

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 of the
Democratic Socialist Republic of Sri Lanka.*

Court of Appeal No:

CA/COC/0001/23

Attorney-at-law Jayathunga Patabandige

Susil Priyantha Jayathunga

No. 294/A,

Kotupathgoda Road,

Western Kumbuka,

Gonapola.

COMPLAINANT

Vs.

President's Counsel Romesh De Silva,

No 79/14,

Dr. C.W.W. Kannangara Mawatha,

Colombo 07.

DEFENDANT

Before : Sampath B. Abayakoon, J.

: P. Kumararatnam, J.

Counsel : The complainant supported the matter in person.

Supported on : 10.02.2023

Order on : 09.03.2023

Sampath B. Abayakoon, J.

The complainant, who is also an Attorney-at Law, filed this application supported by a petition and an affidavit. He has filed this application in terms of Article 105 (3) of The Constitution, urging the Court of Appeal to punish the defendant mentioned in the petition for the offence of Contempt of Court. Along with the petition and the affidavit, the complainant tendered a draft charge sheet containing five charges that he intends to pursue against the defendant mentioned. A draft summons also has been tendered.

This matter was supported before this Court by the complainant in person. Having heard the complainant and having scrutinized the petition, affidavit, and the supporting documents, this Order is pronounced as to whether the summons should be issued against the defendant mentioned.

As the complainant has filed this application stating that this is an application in terms of Article 105 (3) of the Constitution, read with Part IX, Chapter LXV, Sections 792 to 800 of the Civil Procedure Code, I would like to comment on the appropriateness of the application in terms of Civil Procedure Code, before considering any other merits of the application.

It appears that by mentioning he is filing this application in terms of the Civil Procedure Code; the complainant is portraying that this is a matter where the procedure laid down in the Civil Procedure Code in relation to the matters in respect of Contempt of Court should be the procedure that needs to be followed.

It is correct if one says that the only statute that has laid down a specific procedure in respect of Contempt of Court is the Civil Procedure Code.

However, the Preamble of the Civil Procedure Code is clear that it is a statute that has been enacted by the legislature in relation to the procedure as to Civil Courts.

The interpretation given to the term “Civil Court” in section 05 of the Civil Procedure Code, which is the interpretation section is that the “Civil Court” means a court in which civil actions may be brought. The Code has dedicated a separate part in relation to the Contempt of Court matters that may arise in civil actions before the Civil Courts.

The power of the Court of Appeal to punish for Contempt of Court has been granted by The Constitution, which is the supreme law of the country. I am of the view that any procedure laid down in regard to the procedure that should be followed by inferior Courts can have no binding effect of the procedure that should be followed by this Court in a matter of Contempt of Court, although such procedure can be used as guidance when relevant, since no rules have been formulated as yet in that regard.

The purpose of Contempt of Court provision in Article 105 (3) of The Constitution is to punish for Contempt of Court whether committed in the presence of the Supreme Court or the Court of Appeal or elsewhere.

The relevant Article 105 (3) reads as follows.

Article 105 (3). The Supreme Court of the Republic of Sri Lanka and the Court of Appeal of the Republic of Sri Lanka shall each be a superior Court of record and shall have all the powers of such Court including the power to punish for contempt of itself, whether committed in the Court itself or elsewhere, with imprisonment or fine or both as the Court may deem fit. The power of the Court of Appeal

shall include the power to punish for contempt of any other Court, tribunal or institution referred to in paragraph (1) (c) of the Article, whether committed in the presence of such Court or elsewhere.

Provided that the proceeding provisions of the Article shall not prejudice or affect the rights now or hereinafter vested by any law in such other Court, tribunal or institution to punish for contempt of itself.

It is clear that the punishment for Contempt of Court is either imprisonment or fine or both, as the Court may deem fit. Therefore, I am of the view that the procedure that should be followed is the criminal procedure as provided in the Code of Criminal Procedure Act No 15 of 1979 with necessary adaptations, and not the civil procedure.

In the case of **Croos and Another Vs. Dabrera, (1999) 1 SLR 205** it was held that;

*“The offence of contempt of court under our law is a criminal charge and the burden of proof is that of, proof beyond reasonable doubt. Even if contempt is not always a crime, it bears a criminal character and therefore, it must be satisfactorily proved. Lord Denning, in **Re Bramblewale (1969) 1 All ER 1012** stated that a contempt of court must be satisfactorily proven. To use all the time on a phrase, it must be proven beyond reasonable doubt.”*

Since the complaint is on the basis that the contempt was committed within the Court of Appeal itself, it becomes necessary to consider whether the alleged acts by the defendant mentioned can be considered as matters of Contempt of Court within its meaning.

The charge of Contempt of Court was defined by Goodman, J. in the case of **Regina Vs. Kopyto (1987) 24 O.A.C. 81 (CA)** in the following manner;

“The scandalizing of the Court, in that the words or the acts are likely to bring the Court and Judges into disrepute.”

With the above definition in mind, I will now proceed to consider the five draft charges presented by the complainant in order to determine whether they constitute sufficient *prima facie* basis to issue summons against the defendant mentioned.

The first draft charge relates to another Contempt of Court case initiated by the complainant before this Court, namely, case number COC/0011/2022. The complainant alleges that in the said case, the defendant being the father of the 2nd defendant named in that case, has represented and appeared for him knowing the personal connection he has, and with the intention of influencing the minds of the Judges of the Court of Appeal.

It has been alleged that while appearing so, with malice and anguish towards the complainant, the defendant mentioned, objected for the complainant supporting the matter while wearing the cloak of an Attorney-at-law, and also by occupying the bar table. It was his allegation that the defendant mentioned made false representations and misdirected their Lordships of the Court of Appeal, and thereby committed the offence of Contempt of Court.

In this regard, I am unable to find any reason as to why a father, if he is an Attorney-at-law qualified in practicing law, should not appear in a case where his son or, any member of his family for that matter, being a party in a litigation.

If a person chooses to represent himself in Court, such a person is entitled to do so as the law provides.

It appears that the complainant has filed a case of Contempt of Court against several persons including the son of the defendant mentioned. In supporting his application in person, as stated in his petition and affidavit, he has appeared before the Court of Appeal in the attire of an Attorney-at-law wearing the cloak as required, and has supported the matter while occupying the bar table reserved for Attorney's-at-law for the purposes of their professional duties.

I find nothing wrong in anyone objecting to the way the complainant has supported his application. He has been supporting it in his own capacity as a private citizen and not as an Attorney-at-law representing another person. It is my considered view that he should come to the Court not in the capacity of an Attorney-at-law, although he may be qualified in practising law, but as an ordinary citizen, dressed in a suitable attire. He should not sit in the bar table and make his submission from there, as it would send a wrong signal to the opposing party of the litigation or to any onlooker to believe that he is in a privileged position than them.

Although some Judges allow such practice as a matter of courtesy toward the legal profession, I am of the view that it is a practice that should not be allowed or followed. Any legal practitioner should have the presence of mind to understand the detrimental effect of such behaviour would have in the minds of the masses in relation to the impartiality of the judiciary.

It is my considered view that if a complainant or any party to a litigation intends to represent himself in a Court of law, he is also entitled to have sufficient facilities for him to do so. Towards that, if the party seeks such a facility, the Court should provide them in the form of a space for him to keep the material he intends to use in supporting his application, a table and a chair or similar facility for him to be comfortable in Court. However, it is also my view that it is the person who seeks such a facility should ask for it, giving advanced notice of his request to relevant Court officials.

I am in no position to agree with the complainant's contention that the defendant mentioned, misled the Judges of the Court of Appeal in this regard.

Hence, I find no reason to conclude that the complainant has established a *prime facie* basis to issue summons against the defendant mentioned in relation to the first draft charge.

In the second draft charge, the complainant is complaining that while making submissions, in relation to the earlier-mentioned Contempt of Court application

filed by him, the defendant stated matters unrelated to the application and also intentionally assassinated his character, and thereby led the minds of their Lordships of the Court of Appeal in a different direction and intentionally misdirected and deceived the Court.

Although one may perceive submissions of an opposing Counsel as not relevant, which is a subjective thing, I am not in a position to agree that it amounts to Contempt of Court. I am unable to agree the instances where the complainant points out in his petition as character assassination, as such, when submitted by an opposing Counsel in a Court of law. Therefore, I do not find any basis to issue summons against the defendant mentioned in relation to the 2nd draft charge preferred as well.

The third draft charge presented by the complainant is on the basis that in the same earlier-mentioned Contempt of Court application, the defendant mentioned, being a President's Counsel appeared for the defendants in the said case, without a valid proxy being filed in the Court and stating that he has instructions from another Attorney-at-law and thereby intentionally acted against the Court procedure and tarnished the authority of the Court of Appeal, which amounts to Contempt of Court.

As I have already discussed earlier, the Contempt of Court proceedings before this Court cannot be considered in terms of civil procedure under any circumstances. If the Court decides to charge a person for Contempt of Court, such a charge has to be proved beyond reasonable doubt by the complaining party before the Court. If the defendant person is found guilty, he would be subjected to a penal punishment which can include imprisonment, a fine or even both.

In a criminal matter before a Court of law, an Attorney-at-law need not appear for an accused person with a proxy from him as in a civil matter. It is simply because an accused person has to be personally present at all the relevant dates given by the Court, unless he has obtained prior permission of the Court to be

absent on a certain date. If an accused person abstains from appearing before the Court without a valid reason, an arrest warrant can be issued against him, despite the presence of a Counsel on his behalf. This is different to an Attorney-at-law appearing on behalf of a client through a proxy in a civil matter, where the litigant's presence is not always required.

Although this Court has observed that even in Contempt of Court matters proxies are being filed as of a habit and accepted by the Court, it is my considered view that such a procedure would not necessarily, as the Contempt of Court proceedings are essentially criminal proceedings.

I find no basis to issue summons as sought by the complainant in relation to the 3rd draft charge preferred.

In the fourth draft charge, it appears that the complainant has combined what he has stated in the 1st and the 2nd draft charges and formulated it to look like a different charge. As I have already considered and determined in relation to the 1st and the 2nd draft charges, I find no reason to consider the 4th draft charge preferred by the complainant or to consider issuing summons.

When it comes to the fifth draft charge, the complainant is complaining that the defendant being a President's Counsel has violated the Supreme Court (Senior Attorney's-at-law) Rules of 1980, which was published in the Gazette of the Democratic Socialist Republic of Sri Lanka Extraordinary Number 115/9 of 19-11-1980, and thereby intentionally deceived the Court of Appeal and committed the Contempt of Court.

The mentioned Rules relate to appointment of Senior Attorney's-at-law and the rights and privileges of such Attorney's-at-law. However, by the 8th amendment to The Constitution, the position of Senior Attorney's-at-law has been rescinded and rules made in that regard in terms of Article 136 of The Constitution has been rescinded as well.

Therefore, I am of the view that the complainant has no basis to claim that the defendant mentioned has intentionally deceived the Court or committed Contempt of Court.

For the reasons as stated above, I find no *prima facie* basis for the complainant to get the summons and a charge sheet issued against the defendant mentioned.

The application is dismissed.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal