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**METTHANANDA  
VS  
KUSHAN FERNANDO**

COURT OF APPEAL  
BALAPATABENDI, J AND  
IMAM, J,  
CA 570/2003 (CONTEMPT),  
D. C. HOMAGAMA 533/SPL,  
DECEMBER 19, 2003,  
JANUARY 30, 2004 AND  
AUGUST 2 AND 4 2004.

*Contempt of Court - Affirmant not told that the affidavit would be tendered to court - Does the District Court have jurisdiction to charge those who obtained the signatures to the affidavit? - Signatures obtained in the absence of the Justice of Peace - Contempt of Court - Constitution Article, 105(3) - Judicature Act, section 55 (1) - Civil Procedure Code, sections 183 and 183 (B) - In faculae curiae and ex facie curiae.*

The plaintiff-petitioner alleging that the 1st and 5th defendant -respondents have obtained the signature of 3 persons to an affidavit in the absence of the Justice of Peace and without explaining or disclosing that the said affidavit is to be tendered to court, filed an application in the Court of Appeal for contempt of court.

The 1st and 5th respondents contended that the application cannot be maintained taking into consideration Article 105(3) of the Constitution read with section 55 of the Judicature Act and section 183 (B) of the Civil Procedure Code.

**HELD:**

- (i) Article 105(3) of the Constitution gives the Supreme Court/Court of Appeal the power to punish for contempt of itself whether committed in the Court or elsewhere ; the power would include the power to punish for contempt of any Court, Tribunal or Institution whether committed in the presence of such court or otherwise.

It is provided that the provisions of Article 105(3) would not affect or prejudice the rights now or hereinafter vested by any law in such court etc., to punish for contempt of court.

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- (ii) Section 55(1) confers specific jurisdiction on every District Court, Magistrate's Court and Primary Court to deal with every offence of contempt of court committed in the presence of the court or committed in the proceedings in the said court.
- (iii) Section 183 (B) of the Civil Procedure Code utilizes the said power conferred by section 55(1) and lays down the procedure to deal with the contempt of court arising out of giving false statements by way of an affidavit or otherwise.

*Per Imam, J.,*

"When the legislature has laid down a specific provision to deal with the contempt of court arising out of giving false evidence in the course of any of its proceedings, the petitioner should proceed under section 55(1) of the Judicature Act read with section 183 of the Code rather than seek redress from this court.

**APPLICATION** under Article 105(3) of the Constitution on a preliminary objection raised.

**Cases referred to :**

1. *A. M. E. Fernando vs Attorney General* (2003) 2 Sri LR at 53
2. *Regent International Hotels Ltd., vs Cyril Gardiner and 8 others* (1978-79-80) 1 Sri LR 278 (SC)
3. *Mansoor and another vs OIC Avissawella Police and another* - (1991)2 Sri LR 75.

*Edward Ahangama* for plaintiff petitioner.

*Manohara, R. de Silva* with *Govinda Jayasinghe* for 1st and 5th defendants respondent.

July 25, 2005,  
**IMAM, J.,**

This is an application filed by the Plaintiff-Petitioner (hereinafter referred to as the Petitioner) seeking that the 1st and 5th Defendant-Respondents (hereinafter referred to as the Respondents) be dealt with appropriately for Contempt of Court committed by them. On counsel for the Plaintiff-Petitioner making oral submissions to Court on 19.12.2003, counsel for the 1st and 5th Defendant-Respondents took up a preliminary objection on 30.01.2004.

The facts of the case are briefly as follows. The Plaintiff-Petitioner alleges that the 1st Defendant-Respondent and the 5th Defendant-Respondent obtained signatures for the affidavit marked XI from K. D. M. M. Bandara, Arachchige Don Wijeratne and Latha Gamage without explaining or disclosing that the aforesaid document marked XI is an affidavit which is to be tendered to Court. Furthermore it is alleged by the Plaintiff-Petitioner that when the aforesaid signatures were obtained a Justice of the Peace was not present.

The preliminary objections taken up by counsel for the 1st and 5th Respondents was that this application cannot be maintained, taking into consideration Article 105(3) of the Constitution read with section 55(1) of the Judicature Act and section 183(b) of the Civil Procedure Code. Counsel further submitted that the 5th Defendant-Respondent does not intend to avoid facing trial, with regard to the complaint of the Petitioner, but contends that the District Court in which this case was tried would be the best forum to adjudicate the complaint made by the Petitioner. The position of the Petitioner is that the 1st and 5th Respondents obtained the signatures of the aforementioned Bandara, Don Wijeratne, and Latha Gamage between 8.00-9.00 p.m. without disclosing the fact that XI was to be construed as an Affidavit to be tendered to the District Court of Homagama in the absence of a Justice of the Peace to attest X1, which act amounted to a Contempt of Court, and sought that the Respondents be dealt with accordingly. The Respondents referred to a judgment of His Lordship Chief Justice G. P. S. De Silva in *A. M. E. Fernando vs Attorney General*<sup>(1)</sup> where His Lordship held that "Article 105(3) of the Constitution vests the Supreme Court, which is a Superior Court of record, in addition to the powers of such Court, the power to punish for contempt itself whether committed in the

Court itself or elsewhere, with imprisonment or fine or both as the Court may deem fit." This provision it was pointed out by the Petitioner is based on the common law, which draws a distinction in which is described as criminal contempt between those acts committed in the face of the Court "in faciae curiae" and those committed outside Court "ex facie curiae". The inherent jurisdiction of the Supreme Court of England to impose punishment summarily in respect of contempt 'in facie curiae' is mentioned in Oswald's Contempt of Court 3rd Edition as follows. "It is now the undoubted right of the Supreme Court to commit for contempts..... "

It was further averred on behalf of the Petitioner that in *Regent International Hotels Ltd. Vs Cyril Gardiner and 8 others* <sup>(2)</sup> the Bar Association Law Journal that His Lordship Chief Justice Nevile Samarakoon held that the Court of Appeal has all the powers under Article 105(3) of the Constitution of punishing for contempt whenever it is committed 'in facie curiae' (within the well of the Court) or 'ex-facie curiae' (those committed outside the Court). It was further held by Basnayake, CJ in SC 559/62 which dealt with an Application for a Rule Nisi for Contempt of Court on S. M. A. Cader and Assanar Lebbe Hameed Umma, that where an injunction granted by a District Court was disobeyed the Supreme Court had power to punish the offender for Contempt of Court. On hearing counsel for both sides, documents tendered and related matters, I have come to following conclusion.

Article 105(3) of the Constitution reads as follows :

"The Supreme Court of the Republic of Sri Lanka and the Court of Appeal of the Republic of Sri Lanka shall each be a Superior Court of record and shall have all the powers of such Court including the power to punish for contempt of itself whether committed in the Court or elsewhere with imprisonment or fine or both as the Court may deem fit. The power of the Court of Appeal shall include the power to punish for Contempt of any Court, Tribunal or Institution referred to in paragraph 1(c) of this Article, whether committed in the presence of such Court or otherwise.

Provided that the preceding provisions of this Article shall not prejudice or affect the rights now or hereinafter vested by any law in such other Court, Tribunal or Institution to punish for Contempt of Court."

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However section 55(1) of the Judicature Act confers specific jurisdiction to every District Court, Magistrate's Court and Primary Court to deal with every offence of Contempt of Court committed in the presence of the Court or committed in the proceeding in the said Court.

Section 55(1) of the Judicature Act states as follows.

"Every District Court, Family Court, Magistrate's Court and Primary Court shall, for the purpose of maintaining its proper authority and efficiency, have a special jurisdiction to take cognizance of, and to punish with the penalties in that behalf as hereinafter provided, every offence of contempt of Court committed in the presence of the Court itself and all offences which are committed in the course of any Act or proceeding in the said Courts respectively, and which are declared by any law for the time being in force to be punishable as Contempts of Court."

Section 183(B) of the Civil Procedure Code utilizes the said power conferred by section 55(1) on the District Court and lays down the procedure to deal with the Contempt of Court arising out of giving false statements by way of an affidavit or otherwise.

Section 183(B) of the Civil Procedure Code specifically states that where any person wilfully makes any false statement by affidavit or otherwise, in the course of any of the proceedings aforesaid he may be punished as for a contempt of Court, besides his liability to be tried and punished under the Penal Code for the offence of giving false evidence, where such statement is on oath or affirmation.

Furthermore on examination of a true photocopy of X1, there is no apparent signature of a JP nor a seal affixed.

Thus when the legislature has laid down a specific provision to deal with Contempt of Court arising out of giving false evidence in the course of any of its proceedings, the Petitioner should proceed under section 55(1) of the Judicature Act read with section 183 of the Civil Procedure Code, rather than seek redress from this Court.

It is manifestly clear that by taking up this preliminary objection the 1st and 5th Defendant-Respondents do not intend to avoid facing trial, but

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only seek the indulgence of this Court to direct the Petitioner to institute this action in the proper forum for it to be concluded expeditiously. Hence as the evidence of the witnesses is incomplete, the District Court would be the best forum to decide whether the evidence of the witnesses is true or false, and hence the District Court would be the appropriate forum to adjudicate upon the complaint made by the Petitioner.

With this regard the case of *Mansoor and another vs OIC Avissawella Police and another*<sup>(3)</sup> is relevant. In this case it was held that where a statute creates a specific right and gives a specific remedy or appoints a specific Tribunal for its enforcement, a party seeking to enforce must resort to that Tribunal.

For the aforesaid reasons we dismiss the Petitioner's application, and direct the Petitioner to institute this action in the District Court, where the alleged complaint is said to have been committed.

**BALAPATABENDI, J.** — I agree.

*Preliminary objection upheld. Petitioner directed to institute action in the District Court, where the alleged complaint is said to have been committed.*

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