IN THE COURT OF APPEAL OF THE

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of a complaint in terms of Article 105 (3) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C A (CC) Application

No. 04 / 2016

M C Homagama

Case No. 40042

Galagodaaththe Gnanasara,

No. 615,

Saddharma Rajitha Viharaya,

Nawala Road,

Rajagiriya.

ACCUSED RESPONDENT

Before: P. Padman Surasena J (P/C A)

A.L Shiran Gooneratne J

Counsel :

Manohara de Silva PC with Imalka Abeysinghe for the Accused Respondent.

Rohantha Abesuriya, SDSG for the Attorney General.

Decided on: 2018-08-08

JUDGMENT

P Padman Surasena J

Learned Magistrate of Homagama has forwarded to this court, his letter dated 2016-03-18, along with the proceedings had before him in the case bearing No. MC Homagama 40042, to enable this court to invoke the jurisdiction vested in it by Article 105 (3) of the Constitution.

This Court having noticed Hon. Attorney General, had this case mentioned before this court several times taking necessary steps as precursors to the exercise of its jurisdiction under the said Article.

Hon. Attorney General having considered the material pertaining to this case, has forwarded to this court copies of summons and charge sheet to be served on the Accused Respondent (who will hereinafter be called and referred to as the Accused).

When the Accused appeared before this Court in response to the said summons, the charge sheet was handed over to him on 2016-08-10. It

was thereafter that learned President's Counsel who appeared for him stated to Court that he would raise a preliminary objection before the Accused pleads to the charges.

This Court pursuant to the above application took steps to consider the said objections and took steps to address the concerns of the learned President's Counsel who appeared for the Accused.

Subsequently, the learned Senior Deputy Solicitor General has filed a set of amended charges, which was served on the Accused Respondent.

After this Court overruled the preliminary objection raised by the learned President's Counsel for the Accused, the charges were read over and explained to the Accused.

It would be prudent at the commencement of this judgment, to set out the charges levelled against the Accused before this court.

The charges framed against the accused (as they appear in the original charge sheet in Sinhala language) are as follows;

1. වර්ෂ 2016 ක් වූ ජනවාරි මස 25 වන දින හෝ ඊට ආසන්න දිනයකදී හෝමාගම මහේස්ත්‍රාත් අධිකරණයේදී ගලගොඩඅත්තේ ඥාණසාර වන යුෂ්මතා එකී අධිකරණයේ පැවති කිසිදු නීති කෘත්‍යයකට කිසිදු නෛතික සම්බන්ධතාවයක් නොමැතිව හෝ එබදු කෘත්‍යයක පාර්ශවකරුවෙකු

නොවෙමින් හෝ අධිකරණය ඇමතීම සඳහා අධිකරණයේ නිසි අවසරය ලබා ගැනීමකින් තොරව හිතාමතාම සහ ඕනෑකමින්ම අධිකරණය ඇමතීම මගින් අධිකරණ කටයුතු වලට බාධා කිරීමෙන් සහ එම අධිකරණයේ ආධිපත්‍යයට සහ ගරුත්වයට අභියෝග කිරීමෙන්, අගෞරව කිරීමෙන් හා අවමන් කිරීමෙන් සහ යුක්තිය පසිඳලීමට අධිකරණයට ඇති බලයට අනර්ථකාරී වන ලෙස හැසිරීමෙන් ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 105 වන ව්‍යවස්ථාව යටතේ දඩුවම් ලැබිය හැකි අධිකරණයට අපහාස කිරීමේ වරද සිදු කර ඇත.

2. ඉහත පළමුවන චෝදනාවේ සඳහන් ස්ථානයේදී , වේලාවේදී හා එම ක්‍රියාකලාපයේදීම යුෂ්මතා අධිකරණය විසින් ලබා දෙනු ලබන නියෝග පිළිනොගන්නා බවට සහ රටේ පවත්නා නීතිය අනුගමනය නොකල යුතු බවට කිසිදු නීත්‍යානුකූල අවසරයකින් තොරව හිතාමතාම සහ ඕනෑකමින්ම ප්‍රසිද්ධියේ විවෘත අධිකරණයේ පැවසීම මගින් එම අධිකරණයේ ආධිපත්‍යයට සහ ගරුත්වයට අභියෝග කිරීමෙන්, අගෞරව කිරීමෙන් හා අවමන් කිරීමෙන් සහ යුක්තිය

පසිඳලීමට අධිකරණයට ඇති බලයට අනර්ථකාරී වන ලෙස හැසිරීමෙන් ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 105 වන ව්‍යවස්ථාව යටතේ දඩුවම් ලැබිය හැකි අධිකරණයට අපහාස කිරීමේ වරද සිදු කර ඇත.

3. ඉහත පළමුවන චෝදනාවේ සඳහන් ස්ථානයේදී , වේලාවේදී හා එම ක්‍රියාකලාපයේදීම යුෂ්මතා අධිකරණය යුෂ්මතා පවසන පරිදි කටයුතු කල යුතු බවට පවසමින් අංක B 7417/10 දරණ නඩුවේ සැකකරුවන්ට ඇප ලබාදෙන ලෙසට කිසිදු නීත්‍යානුකූල අවසරයකින් තොරව හිතාමතාම සහ ඕනෑකමින්ම අණකර සිටීම මගින් අධිකරණ කටයුතු වලට බාධා කිරීමෙන් සහ එම අධිකරණයේ ආධිපත්‍යයට සහ ගරුත්වයට අභියෝග කිරීමෙන්, අගෞරව කිරීමෙන් හා අවමන් කිරීමෙන් සහ යුක්තිය පසිඳලීමට අධිකරණයට ඇති බලයට අනර්ථකාරී වන ලෙස හැසිරීමෙන් ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 105 වන ව්‍යවස්ථාව යටතේ දඩුවම් ලැබිය හැකි අධිකරණයට අපහාස කිරීමේ වරද සිදු කර ඇත.

4. ඉහත පළමුවන චෝදනාවේ සඳහන් ස්ථානයේදී වෙලාවේදී, හා එම , ක්‍රියාකලාපයේදීම යුෂ්මතා අංක B 7417/10 දරණ නඩුවේ පැමිණිලිකාර පාර්ශවය වෙනුවෙන් පෙනී සිටි ජ්‍යෙෂ්ඨ රජයේ අධිනීතිඥ දිලිප පීරිස් මහතාට කිසිදු නීත්‍යානුකූල අවසරයකින් තොරව හිතාමතාම සහ ඕනෑකමින්ම පරිභවාත්මක වචනයෙන් ඇමතීම මගින් එනම් " නපුංසක රාජ්‍ය නිළධාරියා " ලෙස පැවසීම මගින් එම අධිකරණයේ ආධිපත්‍යයට සහ ගරුත්වයට අභියෝග කිරීමෙන්, අගෞරව කිරීමෙන් හා අවමන් කිරීමෙන් සහ යුක්තිය පසිඳලීමට අධිකරණයට ඇති බලයට අනර්ථකාරී වන ලෙස හැසිරීමෙන් ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 105 වන ව්‍යවස්ථාව යටතේ දඩුවම් ලැබිය හැකි අධිකරණයට අපහාස කිරීමේ වරද සිදු කර ඇත.

The English translation of the said charges would be to the following effect.

1) that he, on or about 2016-01-25, at the Magistrate's Court of Homagama, without having any lawful connection to, or without being any party to any proceedings before that Court, deliberately and intentionally addressed the Court without obtaining any permission thereto, and obstructed the proceedings in Court, challenged the authority of Court, disrespected the authority of Court, and conducted himself in a manner prejudicial to the power and authority of Court to administer justice and thereby committed an offence of contempt punishable under Article 105 of the Constitution.

2) that he at the place, time and in the course of the same transaction referred to in the 1st count above, obstructed the proceedings in Court, challenged the authority of Court, disrespected the authority of Court, and conducted himself in a manner prejudicial to the power and authority of Court to administer justice by deliberately and intentionally stating, without obtaining any permission, in open Court, that he would not accept the orders of the Court, and that the law of the country should not be followed, and thereby

committed an offence punishable under Article 105 of the Constitution.

3) that he at the place, the time and in the course of the same transaction referred to in the 1st count above, obstructed the proceedings in Court, challenged the authority of Court, disrespected the authority of Court, and conducted himself in a manner prejudicial to the power and authority of Court to administer justice, by deliberately and intentionally stating, without any lawful permission, in open Court, in the form of a direction, that the Court must grant bail to the suspects in the case No. B 7417/10 and thereby committed an offence punishable under Article 105 of the Constitution.

4) that he, at the place, the time and in the course of the same transaction referred to in the 1st count above, challenged the authority of Court, disrespected and degraded the authority of Court, and conducted himself in a manner prejudicial to the power and authority of Court to administer justice by deliberately and intentionally, without any lawful permission, addressing in open Court, the Senior State Counsel who appeared for the prosecution Mr. Dileepa Pieris, as an impotent state officer ("නපුංසක රාජ්‍ය

නිලධාරියා"), and insulted him and thereby committed an offence punishable under Article 105 of the Constitution.

The Accused pleaded not guilty to all the charges. Thereafter, learned Senior Deputy Solicitor General (who will hereinafter be called and referred to as the SDSG) led the evidence of four Witnesses. After the learned SDSG closed his case, the Accused and two other witnesses gave evidence on behalf of the Accused. With the present bench being constituted on 2018-01-16, learned President's Counsel for the Accused moved for time to consider whether he would object to adoption of evidence led before the previous bench. Having considered the said issue, learned President's Counsel thereafter did not raise any objection for the present bench continuing with the evidence already led. Both the learned SDSG and the President's Counsel for the Accused thereafter addressed this court setting out their respective cases and then each one of them filed written submissions also.

As the proceeding in the instant case revolves around the above charges for which penal sanctions are attracted, this Court at the outset presumed that the Accused is not guilty to the above charges. It is in that backdrop that this Court heard the evidence led before it.

This Court is mindful that it ought to consider the evidence led before it in its totality, taken as a whole. However, for convenience and for easy future reference to the readers of this judgment, this Court would set out the evidence of several witnesses in the following manner. This Court for the purposes of clarity thinks it fit to state here, that by adopting the following style of dealing with each witness's evidence, it did not intend by any means to compartmentalize the evidence led before it.

Witness No. 01

Evidence of Ranga Srinath Abeywickrema Dissanayake - (Magistrate)

This witness was the presiding Magistrate in the Magistrate's Court of Homagama when the incident relevant to the instant proceedings took place in the said Court. Summary of his evidence (in point form) pertaining to the incident relevant to this case would be as follows;

I. The case No. B 7417/2010 is a case in which the Criminal Investigations Department has reported facts against some suspects alleging that they are suspected to have committed an offence punishable under section 296 of the Penal Code.

II. It was Senior State Counsel Dileepa Pieris who appeared (most of the time) for the prosecution.

III. Even on the date of the incident (i.e. 2016-01-25), Senior State Counsel Dileepa Pieris appeared in Court for the prosecution.

IV. The Magistrate had spent about 1 ½ - 2 hours to deal with the matters arose in the case in Court on that date.

V. He had observed that a group of Buddhist monks (about 10 in number) seated (on the benches allocated to public) in Court throughout that time.

VI. He had thereafter made order, further remanding the suspects and finished the day's proceedings relevant to that case and just commenced dealing with the next case in the roll in open Court.

VII. The Accused at that time suddenly got up, came right in front of him (bench), and started addressing him while standing there.

VIII. Some of the statements the Accused had made are as follows;

a) "... ස්වාමිනි රණ විරුවන් සිර ගත කර තිබෙනවා කොටි එලියට දමා තිබෙනවා ඒ අනුව මේ රණ විරුවන්ට ඇප ලබා දෙන්න ..."

b) "... මේක සුද්දගේ නීතිය. මේක අපි පිළිගන්නේ නෑ. ..."

IX. Having being surprised and flabbergasted by the sudden and unexpected conduct of the Accused, the Magistrate had warned him through the Interpreter of Court directing him to take care to behave in

a proper manner suitable to Court since he was obstructing the proceedings in Court.

X. He had heard some in the Courtroom passing remarks as to why he does not take a prompt action to take the Accused into custody and put him in the cell of the Court.

XI. He warned the Accused through the interpreter to behave in a proper manner because the said address by the Accused is totally unwarranted, made without any permission of Court, obstructed the proceedings of Court, and aimed at challenging the authority of Court.

XII. Despite the warnings, the Accused continued his address. It was at that time Senior State Counsel Dileepa Pieris came quickly to open Court. At the same time, Mr. Upul Kumarapperuma Attorney at Law who had appeared for the aggrieved party of the relevant case also came along with him.

XIII. It was at that time, the Senior State Counsel (Mr. Dileepa Pieris) started addressing Court and requested the Magistrate to take immediate action against the Accused as he is obstructing the proceedings in Court.

XIV. The Accused became more aggressive with the submission of Senior State Counsel Dileepa Pieris and told "... අපිට මේ රජයේ නීතිඥවරුන්ගේ ඒවා අහන්න කිසිම වැඩක් නැහැ. ඔවුන් නපුංසකයින් ..."

Thereafter, the Accused had left open Court saying "... නීතිපතිතුමාගේ නපුංසකයින් ....".

XV. He thereafter having recorded what transpired in Court, made an order directing the Head Quarters Inspector of Police - Homagama, to arrest and produce the Accused.

XVI. Since he had taken the view that the Accused had committed a very serious offence of contempt of Court, he had decided to refer this matter to the Court of Appeal, as the punishment he could have meted out to the Accused for that offence is not a punishment that would be appropriate to the conduct of the Accused.

The hand written notes of the said occurrence made by the Magistrate's hand writing (case No. 40042/16) was produced marked පැ **1**. The typed proceedings pertaining to the same journal entry was produced marked පැ **2**.

Cross-examination

In the course of the cross examination of this witness, the following main points have been relied upon by the learned President's Counsel for the Accused.

1) The Accused was standing when he addressed Court.

2) The Accused used the word "... ස්වාමිනි ..." when addressing Court.

3) Presence of certain differences between the narration of events by this witness in his evidence and the notes entered by him in the case record.

Learned President's Counsel appearing for the Accused had put forward following suggestions to this witness.

I. That this witness did not take any steps to arrest the Accused at that time itself because the Accused had not committed such a serious act which would have warranted this witness to make an order to arrest him.

II. That the steps were taken to arrest the Accused subsequently and refer this matter to the Court of Appeal as a result of a request by another group who was present in Court at that time.

III. What this witness had recorded on 2016-03-18 at a time after more than one month, relates to factual positions, which did not take place on the date of this incident.

IV. That this witness was prompted to insert incidents, which actually did not take place upon a request made by some lawyers and others later on.

V. That it was Mr. Upul Kumarapperuma Attorney-At-Law who was interested in getting the Accused arrested.

VI. That this witness consented and agreed to listen to what the Accused wanted to say and it is because of that permission that the Accused spoke in Court.

This witness has categorically refused to accept these suggestions.

Section 795 of the Civil Procedure Code states that the minute of the facts observed and recorded by the judge before whom the accused person's contemptuous behavior and use of language took place, shall be admissible as evidence at the hearing of the charge. This witness being the Magistrate of that Court before whom the relevant incident had occurred, had at the first instance recorded the incident in his own handwriting. Thereafter he had taken steps to set out the incident occurred in more elaborated terms for the purpose of forwarding the record to the President of the Court of Appeal for further action against the Accused. This Court is of the view that there is nothing unusual in this process, as any Judge facing a similar situation would be obliged to follow such process, which is somewhat similar to the process set out in section 389 of the Code of Criminal Procedure Act No. 15 of 1979. When considering the totality of the evidence, this Court is satisfied that the

suggestion made by the learned President's Counsel for the Accused to this witness that he was prompted to record incidents which actually did not take place, upon a request made by some lawyers and others later on, remains a mere baseless suggestion. The said suggestion has no factual or legal basis and hence has no value to this proceeding.

Apart from the above, this witness has clearly described the relevant incident before this Court. His evidence was subjected to severe cross-examination by the learned President's Counsel for the Accused. It is the observation of this Court that the learned President's Counsel for the Accused despite the said severe cross-examination had not been successful in assailing the testimony of this witness.

On the other hand, this Court observes that the Accused in his evidence had also testified to most of the facts narrated by this witness in somewhat similar form. However, there are few items of evidence that the Accused had not admitted.

One main feature the Accused had denied in the evidence in chief is the fact that he addressed Senior State Counsel Mr. Dileepa Peiris as "... අපිට මේ රජයේ නීතිඥවරුන්ගේ ඒවා අහන්න කිසිම වැඩක් නැහැ. ඔවුන් නපුංසකයින් ..." ..... However, when questioned further on this point by the learned SDSG, the Accused modified his version and stated that what

he told was some words, which meant an impotent government. The evidence of the Accused on this point is as follows; "...අන්න එතැනදී මම කිව්වා නපුංසක රජයේ ඇතැම් නිලධාරීන්ගේ වැඩ හින්ද තමයි මේ ප්‍රශ්න ඔක්කොම කියල මම එලියට ගියා. එවචරයි ඒ සද්දෙට අමතපු වචනය.."

It is to be noted that the two witnesses called on behalf of the Accused did not corroborate this version of the Accused. The evidence of the said two witnesses is that the Accused never uttered the said words.

Further, this Court for the reasons set out elsewhere in this judgment has decided that these two witnesses and the Accused have not divulged the incident in its true form. Thus, the evidence adduced on behalf of the defence has not created any doubt regarding the credibility of this witness.

This Court for the reasons set out at various places in this judgment has decided to accept the evidence of Deputy Solicitor General Mr. Dileepa Peris and Mr. Upul Kumarapperuma Attorney at law. It is the view of this Court that the said two witnesses have corroborated the testimony of this witness as a truthful narration of the events. This Court has no reason to believe that any of the suggestions made to this witness, by the learned President's Counsel for the Accused, have any merit whatsoever. The said suggestions have been made without any legal or factual basis.

In these circumstances, this Court does not have any difficulty in accepting the evidence of this witness as a truthful narration of the events upon which this Court can safely act.

Witness No. 02

Evidence of Malwattage Chamath Dileepa Peiris - (Deputy Solicitor General).

This witness who was a Senior State Counsel at that time is the counsel who had appeared for the prosecution representing the Hon. Attorney General in the relevant case, which had been taken up before the Magistrate at the relevant time.

He along with another Senior State Counsel Wasantha Perera had appeared for the prosecution in that case on the date of the incident and had made lengthy submissions relating to some issues pertaining to the case before the Magistrate. The Magistrate at the end of the said submissions, had ordered that the period of remand of the suspects be extended. Thereafter, he along with the other Senior State Counsel Mr. Wasantha Perera had walked out of the Courthouse. When he was waiting outside the Court (at a place close to the Courtroom), he had heard from

the direction of the Courtroom, someone speaking with a high tone. At that time, a police officer had informed him that the Accused was addressing the Magistrate in open Court. He had then come back to the Court House.

He had then observed that the Magistrate was still on the bench and the Accused was directly addressing the Magistrate. He had also observed that Mr. Upul Kumarapperuma Attorney-at-law was also present at that time.

This witness has confirmed that the Accused had infact uttered the statements referred to by the witness No.01 (Magistrate).

According to this witness's evidence, he has observed that the Magistrate had been embarrassed finding it difficult to tolerate the contents of the speech made by the Accused and hence was in a difficult situation. This witness has stated in his evidence that the Magistrate had told the Accused that he (Magistrate) had listened to him (Accused) to a certain extent because he (Accused) was a monk. The Magistrate had also told the Accused that he is compelled to take steps against him in case he continued with his address any further. The Accused had responded to the above warning by the Magistrate in following terms;

"... ඔව් අපි ඒකට කොහොමත් සුදානම් වෙලා ආවේ. අපිව රිමාන්ඩ් කරන්න. අපිව රිමාන්ඩ් කරලා ඒ වෙනුවට දැනට රිමාන්ඩ් කරලා ඉන්න රණවිරුවෝ

හය දෙනා මුදා හරින්න. ඒ වෙනුවට මා ඇතුළු පිරිස වුනත් රක්ෂිත බන්ධනාගාරගත වෙන්න සුදානම්. ..."

At that time, this witness has also addressed Court and urged the Magistrate to take steps against the Accused. It is at that time that the Accused had turned to him and said "...නපුංසක රජයේ නීතිඥයා ඉඳගනින්", "... මේ වගේ රාජ ද්‍රෝහී නිලධාරීන්, රාජ ද්‍රෝහීන්ව නිදහස් කරලා, කොටී නිදහස් කරලා රණවිරුවෝ ඇතුලට දානවා..." At this time, Mr. Upul Kumarapperuma Attornet-at-law (who had appeared for the aggrieved party in the relevant case) had also requested the Magistrate to take stern action against the Accused. Then Mr. Upali Senarathne upon the request by the Magistrate had stated that he could identify the Accused as Galagoda Aththe Gnanasara Thero. However, at that time the Accused had gone out of the Courtroom. Therefore, the Magistrate had ordered the Assistant Superintendent of Police of Homagama and the HQI, Police station Homagama to immediately arrest the Accused and produce him in Court.

Cross-examination

Answering the questions asked by the learned President's Counsel for the Accused, this witness had explained the background facts pertaining to the

incident relevant to the said case and the events leading to filing of the B report of the relevant case in the Homagama Magistrate's Court. Answering the questions asked by the learned President's Counsel about the incidents pertaining to this proceeding, this witness has confirmed the facts he had narrated in his examination in chief and reiterated that the Accused had uttered the said statements before the Magistrate and that the said statements amounted to contempt of Court.

When suggested by the learned President's Counsel for the Accused that he was making contradictory statements, this witness had refused to accept that suggestion. It is the position of this witness that the statement made by the Accused to release the suspects in that case is in the form of a direction to the Magistrate and not a request.

Learned President's Counsel appears to have pursued an argument that it was a mere dialog between the Magistrate and the Accused. He had placed reliance on the word "සංවාදයක්". However, when considering the evidence of this witness as a whole it is clear that he had not used that word to indicate that it is a peaceful dialog, which indeed happened between the Magistrate and the Accused.

Learned President's Counsel for the Accused has also unsuccessfully attempted to show that the evidence of the witnesses called by the SDSG

are contradictory to each other. It is his submission that the Magistrate has taken up the position that he did not offer any explanation to the Accused when he addressed Court when the other witnesses had stated that the Magistrate explained to the Accused that he was acting according to law.

This witness has refused the suggestion made to him by the learned President's Counsel that he was giving evidence with malice towards the Accused. He has also refused the suggestion made to him by the learned President's Counsel for the Accused, that the assertion by him that the Accused uttered "නපුංසක රජයේ නීතිඥයා" is a fabrication by him. Answering further, this witness has stated that the Accused did not utter any other obscene words other than the above statement. This witness has confirmed that Mr. Upul Kumarapperuma Attorney-at-law had also requested from Courts to take the Accused into custody.

Evidence of this witness was also subjected to severe cross-examination by the learned President's Counsel who appeared on behalf of the Accused. However, the record of evidence clearly shows that this witness has withstood his grounds even in the face of the said severe cross-examination. Learned President's Counsel has not been successful in shaking any of his stances. Moreover, learned President's Counsel for the

Accused has also not been able to highlight any discrepancy in the evidence of this witness either per se or inter se. This Court has no reason whatsoever to refrain from accepting and acting upon the testimony of this witness.

The evidence of the Magistrate is fully compatible with the evidence of this witness. They are not at variance at any point. It is the observation of this Court that the said witnesses have mutually corroborated each other. Further, this Court has decided to accept the evidence of Mr. Upul Kumarapperuma Attorney-at-law for the reasons set out in this judgment at the place where this Court has dealt with the evidence of said Mr. Kumarapperuma. This Court observes that the evidence of all three witnesses namely the Magistrate, the Deputy Solicitor General and Mr. Upul Kumarapperuma are mutually corroborative of each other. Therefore, this Court decides to accept the testimony of this witness as trustworthy evidence upon which this Court can safely act.

Witness No. 03

Evidence of Kumarapperuma Arachchige Upul Indika Kumarapperuma - (Attorney at law)

This witness is the Attorney-at-law who had appeared for the aggrieved party in the relevant case on that date. He also has narrated the events occurred in MC Homagama on the relevant date. His evidence is also on the same line as those previously testified. He has confirmed the events spoken to, by the previous witnesses. This Court does not think it should summarize the evidence of this witness separately here, as such an exercise would only amount to a repetition of facts already stated in this judgment.

Cross-examination

Learned President's Counsel for the Accused had suggested to this witness that he was giving false evidence. However, this witness has rejected that suggestion and stated that he has no necessity to give false evidence about this incident.

Learned president's counsel for the Accused had then inquired from this witness about some associations in which he is an active member. In the course of answering those questions, this witness had asserted that he is a person who is not against Buddhism but a person who would do anything to protect Buddhism. This witness has admitted that his name appeared in the National List of the Janatha Vimukthi Peremuna for the Parliamentary Elections held in the year 2015. However, nothing has

turned out from the above facts against the trustworthiness of the testimony of this witness.

It is the position of this witness that the Accused defied the request made by the Magistrate at the relevant occasion to stop addressing Court in a contemptuous manner.

This witness has rejected the suggestion made to him by the learned President's Counsel that he had discussed with Deputy Solicitor General Dileepa Peiris, about the evidence in this case. It is the position of this witness also that the conduct of the Accused at this occasion amounted to a clear contempt of Court.

Learned President's Counsel cross-examined this witness at length. However, this Court observes that this witness has stood the grounds he had already taken despite the piercing cross-examination by the learned President's Counsel for the Accused. This Court cannot observe any infirmity in the evidence of this witness, which is capable of rendering his evidence untrustworthy.

Moreover, the evidence of this witness is on the same line as that of the other witnesses namely the Magistrate and the Deputy Solicitor General. This Court upon comparison of the evidence of each of these witnesses, cannot find any variance or any discrepancy in their evidence at any point.

Thus, this Court can conveniently conclude that the evidence of this witness has corroborated the evidence of the Magistrate and the Deputy Solicitor General. Evidence of each of these three witnesses matches with each other's evidence. Upon comparison, evaluation and scrutinizing carefully the answers provided by this witness during the cross examination, this Court is satisfied beyond reasonable doubt that the evidence of this witness must be accepted and acted upon. Thus, this Court decides to accept the evidence of this witness as trustworthy evidence.

Witness No. 04

Evidence of Hapuarachchi Vidhanalage Athula Keerthi Erathne, (Registrar, Magistrate Court, Homagama).

This witness being the Registrar of the Magistrate's Court Homagama has produced before this Court, the case record bearing No. B/7417/10. This witness had not served in any capacity in the said Court at the time of the incident relevant to this case.

Cross-examination

Learned president's counsel for the Accused had produced through this witness (during the cross-examination), the B report dated 2015-11-09 marked වි **1**. The learned President's Counsel for the Accused has also produced through this witness, the detention orders marked වි **2**, වි **3**, වි **4**, වි **5** and the journal entry dated 2015-11-09 marked වි **7.**

The case record of the Magistrate's Court Homagama relevant to this case has been produced marked සෘ **3**.

This witness is an official witness who merely testified to some facts in his official capacity as the current registrar of the Magistrate's Court Homagama. The said facts emanate from the contents of the relevant case record he produced in this Court. The learned President's Counsel for the Accused has not challenged this witness's evidence presumably because the evidence of this witness is limited to the production of the relevant records.

With the evidence of above four witnesses having been led before this Court, the learned Senior Deputy Solicitor General had closed his case marking the documents සෘ **1**, සෘ **2**, සෘ **3**, **X 1**, and **X 3**.

Thereafter, the Accused gave evidence before this Court. Two other witnesses namely Kirama Devinda Thero and Pitigala Dhamma Veneetha

Thero, having been called by the Accused, also gave evidence before this Court on behalf of the Accused. It is to the evidence adduced before this Court on behalf of the Accused that this Court would now turn.

Witness No. 01 for the Defence

Evidence of the Accused

The Accused states in his evidence that he is a Buddhist monk holding a Master's Degree from the University of Kelaniya and had worked as a teacher for some time. Thereafter, he had been involved in various activities, in particular, the activities pertaining to encouraging the soldiers deployed in Northern and Eastern Provinces during the time they were engaged in curbing terrorist activities in the country.

It is to be noted that the Accused in his evidence has admitted the followings,

I. that he was present in Court on the date of the incident,

II. that he came to participate in the hearing of the relevant case in the Magistrate's Court of Homagama on behalf of the intelligence officers produced as suspects in that case,

III. that he was pleased with the manner in which the Magistrate conducted the case on that date,

IV. that he had an expectation that the Magistrate would enlarge the suspects on bail on that date,

V. that he got up and addressed the Magistrate in open Court.

It is his position that he was emotionally aroused when tears falling from the eyes of one of the suspects fell on to his hand when the said suspect bent forward to worship him on his way back to the cell. This was after the Magistrate refused to enlarge the suspects on bail.

However, it is his position that he perceived from the body language of the Magistrate that the Magistrate permitted him to speak and opted to listen to his address. He denies directing any contemptuous statements to the Senior State Counsel, to any other state officers, or to the Magistrate. The Accused has admitted uttering the word "නපුන්සක ආණ්ඩුවක්".

Cross-examination

Answering the questions asked during the cross examination, the Accused had admitted that no person other than an Attorney-at-law could address the judges in Court. He has reiterated that he was pleased with both the independence of the Magistrate and the manner in which the Magistrate conducted the proceedings on that date.

The Accused under cross examination has admitted that it is the judge who decides whether or not to release a suspect on bail and that no one else could do anything to influence the judge to persuade him to come to a particular decision.

The accused had categorically stated that he was very pleased with the manner in which the Magistrate conducted the proceedings in Court on that date. He has also admitted that he went to Court on that day with the expectation of an order from the Magistrate enlarging the suspects of the relevant case on bail. However, in the face of the continuous questions asked by the learned Senior Deputy Solicitor General as to why then the Magistrate opted to give evidence before this Court incriminating him, the Accused had failed to give any reason or offer any explanation as to how in such circumstances the Magistrate could have wanted to incriminate him for a charge of contempt. The Accused has categorically stated that he has had no animosity with the Magistrate. Indeed, it is the opposite; he was pleased with the Magistrate's conduct in Court. The Accused could not find anything to offer as an explanation to resolve this anomalous position he has taken up.

It is to be noted that the Accused in the course of answering the questions during the cross examinations, had admitted making the statement "...

මේක සුද්දගේ නීතිය. මේක අපි පිළිගන්නේ නෑ මේ නිසා මේ රණවිරුවන්ට ඇප ලබා දෙන්න"

The Accused had also admitted using the word thereafter, "නපුන්සක" in a high pitch. He has stated this in following terms, "...අන්න එතැනදී මම කිව්වා නපුංසක රජයේ ඇතැම් නිලධාරීන්ගේ වැඩ හින්ද තමයි මේ ප්‍රශ්න ඔක්කොම කියල මම එලියට ගියා. එවචරයි ඒ සද්දෙට අමතපු වචනය.."

The Accused in the face of the cross examination by the SDSG has admitted that he used the word "නපුංසක".

The Accused has also categorically stated that he would not have addressed Court if the Magistrate had opted to enlarge the relevant suspects on bail.

It is significant that the Accused has admitted uttering the word "නපුංසක ආණ්ඩුවක්" in open Court. This significance becomes paramount because the learned President's Counsel for the Accused in the course of cross-examination of the witnesses called by the SDSG has already put forward the suggestion to them that the Accused never uttered the word "නපුංසක". Further, the evidence of two witnesses who testified on behalf of the Accused was also that the Accused never uttered the word "නපුංසක" in Court.

Moreover, the evidence of the Accused shows clearly that he had admitted addressing court in high tone being emotionally aroused.

Therefore, this Court holds that the evidence of the Accused before this Court contains items of falsehood (including that the Magistrate's evidence included things that actually did not happen), which the Accused had deliberately stated in his unsuccessful attempt to evade the criminal responsibility of contempt of Court that is waiting to befall on him.

Witness No. 02 for the defence

Evidence of Kirama Devinda Thero

This witness, who was called to give evidence on behalf of the Accused, is a Buddhist monk who had been present inside the Courtroom at the relevant time. He has narrated the sequence of events occurred in the Court at the relevant time.

However, it is his position that the Accused never uttered anything contemptuous of Court. Answering the questions asked during the cross examination, this witness had asserted that the Accused never uttered the word "... මේක සුද්දගේ නීතිය. මේක අපි පිළිගන්නේ නෑ මේ නිසා මේ රණවිරුවන්ට ඇප ලබා දෙන්න...". This witness has categorically stated in

his evidence that the Accused never uttered the word "නපුංසක". It is also the position of this witness that the Accused never addressed Court in high pitch.

Cross-examination

When perusing the evidence given by this witness in its totality, and when one compares the evidence of this witness with the evidence of the other witnesses. It can clearly be seen that this witness has not divulged the full incident in the same way it had happened. It is a fact that this witness had opted to suppress all the incriminating items of evidence against the Accused. It is not difficult for this Court to come to that conclusion in view of the fact that the Accused himself in the face of the cross examination by the learned SDSG, had at a later occasion admitted most of those facts. It is therefore strange that this witness had opted to deny the said items of evidence against the Accused.

On being asked from this witness by the learned SDSG whether the Accused uttered before the Magistrate, "... මේක සුද්දගේ නීතිය. මේක අපි පිළිගන්නේ නෑ මේ නිසා මේ රණවිරුවන්ට ඇප ලබා දෙන්න", this witness has categorically stated that the Accused never made such a statement. It has to be noted at this stage that even the Accused in the face of the

cross examination by the learned SDSG has admitted making this statement.

This Court is of the view that this is not a statement, which could generally be heard in a Courthouse before a judge. If somebody uttered these words before a Court which was in sessions, this Court cannot see any reason as to why those who were present there could not have remembered whether that statement was indeed made or not. As has been mentioned before, the Accused although attempted to suppress it at the beginning was compelled to admit having made that statement during the cross-examination. In these circumstances, it is the considered view of this Court that there cannot be any justification or possibility for this witness not to have remembered this statement being made by the Accused.

Further, the evidence of the Accused namely "...අන්න එතැනදී මම කිව්වා නපුංසක රජයේ ඇතැම් නිලධාරීන්ගේ වැඩ හින්ද තමයි මේ ප්‍රශ්න ඔක්කොම කියල මම එලියට ගියා. එවචරයි ඒ සද්දෙට අමතපු වචනය.." shows clearly that he has admitted addressing in high pitch at least at some occasions. Therefore, the assertion of this witness that the Accused never spoke in a high pitch also does not match with the evidence of the Accused.

This Court has to reiterate the same position with regard to the use of the word "නපුංසක" in Court by the Accused. This Court has to observe that contrary to the stance taken by this witness, the Accused in his evidence had admitted uttering this word. Therefore, the evidence of this witness is contradictory to the evidence of the Accused.

This Court in the above circumstances can observe that the evidence of the Accused and the evidence of this witness stand wide apart from each other just like two parallel lines in a rail track which would never converge. The anomaly between them is irreconcilable. It is therefore the view of this Court that this witness has uttered falsehood to suppress the incriminatory items of evidence against the Accused.

Witness No. 03 for the defence

Evidence of Pitigala Dhamma Veneetha Thero

This Buddhist monk is the 3rd defence Witness called to give evidence on behalf of the Accused. He is a monk of 39 years old who had been ordained as a Buddhist monk at the age of 18 years. He is a graduate who has obtained a degree in Buddhist philosophy from the University of Kelaniya and a holder of a postgraduate degree relating to the same

subject. This monk had also been sitting along with the Accused in the Magistrate's Court of Homagama on the date of the incident.

It is his evidence that the Accused got up in Court after the Magistrate refused to enlarge the suspects on bail (in the case where the group of intelligence officers were suspects) and addressed Court. It is his evidence that the Magistrate patiently listened to the Accused. It is the position of this witness that he did not perceive that the Magistrate had any objection to the address of the Accused in Court.

This witness also confirmed that the address by the Accused was directed at obtaining bail for the suspect intelligence officers in the relevant case. This witness states that the Magistrate attempted to explain to the Accused about his inability to enlarge the suspects.

This witness also categorically states that the Accused asked the Magistrate to release the suspect intelligence officers on bail and to place the Accused in remand instead. This witness states that thereafter he heard lawyers addressing Court against the Accused and some kind of commotion being created in the Court.

Cross Examination

Answering the questions asked by the learned SDSG, this witness stated that they went to Court on that day with the expectation that the Magistrate would enlarge the relevant intelligence officer suspects on bail. It is the position of this witness that the monks present there in Court were pleased with the manner in which the Magistrate conducted the proceedings in that case. This witness also takes up the position that the Accused never uttered the word "නපුංසක". He also states that at no time he heard the Accused uttering the said word.

It is his position that he cannot remember the Accused stating that the laws made by the foreigners must not be complied. However, on being asked further questions, this witness admitted that such utterance, if made in Court, would be a serious utterance and that therefore he should have remembered if such utterance was indeed made by the Accused. Answering further, this witness states that the Magistrate did not appear to have any objection for the speech of the Accused in Court.

Just like the previous witness called by the defence, this witness also has opted to supress the items of evidence that is incriminatory against the Accused by stating that such things did not happen in Court. However, it appears that he had not known that the Accused himself by that time, in the face of the cross examination by the learned SDSG, had admitted

many of those things. It is the view of this Court that such suppressions have affected the creditworthiness of the evidence of this witness. Therefore, this Court is not inclined to accept this witness as a truthful witness.

Submissions of Counsel

Learned President's Counsel for the Accused has advanced two main arguments both in his oral submissions as well as in the written submissions filed before this Court. They are under the following heads.

i. that the jurisdiction conferred upon this Court through Article 105 (3) of the Constitution must only be exercised in respect of matters that do not fall within section 55(1) of the Judicature Act,
ii. that the acts of the Accused even if it is true, do not amount to contempt of Court.

At the outset, this Court observes that section 39 of the Judicature Act states as follows.

" ..... Whenever any defendant or accused party shall have pleaded in any action, proceeding or matter brought in any Court of First Instance neither party shall afterwards be entitled to object to the jurisdiction of

such court, but such court shall be taken and held to have jurisdiction over such action, proceeding or matter:

Provided that where it shall appear in the course of the proceedings that the action, proceeding or matter was brought in a court having no jurisdiction intentionally and with previous knowledge of the want of jurisdiction of such court, the Judge shall be entitled at his discretion to refuse to proceed further with the same, and to declare the proceedings null and void. ....."

This Court is mindful that this section applies to the Courts of First Instance, which have been described in section 2 of the Judicature Act. However, one must bear in mind that this Court in this instance is not exercising its appellate jurisdiction but one of its original jurisdiction. Therefore, it stands to reason that any party raising an objection to the exercise of any original jurisdiction of any Court in respect of a matter pending before it, is required to raise such objection at the very commencement of the case.

Moreover, this Court notes that the learned President's Counsel on behalf of the Accused, indeed raised certain preliminary objections at the very commencement of the case. This Court at that time considered the said objections and decided to overrule them. The learned President's Counsel

for the Accused, at no stage during the inception of the recording of evidence or even thereafter, and until he concluded his final submissions, raised any concern before this Court on any basis relating to lack of jurisdiction for this Court to hear this case. Therefore, this argument advanced on behalf of the Accused must fail in limine.

Despite this position this Court proceeded to consider that submission and noted that the contents of Article 105 (3) of the Constitution is wide enough and indeed was meant to empower this Court to punish for contempt of other Courts and tribunal without any restriction. It is to that consideration that this Court would now refer.

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, in the body of Article 105 (3) as mentioned above, it would be convenient to reproduce Article 105 (1) which contained that paragraph also, 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."

The plain reading of the above Articles do not even indicate that the legislature has intended to restrict the power it has vested in the Court of Appeal to punish for contempt of any other Court, tribunal or institution

referred to in paragraph 1 (c) of Article 105 (3), whether committed in the presence of such Court or elsewhere. It is clear that the legislature had intended to vest the Court of Appeal with very wide powers in this regard and did not intend that this Court should exercise that power only in respect of matters that do not fall within section 55(1) of the Judicature Act as submitted by the learned President's Counsel for the Accused.

The case law relied upon by the learned President's Counsel, in particular Hendrick Appuhamy Vs. John Appuhamy[1] and Mansoor and another Vs. OIC Avissawella Police and another[2] are both cases in which the Court held that when a statute has created a specific remedy it is that specific procedure which should be followed and not the procedure set out in common law.

This Court observes that the said cases are not cases in which provisions in an ordinary law Vis a Vis the provisions of the Constitution came to be in conflict. Further, no such discussion or decision regarding that issue had been made in those cases. Hence, those cases have no application to the matter in hand where this Court has to decide whether the power vested

[1] 69 N L R 29.
[2] 1991 (2) S L R 75.

in this Court by virtue of Article 105 (3) has been restricted by the provisions in an ordinary law namely section 55 of the Judicature Act.

The Supreme Court in the case of Atapattu and others Vs. People's Bank and others[3], having considered the issue whether the powers vested under Article 140 of the Constitution could be diminished by a provision in the ordinary law stated as follows;

"..... The position is the same in regard to Article 140: the language used is broad enough to give the Court of Appeal authority to review, even on grounds excluded by the ouster clause.

But there is one difference between those Articles and Article 140. Article 140 (unlike Article 126) is "subject to the provisions of the Constitution". Is that enough to reverse the position, so as to make Article 140 subject to the written laws which Article 168(1) keeps in force? Apart from any other consideration, if it became necessary to decide which was to prevail – an ouster clause in an ordinary law or a Constitutional provision conferring writ jurisdiction on a Superior Court, "subject to the provisions of the Constitution" – I would unhesitatingly hold that the latter prevails, because the presumption must always be in favour of a jurisdiction which

[3] 1997 (1) S L R 208.

enhances the protection of the Rule of law, and against an ouster clause which tends to undermine it. ...."

The Supreme Court in that case held that the phrase "subject to the provisions of the Constitution" in Article 140 of the Constitution refers only to contrary provisions in the Constitution itself, and does not extend to subject Article 140 to the provisions of other written laws.

The Supreme Court in the case of Weragama V Eksath Lanka Wathu Kamkaru Samithiya[4] stated as follows; "However, the jurisdiction of the Court of Appeal under Article 138 is not an entrenched jurisdiction, because Article 138 provides that it is subject to the provisions "of any law"; hence it was always constitutionally permissible for that jurisdiction to be reduced or transferred by ordinary law (of course, to a body entitled to exercise judicial power). ..... "

As has been stated by the Supreme Court in the above judgments, where the Constitution contemplated that its provisions should be subjected to the provisions of ordinary law it has specified it in terms such as "subject to any law" like that appears in Article 138. However, Article 105 (3) does not have any such reference which would subject it either to any other law or even to the provisions of the Constitution. Thus, the jurisdiction of the

[4] 1984 (1) Sri. L.R. 293.

Court of Appeal under Article 105 (3) is an entrenched jurisdiction. It cannot therefore be diminished by any other provision of law. Thus, the power that Article 105 (3) vests in this Court cannot and should not be restricted by the provisions of the Judicature Act.

Therefore, this court rejects the said argument advanced by the learned President's Counsel for the Accused.

It is the submission[5] of the learned President's Counsel for the Accused that it must be proved that the Accused has committed either,

i. an act calculated to bring a Court or a judge of a Court into contempt or to lower his authority or to scandalize the Court or judge, or
ii. an act calculated to obstruct or interfere with due course of justice for the lawful process of the Court.

It is the position of the Accused that he spoke in Court addressing the Magistrate with the implied consent of the Magistrate. However, it is not the position of the Magistrate both according to the record maintained by

[5] Page 10 of the written submissions filed on behalf of the Accused Respondent.

him and according to his evidence. The other witnesses called by the learned SDSG have corroborated the position of the Magistrate.

As has been stated before in this judgment, as per section 795 of the Civil Procedure Code this Court is entitled to rely on the notes made by the Magistrate in this case which have been produced before this Court marked **P 1** and **P 2**. Despite that, the Magistrate himself has given evidence before this Court. The witnesses called on behalf of the Accused have categorically stated that there is no reason whatsoever for the Magistrate to fabricate a false case against the Accused. Indeed the evidence of the defence witnesses is that all the Buddhist monks were very pleased in the manner the Magistrate handled the proceedings of the relevant case in Court on that day.

This Court has initiated the instant proceedings against the Accused because the particular Magistrate has reported this matter to this Court urging this Court to take action against the Accused under Article 105 (3) of the Constitution. The notes made by the Magistrate both at the time of the incident and thereafter, show clearly that the speech made by the Accused is not an address made with permission of Court. The sequence of events that followed thereafter also clearly point to that fact. The above material do not at any stage cast even a semblance of a doubt regarding

the fact that the Accused had addressed Court without the consent of the Magistrate. Considering all the evidence in its totality, this Court has no difficulty at all in concluding that the Accused had made the utterances (referred to in the charges) in Court deliberately, on his own volition, without any permission either expressed or implied from the Magistrate.

In the case of Re Garumunige Thilakaratne[6], the Supreme Court had held that an intention to cause disrepute or disrespect to Court is irrelevant because all that is required is that the publication viewed objectively is calculated to obstruct or interfere with the due Course of justice.

Be that as it may, consideration of the evidence adduced before this Court in its totality, shows the presence of overwhelming evidence that the conduct of the Accused before the Magistrate had been with the deliberate intention on his part to intimidate the Magistrate in order to obtain a desired order. This Court would discuss this aspect in more detail in the following paragraphs of this judgment.

Accused is not a party to the relevant proceedings. He does not have any locus standi in Court in the relevant case or for that matter in any other case in that Court. On his own admission, he has come to Court in support of one party namely, the party that stood as suspects in that case. This

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[6] 1991 1SLR 134.

was in his personal capacity. He had come to Court in the expectation that the Magistrate would pronounce an order in favour of the party he was in support of, on that day. Thus, it is proved beyond reasonable doubt that despite not being a party in the relevant proceedings or in any other proceedings in that Court, the Accused intentionally came and sat in the Court in support of one party namely the suspects in that case. In other words, the presence of the Accused is not an accidental or random but a deliberate and a planned presence. The said presence was calculated to somehow obtain the order desired by him, namely bail for the suspects.

This fact has been proved beyond reasonable doubt as the Accused himself had admitted that he made it clear to the Magistrate that the Magistrate can place him in remand instead of the suspects in that case. He had also stated that he had come prepared for that.

A prominent feature, which is not in dispute, in this case is the fact that the Accused had stood up and addressed the Magistrate after the Magistrate had refused to enlarge the suspects on bail. This address had been made after the conclusion of that case with an order refusing to enlarge the suspects on bail, and after the Magistrate had called the next case in the role before Court. Therefore, it is clear that the proceedings before Court in the relevant case had been concluded with the order of

remand in place, when the Accused had started addressing Court to insist that the Magistrate should reverse the order and pronounce the order, which the Accused had desired. This Court has already held that the said address by the Accused has been made without expressed or implied permission of Court. The address by the Accused had been in high tone and had contained abusive, offensive and commanding language.

It would be relevant for this Court to consider next, the purpose or the circumstances in which the Accused had uttered those words. The Accused himself had admitted in his evidence that he wanted the Magistrate to somehow enlarge the suspect intelligence officers on bail. This is even at the cost of placing the Accused in remand instead of the relevant suspects in that case. Thus, it is clear that the end result the Accused had attempted to achieve is to somehow force the Magistrate to enlarge the suspects in that case on bail. This is the order he had desired.

This Court needs to reiterate at this stage also that the Magistrate had already concluded the proceedings of that case for that day with an order being made to place the suspects in remand. Therefore, what the Accused had attempted through his utterances and conduct before Court is to force the Magistrate by intimidating him, to reverse the already pronounced order of the Court.

Accused in his evidence had admitted that he is aware that only the lawyers can make submissions in Court. Despite that knowledge, he has chosen to stand up and make those utterances to the judge after the pronouncement of the order, with the intention of forcing the Magistrate to reverse the order. That is why the Accused had carefully chosen the words "... මේක සුද්දගේ නීතිය. මේක අපි පිළිගන්නේ නෑ මේ නිසා මේ රණවිරුවන්ට ඇප ලබා දෙන්න". It is to be borne in mind that apart from the evidence of witnesses called by the learned SDSG, the Accused himself has also admitted making that statement to Court. As has been said before, these utterances have been made by the Accused without expressed or implied permission of Court. These words have been uttered in a tone, which was high enough even to be heard by those waiting away from the Courtroom.

The language used by the Accused is not one acceptable in Court. It is an offensive language. When considering these utterances in the light of all the other sentences uttered by the Accused such as "'"... මේක සුද්දගේ නීතිය. මේක අපි පිළිගන්නේ නෑ...." , "...නපුංසක රජයේ නීතිඥයා ඉදගනින්" "... මේ වගේ රාජ ද්‍රෝහී නිලධාරීන්, රාජ ද්‍රෝහීන්ව නිදහස් කරලා, කොටී නිදහස් කරලා රණවිරුවෝ ඇතුලට දානවා..." "... අපිට මේ රජයේ නීතිඥවරුන්ගේ ඒවා අහන්න කිසිම වැඩක් නැහැ. ඔවුන් නපුංසකයින් ..." "...

නීතිපතිතුමාගේ නපුංසකයින් ....", this Court can conclude beyond reasonable doubt that the Accused had intended to intimidate the Magistrate.

When the Magistrate had warned the Accused not to obstruct the proceedings of Court, the Accused had made the following statement to the Magistrate;

" ... ඔව් අපි ඒකට කොහොමත් සුදානම් වෙලා ආවේ. අපිව රිමාන්ඩ් කරන්න. අපිව රිමාන්ඩ් කරලා ඒ වෙනුවට දැනට රිමාන්ඩ් කරලා ඉන්න රණවිරුවෝ හය දෙනා මුදා හරින්න. ඒ වෙනුවට මා ඇතුළු පිරිස වුනත් රක්ෂිත බන්ධනාගාරගත වෙන්න සුදානම්. ...."

This also shows clearly that the Accused had commanded the Magistrate to somehow release the suspects on bail forthwith.

When the Magistrate had warned the Accused (when he was making utterances) the other lawyers, namely the Senior State Counsel Mr. Dileepa Peiris and Mr Upul Kumarapperuma had rushed back to open Court. This is upon being heard that the Accused was making some utterances in Court.

It was thereafter that the lawyers had started addressing Court in order to strengthen the Magistrate and to persuade him to take legal action against the Accused for such behaviour.

It is significant to note that both Senior State Counsel Mr. Dileepa Pieris and Mr. Upul Kumarapperuma Attorney at law had rushed back to open Court upon hearing that the Accused was making some utterances in Court. This was with a view of assisting the Magistrate who had been in a difficult situation at that time. Both of them were otherwise getting ready to leave the court premises at that time as their work had become over. It is at that stage that the Accused had referred to Mr. Dileepa Peiris as an impotent State Counsel in abusive language and directed him to sit ("...නපුංසක රජයේ නීතිඥයා ඉදගනින්").

It is to be born in mind that the Accused had chosen on his own volition to abuse the Senior Sate Counsel who had volunteered to appear to assist the Magistrate who was facing a difficult situation. Apart from that, both Senior State Counsel Mr. Dileepa Pieris and Mr. Upul Kumarapperuma Attorney at law were counsel who appeared in the relevant case. The sole reason for the behaviour of the Accused at that time is the Magistrate's refusal to enlarge the suspects on bail (not getting the desired order in his favour).

The address of the Accused to the Magistrate was not in the form of a plea. The address was coercive and aimed at intimidating the Magistrate to secure bail for the suspects of that case by getting the Magistrate to reverse the order he had earlier made. In these circumstances, it is not difficult at all for this Court to conclude that the Accused had deliberately made the said statement to lower the authority of the Court and to obstruct the due course of justice taking place in Court.

In this instance also, perusal of the evidence of the Magistrate and the other witnesses as a whole shows clearly that the Magistrate's words at that time had been to attempt to warn the Accused and silence him at that time itself. However, the Accused had not heeded to the warnings by the Magistrate. He had instead proceeded to abuse the Senior State Counsel also.

The utterances by the Accused that the laws made by foreigners must be defied is clearly to bring the authority of Court to degrade the honour and authority of Court and a refusal to accept the authority of Court. Whether it is foreign made or locally made it is the prevailing law that the Courts have to apply. The Courts will administer justice according to such law irrespective of their genesis. Therefore the said utterance of the Accused that the laws made by foreigners must be defied is a clear indication that

any order made by Court as per such laws must also be defied. It is clear that the said reference was to the law under which the Magistrate made that order.

It must not be forgotten that the Accused made such utterances when the Magistrate did not give the order desired by the Accused. This utterance must be considered in the light of all the utterances made by the Accused. Each utterance of the Accused must not be considered separately.

Having considered all the material before Court, this Court concludes that the ingredients of all the charges framed against the Accused have been proved beyond reasonable doubt. This Court therefore concludes that all charges have been proved beyond reasonable doubt and that the conduct of the Accused before the Magistrate is a contemptuous conduct, which calls for punishment in terms of Article 105 (3) of the constitution. Thus, this Court finds the presumption made by this Court at the inception about the innocence of the Accused now stands rebutted beyond reasonable doubt.

For the foregoing reasons, this Court finds the Accused guilty of all the charges (1st to 4th counts) in the charge sheet. Therefore, this Court convicts the Accused on all four counts of the charge sheet.

Sentence

Considering all the evidence in its totality, this Court has held that the Accused had made the utterances (referred to in the charges) in Court deliberately, on his own volition, without any permission either expressed or implied from the Magistrate. There is overwhelming evidence before this Court, which has proved beyond reasonable doubt that the conduct of the Accused before the Magistrate had been with the deliberate intention to intimidate the Magistrate in order to obtain an order he had desired. The presence of the Accused is not an accidental or random but a deliberate and a planned presence calculated to somehow obtain the order desired by him, namely bail for the suspects. Accused had stood up and addressed the Magistrate after the Magistrate had refused to enlarge the suspects on bail and after the Magistrate had called the next case.

Both Senior State Counsel Mr. Dileepa Pieris and Mr. Upul Kumarapperuma Attorney at law had rushed back to open Court to assist the Magistrate who had been in a difficult situation. It was then that the Accused had referred to Mr. Dileepa Peiris as an impotent State Counsel in abusive language and directed him to sit thereby depriving the Magistrate of their assistance at that difficult moment.

5. The Accused has not tendered any apology to Court either in the Magistrate's Court or in this Court. Instead, he has taken a high ground that his actions were well within law. This is despite having addressed the Magistrate with a view to intimidate him to secure bail for the suspects of that case. What he was trying to do was to force the Magistrate to reverse the order he had earlier made. As has been stated before, the Accused takes up the position that this does not amount to contempt. He appears to be thinking that this is not even a matter for regret.

The legislature had intended to vest the Court of Appeal with wide powers to punish for contempt of other Courts and tribunal. Thus, it is the fervent duty of this Court to ensure that all Courts and tribunal of this country are free from all forms of intimidations and undue influences to enable their smooth functioning towards administering justice according to law in the country. In these circumstances, this Court takes the contemptuous actions by the Accused very seriously. They cannot be condoned by any yardstick. Considering all the circumstances, this Court imposes following sentences on the Accused;

Count 1:

Four years Rigorous Imprisonment,

Count 2:

Four years Rigorous Imprisonment,

Count 3:

Six years Rigorous Imprisonment,

Count 4:

Five years Rigorous Imprisonment,

This Court further directs that all the above sentences should run concurrently.

PRESIDENT OF THE COURT OF APPEAL

A.L Shiran Gooneratne J

I agree,

JUDGE OF THE COURT OF APPEAL