

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

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

CA-WRT-545/2024

Future Automobiles (Pvt) Limited

No. 14, De Fonseka Place

Colombo 05.

Petitioner

Vs.

1. Consumer Affairs Authority
1 & 2 Floor, C.W.E.. Secretariat Building
No. 27, Vauxhall Street
Colombo 02.

2. Indik Prasad Devasundra
No.21, Robert Place
Dehiwala.

3. Hon. Additional Magistrate
Colombo Magistrate's Court No.05
Colombo

4. The Attorney General
The Attorney General's department
Colombo 12.

Respondents

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

Counsel: Jeevantha Jayahilake with Shantha Jayawardana, Rajitha Amarasena
and Hiranya Damunupola for the Petitioners
Kalinga Indatissa, PC with Rashmini Indatissa, Razana Salih and
Udam Wickramasinghe for the 2nd Respondent.
Yuresh Fernando, DSG for the State

Supported On: 27.11.2024

Written

Submissions: 18.12.2024 (for the Petitioner)

On 23.01.2025 (by the 1st Respondent)

Order On: 28.01.2025

ORDER

B. Sasi Mahendran, J.

This order pertains to whether to issue notice to the Respondents and to grant interim reliefs.

The Petitioner filed this application on 16th August 2024 seeking *inter alia* writs of Certiorari quashing the order dated 24.07.2024 made by the Honourable Additional Magistrate of Colombo in case bearing No. 49512/05/2016 of the Colombo Magistrate's Court No. 05 marked P30.

The factual matrix of this case is as follows:

According to the Petitioner, on 26.08.2011, the 2nd Respondent purchased a brand-new Ford Ranger (pickup) motor vehicle from the Petitioner company at the price of Rs.

4,900,000/ with a Limited Warranty for the vehicle's powertrain components valid for a period of 3 years or 60,000 kilometers, whichever occurs first.

The Petitioner states that on 23.07.2013, the 2nd Respondent brought the said vehicle for an accident repair to the Petitioner's service center which was returned to the 2nd Respondent after the repair. The Petitioner further states that, in September 2013, the 2nd Respondent made complaints about his motor vehicle on three occasions which were duly attended by the motor mechanical technicians of the Petitioner's Company. Thereafter, the 2nd Respondent also made a complaint via email to Ford Motor International Regional Dealer Operations Manager after which the vehicle was tested and inspected by the technicians and mechanical engineers and informed by the Petitioner and the Regional Dealer Operations Manager to the 2nd Respondent that there are no such faults or defects as complained of.

The Petitioner states that the 2nd Respondent by letter dated 20th November 2013 has made a complaint regarding said motor vehicle to the Consumer Affairs Authority and requested to hold an inquiry. Consequent to an inquiry, the Consumer Affairs Authority made an order dated 31.08.2015 marked P12 in terms of Section 13 (4) of the Consumer Affairs Authority Act No. 09 of 2003 (as amended) to replace the 2nd Respondent's motor vehicle with a new motor vehicle and ordered the 2nd Respondent to return his motor vehicle back to the Petitioner Company upon replacement.

The said Section 13 (4) of the Act reads as follows:

“(4) Where after an inquiry into a complaint, the Authority is of opinion that a manufacture or sale of any goods or the provision of any services has been made which does not conform to the standards or specifications determined or deemed to be determined by the Authority, or that a manufacture or sale has been made of any goods not conforming to any warranty or guarantee given by implication or

otherwise by the manufacturer or trader, it shall order the manufacturer or trader to **pay compensation** to the aggrieved party or to **replace** such goods or to **refund** the amount paid for such goods or the provision of such service, as the case may be.” (emphasis added)

According to the above Section, it provides that the Authority has the power to compensate the aggrieved parties by,

- a. Pay compensation
- b. Replace such goods
- c. Refund the amount paid for such goods or provision of such service”

In the instant case, the Authority has ordered to replace the motor vehicle of the 2nd Respondent with a new one.

The Petitioner states that in order to implement and enforce the order of the Consumer Affairs Authority marked P12, proceedings were instituted in the Magistrate’s Court of Colombo by the Consumer Affairs Authority on 11th March 2016 in the Magistrate Court No. 5 of Colombo by way of case No. 49512/05/16 in terms of Section 13 (6) of the Consumer Affairs Authority Act against the Petitioner company.

The Petitioner avers that an application was instituted by the Petitioner in the Court of Appeal in CA (Writ) Application bearing No. 26/2016 challenging the said order marked P12 on the basis that the 1st Respondent had no jurisdiction to hear the complaint as the complaint is prescribed which was dismissed by judgment dated 18.02.2019. Thereafter, the Petitioner preferred an application to the Supreme Court for Special Leave to Appeal by case bearing No. SC SPL LA No. 104/2019 against the said judgment of the Court of Appeal dated 18.02.2019 which was refused by the Supreme Court by order dated 30.11.2022.

The Petitioner states that the Central Bank by the Banking Act Direction No. 01 of 2020 dated 19.03.2020, directed the licensed commercial banks to suspend facilitating the importation of motor vehicles and other non-essential goods for a period of 3 months to ease the pressure on exchange rate created due to the impact of Covid-19 outbreak.

The Petitioner avers that general import restrictions were imposed by the Imports and Exports (Controls) Regulations No. 02 of 2020 published in the Government Gazette (Extraordinary) No. 217/19 dated 22.05.2020 which has been amended from time to time and has force in law till today.

The Petitioner further states that as a consequence, the Petitioner was compelled to suspend their Ford motor vehicle importation from March 2020 onwards.

When the matter was taken up before the Magistrate's Court, an application was made on behalf of the Petitioner that in view of the ban on the importation of Motor Vehicles, it is practically impossible for the Petitioner to import a new Ford Ranger motor vehicle and to implement the Order of the Consumer Affairs Authority.

The Learned Magistrate by order dated 24th July 2024 marked P30, rejected the said defense of the Petitioner finding the Petitioner guilty of an offence under Section 13 of the Consumer Affairs Authority Act and also ordered the 2nd Respondent to submit a victim impact statement in terms of Section 8 (1) of the Assistance to the Protection of Victims of Crime and Witnesses Act No. 10 of 2023.

The Petitioner in this context has invoked the writ jurisdiction of this Court seeking *inter alia* a writ of Certiorari quashing the order of the Honourable Additional Magistrate of Colombo marked P30.

We observe that this is not a crime that comes under Section 8 (1) of the Assistance to the Protection of Victims of Crime and Witnesses Act No. 10 of 2023 for the Learned

Magistrate to call the 2nd Respondent to make a statement on the basis that he is a victim of crimes.

Who is a victim of crimes is interpreted in Section 104 of the said Act which reads as follows:

“Victim of crime” means a person who has suffered any injury and includes, where appropriate-

- a. A member of the family of the victim of crime or a dependent of the victim of crime;
- b. A person of significant importance to a victim of crime;
- c. A person who suffers injury in intervening to assist a victim of crime;
- d. A person who suffers injury in preventing another person from victimization; and
- e. A child victim of crime; and”

The Object of the Consumer Affairs Authority is to safeguard innocent purchases. On the other hand, this is purely a civil transaction where the 2nd Respondent has purchased the vehicle from the Petitioner which is claimed by the 2nd Respondent to have a defect. They all know that the government has imposed import restrictions. The question is when the import restriction is in force, how the Petitioner is to replace the vehicle with a new vehicle.

Under Section 13 (4) of the said Act, the law gives the discretion to the Authority to consider how they are going to compensate the aggrieved party, either by compensation or replacing the goods.

I hold that the Consumer Affairs Authority has not considered the restrictions on importing the vehicle, but simply has asked them to replace the vehicle. The Learned Magistrate has not considered this fact when making the Order. Further, she has treated the 2nd Respondent as a victim of crime and taken steps to compensate. This action is illegal.

At the support stage, the Counsel for the Petitioner has brought to the notice of the Court that the said vehicle is still used by the 2nd Respondent which was not denied by the Respondents. We are mindful that when it is impossible for the Petitioner to import vehicles, it is absurd to order the Petitioner to replace the said vehicle. For the above-mentioned reasons, we hold that the Petitioner has established a prima facie case and we issue an interim order not to proceed with the Magistrate Court case No. 49512/05/16 until the conclusion of this trial. Further, we issue notice to the Respondents.

JUDGE OF THE COURT OF APPEAL

N. Bandula Karunarathna (P/CA), J.

I AGREE

PRESIDENT OF THE COURT OF APPEAL