

K. P. KARUNAWATHIE
v.
K. P. KUSUMASEELI AND ANOTHER

COURT OF APPEAL.

S. ANANDA COMARASWAMY J.

C. A. APPLICATION No. 945/84-M. C. MT. LAVINIA No. 90721.

FEBRUARY 16, 1990.

Refusal to postpone trial after several dates of trial-Subsequent order of acquittal and costs against complainant-Permission to appeal to Court of Appeal refused by the Attorney-General-Revision of Magistrate's orders sought-Insufficiency of material to revise Magistrate's Orders-Non compliance with Rules of Supreme Court-Rule 46.

After several dates of trial the Magistrate had refused a postponement of the trial and in discharging the accused had also ordered costs against the complainant. The complainant-petitioner sought the Attorney-General's permission to appeal against the Magistrate's orders to the Court of Appeal. The Attorney-General refused permission. Thereafter the complainant petitioner sought to revise the Magistrate's orders and in doing so annexed only the order of the Magistrate to her application.

Held:

(1) Where several dates of trial had passed there was no reason to interfere with the order of the Magistrate refusing to grant a postponement of the trial.

(2) The impugned order being an appealable order for which the Attorney-General's permission was required and in circumstances where the Attorney-General refuses such permission and an aggrieved party seeks to revise the order of the Magistrate, the order of the Magistrate alone was not sufficient. In those circumstances the proceedings in the Magistrate's Court also should have been filed.

(3) There is also non-compliance with Rule 46 of the Rules of the Supreme Court in the circumstances of the case.

Semble :

Whether Revision lies in respect of an order for costs made against a complainant.

APPLICATION for Revision against an order of the Magistrate's Court of Mt. Lavinia.

Tilak Balasooriya for Petitioner.

J. de Almeida Guneratne for Respondent.

February 6, 1990.

ANANDA COOMARASWAMY, J.

This is an application for revision to revise the order of the learned Magistrate dated 2.11.83 and 3.11.83. The learned Magistrate had *inter-alia*, refused the postponement of the trial, acquitted the accused and ordered costs against the complainant. The complainant sought permission of the Attorney-General to appeal to the Court of Appeal, and that was refused. The complainant had therefore come by way of revision to this court by this application.

To revise the order to the learned Magistrate, the material before this court is insufficient as the petitioner has only filed the order of the learned Magistrate and not the proceedings in that case. In view of the fact that the proceedings are not before this court, it is not possible to revise those orders. It is to be noted that his action had been filed in 1979 and after several days of trial the learned Magistrate took up this trial and discharged the accused.

I see no reason to interfere with that order, as several days of trial had passed before he made that order. In any event, as proceedings of the Magistrate's Court are not before this court it is impossible to revise the order of the learned Magistrate.

There is also non-compliance of Rule 46 of the Rules of the Supreme Court. I therefore dismiss the petitioner's application.

Later—

Counsel for petitioner makes an oral application for leave to appeal to the Supreme Court on the following questions of law as mentioned by him:—

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- (1) Application of Rule 46 to this matter,
 - (2) Since the respondent has not filed any objections they concede the facts in the case,
 - (3) Can the Court of Appeal hold with the Magistrate as he has acted contrary to the provision of the Criminal Procedure Code by—
 - (a) discharging the accused, and
 - (b) ordering state costs.

I see no questions of law in the above submission for adjudication by the Supreme Court.

The application for leave to appeal is refused.
