

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

In the matter of an Appeal in terms of Article 154 P and Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with High Court of the Provinces (Special Provisions) Act No. 19 of 199.0

Rasika Sudantha Punchibandara
Senanayake.
No. 110 C1, Galwala road,
Godagadeniya, Peradeniya

Plaintiff-Respondent-Appellant

CA (PHC) APN
21/13, 48/13, 49/13, 50/13

VS

PHC Kandy,
86/12, 87/12, 88/12, 89/12,

Pradeep Nilanga Dela,
Diyawadana Nilame Nila Niwasaya.
Dharmapala Mawatha, Kandy.

Respondent- Petitioner- Respondent

Before : P. Padman Surasena, J (P-CA)

K.K.Wickremasinghe, J.

Counsel : AAL H. Withanachchi for the Respondent-Petitioner-Respondent

AAL Maneesha Seneviratne for the Plaintiff-Respondent-Appellant

Argued on : 22/01/2018

Written submission of the Appellant submitted on: 30/11/2017

Written submission of the Respondent submitted on: 05/12/17

Decided on : 16/02/2018

Judgment

K.K.Wickremasinghe

When this matter was taken up for argument all parties agreed to abide by the same order of one case (Case Nos: CA (PHC) APN 21/13, 48/13, 49/13,50/13). Further all parties agreed to file one written submission with regard to all matters.

All four Revision Applications were heard together in the High Court of Kandy and the parties had agreed to abide by the Order delivered in PHC – Kandy (Rev) Application No.86/2012.

The Plaintiff –Respondent-Appellant (hereafter referred to as the Appellant) instituted proceedings under section 136(1) (A) in Magistrates court of Kandy, against the Respondent-Petitioner-Respondent (hereafter referred to as the Respondent) for committing an offence under section 36(3) of The Buddhist Temporalities Ordinance (hereafter referred to as the ordinance), namely failure to tender half yearly accounts of the Temple of Tooth Relic which amounts to a violation of Section 36(1) (2)of the Act.

The Respondent-Petitioner-Respondent above named made the said revision application No. 86/2012 seeking inter alia the following reliefs;

- 1) to dismiss the plaint “in limine” filed in the Magistrate Court of Kandy in Case No.52409.
- 2) to set aside /revoke the order dated 25.06.2012 issuing summons on the respondent in the said case No.52409.
- 3) to make an interim order staying all proceedings in the said case No.52409 until the final determination of the revision application.

It is submitted by the appellant that a letter was addressed to the Commissioner of Buddhist Affairs, complaining of various misdeeds of the Respondent and requesting him to take appropriate remedial action. The response to the same by the Commissioner indicated that the Respondent has admitted commission of the offence mentioned above.

Counsel for the appellant submitted that having considered the plaint under Section 139(1)(a) the learned Magistrate issued summons and the Respondent, without making an appearance in the Magistrate court, invoked the jurisdiction of the Provincial High Court by way of a Revision. The Respondent's main grievances before the High Court was that the District court of Kandy had granted him further time to tender the accounts by its order dated 13/03/12. Therefore it was inappropriate for the Magistrate to issue summons. Further he brought to the notice of the court that under section 39 of the ordinance the prosecution of a trustee of a Temple is the sole prerogative of the Commissioner.

By the order of the learned High Court judge dated 7/5/13, it was held that pertaining to failure to tender accounts as per section 39 the sole authority for prosecution was the Commissioner and set aside the order of the learned Magistrate for the issuance of summons. Furthermore costs of Rs. 125,000/= each, totaling up to Rs 500,000/= were ordered.

The learned counsel for the Appellant invited this court to consider the alternative remedy available where Revisionary Jurisdiction can be invoked under special circumstances. Furthermore special circumstances should not be merely questions of law but circumstances that shock the conscience of the court and also that a remedy of a revision is available to a person "aggrieved". The issuance of summons does not make a person "aggrieved".

Counsel for the Respondent submitted that in terms of Section 39 of the act, only the Commissioner has the authority to institute action in respect of defaults with regard to the accounts but the Complainant in his personal capacity had lodged complaints in the Magistrates court of Kandy which resulted in the commencement of Cases Nos. 52409,52410,52411 and No. 52412.

Further that the fund of the Sri Dalada Maligawa would be spent after obtaining the approval of the said Commissioner and the accounts would be audited by a Chartered Accountant prior to the same being sent to the Commissioner resulting in a delay which is explained by the Maha Nayake Theros of two Chapters. Also the Respondent on 26/01/12 had made Application bearing No. DSP 00368/12 to the District Court seeking relief in terms of Section 33(a) and 33(b) of the act and an extension of time till 31/03/12 to furnish the statements of accounts for the period January 2009 to December 2011.

The learned District judge having considered the submissions made on behalf of the said Commissioner of Buddhist Affairs, granted time till 31/03/2012 to tender the said statements (order dated 13/03/2012).

Under the above mentioned circumstances the alleged charges in Cases No. 52409, 52410 and No. 52411 could not be treated as offences contemplated by Section 36 of the act and the attempts made by the Complainants to intervene in Case No. DSP 368 and Case No. DSP 373 had been rejected by the District Court.

It is submitted by the Respondent that the Complainant having got only 5 votes at the Election of the Diyawadana Nilame in which the Respondent was elected, was prompted by malice to make the said baseless private complaints. All the alleged charges related to the failure to furnish the said Statements which lapses had been cured by the Respondent within the time allowed by the District Court under Section 33.

The said Commissioner had called an inquiry by a Deputy Commissioner in Kandy in terms of Section 15(1) of the Act at which the Respondent had been exonerated of 12 charges leveled against him. However in respect of 13th charge the Respondent had admitted the default in sending the statement of accounts for period of six months and the Commissioner had indicated that steps would be taken to obtain such statements in due time.

It is pertinent to note that the Commissioner after inquiry had decided not to charge or to take action under Section 39 of the Act to prosecute, the Respondent in court and granted an opportunity to tender the accounts in time. The Maha Nayake Theros had specifically indicated that **a delay in sending the accounts was inevitable for practical difficulties such as auditing and the approval by all three persons involved and that the supervisory powers in this regard can only be exercised by the Commissioner and not by any other.**

This court is of the view that the Complaint dated 20/06/2011 had been inquired into the Commissioner who found the Respondent not guilty of the alleged acts of misconduct. The only ground of delaying the accounts had been sufficiently explained by the Maha Nayake and also, the Commissioner's decision not to prosecute the Respondent was correct.

Section 36(1) and (2a) in the said Part IV of the Ordinance mandates that the trustees should make up a statement of accounts at the close of every six months period in June and December in each year and submit the same after certifying

“true and correct” within 30 days of the end of each half year to the Public Trustee (presently to the Commissioner – General of Buddhist Affairs). Such accounts should be countersigned by the Mahanayake Theras of Malwatte Vihare and Asgiriya Vihare.

The provisions of Section 39 contemplate an inquiry by the Commissioner in the case of any income not being duly accounted for and to cause to be prosecuted any delinquent trustee. This court is of the view that the High Court was justified in taking the view that only the Commissioner is empowered to hold an inquiry as a condition precedent to satisfy himself that any trustee is reasonably be suspected of having committed a criminal breach of trust prior to cause such trustee to be prosecuted.

It is also noted by this case that by the High Court is that the Respondent had already invoked the provisions of Section 33 of the Act in District Court of Kandy Case No. DSP368/12 and No. SPL/373/12 seeking relief and the District Court had granted such relief. Therefore, the said Section 33, authorizes the court to give relief on an application by the trustee against any accidental mistake or omission or any informality, extent the time fixed for any action or proceeding and to order any person to discharge any duty within a time fixed in the Order. These reliefs could be granted by the Court in respect of any matter, any action or any duty under the Ordinance as the justice of the case may require.

According to the Order dated 26/07/2012 in Case No. SPL 373/12, state counsel appearing for Commissioner – General had informed the Court that the accounts for the period 2005-2008 had been already submitted although not within the time prescribed by Section 36 and the Learned Additional District Judge had concluded that such accounts being accepted by the Commissioner, relief should be granted for the accident mistake or omission of the Respondent.

Therefore in these circumstances, the Complainant could not have made and the Magistrate’s Court did not have jurisdiction to entertain the said impugned private complaints as in above mentioned cases in the Magistrate’s Court.

Considering above we are of the view that this court has no basis to interfere with the order of the learned High Court judge.

Therefore, Appeals of all connected cases are hereby dismissed.

JUDGE OF THE COURT OF APPEAL

P. Padman Sresena, J (P/CA)

I, Agree.

PRESIDENT OF THE COURT OF APPEAL