

**RANMENIKE
v.
SENARATNE**

COURT OF APPEAL
TILKAWARDANE, J. AND
WIJERATNE, J.
HCA NO. 408/92
OCTOBER 21, 2002

Writ of Habeas Corpus – Exemplary costs – When should it be ordered? – Is it punitive?

Held:

- (1) Exemplary means outstanding or in context exceeding the amount needed for simple compensation.
- (2) It is a method of imposing a fine in lieu of a separate action for civil damages for enhanced or exemplary costs which was to penalize the parties who had made false declarations to court.
- (3) Prior to awarding exemplary costs the court has to determine as to whether a respondent is liable for the arrest / detention of the corpus.

Per Tilakawardane, J.

“Another important aspect of exemplary costs is that in a way it involves a punitive effect against those found liable; it is a form of punishment to deter others from following such action specially in carrying out their official duties
.....”

APPLICATION for a writ of *habeas corpus*.

Cases referred to :

1. *K. Leela Violet v. I. P. Vidanapathirana and Others* – (1994) 3 SLR 337.
2. *Sebastian M. Hongray v. Union of India* – (1984) AIR SC 1026.
3. *Kodippilige Seeble v. Savanathan and Others* – (1986) 2 Sri LR 228.

A. A. de Silva, PC with Jayalath Hissella and Sarath Weerakoon for petitioner.

Asoka Weerasooriya with Chandrika Thilakaratne for 2nd respondent.

Arjuna Kurukulasuriya for 1st respondent.

Gihan Kulatunga, State Counsel for Attorney-General.

October 21, 2002

S. TILAKAWARDANE, J.

Learned President's Counsel appearing for the petitioner has conceded in his argument that he is not proceeding against the 5th respondent, the Commander of the Army nor Colonel Liyanage, the 2nd respondent, who at all times material to this application were in charge of the Sevana Army Camp at Ratnapura. ⁰¹

All parties to this case have conceded that the only matter that is in issue is whether this court should award exemplary costs to be paid by the 1st and 3rd respondents to the petitioner.

It is important to note that the definition given in the Oxford Dictionary for the word exemplary means outstanding, in other words where it is connected to the word damages, it means outstanding or in context exceeding the amount needed for simple compensation. ¹⁰ The term exemplary costs was introduced to our courts by the decision given in the case *K. Leela Violet v. I. P. Vidanapathirana and Others.*⁽¹⁾

An analysis of this judgment discloses that the original concept of exemplary costs had come from the Indian case of *Sebastian M. Hongray v. Union of India.*⁽²⁾ Justice Desai, dealing with similar

applications in which the corpora had disappeared but where the respondents were denying liability, evolved a novel method of granting relief. Whilst identifying the writ jurisdiction of the *habeas corpus* applications to obtain the release of a person from illegal detention, he clearly recognised that such applications could not be used to obtain punishment or to afford reparation to the wronged person. He, therefore, developed the concept that, by the very denial of the parties who are responsible, namely the respondents in a case, there had been a misleading of the court. In other words there could have been charges of civil contempt which could have been preferred against the respondents, upon their denial especially when inquiries held subsequently revealed that such denials were false. In such instances no doubt civil contempt would lie against the perpetrators. Civil contempt was admittedly punishable with imprisonment as well as a fine. So, the court evolved this method of imposing a fine, in lieu of a separate action for civil damages for enhanced or exemplary costs, which was to penalize the parties who had made false declarations to the court. In fact, this concept of false denial of arrest and custody of individuals was also referred to by Justice Mark Fernando in *Habeas Corpus* application No. 19 of 1988 which has also been adverted to in the case of *K. Leela Violet v. I. P. Vidanapathirana (supra)*. In this case there is no doubt that the prerequisites for awarding of exemplary costs should be considered by this court, but in considering the same we should also remember that there is a punitive aspect involved in the awarding of such costs.

However, prior to this award this court has to make certain determinations, as to whether a respondent is liable for the arrest and/or detention of the corpus and though it is not accepted that such should be of the standard required in criminal law. *Kodippilige Seetha v. Savanathan and Others.*⁽³⁾ In terms of the findings in the High Court of Ratnapura case No. 121/94 against the 1st and 3rd

respondents their liability had been proved beyond reasonable doubt and they have been accordingly convicted by the High Court of Ratnapura. In this sense, it is also important to note that therefore the denial in these pleadings in this application by the 1st and 3rd respondents were false. In terms of the facts and circumstances of this case, clearly the disappearance of the corpus was attributable to the 1st and 3rd respondents and the denial of arrest and detention made by them in their affidavits were patently false especially in terms of the findings in the aforesaid High Court case. Thus, the denial by the 1st and 3rd respondents are false statements made to this court and attracts the liability of civil contempt. 50

Another important aspect of exemplary costs is that, in a way it involves a punitive effect against those found liable. In other words it is a form of punishment to deter others from following such actions specially in carrying out their official duties. The senior counsel arguing on behalf of the petitioners have stated that this relief of cost is granted in a way to assuage the grief of the petitioner. This would be an understatement as this court is in no way able to make reparation for the loss that has been suffered by them, and specially the loss of the members of their own families. 60

However, it also to be remembered that these petitioners have traversed a long and hazardous path overcoming many bars and obstacles to ultimately obtain their relief, at least in so much as their satisfaction of knowing that the culprits to this hideous crime have been convicted of charges. 70

Therefore, as the costs of seeking relief through court has been incurred by them, this court feels that the awarding of costs is just and necessary under the circumstances.

However, in awarding the punitive costs the very high punitive aspect which would normally have been considered by this court is tempered by the fact that both the 1st and 3rd respondents after their convictions are serving a period of 10 years' rigorous imprisonment⁸⁰ for the actions which are included in the allegations made in these applications.

Having considered all these this court awards a sum of Rs. 35,000, as exemplary costs to be awarded by the 1st respondent to the petitioner in this case. A period of time is being given for the payment of these charges. For this purpose this case is to be mentioned on 12. 12. 2002. Failure to pay such costs, will render the respondents liable to a period of one year's rigorous imprisonment.

The Registrar is required to officially inform the 1st and 3rd respondents of the decision of this court in this matter and a certified⁹⁰ copy of this decision is to be annexed and served to the 1st and 3rd respondents through the Superintendent of Prisons, as the respondents are presently serving a sentence.

WIJERATNE, J. – I agree.

Exemplary costs fixed at Rs. 35,000 awarded.