

SENARATHNE**Vs.****OFFICER—IN—CHARGE, POLICE STATION, KEBITHIGOLLAWA AND ANOTHER**

COURT OF APPEAL
GOONERATNE, J.
P. FERNANDO, J.
CA/BA/23/2018
MC/BR/67/18
FEBRUARY 2, 2019

**Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015,
sections 2, 8(1)(a), 10(1)(a) - Threat and intimidation of a witness-Reference to “any
person”, “such person”**

A person known to the petitioner had sexually assaulted the 10- year-old daughter of the complainant. The petitioner had come to the complainant’s house and threatened him with death and harm to his children, compelling him to withdraw the complaint made to the police. Upon a complaint being made regarding this threat, the petitioner was produced before the Magistrate’s Court under section 8(1) of the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015, and was remanded. Such a suspect can be enlarged on bail only by the Court of Appeal under exceptional circumstances in terms of section 10(1) of the Act. The petitioner moved the Court of Appeal to release him on bail.

The contention of the petitioner was that “any person” referred to in section 8(1)(a) of the Act refers to the person against whom the complaint had been made and “such person” refers to a person against whom the victim refrains from lodging a complaint or testifying at any judicial or quasi-judicial proceedings.

Held:

1. A plain reading of section 8 of the Act demonstrates that the petitioner falls into the category of “any person” defined in the section. In making its determination, the court has to give due consideration to the objects of the Act provided in section 2.
2. If the contention of the petitioner is accepted, any offender can circumvent the provisions of the Act by threatening or intimidating

victims and witnesses through third parties. The court will not interpret section 8(1) so narrowly as to defeat the intention of the legislature.

APPLICATION for bail under section 10(1)(a) of the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015.

Amila Palliyage for the Petitioner.

Nayomi Wickramasekara, S. S. C., for the Respondent.

cur. adv. vult.

March 12, 2019

P. FERNANDO, J.

1. The suspect Petitioner (Petitioner) had been produced before Kebithigollawa Magistrate's Court on 16. 08. 2018 by Officer-in-Charge of the Kebithigollawa police station, alleging that he had committed an offence punishable under Section 8(1)(a) of the Assistance to and Protection of Victims of Crime and Witnesses Act (hereinafter sometimes referred to as the Act). Taking the facts reported by the police into consideration, learned Magistrate had remanded the Petitioner.

2. In terms of Section 10(1) of the Act, such suspect can be enlarged on bail only by the Court of Appeal under exceptional circumstances. Therefore the Petitioner has made this application for bail to be considered by this Court.

3. We considered the petition with documents filed, statement of objections filed by the Respondent, submissions made by the counsel for both parties at the inquiry and the written submissions filed.

4. Facts elicited by the report filed in the Magistrate's Court by O. I. C Kebithigollawa police in brief are;

Petitioner had come to Complainant Karunaratne's house with one Janith to saw timber. On 09. 08. 2018, when nobody was at home, Janith had come and sexually assaulted the 10- year-old daughter of Karunaratne. Karunaratne had made a complaint to the police.

On 12. 08. 2018 at about 12. 15 in the night, Petitioner had tapped on the door. When Karunaratne opened the door, Petitioner had threatened him to withdraw the complaint and if not he would kill Karunaratne. Petitioner had further threatened that he would not let Karunaratne's children go on the road. On 13. 08. 2018 morning around 06. 00 Petitioner had come again and threatened Karunaratne saying that if he is remanded, he would not let them live in the village. Karunaratne had made a complaint to that effect to the police. On that complaint the Petitioner had been produced in the Magistrate's Court as a suspect alleging that he had committed an offence under Section 8(1)(a) of the Act.

5. Counsel for the Petitioner submitted that on the above facts, Petitioner cannot be treated as 'Any person' mentioned in Section 8 of the Act. Counsel urged the Court to consider that as an exceptional circumstance and to grant bail to the Petitioner.

6. It is the contention of the counsel for the Petitioner that 'Any person' referred to in Section 8(1)(a) of the Act refers to a person against whom the complaint had been made, as it refers to 'against such person' in the same section. Counsel further submitted that 'such person' refers to a person against whom the victim refrains from lodging a complaint with a law enforcement authority or testifying at any judicial or quasi-judicial proceedings or to compel such victim of crime to withdraw a complaint lodged or legal action instituted.

7. Offences against victims of crime and witnesses in terms of the Act are defined in part 3 of the Act that starts with Section 8, Section 8(1)(a) provides;

8(1) Any person who-

(a) threatens a victim of crime or a witness with injury to his person, reputation or property or to the person or reputation or property of any other in whom such victim of crime or witness has an interest, with the intention of causing alarm to such victim of crime or witness or to cause such victim of crime or witness to refrain from lodging a complaint against such person with a law enforcement authority or testifying at any judicial or quasi-judicial proceedings or to compel such victim of crime to withdraw a complaint lodged or legal action instituted against such person; or

(b) . . . Commits an offence, and shall on conviction by a High Court, be sentenced to a term of imprisonment not exceeding ten years and to a fine of rupees twenty thousand.

Although we do not see any ambiguity in the English text of Section 8 of the Act, for the purpose of clarity I reproduce the Sinhala text of the same.

The Sinhala text of section 8(1) of the Act;

8(1) යම් තැනැත්තෙකු විසින් -

(අ) අපරාධයක වින්දිතයෙකු හෝ සාක්ෂිකරුවෙකු විසින් තැනී ගැන්වීමේ හෝ අපරාධයක වින්දිතයෙකු හෝ සාක්ෂිකරුවෙකු විසින් නීතිය බලාත්මක කිරීමේ අධිකාරියක ඒ තැනැත්තාට එරෙහිව පැමිණිල්ලක් ඉදිරිපත් කිරීමෙන් හෝ යම් අධිකරණ හෝ අර්ධ අධිකරණ කටයුත්තක දී සාක්ෂි දීමෙන් වැළැක්වීමේ හෝ ඒ තැනැත්තාට එරෙහිව කරනු ලැබූ පැමිණිල්ලක් හෝ පවරනු ලැබූ නඩු කටයුත්තක් ඉල්ලා අස්කර ගැනීමට බල කිරීමේ අරමුණින්, අපරාධයක වින්දිතයෙකුගේ හෝ සාක්ෂිකරුවෙකුගේ ශරීරයට, කීර්තිනාමයට හෝ දේපලවලට හානි හෝ එම වින්දිතයාට හෝ සාක්ෂිකරුට සම්බන්ධයක් ඇති වෙනයම් තැනැත්තෙකුගේ ශරීරයට, කීර්තිනාමයට හෝ දේපලවලට හානියක් සිදුකර තර්ජනය කිරීමෙන් ; හෝ

(ආ) ඒ තැනැත්තා වරදක් සිදු කරනු ලබන අතර, මහාධිකරණය විසින් වරදකරු කරනු ලැබූ විට, අවුරුදු දහයකට නොවැඩි බන්ධනාගාර ගත කිරීමේ දඬුවමකට සහ රුපියල් විසි දහසක දඩයකට හෝ ඔහු යටත් විය යුතුය.

8. On the facts placed before the learned Magistrate, it is clear that Karunaratne who is the complainant is a witness to the crime that was alleged to have been committed against his daughter who was 10 years old. Petitioner is alleged to have threatened Karunaratne, among other things to withdraw the complaint. It is clear that it was also to cause alarm to him as defined in Section 8(1)(a). The plain reading of Section 8 of the Act shows that the Petitioner falls into the category of ‘Any person’ defined in the Section. Contention of the counsel for the Petitioner that he does not fall under the category of ‘Any person’ mentioned in Section 8 is untenable.

9. Court has to give due consideration to the objects of the Act provided in Section 2 of the Act.

Section 2 provides;

2. The objects of this Act shall be to-

a) set out, uphold and enforce the rights and entitlements of victims of crime and witnesses and to provide for a mechanism to promote, protect, enforce and exercise such rights and entitlements;

b) provide assistance and protection to victims of crime and witnesses;

c) enable victims of crime to obtain compensation from persons convicted of having committed offences against them;

d) provide for obtaining redress by victims of crime, including restitution, compensation, reparation and rehabilitation of such victims;

e) set out duties and responsibilities of the State, judicial officers and public officers towards the promotion and protection of the rights and entitlements of victims of crime and witnesses;

f) stipulate offences that may be committed against victims of crime and witnesses and the penal sanctions that may be imposed on persons who commit such offences; and

g) provide for the adoption and implementation of best practices relating to the protection of victims of crime and witnesses.

If the contention of the counsel for the Petitioner is accepted, any offender could threaten or intimidate victims and witnesses through third parties and get away. Court will not give such a narrow interpretation to the Section that would go against the intention of the legislature.

10. We find that the Petitioner clearly falls within the ambit of 'Any person' mentioned in Section 8 of the Act. As the Petitioner has failed to submit any exceptional circumstances, application for bail is refused.

GOONERATNE, J. - *I agree.*

Application dismissed.

Judgment by: K. Priyantha Fernando, J.

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