

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

In the matter of an application for
Contempt of Court under Section 12(1) C
(i) of the Press Council Act.

Sri Lanka Press Council

**Contempt of Court –
COC/0007/2018**

**Complainant
Vs.**

K.T.Priyantha Jayalal
Chief Editor of Ethalaya Magazine

Respondent

Before: N. Bandula Karunaratna J.

&

R. Gurusinghe J.

Counsel: Azard Navavi DSG for the Complainant

Upul Jayasuriya, PC with Sandamal Rajapaksha, AAL.

Written Submissions: By the Complainant - Not filed

By the Respondent - Not filed

Argued on : 06.04.2022

Decided on : 23.05.2022.

N. Bandula Karunaratna J.

Sri Lanka Press Council has received 11 complaints since 2013 against the respondent "Eethalaya" Magazine / News Paper since it has published statements, photographs or other matters which are untrue, distorted, and defamatory to the complainants. Those who complained against the "Eethalaya" Magazine / News Paper are as follows;

1. W.K.D.T. Waragoda
2. A. Waidyalankara
3. D.H.N. Weerasekera
4. Lalith A. Jayasinghe

5. Shammi Arjuna Kumaratne
6. Methila Manodya Kumaratne
7. D.R.I. Gunathilaka
8. Dharma Sri Bandara Ekanayake
9. M.W.K. Karunaratne
10. D.E.M. Hapuarachchi
11. D.S. Padmakulasooriya

In terms of Section 9(1) of the Sri Lanka Press Council Act, the Press Council initiated inquiries against the said News Paper naming it as the Respondent in all the above complaints.

Summons were sent to the respondent to the address given in the paper to appear before the Press Council for the said inquiries and found that all the addresses appeared in the said paper are false. Respondent has deliberately avoided accepting summons by giving bogus addresses as its Registered Office.

The complainant has informed the Attorney General that all the inquiries initiated since 2013 are stalled due to the respondent's wilful refusal to appear before the Press Council and by doing so it has violated Section 12 (i) (c) (i) of the Sri Lanka Press Council Law. The Council has determined that the respondent has thereby committed the offence of contempt against or in disrespect of the authority of the Council. The council had certified its determination that the said respondent has committed the offence of contempt within the meaning of the said term & in Section 12 (1) (c) (i) of the Act.

Section 12 (1) (c) (i) of the Press Council Act reads as follows;

"Where any person in the course of an inquiry being held by the Council under this Law fails without cause, which in the opinion of the Council is reasonable, to appear before the Council at the time and place mentioned in any summons issued by the Council,

... such person shall be guilty of the offence of contempt against or in disrespect of the authority of the Council.

Sri Lanka Press Council has written to the President, Court of Appeal on the 17.09.2018 indicating that they have enclosed the certificate of the determination made by the Sri Lanka Press Council in terms of sect 12 (2) of the Sri Lanka Press Council Act No:05 of 1973 and requested to consider the said certificate and make order in terms of Section 12 (3) of the Sri Lanka Press Council Act as no further proceedings could be held by the Press Council into all the 11 complaints made against the said "Eethalaya" Magazine / News Paper.

It is important to note that as in the Original Act No. 5 of 1973 the above certificate of the Sri Lanka Press Council has to be submitted to the Supreme Court and in the Act embodied in Chapter 378 in volume XIV of the Legislative Enactments, the above certificate has to be handed over to the Court of Appeal.

On 2.11.2018 this court had noticed the Attorney General assist Court on this matter of contempt against the respondent for failing to appear before the Council, violating section 12

(1) C (i) of the press Council Act. Several attempts made to serve notices of these contempt proceedings on the known address of the Respondent were futile.

According to the observations received by the Attorney General from the Sri Lanka Press Council, it was established that from 12.12.2013 to 17.2.2016 the Press Council had failed to serve proper notices to the Respondent.

Learned Deputy Solicitor General who appeared for the complainant says that on the advice of the Attorney General and with the assistance of the Criminal Investigation Division and Mirihana Police the Press Council served proper notices on the respondent on 9.8.2019. The publisher of the "Eethalaya" Magazine / News Paper attended High Court Kalutara for the Case No HC 62/1999 wherein he was accused of an offence.

It is the view of this court that as the proper notices have now been served on the respondent in respect of the instant complaint the Press Council could now proceed with the inquiry thereto. The learned DSG informs this court that it is the view of the Attorney General that the Respondent cannot be held up for contempt of the Press Council in respect of a matter, of which, he had not noticed at all and therefore this contempt proceedings cannot be maintained.

Thus, on behalf of the Attorney General, it was requested by the learned DSG, to make an appropriate order in this matter.

It is my view that as the proper notices have not been served on the respondent in respect of the instant complaint, the Press Council could not be able to proceed with the present contempt proceedings against the respondent. Therefore, the argument of the learned DSG cannot be ignored.

Considering the circumstances of the case we decide to dismiss this application as it cannot be maintained.

Application dismissed. No order for cost.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree.

Judge of the Court of Appeal