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

In the matter of an application for mandates in the nature of Writs of Certiorari, Mandamus and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Case No: CA/WRIT/115/2024

1. Govindasamy Ramanan
   No.15/10,
   25th Lane,
   Colombo 03.

PETITIONER

Vs.

1. Hon. Thilina Gamage
   Magistrate,
   Magistrate Court,
   Fort.

2. Securities and Exchange Commission of Sri Lanka
   Level 28 & 29, East Tower,
   World Trade Centre, Echelon Square,
   Colombo 01.

3. Chinthaka Mendis
   Director General
   Level 28 & 29, East Tower,
   World Trade Centre, Echelon
   Square,
   Colombo 01.

4. Kanagaratnam Naveenkanth
   No.724/4B, Ratnayake Gardens,
   Mabole, Wattala.

5. Registrar
   Magistrate Court
   Fort.

6. Hon. Attorney General
   No.159, Hulftsdorp,
   Colombo 12.

RESPONDENTS

Before: Hon. D.N. Samarakoon, J.

Counsel: Ronald Perera, P.C., with Mr. Namiq Nafath instructed by Ramzi Bacha Associates for the Petitioner.

Medhaka Fernando S.C., for the 1st to 3rd, 5th and 6th Respondents.

Ruwantha Cooray instructed by Mr. Dinesh Randeniya for the 4th Respondent.

Argued on: 06.03.2024

Synopsizes: 06.03.2024 by the Petitioner.

06.03.2024 by the 1st to 3rd, 5th and 6th Respondents.

Decided on: 07.03.2024

D.N. Samarakoon, J

Mr. Ronald Perera P. C. supported this matter on 06.03.2024 and said,

> Court: What is the charge?
>
> Counsel: The charge is manipulation of the shares of this company that he is the major shareholder and that he has got another person called Mrs. Perera to buy shares on his behalf and got the prices manipulated and for us to buy at a higher price. Now, my simple point is I have marked the last document, P. 14 that shows the shares that this Mrs. W.P. M. N. Perera has bought from between 15 February 2019, right up to the 13 March 2020.
>
> She has bought only 1931 shares out of a total share issue of 666,562 shares. That is there in our petition paragraph 16 of the petition.
>
> "Upon investigation, petitioner was made to be aware that Mrs. W. P. M. N. Perera has purchased only 1931 shares of IAC during the period 1.1.2019 to 18.5.2020".
>
> It is absurd to allege market manipulation in respect of 1931 shares purchased over a period of 17 months in a company with a listed shares of 666,562 shares or 0.29%.

The learned President's Counsel cited Malanie Gunaratne vs. Abeysinghe 1994 and C. A. Writ 211 2020 dated 14.06.2021.

Mr. Medhaka Fernando S. C., for all the respondents, except the 4th said,

> State Counsel: I will not go into the substantive detail. The first case No. Writ 111 deals with the situation of market manipulation which arose due

to certain share transactions between the petitioner and the 04th respondent. Writ 115 is another instance of market manipulation which arose due to a certain share subdivision which took place in 2020. So these are two distinct sets of transactions which have led to the Securities and Exchange Commission coming to the conclusion that there is a situation of market manipulation in terms of rule twelve of the securities and Exchange Commission rules. That is essentially the crux of this matter. The SEC came to the conclusion that, prima facie, the transactions evidenced a situation of market manipulation. They submitted certain documents before the magistrate's court. In terms of the law, magistrate took cognizance of these documents and issued summons. So the question here, which your lordships need to determine, is whether there was sufficient material for the magistrate in the first instance to issue summons.

Court: So that is what he also says.

State Counsel: **That is very clear in terms of the authorities before the court as well, where the petitioner and I digress is with respect to the extent of material which the petitioner says should have been placed before the magistrate's court prior to the issuance of summons**. [Emphasis added in this order].

Now, I will take your lordships firstly through section 139 of the Criminal Procedure Act, very briefly, so that the statutory requirement placed on the magistrate at the point of issuing summons, which lays down the standard which the magistrate must take cognizance of prior to the issuance of summons. I won't go very much into the details of this matter, because the stage of summons is a prima facie assessment that the magistrate has to make whether there is a reasonable material before the court for the issuance of summons to the respondents. So section 139 (1)

of the code says, where proceedings have been instituted under paragraph (a) or paragraph (b) or paragraph (c) of section 136(1).

So this is the situation of complaint being made under section 136(1) (b) by the director general of the securities and exchange commission, and the magistrate is of the opinion that there is sufficient ground for proceeding against some person who is not in custody. When I went through the petition the petitioner is disputing the chapeau, disputing the requirement or the requirement as to whether there was sufficient material before the magistrate had merely made a mechanical order, or whether the magistrate had given his mind as to whether there was sufficient material for the court to issue summons.

Then the learned State Counsel referred to the petition in Writ 111 paragraph 15 of the petition.

This is the petitioner's main allegation.

"The 3rd respondent has merely filed a bare plaint without any annexures before the Magistrate Court and moved for summons against the petitioner and the 4th respondent".

He cited the case of Alliance Finance plc versus Yeshan Mark Harindra Samarakoon, PHC, APN 67 of 2015.

In the plaint there was an averment that a particular board resolution was to a particular effect. Submissions were made that this board resolution was not annexed to the plaint. The court rejected that position and said that the complaint made to the magistrates court contains the statement that a resolution has been passed by the board of directors and that the learned magistrate has sufficient material to issue summons.

So the point that I want to make is that the mere lack of supporting material annexed to a plaint, does not necessarily mean that the

magistrate is unable to carry out that assessment at the initial stage as to whether there is sufficient grounds to issue summons.

What the learned magistrate must, do is to go through the relevant section under which the offense is constituted, go through the averments in the plaint and thereafter come to a conclusion whether the ingredients of that offence have been fulfilled at a very prima facie level at that stage.

So my submission, is that at that initial stage the magistrate had sufficient material before him to come to the primary assessment.

The petitioner has cited the above case of Malanie Gunarathne, Writ 211 2020 and Writ 465 2022.

Justice Obeyesekere as President, Court of Appeal in Writ 211 2020 has analysed section 136(1)(a) and section 139 of the Criminal Procedure Code.

Those sections read as follows,

"CHAPTER XIV

OF THE COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES COURTS

Proceedings in Magistrate's Court how instituted.

136.

(1) Proceedings in a Magistrate's Court shall be instituted in one of the following ways: -

.....

(b) on a written report to the like effect being made to a Magistrate of such court by an inquirer appointed under Chapter XI or by a peace officer or a public servant or a servant of a Municipal Council or of an Urban Council or of a Town Council;..

Section 139(1) reads as follows,

"(1) Where proceedings have been instituted under paragraph (a) or paragraph (A) or paragraph (c) of section 136 (1) and the Magistrate is of opinion that there is sufficient ground for proceeding against some person who is not in. custody -

> (a) if the case appears to be one in which according to the fourth column of the First Schedule a summons should issue in the first instance, he shall, subject to the provisions of section 63, issue a summons for the attendance of such person;
> (b) if the case appears to be one in which according to that column a warrant should issue in the first instance, he shall issue a warrant for causing such person to be brought or to appear before the court at a certain time :

Justice Obeyesekera citing Malanie Gunaratne's case said,

> "This Court, in Derek Kelly and another vs Yasasiri Kasthuriarachchi having followed the judgment in Malinie Guneratne vs Abeysinghe, went onto state as follows:
>
> "In Sohoni's The Code of Criminal Procedure, 16th Ed., Vol II, 1234 it is stated that the object of this provision is to prevent the issue of process in cases where the examination of the complainant would show that the complaint was clearly false, frivolous or vexatious, and that further proceedings would tend merely to harass unnecessarily an accused person and waste the time of the Court. The underlying principle for the examination of the complainant at the time of filing a complaint is to ascertain whether the complaint established a prima facie case; that is, whether the facts disclosed in the petition of complaint called for investigation by a criminal court. It is to help the Court concerned to find out whether there were materials sufficient for the purpose of summoning the accused or for an enquiry into the grievances made by the complainant."

The learned state counsel has cited the above case of Alliance Finance PLC and Derek Kelly, which was quoted as above by Justice Obeyesekere in Writ 211 2020.

In paragraph 13 of his synopsis, the learned state counsel says,

> "Moreover in Derek Kelly vs. Yasasiri Kasthuriarachchi CA PHC 57 2008 dated 07.09.2012 [the court] cited Indian Authorities and held that the examination of the complaint itself is the primary task of the magistrate prior to the issuance of summons. Your lordships also held that the magistrate should act on the presumption that the complaint is true and in order."

The perusal of Derek Kelly shows that H. N. J. Perera J., in the Court of Appeal (later His Lordship the Chief Justice) has quoted the above paragraph from Sohoni's Code of Criminal Procedure and has said a follows,

> "The main contention of the counsel for the Petitioners Accused Appellants was that the learned Magistrate had formed his opinion to proceed against the petitioners without having objectively assessing the material placed before him, both in respect of establishing the ingredients of the alleged offence and its purported commission by the petitioners.
>
> **In this case the complainant Respondent had testified on oath and the learned Magistrate being of the opinion that there was sufficient grounds for proceeding against the accused issued summons on the accused petitioners appellants in terms of section 139 (1) of the Criminal Procedure Act NO 15 of 1979**. [Emphasis added in this order].
>
> In Malini Gunaratne, Additional District Judge, Galle vs Abeysinghe and another [1994) 3 Sri LR 196 it was held that the opinion to be formed should relate to the offence, the commission alleged in the complaint or plaint filed under section words "sufficient ground" embraces both the ingredients of the offence and the evidence of its commission. Since the opinion relates to the existence of sufficient ground for proceeding against the person accused, the material acted upon by the Magistrate should withstand an objective assessment. The proper test is to ascertain whether

on the material before court, prima facie, there is sufficient ground on which it may be reasonably inferred that the offence alleged in the complaint or plaint has been committed by the person who is accused of it.

In Leo Fernando vs Attorney General [1985] 2 Sri LR 341, at page 349 Colin Thome, J observed that "**The requirement as to the examination of the complainant is imperative and should be strictly complied with in order to prevent a false, frivolous and vexatious complaint being made to harass an innocent party and the waste of time of court**". [Emphasis added in this order].

In Sohoni's The Code of Criminal Procedure, 16th Edition, Vol. 11, 1234 it is stated that the object of this provision is to prevent the issue of process in cases where the examination of the complainant would show that the complaint was false, frivolous or vexatious and that further proceedings would tend merely to harass unnecessarily an accused person and waste the time of the court. The underline principle for the examination of the complainant at the time of filing of a complaint is to ascertain whether the complaint established a prima facie case; that is, whether the facts disclosed in the petition of complaint called for investigation by a criminal court. It is to help the court concerned in finding out whether there were sufficient material for the purpose of summoning the accused or for an enquiry into the grievances made by the complainant".

His Lordship further said,

"One cannot say that the learned Magistrate has totally failed to consider the evidence given by the complainant in this case. There is no doubt that the learned Magistrate has considered the evidence given by the complainant in this case though he had stated in a summery manner that he considered the evidence that was led before him and was satisfied with that evidence. Therefore this court cannot agree with the submissions

made by the learned counsel for the appellants that the learned Magistrate has failed to apply his mind to the facts of this case and the law applicable thereto".

But with regard to the 1st appellant, His Lordship said, that,

> "There is no dispute that the only evidence that was led in this case against the 1st appellant was a letter sent by Mr. Vitharana that was copied to the 1st petitioner appellant. This court is of the view that there wasn't sufficient material placed before the learned Magistrate to issue summons on the 1st petitioner-appellant. Therefore I set aside the order made by the learned Magistrate to issue summons on the 1st petitioner appellant and discharge 1st petitioner-appellant from the proceedings in the Magistrate's Court of Fort No 60390".

The petitioner at paragraph 12 of the petition marks as P.11(i) and P.11(ii) the amended plaint together with the charge sheet dated 12.01.2024.

The 2nd 3rd and 6th respondents with the motion dated 22.02.2024 filed the proceedings before the magistrate's court dated 12.01.2024.

It says,

"නඩු අංකය : 28553/23

2024.01.12

නීතීඥ ෆස්නා මිස්කින් මිය මෝෂමක් මගින් මේ සමඟ පැමිණිල්ල, චෝදනා පත්‍ර, පැමිණිලිකරුගේ සාක්ෂි හා ලේඛන ලැයිස්තුව, සාක්ෂි ආඥා පනතේ 07 වන වගන්තියට අදාල දැන්වීම මේ සමග ඉදිරිපත් කරයි.

චින්තක මෙන්ඩිස්,

අධ්‍යක්ෂ ජනරාල්,

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28 – 29 මහල, නැගෙනහිර කුළුණ,

එවිලන් චතුරස්රය, ලෝක වෙළඳ මධ්යස්ථානය,

කොළඹ 01.

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එදිරිව

01. ගෝවින්දසාමි රමනත්

15/10, 25 පටුමග,

කොළඹ 03.

02. කනගරත් නම් නවීන්කාන්ත්

අංක 724/4 බී. රත්නායක ගාඩන්ස්,

මාබෝල, වත්තල,

විත්තිකරුවන්

කරුණු තහවුරු කිරීම සඳහා අද දින ගරු විවෘත අධිකරණයේ කැඳවන මෙන් අයැද සිටි.

පැමිණිල්ල වෙනුවෙන් නියෝජිත පෙනී සිටී. බලය පැවරූ ලිපිය ගොනු කරයි. සංපැමිණිල්ල ගොනු කරයි. පැමිණිල්ල වෙනුවෙන් රජයේ අධිනීතිඥ ලහිරු ජයමාන්න මයා කරුණු තහවුරු කරයි. සංශෝධිත පැමිණිල්ල භාර ගනිමි. 01,02 චුදිතයින්ට සිතාසි. කැඳවන්න 2024.04.26. පෙර ගොනු කරන ලද පැමිණිල්ල සමග ඇති චෝදනා පත්රය පැමිණිල්ලට මුදාහරිමි.

අත්/කළේ මහෙස්ත්රාත්

It was only a brief part of the transcript of proceedings before this Court on 06.03.2024 that was reproduced at the commencement of this order.

The submissions and arguments of learned counsel referred to therein, with what was although not stated there but considered by this Court, to decide on the question of issuing notice, etc., may be compared with the highlighted part in the above order.

Did the magistrate satisfy himself on the requirements of the above two sections of the Code of Criminal Procedure? Was the requirements H. N. J., Perera J., (later Chief Justice) stated in Derek Kelly's case fulfilled?

Prima facie, as this is not the time for the final judgment, it does not appear so.

Hence this Court issues formal notice on all the respondents including the 4th who appears to have no contest with the petitioner and also interim orders under paragraphs H, J, J, of the prayer to the petition to be in operation until the final determination of this case.

There is no order on costs.

Judge of the Court of Appeal