

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

In the matter of an application made under and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka seeking to revise and set aside the Judgement made in the Provincial High Court of Colombo.

Court of Appeal Case No:
CA/PHC/APN/149/2017

Consumer Affairs Authority
1st and 2nd Floors
CWE Secretarial Building
Vauxhall Street
Colombo 02

Complainant

HC Colombo Case No:
HCRA/40/2014

Vs.

MC Fort Case No:
S/75660/13

1. M/s. Ceylon Cold Stores
PLC
No.01, Justice Akbar
Mawatha
Colombo 02
2. Ajit Damon Gunewardhane
No.09, Rotherfiled Place
Colombo 07
3. Susantha Chaminda
Ratnayake
No.4/10D, Thalakotuwa
Gardens
Colombo 05
4. James Ronnie Felitus Peris,
No.02, Lakshapana Mawatha
Janadhipathipaura
Battramulla

5. Jitendra Romesh Gunaratne
No.60, Pahalawela Road
Battaramulla
6. Dr. Uditha P Liyangae
(deceased)
No.14/1, St. Stephen's
Mawatha
Rajagiriya
7. Prasanna Sujeewa
Jayawardena
No.38/5, Lake Drive
Rajagiriya
Sri Jayawardhanapura – Kotte
(Deceased)
8. Albert R. Rasiah
No.52, Ward Place
Colombo 07

Accused

AND BETWEEN

1. Ajit Damon Gunewardhane
No.09, Rotherfiled Place
Colombo 07
2. Susantha Chaminda
Ratnayake
No.4/10D, Thalakotuwa
Gardens
Colombo 05
3. James Ronnie Felitus Peris,
No.02, Lakshapana Mawatha
Janadhipathipaura
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4. Jitendra Romesh Gunaratne
No.60, Pahalawela Road
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Jayawardena
No.38/5, Lake Drive
Rajagiriya
Sri Jayawardhanapura – Kotte
(Deceased)

7. Albert R. Rasiah
No.52, Ward Place
Colombo 07

Accused – Petitioners

Vs.

Consumer Affairs Authority
1st and 2nd Floors
CWE Secretarial Building
Vauxhall Street
Colombo 02

Complainant – Respondent

M/s. Ceylon Cold Stores PLC
No.01, Justice Akbar Mawatha
Colombo 02

1st Accused – Respondent

Hon. Attorney General,
Attorney General's
Department,
Colombo 12.

3rd Respondent

AND NOW BETWEEN

- I. Susantha Chaminda
Ratnayake
No.4/10D, Thalakotuwa
Gardens
Colombo 05
- II. James Ronnie Felitus Peris,
No.02, Lakshapana Mawatha
Janadhipathipaura
Battramulla
- III. Jitendra Romesh Gunaratne
No.60, Pahalawela Road
Battaramulla

**Accused – Petitioners –
Petitioners**

Vs.

Consumer Affairs Authority
1st and 2nd Floors
CWE Secretarial Building
Vauxhall Street
Colombo 02

**Complainant – Respondent –
Respondent**

M/s. Ceylon Cold Stores PLC
No.01, Justice Akbar Mawatha
Colombo 02

**1st Accused – Respondent –
Respondent**

Hon. Attorney General,
Attorney General's
Department,
Colombo 12.

3rd Respondent – Respondent

1. Ajit Damon
Gunewardhane
No.09, Rotherfiled Place
Colombo 07

2. Prasanna Sujeewa
Jayawardena
No.38/5, Lake Drive
Rajagiriya
Sri Jayawardhanapura –
Kotte (Deceased)

3. Albert R. Rasiah
No.52, Ward Place
Colombo 07

2nd, 7th and 8th Accused – Petitioners - Petitioners

BEFORE : Hon. K. K. Wickremasinghe, J.
Hon. Devika Abeyratne, J.

COUNSEL : Mr. Faiz Musthapha PC with Mr. Ranil
Samarasooriya AAL for Petitioners.
Ms. Nisasiri Dayananda AAL, Sanjaya Seneviratne
AAL, Ms. Malsha Munasinghe, Ms. Priyangika
Hettiarachchi AAL, Mr. Aruna Jayathilake AAL
and Ms. Ayeshika Sirirathne AAL for
Complainant Respondent Respondent
Mr. Manohara Jayasinghe SSC with Mr. S.
Ahamed SC for Hon. Attorney General

ARGUED ON : 26th June 2020 and 31st July 2020

WRITTEN SUBMISSIONS : 3rd – 5th Accused – Petitioners – Petitioners on
10th September 2018
Further Written Submissions on behalf of 3rd – 5th
Accused Petitioners Petitioners on 12th August 2020
Complainant Respondent Respondent on 30th August
2020
Further Written Submissions on behalf of Complainant
Respondent Respondent on 7th August 2020

DECIDED ON : 18.09.2020

K.K.WICKREMASINGHE, J.

1. This is an application for Revision from an order dated 20.9.2017 by the Learned High Court of Colombo on the case bearing the number HCRA 40/2014. The instant order is concerned with, whether the Accused – Petitioners – Petitioners (hereinafter referred to as the “Petitioners”) aver exceptional circumstances to warrant this Court to intervene with the order of the Learned High Court Judge of Colombo.

FACTS OF THE CASE

2. Consumer Affairs Authority, the Complainant – Respondent – Respondent (hereinafter referred to as the “1st Respondent”) instituted an action against the M/s. Ceylon Cold Stores PLC (hereinafter referred to as the “2nd Respondent”) alleging that the 2nd Respondent committed an offence which is punishable under the Section 30 and 31 (a) read together with Section 60 (5) (b) of the Consumer Affairs Authority Act, No.09 of 2003.

3. It is alleged that the Respondent Company on or about 14th May 2011 committed the said offences by manufacturing, distributing and selling a contaminated Elephant House Cream Soda 1.5 Liter bottle which involved substances that are harmful for human consumption as confirmed by the Government Analyst Report.

4. The action was instituted in the Magistrate's Court of Fort where the summons was issued against the Company and the Directors. Being aggrieved by the order of naming of the above cited petitioners as Accused, the instant application is lodged. The three orders of the Learned Magistrate of Fort bearing number S 75660/13 were pronounced on 26th June 2013, 30th August 2013 and 6th December 2013. The Petitioners filed a Revision application in the Provincial High Court of the Western Province. The Learned High Court Judge dismissed the revision application on the ground that Petitioners have failed to establish exceptional circumstances.

5. Being aggrieved by the said Judgement of the Learned High Court Judge, the Petitioners filed this revision application to invoke the revisionary jurisdiction of this Court in order to set aside and revise the Judgement of the Learned High Court Judge of Colombo dated 20th September 2017 and to set aside and revise the orders of the Learned Magistrate of Fort dated 26th June 2013, 30th June 2013 and 6th December 2013.

GROUND OF THE REVISION APPLICATION

6. The following grounds were submitted and urged as the exceptional circumstances to invoke the revisionary jurisdiction of this Court by the Petitioners;-

- I. The Complainant cannot on the strength of Section 60 (7) of the Consumer Affairs Authority Act, No.09 of 2003 name the Directors of the body corporate as Accused of that action at any stage of the trial prior to the said body corporate is convicted.

- II. As per Article 13(5) of the Constitution of the Democratic Socialist Republic of Sri Lanka every person is presumed to be innocent until proven guilty.
- III. It cannot be presumed that the Directors at the stage of filing the Complaint could be deemed to have committed the offence.
- IV. The three orders of the Learned Magistrate of Fort bearing the number S 75660/13 dated 26th June 2013, 30th August 2013 6th December 2013, affects the smooth functioning of the Respondent Company.

LEGAL ANALYSIS

7. I wish to analyze ground I and III together and ground II and ground IV separately.

Ground I and III

8. Consumer Affairs Authority, the “1st Respondent” instituted an action against the M/s. Ceylon Cold Stores PLC alleging that they committed an offence which is punishable under the Section 30 and 31 (a) of the Consumer Affairs Authority Act, No.09 of 2003. The aforesaid Sections are reproduced as follows;

Section 30

“No trader shall, in the course of a trade or business, engage in any type of conduct that is misleading or deceptive or is likely to mislead or deceive the consumer or any other trader”.

Section 31 (a)

“Any trader who, in the course of a trade or business, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services—

(a) falsely represents that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model”

9. As set out in Section 60 (7) of the Consumer Affairs Authority Act, No.09 of 2003 every Director of a Body Corporate is deemed to be held liable for the offences committed under the said Act. Section 60 (7) of the Act reads as follows;

“Where any offence under this Act is committed by a body of persons, then —

(a) if the body of persons is a body corporate, every director and officer of such body corporate ; and

(b) if the body of persons is a firm, every partner of that firm, shall be deemed guilty of that offence :

Provided that no such director, officer or partner shall be deemed guilty of that offence if he proves that such offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence”.

10. On a reading of the said provision, it is clear that if a person who commits an offence under the Consumer Affairs Authority Act, No.09 of 2003, the company as well as every person in charge of for the conduct of the business of the company at the time of the commission of the offence is deemed to be guilty of the offence and the proviso carves out under what circumstances the liability is exempted.

11. At this juncture I would like to refer to the case of ***H L Bolton (Engineering) Co Ltd v T J Graham & Sons Ltd*** [1957] 1 QB 159 where Lord Denning expressed that;

"A company may in many ways be likened to a human body. It has a brain and nerve centre which controls what it does. It also has hands which hold the tools an act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company and control what it does. The

state of mind of these managers is the state of mind of the company and is treated by law as such. So you will find that in cases where the law requires personal fault as a condition of liability in tort, the fault of the manager will be the personal fault of the company. So also in the criminal law, in cases where the law requires a guilty mind as a condition of a criminal offence, the guilty mind of the directors and managers will render the company itself guilty." (Lord Denning at page 172)

12. The submissions made by the Complainant Respondent highlighted the importance of the interpretation of the words in a statute within the intention of the Parliament. In light of the above submission the Complainant Respondent cited ***Commissioner of Elections v U. Amaradasa SC Appeal No. 75/2010*** dated 12th February 2014. In the aforecited case, Hon. Justice Sathya Hettige elaborated the necessity of interpretation of a provision of a statute in light of the intention of the legislature as follows;

"Maxwell on the Interpretation of Statutes (12th Edi.) 1969 P.1 says that " Statute law is the will of the Legislature.." (emphasis added)

It can be seen that In line of authorities it has been decided that the function of the court is to find out and declare the intention of the legislature and not to add words to a statute. It is also not the function of the court to drop the vital part of the statutory provisions in the section but to obey the statutory provisions. It has to be given the true meaning intended by the legislature.

In R. vWimbledonJusticesEX.P.Derwent (1953) 1 QB 380 Lord Goddard CJ at 384 observed that

" A court cannot add words to a statute or read words into it which are not there."

(emphasis added)

It was decided in an earlier case in the case of R.v City of London Court Judge(1892)1 QB 273Lopes LJ at page 310 said " I have always understood that If the words of an Act are unambiguous and clear, you must obey those words however absurd the result may appear.."

N.R.Bindra's Interpretation of Statutes (Tenth Edition 2007) at page 279 states that "The golden rule of interpretation is that we must first try to ascertain the intention of the Legislature from the words used , by attaching the ordinary meaning of the word on the grammatical

construction adding nothing and omitting nothing and give effect to the intention thus ascertained if the language is unambiguous, and no absurdity results....”

Therefore in light of the above sources it is clear that the meaning of a provision of a statute should be elicited from the intention of the Parliament and such interpretation must not violate meaning of the words that are expressly used.

Thus, I am of the opinion that the word “*shall be deemed guilty*” used in Section 60 (7) of the Consumer Affairs Authority Act, No.09 of 2003 has to be interpreted in such a way that a body corporate and every director and officer of such body corporate is guilty by operation of law until and unless they bring evidence as to lack of knowledge and due diligence.

13. The Learned President’s Counsel for the Petitioners submitted the following cases on the basis that the order made issuing summons is *ex facie* bad in law and it violates the rules of natural justice;

- a) *Malini Gunaratne, Additional District Judge, Galle vs Abeysinghe and another* [1994] 3 Sri LR 196
- b) *Moses v State* (1999) 3 Sri LR
- c) *Chanrasena and Others v Munaweera* [1998] 3 Sri LR.

In the case of *Malini Gunaratne, Additional District Judge, Galle vs Abeysinghe and another (supra)* where an allegation that the plea of the complainant was incorrectly recorded as a plea of guilt was not borne out by the entries in the record. It was held that no summons should have been issued in the above mentioned case. It is my view that the aforecited case is materially different to the instant application, therefore it has no bearing on the instant case and therefore not applicable.

Also, in the case of *Moses v State (supra)* it was held that a duty is cast upon the judges to give reasons for their decisions as their decisions are subject to review by the superior courts. In the case of *Chanrasena and Others v Munaweera (supra)* the Learned Magistrate has found the accused guilty and the reasons were delivered belatedly. I find these cases have no bearing on the case in hand and thus are not applicable.

14. The Learned Counsel for the Complainant – Respondent – Respondent submitted the ground on which the directors of the Company has to be summoned along with the Body Corporate and I wish to reproduce that submission as follows;

“.....Moreover, there cannot be a provision to summon Directors after the Accused Company being convicted. Because after conviction no one could be summoned but only the convicted persons.....It is respectfully submitted that once that accused company is found guilty by operation of law the Directors are also guilty of the same offence.”

15. It may be appropriate at this stage to notice the observations of ***S.K. Shukla vs The State Of Madhya Pradesh*** dated 22 March 2018 decided by the High Court of India (Madhya Pradesh). The case concerned with a complaint made against a company carrying out the business of manufacture of Soya Badi, Soya Flour and Soybean Oil. The food safety officers inspected the company and the samples that were tested found to be of unsafe for human consumption under the said Act. A case was filed against the Directors of the Company. The State of India submitted that thus the directors are nominees of the Company and can be prosecuted even in the absence of the Company. The defendants objected on the ground that the company has to be named as an accused along with the Directors.

16. Section 66 which imposes liability under the said Act of India and Section 60 (7) of the Consumer Affairs Authority Act, No.09 of 2003 of the case in hand is identical. Both the provisions impose liability to the *body corporate and every director and officer of such body corporate in a deemed effect.*

17. In ***S.K. Shukla vs The State Of Madhya Pradesh (supra)*** is analyzed as follows:

“We have referred to the aforesaid authorities to highlight that the company can have criminal liability and further, if a group of persons that guide the business of the companies have the criminal intent that would be imputed to the body

corporate. In this backdrop, Section 141 of the Act has to be understood. The said provision clearly stipulates that when a person which is a company commits an offence, then certain categories of persons in charge as well as the company would be deemed to be liable for the offences under Section 138. Thus, the statutory intendment is absolutely plain. As is perceptible, the provision makes the functionaries and the companies to be liable and that is by deeming fiction. A deeming fiction has its own signification."

"From the aforesaid pronouncements, the principle that can be culled out is that it is the bounden duty of the court to ascertain for what purpose the legal fiction has been created. It is also the duty of the court to imagine the fiction with all real consequences and instances unless prohibited from doing so. That apart, the use of the term "deemed" has to be read in its context and further, the fullest logical purpose and import are to be understood. It is because in modern legislation, the term "deemed" has been used for manifold purposes. The object of the legislature has to be kept in mind."

18. It was held that for maintaining an action, placing the Company as an Accused is imperative and the other categories of the offenders can only be brought in as accused when the Company has been named as an Accused.

19. Therefore, my observation is that the fact in issue of the case in hand and the afore cited case is different because in the cited case the plaint doesn't contain the name of the Company as an Accused while in the instant case, it has already been named. Nevertheless, its *raio decidendi* that it is imperative to name the alleged Company and the Directors as Accused is commendable and thus it is espoused to the instant case as well.

20. Also, my view is that if the Directors of the Company are not named as Accused to the action it shall be an inevitable bar to proceed with the matter.

21. In view of my aforesaid analysis, I arrive at the irresistible conclusion after applying a strict construction of the statutory provision that in light of Section 60 (7) of the Consumer Affairs Authority Act, No.09 of 2003 naming the Directors of the body corporate as Accused is correct in a deeming effect.

Ground II

22. As per Article 13(5) of the Constitution of the Democratic Socialist Republic of Sri Lanka every person is presumed to be innocent until proven guilty.

23. Article 13(5) of the Constitution is reproduced as follows;

“Every person shall be presumed innocent until he is proved guilty.

Provided that the burden of proving particular facts may, by law, be placed on an accused person.”

24. I do not wish to analyze further on this ground since naming a person as an Accused neither render a legal bearing nor act as a legal bar upon the presumption of innocence as stipulated in Article 13(5) of the Constitution. Directors are open to face a fair trial where they get an opportunity to defend themselves.

25. Therefore, the directors are liable to go through the trial when they are named as Accused and at the stage of the trial they can act according to the Proviso to Section 60 (7) of the Consumers Affairs Authority Act, No.09 of 2003.

Ground IV

26. As alleged by the Petitioners that the three orders of the Learned Magistrate of Fort bearing the number S 75660/13 dated 26th June 2013 , 30th August 2013 and 6th December 2013, affects the smooth functioning of the Respondent Company.

27. I wish to state that under the proviso to Section 60 (7) of the Consumer Affairs Authority Act, No. 9 of 2003, the Accused are given with an opportunity to exculpate themselves from the liability after the proof of *no knowledge or exercise of due diligence to prevent the commission of such offence*.

28. Therefore, my view is that it has no bearing on the smooth functioning of the Company.

29. In view of the foregoing reasons, based on factual scenarios and legal concepts I decide that the Petitioner is not entitled to any of the reliefs he has prayed for in his petition of Revision. Accordingly, we affirm the order of the Learned High Court Judge of Colombo in Case No. HCRA 40/2014 and the order of the Learned Magistrate of MC Fort in Case No. 75660/13

30. The Revision Application is hereby dismissed without costs.

JUDGE OF THE COURT OF APPEAL

Devika Abeyratne, J.

I agree,

JUDGE OF THE COURT OF APPEAL

Cases referred to:

1. H L Bolton (Engineering) Co Ltd v T J Graham & Sons Ltd [1957] 1 QB 159
2. Malini Gunaratne, Additional District Judge, Galle vs Abeysinghe and another [1994] 3 Sri LR 196
3. Moses v State (1999) 3 Sri LR
4. Chanrasena and Others v Munaweera [1998] 3 Sri LR.
5. S.K. Shukla vs The State Of Madhya Pradesh dated 22 March 2018
6. Commissioner of Elections v U. Amaradasa SC Appeal No. 75/2010