

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

Dr. Sena Yaddehige,
Level 22,
Crescat Residencies,
Colombo 3.
Petitioner

CASE NO: CA/WRIT/417/2017

Vs.

Securities and Exchange
Commission of Sri Lanka,
Level 28 and 29,
East Tower,
World Trade Center,
Echelon Square,
Colombo 1.
And 11 Others
Respondents

Before: K.K. Wickramasinghe, J. (Acting P/CA)
Mahinda Samayawardhena, J.

Counsel: Romesh de Silva, P.C., with Chanaka de Silva
for the Petitioner.
Shaheeda Barrie, S.S.C., for the Respondents.

Decided on: 22.03.2019

Samayawardhena, J.

The petitioner filed this writ application on 08.12.2017 basically challenging the decision of the Securities and Exchange Commission of Sri Lanka to initiate legal proceedings against the petitioner under the Securities and Exchange Commission of Sri Lanka Act, No. 36 of 1987, as amended. However the application was supported only yesterday for interim relief and notice as adjusting the matter outside the Court was failed and *“the petitioner has received summons in MC Fort Case No. 12639/19 to appear before the said Court on the 28th March 2019 in respect of this matter.”*¹

As legal proceedings have now been initiated, the learned President’s Counsel for the petitioner supported for the interim relief preventing the Securities and Exchange Commission/learned Magistrate from proceeding with that case until final determination of this application. The learned Senior State Counsel for the Securities and Exchange Commission vehemently objects for granting interim relief and also notice being issued on the substantive application.

The principal argument of the learned Senior State Counsel is that no writ lies against the substantive reliefs sought for by the petitioner in the prayer to the petition.

Conversely, the argument of the learned President’s Counsel for the petitioner is mainly two-fold.

¹ Vide motion of the Attorney-at-Law of the petitioner dated 19.03.2019.

The pivotal argument is that the decision of the Securities and Exchange Commission not to compound the matter in terms of section 51(a) of the Securities and Exchange Commission Act is unreasonable and arbitrary and therefore shall be quashed by way of certiorari. I am unable to accept that the said decision P7 was taken arbitrarily as it has been reached after giving a hearing to the petitioner as stated in P7 itself.

Even after the filing of this application, it appears, another more serious attempt has been made by the petitioner to compound the matter without success. Learned Senior State Counsel in the course of her submission drew the attention of the Court to a letter dated 24.01.2018 sent to the petitioner in pursuant to that attempt and a letter dated 05.05.2018 received by the Commission from the petitioner in reply.

The petitioner concedes that compounding under the Act is “*in the discretion of the Commission.*”² According to section 51(a) of the Securities and Exchange Commission Act, “*The Commission may having regard to the circumstances in which the offence under this Act was committed, compound such offence*” subject to conditions. This Court is unaware of the full circumstances under which the offences are alleged to have been committed except what has been stated by the alleged offender himself in the petition.

On the other hand, whether this Court can, in the exercise of writ jurisdiction, delve into those factual and always disputed matters, is another question.

² Vide paragraph 66 of the Petition.

Can this Court compel the Commission to compound the matter? I think not. When that question was posed in the course of the submission, the learned President's Counsel stated that the petitioner seeks only to quash P7 whereby compounding was ruled out. In my view, even if that relief is granted, that will not solve the matter. If we stop at that, we are in limbo. I regret, I am not impressed by that argument.

The other argument of the learned President's Counsel is that P8 and P9 speak of the alleged violations of Colombo Stock Exchange Listing Rules, and those violations cannot, even if true, be considered as offences committed under the Securities and Exchange Commission Act, and therefore, P8 and P9 "*decisions and/or findings*"³ are void *ab initio*. Learned Senior State Counsel does not accept that argument. I think, for the present purposes, I do not need to rule on that matter.

In any event, P8 and P9 are Show Cause letters, and therefore constitute part of the investigation process. They are not final decisions. P8 and P9 have been sent to Show Cause before taking a final decision.

On the other hand, violation of Colombo Stock Exchange Listing Rules is not the only offence which is alleged to have been committed by the petitioner. The petitioner is, as seen from P4-P7, also suspected of Insider Trading. This is a different offence, and as seen from P7, was the one, the Securities and Exchange Commission was unwilling to compound. Insider Trading is,

³ Vide paragraph 50 of the Petition.

without doubt, an offence under the Securities and Exchange Commission Act.

For the aforesaid reasons, I am not inclined to grant the interim relief.

I understand that this is an important case. Hence there is no necessity to hurriedly decide the question whether or not Notice shall be issued. Yesterday, the learned counsel for both parties could not make their submissions fully due to time constraints. Therefore both parties can file their written submissions on the question whether Notice shall be issued on the substantive application on or before 15.05.2019 at the registry with a copy to the Attorney-at-Law of the opposite party. Reply submissions, if any, can be tendered on or before 29.05.2019.
Order: 21.06.2019

Judge of the Court of Appeal

K.K. Wickramasinghe, J. (Acting P/CA)

I agree.

Judge of the Court of Appeal