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

In the matter of an application for Revision in terms of Article 138 of The Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No:

CA (PHC) APN 0081/21

High Court of Chilaw

Case No: HCA 11/17 & HCR 24/17

Chilaw Magistrate's Court

Case No: 90905

Officer-in-Charge,

Police Station,

Chilaw.

COMPLAINANT

Vs.

Rev. Yogaraj Steven,

No. 11, Wijaya Mawatha,

Chilaw.

RESPONDENT

AND NOW

Rev. Yogaraj Steven

No. 11, Wijaya Mawatha,

Chilaw.

RESPONDENT-APPELLANT

Vs.

1. Officer-in-Charge,

Police Station,

Chilaw.

COMPLAINANT-RESPONDENT

2. The Hon. Attorney General,

Attorney General's Department,

Colombo 12.

RESPONDENT

AND NOW BETWEEN

Wasala Herat Mudiyanselage Manel

Kapukotuwa

No. 6A, Wijaya Mawatha,

Chilaw.

VIRTUAL COMPLAINANT-

PETITIONER

Vs.

1. Rev. Yogaraj Steven

No. 11, Wijaya Mawatha,

Chilaw.

RESPONDENT-APPELLANT-RESPONDENT

2. Officer-in-Charge,

Police Station,

Chilaw.

COMPLAINANT-RESPONDENT-RESPONDENT

3. The Hon. Attorney General,

Attorney General's Department,

Colombo 12.

RESPONDENT-RESPONDENT

Before : Sampath B. Abayakoon, J.

: P. Kumararatnam, J.

Counsel : Tenney Fernando with Terin Marasinghe for the Petitioner.

: Ranjan Mendis for the Respondent-Appellant-Respondent.

: Lishan Ratnayake, S.C. for the Respondents.

Argued on : 20-05-2024

Decided on : 01-08-2024

Sampath B. Abayakoon, J.

This is an application by the virtual-complainant-petitioner (hereinafter referred to as the petitioner) invoking the revisionary jurisdiction of this Court granted to this Court in terms of Article 138 of The Constitution.

When this matter was supported for notice, after having considered the relevant facts, circumstances and the law, this Court decided to issue notice on the respondent-respondents mentioned in the petition. Accordingly, the respondents were allowed to file their respective objections if any, and the petitioner was also allowed to file counter-objections.

At the hearing of this application, this Court heard the submissions of the learned Counsel for the petitioner and also heard the submissions of the learned Counsel for the respondent-appellant-respondent (hereinafter referred to as the respondent). This Court also had the advantage of listening to the views expressed by the learned State Counsel who represented the complainant-respondent-respondent and the Hon. Attorney General.

The Facts:-

This is a matter that emanates from an order pronounced by the learned Magistrate of Chilaw in relation to an application filed before him by the Officer-in-Charge of Chilaw police station in terms of section 98(1) of the Code of Criminal Procedure Act, which was an application seeking a conditional order for a removal of a nuisance.

The nuisance complained had been to prevent noise pollution caused in the neighbourhood where the respondent was conducting Church services using equipment that releases loud noises to the environment.

After having considered the report filed by the police and taking evidence in relation to the complaint, the learned Magistrate of Chilaw has decided to issue a conditional order in that regard on 7th July 2017.

In his conditional order, the learned Magistrate has prevented the respondent from using loudspeakers in conducting religious prayers at the Church maintained by him.

When this conditional order was served upon the respondent, it has been informed to the Court on 12-09-2017 by his Counsel that he would not be calling any evidence and will only make oral submissions.

Accordingly, the learned Counsel who represented the respondent has made oral submissions. After the conclusion of the said submissions, the learned Magistrate has provided an opportunity for both sides to submit written submissions as well, in this regard.

The learned Magistrate has pronounced his order on 17-10-2017, and has decided to make the previous conditional order permanent in terms of section 101(3) of the Code of Criminal Procedure Act.

Being dissatisfied of the above-mentioned order, the respondent has invoked the revisionary jurisdiction as well as the appellate jurisdiction granted to the Provincial High Court of the North Western Province Holden in Chilaw in terms of Article 154P of The Constitution.

The learned High Court Judge of Chilaw, pronouncing his judgment on 21-05-2021, has decided that the order made by the learned Magistrate of Chilaw on 17-10-2017 should stand vacated. Accordingly, the learned High Court Judge has given relief to the respondent as sought by him in his petition of appeal as well as the revision application.

The petitioner has come before this Court being aggrieved by the said judgment of the learned High Court Judge of the Provincial High Court of North Western Province Holden in Chilaw.

The Submissions:-

At the hearing of this application, the learned Counsel who represented the petitioner made submissions on the basis that the learned Magistrate of Chilaw has come to a correct determination in terms of section 98 of the Code of Criminal Procedure Act that, the noise pollution complained of by the petitioner along with several others amounts to public nuisance that needs to be prevented in terms of the Code of Criminal Procedure Act.

It was his submission that the learned Magistrate has followed the due process in pronouncing his order made on 17-10-2017, where the previous conditional order was made permanent. It was the contention of the learned Counsel that the respondent has failed to make an application in terms of section 98(2) of the Code of Criminal Procedure Act, and submissions made on behalf of him challenging the conditional order pronounced had provided no basis for the learned Magistrate to make any other order than the order pronounced, which was an order made after having considered the relevant legal provisions in its correct perspective.

The learned Counsel for the petitioner also pointed out to the Court that the intention of making a complaint to the police with regard to the noise pollution by the complainant had been not to close down the religious prayer centre maintained by the respondent, or to stop conducting prayers and other religious activities at the centre, but only to seek an order to have a control over the loud noises emanating from the place, which causes a public nuisance to the neighbourhood.

It was also pointed out by the learned Counsel that, when this matter was taken up for inquiry before the learned Magistrate, the main argument taken up on behalf of the respondent had been to the effect of challenging the entire

conditional order on the basis that the sound emanating from the religious centre headed by the respondent would not fall under the provisions of section 98, and the place cannot be considered as a public place in terms of the section.

The learned Counsel also submitted that when the respondent filed an application in revision challenging the order of the learned Magistrate, he failed to name the petitioner or any other party who complained about the public nuisance faced by them as respondents before the High Court. He pointed out that the petitioner had to intervene in the matter at a later stage of the High Court proceedings.

He was of the view that the learned High Court Judge was misdirected in his judgment when it was determined that the Church or the prayer centre maintained by the respondent cannot be termed as a public place and there was no basis for the learned Magistrate to determine that the noise levels emanating from the said Church amounts to a public nuisance. He has also determined that religious institutions like Buddhist Temples, Churches, Hindu temples, and other religious centres cannot be considered as public places in terms of section 98. The learned High Court Judge has also determined that the cultural and historical practices of this country allow religious institutions to use loudspeakers and other sound emanating instruments, although it may cause some kind of public nuisance because of the sound pollution such activities may cause.

The learned High Court Judge has also distinguished the views expressed in the judgment of **Ashik Vs. Bandula And Others (Noise Pollution Case) (2007) 1 SLR 191** to determine that the facts of the said case would not be applicable to the facts of the matter considered by the learned High Court Judge.

The learned Counsel for the respondent maintained the same position, which was maintained before the Magistrate's Court, as well as the Provincial High Court that the noise pollution complaint made to the plice does not fall within the ambit of section 98 of the Code of Criminal Procedure Act.

He was of the view that a Magistrate can pronounce an order in terms of section 98 only if the alleged nuisance falls within the section 98(1) (a) to (e), and was of the view that, a matter of noise pollution does not fall within any of the earlier mentioned sub-sections of section 98(1) of the Code of Criminal Procedure Act.

He argued that the respondent maintains a duly registered Church in the premises where various religious activities are being conducted. It was his position that no loudspeakers were being used, but only baffles on days where large gatherings of devotees are present, especially on Sundays and days where weddings and funeral services were being held.

He pointed out to the learned Magistrate's order where it has been stated that the order would be made in terms of section 98(1)(a) of the Code of Criminal Procedure Act, to stress that it does not relate to the activities conducted in a Church and the section does not specify the Church as a public place for that matter. It was his view that the learned Magistrate has acted without jurisdiction. He also pointed out that the learned Magistrate has decided to act without proper evidence being placed before the Court, and has failed to consider both sides of the issue before reaching his final determination.

He submitted that there exists no basis for this Court to interfere with the findings of the learned High Court Judge of the Provincial High Court of North Western Province holden in Chilaw, as it has been reached after due consideration of the facts, as well as the existing laws of the land.

The Consideration of the Arguments :-

This is a matter where the learned Magistrate of Chilaw has considered an application made to him by the police, seeking an order to prevent a public nuisance allegedly caused due to the sound pollution caused by the activities of the Church maintained by the respondent.

It is clear from the final order of the learned Magistrate made on 17-10-2017, that the application has been considered in terms of section 98(1)(a) of the Code of Criminal Procedure Act (hereinafter referred to as the Act).

As it was strenuously argued by the learned Counsel for the respondent that the alleged nuisance complaint, namely, the sound pollution, was not a matter covered by the said section, I find it necessary to consider the said contention to determine whether it has merit.

The relevant section 98(1)(a) of the Act under which the learned Magistrate has considered the application made to the Court reads as follows;

> **98. (1) Whenever a Magistrate Considers on receiving report or other information and on taking such evidence (if any) as he thinks fit-**
>
> **(a) that any unlawful obstruction or nuisance should be removed from any way, harbour, lake, river, or channel which is or may be lawfully used by the public or from any public place, or**

The main argument advanced by the learned Counsel for the respondent was that this section is applicable only to public ways, harbours, lakes, rivers or channels. Therefore, a place of worship as in this case, cannot be considered as applicable in terms of the said section. It was also argued that, anyway, a Church or a place of worship cannot be considered as a public place in terms of section 98(4) of the Act.

He also cited the judgments considered by the learned High Court Judge in his determination to hold that the learned Magistrate has come to a wrong conclusion that the Church run by the respondent was a public place, should be the correct judicial view in this regard.

Since section 98(4) has been cited, for the completeness of this judgment, I would now reproduce the relevant section which reads as follows.

98. (4) For the purpose of this section a "public place" includes also property belonging to the State or a corporation or vested in the public officer or department of state for public purpose and ground left unoccupied for sanitary or recreative purpose.

I am in no position to agree with any of the positions taken by the learned Counsel in that regard. A careful scrutiny of section 98(1)(a) becomes clear that the said sub-section has two applicable parts.

For matters of clarity, I would like to breakdown the relevant section in the following manner.

The sub-section is applicable in relation to any unlawful obstruction or nuisance that should be removed;

(i) from any way, harbour, lake, river, channel which is or may be lawfully used by the public or,

(ii) from any public place.

It is clear from the order of the learned Magistrate that the learned Magistrate has considered the application before him in terms of the 2nd applicable part of the subsection, namely, the nuisance complained of should be removed or remedied considering the place as a public place, for which I find no reason to disagree.

I find no basis to agree with the learned High Court Judge's view that the places of worship cannot be considered as a public place for the purposes of this section.

At this juncture, I would like to quote from the views expressed by **Sarath N. Silva, C.J.** in the case of **Ashik Vs. Bandula And Others (Noise Pollution Case) (Supra) at page 196.**

Having considered the reported case of **Marshall Vs. Gunaratne Unnanse 1 NLR 179**, it was observed:

"*We have had in this country probably the oldest jurisprudential tradition of a secular approach in dealing with matters that constitute a public nuisance. I would refer to the judgment of this Court handed down in the year 1895 in the case reported in Marshall Vs. Gunaratne Unnanse 1 NLR 179. In that case the principal trustee of a Buddhist Vihare in Colombo was charged for creating noise in the night and disturbing the inhabitance of the neighbourhood. The report to Court was under the then applicable section 90 of the Police Ordinance. Considering the particular circumstances of the case Bonsor, C.J. upholding the conviction stated as follows,*

> *… the idea must not be entertained that a noise, which is an annoyance to the neighbour, is protected if it is made in the course of a religious ceremony.*
>
> *No religious body, whether Buddhist, Protestant, or Catholic, is entitled to commit a public nuisance and no licence under section 90 of the Police Ordinance, 1865 will be a protection against proceedings under the Penal Code, though it may protect them from proceedings under the Police Ordinance. It is to be noted that in terms of section 261 of the Penal Code a person is guilty of public nuisance who does any act or is guilty of an illegal omission, which causes inter alia any annoyance to the public or to the people in general who dwell or occupy any property in the vicinity. Section further states as follows… 'a public nuisance is not excluded on the ground that it causes some convenience or advantage.'*

The proposition of Bonsor, C.J. which could be cited as a classic statement of a secular approach in dealing with a public nuisance is referrable to the final sentence of section 261 cited by me above. A perceived convenience or advantage to some based on a religious practice cannot be the excuse for a public nuisance which causes annoyance to the public or to the people in general who dwell or occupy property in the vicinity."

The above views expressed and considered by His Lordship clearly establishes the fact that a religious place or any sound pollution emanating from that institution falls within the ambit of a public place in terms of section 98 of the Act.

I find that the learned High Court Judge in his judgment has correctly determined that the description of a public place mentioned in section 98(4) of the Act does not mean that only the places mentioned in the said section should be considered as public places.

It is clear from the section that, to avoidance of any doubt, the legislature by its wisdom has stated that a public place should include the places mentioned in the section, which means that any other place also comes within the meaning of a public place according to the facts and circumstances of each case.

When it comes to a matter of a noise pollution, it needs to be understood that what is meant by a public place in such a situation would not only be the place that emanates the noise, but the surrounding areas which get affected as a result of the noise created from the place. In the instant situation, the noise creator is the Church run by the respondent. It is clear that the people who live in the vicinity of the Church are the persons affected by the said nuisance.

It is clear from the proceedings before the Magistrate's Court of Chilaw that once the report was received by the learned Magistrate, the learned Magistrate has not decided the matter arbitrarily. The learned Magistrate has called for evidence, and after having considered the relevant law and the decisions reached by Superior Courts in similar circumstances, has decided to issue a conditional order preventing the respondent from using instruments that emanate loud sounds until the next date of the matter. I find that the learned Magistrate has acted within the powers vested with him when pronouncing the order, which is a clear order that can be given effect.

For a person against whom a conditional order has been made, the procedure he should follow has been stipulated in section 98(2) of the Act, which reads as follows;

> **98. (2) Any person against whom a conditional order has been made under subsection 1 may appear before the Magistrate making that order or any other Magistrate of that Court before the expiration of the time fixed by that order and move to have the order set aside or modified in manner hereinafter provided.**

The proceedings before the Magistrate's Court shows that the respondent has chosen not to call evidence in that regard, but to make oral submissions in order to challenge the conditional order, seeking to set aside it. The learned Magistrate has ordered that the conditional order should be made absolute based on the stand taken by the respondent. He has not sought for a modification of the order, but for a total setting aside of the order on the earlier considered basis that no order can be made in terms of section 98 of the Act against the alleged noise pollution.

Under the circumstances, it is my view that although the application by the petitioner has been to have some control over the noise emanating from the Church when the services were being conducted using loudspeakers, the learned Magistrate has had no option, but to make the earlier order absolute under the given circumstances.

The order has been not to stop the respondent from conducting religious activities, but to stop using loudspeakers in conducting such religious activities.

There cannot be any argument that in a crowded area where people live in houses built close to each other, if a religious institution or any other institute allows the noise created as a result of any religious gathering or any other event that takes place in that institution regularly to disturb the tranquility, it would create immense hardship to public who lives in the vicinity of that area. That has been the complaint made by the petitioner.

As I have considered before, I am of the view that no one is permitted to create such public nuisance in the guise of religious freedom or any other right, as the persons who suffer because of sound pollution nuisances are also entitled to similar basic fundamental rights.

Another matter that needs the consideration of the Court is the fact that the legislature by its wisdom has enacted separate legislation to deal with control and punish those who causes damage to the environment.

The Central Environmental Authority Act No. 47 of 1980 as amended by Amendment Act No. 56 of 1988 and 53 of 2000 has provided clear provisions as to the matters of noise pollution.

Section 23P of the principal enactment, as amended by Amendment Act No. 56 of 1988 reads as follows.

> **23P. Subject to section 23A of this Act, with effect from the relevant date no person shall permit the emission of excessive noise, unless he complies with such standards or limitations as may be prescribed under this Act in regard to the volume, intensity or quality of such noise.**

The section 23A referred to in the section reads as follows.

> **23A. With effect from such date as may be appointed by the Minister by Order published in the Gazette, (hereinafter referred to as the "relevant date"), no person shall discharge, deposit, or emit waste into the environment which will cause pollution except –**
>
> **(a) under the authority of a licence issued by the Authority ; and**
>
> **(b) in accordance with such standards and other criteria as may be prescribed under this Act.**

Section 23Q provides that a person who causes or permits to emit noise greater in volume than the levels prescribed should only do so under the authority of a license issued by the Central Environmental Authority.

Section 23R of the Central Environmental Authority Act which prescribes punishment to those who violates the provisions of the Central Environmental Authority Act as to noise pollution reads as follows.

> **23R. (1) Any person who without a licence or contrary to any condition, limitation or restriction to which a licence under this Act or any other written law is subject, makes or causes or permits to be made or emitted noise that is greater in volume, intensity or quality than the standard as may be prescribed for the emission of noise which is tolerable noise in the circumstances, shall be guilty of an offence under this Act.**
>
> **(2) Any person who is guilty of an offence under subsection (1) shall on conviction be liable to a fine not less that rupees ten thousand and not exceeding rupees one hundred thousand and in the case of a continuing offence to a fine of rupees five hundred for every day in which the offence continues after conviction.**

The above considered provisions of the Central Environmental Authority Act clearly provide that the respondent cannot make use of loudspeakers or baffles as he claimed, or any other sound emanating equipment to create a sound that causes a nuisance to others, without a valid permit obtained from the Central Environmental Authority.

Therefore, it is clear that the actions of the respondent not only amount to a public nuisance, but also to a violation of the statutory law, which makes it an offence to cause sound pollution unless he has a valid permit obtained in that regard.

For the completeness of this judgment, I would like to quote again from the judgment of **Ashik Vs. Bandula And Others (Noise Pollution Case) (Supra)** which referred to the Indian Supreme Court case of ***In Re* Noise Pollution – AIR 205 – SC 3136**.

It was stated by the Chief Justice of India that,

> "*Noise is more than a just nuisance. It constitutes a real and present danger to people's health day and night, at home, at work, and at play, noise can produce serious physical and psychological stress. No one is immune to this stress. Though we seem to adjust, to noise by ignoring it, the ear, in fact, never closes and the body still responds- sometimes with extreme tension, as to a strain sound in the night."*
>
> *Further "that noise is a type of atmospheric pollution. It is shadowy public enemy whose menace has increased in the modern era of industrialization and technological advancement.*"

For the aforementioned reasons, I am of the view that the judgment dated 21-05-2021 by the learned High Court Judge of the High Court of the North Western Province Holden in Chilaw cannot be allowed to stand.

Accordingly, I set aside the said judgment and affirm the order dated 17-10-2017 pronounced by the learned Magistrate of Chilaw.

It needs to be noted that this judgment or the order of the learned Magistrate of Chilaw should not be understood as preventing the respondent from conducting religious activities at the Church.

The respondent is only prohibited from conducting activities that release a loud noise to open-air outside of the Church building, unless he obtains a required permit in that regard, in accordance with the rules and regulations of the Central Environmental Authority.

The Registrar of the Court is directed to communicate this judgment to the relevant Provincial High Court and to the Magistrate's Court of Chilaw for necessary further action.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal