenuously that section 6 (3) (c) of the Interpretation Ordinance will apply only to instances where a specific provision has not been made. In support of this argument he cited the judgment of Ratwatte, J. in Thambiah Seewaratnam Vs Assistant Commissioner of Cooperative Development, Jaffna 79 2 NLR 104 at page 108 wherein it was held that section 6 (3) (c) of the Interpretation Ordinance will not apply as that section would apply only in cases where there is no specific provision made in the repealing Act.

In other words if the amending Act does not contain any express provision as to how such repeal should affect the pending or continuing matters every such action proceeding or thing may be carried on and completed as if there had been no such repeal. In other words if there is specific provision which prohibits the continuation of pending applications in a particular forum this particular section of the Interpretation Ordinance would not apply but in the

absence of any such express provision Se.6(3) (c) would apply. Thus any action proceeding or thing pending or incomplete when the repealing written law comes into operation, such action proceeding or thing may be carried on and completed **as if there had been no such repeal.**

In this regard I would like to refer to certain parts of the Judgment in Seewaratnam Vs Assistant Commissioner of Corporative Development, Jaffna, which shows that, in that case the facts and circumstances are different from the facts and circumstances of this case. In that case an award made on 16 December the, 1971 under the Co-operative Societies Ordinance as amended was sought to be enforced under the provisions of section 59 of the co-operative Societies law No. 05 of 1972. It was submitted that the Magistrate's Court had no jurisdiction to entertain the application to enforce this award and that the provisions of section 70 (3) of law number 05 of 1972 did not apply to awards made under the earlier Law. Reliance was also placed on section 6 (3) (c) of the interpretation ordinance.

Held: that an award made under the Co-operative Societies Ordinance as amended can be enforced under section 59 of the co-operative Societies law, number 05 of 1972. Section 70 (3) of the new law applies to such awards. Section 6 (3) of the Interpretation Ordinance has no application in

such an instance and the Magistrate had jurisdiction to entertain such applications.

The reasoning behind his Judgment appears at page 108 of the said Judgment. Their Lordships referring to section 70 (3) opined that the Magistrate's Court had jurisdiction to entertain the application under the new law as the new law contained specific provision[(Se.70 (3)] and that section 6 (3) (c) would apply only in cases where there is no specific provision made in the repealing Act.

Se.70 (3) of the Co-operative Societies Law—

" All appointments and orders made, notifications and notices issued, and suits and other proceedings instituted, or deemed to have been made, issued or instituted and all disputes that have arisen under any enactment repealed by this law, shall, so far as may be, be deemed to have been respectively made, issued and instituted and to have arisen under this law",

In the matter before us, I find that there are no such provisions made, let alone specific provisions, to deal with a situation of the sort. Amending Act number 2 of 2011 does not contain any transitional provisions. It is completely silent with regard to the pending matters. Whatever the

intention may have been of the legislature, canons and the rules of interpretation cannot be brushed aside lightly or disregarded. The courts can ascertain the intention of the legislature only if the words of a particular section or provision are ambiguous. In the amending Act, we find that there is no such ambiguity. Therefore, it is not necessary for this court to go on a voyage of discovery to ascertain the intention of the Legislature in enacting Act No. 02 of 2011.

On the other hand there is a presumption that the legislature would always act rationally and wisely. If this court were to assume that all the pending applications for bail should stand removed from 28 January 2011 onwards to the respective High Courts from the day of the speaker's certification then what would be the result or the outcome or the effect of the hundreds of orders this Court made in the interim till the amendment was brought to the notice of this court by the State on 21-03-2011. Are those orders to be declared null and void?. Should they be branded as nullities? To this my answer is "No". We are not possessed of the powers or the jurisdiction to transfer those pending applications to the relevant High Courts. If the litigants were to file fresh applications or even if the pending applications were to be transferred to the relevant High courts the Litigants would have to retain the services of different lawyers from those areas at a considerable cost much against their will and at tremendous inconvenience.

For the reasons adumbrated, I hold that this court has the jurisdiction to hear and dispose those applications for bail, filed before 28th of January 2011 in this court under section 10 of the Offensive Weapons Act despite the amendment Act No 2 of 2011.

JUDGE OF THE COURT OF APPEAL

D.S.C.Lekamwasam, J.

I agree,

JUDGE OF THE COURT OF APPEAL