

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

In the matter of an application for punishment for Contempt of Court under Article 105(3) of the Constitution.

**Contempt of Court -
COC/03/2019**

Kankanam Gamage Saman Priyadarshana,
No. 09B/ 26L, National Housing Scheme,
Raddolugama.

Petitioner

Vs.

1. W. Sudesh Nandimal Silva
397/F, Rubberwatte Road,
Tissamaharama.
2. H. Senaka Perera
Attorney-at-Law,
No.152-1/3 Hulftsdorp Street,
Colombo 12.

Accused-Respondents

Before: N. Bandula Karunarathna J.

&

R. Gurusinghe J.

Counsel: K. Tiranagama, AAL for the Petitioner
Geoffrey Alagarathnam, PC with C. Ranitha Ganarajah, AAL and
Luwie Ganeshathasan, AAL for the Accused-Respondent

Written Submissions: By the Petitioner – 26.11.2019
By 1st and 2nd Respondent – 16.06.2022

Argued on : 19.10.2022

Decided on : 19.01.2023.

N. Bandula Karunarathna J.

The Petitioner has filed his application dated 05.02.2019 seeking the following relief;

- (i.) Issue summons/Rule on the 1st and 2nd Respondents directing them to show cause as to why they should not be punished for Contempt of Court for making a false statement in the Petition and Affidavit in CA/Writ Application No.130/17;
- (ii.) Punish the 1st and 2nd Respondent for Contempt of Court;
- (iii.) Order costs, such other and further relief as the court shall deem fit to meet.

The learned President's Counsel for the respondent raised a preliminary objection saying that this application is misconceived in law because an allegation of a false averment in an Affidavit cannot be the basis for Contempt of Court. The learned President's Counsel for the respondent further says that the motive and matters pleaded by the petitioner was that his application before this court is *male fide* due to personal vendetta and with an ulterior motive. He further argued that this application is *prima facie* invalid as Contempt of Court cannot arise from alleged false averments in an affidavit tendered to the court and this petition for contempt of court has been filed in a proceeding that has already been concluded.

Both parties agreed to decide the preliminary objection first and tendered their written submissions for us to consider whether the petition dated 05.02.2019 alleging and seeking punishment for contempt of court be dismissed in *limine* or to have an inquiry and decide whether the 1st and the 2nd respondents be punished for Contempt of Court charge. I am of the view that to decide whether a false averment in an affidavit can be the basis or cannot be the basis for Contempt of Court, should be decided after calling the witnesses from both parties.

The affidavit and its contents of it should be proved after tendered by the petitioner only when he is giving evidence. Before the relevant affidavit is marked as evidence it is not advisable to depend on an unmarked document to decide whether the affidavit is true or false. Therefore, this preliminary objection cannot be decided without calling evidence from both parties as it is the duty and the responsibility of the petitioner to prove his case against the accused-respondents beyond a reasonable doubt.

The preliminary objection of the respondents and its legal validity should be decided at the inquiry. This matter will be taken up for inquiry on the next date and both parties should summon their witnesses to give evidence to support their application, respectively.

Inquiry on 30th May 2023, at 1.30 p.m.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree.

Judge of the Court of Appeal