

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.

Nagananda Kodituwakku
No. 99, Subadrarama Road, Nugegoda.

Petitioner

Case No. C. A. Writ Application 374/2012

Vs.

1. Chulananda Perera,
Director General of Customs
- 1A. Mrs. P. S. M. Charles
Director General of Customs
2. Tharaka Mahaulpotha
Deputy Superintendent of Customs
3. Thilak Pragnarathna
Deputy Superintendent of Customs
4. T. U. R. Marambe
Deputy Superintendent of Customs

All at –

Customs Department,
Customs Headquarters,
No. 40, Main Street, Colombo 11.

5. The Attorney General
Attorney General's Department,
Colombo 12.

Respondents

Before: Janak De Silva J.

Counsel:

Anandalal Nanayakkara for the Petitioner

Manohara Jayasinghe SSC for the Respondents

Decided on: 05.02.2020

Janak De Silva J.

This order pertains to two applications. Firstly, it addresses the application made by the Respondents to accept document marked RX as part of the record. Secondly, it addresses the application of the Petitioner to amend the prayer by including a new prayer d) which reads:

“d) to grant interim relief, to call for the cash reward lists CIB/RL/05/2012 and CIB/RL/06/2012 related to this matter”

Both these applications are regulated by Rules 3(8) of the Court of Appeal (Appellate Procedure) Rules 1990 (Rules) which reads:

“A party may, with the prior permission of the Court, amend his pleadings, or file additional pleadings affidavits or other documents, within two weeks of the grant of such permission, unless the Court otherwise directs. After notice has been issued, such permission shall not be granted ex parte.”

By this rule court is given discretion on whether to allow amendment of pleadings, or file additional pleadings affidavits or other documents. However, the Rules are silent on the matters that must be considered by court in exercising this discretion. In my view Court must approach this task with the interest of justice uppermost in mind. At the same time this Rule should not be used by parties who by negligence omitted to produce documents.

I will first address the application of the Respondent to accept document marked RX as part of the record. RX is the proceedings dated 17.08.2009 of customs inquiry case no. POM/822/2009. The said inquiry pertains to the importation of a used BMW car which was brought to Sri Lanka under what is called as a "carnet certificate" by a person which was not re-exported within the validity period and kept in the custody of that person without paying the due levies to the customs.

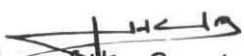
These inquiry notes, according to the Respondents pertain to document marked R4 with their objections and is intended to establish that document marked R4 relates to a carnet transaction as this was denied by the Petitioner. This issue becomes relevant to this application as the contention of the Petitioner is that he is the person who supplied information to the Customs on the abuse of the *carnet scheme* which led to its detection. The Petitioner contends that accordingly he is entitled to the reward.

The document RX shows that the customs inquiry took place on 17.08.2009 whereas the date on which the Petitioner is said to have supplied the information is much later. Hence the document RX is material to this application in that it is vital in the ascertainment of the truth of the statement of the Petitioner. I therefore make order accepting the document RX as part of the record.

The next issue to be determined is whether the application of the Petitioner to amend the prayer should be allowed. The Petitioner claims that he had to amend the prayer due to the 4th Respondent making a false statement that there are no appeals or court cases pending in respect of this case.

In this application the Petitioner is seeking a writ of mandamus directing that he be paid his legitimate share of cash rewards in all cases of carnet abuses inquired into. Therefore, the amendment sought is directly relevant to the main issue in this application and therefore I allow the amendment sought to be made by the Petitioner.

Parties shall bear the costs of this application.


Judge of the Court of Appeal