

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

**Court of appeal case no.
CA/PHC/132/2013**

**H.C. Negombo case no.
299/2011**

**M.C. Minuwangoda case
no. 71533/P.C.A.**

Aluthapola Rathnaloka Thero,
Sri Dharmaratnodaya Piriven Temple,
Aswana, Minuwangoda.

Petitioner - Appellant

Vs.

1. Officer in Charge,
Police Station Minuwangoda.
2. Hon. Attorney General,
Attorney General's Department,
Colombo 12.
3. M.K.Lakshman Premathilake,
No. 106, Mathammana, Minuwangoda.
4. A.G.Piyasiri Amarasinghe,
No. 03. Hendi Maahara, Minuwangoda.
5. R.K.T.M.P.S.Rathnayake,
No. 169, "Nisansala" Pamunuwa,
Minuwangoda.

Respondent - Respondents.

Before : H.C.J.Madawala J.
: L.T.B. Dehideniya J.

Counsel : Hemaka Senanayake with Manohara de Silva for the
Petitioner - Appellant.

: Rasmi Wimalarathene for the 3rd, 4th and 5th Respondent – Respondents

: Nayana Senawitathne SSC 1st and 2nd Respondent – Respondents as amicus curiae.

Argued on : 12.07.2016

Written submissions filed on : 19.09.2016

Decided on : 08.11.2016

L.T.B. Dehideniya J.

This is an appeal from an order of the High Court of Negombo. The facts of the case are briefly as follows. The police filed a report in the Magistrate Court Minuwangoda On 20.02.2011 under section 81 of the Criminal Procedure Code seeking for an order to show cause why they should not be ordered to execute a bond to keep the peace. The learned Magistrate on 21.01.2011 made an order preventing the 2nd Party Petitioner Appellant Ven. Aluthapola Rathanaloka Thero who was the viharadhipathy of the temple called Aswana Sri Dharmarathanodaya Piriven Viharaya of Minuwangoda, (hereinafter called and referred to as the Appellant), from entering in to the temple. On 24.02.2011 the learned Magistrate extended the order by prohibiting the Appellant from coming to the area. Thereafter the learned Magistrate again confirmed the said order on 27.07.2011.

The order dated 27.07.2011 explained the reasons for ordering the Appellant to refrain from coming to the temple. She says that her prime motive was to prevent the breach of the peace of the area and to see that the lives of the people, the police officers and the Appellant are been

protected. The court went on to comment on an incident took place Katunayaka and stated that there was a possibility of occurring a similar situation in her jurisdiction. Court further said that there were about 300 people gathered in the Court premises and has come to the conclusion that they are Dayakayas of the temple and they were there to protest against the Appellant.

Being aggrieved by the order of the learned Magistrate, the Appellant moved in revision in the High Court of Negombo. The learned High Court Judge dismissed the said application and this appeal is from the said dismissal.

Section 81 of the Criminal Procedure Code is as follows.

81. Whenever a Magistrate receives information that any person is likely to commit a breach of the peace or to do any wrongful act that may probably occasion a breach of the peace within the local limits of the jurisdiction of the court of such Magistrate, or that there is within such limits a person who is likely to commit a breach of the peace or do any wrongful act as aforesaid in any place beyond such limits the Magistrate may in manner hereinafter provided require such person to show cause why he should not be ordered to execute a bond with or without sureties for keeping the peace for such period not exceeding two years as the court thinks fit to fix.

The only order that the Magistrate can made under this section is to order that person to show cause as to why he should not be ordered to execute a bond to keep the peace. Under section 87 the Court can order to execute a bond. The section reads;

87. If upon such inquiry it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond with or without sureties, the Magistrate shall make an order accordingly;

The Criminal Procedure Code does not provide for the Magistrate to dispossess a person from his property in the guise of preventing the breach of the peace under section 81. It is common ground that at the time of filing the information the Appellant was the viharadhipathy of the temple. The learned Magistrate has stated that in her order dated 27.07.2011 that she has exercised the inherent power of the Court. The inherent power of the Court does not extend to dispossess a viharadhipathy and give the key to the "Dayaka Sabhawa" in an application under section 81. If there is an issue between the viharadhipathy and the devotees, they should have resolved it among themselves, the Court should not get involved in to those issues. If the devotees want to remove the viharadhipathy, they must do it in the proper way; they cannot attack the priest or the devotees who support him or police officers. The action must be taken against those who committed the breach of the peace and the Court should not have involved in removing the priest.

The learned Magistrate has concluded the proceeding on 29.12.2011 ordering to handover the key to another priest called Ven. Makuddala Chandraloka Thero. Further directed that the Appellant can enter the temple only on the written permission of the Mahanayaka Thero (High Priest) of the Malwatta Chapter.

The application of the police is to order the parties to show cause as to why they should not be ordered to execute a bond to keep the peace. The case has been concluded without ordering the parties to enter in to a bond.

But the Court terminated the proceedings with a resulting position is that the Court had removed the viharadhipathy in a summary manner. Order of this nature cannot allow to stand.

Accordingly I set aside the order of the learned High Court Judge dated 26.08.2013 and the orders of the learned Magistrate dated 21.01.2011, 24.02.2011 and 27.07 2011.

Appeal allowed.

Judge of the Court of Appeal

H.C.J.Madawala, J.

I agree.

Judge of the Court of Appeal