

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

W. A. R. C. Perera

(Presently detained at the Magazine
Remand Prison, Colombo).

ACCUSED-PETITIONER

C.A. (PHC) 88/2012

C.A. (PHC) 89/2012

C.A (PHC)136/2012

Vs.

1. Hon. Attorney General
Attorney General's Department
Colombo 12.
2. Officer In Charge
Colombo Criminal Division
No. 214, Kollonnawa Road,
Dematagoda, Colombo 9.
3. Officer In Charge
Homicide Investigation Unit,
Criminal Investigations Department
Colombo 1.

RESPONDENTS-RESPONDENTS

BEFORE: Anil Gooneratne J. &
P.W.D.C. Jayathilake J.

COUNSEL: Saliya Peiris with Lasitha Sachindra for the Accused-Petitioner

W.J.S. Fernando P.C., A.S.G., with Anooa de Silva S.S.C.
for Respondents-Respondents

ARGUED ON: 28.3.2013 & 31.03.2014

DECIDED ON: 27.05.2014

GOONERATNE J.

The Accused-Petitioner in this revision application at the time of his arrest was a Lieutenant Colonel in the Sri Lanka Army. As pleaded Petitioner is detained in the Welikada Remand Prison, Colombo. It is also pleaded inter alia that on or about 14.5.2009, a team of police officers came to his house and interrogated the Petitioner in relation to an alleged association with identified LTTE suspect. Thereafter petitioner was arrested on a charge of committing acts/offences against the state. Though numerous positions were taken in the pleadings and submissions before this court, the only matter to be decided is

whether the Petitioner could be enlarged on bail as per sub-paragraph (b) of the prayer to the petition whereby the Petitioner seek to set aside the order of the learned High Court Judge dated 14.5.2012 (contained in document P6).

The learned counsel for the Petitioner argued that bail provisions under the Emergency Regulations are less stringent than the provisions contained in the Prevention of Terrorism Act (PTA). He also submitted that Emergency Regulations permit the release of the suspect, unlike under the powers of the PTA. Learned counsel strenuously argued that the Emergency Regulations lapsed on 30.8.2011. As such with the lapse of Emergency Regulations procedural law applicable including the provisions of bail is no longer the Emergency Regulations, but the general law that would apply in the context of this application.

In support of his views several rules of interpretations were cited to this court. We are mindful of all those submissions made on behalf of the Accused-Petitioner.

Learned Additional Solicitor General basically relied on the gazette regulation itself to convey his point and argued otherwise. He also cited the case reported in S.C 637/95.

The order of the learned High court Judge contained at P6, although very brief, specifically states that with the lapse of Emergency Regulations and even though the case had been filed under the Emergency Regulations, be deemed to have been in remand in terms of the Prevention of Terrorism (Temporary Provisions) act. Trial Judge further states that when charges are framed under the provisions of the Prevention of Terrorism Act a suspect could be enlarged on bail only with the sanction and consent of the Hon. Attorney General.

The relevant Gazette Notification of 29th August 2011, which regulations, are cited as the Prevention of Terrorism (Detainees and Remandees) Regulations No. 4 of 2011. I would for purpose of clarity incorporate the relevant provisions as follows:

- Section 2(1) Any person who has been detained in terms of the provisions of any emergency regulation which was in operation on the day immediately prior to the date on which these regulations came into operation, shall forthwith on the coming into operation of these regulations, be produced before the relevant Magistrate, who shall take steps to detain such person in terms of the provisions of the Criminal Procedure Code Act No. 15 of 1979.
- (2) Any person who has –
- (a) been remanded by a Magistrate in connection with the commission of an offence in terms of the provisions of any emergency regulation which

was in operation on the day immediately prior to the date on which these regulations came into operation; or

- (b) been connected with or concerned in, or who is reasonably suspected of being connected with or concerned in the commission of any unlawful activity within the meaning of the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979.

The above regulations no doubt has made provisions to cater to the problem in hand. There is no ambiguity in same. I see no basis to interfere with the learned High Court Judge's order. The regulation in question could be called subordinate legislation. The Accused had been arrested for a very serious offence. The offence no doubt connects either directly or indirectly to the colossal damage caused to the country (person and property) for several years and what kept our country under a cloud. Merely because the Emergency Regulation has lapsed would not mean that the state could risk its security to the nation. There is no objection in law to a valid determination order under Emergency Regulations being immediately followed upon its expiry by a valid detention order under the PTA (vide S.C. 637/95). It is evident that in these circumstances that Regulation No. 4 of 2011 was passed. I would cite Maxwell on the Interpretation of States 12th Ed. Pg. 45 (applicable even to subordinate legislation). In determining either the general object of the

legislature or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most in accord with convenience, reason, justice and legal principles should in all cases of doubtful significance, be prescribed to be the true one.

I would state that intention to produce an unreasonable result need to be rejected.

In the above circumstances we affirm the order of the learned High Court Judge. Applications of Accused-Petitioner dismissed.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

P.W.D.C. Jayathilake J.

I agree.

JUDGE OF THE COURT OF APPEAL