

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

In the matter of an application
for a ruling of contempt of the
Court under Article 105(3) of the
Constitution

CA/Contempt/6/2023

Nagananda Kotituwakku
The General Secretary Vinivida
Foundation
199, Subadrarama Road,
Nugegoda.

Petitioner

Vs

Ranjith Withanage
President
National Movement for
Consumer Rights Protection,
191, Katuwawala,
Boraesgamuwa.

Respondent

Before : **Hon Justice N Bandula Karunarathna (P/CA)**

Hon. Justice M. Ahsan R Marikar

Counsel : Nagananda Kodithuwaku for the Petitioner

Argued on : 09.05.2023

Decided on : 05.06.2023

M. Ahsan R. Marikar, J.

Introduction

- 1) The Petitioner had instituted this action against the Respondent to get the reliefs prayed for in the prayer of the petition dated 18th April 2023. The said reliefs claimed under Article 105(3) of the Constitution are as follows;
 - a) issue summons on the Respondent to show cause as to why he should not be punished for insulting and undermining the authority of the Court of Appeal and thereby committing an offence of contempt of the Court of Appeal
 - b) charge the Respondent on the offence of Contempt of Court in terms of Article 105 (3) of the Constitution
 - c) issue a Rule Nisi on the Respondent compelling him to show cause as to why he should not be punished according to law for committing the offence of Contempt of the Court of Appeal
 - d) to make the rule Nisi into absolute and impose an appropriate sentence for defying the rule of law and bringing the Court of Appeal into disrepute
 - e) grant costs
 - f) grant such other further relief as the Court shall seem meet

Facts of the Petitioner's case

- 2) The contention of the Petitioner is that on the facts related in his petition under paragraphs 3 to 14, the Respondent had violated the Provisions of Article 105(3) of the Constitution.
- 3) On that the Petitioner has sought to issue summons to show cause, why the Respondent should not be punished for insulting and undermining the authority

of the Court of Appeal and thereby committing an offence of contempt of the Court of Appeal.

Can the Petitioner maintain this application

- 4) This matter was supported by the Counsel for the Petitioner on 9th May 2023. Thereafter considering the application the case was fixed for order, whether the notice sought by the Petitioner can be issued or not.
- 5) The Counsel for the Petitioner, when addressing this court admitted matters pertinent to this action is arising out of a writ application No.247/2018.
- 6) It is interesting to note, on perusal of the petition from paragraphs 3 to 14, the said Writ application had been withdrawn by the Petitioner on the instructions given by the Petitioner in the Writ application No.247/2018.
- 7) Those facts are supported by X2 to X4 documents.
- 8) The present application's Petitioner had filed this case for the comments made by the Petitioner in Writ application No.247/2018 after the withdrawal of the said Writ application, to charge him under contempt of court.
- 9) On perusal of X1 to X10 documents this court has not made any order on the withdrawal of the Writ application No.247/2018. Therefore, it is not clear under which grounds the Petitioner is seeking an order under Article 105(3) of the Constitution, as there is no violation of a court order or violation of a settlement and or a direction given by any court.
- 10) On the face of it, it appears the statement made by the Respondent are against the Petitioner which cannot be pursued under Article 105(3) of the Constitution. It is a dispute between two individual private parties and the Petitioner should know in which forum to institute an action against the Respondent.

11) When referring to the following judgement of Justice Jameel, it specifies the context on which the contempt charge should have been filed. In **DAYAWATHIE AND PEIRIS V. DR. S. D. M. FERNANDO AND OTHERS [1988] 2 Sri L R 314**

“In Sri Lanka Failure to honour an undertaking given to court is a Contempt of Court.”

12) In view of the facts pertinent to this case and referring to the aforesaid judgement I do not see any merit on the Petitioner’s application dated 18th April 2023 to issue summons and a charge sheet to the Respondent.

Conclusion

13) Considering the aforesaid facts and documents we dismiss the petition dated 18th April 2023. No cost fixed against the Petitioner.

Judge of the Court of Appeal

N. Bandula Karunarathna J. (P/CA)

I agree.

President of the Court of Appeal