

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

In the matter of an application under Article
140 of the Constitution for Mandates in the
nature of Writs of Mandamus.

Nagananda Kodituwakku,
No. 99,
Subadrarama Road,
Nugegoda.

Petitioner

Court of Appeal case

No. CA 254/2017 Writ

Vs.

1. Jayantha Jayasuriya,
Hon. Attorney General,
Attorney General's Department,
Colombo 12.
and 2 others.

Respondents

Before : L.T.B. Dehideniya J, (P/CA)

&

A.L. Shiran Gooneratne J.

Counsel : N. Kodithuwakku for the Petitioner.

Arjuna Obeysekera SDSG for Respondents.

Supported on : 19/10/2017

Decided on : 10/11/2017

Order

A.L. Shiran Gooneratne J.

In this application the Petitioner inter alia, is seeking a writ of Mandamus to compel the 1st Respondent, the Hon. Attorney General to indict the 3rd Respondent on an amended indictment before the High Court of Colombo. The aforesaid relief is prayed for in pursuant to an order in case No. 4648/2009 in the said High Court, discharging the 03 accused named in the said indictment, including the 3rd Respondent to this application.

When this matter came up for support on 15th September 2017, four (4) preliminary objections were raised on behalf of the 1st Respondent with regard to the maintainability of this application. They are,

1. The Petitioner is guilty of laches. (delay)
 2. Parties necessary for a proper determination of this Petition are not named as Respondents.
 3. The Petitioner is guilty of suppression and misrepresentation.
 4. The application of the Petitioner is futile.
1. The Senior DSG submitted a number of cases to justify a delay in filing the Petition. In numerous cases the Superior Courts have stressed on strict compliance of time limits. If there is a delay the Courts should scrutinize with care the reasons for such delay. The High Court of Colombo delivered

its order on 18th May 2015. As such the Petitioner has failed to give any reason for the delay in filing the Petition which is dated 31st July 2017. Therefore we are of the view that the Petitioner has failed to address concerns of delay when filing this Petition to the satisfaction of Court.

2. By order dated 18th May 2015, the High Court of Colombo discharged all 03 accused including the 3rd Respondent to this application, citing defects in the Indictment. Therefore any order given by this Court in review of the said case should not adversely affect the rights of persons who are not before Court.

In Gregory Fernando and others vs Stanley Perera and others (2004 1 SLR 346), His Lordship Sripavan J (as he then was) held,

“It is vital that fairness demands that a person whose rights would be adversely affected must be given an opportunity for a fair hearing. One would not go to the merits of a case without hearing necessary parties.

The law is concerned with public confidence in the administration of justice; hence it is of paramount importance to ensure that individuals feel that, that have been given a fair hearing before a decision is taken..”

Therefore all parties who would be affected by the outcome of this Petition should be made Respondents to this application. Failure to name such persons as Respondents is a ground for dismissal of the Petition.

Since the Petition can be disposed of by the aforesaid findings on the 1st and 2nd preliminary objections, we see no reason to proceed further to decide on the rest of the preliminary objections raised by the state.

Accordingly notice refused.

Petition dismissed without costs.

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya J, (P/CA)

I agree.

PRESIDENT OF THE COURT OF APPEAL