

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

*In the matter of an Application in terms
of Article 105 (3) of the Constitution of
the Democratic Socialist Republic of Sri
Lanka.*

C A (CC) Application

No. 11 / 2016

Mary Jean Varma,
Mezzanine Floor - M2,
Green Path Residencies,
Col. T G Jayawardene Mawatha,
Colombo 03.

PETITIONER

-Vs-

1. Dr Chrisantha Nicholas Anthony
Nonis,
No. 69/6 Kynsey Road,
Colombo 08.

2. Francis Lalith Fonseka,
191/2B,

Thimbirigasyaya Road,
Colombo 05.

3. Lakshman Leelaraj Samarasinghe
No 30/3,
Dehiwala Road,
Pepiliyana.

4. Shelendra Marianne Andrea Nonis
Ranaweera,
69/4A,
Kynsey Road,
Colombo 08.

RESPONDENTS

Before: Vijith K. Malalgoda PC J (P/CA)

P. Padman Surasena J

Counsel : Romesh de Silva PC for the Petitioner.

Faiz Musthapa PC and Avendra Rodrigo appeared to look after the interests of the Respondents.

Decided on: 2017-01-24

ORDER

P Padman Surasena J

The Petitioner in his application prays inter alia,

- (a) that summons be issued on the 1st, 2nd, 3rd and 4th Respondents in order to direct them to show cause as to why each one of them should not be punished for contempt of the High Court of the Western Province Holden in Colombo (exercising civil jurisdiction)
- (b) that they be convicted and punished according to law, for the said act of contempt¹

It is the position of the Petitioner that the 1st, 2nd, 3rd and 4th

Respondents have, by their actions mentioned in the petition, willfully,

¹ prayers are described more fully at page 12 of the petition.

deliberately and intentionally violated the interim order of the High Court and that amounts to committing the offence of contempt of the High Court.

The interim order referred to above was issued in terms of the prayers (f) and (g) of the case bearing No. H C (Civil 14/2016 (CO)). The said prayers was to the following effect.

f) an interim order restraining the 1st, 2nd, 3rd and 4th Respondents and/ or any one or more of them from appointing any Directors and/ or seeking to fill any vacancy on the board of the Mackwoods Securities (Private) Limited until the conclusion of the Extraordinary General Meeting requisitioned by requisition dated 2016-05-12 annexed to the petition marked "**P 11**";

g) an interim order restraining the 1st, 2nd, 3rd and 4th Respondents and/or any one or more of them from acting in contravention of the Articles of Association of Mackwoods Securities (Private) Limited.

When this case was taken up on 2016-10-08 before us for the learned President's counsel appearing for the Petitioner to support for notices,

learned counsel who appeared for the Respondents raised their objections with regard to the maintainability of this case before this court.

Upon their request, learned counsel for all the parties were thereafter allowed to file written submissions before this court in respect of that issue.

However none of them has filed written submissions or any other document pursuant to that agreement.

According to the caption of the Petition, the Petitioner has filed this application to invoke the jurisdiction vested in this court by virtue of Article 105 (3) of the Constitution of the Democratic Socialist Republic of Sri Lanka read together with chapter LXV of the Civil Procedure Code for the punishment of the 1st, 2nd, 3rd and 4th Respondents for contempt of court.

It would be convenient to reproduce here Article 105 (3) of the constitution which is as follows.

"The Supreme Court of the Republic of Sri Lanka and the Court of Appeal of the Republic of Sri Lanka shall each be a superior court of record and shall have all the powers of such court including the power to punish for contempt of itself, whether committed in the court itself or elsewhere,

with imprisonment or fine or both as the court may deem fit. The power of the Court of Appeal shall include the power to punish for contempt of any other court, tribunal or institution referred to in paragraph 1 (c) of this Article, whether committed in the presence of such court or elsewhere:

Provided that the preceding provisions of this Article shall not prejudice or affect the rights now or hereafter vested by any law in such other court, tribunal or institution to punish for contempt of itself."

Since paragraph 1 (c) has been referred to above, it is necessary to have a look at that, at this moment.

Article 105 (1) is as follows;

"Subject to the provisions of the Constitution, the institutions for the administration of justice which protect, vindicate and enforce the rights of people shall be-

- (a) the Supreme Court of the Republic of Sri Lanka,
- (b) the Court of Appeal of the Republic of Sri Lanka,
- (c) the High Court of the Republic of Sri Lanka and such other Courts of First Instance, tribunals or such institutions as parliament may from time to time ordain and establish."

It is to be noted that section 18 of the Judicature Act has specifically provided the High Court with the jurisdiction to deal with instances where contempt of court and has also specified the sentence that it could impose on such accused.

Section 18 of the Judicature Act is as follows;

" The High Court shall have power and authority to take cognizance of and try in a summary manner any offence of contempt committed against or in disrespect of its authority, and on conviction to commit the offender to jail for a period not exceeding five years. Such imprisonment shall be simple or rigorous as the court shall direct and the offender may, in addition thereto, or in lieu thereof, in the discretion of the court be sentenced to pay a fine not exceeding five thousand rupees."

The proviso found in Article 105 (3) clearly lays down that the power of the Court of Appeal to punish for contempt of any other court, tribunal or institution referred to in paragraph 1 (c), shall not prejudice or affect the rights now or hereafter vested by any law in such other court, tribunal or institution to punish for contempt of itself. Thus it is clear that section 18 of the Judicature Act must operate independently. Therefore the High Court shall have power and authority to take cognizance of and try in a

summary manner any offence of contempt committed against or in disrespect of its authority.

The interim orders issued by the High Court above referred to, had been granted as recently as 2016-05-13, by the High Court of Western Province holden in Colombo (exercising civil jurisdiction). It is to be noted that the main case is still pending before that High Court and the orders that are alleged to have been violated by the Respondents are interim orders that the learned High Court Judge had made at the very first instance of the case.

The case record containing all the relevant material as well as all the relevant parties are already before the said High Court. If the Respondents have violated the interim orders granted by the High Court thus committing an offence of contempt, the question arises as to why the said High Court cannot deal with this case particularly when it has been specifically vested with such power by the legislature. Similarly the question as to why in those circumstances this court should entertain this case when it is clearly a matter which should come under the purview of the High Court.

One has to bear in mind in this regard that in our system of law, the Court of Appeal is considered as one of the two superior courts of record². It also has to be borne in mind that the main function of the Court of Appeal is to deal with appeals as its very name "Court of Appeal" denotes.

The other aspect which has to be highlighted at this moment is that this is a case involving exercise of original jurisdiction (as opposed to the appellate jurisdiction).

Although Article 105 (3) of the Constitution has enabled the Court of Appeal to punish for contempt of any court, tribunal or other institution referred to in paragraph 1 (c) of that Article, it should not be taken as if, it is the Court of Appeal that should deal with all the situations of committing contempt of court in any of those institutions referred to in paragraph 1 (c) of that Article throughout the whole country.

Number of judges designated to those institutions referred to in paragraph 1 (c) of that Article is indeed very much more than the mere twelve judges in the Court of Appeal.³ Thus it is manifestly clear that it would not be practically possible for this Court to deal with all such contempt matters if litigants from all over the country start filing such cases before the Court

² Article 105(3) of the Constitution

³ Article 137 of the Constitution.

of Appeal. In these circumstances it is clear that the power given to the Court of Appeal by Article 105 (3) of the constitution is a power which the Court of Appeal may use when necessary in circumstances that it thinks warrants the exercise of that power.

The petitioner has not adduced any acceptable reason as to why it is the Court of Appeal and the Court of Appeal alone which should deal with this case. There is absolutely no bar for the Petitioner to file this case in the very High Court before which the very case is pending. Indeed it would be the learned High Court Judge who is already possessed of the facts and circumstances of this case and who has access to all the material adduced in this case, who would undoubtedly be the best judge to deal with this case.

This court has taken a similar view in the case of Metthananda Vs. Kushan Fernando⁴ in which a similar objection was upheld by this court. This court dismissed that application and directed the Petitioner to institute that action in the District Court where the alleged subject matter of the complaint was said to have been occurred.

⁴ 2006 (1) S L R 290

In these circumstances we are of the view that it is not the Court of Appeal in which the Petitioner should have filed this case. For the foregoing reasons we refuse to entertain this case. Hence this application must stand dismissed without costs.

The Petitioner should be free, if he so desires, to institute the proceedings in this regard, in the High Court before which this matter is already pending, and whose order is alleged to have been violated by the Respondents.

JUDGE OF THE COURT OF APPEAL

Vijith K. Malalgoda PC J

I agree,

PRESIDENT OF THE COURT OF APPEAL