

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

*In matter of a Rule in terms of Article 105 (3) of
the Constitution against Adambarage Desmond
Chathuranga De Alwis.*

CA/Contempt of Court/06/2020

Adambarage Desmond Chathuranga
De Alwis,
No. 356/6/A, Gangarama Road,
Werahera, Boralesgamuwa.

RESPONDENT

Before: Sobhitha Rajakaruna J.
Menaka Wijesundera J.
Mayadunne Corea J.

Counsel: Dilan Ratnayake PC, ASG with Chaya Sri Nammuni DSG for the Attorney
General.

Evidence Led on: 24.10.2024, 13.03.2024, 31.07.2024

Decided on: 18.09.2024

These proceedings were commenced in this Court under Article 105 (3) of the Constitution against the Respondent (Adambarage Desmond Chathuranga De Alwis) based on a web article uploaded by him on lankanewsweb.org on 30.04.2020 making purported accusations of Bribery and Corruption against their Lordships of the Court of Appeal.

The said article is under the caption “පාස්කු ප්‍රහාරයේ සැකකාර නීතිඥ හිචාස්ට ඇප ගන්න භොර පාරක් කපයි... ලක්ෂ 50 කට අභියාචනාධිකරණයේ දොර ඇරෙද්දී විනිසුරුවරුන්ටත් සල්ලි.... ඇපදීම පසුපස බලවත් බලේ අතක්” and it has been widely circulated on social media.

The Criminal Investigations Department ('CID') has investigated the matter and ascertained that this article was uploaded to social media by the said Respondent. A transcript of the text of the article was tendered to Court marked 'X1'. His Lordship the President and the other Honorable Judges of the Court of Appeal have taken cognizance of the above article attributed to the said Respondent, amounts to Contempt of Court, warranting proceedings to be brought against him in terms of Article 105 (3) of the Constitution.

On 01.04.2021, in open court, the Attorney General was informed by His Lordship the President of the Court of Appeal that all the Hon. Judges of the Court of Appeal have reached an agreement that the material available against the Respondent discloses an offence of contempt of court. His Lordship the President of the Court of Appeal has obtained the views of all the judges in this regard.

The Hon. Attorney General on 10.02.2022 submitted to Court the Rule formulated in terms of the said Article 105 (3) against the Respondent and accordingly the Registrar of this Court was directed to issue notice on the Respondent along with the said Rule. After reissuing notice and the summons, this Court decided to issue notice once again on the Respondent through the Fiscal of the District Court of Nugegoda to the address of the Respondent- No. 151, Pepiliyana, Borelasgamuwa (the other address of the Respondent appears to be 356/06/A Gangarama Road, Werahera, Boralesgamuwa). The Fiscal has reported that the Respondent has gone abroad and accordingly, CID has taken endeavors to find the foreign address of the Respondent with the assistance of the Interpol. As the CID informed Court that the Respondent is absconding, the Attorney General moved that the matter be taken up for Inquiry in the absence of the Respondent. It is observed that the Respondent has left the island while the relevant Magistrate's Court case was pending against him. It is noted that such proceedings in the Magistrate's court has been commenced against the Respondent as a consequence of a complaint received by the Bar Association of Sri Lanka upon the said article marked 'X1'.

The following witnesses were examined-in-chief by the learned Senior Deputy Solicitor General- Mr. Dilan Ratnayake (before he was conferred Silk)

1. Arangalage Don Samanmalee Devika Perera (a person known to the Respondent)

2. Sujeewa Rathanayake (Deputy Controller, Department of Immigration and Emigration)
3. Konganiyage Ashen Gimhana Anthony (Police Constable 94001 Anthony)
4. B.N.M.A.S.K. Senarathne (Chief Inspector, OIC of the CID and Digital Forensic Laboratory)

Based on the testimony of the above witnesses, this Court was convinced that sufficient evidence was led before Court to establish that the Respondent is evading Court. Further, based on the evidence led before Court, it can be assumed that the Respondent was well aware of the nature of the charges and he has abused the process of court to evade Court proceedings.

Thus, the Court arrived at a conclusion that summoning the Respondent before Court will be an onerous task and accordingly, decided to proceed with the Inquiry in respect of the Rule that was issued against the Respondent and conduct the Inquiry in the absence of the said Respondent (Accused).

Consequently, the following witnesses were examined in chief by the learned Additional Solicitor General;

1. R. A. Mahinda Rajapaksa (Sub-Inspector, CID Cyber Crime Investigations Unit, Social Media Unit)
2. B.N.M.A.S.K. Senarathne (Chief Inspector, OIC of the CID and Digital Forensic Laboratory)

Considering the evidence of all of the above witnesses (including reports upon investigation of the Computers taken into custody by the CID from the place the Accused was living in Borelasgamuwa) and the special circumstances of this case, we are of view that satisfactory evidence has been led to establish that;

- i. the said article under the caption “පාස්කු ප්‍රහාරයේ සැකකාර නීතිඥ හිඡාස්ට ඇප ගන්න භාර පාරක් කපයි... ලක්ෂ 50 කට අභියාචනාධිකරණයේ දොර ඇරෙද්දී විනිසුරුවරුන්ටත් සල්ලි.... ඇපදීම පසුපස බලවත් බලේ අතක්” was widely circulated on social media- lankanewsweb.org,

- ii. the Respondent (Accused) who has acted as the administrator of the said website lankanewsweb.org is the author and publisher of the above article containing purported accusations which are serious in nature,
- iii. the said article had been circulated approximately among 122 web users and shared roughly among 4300 readers,
- iv. the aforesaid website can be operated only by the Administrator i.e. the said Accused,
- v. all the aspersions made against their Lordships of the Court of Appeal are false, defamatory and malicious.

We have not received any evidence or material contrary to evidence adduced by the above-mentioned witnesses. We find no reason whatsoever to believe purported accusations made by the said Accused against certain Judges of the Court of Appeal (as allegedly described in the article marked 'X1'). Similarly, this Court has not received any evidence to support any claim that these allegations against the Hon. Judges of the Court of Appeal are true or not made with malicious intention. The Accused has failed neither to give oral testimony nor any documentary evidence.

In his article, the Accused explicitly named His Lordship Justice A.H.M.D. Nawaz, their Ladyships Justice Kumudini Wickramasinghe, and Justice Devika Abeyratne (now retired), and made alleged accusations of bribery against them, specifying fixed sums of money. We have carefully perused and examined the document marked 'X1' authored by the Accused and take the view that creating such a false and malicious impression in the minds of the public has adversely affected the credibility, integrity and the independence of the Court of Appeal. Further, we are of the view that such statements will eventually tarnish the trust the public reposes in the administration of justice and accordingly, the said Accused has seriously violated his duty to abide by the law of the country and to protect the integrity of the Court of Appeal.

In the circumstances, we are of the view that the article marked 'X1' authored and published by the said Accused has been made and published with a clear intention of insulting their Lordships of the Court of Appeal or to bring the Court of Appeal into disrepute. This

eventually amounts to the interference with the course of justice or the abuse of process of court.

In *Vijitha Herath v. Secretary to the Treasury SC Contempt 2 -2023 dated 14.11.2023*, the Supreme Court has referred to the case of *Mudiyanselage Vijit Reginald Perera v. The King 52 NLR 293* in which the definition of contempt has been defined as follows; *“There must be involved some act done or writing published calculated to bring a Court or a judge of the Court into contempt or to lower its authority, or something calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts. (see Reg v. Gray 1900 2 Q.B. 36.)”*

The Supreme Court in the same judgment has referred to the below paragraphs of the case of *Croos and Another vs Dabrera (1999) 1 SLR 205*: -

“The charge of contempt of Court was classically defined in the case of Regina vs Kopito by Goodman J as “the scandalizing of the Court”, in that the words or the acts are likely to bring the Court and the Judges in to disrepute.

The action taken with regard to acts of contempt is based on the premises that a well regulated law of a civilized community cannot be sustained without sanctions being imposed for such conduct. It is therefore thought important to maintain the respect and dignity of the Court and its officers, whose task is to uphold and enforce the law, because without such respect, public faith in the administration of justice would be undermined and the law itself would fall into disrepute”.

The Supreme Court in the said judgement has further observed that, *“even if contempt is not always a crime, it bears a criminal character and therefore, it must be satisfactorily proved”.*

Tilakawardena J. in the said *Croos and Another* case has held that the offence of contempt of court under our law is a criminal charge and the burden of proof is that of proof beyond reasonable doubt. We observe that the ‘Contempt of a Court, Tribunal or Institution Act No. 8 of 2024’ was certified on 01.02.2024 and it was after the Rule had been issued against the Accused of these proceedings. As mentioned above this Court was convinced that the Inquiry should be conducted in the absence of the Accused. Anyhow, regardless of the procedures that were in place for contempt of court cases prior to the enactment of the said Act, we

believe this Court has the inherent powers to make a decision *Suo Moto* in such proceedings of contempt of court.

In light of the above and considering all the circumstances of this case we hold that the charges against the Accused have been proved beyond reasonable doubt and accordingly we hold him guilty of contempt of court. Moreover, we take the view that the said Accused should be punished for such contempt.

Sobhitha Rajakaruna J.

Judge of the Court of Appeal

Menaka Wijesundera, J.

Judge of the Court of Appeal

Mayadunne Corea, J.

Judge of the Court of Appeal