

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

*In the matter of an Application in terms
of Article 105 (3) of the Constitution of
the Democratic Socialist Republic of Sri
Lanka.*

C A (CC) Application

No. 04 / 2016

M C Homagama

Case No. 40042

Galagodaaththe Gnanasara,

No. 615,

Saddharma Rajitha Viharaya,

Nawala Road,

Rajagiriya.

ACCUSED RESPONDENT

Before: Vijith K. Malalgoda PC J (P/CA)

P. Padman Surasena J

Counsel : Manohara de Silva PC for the Accused

Rohantha Abesuriya, DSG for the Attorney General

Decided on: 2017-02-28

ORDER

P Padman Surasena J

Learned Magistrate of Homagama has forwarded to this court, his letter dated 2016-03-18, along with the proceedings of this case had before him, to enable this court to act under the jurisdiction vested in it by Article 105 of the Constitution.

This Court having noticed Hon. Attorney General, had this case mentioned before this court several times taking necessary steps in the exercise of its jurisdiction under the said Article.

Hon. Attorney General having considered the material pertaining to this case, has forwarded to this court copies of summons and charge sheet to be served on the Accused Respondent.

When the Accused Respondent appeared before this Court in response to the said summons, the charge sheet was handed over to him on 2016-08-10. It was thereafter that learned President's Counsel who appeared for him stated to Court that he would raise a preliminary objection before the Accused Respondent pleads to the charges.

This Court pursuant to the above application, took steps to inquire into the said preliminary objection raised by the learned President's Counsel.

The preliminary objection raised by the learned President's Counsel is twofold.

First objection he raised is that the charges served on the Accused Respondent do not contain specific acts committed by the Accused Respondent.

The second objection raised by him is that the procedure adopted by this Court to deal with this case is not the proper procedure that should have been adopted.

Having listened to the submissions made by the learned President's Counsel on the above issues, learned Deputy Solicitor General agreed before this Court to make an endeavor to amend the charges with a view of giving more and clearer information to the Accused Respondent to

facilitate a fair inquiry. He also undertook to hand over a complete set of Magistrate's Court proceedings to the Accused Respondent.

This Court also granted an opportunity for the Accused Respondent to tender written objections in case he wishes to raise further objections once the said amended charges are handed over to him.

Pursuant to the above agreement learned Deputy Solicitor General has filed a set of amended charges which was served on the Accused Respondent.

However, the learned President's Counsel who appeared for the Accused Respondent although moved for time to file written submissions in this regard, has not so far tendered any written objection or written submissions to this Court. Nevertheless it would be appropriate for this Court to deal here briefly with the submissions he had made at the earlier occasion before this Court.

It was the submission of the learned President's Counsel that it is section 792 of the Civil Procedure Code that this Court should follow in dealing with this case¹. What section 792 of the Civil Procedure Code states is that

¹ Minute dated 2016-09-27 of the docket.

in all Courts the summary procedure to be followed for the exercise of the special jurisdiction to take cognizance of and punish summarily offences of contempt of court shall be that which is prescribed in the sections next immediately following in that Code.

The next section which is section 793 states that the court shall issue summons to the accused person in the form No. 132 in the first schedule or to the like effect. This summons shall state the nature of the alleged offence and the information or grounds upon which the summons is issued. It shall require the Accused Respondent to appear before the court on a day named in the summons to answer the charge.

It could be seen that this Court in the summons it served on the Accused Respondent has furnished more information than what has been prescribed in the form of summons set out in No. 132 of the first schedule to the Civil Procedure Code.

Thus, it could be seen that the procedure adopted in this Court is in conformity with the requirements under section 793 of the Civil Procedure Code.

Further, on the day appointed by this court for the hearing of the charge, this court has commenced the hearing by handing over to the Accused

Respondent the charge sheet in both Sinhala and English Languages. The Accused Respondent indeed is yet to plead to the charge by stating whether or not he admits the truth of the charge. He has raised the objections above referred to, before pleading to the charge. Therefore, the procedure adopted in this regard by this court is in conformity with section 796 of the Civil Procedure Code also.

When considering the nature and the circumstances under which the alleged offences are said to have been committed, the description of the acts said to have been committed by the Accused Respondent contained in the charge sheet served on him, is sufficient to provide him with adequate information to enable him to understand the circumstances and the grounds upon which the said charges have been framed. There is no basis for this court to conclude that the material supplied to the Accused Respondent is insufficient for the preparation and conduct of his defence. In any case, as has been mentioned before the Accused Respondent has not taken up any objection to the amended charges.

In these circumstances and for the foregoing reasons this court is of the view that the objections taken up by the Accused Respondent at the first instance do not have any valid ground.

Therefore, this court decides to reject the said objections and proceed with the inquiry.

JUDGE OF THE COURT OF APPEAL

Vijith K. Malalgoda PC J

I agree,

PRESIDENT OF THE COURT OF APPEAL