

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

In the matter of an appeal in terms of Section 11(1) of Act No.191) of Act No.19 of 1990 and Rule 2(1) of the Court of Appeal (Procedure for Appeals from High Courts established by Article 154 P of the Constitution) Rules 1988.

U.A.W. Munaweera,

Dayananda Wishrama Shalawa,

69, Hambanthota Road,

Tissamaharamaya.

Plaintiff

Case No: CA(PHC)APN 121/2014

H.C Hambantota Case No: HCRA 11/12

M.C. Tissamaharama Case No: 15623

Vs.

1. Harsha Udaya Kumara Jayaweera,
(President of the Pradeshiya Sabha of
Tissamaharamaya),
Udaya, Gangasiri Pura,
Tissamaharamaya.
2. W.G Upul,
(Vice President of the Pradeshiya Sabha of
Tissamaharamaya),
Kirula, Wellawaya Road,
Pannegamuwa,
Weerawila.

3. P.S Nihala,
(Secretary of the Pradeshiya Sabha of
Tissamaharamaya),
Kesselwatta, Helaoyagaswela,
Tissamaharamaya.
4. Presly Suraj Andrahannadi,
(Member of the Pradeshiya Sabha of
Tissamaharamaya),
No.180, Pannegamuwa,
Weerawila.
5. D.M Sheela Pushparai,
(Technical Officer of the Pradeshiya Sabha
of Tissamaharamaya),
No.276/1, Mirrijjawila,
Hamabanthota.
6. K.K.S.P Mendis
(Planning Officer of the Pradeshiya Sabha of
Tissamaharamaya),
Kuda Gammana 03,
Rajaye Sewaka Gammanay,
Nawa Nagaraya,
Lunugamwehera.

Accused

AND BETWEEN

U.A.W Munaweera,

Dayananda Wishrama Shalawa,

69, Hambanthota Road,

Tissamaharamaya.

Plaintiff-Petitioner

Vs.

1. Harsha Udaya Kumara Jayaweera,
(President of the Pradeshiya Sabha of
Tissamaharamaya),
Udaya, Gangasiri Pura,
Tissamaharamaya.
2. W.G Upul,
(Vice President of the Pradeshiya Sabha of
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Kirula, Wellawaya Road,
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(Technical Officer of the Pradeshiya Sabha
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(Planning Officer of the Pradeshiya Sabha of
Tissamaharamaya),
Kuda Gammana 03,
Rajaye Sewaka Gammanay,
Nawa Nagaraya,
Lunugamwehera.

Accused Respondents

AND NOW BETWEEN

U.A.W Munaweera,

Dayananda Wishrama Shalawa,

69, Hambanthota Road,

Tissamaharamaya.

Plaintiff-Petitioner-Appellant

1. Harsha Udaya Kumara Jayaweera,

(President of the Pradeshiya Sabha of
Tissamaharamaya),

Udaya, Gangasiri Pura,

Tissamaharamaya.

2. W.G Upul,

(Vice President of the Pradeshiya Sabha of
Tissamaharamaya),

Kirula, Wellawaya Road,

Pannegamuwa,

Weerawila.

3. P.S Nihala,

(Secretary of the Pradeshiya Sabha of
Tissamaharamaya),

Kesselwatta, Helaoyagaswela,

Tissamaharamaya.

4. Presly Suraj Andrahannadi,

(Member of the Pradeshiya Sabha of
Tissamaharamaya),

No.180,Pannegamuwa,

Weerawila.

5. D.M Sheela Pushparai,

(Technical Officer of the Pradeshiya Sabha of
Tissamaharamaya),

No.276/1, Mirrijawila,

Hamabanthota.

6. K.K.S.P Mendis

(Planning Officer of the Pradeshiya Sabha of
Tissamaharamaya),

Kuda Gammuna 03,

Rajaya Sewaka Gammanay,

Nawa Nagaraya,

Lunugamwehera.

Accused-Respondents-Respondents

Before: K.K. Wickremasinghe J.

Janak De Silva J.

Counsel:

Samantha Withana with Nishanthi Mendis for Plaintiff-Petitioner-Appellant

Razik Zarook P.C. with Dumindu De Alwis for Accused-Respondents-Respondents

Written Submissions tendered on:

Plaintiff-Petitioner-Appellant on 11.09.2018 and 23.10.2018

Accused-Respondents-Respondents on 17.07.2018 and 23.10.2018

Argued on: 26.09.2018

Decided on: 01.02.2019

Janak De Silva J.

This is an appeal against the order of the learned High Court Judge of the Southern Province holden in Hambanthota dated 14.10.2014.

On or about 10.04.2012 the Plaintiff-Petitioner-Appellant (Appellant) filed a plaint with a charge sheet against the 1st to 6th Accused-Respondents-Respondents (1st to 6th Respondents) in the Magistrates Court of Tissamaharama in terms of section 136(1)(a) of the Code of Criminal Procedure Act No. 15 of 1979.

There were six charges altogether covering sections 138 read with 140, 408 read with section 32, section 427 read with section 32, section 483 read with section 32 and section 22 read with section 394 of the Penal Code.

The 1st to 6th Respondents raised a preliminary objection that the proceedings cannot be maintained due to non-compliance with section 214(1) of the Pradeshiya Sabha Act No. 15 of 1987 (Act). The learned Magistrate upheld the objection. The Appellant moved by way of revision to the High Court of the Southern Province holden in Hambanthota which was dismissed and hence this appeal.

Scope of section 214(1) of the Act

Section 214(1) of the Act reads:

“No action shall be Instituted against any Pradeshiya Sabha or any member or any officer of the Pradeshiya Sabha or any person acting under the direction of the Pradeshiya Sabha for anything done or intended to be done under the powers conferred by this Act, or any by-law made thereunder. until the expiration of one month next after notice in writing shall have been given to the Pradeshiya Sabha or to the defendant, stating with reasonable certainty the cause of such action and the name and the place of abode of the intended plaintiff and of his attorney-at-law or agent. if any. in such action.” (emphasis added)

The Appellant submits that the word **action** in this section applies only to civil actions whereas the 1st to 6th Respondents submits that it applies to both civil and criminal actions. The learned Magistrate and the learned High Court Judge held that it applies to both civil and criminal actions.

Therefore, the fundamental question to be determined in this appeal is whether the word *action* appearing in section 214(1) of the Act covers both civil and criminal actions.

The learned Presidents Counsel for the 1st 6th Respondents as well as the learned Magistrate and the learned High Court Judge relied heavily on the decision in *Ven. Kirama Sumana Nanda Thero v. Rajapakse* [(2008) 1 Sri.L.R. 59] where Gooneratne J. held that in terms of Section 214(1) and (2) of the Act no action could be instituted against any Pradeshiya Sabawa until the expiration of one month, next after notice in writing is given to the Pradeshiya Sabawa and that the provisions in section 214 of the Act seem to be an imperative requirement. However, that was a matter arising in relation to a civil action and cannot be considered as the correct position of the law on the question whether section 214 of the Act is applicable to a criminal action.

Accordingly, this Court must examine whether section 214 of the Act is applicable to a criminal action and in this exercise the whole Act must be considered to ascertain the legislative intent. *Craies on Statute Law* (7th Edition) at page 100 states:

"In *Colquhoun v. Brooks* Lord Herschel said, It is beyond dispute, too, that we are entitled and indeed bound, when construing the term of any provision found in a statute, to consider any other parts of the act which throw light on the intention of the legislature and which may serve to show that the particular provision ought not to be construed as it would be alone and apart from the rest of the Act. And Lord Davey in *Canada Sugar Refining Co. v. R.* said Every clause of a statute should be construed with reference to the context and other clauses in the Act, so as, as far as possible, to make a consistent enactment of the whole or series of statutes relating to the subject matter."

It is interesting to note that the Act uses the words *action* and *prosecution* in two different senses. Section 215(2) of the Act reads:

"Subject and without prejudice to any other powers, a Pradeshiya Sabha' in any case where the defendant in any **action, prosecution**, or other proceeding is a member Of the Pradeshiya Sabha, or its officer, agent, or servant, may, if it thinks fit, except so far as the Court before which the **action, prosecution**, or other proceeding is heard and determined otherwise directs, payout of the Pradeshiya Sabha Fund, all or any part of any sums payable by the defendant in, or in

consequence of the action, prosecution, or proceedings, whether in respect of costs, charges, expenses, damages, fines, or otherwise:

Provided that nothing in this section shall exempt any member of any Pradeshiya Sabha from liability to be surcharged with the amount of any payment which may be disallowed upon the audit of the accounts of such Pradeshiya Sabha and which such member authorized or joined in authorizing." (emphasis added)

The drafter need not have used "action" and "prosecution" in this section if these words were to have the same meaning. It would have been sufficient for the word "action" **or** "prosecution" to have been used as it is a trite rule of interpretation that generally a word is used in the same sense throughout a statute.

Bindra, Interpretation of Statutes, 10th Ed., 701:

"Words are generally used in the same sense throughout in a statute unless there is something repugnant in the context. The same expressions, if it appears more than once in the same statute or for that matter in the same provision, should receive the same meaning unless, the context suggests otherwise...Where in a statute, a word is not defined, but is used in different sections, it ought to be interpreted in the same sense throughout, unless the context in any particular section plainly requires that it should be understood in a different sense."

There is nothing in the Act and in particular, sections 214(1) and 215(2) therein that indicates the word **action** to have a different meaning in the two sections. Therefore, when the Act uses the words **action** and **prosecution** in the above two sections that is a clear indication that action in section 214(1) of the Act does not cover criminal actions.

There are other reasons as well as to why the argument of the 1st to 6th Respondents must fail. Sections 214(2) and (3) of the Act shows that the requirement of giving notice is to allow the party noticed to tender amends. Section 214(3) of the Act states that if any person to whom notice of action is given under subsection (1), shall before action is brought, tender sufficient amends to the plaintiff, such plaintiff shall not recover in any such action when brought, and the defendant shall be entitled to be paid his costs by the plaintiff. The words "tender sufficient

amends to the plaintiff" and "such plaintiff shall not recover" are words clearly pointing towards an intention to limit the scope of the sections to be civil actions.

There is a further compelling point which militates against accepting the position articulated by the 1st to 6th Respondents. Accepting their position means that even the Police or the Hon. Attorney General cannot institute any criminal prosecutions without following the procedure set out in section 214(1) of the Act. That is an absurdity as the purpose in criminal prosecutions is not to obtain sufficient amends as contemplated by section 214(3) of the Act. Furthermore, amends tendered to the Police or the Hon. Attorney General becomes meaningless as the party aggrieved is a third party.

For the foregoing reasons, I hold that Section 214(1) of the Act applies only to civil actions. Accordingly, I set aside the judgment of the learned High Court judge of the Southern Province holden in Hambanthota dated 14.10.2014 and the judgment dated 14.08.2012 of the learned Magistrate of Tissamaharama. I further direct the learned Magistrate of Tissamaharama to continue with the proceedings instituted by the Appellant according to law from the time it was dismissed expeditiously.

The Appellant is entitled to costs in both the High Court and this Court which is quantified at Rs. 1,20,000/=. Accordingly, the 1st to 6th Respondents will each pay the Appellant a sum of Rs. 20,000/=.

Appeal allowed.

Judge of the Court of Appeal

K.K. Wickremasinghe J.

I agree.

Judge of the Court of Appeal