THE

Sri Lanka Law Reports

containing cases and other matters decided by the Supreme Court and the Court of Appeal of the Democratic Socialist Republic of Sri Lanka

[2012] Vol. 1 SRI L. R. - Part 5

PAGES 113 - 140

PUBLISHED BY THE MINISTRY OF JUSTICE
Printed at the Department of Government Printing, Sri Lanka

Price : Rs. 18.00
1 - CM 018075

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CM 18075– 3,000 (2014/06)

APPLICATION for leave to appeal from an order of the District Court of Hambantota.

T. B. Waduressa for defendant - petitioner
M. G. M. Ali Sabry for plaintiff - respondent.

Cur. adv. vult.

June 15, 2007
Chandra Ekanayake, J.

The defendant - petitioner (hereafter sometimes referred to as the defendant) by this leave to appeal application has sought *inter-alia*;

> Leave to appeal against the order of the learned District Judge of Hambantota dated 28.7.2003 (P24) pronounced in the District Court, Hambantota case No. 342/Spl, to set aside the same and to dissolve the enjoining order and dismiss the application for interim injunction made by the plaintiff -respondent in the said case.

The plaintiff - respondent (hereafter sometimes referred to as the plaintiff) had instituted the above styled action in the District Court of Hambantota against the defendant - bank seeking *inter-alia*, a declaration that the liability of the plaintiff under the two mortgage bonds (P2 and P3) is confined to a sum of Rs. 200,000 and declaration that the plaintiff is entitled to release of the said bonds after paying the aforesaid sum of Rs. 200,000. Further an interim injunction was also sought (as per sub paragraph(C) 'ඇ' of the prayer to the plaint) restraining the defendant from selling the property in dispute which was morgaged in terms of the said bonds P2 and P3. Having supported the application an enjoining order and notice of interim injunction had been issued. The defendant by its objections dated 23.6.2003 whilst denying the averments in the plaint had moved for dissolution of the enjoining order and dismissal of the application for interim injunction. The learned Judge after an inquiry by the impugned order had allowed the plaintiff's application and issued the interim injunction prayed for. This is the order this leave to appeal has been preferred from.

This Court by order dated 28.06.2004 had granted leave to appeal in this matter on the correctness of the learned Judge's finding.

The basis of the plaintiff's action is that he entered into 2 mortgage bonds marked as P2 and P3 by mortgaging the property mentioned therein as security for a loan granted by the defendant - bank to one Tuwan Kamaldeen Sumsudeen and the security was given only for a sum of Rs. 200,000 and not for any more. It was the position of the defendant- bank that the plaintiff furnished the said bonds as security not only to guarantee the capital sum of Rs. 200,000 but also the interest accrued thereon which according to the defendant stands at Rs. 625,924.59 as at 30.08.2002. Whilst denying the above the plaintiff took up the position that his guarantee confined to a sum of Rs. 200,000 and sought to discharge the said bonds since he had already deposited the said sum of Rs. 200,000 in the bank *vide* the document marked P6. Further the plaintiff has denied and disputed the interpolations appearing at page 9 of the said bonds to the effect that "plus interest at the rate of twenty four decimal five (24.5% per centum) per annum".

Perusal of the two mortgage bonds bearing Nos. 1165 (P2) and 1181 (P3) reveals that it specifically mentioned in both bonds that interest at the rate of 24.5% per annum should be calculated in addition to the capital sum *(vide* page 9 of both bonds).

By the impugned order learned trial Judge has issued the interim injunction against the 1st and 2nd defendants. It appears that there is only one defendant and that is the "Seylan Bank Ltd". The nature of the interim injunction sought (*vide* sub paragraph (ඇ) of the prayer to the plaint marked XI) is to restrain the defendant -bank and its agents from selling/disposing/ effecting any alienation of whatever kind in respect of the property more fully described in the schedule to the plaint. The letter issued by the defendant to the plaintiff dated 20.12.2003 (P13) makes it abundantly clear that as at the date of the letter the amount justly due and owing from the plaintiff to the defendant was a sum of Rs. 62,594.59 together with interest from 01.09.2002 and to show cause within the period stipulated therein why steps should not be taken under and in terms of Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990.

In this regard it would be pertinent to consider the provisions of Section 4 of the Recovery of Loans by Banks (Special Provisions) Act No.4 of 1990. The above section thus reads as follows:

"Subject to the provisions of Section 7 the Board may by resolution to be recorded in writing authorize any person specified in the resolution to sell by public auction any property mortgaged to the bank as security for any loan in respect of which default has been made in order to recover the whole of the unpaid portion of such Loan and the interest thereon up to the date of the sale together with the monies and costs recoverable under section 13".

According to paragraphs 1 (a) and 1 (b) of the present petition it is contended that the plaintiff had become the owner of the property in question by virtue of deed bearing No. 80 dated 18.10.1986 and the plaintiff had mortgaged the property (more fully described in the schedule to the plaint) as security. In terms of his own plaint, the plaintiff had mortgaged the said property by way of primary and secondary mortgages to the defendant - bank as security for the loan released to one T.K. Samsudeen. It was submitted on behalf of the plaintiff that the portion setting out the rate of interest was an interpolation in the two bonds.

Basis of the learned trial Judge to have issued the interim injunction as prayed for was that the plaintiff had a strong case in his favour by virtue of the fact that he had expressed his consent to settle the claim paying the money due under the mortgage bonds since the defendant - bank was possessed of his fixed deposit. At pages 2 and 3 of the impugned order the trial judge had stated as follows:

"තව ද විත්තිකරුවන් ස්ථිර තැන්පතුවක් බැංකුව සතුවන නිසා විත්තිකරු උගස් ඔප්පුවකට අදාල මුදල් ගෙවා මෙම නඩුව සමථයකට පත්කර ගැනීමට කැමැත්ත ප්‍රකාශකර ඇති නිසා පැමිණිලිකරුට ප්‍රබල නඩුවක් ඇති බවට අධිකරණය තීරණය කරනු ලබන අතර 1, 2, විත්තිකරුවන්ට එරෙහිව මෙම දේපළ වෙන්දේසියේ විකිණීම වැළැක්වීම සඳහා අධිකරණය විසින් නියෝගයක් කරනු ඇත."

I am unable to agree with the above finding for the reason that the learned trial Judge's reasoning is erroneous. Plaintiff's consent to settle the amount due under the mortgage bonds does not constitute a ground for the plaintiff to pass the test of *prima-facie* case, which being the first and foremost requirement for the issuance of an interim injunction.

A party who seeks the aid of Court in granting an interim injunction must as a rule, be able to satisfy the Court on three requirements *viz* :

(1) Has the plaintiff made out a *prima-facie* case ?
(2) Does the balance of convenience lie in favour of the plaintiff,
(3) Do the conduct and dealings of the parties justify the grant of the same. In other words do equitable considerations favour the grant of the same.

To ascertain whether the plaintiff was successful in establishing a prima *facie* case the decision in the case of *Jinadasa v. Weerasinghe* [1] would be of importance. In the above judgment per Dalton. J at 34, while adopting the language of Cotton L. J. - *in Preston v. Luck* [2]

> "..... the Court must be satisfied that there is a serious question to be tried at the hearing and that on the facts before it there is a probability that plaintiff is entitled to relief".

In this regard it would be pertinent to consider the decision in *F. D. Bandaranayake v. State Film Corporation* [3] whereby the principle of law was offered with regard to the sequential tests that should be applied in deciding whether or not to grant an interim injunction, namely :

1. "has the plaintiff made out a strong *prima-facie* case of infringement or imminent infringement of a legal right to which he has title, that is, that there is a question to be tried in relation to his legal rights and that the probabilities are that he will win".

2. in whose favour is the balance of convenience,

3. as the injunction is an equitable relief granted in the discretion of the Court do the conduct and dealings of the parties justify grant of the injunction.

Further in the case of *Gulam Hussein v. Cohen* [4] *per* S. N. Silva, J (P/CA), (as then he was) at 370;

> "The matters to be considered in granting an interim injunction have been crystallized in several judgments of this Court and of Supreme Court. In the case of *Bandaranayake v. The State Film Corporation* (Supra) Soza, J. summarized these matters as follows :
>
> "*In Sri Lanka we start off with a prima-facie case that is, the applicant for an interim injunction must show that there is a serious matter in*

relation to his legal rights, to be tried at the hearing and that he has a good chance of winning. It is not necessary that the Plaintiff should be certain to win. It is sufficient if the probabilities are he will win".

When considering whether an applicant for an interim injunction has passed the test of establishing *prima-facie* case, at this stage the Court should not embark. upon a detailed and full investigation of the merits of the parties, it would suffice if the applicant could establish that probabilities are that he will win. In this regard assistance could also be derived from the decision in *Dissanayake v. Agricultural and Industrial Corporation*[5] per H.N.G. Fernando. J., (as he then was) in the above case at 285 :

> "The proper question for decision upon an application for an interim injunction is "whether there is a serious matter to be tried at the hearing (*Jinadasa v. Weerasinghe (supra)*. If it appears from the pleadings already filed that such a matter does exist, the further question is whether the circumstances are such that a decree which may ultimately be entered in favour of the party seeking the injunction would be nugatory or ineffective if the injunction is not issued".

In the case at hand the plaintiff has raised the question that those questionable remarks and/or interpolations in the documents marked P2 and P3. The main relief sought by the plaint *[vide* sub-paragraphs (a) and (b) of the prayer] are for a declaration in his favour restraining the liability under the mortgage bonds (P2 and P3) Rs. 200,000 and after paying the said amount he has the right to get those bonds discharged and for an order for discharge of the said bonds by the Registrar of the District Court in the event of refusal by the bank to do so. Having considered the questions raised by the plaintiff in his plaint and having regard to the relief's sought by the plaintiff I am inclined to hold the view that the plaintiff in this case has passed the test of *prima - facie* case.

If the applicant passes the test of *prima-facie* case then only balance of convenience has to be considered. In the said case of *F.D. Bandaranayake v. State Film Corporation (supra)* Soza, J at 303 :

"If a *prima-facie* case has been made out, we go on and consider where the balance of convenience lies".

In this context it would be of assistance to consider the principle of law offered by H.N.G. Fernando, C.J. In the case of *Yakkaduwa Sri Pragnarama Thero v. The Minister of Education and others,*[6] namely;

> "An interlocutory injunction will not be granted if there is no likelihood of irreparable damage being caused to the petitioner. Moreover, the burden of proof that the inconvenience which the petitioner will suffer by the refusal of the injunction is greater than that which the respondent will suffer, if the application is granted, lies on the petitioner".

In the present case it is common ground that the plaintiff has not taken the said loan from the defendant bank and he has only guaranteed the loan granted by the bank to the borrower (to one T.K. Samsudeen) and has provided the mortgages solely for the purpose of securing the guarantee. The majority decision of the full Bench of the Supreme Court in the case of *Ramachandran* and a*nother v. Hatton National Bank*[7] would lend assistance to the issue at hand. In the above case also facts were similar to the present case and the petitioner there, was not the person who had taken the loans in question from the bank, but he too was guarantor who has secured the guarantee. Further it was observed by His Lordship the Chief Justice S.N. Silva, J as follows:

> *"that the provisions* of *the Recovery of Loans by Banks (Special Provisions) Act No.* 4 of *1990 will not apply in respect of a mortgage given by* a *guarantor or any person other than* a *borrower to whom* a *loan has been granted by* a *Bank for the economic development of Sri Lanka".*

In the course of his Judgment per His Lordship the Chief Justice at 18:

" . . . .. they have only guaranteed loans granted by the banks to borrowers and provided the mortgages only to secure the guarantee'"

When the above principle is applied to the present case the plaintiff in this case has discharged the burden of establishing that the inconvenience which he will suffer by the refusal of the injunction is greater than that which the defendant will suffer, if it is granted, for the reason that when the defendant - bank has no legal right under the provisions of Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990 to take action in

respect of a mortgage given by a guarantor or any person other than a borrower to whom the loan was granted by the bank. In this case also the plaintiff was only a guarantor and not be the borrower. Therefore I am inclined to hold the view that the balance of convenience too favour the grant of the interim injunction.

As the injunction is an equitable relief granted in the discretion of Court, the conduct and dealings of the parties before the application must be taken into account. When the facts and circumstances of the case are considered it appears that equitable consideration too favour the issuance of the interim injunction.

By the impugned order the learned Judge had issued the interim injunction prayed for in the plaint. Though I am unable to agree with the reasons on which the Judge had based his conclusions, for the reasons given as above I am inclined to hold the view that this is a fit instance to have granted the interim injunction.

Accordingly this appeal is hereby dismissed. However no order is made with regard to costs.

SRI SKANDARAJAH, J. - I agree

Appeal dismissed.

CHANDRA AND ANOTHER
V
ATTORNEY GENERAL

COURT OF APPEAL
RANJIT SILVA,J
SISIIRA DE ABREW,J
CA 120-121/99
HC AVISSAWELLA 117/93
SEPTEMBER 18, 2007

Penal Code-Section 77- Section 296-Murder-Plea of insanity- Taken up in the Appellate Court - Criminal Procedure Code-Section 338-Evidence Ordinance

Section 105-Mc-Naughtons Principle-general or special exceptions cannot be presumed-Burden on whom? - Beyond reasonable doubt or on a balance of probability?

The three accused-appellants and another were charged under Section 296-tried, convicted and sentenced to death.

It was contended in the appeal that the accused was insane at the time he committed the offence, the plea of insanity was not taken at the trial, the Court of Appeal is empowered under Section 388 of the Code to consider whether the accused was insane at the time he committed the offence.

HELD:

(1) If there was material the trial Judge should have considered, which had not been considered, the Appellate Court can interfere in a situation where the intervention is necessary. In the instant case there is no reason to interfere as the trial Judge has considered the evidence whatever that was available to him-The evidence did not show that the accused was insane at the time of the incident.

(2) General exceptions or special exceptions cannot be presumed and the presumption should be against the existence of such circumstances.

(3) If a person seeks to excuse himself upon a plea of insanity it is for him to make it clear that he was insane at the time of committing the offence charged. The onus rests on him and the jury must be satisfied that he was actually insane.

(4) Burden in cases in which an accused has to prove insanity may fairly be stated to be no higher than the burden which rests upon the plaintiff or defendant in civil proceedings. In other words insanity, need not be proved beyond reasonable doubt but on a balance of probability like in a civil case.

APPEAL from a judgment of the High Court of Avissawella.

Cases referred to :

(1) *Piyadasa v. Queen* - 73 NLR 209 (distinguished)
(2) *K. v. Abraham Appu-40* NLR 505
(3) *K. v. Don Nikulus Buiya* - 43 NLR 385
(4) *Perera v. Republic of Sri Lanka-1978-79-2* Sri LR 84

Ranjith Abeysuriya PC with Thanuja Rodrigo for accused appellant
Yasantha Kodagoda DSG for A. G

Cur. adv. vult.

September 18,2007
RANJIT SILVA, J.

The three accused - appellants in this case along with another accused who was not among the living at the time of the trial, were charged under Section 296 of the Penal Code for murder. They were tried and convicted and were sentenced to death. This appeal by the 1st and the 2nd accused is against the said convictions and sentences.

The learned President's Counsel for the accused-appellant submitted, citing the case of *Piyadasa vs. Queen* [1] that even though the plea of insanity was not raised at the trial this Court is empowered under Section 338 of the Criminal Procedure Code to consider whether the accused was insane at the time he committed the offence. We have perused the relevant case that was cited by the Counsel for the accused-appellant. What was held in that case was that it was open to the Court of Criminal Appeal to cause the accused to be subjected to psychiatric examination if necessary, to quash the sentence in terms of Section 64 of the Court of Criminal Appeal Ordinance, presently Section 338 of the Criminal Procedure Code. In that case what happened was although the plea of insanity was not raised at the trial, the circumstances transpired in evidence led at the trial indicated that the killing had been done by a person of unsound mind. The fact that the deceased was murdered brutally, that there was no motive, and the fact that it was a senseless killing no doubt ,influenced the minds of their Lordships. That was a case tried by a jury and their Lordships were of the opinion that, when there was some evidence showing mental unsoundness the trial Judge should have directed the jury to consider that aspect. The trial Judge had not done that in that case. In contrast in the present case the trial Judge has considered whatever the evidence that was there especially, Dr. Waidyasekera's evidence and also the evidence of Hemalatha, the sister of the 1st accused before he reached his decision.

In this case on an examination of the evidence of Dr. Waidyasekera at page 526 of the brief, the Doctor has explained that delusion is not a mental disease that amounts to insanity. He only expressed his opinion that there was a probability that the accused was insane at the time of the incident. On the other hand Hemalatha's evidence, was that the accused had been suffering from mental disorders several years ago but, in her evidence she had not stated any incident which displayed any mental unsoundness on the part of the 1 st accused at or about time of the

incident. She being the sister of the 1st accused was utterly competent and capable of stating, giving examples and describing the movements and the actions of the 1st accused if there had been any such incidents or movements. Therefore it is safe to assume that there were no such mental disorders or mental unsoundness on the part of the 1st accused at the time of incident. Hemalatha's evidence was led by the defence.

If there was material, the trial Judge should have considered, which has not been considered, the Court of Appeal can intervene in a situation where the intervention of this Court is necessary. But as I have stated, we find that there is no reason to interfere because, the Judge's decision cannot be faulted as he has considered the evidence whatever that was available to him. We too find that the learned Judge cannot be faulted as the evidence did not show that the 1 st accused was insane at the time of the incident. I would like to refer to Section 105 of the Evidence Ordinance which lays down the rule that general exceptions or special exceptions cannot be presumed and the presumption should be against the existence of such circumstances. There was no room for such general or special exception. For that reason too we find that the trial Judge's decision cannot be faulted. We are also aware of M'Naughton's principles. When a pea of insanity is raised the person who relies on that plea must prove it on a balance of evidence. It has been decided in the following cases:-

In *King v. Abraham Appu* [2] *505 Soertz ACJ* following the principles annunciated in M'Naughton's case observed, I quote;

"Section 77 of the Ceylon Penal Code is a condensed reproduction of the rule in M'Naughton's case, and in view of Section 105 of our Evidence Ordinance, there can be no doubt that the burden of proving insanity is on the prisoner (accused). In the words of the Judges in M'Naughton's case, insanity must be "clearly proved", "proved to their satisfaction" (ie.,of the jury), or as Rolfe B. stated it is for the prisoner "to make it clear", "the jury must be satisfied", the burden of proving innocence rested on the accused."

Soertz ACJ further held referring to several decisions of the Courts in England including the decision of the M'Naughton's case said:- "if a prisoner seeks to excuse himself upon a plea of insanity it is for him to make it clear that he was insane at the time of committing the offence charged. The onus rests on him, and the jury must be satisfied that he actually was insane. If the matter be left in doubt, it will be their duty to convict him, for every

man must be presumed to be responsible for his acts till the contrary is clearly shown".

We hold that the burden in cases in which an accused has to prove insanity may fairly be stated to be no higher than the burden which rests upon the plaintiff or defendant in civil proceedings. In other words insanity need not be proved beyond reasonable doubt but on a balance of probability like in a civil case."

In *King v. Don Nikulas Buiya* [3] at 385 The Court of Criminal Appeal held that "where in a charge of murder a plea of insanity is set up, insanity must be clearly proved to the satisfaction of the jury. This burden is discharged by an accused person who tenders a preponderance or balance in support of such a plea."

In *Perera v. Republic* of *Sri Lanka* [4] it was held "where in a charge of murder the plea of insanity is set up the burden is on the accused to prove it to the satisfaction of the jury on a preponderance or balance of evidence in support of the plea."

The accused in that event must prove that the unsoundness of mind existed at the time of committing the act in question. The Court is only concerned with the state of mind of the accused at the time of the act. It is only unsoundness of the mind which materially impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility. The nature and extent of unsoundness of mind required being such as would make the offender incapable of knowing the nature of the act or that he is doing what is wrong or contrary to law."

We have carefully considered the dictum in the case that was mentioned by the learned President's Counsel for the accused-appellant namely; *Piyadasa v. Queen (supra).* Their Lordships opined that the evidence disclosed in that case a senseless brutal killing. A killing according to what I understand a senseless killing without any reasons which indicates an action of an insane person. [Vide *Perera v. The Republic* of *Sri Lanka (Supra)* In this case the facts can be contrasted because, the evidence discloses that there was a very strong motive for the accused to murder the three deceased namely, a land dispute. In fact it was the case for the defence in the High Court, that there was a big commotion with regard to the deceased poisoning a well. Therefore, the bestiality or the brutality of

the accused's act cannot be interpreted in his favour in a situation of this sort when there was a motive for killing. Therefore we find the decision of the learned High Court Judge to convict both accused on charges of murder to be just and flawless.

The 1 st and the 2nd accused were brothers. The learned President's Counsel did not seriously contest the conviction and the sentence imposed on the 2nd accused, but simply mentioned about sudden provocation without much conviction. If it was sudden provocation what I have to say is the same, I have stated with regard to insanity, referring to Section 105 of the Evidence Ordinance. We find no reason to interfere with the judgment of the learned High Court Judge. We affirm the conviction and the sentence imposed on both accused and dismiss the appeal.

SISIRA DE ABREW,J. - I agree

Appeals dismissed

SIYANERIS & CO. LTD
V.
JAYASINGHE AND OTHERS

COURT OF APPEAL
EKANAYAKE.J
SISIRA DE ABREW.J
CALA 88/2003 (LG)
DC RATNAPURA 14845/M
DECEMBER 7,2007

Civil Procedure Code - Section 18 - Addition of a party who was previously discharged - Bona fide - Legality? Discretion of Court - Prejudice caused? - Prescriptive rights? - Prescription Ordinance No. 22 of 1871.

The plaintiff instituted action seeking a decree in a sum of Rs. 500,00/- against the 1 - 3 defendants on their joint and several liability together with interest - on account of damages suffered by the plaintiff as a result of the death of her husband caused in a motor accident. The 3rd defendant though wrongly named filed answer denying liability. Initially the 3rd defendant was discharged on the basis that the 2nd defendant was the registered owner. Subsequently the

plaintiff alleging that he was under the impression that the 2nd defendant was the registered owner, and having later come to know that the 3rd defendant is in fact the owner, sought to add him as a party. The District Court allowed the application - on leave being granted.

Held:

(1) A plain reading of Section 18 (1) would reveal nothing but that Court may on or before the hearing on such terms as the Court thinks just, order that name of any person who ought to have been joined whether as plaintiff, defendant or whose presence before the court may be necessary to adjudicate upon and settle all the questions involved in the action be added.

Per **Chandra Ekanayake**, J.

"In the instant case when the case was taken up for trial on 25.1.2000 on the belief that the 2nd defendant is the registered owner at the time of the action and having acted on that belief plaintiff agreed, to discharge the defendant from the case, thereafter when further trial was fixed then only she having understood correctly that the 3rd defendant was the registered owner at the time of the accident an application was made under Section 18 (1) to add the 3rd defendant the registered owner as a defendant. The application to discharge the 3rd defendant appears to be *bona fide* and there is nothing to prevent the present petitioner being added as a party under Section 18".

(2) A party so added under Section 18 has the right to plead prescription and he is in no way precluded from setting up such a plea as his answer. No question of limitation can arise with respect to the Courts power to make an order adding a party default to suit.

(3) When an application is made under Section 18 (1) to add a party what the Court ought to see is whether there is anything which cannot be determined owing to his absence or whether he will be prejudiced by his not being added. If the present petitioner is not added as a party the liability cannot be properly determined owing to its absence.

APPLICATION for leave to appeal from an order of the District Court of Ratnapura with leave being granted.

Cases referred to :

(1) *Corea v. Pieris* - 13 NLR 212
(2) *Fernando v. Fernando* 26 NLR 292
(3) *Oriental Bank Corporation v.* J.A. *Charriol and others* 1886 1LR 12 Cal 642

(4) *The Chartered Bank v. De Silva* 67 NLR 135

Hemasiri Withanachchi for petitioner.
Rohan Sahabandu for plaintiff - respondent.

Cur. adv. vult

July 12, 2007
CHANDRA EKANAYAKE, J

The Petitioner (K.M. Siyaneris and Co. Ltd) by its Petition dated 23.03.2003 has sought *inter alia,* leave to appeal from the order dated 06.03.2003 of the District Judge of Ratnapura pronounced in D.C. Ratnapura case No. 14845/M, to set aside the same and to dismiss the application of the Plaintiff - Respondent (hereinafter sometimes referred to as the Plaintiff) to add the Petitioner as a party.

The plaintiff had instituted the above styled action in the District Court of Ratnapura seeking *inter alia,* a decree in a sum of Rs. 500,000/- against 1 to 3 defendants on their joint and several liability together with interest prayed for in sub-paragraph (ii) of the prayer to the amended plaint (XI), on account of damages suffered by the plaintiff as a result of the death of her husband caused in a motor accident. By the amended plaint the plaintiff had pleaded *inter alia* at all times material to the action, the driver of the motor bus bearing No. 60 - 9882 was the 1st defendant while the 2nd defendant was the employer and the registered owner was the 3rd defendant (The 3rd defendant was K.M. Siyaneris, K.M. Siyaneris & Company). Further it was averred that as the plaintiff's husband (Borellage Sirisena) had got on the foot board of the said bus at a bus halt, after bus was started due to reckless and negligent driving of the said 1 st defendant. Plaintiff's husband having got thrown of the bus and was run over by the same bus.

The 1 st and 2nd defendants by their answer (X2) whilst only admitting that the 2nd defendant was the owner of the said vehicle denied their liability. The Petitioner Company though not properly cited as a party filed answer denying the accrual of any cause of action and took up a position that the said accident occurred due to the negligence of the deceased having attempted to get into a moving vehicle. By the amended plaint the plaintiff had pleaded *inter alia,* that the driver of the motor bus bearing

No. 60 - 9882 was the 1 st defendant, while the 2nd defendant was the employer and the owner at all times material to the action. As evidenced by the proceedings of 05.01.2000 (X4) , when the case proceeded to trial on that day the petitioner had been discharged from the proceedings.

Thereafter by petition dated 22.10.2001 (X5) (supported by affidavit) the plaintiff had moved the District Court to add the 3rd defendant who was discharged from the proceedings alleging *inter alia,*

(*a*) that she had agreed to discharge the 3rd defendant - respondent from the proceedings as she was under the impression that 2nd defendant was the registered owner of the said vehicle and

(*b*) that since the registered owner of the vehicle was the 3rd defendant it had become necessary to add the 3rd defendant as a party to the action and in the event of not adding so irremediable and irreparable loss and damages would be caused to the plaintiff.

The petitioner having objected to the aforesaid application by statement of objections (X6), after an inquiry the learned trial Judge had by order dated 06.03.2003 (Y) had allowed the plaintiff's application. This is the order this leave to appeal application has been preferred from.

This Court by its order dated 17.05.2004 had granted leave to appeal on the question - "whether the learned District Judge's order allowing previously discharged 3rd defendant to be brought in under Section 18 of the Civil Procedure Code was correct in law.'

By the impugned order the learned Judge had allowed the application of the plaintiff to add the petitioner (K.M. Siyaneris & Company) as a defendant in the case. Sole basis of the finding to the above effect had been that necessity has arisen to add the said company as a party to consider the facts in the case completely and effectually. In the course of the impugned order it has been stated as follows.:

"එබැවින් නඩුවේ කරුණු සම්පූර්ණ සහ අවසානාත්මක වශයෙන් සලකා බැලීම සඳහා තුන්වන විත්තිකරු නඩුවට එකතු කිරීමට අවශ්‍ය බවට පෙනී යයි"

Since the application (X5) which gave rise to making of the above impugned order was one made under section 18 of the Civil Procedure Code necessity

has arisen to consider the provisions of the same. Thus the above section is reproduced below:

"18 (1) The Court may on or before the hearing, upon the application of either party, and on such terms as the Court thinks just, order that the name of any party, whether as plaintiff or as defendant improperly joined, be struck out, and the Court may at any time, either upon or without such application, and on such terms as the Court thinks just, order that any plaintiff be made a defendant, or that any defendant be made a plaintiff, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in that action, be added,"

A plain reading of the above section would reveal nothing but that Court may on or before the hearing on such terms as the Court thinks just order that name of any person who ought to have been joined, whether as a plaintiff, a defendant or whose presence before the Court may be necessary to adjudicate upon and settle all the questions involved in the action, be added.

In the case at hand the basis of the petitioner's application to the Distrct Court had been that - when the case was taken up for trial on 25.01.2000 on the belief that the 2nd defendant was the registered owner of the said motor bus as at the time of the action and having acted on that belief plaintiff had agreed to discharge the defendant from the case. Thereafter when further trial was fixed then only she having understood correctly that the 3rd defendant was the registered owner of the vehicle at the time of the accident, as such an application (X5) under Section 18 of the Civil Procedure Code was made to add the registered owner as a defendant in the case.

At the hearing before this Court petitioner's Counsel vehemently relied on two matters namely:

1. that the present petitioner who was quite rightly discharged earlier does not have any nexus with the conduct of the driver has no liability and

2. that even apart from the aforementioned liability the cause of action if any against the petitioner was prescribed in law.

Having regard to the circumstances of the case at hand I shall first proceed to examine the 2nd submission of the petitioner's Counsel stated as above. The petitioner's counsel sought that on the decision in *Corea v. Pieris*[1] that the present petitioner cannot be added. However at 217 of the said judgment Wood Renton, J has succinctly stated to the following effect.

"..... It does not decide that a party so added is not entitled to set up a plea of limitation, and to claim a dismissal of the suit as against him on the ground, in spite of the order of the Court which has brought him into the proceedings. As a matter of construction, I think that Mr. H.J.C. Perera's contention that Section 18 of our own Code of Civil Procedure over - rides the right of an added party to plead prescription is untenable. At the point of time of which the order is made under that Section no question of pleading is before the Court, and I hold without any hesitation that in spite of an order made by the District Court, or, for that matter, by the Supreme Court on appeal, adding a party under Section 18, a party so added has the right to plead the provisions of Ordinance No. 22 of 1871."

Further the trend of decisions in our country would demonstrate that addition of a party under Section - 18 of the Civil Procedure Code is at the discretion of the Court - *Vide* the decision in *Fernando v. Fernando* [2] In this respect the decision in the case of *Oriental Bank Corporation (Plaintiffs) v. J.A. Charriol and others*[3] (Defendants) would lend assistance. This being an appeal preferred from an order of the original Civil Court with regard to addition of a party as the defendant to the suit, it was held as follows:

"No question of limitation can arise with respect to the Court's power to make an order adding a party defendant to suit"

The above authorities would amply establish the contention that under Section 18 of the Civil Procedure Code overrides the right of an added party to plead prescription is untenable. Further a party so added under Section 18 has the right to plead prescription and he is in no way precluded from setting up such a plea in his answer. Hence the 2nd submission of the petitioner's Counsel cannot succeed.

Now I turn to the 1 st submission of the Counsel for the petitioner stated as above. Perusal of the impugned order reveals that basis of learned Judge's conclusion is that the presence of party proposed to be added would become necessary to enable the Court to effectually and completely

adjudicate the questions involved in the case. This appears to be the correct proposition of law and it is in construction with the provisions of Section 18 of the Civil Procedure Code and also the judicial pronouncements we have had in this regard. The decision in the case of the *Chartered Bank v. De Silva*[4] would be of importance here. In the above case it was held amongst other things that:

"A person who is no more than an important witness in a case is not liable to be added as a party to the case in terms of Section 18 (1) of the Civil Procedure Code on the pretext that his presence is necessary "in order to enable the Court effectually and completely to adjudicate upon all the questions involved in the action".

Further per **Sri Skandarajah**, J at 137 :

"When an application is made under Section 18 (1) to add a party what the Court ought to see is whether there is anything which cannot be determined owing to his absence or whether he will be prejudiced by his not being joined as a party."

In the case at hand if the present petitioner is not added as a party the liability cannot be properly determined owing to its absence.

The basis of the application of the plaintiff made to the District Court (X5) to add the present petitioner as the 3rd defendant in the case had been that the application for withdrawal of the 3rd defendant from the case was on the genuine belief that the 2nd defendant was the registered owner of the motor bus as at the time of the accident. Thereafter only the plaintiff had realized the correct position namely - the 3rd defendant who was already discharged had been the registered owner of the said bus at the time of the accident. Therefore the necessity arose to make a subsequent application for addition as per X5. On the material before Court there is nothing to infer that the reason given as above by the plaintiff which made her to make an application under Section 18 of the Civil Procedure Code was something different to that, nor was there any material to suggest that the plaintiff made the aforesaid application to add the present petitioner on some other grounds. In those circumstances the application to discharge that 3rd defendant (present petitioner) appears to be a *bona fide* one and thus there is nothing to prevent the present petitioner being added as a party under Section 18, if it appears to Courts that his presence before

Court may be necessary in order to enable the Court to adjudicate upon all questions involved in the case effectively and completely.

Further it is to be stressed here that the petitioner has not been able to demonstrate successfully that any injustice and/or prejudice would be caused to him by allowing the said addition.

For the above reasons in my opinion the impugned order of the learned Judge is found to be correct. Therefore I would proceed to answer the question raised by this Court on 17.05.2004 (when granting leave) in the affirmative. I would accordingly dismiss this appeal with costs fixed at Rs. 15,000/-.

SISIRA DE ABREW, J - I agree.

Appeal dismissed.

LAKSIRI
V.
OFFICER IN CHARGE ANTI VICE SQUAD AND ANOTHER

COURT OF APPEAL
RANJIT SILVA.J.
SISIRA DE ABREW.J.
CA PHC 13/2008(REV)
HC COLOMBO *1081/2006*
MC GANGODAWILA 58297
MARCH 26, 2008

Constitution Article 138, 154 P - *High Court* of *the Province (Special Provisions) Act* 19 of *1990 Section* 9 - *Right* of *Appeal to Supreme Court - Is an appeal an alternative remedy? - Revision* of a *judgment of High Court? Does the Court of Appeal have jurisdiction to entertain* a *Revision Application?*

Held :

(1) Section 9 of Act 19 of 1990 gives exclusive right of appeal from the High Court to the Supreme Court - on a substantial question of law after obtaining special leave from the Supreme Court.

Wording of Section 9 is rather restrictive in that it does not permit an appeal on the facts but only on a question of law.

(2) An aggrieved party desirous of filing an application in Revision on a question of law can seek and obtain redress, if he so desires by filing an appeal under Section 9 such questions of law are necessarily involved and could be agitated in an appeal under Section 9

Section 9 is not an alternative remedy but a very special remedy that has been specifically granted which could be obtained only from the Supreme Court.

Held Further :

(3) Held further, Although Art 138 gives forum jurisdiction to the Court of Appeal to invoke revisionary jurisdiction such jurisdiction is subject to the provisions of the Constitution or any law.

Court of Appeal will not have the jurisdiction to entertain a matter by way of revision in derogation of the statutory powers specifically conferred on the Supreme Court by the 13th amendment read with Section 9 even in exceptional circumstances.

(4) Jurisdiction of the Court of Appeal is not an exceptional jurisdiction because Article 138 provides that, it is subject to provisions of any law. It is always permissible for the jurisdiction to be reduced or transferred by ordinary law.

Application in Revision from an order of the High Court of Colombo.

Cases referred to :

1. Colombo Apothecaries Ltd, and Other v. *Commissioner of Labour* - 19980 3 Sri LR 320
2. *Mariam Bee Bee v. Seyed Mohamed* 68 NLR 36
3. *Attoney General v. Podi Singho* 51 NLR 385
4. *Rustom v. Hapangama Company Ltd - (19787980)* 1 Sri LR 352
5. *Potman v. I.P. Dodangoda* 74NLR at 115
6. *Weragama v. Eksath Lanka Wathu Kamkaru Samithiya* 1994 1 Sri IR 293

L. Weerasuriya for petitioner

Cur. adv. vult.

March 26, 2008
RANJITH SIIVA.J.

This is an application for revision to revise, the judgment of the learned High Court Judge of Colombo in case No.108/2006 delivered on 14.03.2007.

The petitioner who was the accused in the Magistrate's Court Gangodawila in case No.58297 was convicted by the learned Magistrate, and was sentenced to 03 months imprisonment. When the matter came up in appeal before the learned High Court Judge, the learned High Court Judge affirmed the conviction and proceeded to enhance the sentence that was imposed on the accused and sentenced him to 18 months rigorous imprisonment.

The learned High Court Judge had also in the same order implemented two terms of suspended sentences ordered by different Magistrate's Courts as he found that the offence had been committed during the operational period of the two respective suspended terms of imprisonment ordered in the earlier two cases.

Section 09 of the High Court of the Province (Special Provisions) Act No. 19 of 1990 reads as follows:-

"A final order, judgment, decree or sentence of a High Court established by Article 154P of the Constitution in the exercise of the Appellate Jurisdiction vested in it by paragraph 3(b) of Article 154P of the Constitution or Section (3) of this Act or any other law, in any matter or proceeding whether civil or criminal which involves a substantial question of law ,may appeal there from to the Supreme Court, if the High Court grants leave to appeal to the Supreme Court ex-mero-motu or at the instance of any aggrieved party to such matter or proceedings; provided that the Supreme Court may in its discretion grant Special Leave to Appeal to the Supreme Court from any final or interlocutory order, judgment, decree or sentence made by such High Court in the exercise of the appellate jurisdiction vested in it by paragraph 3(b) of Article 154P of the Constitution or Section (3) of this Act, or any other law, where such High Court has refused to grant leave to appeal to the Supreme Court, or where in the opinion of the Supreme Court, the case or matter is fit for review by the Supreme Court.

Provided further that the Supreme Court shall grant leave to appeal in every matter or proceeding in which it is satisfied that the question to be decided is of public or general importance."

This section has given the exclusive right of appeal to the Supreme Court on a substantial question of law after obtaining Special Leave from the Supreme Court.

In Colombo Apothecaries Ltd. And others v. Commissioner of Labour[1] it was held that the application for revision made by the petitioners without seeking the remedy by way of appeal available to them as of right, was misconceived under the circumstances.

We find that the wording of Section 09 is rather restrictive in that it does not permit an appeal on the facts but only on a question of law. We believe that whatever the grounds that give rise to a revision application necessarily involve questions of law, the term exceptional circumstances necessarily embraces into its folds "a question of law". Want of jurisdiction, failure to observe the principles of natural justice, substantial miscarriage of justice, fundamental vice, are some circumstances which could be treated as forming exceptional circumstances and they are all questions of law. (This is in contradistinction to what forms exceptional circumstances in bail matters)

We find that an aggrieved party desirous of filing an application for revision on a question of law can seek and obtain redress, if he so wishes by filing an appeal under Section 9 of Act No.19 of 1990. Such questions of law necessarily involved and could be agitated in an appeal under Section 9 of Act No. 19 of 1990.

Therefore we find that Section 09 is not an alternative remedy but a "very special remedy that has been specifically granted which could be obtained only from the Supreme Court.

If one carefully analyzes and examines the judicial authorities we find that the judicial trend appears to be that when there is an alternative remedy that could be obtained from an inferior Court or a parallel Court the Court of Appeal can invoke its revisionary powers in exceptional circumstances to ensure the due administration of justice. (Vide *Mariam Bee Bee V. Seyed Mahamed*[2] *at 36, Attorney General v. Podisingho*[3] *Rustom v. Hapangama Company Limited* [4] power is not limited to a case where there is no appeal. It is wide enough to embrace a case where an appeal lay but for some reason was not taken. The Court of Appeal can and should grant relief by way of revision even in a case where it has dismissed an appeal

preferred in respect of the same matter. It can grant relief contrary to an order it has already made upon appeal in exceptional circumstances. Such relief could be granted only if the alternative remedy was available from the same court or from a Court with parallel jurisdiction or from an inferior Court.

In *Potman V. I. P. Dodangoda* (5) at 115 relief was granted by way of revision in a case where 'the Supreme Court had earlier dismissed an appeal preferred in respect of the same matter. In that case Court observed that "Although the Supreme Court would be extremely hesitant and cautious before making an order in revision which is contrary to an order which it has already made upon appeal. Relief should be granted in a case of an obvious error based on an all important item of evidence not having being brought to the notice of Court at the hearing of the appeal.

In that case too the alternative remedy was available from the same Court (a parallel Court) and not from a Superior Court. The appeal and the application for revision both were made to the same Court. Unlike in the instant case where the remedy by way of appeal lies to the Supreme Court under Section 9 of Act No. 19 of 1990 which is a Superior Court.

Although Article 138 of the Constitution gives forum jurisdiction to The Court of Appeal to invoke the revisionary jurisdiction such jurisdiction is subject to the provisions of the Constitution or any other law. Thus Article 138 has to be read subject to Section 9 of the High Court of the Province (Special Provisions) Act No.19 of 1990.

Mark Fernando, J. in *Weragama v. Eksath Lanka Wathu Kamkaru Samithiya* (6) held, I quote, "The jurisdiction of the Court of Appeal is not an entrenched jurisdiction because Article 138 provides that it is subject to provisions of any law. Hence it was always constitutionally permissible for the jurisdiction to be reduced or transferred by ordinary law.

Therefore we find that Court of Appeal will not have the jurisdiction to entertain a matter by way of revision in derogation of the statutory powers specifically conferred on the Supreme Court, by the 13th Amendment to the Constitution read with Section 9 of the High Court of the Province (Special Provisions) Act No. 19 of 1990, even in exceptional circumstances.

We also find that it is not plausible to interpret Section 09 of the High Court of the Province (Special Provisions) as an alternative remedy. It is more than an alternative remedy which ought to be followed by any person aggrieved by a decision or judgment of the High Court in the exercise of its appellate jurisdiction. *(Vide* the two decisions in CA (PHC) Apn.219/2005 and CA (PHC) Apn 227/2005, decided by the Court of Appeal.

For the reasons adumbrated we refuse to issue notice and dismiss this application for revision.

Sisira De Abrew, J. - I agree

Application dismissed.

LUMBINI DE SILVA
V.
1. CONTROLLER, IMMIGRATION AND EMIGRATION AND ANOTHER
2. SENIOR AUTHORIZING OFFICER, IMMIGRATION AND EMIGRATION OFFICE

SUPREME COURT J
NIHAL JAYASINGHE, J.
TILAKAWARDANE, J.
MARSOOF. P. C./ J.
SC FR 109/2007
OCTOBER 17, 2007

Constitution - Article 12 (1) - *Preventing party leaving Sri Lanka to sit for Examination - Name allegedly in the stop list-Conduct of Public Officers - Who could detain passengers leaving the country ? Court order necessary* ?

The petitioner a Medical Practitioner was invited to sit a professional examination in Singapore. The Immigration Officer refused to permit her to travel since there was a direction from the 1st respondent, and her name was in the stop list. She was requested to meet the 1st respondent who stated that he will take steps to remove her name from the stop list. She rescheduled her flight for the next day. Once again she was prevented from boarding the flight as her name was still in the list - but was permitted to proceed only to Singapore

and was told that, her name would be re- entered in the stop list on her return. She was late for the examination by 15 minutes.

It was contended by the respondent, that her name was placed in the stop list on a complaint by her husband that she would remove their child.

Held :

(1) It is apparent that she was not travelling with her child and no particulars of the child were entered in her passport.

Per **Nihal Jayasinghe**, J

"It appears so easy for any designing individual to prevent any passenger from leaving this country by just sending a letter or a petition or a telephone call that the passenger should not be allowed to leave this country If this is the manner in which the public servants behave we dread to think of the plight of the passengers who report at the Airport for all legitimate purposes".

(2) They had no authority to detain passengers from leaving the country unless there was an order from a Competent Court concerned in committing a cognizable offence. There was absolutely no reason that warranted the detention of the petitioner because there was no criminal record associated with her.

Per **Nihal Jayasinghe**, J

"We want to place on record in the strongest possible terms at our command the abhorrence with which the 1st and 2nd respondents conducted themselves. The inconvenience and the hardships suffered by the petitioner cannot be quantified by payment of compensation."

Application under Article 126 of the Constitution.

Upul Kumarapperuma with *Suranga Marasinghe* for petitioner.
Shanaka Wijesinghe, SSC for the respondent.

Cur. adv. vult.

October 17, 2007
Nihal Jayasinghe, J.

The Petitioner a Medical Practitioner by profession was invited by letter dated 20.06.2006 to sit the Australian Institute of Medical Scientists Professional Examination, on successful completion of which the Petitioner

would be classified as Medical Scientist. The said letter was marked and produced P2.

The Petitioner consequently applied to sit the examination on 26th July, 2006 and made the required payment of 300 Dollars. Consequently the Petitioner received a letter dated 29th January, 2007 from the British Council of Singapore, informing her that the examination would to be held at the British Council in Singapore on the 8th of March, 2007. The Petitioner thereafter made arrangements to depart for Singapore on the day prior to the scheduled date of examination so that she could present herself for the examination the next date. She purchased the ticket on Singapore Airlines flights No. SQ 469 which was scheduled to depart from the Bandaranayake International Airport at 1.10 a.m. on the 07th of March, 2007. The Petitioner accordingly arrived at the Bandaranayake International Airport on 6th March at 11.00 p.m. and after having completed the Customs and ticketing formalities, proceeded to the Immigration with her Boarding Pass for Immigration clearance. At the Immigration Counter, the officer who handled her passport informed her that she could not be allowed to board her flight, since there was a direction from the 1st Respondent to prevent her from leaving the country. Thereafter she was produced before the 2nd Respondent and the Petitioner asked the reason for preventing her from leaving the country but the 2nd Respondent failed to disclose the reason but informed that her name has been placed on the Stop List. The Petitioner informed him that there are no pending criminal cases nor has she been convicted by any Criminal Court of any country and she further informed that there was no reason to put her name on the Stop List. Thereafter the 2nd Respondent informed her to meet the 1st Respondent and get her name cleared from the Stop List. She was unable to take the flight No. sq 469. thereafter on 7th March, 2007 she met the 1st Respondent and made a complaint about the incident that happened the previous night. The 1st Respondent after questioning her for a long period of time informed her that he would take steps to have her name removed from the Stop List on the computers in the Immigration Counters. However out of abundance of caution the Petitioner requested a letter to the said effect which the 1st Respondent complied with. The Petitioner thereafter got her flight rescheduled for 8th March, 2007. However when she went to the Bandaranayake International Airport she was again stopped by the 2nd Respondent stating that her name was still in the Stop List. Then the Petitioner produced the letter issued by the 1st Respondent and informed that her name was in fact removed from the Stop List. However, the 2nd

Respondent informed the Petitioner that he could not permit her to leave the country since her name still appeared in the Stop List. At this point the Petitioner pleaded with the 2nd Respondent to check with the authorities concerned with regard to her passport. After detaining the Petitioner at the office of the 2nd Respondent for about an hour and after making several phone calls and lengthy entry made in a book the 2nd Respondent informed the Petitioner that he would allow her only to proceed to, Singapore. The 2nd Respondent also informed the Petitioner that the letter of the 1 st Respondent was a temporary suspension of the decision to stop her departure from Sri Lanka. He would re - enter her name on the Stop List.

Counsel for the Petitioner submitted that the conduct of the 2nd Respondent was obvious in that it was to harass the Petitioner and to humiliate her for no apparent reason in the presence of many others and while using threatening words. The Petitioner was allowed to proceed on the following day to Singapore, the Petitioner submits that the flight arrived in Singapore at 8.35 a.m. and she was already 15 minutes late for the examination. Petitioner complains that the conduct of the 1st and 2nd Respondents amounted to violation of her fundamental right guaranteed under Article 12 (1) of the Constitution.

This Court having heard the submissions of the Counsel granted leave to proceed for the alleged infringement of Article 12 (1) on 11.05.2007. the 1st Respondent filed objections that on 04.08.2007 a request was made by the Petitioners' husband to prevent her from leaving the country with his child without his consent and that the 1st Respondent took steps to enter the name of the Petitioner and the child in the Stop List in order to prevent the Petitioner leaving Sri Lanka with the child. When the Petitioner checked in at the Immigration Counter on 6th March, when her passport was swiped through the computer the authorized officer informed her that she would not be allowed to leave as her name appeared in the Stop List. Since the name of the Petitioner appeared in the Stop List, the Authorized Officer who was on duty on that date directed her to the Senior Officer in terms of the procedure laid down in the Immigration Department. The Senior Authorized Officer was the 2nd Respondent who informed her the reason as to why her name appeared on the Stop List and directed her to meet the 1st Respondent to get clearance for her departure. On 07.03.2007, 1st Respondent submits that the Petitioner met him at his office and informed of the incident that took place and after making an inquiry into her complaint and after appreciating the importance of her journey to Singapore i.e. to sit

an examination and the Petitioner was permitted to leave the country and took steps to remove her name from the Stop List. At the inquiry, 1st Respondent submits that he was satisfied that the Petitioner had no intention of taking the child out of the Country and that she also did not possess a passport with her child's name included. There was also no child. The 1st Respondent states that due to an oversight name was not removed from the Stop List and when the Petitioner checked in at the Immigration Counter on 07.03.2007 the name was still on the stop list and the authorized officer referred her to the 2nd Respondent who was also supervising officer. The 1st Respondent submits that the 2nd Respondent thereafter complied with his instructions and the Petitioner's name was removed and the Petitioner was permitted to leave the country. The 2nd Respondent also filed objections and submitted that he was on duty on 07.03.2007 as a senior officer and that he was the authorized officer at the Katunayake International Airport. The Petitioner was produced before him stating her name appeared on the Stop List. Since the Petitioner produced a letter from the 1st Respondent and after having consulted the superior officers and having made an entry in the log book instructed the relevant officer to perform the Immigration formalities in order to permit the Petitioner to leave the country.

We have considered the submissions very carefully. We are deeply distressed by the attitude of the 1st and 2nd Respondents in dealing with the Petitioner, when she reported to the Bandaranayake International Airport for her departure to Singapore and we assume that the 1st and 2nd Respondents, very senior officers are competent and familiar with the procedures that they are expected to follow when passengers report at the Bandaranayake International Airport for their departures. We are extremely disturbed that the 1st and 2nd Respondents entered the name of the Petitioner on the Stop List on the complaint made by the Petitioner's husband. There is no evidence placed before this Court to establish the fact that it was in fact the husband who made the complaint. Be that as it may it was apparent that she was not traveling with her child and no particulars of the child were entered in her pass port. We are also disturbed that the 1st and 2nd Respondent did not realize that they had no authority to detain passengers from leaving the country unless there was an order from a competent Court concerned in committing a cognizable offence. There was absolutely no reason that warranted the detention of the Petitioner because there was no criminal record associated with her. On a petition addressed by somebody the 1st Respondent took the extreme