

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

In the matter of an application under and in terms of
Article 154P(6) of the Constitution of the Democratic
Socialist Republic of Sri Lanka

Court of Appeal case no. CA/PHC/03/2012

H.C. Colombo case no. HCRA 68/2010

M.C. Maligakanda case no. 10077/M

Trans Asia Hotel PLC,
No.115 and 117,
Sir Chiththampalam A. Gardiner Mawatha,
Colombo 12.

Accused Petitioner Appellant

Vs.

W.A.D.A.Wijesooriya,
Revenue Inspector,
Colombo Municipal Council.

Plaintiff Respondent Respondent

Before : H.C.J.Madawala J.

: L.T.B. Dehideniya J.

Counsel : Anil Silva PC with Sahan Kulathunga for the Accused
Petitioner Appellant.

: Senany Dayarathne for the Plaintiff Respondent Respondent.

Argued on : 14.12.2016

Written submissions filed on : 03.02.2017 and 07.02.2017

Decided on : 08.02.2017

L.T.B. Dehideniya J.

This is an appeal from the High Court of Colombo.

The Complainant Respondent Respondent (the Respondent) the Revenue Inspector of the Colombo Municipal Council filed a plaint dated 25.06.2008 against the Respondent Petitioner Appellant (the Appellant) Trans Asia Hotel (PLC) for violating the bylaws of the Colombo Municipal Council. Based on this plaint/report, the Court framed the charge against the Company, but inadvertently issued summons to the Manager of the said hotel. The Manager appeared before Court and raised a preliminary objection that he is not a juristic person and the case cannot be maintained against a nonexistent person. The Court considered this submission and discharged the Manager and on the wrong premise that the plaint has been filed against the Manager, directed the Respondent to file an amended plaint. The Respondent filed an amended plaint on 31.03.2009. After hearing both parties on the admissibility, Court allowed the amendment. Being aggrieved by the said order of the Magistrate Court, the Appellant moved in revision in the High Court of Colombo where the order of the learned Magistrate was affirmed. The appellant presented this appeal against the said order of the High Court.

Both Counsels were heard and they have filed their written submissions too. It is not necessary to consider any of the lengthy legal arguments presented by both parties.

There was no necessity to amend the plaint in this case. The written report, commonly called as the plaint, was filed on the 26th of June 2008 by the Respondent is at page 51 of the brief. The caption of the plaint refers to the Accused as the "*Trans Asia Hotel PLC, 117, Sir Chiththampalam A. Gardiner Mawatha, Colombo 02*". It does not refer to the "*Manager*" of that hotel. In the body of the plaint it says that the "*above named accused*"

which refers to the “*Trans Asia Hotel PLC*” but not to the “*Manager*”. In the Journal of the case record the first entry recorded as

“Accused: The Manager, Trans Asia Hotel PLC.

Issue summons to the Accused returnable on 28.10.2008.”

The Accused named in the plaint is the Company, but the summons was issued to the Manager. It is a mistake done by the Court staff. Issuing summons and serving summons are two different matters. The Court should have issued summons to the Company because the accused named in the plaint is the Company, not to its Manager. The entire argument was based on the understanding that the plaint has been filed against the Manager; in fact the plaint was correctly filed against the Company. If the learned Magistrate had gone through the plaint, this mistake would have been rectified because a mistake of Court should not harm the parties.

Under these circumstances I dismiss the appeal and direct the learned Magistrate to conclude this case as speciously as possible.

I order no costs.

Judge of the Court of Appeal

H.C.J.Madawala J.

I agree.

Judge of the Court of Appeal