

RAMALINGAM
v.
PARAMESWARY AND OTHERS

COURT OF APPEAL.
WIGNESWARAN, J.
TILAKAWARDENA, J.
CA. 1055/98.
P. C. JAFFNA 713.
28TH JANUARY, 2000.

Constitution, Articles 138, 154P, 154P(3) (b) - Thirteenth Amendment - Jurisdiction of the Court of Appeal exercising Revisionary Jurisdiction over Orders of Primary Court - Is the jurisdiction of Court of Appeal ousted - Is jurisdiction vested only in the High Court - Concurrent or parallel jurisdiction - High Court of the Provinces (Special Provisions) Act 19 of 1990 - S. 12(a) - Transfer of case - "Expedient to do".

On the preliminary objection that the Court of Appeal has no jurisdiction to entertain the transfer application -

Held :

- (1) Despite Article 138 of the Constitution, Article 154P(3)b gave the High Court of a Province a parallel or concurrent jurisdiction to hear applications by way of an appeal or Revision regarding orders made by a Primary Court within the Province. In effect both courts were conferred concurrent jurisdiction in respect of these matters.
- (2) The High Court of the Provinces (Special Provisions) Act No. 19 of 1990 - certified on 15.5.1990 - was brought into make provision regarding the procedure to be followed in and the right to appeal to and from the High Court established under Article 154P of the Constitution.
- (3) After conferring by S.4 - S.5 of Act No. 19 of 1990 - a right of appeal from an order made by the Primary Court to the High Court established under Article 154P, S.5 of Act 19 of 1990 provided similar procedures to be adopted in the High Court, as followed in

the Court of Appeal with regard to such appeal or revision relating to orders made by Primary Courts.

- (4) When S.12(a) of Act, No. 19 of 1990 - provides for a transfer of a case filed in the Court of Appeal to the appropriate High Court, the main consideration which should attract the attention of the Court of Appeal when deciding whether a case before it should be transferred should be the convenience of parties. Easing the workload of the Court of Appeal cannot be an adequate ground - that would be a most unfortunate selfish ground.

Per Wigneswaran, J.

“To order the transfer of this case to the High Court of Northern Province holden at Vavuniya would be the height of insensitivity on the part of this Court. The Primary Court which made the impugned order is the Primary Court of Jaffna. The very fact that there is no High Court functioning in Jaffna but only in peripheral Vavuniya must no doubt be taken into consideration in consonance with the difficulty faced by persons to obtain security clearance to stay beyond 24 hours at Vavuniya.”

Semle

“High Court functioning in a peripheral area (at Vavuniya) being called upon to overlook the work of an appropriate Court (in Jaffna) for certain exigencies cannot be considered as the appropriate High Court established under the Law in terms of S.12 of 19 of 1990.”

APPLICATION in Revision from the Order of the Primary Court of Jaffna, under Article 138 of the Constitution.

P. Sivaloganathan for Petitioner.

S. Mahenthiran for 1st and 3rd Respondents.

Cur. adv. vult.

May 30, 2000.

WIGNESWARAN, J.

This Revision Application was filed on 14.10.1998 before this Court in respect of an order made by the Primary Court Judge, Point Pedro dated 14.9.1998. Counsel for the Petitioner having supported this matter on 21.10.1998 the Court issued notice on the Respondents returnable on 27.11.1998.

On 27.11.1998 the Counsel for the Respondents moved for two months' time to file objections stating that the Respondents were residing in Jaffna and communication with them was difficult. Consequently 29.1.1999 was fixed as the date for objections. On that day Counsel for Respondents moved for further time to file objections. The date was extended until 02/03/1999. Thereafter owing to the proceedings in the original Court being in Tamil the case was transferred to be heard before this Bench by the President of the Court of Appeal on 07.09.1999.

A preliminary objection was taken up by the Counsel for the Respondents on 16.12.1999 stating that this case should not be entertained by this Court. Written submissions were called for and thereafter filed by the respective Counsel.

The arguments placed by the learned Counsel for the Respondents are as follows:

1. The Thirteenth Amendment to the Constitution of this country devolved judicial power earlier vested in the Court of Appeal (Article 138) to the Provincial High Courts. (Article 154P).

2. Proviso to Section 12(a) of Act No. 19 of 1990 empowered this Court to transfer cases falling within the jurisdiction of High Courts to the appropriate High Courts.
3. Not to transfer such cases to the appropriate High Courts would (i) equate one of the Superior Courts, the Court of Appeal, to the High Courts, (ii) unduly burden the work-load of the Court of Appeal (iii) deprive the High Court of the Northern Province holden at Vavunia of the devolved judicial matters falling within its jurisdiction.
4. Judgment of this Court in C. A. Revision 686/97 (Primary Court, Jaffna Case No. 139) was also referred to.

These arguments would presently be examined.

Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka certified on 31.8.1978 reads as follows:

- (1) **The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by any Court of First Instance, tribunal or other Institution and sole and exclusive cognizance, by way of appeal, revision and *restitutio in integrum*, of all causes, suits, actions, prosecutions, matters and things of which such Court of First Instance, tribunal or other institution may have taken cognizance:**

Provided that no judgment, decree or order of any court shall be reversed or varied on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice.

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- (2) **The Court of Appeal shall also have and exercise all such powers and jurisdiction, appellate and original, as Parliament may by law vest or ordain.**

By the Thirteenth Amendment certified on 14.11.1987 the following new Article 154P was incorporated into the Constitution:

- (1) **There shall be a High Court for each Province with effect from the date on which this Chapter comes into force. Each such High Court shall be designated as the High Court of the relevant Province.**
- (2) **The Chief Justice shall nominate, from among Judges of the High Court of Sri Lanka such number of Judges as may be necessary to each such High Court. Every such Judge shall be transferable by the Chief Justice.**
- (3) **Every such High Court shall:**
- (a) **exercise according to law, the original criminal jurisdiction of the High Court of Sri Lanka in respect of offences committed within the Province;**
 - (b) **notwithstanding anything in Article 138 and subject to any law, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province;**
 - (c) **exercise such other jurisdiction and powers as Parliament may, by law, provide.**
- (4) **Every such High Court shall have jurisdiction to issue, according to law-**

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- (a) **orders in the nature of habeas corpus, in respect of persons illegally detained within the Province; and**
- (b) **orders in the nature of writs of certiorari, prohibition, procedendo, mandamus and quo warranto against any person exercising, within the Province, any power under-**
- (i) **any law; or**
- (ii) **any statutes made by the Provincial Council established for that Province,**

in respect of any matter set out in the Provincial Council List.

- (5) **The Judicial Service Commission may delegate to such High Court, the power to inspect and report on, the administration of any Court of First Instance within the Province.**
- (6) **Subject to the provisions of the Constitution and any law, any person aggrieved by a final order, judgment or sentence of any such Court in the exercise of its jurisdiction under paragraphs (3) (b) or (3) (c) or (4) may appeal therefrom to the Court of Appeal in accordance with Article 138.**

Thus despite Article 138 of the Constitution, Article 154 P (3) (b) gave High Court of a Province a parallel or concurrent jurisdiction to hear applications by way of an appeal or revision regarding orders made by Primary Courts within the Province.

The High Court of the Provinces (Special Provisions) Act No. 19 of 1990 certified on 15.5.1990 was brought in "to make provision regarding the procedure to be followed in and the right to appeal to, and from the High Court established under Article 154 P of the Constitution"

After conferring by Section 4 a right of appeal from an order made by the Primary Court to the High Court established under Article 154 P of the Constitution, Section 5 of the said Act No. 19 of 1990 provided similar procedures to be adopted in the High Court as followed in the Court of Appeal, with regard to such appeal or revision relating to orders made by Primary Courts.

Section 12 of the said Act No. 19 of 1990 referred to procedure to be adopted in case an appeal or application in respect of the same matter is filed in Court of Appeal and in the High Court. The said section is as follows:

- (a) **Where any appeal or application is filed in the Court of Appeal and an appeal or application in respect of the same matter has been filed in a High Court established by Article 154 P of the Constitution invoking jurisdiction vested in that Court by paragraph (3) (b) or (4) of Article 154 P of the Constitution, within the time allowed for the filing of such appeal or application, and the hearing of such appeal or application by such High Court has not commenced, the Court of Appeal may proceed to hear and determine such appeal or application or where it considers it expedient to do so, direct such High Court to hear and determine such appeal or application:**

Provided, however, that where any appeal or application which is within the jurisdiction of a High Court established

by Article 154 P of the Constitution is filed in the Court of Appeal, the Court of Appeal may if it considers it expedient to do so, order that such appeal or application be transferred to such High Court and such High Court shall hear and determine such appeal or application,

- (b) Where the Court of Appeal decides to hear and determine any such appeal or application, as provided for in paragraph (a), the proceedings pending in the High Court shall stand removed to the Court of Appeal for its determination.**
- (c) No appeal shall lie from the decision of the Court of Appeal under this section to hear and determine such appeal or application or to transfer it to a High Court.**
- (d) Nothing in the preceding provisions of this section shall be read and construed as empowering the Court of Appeal to direct a High Court established by Article 154 P of the Constitution to hear and determine any appeal preferred to the Court of Appeal from an order made by such High Court in the exercise of the jurisdiction conferred on it by paragraph (4) of Article 154 P of the Constitution.**

It is to be noted that the power given under Article 138 of the Constitution to the Court of Appeal to hear and determine applications in revision against orders made by Primary Courts was not in any way taken away by either the Thirteenth Amendment or Act No. 19 of 1990. In effect both Courts were conferred concurrent jurisdiction in respect of these matters.

When section 12(a) and its proviso in Act No. 19 of 1990 speaks of considering "it expedient to do so" the phrase must

be properly understood. "Expedient" as an adjective means suitable or advisable. As a noun it means that which serves to promote. It also connotes the means suitable to an end. It would be unethical to define the phrase "expedient to do so" as that which serves to promote a selfish end. The main consideration which should attract the attention of the Court of Appeal when deciding whether a case before it should be transferred to an appropriate High Court should be the convenience of parties. Easing the work-load of the Court of Appeal cannot be an adequate ground. That would be a most unfortunate selfish ground. Further, the alleged equation of a Superior Appellate Court to the High Court of a Province need not be considered demeaning or debasing. The whole purpose of the Thirteenth Amendment establishing a High Court in every province was to confer jurisdiction in respect of certain matters in the High Court granting it concurrent jurisdiction with the Court of Appeal. When concurrent or parallel jurisdiction is given by Law to two Courts the question of a superior and inferior Court would not arise. As far as the jurisdiction granted to the two Courts in certain matters goes, they are equal. Even the question of depriving the High Court of the Northern Province of a devolved judicial matter need not concern us unless the Court of Appeal arbitrarily wishes to arrogate to itself jurisdiction in preference to the High Court for some questionable reason.

The only consideration, to our mind, that should receive our attention when we deem a matter to be "expedient to do so" should be the convenience of parties. So long as the law had not detracted nor taken away a particular jurisdiction from the Court of Appeal and conferred it exclusively on the High Court, it might be assumed that both Courts could hear such cases subject to convenience of parties. If parties have a ready forum closer to them such a forum is to be preferred rather than the forum far away from their residences.

Thus the only matter to receive our consideration in this connection should be whether parties would be prejudiced by having this matter decided in this Court.

The learned Counsel for the Petitioner has drawn our attention to paragraph 7 of the Petition dated 14th day of October 1998 which reads as follows:

"The Petitioner is compelled to make this application to your Lordships' Court direct as there is no High Court functioning in Jaffna, the High Court holden in Vavuniya is beyond the reach of the Petitioner as he has to come to Colombo and obtain security clearance to enter Vavuniya and no more than a day will be permitted for his stay in Vavuniya for security reasons and as your Lordships' Court is vested with concurrent appellate and revisionary jurisdiction to enable them to make this application in respect of this matter".

With the passing of the Emergency (Miscellaneous Provisions and Powers) Regulation No. 1 of 2000 on 03.05.2000, published in Gazette Extra Ordinary No. 1130/8, under Section 5 of the Public Security Ordinance, the position of a litigant, resident in the Northern Province has become even more pathetic. He has to face *inter alia* ad hoc curfews, restrictions on movements; control over communications including telecommunications and daily news publications. The very fact that there is no High Court functioning in Jaffna but only in peripheral Vavunia must no doubt be taken into consideration in consonance with the difficulty faced by persons to obtain security clearance to stay beyond 24 hours in Vavuniya. To order a transfer of this case to the High Court of Northern Province holden at Vavuniya would be height of insensitivity on the part of this Court. We are aware that in cases such as C. A. Revision No. 686/97 which was referred to

by the learned Counsel for the Respondent, the relevant records have still not reached the appropriate High Court of Northern Provinces holden in Vavunia even after eight months since the order was made. **We are satisfied that litigants from the Jaffna Peninsula would be adversely affected if we were to make order transferring this applicaiton to the High Court holden in Vavuniya.**

Even though learned Counsel for the Respondents had in paragraph 28 of his written submissions referred to the fact that he had attended Courts in Vavuniya and had not encountered any difficulties in conducting his professional duties there, we are not sure that he had made such visits to Vavunia after the passing of Regulation No. 1 of 2000. In any event, this Court has already considered this matter and issued notice on the Respondents. Further, there had been no connected application pending in the High Court holden at Vavunia when such steps were taken before this Court. Furthermore, a High Court functioning in a peripheral area (at Vavuniya) being called upon to overlook the work of an appropriate High Court (in Jaffna) for certain exigencies cannot be considered as the appropriate High Court established under the law in terms of Section 12 of Act No. 19 of 1990.

Therefore we are of opinion that even though the Thirteenth Amendment devolved judicial power earlier vested in the Court of Appeal to Provincial High Courts and proviso to Sec. 12(a) of Act No. 19 of 1990 empowered this Court to transfer certain types of cases to the appropriate High Court if considered expedient to do so, yet the use of discretion by this Court to transfer such cases must consider *inter alia* the convenience of parties. We are of opinion that when an order to transfer is made by this Court under the provisions of Act No. 19 of 1990 it must not be founded on the convenience

of the Court of Appeal but on adequate grounds favourable to the litigants.

There would not be any beneficial results that may accrue to the litigants by such a transfer in this instance. In fact they would be greatly prejudiced under the present circumstances if a transfer is ordered.

We therefore refuse the application made by the learned Counsel for the Respondents to transfer this case to the High Court of Northern Province holden at Vavuniya and dismiss the preliminary objection raised by the learned Counsel.

TILAKAWARDANA, J. - I agree.

Preliminary objection overruled. Application to transfer case refused.