

PERIANNAN
VS
BANDARAWELA MULTI-PURPOSE
CO-OPERATIVE SOCIETY AND ANOTHER

COURT OF APPEAL
BALAPATABENDI, J. AND
IMAM, J.
CA. 697/2003 (CONTEMPT)
C.A. 621/99 (WRIT)
JUNE 23, AND
OCTOBER 6 AND 11, 2004

Contempt of the Court of Appeal — Article 105 of the Constitution – Summons / charge sheet – Necessity to disclose any violation of the judgment of the court

The petitioner in his writ application – CA 621/99 – obtained a judgment in his favour for all the relief claimed. In spite of the demand made upon the said judgment the 1st – 9th respondents accused have failed to hand over possession of the premises. The petitioner asserts that there is contempt of court.

Held :

The summons or the charge sheet served on the respondents-accused do not disclose any violation of the judgment of the Court of Appeal and further the summons or the charge sheet do not specify the offences committed by the respondents accused.

“A person should not be punished for contempt of court unless a charge is formulated either specifically or in the form of a rule nisi.”.

APPLICATION under Article 105 of the Constitution.

Case referred to :

1. *K. Velayuthan vs Hon. A. C. A. Alles* – 75 NLR 268

S. P. Sriskantha with A. Paramalingam for complainant petitioners

M. Ameen, State Counsel, for 10th – 12th respondents

Wijayadasa Rajapakse, P. C. with Rasika Dissanayake for 2nd – 9th accused respondents.

Cur.adv.vult

December 14, 2004

JAGATH BALAPATABENDI, J.

The Petitioner-complainant in Case No. CA (Writ) 621/99 had obtained a Judgment in favour of him by this Court, for all the reliefs claimed in the prayer to the Petition filed by him.

In the instant case for contempt of Court the Petitioner-complainant alleged that, inspite of the demand made upon the said Judgment the 1st to 9th Respondents-accused have failed and/or neglected and/or refused to comply with the Orders of this Court, of handing over the vacant possession of the premises bearing Assessment No. 25, Main Street, Bandarawela. Hence the Petitioner-complainant has asserted, the refusal of the Respondents-accused to comply with the said orders of this Court is malicious and/or *malafide* and/or illegal and/or unlawful and/or in contempt of this Court, therefore the Respondent-accused are liable to be punished by this Court for defiance/disrespect/dishonour of the orders of this Court and to be dealt with, in accordance with the law.

In the prayer to the Petition of the instant case for contempt of Court the Petitioner-complainant had prayed for the following reliefs :

- (i) issue summons on the Accused-respondents abovenamed ;
- (ii) issue notices on the Respondents-respondents abovenamed ;
- (iii) charge the accused with contempt of this Honourable Court ;
- (iv) inquire into the charge of contempt of this Honourable Court ;
- (v) punish the accused found guilty of contempt of this Honourable Court in accordance with the law ;
- (vi) *order the accused to hand over peaceful and vacant possession of the premises in suit to the Complainant, or in the alternative, direct the Fiscal of the District Court of Bandarawela to hand over possession of the said premises to the Complainant ;*
- (vii) for costs ; and
- (viii) for such other and further reliefs as to Your Lordships' Court shall seem fit and proper.

At the inquiry into the instant contempt of Court application, the counsel for the Accused-respondents raised two preliminary objections as follows :-

- 1) Since the summons served on the 2nd to 9th Respondents-accused do not disclose any violation of the Judgment of this Court by the 2nd to 9th Respondents-accused, this inquiry into the purported contempt of Court cannot be proceeded with; and
- 2) The Petitioner has failed to serve valid summons and/or charge sheet on the 2nd to 9th Respondents-accused.

Both counsel agreed to resolve the abovementioned Preliminary issues on written submissions.

The contention of the Counsel for the Petitioner-complainant was that, when this matter was taken up on 07.08.2003 the same preliminary objections were raised, and later it was abandoned by the Respondent-accused. On 15.10.2003 the Respondents-accused pleaded "Not Guilty" to the charges framed and the inquiry was fixed for 21.11.2003. Thereafter, as the Counsel for the Respondents-accused indicated to Court that he had personally advised the Respondents-accused to arrive at a settlement several dates were given for a settlement by Court. Later on the inquiry date (23.06.2004), as there was no settlement again the abovementioned preliminary objections were raised. The Counsel contended that the Preliminary Objections based on summons/charge sheet cannot be raised at this stage, as the Respondents-accused had already pleaded "Not Guilty" to the charges, and also the objections raised are untenable in law as the summons clearly indicate the violation of the Judgment by the Respondents-accused. Therefore he urged that the preliminary objections raised be dismissed and fix the matter for further inquiry on the charges framed against the Respondents-accused.

Even though the counsel for the Petitioner stated that the same objections were raised on 07.08.2003, it appears in the Journal Entry dated 07.08.2003 as follows :

" 1st to 8th Respondents take up a preliminary objection that *ex-facie* there are no grounds for contempt of Court and wishes to make submissions on the matter." "Arguments on 15.10.2003."

Thus, it is manifest that the objections raised by the 1st to 8th Respondents on 07.08.2003 were not the same.

The contention of the counsel for the Respondents-accused was that, in writ application bearing No. CA. 621/99 filed in this Court by the Petitioner-complainant had sought the following reliefs :-

- (a) grant and issue a mandate in the nature of writ of certiorari to quash the purported Section 2 and Section 5 notices and all the steps taken in acquiring the premises which belonged to the Petitioner under the Land Acquisition Act (Chap. 460) ; and
- (b) grant and issue a mandate in the nature of writ of certiorari to quash the vesting and acquisition order published in the Gazette 1059/11 dated 23.12.1998.
- (c) grant costs, and other reliefs the Court shall seem meet.

This Court after inquiry had held that the Petitioner-complainant was entitled to the above mentioned reliefs claimed, and also the Petitioner-complainant was entitled to costs of Rs. 10,000/- payable by the 3rd respondent, Bandarawela Multi Purpose Co-operative Society. (As per Judgment dated 30.05.2002).

It had been revealed that the 3rd Respondent-accused – the Multi Purpose Co-operative Society is in possession of the said premises since 1975 as a tenant and the other Respondents-accused are the Directors of the said society. Following the Judgment of this Court dated 30.05.2002 the Petitioner-complainant had sent a letter to the Respondents-accused demanding to hand over the vacant possession of the said premises to him had been refused by the Respondents-accused – on the premise that they are the statutory-tenants of the premises in question.

Hence, the counsel for the Respondents-accused contended that the rights of the tenant which were secured by the statute (the Rent Act) cannot be affected or taken away merely because an order for acquisition was quashed by a writ of certiorari. Also, neither the Petitioner-complainant had sought a relief for ejection of the 3rd respondent society from the said premises nor had this Court granted a relief to eject the 3rd respondent from the said premises. Besides, there was no order been made against the 3rd respondent to vacate the said premises in the Judgment dated 30.05.2002.

For the reasons aforesaid, the counsel for the Respondents-accused urged that the refusal to vacate the said premises by the Respondents-accused do not constitute an abuse of the process of this Court, and also do not amount to contempt of Court.

In the case of *K. Velayuthan vs. The Hon. A. C. A. Alles⁽¹⁾* it was held that “a person should not be punished for contempt of Court unless a charge is formulated either specifically or in the form of a rule nisi.”

In the circumstances mentioned above, we are inclined to accept the contention of the counsel for the Respondents-accused, that the summons or the charge sheet served on the Respondents-accused do not disclose any violation of the Judgment of this Court and also the summons or the charge sheet served do not specify the offence committed by the Respondent-accused.

Having considered all the circumstances, we uphold the preliminary objections raised by the Respondents-accused. Thus the application filed by the Petitioner-complainant against the Respondents-accused for contempt of Court, is dismissed. No costs.

IMAM, J. — I agree.

Application dismissed.