

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

In the matter of an application for Transfer in
terms of Section 46(1) of the Judicature Act No. 2
of 1978.

CA-TRF/21/24

Wanninayakake Mudiyanseelage Premachandra

(Presently detained at the Wariyapola remand
Prison)

Petitioner

Vs.

1. P.I. Dilruk Perera
Chief Inspector
Officer-In- Charge
Specil Crime Investigating section
Nikawaratiya
2. Ruwan Chaminda
Chief Inspector Zonal Crime Division
Nikawaratiya.
3. Hon. Attorney General
Attorney General's department
Hulftsdrop
Colombo 12.

Respondents

Before : N. Bandula Karunarathna, P/CA, J.
B. Sasi Mahendran, J.

Counsel: P.K. Prince Perera for the Petitioners
A. Navavi, S.D.S.G for the Respondents.

Supported On: 17.12.2024

Written

Submissions: Not filed

On

Order On: 28.01.2025

ORDER

B. Sasi Mahendran, J.

The Petitioner has preferred this application under section 46 (1) of Judicature Act No. 2 of 1978 by petition dated 12.11.2024 seeking *inter alia* an order for the transfer of the action pending in the Magistrates Court of Galgamuwa case bearing No. B 48293/24 to Magistrates Court of Kurunagala.

According to the Petitioner, the 1st Respondent reported the following facts to the Learned Magistrate under the B report bearing No. B 48293/24.

“ව්‍යාප ලේඛණ සකස් කර කෘෂිකර්ම පර්යේෂණ හා නිෂ්පාදන සහකාරවරියගේ මරණ පාරෝෂිතය හා විශ්‍රාම වැටුප් මුදල් වශයෙන් රු. 1,287,060.50 ක ලබාගෙන වංචා කිරීම”

The Petitioner states that regarding the alleged incident, he was taken into custody on 02.08.2024 by the 1st Respondent and he was produced before the Learned Magistrate of Galgamuwa under the Public Property Act No. 12 of 1982 and Sections 454 and 457 of the Penal Code where the Petitioner was committed to remand custody. The Petitioner further states that the Petitioner denied the charges in the said B report.

The Petitioner avers that the Petitioner has been in remand custody since 02.08.2024 and that the Learned Magistrate unreasonably refused to enlarge the Petitioner on bail on two occasions. We are mindful that these are offences under the Public Property Act and this Court is unaware whether the Petitioner showed any exceptional circumstances for the Court to grant bail.

The Petitioner further avers that the Petitioner's daughter namely W.M. Nimali Sirimavan Premachandra made a complaint to the Secretary to the Judicial Service Commission and to His Lordship the Hon. Chief Justice stating that the Learned Magistrate unreasonably refused to grant bail to her father. Further, the Petitioner states that the Learned Magistrate of Galgamuwa had informed the Petitioner's Attorney-at-Law that “මේ වරද පිළිගන්න, මම සුළු දඬුවමක් දෙන්නම්” where the Petitioner refused to admit the said offence.

The Petitioner states that the complaint against him was that he had obtained his wife's pension and used such pension after his divorce which was denied by the Petitioner that the Petitioner lived with his wife till her death on 04.10.2018 and she had not filed a divorce case bearing No. 2319/D.

The Petitioner further states that the 1st Respondent had only filed a B report and the 2nd Respondent is now conducting an investigation. The Petitioner further states that the plaint was not filed so far in the Magistrate Court of Galgamuwa and the charge sheet was not issued and therefore, the trial had not yet been started.

The Petitioner contends that the Learned Magistrate of Galgamuwa is biased towards the prosecution and therefore a fair and impartial trial cannot be had in the said Magistrate Court.

This Court is mindful of Section 46 (1) of the Judicature Act No. 2 of 1978 that regulates the transfer of a case or proceeding which lays down the following;

“Whenever it appears to the Court of Appeal,

- a. that a fair and impartial trial cannot be had in any particular court or place; or
- b. that some questions of law of unusual difficulties are like to arise; or
- c. that a view of the place in or near which any offence is alleged to have been committed may be required for the satisfactory inquiry into or trial of the same; or
- d. that it is so expedient on any other ground,

the court may order upon such terms as to the payment of costs or otherwise as the said court thinks fit, for the transfer of any action, prosecution, proceeding or matter pending before any court to any other court and accordingly in every such case, the court to which any such action, prosecution, proceeding or matter is so transferred shall, notwithstanding anything to the contrary in this or any other law, take cognizance of and have the power and jurisdiction to hear, try and determine such action, prosecution, proceeding or matter, as fully and effectually to all intents and purposes as if such court had an original power and jurisdiction.”

If this Court has to consider the grounds on which the present application is in favour of the Petitioner, there should be materials or valid reasons for this Court to come to a conclusion that a fair and impartial trial cannot be had. We note that the Petitioner has not placed any material before this Court to prove his contention that the Learned Magistrate is biased.

Our Courts have held that the Petitioner has to satisfy the Court if an allegation of bias is made against the judicial officer. The reason is that the judicial officers are trained officers and there is no reason for them to be biased.

In Abdul Hasheeb vs Mendis Perera and others (1991) 1 SLR 243 at 254, His Lordship Justice G. P. S. De Silva (as he then was) held that:

“In the subsequent authorities cited before us, two tests for disqualifying bias have been formulated:-

(a) The test of real likelihood of bias; and

(b) The test of reasonable suspicion of bias.”

Further referring to the judgment of Lord Denning in Metropolitan Properties Co (F.G.C) Limited v. Lannon (1968) 3 All ER 304, His Lordship held that;

“It would appear that Lord Denning was inclined to adopt the 'real likelihood' test but said that it was satisfied if there were circumstances "from which a reasonable man would think it likely or probable that the justice or the chairman, as the case may be, would, or did, favour one side unfairly at the expense of the other". Lord Denning emphasized that "the court looks at the impression which would be given to other people". "The reason" he said "is plain enough, Justice must be rooted in confidence;

and confidence is destroyed when right minded people go away thinking; the Judge was biased.”

The dictum of His Lordship Justice G. P. S. De Silva was followed by His Lordship Arjuna Obeyesekere J (as he then was) in Anurudhdha Lihinikaduwa v. Sinnaiya Sooriyakumar CA (Transfer) Application No: 12/2018 decided on 21.09.2018, where it was held that;

“In these circumstances, can it be said that a reasonable right thinking man would think the learned Magistrate has favoured the prosecution at the expense of the Petitioner or that the Petitioner would not receive a fair and impartial trial? This Court does not think so. The accusation made against the learned Magistrate, with a view to demonstrating bias on his part, is therefore unfounded. Thus, even if the less stringent of the test is applied, the Petitioner has failed to establish a reasonable suspicion of bias on the part of the learned Magistrate. In these circumstances, this Court rejects the argument of the Petitioner that he would not receive a fair and impartial trial, before the Magistrate's Court of Jaffna.”

I am mindful of the following sentiments of His Lordship Justice G. P. S. De Silva (as he then was) in the above-said case;

“In this view of the matter, it seems to me that the facts set out in the petition are too remote and too tenuous in character to found an allegation of bias on the part of a judicial officer, who it must be remembered, is one with a trained legal mind. As submitted by Mr. Pullenayagam, it is a serious matter to allege bias against a judicial officer and this court would not lightly entertain such an allegation... The totality of the circumstances relied on by the petitioners, do not show that the Judge has extended favours to one side "unfairly at the expense of the other" and I accordingly hold that the allegation of bias has not been established.”

In the instant case, the Petitioner has failed to produce any material before this Court that the Learned Magistrate was biased against the Petitioner.

In view of the above reasoning, the application is dismissed with costs of Rs. 50,000/-.

JUDGE OF THE COURT OF APPEAL

N. Bandula Karunarathna,J (P/CA)

I AGREE

PRESIDENT OF THE COURT OF APPEAL