

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

*In the matter of Contempt of Court in terms
of Article 105(3) of the Constitution.*

Court of Appeal No:

V Y Sabaratnam

CA/COC/0009/2019

COMPLAINANT

Vs.

Court of Appeal Case No:

CA/RTI/REV/02/2018

1. Ms. Ruwani Dharmawardena,
Attorney-at-Law. The Information
Officer and Company Secretary.
Sri Lanka Insurance Corporation
Ltd,
No 21 Vauxhall Street,
Colombo 02

2. Mr. K A Vimalenthirarajah,
Designated Officer and Chairman,
Sri Lanka Insurance Corporation
Ltd,
No 21 Vauxhall Street,
Colombo 02

DEFENDANTS

Before : K Priyantha Fernando, J. (P.C/A.)
: Sampath B Abayakoon, J.

Counsel : Complainant appeared in person
: S A Parathalingam, P.C., with N R Sivendran and
Renuka Udumulla for the Defendants

Order on : 14.12.2021

Sampath B Abayakoon, J.

Order on issuing summons to the defendants

This is an application by the complainant V. Y. Sabaratnam in terms of Article 105(3) of the constitution seeking this Court's indulgence to charge the defendants mentioned in his application for contempt of Court.

The complainant appearing in person has filed his complaint giving details of his complaint against the two defendants and has sought reliefs as prayed for in his application. The application has been supported by an affidavit and other documents relating to his complaint. The defendants appearing through their Counsel have filed objections for the issuing of summons against them. Subsequently, both parties have filed written submission for the consideration of the Court.

When this matter was supported before this Court on 25.10.2021 parties agreed for this Court to make an order on the preliminary issue as to whether summons should be issued against the defendant or not, based on the written submissions filed by the parties.

The complainant has come before this Court on the basis that the defendant violated the order entered by this Court in case No- CA/RTI/REV/2/2018, which was decided on 12th July 2019 (document marked A1).

The above was an appeal preferred by the Sri Lanka Insurance Corporation against a determination made by the Right to Information Commission of Sri Lanka. However, on the above-mentioned day, the appellant has withdrawn the appeal and had agreed to provide the information sought by the complainant, namely, V. Y. Sabarthnam by his letter dated 17.12.2017 (document marked A3).

It is the complaint of the complainant that the information sought and agreed to be made available was not provided to him. He has produced, marked as A8, the purported information provided and has initiated proceedings under the provisions of the Constitution on the basis of Contempt of Court.

The learned Counsel for the defendant in the preliminary objections tendered has taken up several technical objections as to the maintainability of the complaint and has sought the dismissal of the complaint *in limine*, on the basis that there was no contempt and that they have complied with the judgment of the Court of Appeal.

However, I find no basis to agree with the above-mentioned objections as they are of highly technical in nature. The complainant has filed an affidavit in support of his complaint. Being a layman appearing in person, he has named the relevant parties in the caption of the complaint. The complainant has tendered copies of the documents relied on by him, but none of the documents relevant to this application are contested documents as per the objections filed by the learned Counsel for the defendant.

This Court is of the view that this kind of trivial technical objections should not be allowed to stand in the way of a litigant who is seeking redress from this Court, without considering the merits of the application on a matter which is important to him, unless they are matters that go into the root of the action.

A complainant is only required to tender the summons and the chargesheet if and when the Court decides to proceed with the application of a complainant in terms of Article 105 (3) of the constitution. Therefore, it is not a pre-requisite that the summons and the chargesheet shall be filed along with the complaint.

Upon consideration of the complaint and the supporting documents, this Court is of the view that the complainant has adduced sufficient *prima facie* grounds for this Court to initiate contempt of Court proceedings against the defendants. Hence, this Court directs the complainant to file summons, the charge, and the list of witnesses and productions relied on by him, to be served on the defendants. The Registrar of the Court is directed to take necessary steps to serve the summons along with the chargesheet on the defendant.

When preparing the summons, the complainant should follow Form-1 of the second schedule of the Code of Criminal Procedure Act No. 15 of 1979, where the form of the summons to a defendant has been prescribed, with necessary modifications to suit the Court of Appeal. The complainant should also tender the chargesheet with the necessary information that should be included in a charge as provided for in the Code of Criminal Procedure Act.

Both the summons and the charge sheets should be sent under the hand of the Registrar of the Court of Appeal.

Judge of the Court of Appeal

K Priyantha Fernando, J. (P.C./A.)

I agree.

President of the Court of Appeal