

**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/0002/23

Attorney-at-law Jayathunga Patabandige

Susil Priyantha Jayathunga

No. 294/A,

Kotupathgoda Road,

Western Kumbuka,

Gonapola.

COMPLAINANT

Vs.

Honourable Judge Ruchira Weliwaththa

District – Magistrate court

Kesbewa

Presently,

Honourable High Court Judge

Ruchira Weliwaththa

High Court – Polonnaruwa.

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 petitioner tendered a draft charge sheet containing two 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 that 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 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 two draft charges presented by the complainant in order to determine whether they constitute sufficient *prima facie* basis to issue summons against the defendant mentioned.

In the 1st draft charge, the complainant is alleging that in the Court of Appeal writ application preferred by him as the petitioner, namely CA-WRT-0635-21, the defendant named, being the 1st respondent of the above action and being a Judicial Officer, failed to appear before the Court on 24th February 2022 or to have legal representation despite the fact that the notice with regard to the said application being accepted by him. It is his position that thereby, intentionally acted in order to disrupt the proceedings of the Court of Appeal and has committed the offence of Contempt of Court.

In the 2nd draft charge, the complainant alleges that in the same case as mentioned above, the defendant mentioned, being the 1st respondent of the writ action filed by him before the Court of Appeal, failed to appear or appear through legal representation for the 2nd time on 11th March 2022. Therefore, has committed the offence of Contempt of Court.

As the two draft counts are similar in nature, both charges will be considered together.

The Court of Appeal case where the complainant alleges that the defendant named failed to appear and defend is a case filed by him as the petitioner in terms of Article 140 of The Constitution seeking writs of certiorari and prohibition.

It needs to be emphasized that writ applications before the Court of Appeal are essentially civil proceedings.

When a respondent to such an application fails to appear before the Court or have legal representation, once the notices in that regard has been duly served on such a respondent, and if the Court is satisfied that due notice has been given, the matter can be proceeded in the absence of such a respondent. Since the writ applications are discretionary remedies, if a party does not appear before the Court, there is no basis to conclude that it amounts to Contempt of Court.

I find that the complainant has initiated this Contempt of Court proceedings without any basis whatsoever.

Hence, I find no reasons to issue summons to the respondent mentioned.

The application is dismissed.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal