

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

**Court of Appeal
CA/COC No: 0015/2019**

In the matter of an application under and
in term of Article 105(3) of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

Shanthi Sriskandarasa
Member of Parliament,
Bharathi Nahar,
Yogapuram.

Petitioner

-Vs-

1. Rev. Galagodaaththe Gnanasara
Thero
No. 615,
Saddharma Rajatha Viharaya,
Nawala Road,
Rajagiriya.
2. Anuruddha Bandara Hakmana
Senior Superintendent of Police,
SP's office,
Mullaitivu.
3. Senadhipathi K.D. De Silva
Chief Inspector of Police (CI),
Head Quarters Inspector (HQI),
Mullaitivu,
Police Station,
Mullaitivu.

Respondents

Before: C.P. Kirtisinghe – J
Mayadunne Corea – J

Counsel: M. Sumanthiran, PC with J. Arulanathan and D. Moscranghe for the
Petitioner.

Maithree Gunarathna, PC with Ashan Nanayakkara, I. Senevirathne and
S. Marambe for the 1st Respondent.

Sudharshana De Silva, DSG as amicus curie.

Argued on: 22.07.2022

Decided On: 27.10.2022

C. P. Kirtisinghe – J

The Petitioner is making this application under and in terms of article 105 (3) of the constitution of the Democratic Socialist Republic of Sri Lanka praying this court to issue a rule on the 1st Respondent to show cause as to why he should not be punished for contempt of court, to issue a rule on the 2nd and 3rd Respondents directing them to show cause as to why they should not be punished for contempt of court, to issue summons on the Respondents, to charge the 1st, 2nd and 3rd Respondents for the offence of contempt of court under article 105 (3) of the constitution, to punish the three Respondents for the offence of contempt of court under article 105 (3) of the constitution.

The facts of the case can be briefly summarized as follows,

The Buddhist temple known as the “Gurukanda Raja Maha Viharaya” is situated in the precincts of the Hindu temple known as “Neeraviyady Pillayar Temple” and according to the Petitioner there is a dispute between the two parties in respect of the premises where the temple stands. The chief incumbent priest of the

aforesaid Buddhist temple passed away in Colombo and according to the Petitioner arrangements were made to bring his body to Mullaitivu to be cremated within the aforesaid premises in dispute. Thereafter, the 3rd Respondent the H.Q.I. of the Mullaitivu Police had filed a report in the Magistrates' Court of Mullaitivu and the learned Magistrate issued an interim order that the body of the deceased priest should not be buried or cremated until a final order is made on the following day. The Court issued notice on the new Viharadhipathi of the Buddhist temple to appear in court on the following day. On the following day – 23.09.2019 the new Viharadhipathi of the Buddhist Viharaya and the members of the present administrative body of the temple had appeared and represented by their Attorneys–a –Law and it has been submitted to court on their behalf that as an amicable settlement they are willing to perform the religious rites of the deceased and do the cremation near the beach close to the Army camp which is situated in front of the temple on the other side of the road. The Hindu Temple Authorities were agreeable to that. Thereafter the learned Magistrate had granted permission to the new Viharadhipathi and the administrative body of the Buddhist Viharaya to cremate the mortal remains of the deceased priest at that place as suggested and agreed upon by them. The learned Magistrate had made the following Order, “Court makes order that the body of the Rev. Colombe Methalankara Keerthi Himi Thero, Viharadhipathi of the Kurukanthai Raja Maha Vihara be cremated at the place stated by the Nayaru Kurukanthai Vihara.”

The learned Magistrate had further ordered thus,

“Therefore, I order that in terms of the undertaking given on behalf of the Buddhist Viharaya necessary permission be obtained from the Army and carry out the last rites without causing any breach of peace. Further as was said on behalf of the Viharaya about identifying the place I order the Headquarter Inspector and the Attorneys–at–Law for both parties to proceed to the said place

and identify correctly the place of cremation, and as was stated by the Petitioners, their Attorneys-at-Law, the place of cremation should be identified correctly and they should accompany their brother Attorneys-at-Law who appear on behalf of the Kurukanthai Raja Maha Vihara to the said place where cremation to take place and satisfy and confirm themselves the place of cremation.”

According to the proceedings of that day the new Viharadhipathi of the Kurukanthai Raja Maha Viharaya and its administrative body had appeared in court through their Attorneys-at-Law and the aforementioned undertaking had been given on behalf of them. Therefore, the Court order binds them.

Later on, the same day the matter had again come up before court by way of a motion and the Counsel for the administrative body of the Hindu Temple and the Pradeshiya Sabha had informed Court that steps are being taken to do the cremation at premises in dispute and the court had made an order directing the 2nd and 3rd Respondents to take steps to ensure that the cremation is conducted at the place as agreed upon by the parties. Later on, that same day the Petitioner had seen a group of Monks lead by the 1st Respondent taking the body of the deceased from the temple to the aforesaid premises in dispute. Thereafter the body of deceased priest was cremated at the premises in dispute in violation of the court order. The Petitioner states that the 2nd and 3rd Respondents did nothing to prevent the 1st Respondent from violating the aforesaid court order. Therefore, it is the case of the Petitioner that the 1st Respondent had violated the aforementioned court order and the 1st, 2nd and 3rd Respondents are guilty of the offence of contempt of court.

The aforementioned undertaking was given on behalf of the new Viharadhipathi of the Kurukanthai Raja Maha Viharaya and its administrative body while they were represented by their Attorneys-at-Law and the learned Magistrate made this order based upon that undertaking. Therefore, the new Viharadhipathi and the

members of the administrative body of the Viharaya are bound by that order. If they violate the order they can be charged for the offence of contempt of court. The question that has to be taken in to consideration is whether a third party is bound by that order. The applicable law of contempt is that all persons who know the existence of a court order and yet aid in violation of such order are liable to be punished for contempt of court whether or not they are parties to the action – Vide Borrie and Lowe’s “Law of Contempt” – 2nd edition page 403. In the case of **Cornel and Company Ltd Vs Mitsui Company Ltd and Tai Sei Corporation and others 2006 (2) Appellate Law Recorder page 50** Wigneshwaran – J followed that principle.

In the case of **Regent International Hotels Ltd Vs. Cyril Gardiner and others (1978-79-80) 1 SLR 278** Samarakoon – CJ held that section 665 of the Civil Procedure Code provides that an injunction directed against a company is binding on all its members and officers whose personal action it seeks to restrain. Samarakoon – CJ stated thus “When an injunction is obtained against a juristic person the parties who must obey it are those in control of the affairs of the juristic person.”

Although the administrative body of the Viharaya is not a juristic person the same principle can be applied to its members as well. As the administrative body of the Buddhist Temple had given an undertaking to court and the court had made an order against that body. The members of the administrative body of the Viharaya are bound by that court order. Therefore, if the 1st Respondent was a member of the administrative body of the Viharaya he is liable to obey that order and he is bound to do so. Even if he was not a member of the administrative body if he was aware of the existence of the court order, he is bound by it.

As observed by Wigneshwaran – J. in **Cornel and Company Ltd** case cited above “it must be noted that under our law there are no contempt of court

legislation specifically incorporated unlike in England and Australia. Therefore, under our law if a person accused of contempt is made aware of the matter for which he or she was being charged that would suffice – Vide – **Gunawardena Vs. O.I.C Kahawatta Police 1987 (1) SLR 125; Cornel and Company Ltd Vs Mitsui Company Ltd and Tai Sei Corporation and others 2006 (2) Appellate Law Recorder page 50.**”

The next question that has to be considered is that before issuing summons under and in terms of section 793 of the Civil Procedure Code in respect of contempt of court is it necessary for the court to be satisfied that an offence of contempt appears to have been committed. In the case of **Jayarathne Vs. Sirimavo Bandaranaike 69 NLR 184** H.N.G. Fernando – J. (as he then was) held that a rule nisi for contempt of court will not be issued unless there is available evidence which can lead the court to conclude that an offence of contempt appears to have been committed.

In the case of **Media Image Ltd Vs. Dissanayake (2006) 3 SLR 215** Wimalachandra – J. held as follows,

“Therefore, the Court, before issuing summons, must form an opinion as to whether sufficient grounds exist to issue summons under section 793 of the Civil Procedure Code. In order to form an opinion, the learned Judge may examine the affidavit and other documentary evidence placed before Court disclosing sufficient grounds upon which the contempt charge is framed.”

Justice Wimalachandra further held as follows,

“I am of the view that the proper test is to ascertain whether on the material before Court, Prima facie, there is sufficient ground on which it may be reasonably inferred that the offence as alleged in the complaint or plaint has been committed by the person who is accused of it.”

The Petitioner in her affidavit states that she witnessed a group of monks lead by the 1st Respondent take the body of the deceased priest from the temple to the premises in dispute and was cremated there. The Petitioner does not say that the 1st Respondent was a member of the administrative body of the Viharaya and there is no evidence to that effect. There is no evidence to show that the 1st Respondent had participated in the Court proceedings and he was present in Court when the undertaking was given and the Court order was pronounced. There is no evidence to show that the 1st Respondent had any knowledge of the Court order. The Petitioner does not say that the 1st Respondent was acting as an agent of the new Viharadhipathi. There is no evidence to show that the 1st Respondent had a close relationship with the temple and its governing body which can give rise to the presumption that the 1st Respondent was aware of the Court order. The Petitioner does not say so. The Petitioner does not say that the circumstances were such that it can be presumed that the 1st Respondent had knowledge of the Court order. Therefore, under those circumstances one cannot presume that the 1st Respondent had any knowledge of the Court order and there is no evidence to show that the 1st Respondent was a member of the governing body of the temple. Therefore, it is our view that the Petitioner has failed to disclose a cause of action against the 1st Respondent. Merely leading a group of monks and taking the body of the deceased from the temple to the place where it was cremated and cremating there per se does not constitute an act of contempt in the absence of any knowledge of the Court order. Although the petition discloses a cause of action against the 2nd and 3rd Respondents they have been discharged from the proceedings on the application of the Petitioner.

For the aforementioned reasons we refuse to issue summons against the 1st Respondent on the charge of contempt of court.

Judge of Court of Appeal

Mayadunne Corea – J.

I Agree

Judge of Court of Appeal