

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

*In the matter of an application for mandates in
the nature of Writs of Certiorari and Prohibition
under and in terms of Article 140 of the
Constitution of the Democratic Socialist Republic
of Sri Lanka.*

CA/WRIT/313/2021

C.J. Ranasinghe
Leading Seaman, XS45538
Sri Lanka Naval Ship *Uththara*,
Kankesanthurai,
Sri Lanka Navy.

Petitioner

Vs.

1. Commander of Sri Lanka Navy
Sri Lanka Navy Headquarters,
Sri Lanka Navy.

2. Chief of Staff
Sri Lanka Navy Headquarters,
Sri Lanka Navy.

3. Captain (ASW) M.A.G. Priyantha
Commanding Officer,
Sri Lanka Naval Ship *Uththara*,
Kankesanthurai.

4. A.P.K. Subasinghe,
Commander (A.S.W.) NRX 1725,
Prosecuting Officer,
Sri Lanka Naval Ship *Uththara*,
Kankesanthurai.

5. B.K.S.E. Rodrigo
Lieutenant Commander, NRX 2729
Defense Office [before Summary Trial]
Sri Lanka Naval Ship *Uththara*,
Kankasanthurai.

Respondents

Before : Sobhitha Rajakaruna J.
Dhammika Ganepola J.

Counsel : Shavindra Fernando PC with Mirthula Skandarajah for the Petitioner
Amasara Gajadeera, SC for the Respondents

Supported on : 20.01.2022

Written submissions : tendered on behalf of the Petitioner -14.03.2022 & 04.04.2022
tendered on behalf of the Respondents-28.03.2022

Decided on : 07.04.2022

Sobhitha Rajakaruna J.

The Petitioner who was attached to the regular force of the Sri Lanka Navy as a seaman seeks in this application for a mandate in the nature of a writ of Certiorari quashing the conviction issued against him after a Summary Trial on 09.03.2021 and also quashing the subsequent sentence imposed, which are reflected in 'P7'.

A Board of Inquiry consisting of three officers attached to the Naval Provost Branch of the Sri Lanka Navy inquired in to the charges against the Petitioner and two other sailors in relation to the incident that them being caught with narcotic substances (Cannabis) and/or foreign cigarettes in their possession. The Petitioner states that no such narcotic substances were found in his possession. Upon the recommendations made as a consequence to the findings of the said Board of Inquiry, Summary Trial proceedings were instituted against the Petitioner on 09.03.2021.

The Petitioner's contention is that he has 'pleaded guilty' on the charge pertaining to the sale of foreign cigarettes and he has 'pleaded not guilty' pertaining to the other offence on consumption of narcotic substances. Furthermore, the Petitioner claims that he was not served with a charge sheet and was not given an opportunity to choose the defending officer or the Counsel appearing on his behalf. The Petitioner states that he has been subsequently found guilty of the offence of consuming narcotic substances upon which he had categorically 'pleaded not guilty'.

The punishment imposed against the Petitioner was to discharge him from Sri Lanka Navy. The Petitioner after being served with the said punishment submitted an appeal against the sentence to His Excellency the President under section 122 of the Navy Act.

Accordingly, the main question, prima facie, arises in this application for judicial review is whether the decision making process of the authorities at the Summary Trial has become flawed by allegedly recording the Petitioner's 'plea of guilt' to the charge for which the Petitioner has 'pleaded not guilty'. In such circumstances, this Court on 02.08.2021 decided to issue notice of this application on the Respondents and directed the 1st Respondent to stay the execution of the sentence imposed against the Petitioner until the following date of the case.

When this matter was mentioned on 20.01.2022 the learned President's Counsel for the Petitioner moved that an interim relief be issued as prayed for in the prayer of the Petition until the final determination of this case based on the grounds that the Respondents are on the verge of taking steps to execute the aforesaid sentence imposed against the Petitioner. However, the learned State Counsel for the Respondents intimated that His Excellency the President, on a date after filing the instant application in this Court, had made an order affirming the sentence imposed on the Petitioner. Hence, she pointed out that in terms of Article 35(1) of the Constitution, this Court is not competent to exercise writ jurisdiction in the instant application and reverse a conviction in a situation where the President has tendered a determination under section 122 of the Navy Act.

As oppose to the said argument, the learned President's Counsel submits that the Petitioner in this application seeks only to get the said conviction quashed by this Court and in the event the conviction is quashed, the relevant sentence imposed against the Petitioner cannot stand. The learned State counsel further argues that it would be futile to grant a relief if it leaves the final decision intact.

In light of the above, I am of the view that the following questions are arising out of the submissions made by the learned President's Counsel and the learned State Counsel;

- i. whether there is any procedural error as highlighted by the Petitioner has been made during the proceedings of the Summary Trial against the Petitioner;
- ii. whether the rule of natural justice has been breached by not allowing the Petitioner to be represented at the said trial by an appropriate defending officer or a Counsel;
- iii. whether this Court is competent to exercise writ jurisdiction upon a conviction when His Excellency the President has exercised his powers under section 122 of the Navy Act and also whether the President has actually exercised his powers under the said section 122 in relation to the Petitioner;
- iv. whether the instant application would be futile even if the said conviction is quashed by this Court since the affirmation of the relevant sentence by His Excellency the President remains unexpunged.

The Respondents assert that this Court is suffering from patent and total want of jurisdiction in view of the said Article 35 of the Constitution which confers constitutional immunity on President from suit. It is observed that the Petitioner is not challenging any decision of His Excellency the President and further, the Petitioner has not made His Excellency the President a party in the instant application. In that context I am of the view that there is no necessity to examine at this stage whether the proper course of action for the Petitioner was to file a Fundamental Rights application in Supreme Court against the Attorney General in terms of the proviso to Article 35(1) of the Constitution.

In such a backdrop, I need to draw my attention to the assertions of the Petitioner that His Excellency the President cannot inquire in to the correctness and legality of a conviction given either by a Court Martial or at a Summary Trial. The learned President's Counsel for the Petitioner argues that the President when considering appeals against sentences must take in to account as to whether the sentence was imposed after a proper conviction according to Law.

On an overall conspectus of these submissions, I take the view that this Court should fully consider the preliminary objection raised by the Respondents on Article 35 of the Constitution together with the facts and circumstances of this case on affidavits at a final

hearing. The writ is of a supervisory nature and the preliminary objection raised in this application can be considered at the merit stage. It must be noted that this Court has already arrived at a decision that the Petitioner had satisfied the minimum threshold requirement which warrants this Court to issue formal notice of this application on the Respondents. It is apparent that His Excellency the President has allegedly affirmed the said sentence after this Court made such decision.

Therefore, I am of the view that the timeline for pleadings such as statement of objections should be nominated and thereafter this matter should be fixed for hearing.

The learned President's Counsel for the Petitioner contends that this application would be rendered nugatory unless an interim relief as prayed for in the prayer of the Petition is being issued. Having considered such submissions, this Court directs the 1st Respondent not to take any further steps in regard to the relevant sentence imposed against the Petitioner, until the date of the argument of this matter.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal