News Letter

THE JUDICIAL SERVICE ASSOCIATION OF SRI LANKA

2024 VOLUME 01

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A New Era for JSA Communication: Welcome to the Digital Newsletter of Judicial Service Association (JSA) !

We are thrilled to announce the launch of the Judicial Service Association's inaugural digital newsletter! This marks a historic moment for our Association, as we transit from a printed publication to a dynamic online platform. The JSA newsletter has been the mode through which the JSA has shared news, recent developments and notable advancements in the justice sector. Throughout the years the newsletter was published in the printed form, and for the first time in the history of JSA the newsletter will be delivered to the honourable members of the JSA in the digital form.

This exciting new initiative brings with it several advantages for our esteemed members of the JSA.

- Environmental Friendliness: As a digital newsletter, we're taking a significant step towards a greener future. By eliminating the need for paper printing and distribution, we contribute to environmental sustainability.
- Enhanced Accessibility: This digital format allows for 24/7 access to the newsletter from any device with an internet connection. No more waiting for physical copies.
- Increased Engagement: The online platform fosters greater engagement with interactive features, links to relevant resources, and the ability to share articles with colleagues.
- Improved Timeliness: Digital delivery ensures the latest news and information reaches you faster than ever before.
- Cost-effective communication: Digital newspaper will reduce the cost of printing and provide convenient accessibility for the membership.

This digital newsletter will be accessible directly from the Judicial Service Association website and will also be shared through our social media channels.

We believe this new format will keep you better informed and connected to the Association. We look forward to this innovative chapter and continuing to serve you with valuable resources and information.

Editor JSA

The office bearers and the executive committee for the year 2024 of JSA were appointed at the Annual General meeting held on 17th December 2023

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Keynote address by Justice B. Aluwihare at the Annual Conference and Workshop of the Judges of Sri Lanka Judicial Service held on 16. 12. 2023 at Hotel Galadari Colombo.

Enhancing Public Confidence in the Judiciary; The Role of a Judge

Your Lordship the Chief Justice

Hon. Justice Amarasekara Member of the JSC Hon. Justice Sisira de Abrew

Secretary JSC

Hon. President, the Secretary and the office bearers of the Judicial Service Association

Hon. Judicial officers Ladiesand gentlemen.

At the outset permit me to express my appreciation to the Judicial Service Association for extending this invitation to address this august gathering, which I consider both an honour and a privilege.

I am aware that among you- are the judicial officers who assumed duties at the beginning of this month. I take this opportunity to warmly congratulate each and every one of those judicial officers who joined the fold, anew.

I am also saddened by the untimely passing away of Mrs. Kalhari Liyanage, District Judge of Nugegoda - during the past two years or so she worked very closely with me as a pilot court judge in implementing a case management plan that is to be introduced to our courts.

I found her to be one of the most dedicated and conscientious judicial officers during my tenure in office.

If we look at the events that unfolded in the country, commencing early part of the last year, 2022; we experienced an unprecedented phenomenon, where the public became very vocal about their dissatisfaction as to the manner in which our country is governed by its administrators. Although the protests largely were focused against the polity.

I thought I will take you down the memory lane, just to remind you the events that transformed our political landscape within a short span of time.

The reason for me to do so is to drive the point that, more than at any point of time in the contemporary history, in the annals of the judiciary; we are under public scrutiny - not only in relation to the processes adopted by us in delivering what we are expected to deliver, but also the manner in which, we do it.

If we, as judicial officers, fail in the expectations of the public, one cannot rule a similar public agitation, pointed at the Judiciary

At the outset I wish to refer to the parting words of Chief Justice Parinda Ranasinghe at his farewell;

He observed, "judges at all levels of this island have a high standing in our country and have the highest occupational prestige and also of community status".

This stamen was made more than 30 years ago and we need to look inwards and see whether this statement stands true even today.

The responsibility of maintaining the status of the judiciary, Chief Justice Ranasinghe spoke of, is bestowed upon you, as long as you hold judicial office.

The judicial office as a profession is a noble one, and the privileges you enjoy being a judicial officer carries a corresponding duty on your part to promote, maintain and uphold the Administration of Justice and the dignity of the judiciary.

Your contribution to help build a credible judiciary is both demanded and expected. The law must be responsive to the needs of the society; else it ceases to be functional. As functionaries upholding the law, we can assure no superiority over others. At every point, treat everyone with dignity – remember that everyone is equal before the law.

One may question how significant is the public confidence in the judiciary,

If the rule of law to prevail, which is a fundamental requisite for the maintenance of peace in a society, the public must have total trust in the judiciary so that they will not only respect and accept the decisions of the court, but also abide by them. One way this trust could be harmed is by judicial misconduct. Judicial misconduct breaks down the very fibre of what is necessary for a functional judiciary- for the reason that the citizens believe- that their judges are fair and impartial. The judiciary cannot exist without the trust and confidence of the people.

If we are to maintain the public confidence, Judges must, therefore, be accountable to legal and ethical standards. In holding them accountable for their behaviour, judicial conduct review must be performed, however, without invading the independence of judicial decision-making.

This task – in my view- can be daunting.

Remember, more than any other branch of government, the judiciary is built on a foundation of public faith. As you know judiciary does not have the power to pass legislation. Instead, they make rulings on the law. Rulings that the people must believe came from competent, lawful, and independent judicial officers.

What we need to bear in mind is that one of the main causes that impairs the confidence the public has in the judiciary- stems from judicial misconduct on our part. Or to be precise, a conduct which is not appropriate for judicial office.

Therefore, it is extremely important that we do a self-scrutiny of our own conduct.

Without going into entrenched concepts of Judicial Conduct and responsibilities, I wish to keep this presentation simple and straight forwards.

The biggest flaw I see in our endeavour to boost the public confidence, is our obstinacy to change… or the reluctance to change our habits which are not consonant with ideal judicial conduct.

As far as the public is concerned, the foremost and the initial encounter of the public with the court and for that matter the judiciary, is the original court, subject however to a few exceptions.

It is here that the public perception of the judiciary is created, and if a negative perception is created--then naturally that will lead to the erosion of the confidence, they have in us. It is for that reason that I say, you have to be extremely careful to make certain, that does not happen ---you are under a public duty to do everything possible- as far as the powers that are vested in you warrants,- to safeguard the public confidence.

I will tell you why such an approach is so significant; and I wish to make two important points here;

On and off, we hear allegations against judges, sometimes these allegations end up in the public media and now social media,

The first point is, these allegations have not been made against Judiciary as a whole, or not against even a large number of judges- but are a very individualistic type of allegations, this is the first point;

The next one is the more alarming one,

When public confidence in one judge is shaken, it adversely impacts on the public confidence in the judiciary as a whole; ….the word goes…this is our judiciary now … which certainly does not auger well for the judiciary.

As judges, you not only must bear in mind but also be alive to the fact that unless there is peace and social stability in a society, one cannot expect economic or social development of a country and this is directly linked to law and order. For a country to enjoy social stability and peace, law and order must firmly be in place.

All would agree, that law and order were deeply challenged during the 'äragalaya' and the most proximate reason for that was the instability created in the society due numerous factors. The fact that the public did not target courts could be due to the confidence people still have in the judiciary to a greater degree, but whether that was the reason or not- its best that we leave that debate for a another day.

The point is, the courts still play a pivotal role in ensuring that the law and order prevail. The courts will not be in a position to fulfil this vital role, if the judiciary does not enjoy the confidence of the public. It is for that reason that each and every one of you have a direct responsibility in ensuring that the public confidence in the judiciary is not eroded and you are required to conduct yourself in a manner that strengthens the public confidence in the system.

This duty is not only expected of you but demanded as well.

The duty of a judge in achieving this objective is an onerous one, a duty from which you cannot shirk;

As Justice ARB Amarasinghe remarked in his monumental work "Judicial Conduct, ethics and Responsibilities;

I quote " The judiciary occupies an important place in every society, it is essential to the preservation of the rights of every individual, his or her life, liberty, property and character, that there should be an impartial interpretation of the laws and administration of justice. It is the right of every citizen to be tried by judges, as free, impartial and independent, as the lot of humanity will admit" unquote.

At this point, I shall digress a little from the concepts that we considered, and relate a few common pitfalls on our part.

Remember, as I said earlier we are being watched; I think more than any other official who discharges public duty.

Therefore, how you conduct yourself, not only on the bench, but off the bench as well is critical from the perspective of public confidence….

One common complaint is that, we get into arguments with counsel and more often than not, they develop into undesirable cross talks between the judge and the counsel.

Such situations must be avoided at all costs, such exchanges do not happen on a level playing field, when you preside as a judge, your writ will prevail over and above that of the counsel; this is the main reason why you should avoid having arguments with counsel.

I recall one such incident where the judge lost control and in retorting asked the counsel;

"Do you think I am a fool" The counsel responded;

"If I say yes, I will be guilty of contempt your honour; and if I say no, then I will be guilty of perjury"

Irrespective of the character of the person with whom you may have to interact; remember all have a self-respect as much as you have. It could be the worst criminal or the most eminent counsel; see that you do not say anything insulting or that may damage their dignity.

It is both unnecessary and uncalled for. More than anything else it reflects badly on you.

And do not act as you know everything, be prepared to learn. During my career both as a prosecutor and as a judge, I have come across brilliant counsel and very knowledgeable ones at that; do not underestimate their competency;

For a moment I am not saying that you should accede to every application they make, but should be humble enough to listen and consider their viewpoints. The final decision, however, should be yours.

Then there is the reluctance on our part to change our ways…. we have the same weaknesses all human beings have…. We tend to think we are always right…. And we think we know more than anyone else….

This approach does not work for the judiciary…

Before I deal with the crux of the matter, I just want to highlight two fundamental aspects which I think all judicial officers must follow, if we are to conduct our affairs in a way that it would not have an adverse impact on public confidence.

Firstly; we must be modest enough and be ready to learn…. correct ourselves if we make mistakes. Because, as judicial officers, we cannot afford to make mistakes.

Secondly; our conduct as judicial officers should not only be uniform as far as the application of the law is concerned but also must be in accordance with the applicable legal provisions…

In gaining public confidence -the most important aspect as far as I see it,-, - is your competency… it does not come automatically, and there are no short cuts either. You need to study and learn the law, both the conceptual aspect as well as its application. This is hard work, but now you have chosen to be judicial officers without complaining you have to do it.

Remember, you became a judicial officer of your own choice, not that anyone forced you to take up judicial office.

Sometimes it so appears that the duties are discharged as if as someone had forced the job on us;

From the time you get on the bench, you shout at the mudliar, the court staff, the police, lawyers, the litigants, at times using the language that is not appropriate for a judge.

You must be thinking that such conduct is a great thing because no one challenges you,

In fact what you are doing is making a fool of yourself and lowering the esteem of the judicial office.

You have to make many sacrifices if you want to be a good judicial officer, simply do not complain, if you think this job does not fit you …you are free to find a suitable position elsewhere- do not take your problems on the public and other stakeholders who come before you.

Recently a lawyer related a comment made by a judicial officer that they work from 7 in the morning to 7 in the evening and no one appreciates. The lawyer said he felt like saying – we didn't ask you to be a judicial officer, you chose to be one, if you are incompetent to handle it why don't you consider leaving?

People will appreciate if you can stop winging, specially from the bench and get on with your job.

One can be firm and still act with dignity rather than being nasty.

I digressed a little, what I was emphasizing is the importance of raising your competency and the readiness to learn.

Having served as a prosecutor for over 30 years and having appeared in the entire spectrum of courts; from the magistrate's court up to the Supreme Court, my experience and perception is, that the degree of competency of judge is conversely relative to the amount a judge speaks from the bench.

A knowledgeable and a competent judge will preside with a few words, conversely, the more you talk it's an indication that you are not sure of your job,

So make it a point to talk when it is really necessary and avoid delivering sermons from the bench, it is certainly not your job to do.

The bottom line is incompetency certainly will have an adverse impact on the credibility of the judiciary and in turn the public confidence.

I also referred to the fact that the readiness to learn is a quality that we need to develop in ourselves.

No one expects us to know everything.

I will relate to two instances that are reported which will demonstrate the damage it can cause by our reluctance to learn.

One is from a High Court in the North Central province.

As you know proving contradictions, is a basic tool made available to the opposing party to discredit a witness. That is recognized by law and had been practiced in the country since the inception.

If one refers to Section 145 of the Evidence Ordinance, it says

"A witness may be cross-examined as to " previous statements " made by him in writing or reduced to into writing"

Subsection (3) of Section 110 of the CPC specifically states that;

"A statement made by any person to a police officer in the course of any investigation may be used in accordance with the provisions of the Evidence Ordinance"

If we read the evidentiary provision and the procedural provision, they are very clear and there cannot be any ambiguity that statement made by a witness to the police can be made use of to prove contradictions in order to discredit witnesses.

This is not only an important rule but something that had been practiced in our courts from the time immemorial.

But in this particular High Court I was informed that if a contradiction is to be marked, it must be from the very evidence given by the witness in the witness box and nothing else…

One only has to consider the words "previous Statement" in section 145 of the EO to appreciate that what the provision means is, statement other than the testimony in court.

If you are in doubt it's a matter of referring up a text on the subject or any precedence reported in Law reports? And don't be shy to ask someone whom you may think is knowledgeable on the issue.

I do not know whether this particular judicial officer adopted the same practice even as magistrate and as a District judge as well. Just imagine the damage such conduct can have on the system.

This is a drawback of not being prepared to listen and to advance your knowledge, we cannot have a dogmatic approach in dealing with the law,

Dogmatism has to be shunned, and as judicial officers you should be prepared for change.

Dogmatism is defined as avoidance from accepting others' beliefs, ideas and behaviors. Dogmatic individuals have many problems in understanding new ideas. They cannot accept reasonable ideas instead of their incorrect ideas. They do not cooperate with others with different ideas.

The other incident that I wish to refer to is a practice in a magistrate's court where the accused right to plead guilty is curtailed.

All of you would agree it is a basic right of a person to plead guilty if his conscious says he or she is guilty of the violation.

Sometimes so happen in a charge sheet there can be number of offences with which a person is charged.

One may think that I am guilty of some and not of others and that person has the freedom to plead guilty only to the charges he or she thinks is guilty.

How can you deprive this right of an accused?

In this particular court I was told it all or nothing- that is either you plead guilty to all charges and no picking of charges!. I hope it is not the same when more that one accused is charged…

These are a few fundamental errors which would lead to the erosion of public confidence.

Delay in delivering justice on a timely basis is also a common issue that may tarnish the image of the judiciary.

We appreciate the work load that you carry as judicial officers and it is not underestimated.

But where ever possible you need to speed up the process.

When I was a member of the JSC a frequent complain was delaying judgment in ex-parte cases, cases had been concluded years ago, however, the party cannot obtain the judgment because there is an inordinate delay in delivering the judgment…

This I see as sheer incompetency on the part of the judicial officer concerned.

Behavior outside of the courtroom can also be at issue. Judicial conduct oversight should not attempt to regulate purely personal aspects of a judge's life. However, a judge can commit misconduct by engaging in personal behavior that calls their judicial integrity into question.

You must never use your authority outside the court, remember once we leave the court, we are ordinary citizens and we do not enjoy any special privileges or rights over and above any other citizen of this country,

So one little piece of advice I can give you is never throw your 'judicial' weight around, which I think is downright ugly, and unbecoming of a judicial officer.

If you are respected and recognize it is not because you are so and so, because of the respect and the recognition the judiciary has.

For a moment I am not suggesting that judicial conduct oversight should attempt to regulate purely personal aspects of a judge's life. However, a judge can commit misconduct by engaging in personal behavior that calls their judicial integrity into question. This is true even if the same behavior would merely be considered unwise for the average citizen. As I said we are in the public eye and the saying goes, - “the robe magnifies the conduct”.

The preamble to the Arkansas Code of Judicial Conduct states that, "judges should maintain the dignity of the office at all times and avoid both impropriety and the appearance of impropriety in their professional and personal lives.

Although there are Codes of judicial Conduct in many jurisdictions which are fashioned in away with the objective of enhancing or maintaining public confidence in the judiciary, I am not a great advocate of that, the reason being, regulating the type of behaviour without violating separation of powers or decision-making independence- becomes a walk on the edge of knife.

So the Codes may not be the best option, what is required is self-discipline. Implementing a meaningful way for the public to be protected from judicial misconduct is vital-- there has to be review. Furthermore, it must be done with minimal risk of unlawful intervention by forces trying to prevent unpopular, but correct, rulings on the law. That balance is very important from the perspective of an independent judiciary.

While the majority of judges serve with honour, ethical missteps should be corrected, and major breaches of trust should be acknowledged.

Enhancing the Public confidence in the judiciary you have a role to play, on your part, the judiciary should be willing to help develop ethical standards.

I am aware that the Judicial Service Association has initiated a judicial colloquium among the membership and many issues relating to judicial officers are deliberated.

This is a very laudable initiative which should be encouraged and you as judicial officers must actively take part in such deliberations. It will certainly help you to advance your knowledge on so many aspects.

These are the few aspects I thought of sharing with you today. I thank you for your patient hearing.

Retirement of Justice Buwaneka Aluwihare

Justice Buwaneka Aluwihare, PC retired from his Nobel service to the Sri Lankan judiciary on the 15th of November 2023.

Justice Aluwihare is a proud product of St. Sylvester's College, Kandy. Upon completing his school education, he entered the prestigious Sri Lanka Law College in 1979 and was called to the Bar in October 1982.

Thereafter, he joined the Attorney General's Department as an Acting State Counsel in 1981. while serving in the Attorney General's Department, he enrolled as a Solicitor of England and Wales in 1989. Further, he completed his Master's in law from the Queen Mary College of the University of London in 2004. During his tenure at the Attorney General's Department, he served as a prosecutor in the United Nations Transnational Administration in East Timor, dealing with War Crimes and Crimes against Humanity.

Justice Aluwihare Served as an Additional Solicitor General in Attorney Genaral's Department from June 2013. On 4th December 2013, Justice Aliwihare was appointed as a Judge of the Supreme Court

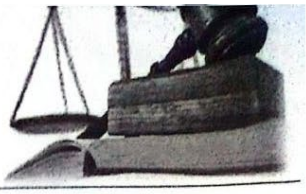
His lordship assumed duties as a member of the Judicial Service Commission in 2019 and rendered his service to the Sri Lanka Judiciary.

JSA wishes His Lordship a happy retirement..!

Letter dated 22 February 2024 to Hon. Secretary to JSC on 'Shortage of administrative staff'

In response to the discussion held at the Executive committee meeting held on 17 February 2024 on the shortage of administrative staff in the minor judiciary, JSA has taken steps to inform JSC on the issue as staff shortage heavily affects on the administration of justice in the country. Accordingly, the correspondence was sent to the Hon. Secretary to the JSC on 22 February 2024 requesting an appropriate action.

Judicial Service Association of Sri Lanka



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කාර්ය මණ්ඩල පුරප්පාඩු මත අධිකරණ කටයුතු වලට සිදු වී ඇති බලපෑම් සම්බන්ධයෙන් සමාජික විනිශ්චයකාරවරුන් විසින් කරන ලද කරුණු දැක්වීම් 2024.02.17 දින රැස් වූ අප සංගමයේ විධායක සභාවේ අවධානයට යොමු වන ලදී.

මීට පූර්වයෙන්ද මේ සම්බන්ධයෙන් ලැබෙමින් තිබූ පැමිණිලි වල ප්‍රමාණය සහ සහේතුකභාවය ක්‍රමිකව වර්ධනය වී ඇති අතර, දැන් එම තත්ත්වය අභ්‍යන්තරව ආයතනික මට්ටමින් කළමනාකරණය කර ගත හැකි සීමාවෙන් ඔබ්බට ගොස් අධිකරණ කටයුතු වල කාර්යක්ෂමතාවයට බරපතල ලෙස බලපෑම් කරන තත්ත්වයට ගමන් කර ඇති බව අපගේ නිරීක්ෂණයයි. පුරප්පාඩු ලෙස පවතින කාර්ය මණ්ඩල මගින් ඉටු විය යුතු රාජකාරිද සිටින සීමිත නිලධාරී පිරිස මගින්ම ඉටු කරවා ගැනීම හේතුවෙන් එක් අයෙකුට පැවරෙන අධිකතර රාජකාරිද ආර්ථික අර්බුදය හේතුවෙන් ඇති වී ඇති ආකර්ශනීය නොවන රාජකාරී තත්ත්වයන්ද මත මෙම ගැටළුව අධිකරණ කටයුතු වල කඩා වැටීමක් ඇති කර මහජනතාව කෙරෙහි යුක්තිය පසිඳලීමේ ක්‍රියාවලිය සම්බන්ධයෙන් පවතින විශ්වාසය හීන කරන තත්ත්වයකට ගමන් කිරීමේ අවදානමක් ඇති බව වැඩිදුරටත් නිරීක්ෂණය වේ.

එබැවින් රාජ්‍යයේ නීතිය හා සාමය පවත්වාගෙන යෑමට අතිශය සංවේදී අධිකරණ පද්ධතියේ ඇති වෙමින් ඇති මෙම විශේෂ තත්ත්වය නිසි බලධාරීන්ගේ අවධානයට යොමු කර එම පුරප්පාඩු පිරවීම සඳහා ඉක්මන් ක්‍රියාමාර්ග ගැනීම සලකා බලන ලෙස ඉල්ලා සිටීමට අප සංගමය තීරණය කරන ලදී.

ඉසුරු නෙත්තිකුමාරගේ,
ලේකම්,
අධිකරණ සේවා සංගමය.

2024.02.22 වන දිනදිය.
ගාල්ල මහෙස්ත්‍රාත් අධිකරණයේදිය.

Isuru Neththikumarage
Secretary
Judicial Service Association

Letter dated 26 February 2024 to the Director of Judges' Institute on 'Enhancing communication skills of judges'

Recognizing the necessity of improving JSA member's communication skills such as presentation, communication, and public speaking skills up to international standards to enhance the level of professionalism and confidence at professional forums, the JSA requested to formulate a Toast Master Club under the guidance of the British Council.

Judicial Service Association of Sri Lanka

His Lordship Justice Mahinda Samayawardane,
The director,
Sri Lanka, Judges' Institute,
Haltsdorp,
Colombo 12.

A Request to improve commiunication skills of Judges.

Judicial Service Association of Sri Lanka (JSASL) has noticed that there is a necessity to improve presentation skills of Judicial Officers as to meet the globle standards.

After having extensively considered the vacuum of opportunities for judges to improve their communication skills, JSASL in it's meeting held on 17th February 2024, decided to forward this concern to the attention of Sri Lanka Judges' Institute.

Therefore, JSA is kindly requesting your Lordship to consider the possibility of organizing a Toast Master Club or the Previous British Counsil program or a similar awareness program for Judicial Officers.

Thank You.

Isuru Neththikumarage,
Secretary,
Judicial Service Association

On this day 26th February 2024
At Galle Magistrate Court

Copy: Hon. Sanjeewa Somarathne, The Secretary, Judicial Service Commission

'Letter dated 01 March 2024 to His Lordship the Chief Justice on 'Appointment to the High Courts'

According to the decision taken at the executive committee meeting held on 17th February 2024, JSA forwarded the grievance of the minor judiciary to His Lordship Chief Justice Jayantha Jayasuriya P.C on appointment to the High Courts of Sri Lanka.

His Lordship Jayantha Jayasuriya P.C,
The Chief Justice of the Democratic Socialist Republic of Sri Lanka.

Appointment to the High Court

In pursuit of the decision taken at the Exeo meeting of the Judicial Service Association of Sri Lanka (JSA) held on 17.02.2024, following concerns are submitted to your Lordship the Chief Justice and other Hon. members of the JSC.

In the present scenario, it is a known fact that for most of the carrier judges, the appointment to the High Court has become the only carrier prospect. However, during the period of last two years, only 2 judges from the First Instances Courts have been appointed to the High Courts. This situation has created unrest among District Judges and Magistrates. JSA further observed that this unrest would gradually increase in a considerable amount and it is being badly affected with the efficiency of judicial works and court administrations.

In the meantime, JSA come to know that few officers from the Attorney General's Department who are far juniors when compared to the Judicial Officers who are next in line in judicial seniority, are going to be recommended as High Court Judges. As your Lordship knows, JSA has already forwarded it's suggestions to the JSC, for a fair and transparent policy for the appointment of judges to the High Court. Fundamentals of the proposed policy are hereby quoted as follows;

"1. Nominations from the Judges of the 1st Instance Courts, must be made on the seniority basis only subjected to the circularized criteria for the evaluation of performance. Seniority must be accordance with the seniority list at the time being.

2. Where there are nominations from the AG's Department, the duration of the working experience must be considered with the minimum working experience which had been considered at the appointment as the Judge of the 1st Instance Courts or a State counsel.

3. Where there are nominations from both institutions, date of oath as an Attorney - at - Law must be considered to avoid negative consequences, if necessary.

4. No ratio is proposed to enable most suitable officer to be appointed as a High Court Judge from any of institution.

5. General guidelines which are considered for the appointments of High Court Judges are proposed to be circularized, for the transparency of judicial appointments."

As such, this situation has resulted in frustration and disappointment among the Judicial Officers who have been serving in the judiciary for years. Therefore, JSA urges the JSC to draw serious attention to these concerns of the JSA which represents the entire District Judges and Magistrates of the Country.

Thank You.

Isuru Neththikumarage,
Secratary,
Judicial Service Association.

On this day 01st of March 2024.
At Galle Magistrate Court.

Copies - 1. His Lordship Justice E.A.C.R.Amarasekara,
Judge of the Supreme Court,
Member of the Judicial Service Commision.

2. Hon, Sanjeewa Somaratne,
The Secratary,
Judicial Service Commission.

Letter dated 12 January 2024 to Hon. Secretary to the JSC on ‘Untruthful press releases on judicial functions’

Considering the complaints made by the membership to the executive committee of JSA on the behaviour of media in reporting court proceedings, a letter was sent to the Hon. Secretary to the JSC on 12 January 2024 requesting a permanent solution to prohibit untruthful press releases on judicial functions.

සංජීව සෝමරත්න මැතිතුමා,
ලේකම්,
අධිකරණ සේවා කොමිෂන් සභාව,
කොළඹ 12.

අධිකරණ කටයුතු විෂයෙහිලා සිදු කරන අසත්‍ය පුවත් වාර්තාකරණය.

ශීර්ෂගත කාරණය මහින් අධිකරණ නීත්‍යනුකූල සහ නියෝග විකෘති කොට දැක්වීම, කිසියම් න්‍යාය පත්‍රයකට ගලපවා ගත හැකි අමතර කොටස් එකතු කර වාර්තා කිරීම, විනිශ්චකාරවරුන්ගේ පුද්ගලිකත්වයට බලපෑම් ඇති කරන ආකාරයට වාර්තා කිරීම ආදී නඩු කටයුතු වලටද අධිකරණ පද්ධතියේ ගෞරවයටද බලපෑම් ඇති විය හැකි විද්‍යුත් හා මුද්‍රිත වාර්තාකරණයන් සම්බන්ධයෙන් අප සංගමයේ සාමාජික විනිශ්චකාරවරුන් විසින් කරන ලද පැමිණිලි සලකා බලන ලද 2024.01.06 දින රැස් වූ විධායක කමිටුව මෙම තත්ත්වයන් වැළැක්වීම සඳහා ස්ථිරසාර සහ ප්‍රායෝගික ක්‍රමවේදයක් සකස් කිරීම කෙරෙහි අවධානය යොමු කරන ලෙස අධිකරණ සේවා කොමිෂන් සභාවෙන් ඉල්ලා සිටීමට තීරණය කරන ලදී.

එබැවින් ඒ කෙරෙහි ඔබතුමාගේ අවධානය යොමු කරමි.

ඉසුරු නෙත්තිකුමාරගේ,
ලේකම්,
අධිකරණ සේවා සංගමය

2024 ජනවාරි මස 12 වන දින.

Letter dated 18 January 2024 to Hon. Secretary to the JSC on 'Requesting to relax a condition, imposed by JSC circular Nos. 281, 281(a) and 281(b)'

Considering the requests made by the membership on relaxing the specifications/ criteria imposed on vehicles allocated to the minor judiciary, a letter was sent to the Hon. Secretary to the JSC on 18th January 2024 for favourable consideration.

Hon. H. S. Somarathne,
The Secretary,
Judicial Service Commission,
Colombo 12.

Request to relax a condition, imposed by JSC Circular No. s 281, 281 [a] & 281 [b]

Dear Sir,

Judicial Service Commission by it's circular bearing No. s 281, 281(a), 281(b) has imposed conditions to receive a vehicle allowance in lieu of an official vehicle. According to those circulars Judicial Officers are directed to use a vehicle which has an engine capacity approximately 1300cc or above. Said provisions have finally been amended on 06th September 2011 and since then Judicial Officers are obliged to comply the same to receive vehicle allowance.

However, recently Judicial Service association (JSA) has received many requests from it's members explaining their grievances in securing an approved vehicle, consisted with required engine capacity due to the unavailability of vehicles in the current market on restrictions made by the government to import vehicles during a considerable period. The Ministry of Justice has also failed to provide official vehicles for Judges a earlier and a large number of Judges are in a queue to receive a government vehicle. JSA has noticed that this unpredicted situation is gradually creating an unrest among Judges in maintaining their professional standards. In the meantime, with the development of the technology in the vehicle industry, new models of cars have been introduced with Turbo charging technology to save the engine's power & increase the efficiency. Said new productions are modified with a lesser engine capacity as to meet above technical purposes. Therefore, in our view, a necessity has arisen to update circularized conditions on an urgent basis.

Having considered above said both factors, JSA earnestly request you to consider the possibility of further amending clause I (i) of JSC circular No. 281, already amended by circular No. s 281(a) & (b) as follows;

"has an engine capacity approximately 1300cc **or above or an engine capacity not less than 1000cc with Turbo charging echnology."**

Thank you,

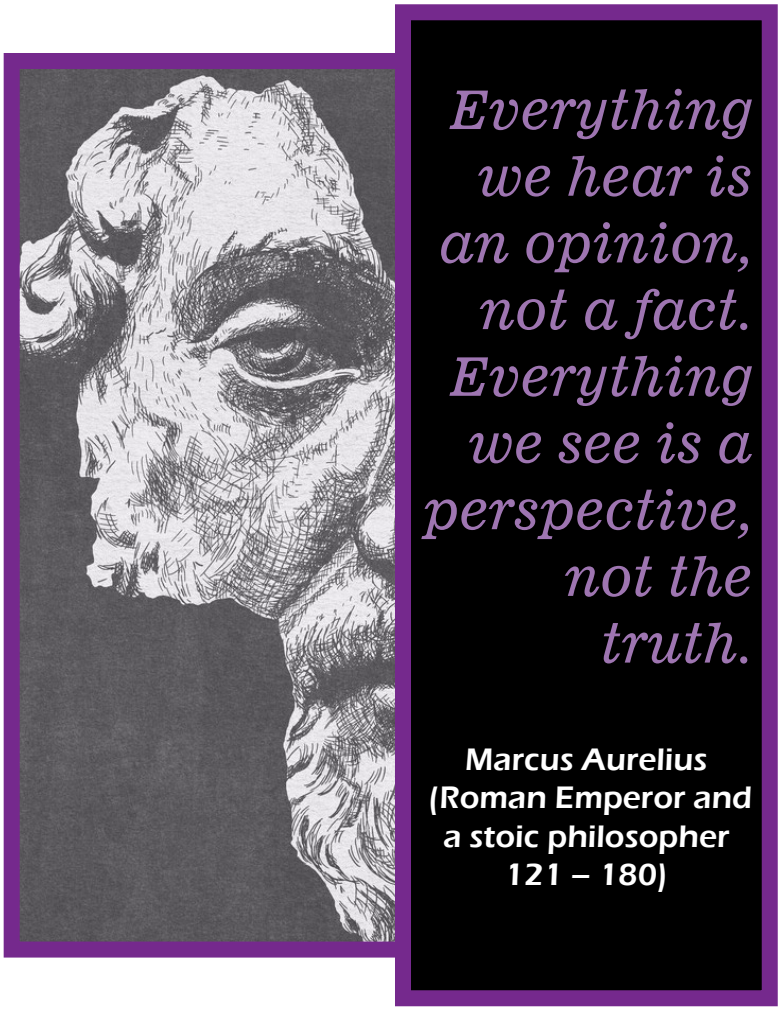
Sincerely.

Isuru Neththikumarage,

Secretary,

Judicial Service Association.

On the 18th January 2024.



Letter dated 17 January 2024 to the president of the National Police Commission on Security of Judges

Since there have been several unfavourable cases reported on Judge's security in the recent past, the JSA executive committee has indicated its' concern on the matter to the president of the National Police Commission seeking special attention to the issue.

ලලිත් ඒකනායක මැතිතුමා,
(විශ්‍රාමික මහාධිකරණ විනිසුරු)
සභාපති,
ජාතික පොලිස් කොමිෂන් සභාව,

විනිශ්චයකාරවරුන්ගේ ආරක්ෂාව

විනිශ්චයකාරවරුන්ගේ ආරක්ෂාව සම්බන්ධයෙන් වූ ක්‍රියාමාර්ග පොලිස්පති චක්‍රලේඛ 2323/2011 යටතේ ඉටු කිරීම චේතනාන්විතව නොසළකා හැරීම මඟින් ඇති වී ඇති අපහසුතා සම්බන්ධයෙන් විනිශ්චයකාරවරුන් විසින් පසුගිය කාලය තිස්සේ කරනු ලැබූ පැමිණිලි සම්බන්ධයෙන් 2024. 01. 06 දින රැස් වූ අප සංගමයේ විධායක කමිටුව සාකච්ඡාවට ලක් කරන ලදී.

විනිශ්චයකාරවරුන්ගේ ආරක්ෂාව සම්බන්ධයෙන් නව විධිවිධාන ඇති කිරීමේ අවශ්‍යතාවයක් නොමැති බවත් 2023/2011 පොලිස්පති චක්‍රලේඛයේ විධිවිධාන නිසි පරිදි ක්‍රියාත්මක වන්නේ නම් දැනට ඇති වී ඇති රාජකාරී පැහැර හැරීම් බොහෝ දුරට මග හරවා ගත හැකි බවත් අපගේ නිරීක්ෂණය වේ. පසුගිය කාලය පුරාවට වරින් වර ඇති වූ විනිශ්චයකාරවරුන්ගේ ආරක්ෂාව බිඳවැටීමේ සිද්ධීන් පිළිබඳව පොලිස්පතිවරයා වෙත සෘජුව කරන ලද කරුණු දැක්වීම් වලදී ශීර්ෂගත චක්‍රලේඛය පරිදි ක්‍රියා කිරීමේ අත්‍යවශ්‍යතාවය අවධාරනය කළ ද එම තත්ත්වයේ ප්‍රගතියක් ඇති වී නොමැත.

එබැවින් පොලිස්පති චක්‍රලේඛ 2323/2011 සම්පූර්ණ වශයෙන් ඉටු කිරීම සඳහා සියළු පොලිස් නිලධාරීන්ට නැවත උපදෙස් ලබා දෙන ලෙස පොලිස්පතිවරයාට දන්වන ලෙසත් එම විධිවිධාන යටතේ කටයුතු නිසි පරිදි සිදු වන්නේ දැයි සමීප නිරීක්ෂණය සඳහා සෑම අධිකරණ සංකීර්ණයක් භාරවම ස්ථාන භාර නිලධාරියෙකු පත් කිරීමට උපදෙස් දෙන ලෙසත් එකී කටයුතු නිසි පරිදි සිදු වන්නේ දැයි අධීක්ෂණය සහ ඒ සම්බන්ධ වූ පැමිණිලි ඍජුව සළකා බැලීම සඳහා විනිශ්චයකාරවරුන්ගේ ආරක්ෂාව විෂය භාරව ජ්ෙෂ්ඨ නියෝජ්‍ය පොලිස්පතිවරයෙකු පත් කර ඒ පිළිබඳව අධිකරණ සේවා කොමිෂන් සභාව දැනුවත් කිරීමට උපදෙස් ලබා දෙන ලෙසත් ඔබතුමාගෙන් කාරුණිකව ඉල්ලා සිටිමි.

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ලේකම්,
අධිකරණ සේවා සංගමය.

2024 ජනවාරි මස 17 වන දින.

Letter dated 09 January 2024 to the Director Judges Institute on 'Necessity of conducting an awareness programme for judicial officers on the law related to dangerous drugs'

Having noticed the new trend of producing a higher number of individuals before the magistrate's court seeking various orders under laws relating to dangerous drugs, the executive committee decided to request from the Director of the Sri Lanka Judge's Institute arranging awareness among the membership on the law related to dangerous drugs.

His Lordship Justice Mahinda Samayawardane,
Judge of the Supreme Court,
The Director,
Sri Lanka Judge's Institute

Re: Necessity of conducting an awareness programme for Judicial Officers on the law relating to Dangerous Drugs

Dear Sir,

The Judicial Service Association (JSA) through it's membership was noticed that there is a new trend of producing higher numbers of individuals before Magistrates seeking orders for compulsory rehabilitation under the sec. 10(3) of the Drug Dependent Persons (Treatment and Rehabilitation) Act No. 54 of 2007 and for detention under the sec. 82 or remand under the sec. 54A of the Poisons, Opium and Dangerous Drugs Ordinance following wrong procedures. Further, it is also taken to notice that some police officers arrest and produce those individuals without following basic legislative pre – requisites.

The matter was extensively discussed at the Executive Committee (Ex-co) meeting, held on 6th of January 2024 and it was observed that a fair knowledge on the procedure and the practical aspect on the process are absolutely necessary to minimize the violation of fundamental rights of individuals and protect the legislative expectations of penal and rehabilitation laws.

Therefore, the Ex-co decided to draw your Lordship's attention on this serious issue on priority basis to take suitable steps to enhance the knowledge of the magistrates in order to ensure the uniformity in judicial decisions.

Hence, JSA is kindly requesting your Lordship to consider the possibility of organizing an awareness programme pertaining to drug related laws at your early convenience.

Thank you

Sincerely,

Isuru Neththikumarage ,
Secretary,
Judicial Service Association.

On this day 9th January 2024

New Appointments

Eight New High Court Judges have been appointed with effect from 08th April 2024. JSA congratulates following senior JSA members for their appointments as High Court Judges!

1. Mr. A. G. Alexrajah
2. Mr. A. M. N. P. Amarasinghe
3. Mr. H. K. N. P. Alwis
4. Mr. L. K. Mahinda
5. Mr. L. D. H. De Silva
6. Mr. P. M.T. Bandara
7. Mr. R. S. M. Wijesekara

25 New Judicial Officers (Class II Grade I) were recruited by the Judicial Service Commission on 01st December 2023

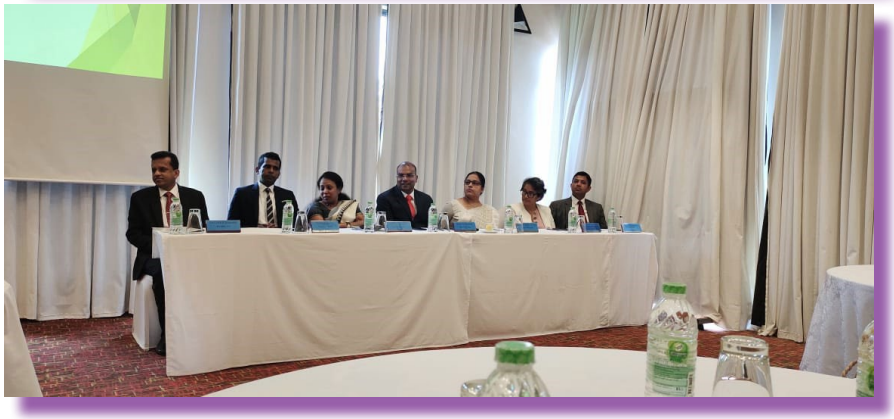
1. Miss. W. A. B. D. Wickramasinghe
2. Miss. W. G.W. Gangadari
3. Mr. M. K. U. S. Gunathilaka
4. Mrs. D. L. A. S. Wimalaratha
5. Miss. D. L. N. Karuarathna
6. Miss. W. P. G. S. N. Bootawatte
7. Mr. S. A. D. R. Anuruddha
8. Mr. M. M. R.Ahamed
9. Miss. K. H. M.Navoda
10. Mr. P. D. U. Fernando
11. Mrs. P. H. W. D. L. Samarasinghe
12. Mrs. M. Niroshan
13. Mrs. H. M. C. M.i Chandrathilka
14. Mr. A. W. Arjun
15. Miss. I. M. Dharmadasa
16. Miss. G. P. D. Sandarekha
17. Mrs. D. P. S. M. Karunarathne
18. Ms. K. N. A. Seneviratne
19. Mr. S. H. Mahroos
20. Mr. D. P. Bogahawatte
21. Mr. B. K. T. D.Weerasiri
22. Mr. I. H. N. D. Gunaena
23. Mrs. S. Prithivl
24. Miss. P. S. L. L. Rathnayake
25. Mrs. M. Ketheeswaran

Experience sharing workshop organized by the JSA

JSA has been permitted by the Judicial Service Commission for the first time in history to conduct a series of residential workshops for its membership from last year. Accordingly, the 2nd residential workshop was successfully conducted on 21st and 22nd October 2023 at Cinnamon Citadel, Kandy, with the financial assistance of the United Nations Office of Drug and Crimes (UNODC). The workshop was held to share the experience of senior judges who were well-versed in their careers as first-instance court judges. Over thirty junior members of the judiciary participated and feedback for the programme was excellent.

Hon. Ranga Dissanayake, Hon. Lanka Jayarathne, Hon. R.S.S Sapuvida, and Hon. Prabha Kumari Dela judges of the High Court contributed their immense experiences in the judiciary and discussed the practical aspects of performing duties as Magistrates and District judges.

JSA expects to continuously organize a series of workshops to share the knowledge and experience of the membership to strengthen the justice system of the country.



Commemoration of Late District Judge of Nugegoda

Mrs. Kanchana Kalhari Liyanage

Mrs. Kalhari Kanchana Liyanage hails from a respected family in Warakapola Kegalle District. She attended her primary education at St.Joseph's Convent Kegalle, and Secondary education at Visakha Vidyalaya Colombo – 05.

Upon completion of her school education, she entered the prestigious Sri Lanka Law College in 1998, where she excelled and passed her examinations with honors and subsequently, she was called to the bar in 2001. Mrs. Kalhari Liyanage pursued her higher academic education at the Open University of Sri Lanka, where she obtained her L.L.B, and she completed her Master of Laws (L.L.M) at University of Colombo. Further, she has also obtained Diploma of Forensic Medicine and Science from the Faculty of Medicine, University of Colombo. Furthermore, at the time of her sudden demise, Mrs. Kalhari Liyanage was successfully reading for the PhD in law at the University of Colombo.

Mrs. Kanchana Kalhari Liyanage's illustrious career begins as an Attorney - at - Law attach to the CH Unit of the Attorney General'd Department whilst serving as a tutor in Sri Lanka Law College till 2009. Subsequently in the month of May 2009, She has been appointed as the president of the Labor Tribunal - Kegalle and in the month of June 2009 she has been appointed as the District judge/Magistrate at District/Magistrates' Court in Nikaweratiya. During her 14 years of distinguished career as a judicial officer, Mrs. Kalhari Liyanage has served as Additional District Judge Gampaha, Additional District Judge Chilaw, District Judge Marawila, Additional Magistrate Panadura, Additional District Judge Colombo and finally, she had been serving as the District Judge of Nugegoda when the time of sudden demise.

Mrs Kalhari Liyanage has been recognized as an intelligent, well-educated and hardworking judicial officer in the Sri Lanka Judiciary and also well known as a humble, kind hearted lady devoted to the betterment of the society.

Apart from her official capacity, she was an admiring partner to her loving husband Mr. Deepal Kumanayake, loving mother to Mandara and loving daughter to her father Siri Liyanage.

Undoubtedly, the sudden demise of Mrs. Kalhari Kanchana Liyanage has created an unfillable vacuum in the Sri Lanka Judiciary. Her loving smile, generous and friendly behavior will always remain in our hearts and minds forever.

May her attain supreme bliss of Nibbana ……!

Buddhini Abeysinghe
District Judge
Panadura.

SELECTED GUIDELINES ON CRIMINAL JURISDICTION WITH SPECIAL REFERENCE TO THE MAGISTRATE'S COURT

Manjula Thilakaratne
High Court Judge, Colombo.

1) **The accused should be called first into the witness box before his witnesses are called.**

The practice of calling the accused to give evidence before other witnesses on his behalf are called should be observed.

Vide Queen Vs. T. M. Appuhamy 60 NLR 313 (Hon. Basnayake, C.J.)

It is no doubt correct that the accused person ought to be called first into the witness box before supporting witnesses who testify to the same facts are called; otherwise, his evidence will be of very little value.

One can conceive of cases where in the course of evidence given by witnesses for the defence the need to call an accused person, which did not earlier exist, may suddenly arise. In such a case to refuse him the right to give evidence would amount to a denial of justice. His evidence, no doubt, would be subject to the obvious infirmity that he is in a position to shape his evidence according to what he has already heard and it may be of very little value.

The general rule, however, is for the accused to give evidence before his witnesses.

Vide Queen Vs. Don Wilbert 64 NLR 83 (Hon. Sinnetamby, J.)

2) **The accused is entitled to be present when evidence is led for the prosecution or the defence. Failure to observe this rule of procedure is an illegality.**

Vide Section 272 of the C.P.C.(Section 297 of the Old C.P.C.)

Gunetti Vs. Fonseka 44 NLR 191 (Hon. Jayetileke, J.)

3) **The mere fact that the officer who conducts a prosecution gives evidence in the course of it is not fatal to the conviction of the accused.**

Vide Santiapillai Vs. Sittampalam 49 NLR 138 (Hon. Basnayake, J.)

Mahadeva Vs. Yoganathan 36 CLW 52 (Hon. De Kretser, J.)

4) **Recording of evidence is a sine qua non, before issuing a warrant of arrest of a suspect, unless that warrant is issued for the failure to obey summons.**

Vide Mahanama Tilakaratne Vs. Bandula Wickramasinghe and others (1999) I SLR 372 (Hon. Dheeraratne,J.)

5) **When a prosecution witness is absent without reasonable excuse although served with summons, it is the duty of the Magistrate to issue a warrant.**

Vide A.G. Vs. Don Davith 63 NLR 334(Hon. Weerasooriya, J.)

6) **Sentencing**

Whilst plea bargaining is permissible, sentence bargaining should not be encouraged at all and must be frowned upon. No trial judge should encourage this unhealthy practice. Further no trial judge should permit and encourage a situation where the accused attempts to dictate or indicate what sentence he should get, or what sentence he expects.

Vide A. G. Vs. Mendis (1995)I SLR 138 (Hon.Gunasekara, J.)

Governing considerations

Vide A.G. Vs. H. N. de Silva 57 NLR 121 (Hon. Basnayake,A.C.J.)

Other considerations

Vide Gomes Vs. Leelaratne 66 NLR 233 (Hon. Sri Skanda Rajah,J.)

Aggravating factors

Vide A. G. Vs. Ranasinghe and others (1993) 2 SLR 81(Hon. Sarath Silva, J.)

7) It is an unwritten rule that except in the case of expert witnesses counsel does not interview a witness once he is in the witness box and once the cross examination commences even an expert is not interviewed. Counsel's action in discussing the evidence with the accused while under cross examination is such a grave departure from that rule that the court cannot refrain from expressing not only its disapproval of his action but also its censure.

Vide Queen Vs. Mapitigama Buddharakkita Thera and others 63 NLR 433 at page 472 and 473 (Hon. Basnayake,C.J.)

8) **Right of appeal is available to an accused who has jumped bail and absconded at the trial.**

Vide Sudharman de Silva Vs.A.G.(1986) 1 SLR 9 (Hon. Sharvananda, C.J.)

9) **Computation of time within which an appeal should be preferred.**

The period of time within which an appeal should be preferred must be calculated from the date on which the reasons are given and not from the date on which the verdict was entered.

Vide S.G. Vs. Nadarajah Muthurajah 79(1)NLR 63 (Hon. Pathirana, J.)

Rajapakse Vs. State (2001) 2 SLR 161 (Hon. Kulatilaka,J.)

10) **Section 5 of the C.P.C.**

All offences-

(a) under the P.C.,

(b) under any other law unless otherwise specially provided for in that law or any other law, shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of this Code.

Vide Wijesiri Vs. A.G.(1980)2 SLR 317 (Hon. Ranasinghe,J.)

11) **Section 81 of the C.P.C.**

Members of two opposing factions cannot be bound over to keep the peace under Section 81 of the C.P.C.in the same proceeding.

Vide Velaiden Vs. Zoysa 14 NLR 140 (Hon. Middleton,J.)

Police Officer Vs. Dineshamy 21 NLR 127 (Schneider,J.)

12) **Dispersal of unlawful assembly under Section 95 of the C.P.C.**

Vide Bandara and others Vs. Jagodarachchi (2000) 1 SLR 225 (Hon. Sarath Silva, C.J.)

13) **Use of the Information Book under Section 110 (4) of the C.P.C.**

It is for the judge to peruse the Information Book in the exercise of his overall control of the said book and to use it to aid the court at the inquiry or trial. When defence counsel spot lights a vital omission/ contradiction the trial judge ought to personally peruse the statement recorded in the Information Book, interpret the contents of the statement in his mind and determine whether there is a vital omission/ contradiction or not.

Court cannot use the contents of the statements as substantive evidence to determine the issues arising in the case. Court is looking into the statements only to ascertain whether there is a vital omission/ contradiction.

Vide Keerthi Bandara Vs. A.G. (2000) 2 SLR 245 (Hon. Jayasuriya,J.)

14) **Confession to a Magistrate**

Voluntariness

Vide Nuwan de Silva Vs. A.G. (2005) 1 SLR 146 (Hon. Sarath Silva, C.J.)

Queen Vs. Gnanasecha Thero and others 73 NLR 154(Order of Court)

15) **Issue of summons in a Private Plaint**

Section 139(1)requires a Magistrate to form an opinion as to whether there is sufficient ground for proceeding against some person who is not in custody. The words "sufficient ground" embraces both, the ingredients of the offence and the evidence as to its commission.

Vide Malinie Gunaratne Vs. Abcysinghe (1994) 3 SLR 196 (Hon.Sarath Silva, J.)

16) **Once a person is convicted of theft he cannot also be found guilty of retention of stolen property.Vide Alagaratnam and others Vs. Republic of Sri Lanka (1986) 1 SLR 237 (Hon. Bandaranayake,J.)**

17) **Where a person is charged with robbery under Section 380 of the P.C., he can be found guilty of retention of stolen property under Section 394.**

Vide Tillakaratne Vs.A.G.(1989)2 SLR 54(Hon.Wijeyaratne,J.)

18) **Section 185 of the C.P.C.**

The Magistrate has found the accused guilty on 27.10.1982, the reasons were delivered belatedly on 6.12.1982.In the circumstances the reasons belatedly pronounced and signed by the Magistrate long after the imposition of the sentences are illegal and are vitiated in law. They are pronounced in contravention of the law as they have not been pronounced within a reasonable time or forthwith.

Vide Chandrasena and others Vs. Munaweera (1998) 3 SLR 94 (Hon. Jayasuriya, J.)

19) **Section 271(1) of the C.P.C. (Section 296(1) of the Old C.P.C.)**

These provisions are imperative and the trial judge must strictly conform to them.

Vide Premaratne Vs. Republic of Sri Lanka 77 NLR 522 (Hon. Malcolm Perera, J.) Jayasena Vs. S.I., Police, Akmeemana 61 NLR 306 (Hon. Weerasooriya,J.)

20) **Section 300 of the C.P.C.**

Vide Weerawarnakula Vs. Republic of Sri Lanka(2002)3 SLR 213 (Hon.Amaratunga,J.)

21) **Section 420 of the C.P.C.**

An admission could be recorded at any stage of the trial before the case for the prosecution is closed.

Vide Perera Vs. A.G. (1998) 1 SLR 378 (Hon. Asoka de Silva,J.)

22) **Section 449 of the C.P.C. (Section 440 of the Old C.P.C.)**

Vide Daniel Appuhamy Vs. Queen 64 NLR 481 (Privy Council Judgment)

Gunapala Vs.A.G. (2000)2 SLR 130 (Hon. Kulatilaka,J.)

Kumarasinghe Vs. State (2001)2 SLR 398(Hon. Kulatilaka,J.)

Govindarajah Vs.A.G. (2002) 3 SLR 311 (Hon. Mark Fernando,J.)

23) **There is no provision in law to remand sureties.**

Vide Rupasena and another Vs. Hussain Babu and others (1997)1 SLR 379 (Hon.Gunasekara,J.)

24) **Correctness of a Judicial Record.**

Vide Gunawardene Vs. Kelaart 48 NLR 522(Hon. Canckeratne,J.)

K A. Wijetunga alias Wije Vs. Republic of Sri Lanka C.A. Appeal No. 45/2007 Decided on 30.01.2009(Hon. Sisira de Abrew,J.)

25) It is a recognized principle that in drug related cases the prosecution must prove that the productions had been forwarded to the Govemment Analyst from proper custody, without allowing room for any suspicion that there had been no opportunity for tampering or interfering with the production till they reach the Analyst. Therefore it is correct to state that the most important journey is the inwards journey because the final Analyst report will be depend on that. To prove this, the prosecution must prove all the links of the chain from the time it was taken from the possession of the accused to the Government Analyst.

Vide Perera Vs. A.G. (1998) 1 SLR 378 (Hon. Asoka de Silva, J.)

Witharana Doli Nona Vs. Republic of Sri Lanka C.A. No. 19/99 Decided on 20.01.2009 (Hon. Sisira de Abrew,J.)

26) **Applicability of the Bail Act**

Vide Shiyam Vs. OIC, Narcotics Bureau and another (2006) 2 SLR 156 (Hon. Shirani Bandaranayake, J.)

27) **Exceptional Circumstances (with special reference to bail pending appeal and health condition of the accused)**

Vide A.G Vs. Selvaraj Maha Letchchemi and Dachchaini S.C.Appeal 13/2006 Decided on 04.08.2006 (Hon.Shiranee Tilakawardena, J.) -The judgment of the Court of Appeal reported in (2005) 2 SLR 152was set aside by the Supreme Court.

A.G. Vs. Ediriweera Arachchige Prabath Ediriweera S.C. Appeal No. 100/2005 Decided on 04.08.2006 (Hon. Shiranee Tilakawardena, J.) -The majority judgment of the Court of Appeal reported in (2006) 1 SLR 25 was set aside by the Supreme Court.

28) It is to be noted that the judicial discretion of a court in granting or refusing bail is not to be guided solely by the concession or objection raised by the State Counsel. The court is not to surrender its judgment to that of a counsel appearing for the State. The court should exercise its discretion judicially on a proper consideration of the material against an accused person.

Vide Jayaweera Muhandiramge Premaratne Vs. A.G. CA (PHC) APN 310/2004 (Bail)

Decided on 21.09.2005 (Hon. Balapatabendi,J.)

29) **Anticipatory Bail**

Vide Balchand Jain Vs. State of Madhya Pradesh AIR 1977 SC 366 (Bhagwati, J./Murtaza Fazl Ali,J.)
Gurbaksh Singh Vs. State of Punjab 1980 Cri.L.J. 1125 (Chandrachud, C.J.)

30) **The principle of joint criminal liability set out in Section 32 of the P.C. applies to acts made punishable by other laws as well. The expression "criminal act" in Section 32 applies to all criminal acts whether made punishable by the P.C. or any other law.**

Vide S.Parandaman Vs. T.M.D.Wijesinghe 79 (1) NLR 121(Hon. Vythialingam,J.)

31) **Conspiracy**

Vide King Vs. Cooray 51 NLR 433 (Hon. Gratiaen, J.)

Queen Vs. Mapitigama Buddharakkita Thera and others 63 NR 433 (Hon. Basnayake, C.J.)

Queen Vs. Liyanage and others 67 NLR 193 (Judgment of Court)

Sudu Aiya Vs. A.G. (2005)1 SLR 358 (Hon.Yapa,J.)

32) **Unlawful Assembly**

Vide Munasinghe Arachchige Sammy and others Vs. A.G. SC Appeal 20/2003 (TAB) Decided on 21.05.2005 (Bindunuwewa Case) (Hon. Weerasuriya, J.)

33) **Emergency Regulations**

Gazette No.1405/14 dated 13.08.2005 would continue in operation without the amendment as contained in Gazette No. 1561/11 dated 05.08.2008.

Vide Centre for Policy Alternatives and another Vs. Gotabhaya Rajapakse and others S.C. (FR) No.351/08 Decided on 15.12.2008 (Hon. Sarath Silva, C.J.)

34) **Competency of the wife of an accused against the co-accused**

When two or more accused are charged and tried jointly, the evidence of the wife of one of the accused is admissible, but could only be considered as against the co-accused of the husband, but not as against the husband. It would be advisable in such cases that the spouse should be charged and tried separately.
Vide Eliatamby Vs. Murugappa 1 Leader Law Reports 19 (Hon. Middleton,J.)

35) **Evidence not challenged in Cross Examination**

Whenever evidence given by a witness on a material point is not challenged in cross examination, it has to be concluded that such evidence is not disputed and is accepted by the opponent subject however to the qualification that he or she is a reliable witness.

Vide Sarwan Singh Vs. State of Punjab A.I.R. 2002 SC 3652 (Banerjee,J.)

B. R. R. A. Jagath Premawansa Vs. A.G. C. A. Appeal No. 173/2005 Decided on 19.03.2009 (Hon. Sisira de Abrew, J.)

36) **What is the position when the defence of the accused was not suggested to the prosecution witness?**

Vide Maddekand age Premawardena Vs.Republic of Sri Lanka C.A. No. 104/2002 Decided on 13.01.2009(Hon. Sisira de Abrew, J.)

37) ***Res ipsa loquitur*-Criminal Cases**

Vide Perera Vs.Amarasinghe 41 CLW 92(Hon. Basnayake, J.)

Kalanasuriya Vs. Johoran 48 NLR 400 (Hon. Wijeyewardene, S.P.J.)

Gamini Vs. A.G (1999) 1 SLR 321 (Hon. Jayasuriya, J.)

38) **Number of witnesses-Section 134 of the E.O.**

Evidence must be weighed and not counted. Prosecution is not bound to call all the witnesses listed in the list of witnesses.

Vide Sumanasena Vs. A.G. (1999) 3 SLR 137 (Hon. Jayasuriya,J.)

Walimunige John Vs. State 76 NLR 488 (Hon. G.P.A. Silva, S.P.J.)

King Vs. N.A. Fernando 46 NLR 254 (Hon. Soertsz, S.P.J.)

Muluwa Vs. State of Madhya Pradesh (1976) A.I.R. SC 989

39) **Adverse Witness-Section 154 of the E.O.**

Once a prosecution witness is declared hostile the prosecution clearly exhibits its intention not to rely on the evidence of such witness and, hence his version cannot be treated as the version of the prosecution itself. Such evidence has no value and cannot be relied upon by either party.

Vide Moses Vs. State (1999) 3 SLR 401 (Hon. Yapa, J.)

40) **Identification of the accused at a parade**

Evidence given by the witness at the trial relating to his identification of the accused at a parade is substantive evidence establishing identity in terms of Section 9 of the E.O.

But certainly the proceedings of the identification parade (identification parade notes), including the evidence given at the parade by the witnesses would only be admissible to establish consistency on the part of the witness and thereby advance his credibility in terms of Section 157 of the E.O.

Vide Keerthi Bandara Vs. A.G. (2000) 2 SLR 245 (Hon. Jayasuriya,J.)

41) **Section 157 of the E.O.**

The corroboration set out in Section 157 is only for the purpose of showing that the witness is consistent. The statements admitted under Section 157 are not substantive evidence. They cannot be substituted for the evidence of the witness.

Vide Bench Book (Law of Evidence)-pages 225-227

42) **Dock Identification**

Vide Munirathne and others Vs. State (2001) 2 SLR 382 (Hon. Kulatilaka, J.)

Dayananda Lokugalappaththi and others Vs. State (2003) 3 SLR 362 (Hon. Kulatilaka,J.)

43) **A unique case on identification**

The accused and the prosecutrix were in the police station within a few hours after the incident and she had pointed out the persons who questioned her and committed rape on her. The procedure adapted by the police in the identification of the accused had been done without any prior design. Identification parade would not be necessary if the accused had been identified at the scene itself or shortly thereafter.

In the circumstances it was held that the identification of the accused was legal and admissible.

Vide Kapila and others Vs. A. G. C. A. No.131/92 Decided on 11.02.1998 (Hon. Asoka de Silva, J.)

44) **Proper procedure that should be followed in marking/proving contradictions.**

Vide Gamini Sugathasena and another Vs. State (1988) 1 SLR 405 at page 411 (Hon. Asoka Gunawardena,J.) Wijeratne Vs. Ekanayake 48 NLR 306 at page 307 (Hon.Dias,J.) Rasiah Vs. Suppiah 50 NLR 265 at page 270 (Hon. Dias,J.)

45) When a contradiction is marked with a former statement of a witness, the prosecution or the defence as the case may be, is entitled in re-examination to mark the other portions of his statement to remove the wrong impression created by the contradiction. But the prosecution or the defence cannot adopt this procedure to corroborate the witness with his former statement.

Vide Dharmadasa Wijesekara Pathirana alias Chutimalli Vs. State C.A.No.100/2005 Decided on 04.12.2008 (Hon. Sisira de Abrew, J.)

46) **A witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.**

The powers of observation differ from person to person.

By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them.

A witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span.

Contradictions which do not go to the root of the matter and shake the basic version of the witness, therefore cannot be annexed with undue importance.

Vide Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat A.I.R. 1983 SC 753 (Thakkar,J.)

Duminda Kithsiri Welagedara Vs. A.G. C. A. Appeal No. 111/2002 Decided on 30.10.2008 (Hon. Sisira de Abrew, J.)

47) **A confession made to a police officer is inadmissible as proof against the person making it whether as substantive evidence or in order to show that he has contradicted himself.**

Vide King Vs. Kiriwasthu 40 NLR 289 (Hon. Abrahams, C.J.)

Seyadu vs. King 53 NLR 251 (Hon. Gratiaen,J.)

Where non confessional parts of a confessional statement made by an accused person to a police officer are separable from such a statement, without creating the impression that the accused had made a confession, then those non confessional parts of the confession can be produced in evidence in the course of the accused's evidence in order to impeach the credibility of the accused.

Vide C. A. Appeal No. 88/98 Decided on 27.08.2007 (Hon. Sisira de Abrew,J.)

Gamini Sugathasena and another Vs. State (1988) I SLR 405 (Hon. Asoka Gunawardena,J.)

48) Circumstantial Evidence

It is incorrect and inappropriate to equate circumstantial evidence to a chain and consider it as a chain and each piece of evidence as a link in that chain. It is more appropriate to equate circumstantial evidence to a rope composed of several codes so that even if one strand of that rope may be insufficient to sustain the weight, the several strands combined together may be of quite sufficient strength; on the other hand in the case of a chain if any one link broke, the chain would fall. But in circumstantial evidence even if one piece of evidence as a strand broke the rope would not fall.

Vide Regina Vs. Exall and others 176 ER nisi privy 850 at page 853

Kankanam Arachchilage Gunadasa Vs. Republic C.A. No. 121/95-H.C. Chilaw No. 71/95 (Hon. Jayasuriya,J.)

Sajeewa alias Ukkuwa and others Vs.A.G. (2004) 2 SLR 263 (Hon. Shirani Bandaranayake, J.)

49) Belated Witness

Just because the statement of a witness is belated the court is not entitled to reject such testimony. If the reasons for the delay adduced by the witness are justifiable and probable the trial judge is entitled to act on the evidence of a witness who had made a belated statement.

Vide Ajit Smarakoon Vs. Republic (2004) 2 SLR 209 (Hon. Jayasuriya,J.)

Sumanasena Vs. A.G. (1999) 3 SLR 137 (Hon. Jayasuriya, J.)

Herath Bandage Palitha Fernando Vs. State C.A. No.154/2005 Decided on 08.01.2008 (Hon. Sisira de Abrew, J.)

Pauline de Croos Vs. Queen 71 NLR 169 (Hon. T.S Fernando,J.)

50) Motive

Though the prosecution is not required to establish a motive, once a cogent and intelligible motive has been established, that fact considerably advances and strengthens the prosecution case.

Vide Sumanasena Vs. A.G. (1999) 3 SLR 137 (Hon. Jayasuriya, J.)

51) Non production of material objects (weapons etc.) at the trial is not fatal to the conviction.

Vide Sudu Banda Vs. A.G. (1998) 3SLR 375 (Hon. Jayasuriya,J.)

Ratnayake Mudiyanselage Ratnapala Vs.A.G.CA No.13/98 Decided on 27.05.1999 (Hon. Jayasuriya,J.)
Wannaku Arachchilage Gunapala Vs. A. G. (2007) I SLR 273

52) Admissibility of Photographs

Vide King Vs. Dharmasena 50 NLR 505 at page 506 (Hon. Canekeratne,J.)

53) Divisibility of credibility-falsus in uno falsus in omnibus.

Vide Francis Appuhamy and others Vs. Queen 68 NLR 437 (Hon. T.S.Fernando,J.)

Samaraweera Vs. A.G. (1990) I SLR 256 (Hon. Priyantha Perera, J.)

Sudu Aiya and others Vs. A.G. (2005) I SLR 358(Hon. Yapa,J.)

54) Hearsay Evidence

Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or of some other person in whose presence the statement was made.

Vide Subramaniam Vs. Public Prosecutor (1956) I WLR 965 (Privy Council Judgment)

55) Dock Statement

Dock Statement should be considered as evidence, subject to the following infirmities:-

1. that the dock statement is not tested by cross examination
2. that the dock statement is not made under oath.

Dock Statement cannot be used against a co-accused.

Vide The Law of Evidence (Vol.2 Book 2) By E.R.S.R. Coomaraswamy-page 533 and 534

Queen Vs. Mapitigama Buddharakkita Thera and others 63 NLR 433 (Hon. Basnayake, C.J.)

Queen Vs. Kularatne and others 71 NLR 529 (Judgment of Court)

Wijelath Vs. Republic of Sri Lanka C.A. No. 137/2006 Decided on 21.02.2008 (Hon. Sisira de Abrew,J.)

56) Plea of Alibi

There is no burden whatsoever on the accused to establish the plea of alibi to any degree of probability. The burden is always on the prosecution to establish beyond reasonable doubt that the accused was not elsewhere but present at the time of the commission of the offence.

The defence evidence on alibi has merely to be weighed in the balance with the prosecution evidence. Three positions arise:-

a. If the evidence of alibi is not believed, it fails
b. If it is believed, it succeeds
c. If it is neither believed nor disbelieved but creates a reasonable doubt as to the prosecution case on identity, the accused is entitled to be acquitted.

Vide Bench Book-Law of Evidence-page 100 and 101

Banda and others Vs. A.G. (1999)3 SLR 168 (Hon. Jayasuriya,J.)

C.A. No. 124/2003 Decided on 18.06.2007 (Hon. Sisira de Abrew, J.)

57) Section 51C. of the Immigrants and Emigrants Act

A passport of a suspect, accused or witness can be impounded in terms of Section 51C.

The detention of a person, whether a Sri Lankan or a foreign national must strictly accord with the powers vested by law in the judicial officer issuing the order. Such powers must also be carefully exercised with strict adherence to procedures established by law. It should not be exercised in an arbitrary or unreasonable manner.

Clearly the purpose under these provisions is to ensure presence in court. Hence before making the order, considering the serious implications, the court should be satisfied that presence is necessary.

Vide Leo A M Claes Vs. Wilfried Van Els S.C. SPL No.43A/07-S.C. (SPL) L.A. No. 111/07 Decided on 01.02.2008 (Hon. Shiranee Tilakawardane,J.)

58) **A diplomatic agent shall enjoy immunity from criminal jurisdiction of the receiving State. A diplomatic agent is not obliged to give evidence as a witness.**

Vide Diplomatic Privileges Act No. 09 of 1996

59) **Where any act or omission constitutes an offence under two or more laws, the offender shall be liable to be prosecuted and punished under either or any of those laws, but shall not be liable to be punished twice for the same offence.**

Vide Section 9 of the Interpretation Ordinance

60) **Criminal Negligence**

A very high degree of negligence is required to be proved in order to establish a charge under Section 298of the P.C.

Vide Percy Bateman 19 Criminal Appeal Reports 8 OR 94 LJKB 791 (Hewart, L.C.J.)

Andrews Vs. Director of Public Prosecutions (1937) 2 AER 552 (Lord Atkin)

Lourensz Vs. Vyramuttu 42 NLR 472 (Hon. Howard,C.J.)

King Vs. Leighton 47 NLR 283 (Hon. Howard,C.J.)

Karunadasa Vs. OIC,Police Station, Nittambuwa (1987) 1 SLR 155 (Hon. Priyantha Perera, J.)

Premasiri Vs.OIC, Police Station, Matara (1993)2 SLR 23 (Hon. Grero, J.)

Judgments

SUPREME COURT

JSALR 2024/I//I

W. M. Piyal Senadheera, Vs. **Hon. Attorney General**

SC Appeal No : 249/2017

Before : E. A. G. R. Amarasekara, J.
A. L. Shiran Gooneratne, J.
K. Priyantha Fernando, J.

Confiscation of a vehicle under section 79 of the Poisons, Opium and Dangerous Drugs Ordinance

Decided on : 20.02.2024

K. Priyantha Fernando, J.

The Claimant-Appellant-Appellant in the instant case (hereinafter referred to as the appellant) preferred an appeal from the Order of the Court of Appeal dated 14.09.2017 which dismissed the appellant's application for revision. The application for revision has been made in respect of the Order of the High Court, which refused to release the vehicle bearing No. SP PE 1214 to the appellant which was confiscated under the Poisons Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984.

Question of law

19(c) – Did the Judges of the Court of Appeal misdirect themselves when they failed to consider that there is no necessity for the owner of the vehicle to show that he has taken all precautions to prevent the use of the vehicle for the commission of an offence when an inquiry is held under Poisons Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984.

Held

- It is clear that the Section 79 of the poisons, opium and Dangerous Drugs Ordinance does not include a special provision with regard to a situation where the owner of the vehicle which was used for the commission of the offence is a third party. (Both the learned President's Counsel and the learned Counsel for the State have conceded to the fact that section 79 of the Poisons, Opium and Dangerous Drugs Act has not been amended since 1984.)
- When considering the development in the law with regard to confiscation of a vehicle under other laws such as the Forest Ordinance and the Animals Act, it is clear that the law has been amended so as to include a proviso which provided special attention where the owner of the vehicle that is subject to confiscation is a third party.
- This Court cannot in good conscience ignore the development of the law surrounding the position of a third-party owner of a vehicle, whose vehicle has been subject to confiscation. Neither can this Court ignore the fact that dangerous drugs have evolved to be a menace in society in the recent past. The law evolves with time and it is the duty of the Court to interpret the law in a manner so as to suit changing times. Further, as the intention of the legislature is understood, there would be no usurpation of its power by the judiciary.
- Therefore, it is my position that, it is appropriate to interpret the Poisons, Opium and Dangerous Drugs Act in a similar light so as to include the proviso set out in section 40 of the Forest Act and section 3A of the Animals Act.

Full Judgment

https://www.supremecourt.lk/images/documents/sc_appeal_249_17.pdf

JSALR 2024/I//II

Coca – Cola Beverages Sri Lanka Ltd Vs. I.M. Jagath Keerthi Bandara Public Health Inspector/Authorized Officer Nanneriya and Hon. Attorney General

SC. Appeal No : 19/2021

SC/Spl./L.A Case No : 55/2018

Before : Buwaneka Aluwihare, PC, J.
A.H.M.D Nawaz, J.
Mahinda Samayawardhena, J.

Section 128 and 129 of the CPC, lack of territorial jurisdiction..

Decided on : 13.09. 2023

Aluwihare, PC, J.

The 2nd Accused -Appellant -Petitioner Appellant [hereinafter referred to as the 2nd Accused] was charged before the magistrate's court of Mahawa for having manufactured and distributed to the 1st Accused - Respondent-Respondent [herein after the 1st Accused] a bottle of 'Coca-Cola' containing impurities and/or foreign matter, in violation of Section 2(1)(b) read with Section2(1)(a) of the Food Act No.26 of 1980 as amended, an offence punishable under Section 18(1)(a) read with Section 14(1)(a) of the said Act.

On 01.03.2009, Public Health Inspector [of Nan-Neriya] detected a [sealed] bottle of Coca-Cola, a product of the 2nd Accused establishment, containing impurities and/or foreign matter. After attending to the preliminary investigations, the bottle of Coca -Cola was forwarded to the Government Analyst. The Analyst, upon analyzing the contents, had detected foreign matter, which has been referred to as 'කලු පැහැති ලප සහිත සුදු පැහැති අවලම්බිත ආගන්තුක ද්‍රව්‍යය' suspended impurities in the liquid and had expressed the opinion that the contents were not fit for human consumption. It should be noted that what led to the detection was the information provided by a person in charge of running a canteen who had observed that the bottle, which had been supplied to her by the distributor of Coca- Cola in the area, had some foreign matter in it.

After the investigations, both the distributor of Coca-Cola [the 1st accused] and the producer [the 2nd Accused] were charged before the magistrate's court. The 1st accused pleaded guilty, whereas the 2nd accused contested the charge.

The only legal issue that came up for consideration before us was whether the Magistrate's Court of Mahawa had jurisdiction to hear and determine the charge against the 1st Accused.

The learned President's Counsel argued that the charge against the 2nd Accused was, for manufacturing a bottle of Coca-Cola that contained impurities. It was pointed out that the manufacturing of the bottle of Coca-Cola concerned, took place at Biyagama Thekkawatte, which is not within the local limits of the magistrate's Court of Mahawa. The State did not dispute this contention; thus, it was common ground that Biyagama, Thekkawatte, was not within the local limits of the Mahawa Magistrate's court.

It was the contention on behalf of the 2nd Accused that the evidence led at the trial had clearly established that the seal of bottle of Coca-Cola was intact and the evidence showed that it had not been opened. Thus, it was argued that no consequences of the offending act alleged, flowed to the local jurisdiction of the Mahawa Magistrate's Court. It was further contended by the learned President's Counsel that Section 129 of the Code of Criminal Procedure Act No. 15 of 1979 as amended [hereinafter the 'CPC'] would have

applied if the bottle of Coca-Cola was opened and consumed, as one could argue that the consequences of the act of manufacturing had ensued or flowed to the 'act of consuming' thereby, by operation of law, jurisdiction to try the offence would have vested with both; the magistrate's court within the local limits of which the act of manufacturing took place and also with the magistrate's court within whose jurisdiction such consequence has ensued .

This can be easily gleaned from the illustration (a) to Section 129 of the CPC;

> *A is wounded within the local limits of the jurisdiction of the Magistrate's court of X and dies within those of the Magistrate's Court of Z; the offence of culpable Homicide of A may be inquired into by the Magistrate's Court of either X or Z. [emphasis added]*

The contention of the learned President's Counsel, in my view, is correct and Section 128 of the CPC requires the offence to be inquired into and tried by the court within the local limits of whose jurisdiction it was committed. The learned State Counsel also did not dispute this position. The learned President's Counsel in his submission relied on Section 9(a) and Section 128(a) of the CPC and argued that a Magistrate's Court shall only try offences committed wholly or in part within its local limits.

The principal issue before this court, however, is whether the lack of jurisdiction on the Mahawa Magistrate's Court to try the offence, as argued by the learned President's Counsel, is 'patent' or 'latent'.

It is settled law that the lack of territorial jurisdiction of a court is a latent lack of jurisdiction.

If a Magistrate is empowered by law to try an offence but the Court lacks territorial jurisdiction to entertain the action, then it amounts to latent lack of jurisdiction as it is a procedural error. In such an instance it is then open for the accused to raise an objection at the earliest possible opportunity. If he fails to do so, the court will assume jurisdiction.

Appeal Dismissed

Full Judgment

https://www.supremecourt.lk/images/documents/sc_appeal_19_2021.pdf

JSALR 2024/I//III

Stitches Private Limited,Kahagallawaththa, Udawelakotuwa, Diyathalawa Vs. Assistant Commissioner of Labour District Labour Office, Haputhale and Hon. Attorney General

SC Appeal : 03/2019

Before : Justice Vijith K. Malalgoda, PC.
Justice A. H. M. D. Nawaz,
Justice Achala Wengappuli,

Liability of the directors of a company under section 38(2) of the Employees Provident Fund Act No. 15 of 1958.

Decided on : 12.03.2024

Vijith K. Malalgoda PC, J.

The Complainant - Respondent - Respondent-Respondent (hereinafter referred to as the 'Complainant - Respondent') filed four separate certificates in the Magistrate's Court of Bandarawela under section 38 (2) of the Employees' Provident Fund Act No 15 of 1958 (as amended) against Stitches Private Limited' the Respondent-Petitioner-Appellant-Petitioner (hereinafter referred to as the 'Petitioner') for the recovery of Employees' Provident Fund dues for four separate periods referred to in those certificates.

The instant applications seeking special leave were filed challenging the decisions of the Court of Appeal and this Court having considered the applications filed, had granted special leave on the following questions of law.

1. Did the Court of Appeal err in law in holding that directors of a defaulting company are liable under section 38 (2) of the Employees' Provident Fund Act No 15 of 1958 (as amended)?
2. Did the Court of Appeal err in law penalizing the directors for the improper exercise of discretion by the Commissioner?
3. At what state, the directors of a company will become liable for the nonpayment of the Employees' Provident Fund by a company, of which they are directors under the Employees Provident Act No. 15 of 1958 as amended..?

Held

- When considering the procedures identified under the Act to recover dues from the defaulting employers, it appears that the three procedures referred to are distinct remedies available to the Commissioner.
- When the recovery procedure is initiated under Section 38(2), the sum due from a defaulting employer is considered a fine, and the failure to pay the fine results in imprisonment in accordance with Section 291 of the Criminal Procedure Code Act. The procedure provided in Section 38 (2) differs from the procedures prescribed in Sections 17(1) and 38(1) as the procedure prescribed in Section 38(2) is deterrent and speedy because of the punishment with imprisonment to the defaulters.
- When looking at sections 17,38 (1), 38(2) and section 38(4), it is quite clear that there is no necessity at all for the Commissioner General of Labour to resort to Section 17 of the Act before filing a certificate under Section 38(2) of the EPF Act. The said provisions are very clear, and it is for the Commissioner to form an opinion that it is impracticable or inexpedient to recover the sums due under Section 17 or Section 38(1) of the EPF Act. It is not for the defaulter to decide the required statutory provisions under which the Commissioner is expected to proceed and recover the amount in default.
- The certificate filed before the learned Magistrate was issued under the name of the body corporate. Since in this case 'employer named in the certificate' was only the Stitches Pvt Ltd and not the directors, the question arises as to who is liable for the failure of the company to act in accordance with the EPF Act and if the liability could be imposed upon directors at what stage would the directors' become liable.
- The preamble to EPF Act states that *"An act to establish provident fund for the benefit of certain classes of employees and to provide for matters connected therewith or incidental thereto."* However, if the court were to hold directors of a body corporate do not fall within the ambit of the employer in Section 38(2) of the EPF Act, then the establishment of the provident fund would be redundant. Further, such an interpretation, would defeat the purpose of the Act and lead to absurdity.
- In the circumstances, it is clear that the Act had provided to add directors as parties to a proceeding that is pending before a Magistrate's Court under Section 38 (2) of the Act. Further, could be seen that the directors of the company are liable to pay the amount in question if it is

not recoverable from the defaulting company.

- For the above reasons, I hold that 'employer' in Section 38(2) of the EPF Act includes directors of a body corporate and it is lawful for the Magistrate to order the directors of a body corporate to pay the amount set out in the certificate filed in terms of Section 38(2) of the EPF Act if it is not recoverable from the Body Corporate.
- In the circumstances I answer all 3 questions of law as follows;

1. No
2. No
3. When it is not possible to recover from the company or the company defaults making the payment

Appeal dismissed.

Full Judgment

https://www.supremecourt.lk/images/documents/sc_appeal_03_2019.pdf

JSALR 2024/I//IV

Beminahennadige Krishantha Ranmal Pieris Vs. Officer-in-Charge Police Station, Police Station, Wellawatta and Hon. Attorney General

SC Appeal No : 82/2019SC

Before : Priyantha Jayawardena, Pc,J.
S. Thurairaja, Pc., J.
Achala Wengappuli, J.

Plea of alibi, Failure of the accused to offer any evidence in support of the suggestions put to the prosecution, Purpose of cross examination of prosecution witnesses.

Decided on : 27th February, 2024

Achala Wengappuli, J.

- The Appellant was charged before the Magistrate's Court of Colombo for committing criminal intimidation of one Lakna Somasiri on 02.08.2014, an offence punishable under Section 486 of the Penal Code. He was also charged for using criminal force on her, in the course of same transaction, and thereby committing an offence punishable under Section 343 of that Code. The Appellant pleaded not guilty to both charges and proceeded to trial.
- The trial Court pronounced its judgment on 26.04.2016, and found the Appellant guilty to the 1st count, while acquitting him of the 2nd count. The Appellant was imposed a term of imprisonment of six months to serve, a fine of Rs. 500.00 with a default sentence of six months. The Appellant was also ordered to pay a sum of Rs. 30,000.00 to the virtual complainant as compensation coupled with a default sentence of six months.
- Being aggrieved by the said conviction and sentence, the Appellant preferred an appeal to the Provincial High Court of Colombo.
- One of the grounds of appeal taken up in the petition of appeal by the Appellant was that the trial Court had failed to consider his alibi. In dismissing the appeal of the Appellant, the Provincial High Court, rejected the ground of appeal raised by him on alibi. The Provincial High Court, whilst affirming the conviction and the sentences imposed on the Appellant, decided to enhance the period of imprisonment imposed on him from six months to one year.
- The question of law on which this Court was addressed on by the learned Counsel for the Appellant as well as the leaned Deputy Solicitor General was;

Did the learned High Court Judge of Colombo

and the learned Additional Magistrate of Colombo fail to properly consider the defence of alibi presented by the Appellant ?

- Perusal of the evidence of the virtual complainant, Lakna Somasiri, indicates that the incident of intimidation had taken place at about 12.30 or 1.00 p.m. on 02.08.2014, along Marine Drive near the KFC outlet at Wellawatta. She was returning home after her classes at ACBT campus in a vehicle driven by one of her relatives. When the vehicle became stationary for some time due to heavy traffic jam near the KFC outlet, the Appellant came up to the vehicle and threatened her with death.
- The Appellant gave evidence under oath. In his evidence the Appellant stated that he was employed as a supervisor at the Ocean Colombo Hotel during the relevant time. He had reported to work on the day of the incident at 8.00 a.m. and worked for continuous twelve hours until his sign off at 8.00 p.m. He was emphatic that after reporting to work, he had no way of leaving his workplace.
- The prosecution that must discharge its burden of proof, in establishing a criminal charge by which it alleged the Appellant had committed an offence. Of the many factors the prosecution must establish in this regard, the identity of the accused is an important element, which must be established beyond reasonable doubt. In other words, the prosecution must establish that it was the accused, who is present in Court, committed the alleged criminal acts or omission at the crime scene. When a prosecution witness identifies an accused in Court and states that it was that accused, who committed the acts or omissions which constitute the alleged offence, it is inbuilt in that testimony that the accused was physically present at that place to commit the alleged offence.
- When the prosecution alleged that the Appellant was present at the place of the incident to commit the alleged offence, and if the Appellant takes up the plea of alibi, that would make his alleged presence at the crime scene, inconsistent with the prosecution claim. The place where the accused claims to be in during the relevant time therefore becomes a relevant fact in issue. This conflict could be termed as an instance of "inconsistent fact" in terms of Section 11 of the Evidence Ordinance.
- It is already noted that there was only a distance of two kilometres between the place of offence and the Appellant's workplace and he could have reached there within a half an hour. If the distance between the two places itself makes it impossible for the accused to be present at the scene during the relevant timeperiod, the specifics of time might lose some of its significance.
- If the Appellant had taken up the position that he was in Jaffna in that morning and if there was evidence, which tends to support that position, then that alibi might have been sufficient to raise a reasonable doubt in the prosecution's allegation that he was at Wellawatta. This is because of the physical impossibility of the Appellant being present in the two given locations during the same time interval, due to sheer distance between the two places. But here is a situation where the Appellant could walk up to Wellawatta KFC from his workplace within a matter of and return to the workplace in less than thirty minutes, as his witness conceded. The Appellant did not specifically claim that he was at the Hotel during the relevant time interval. He expected the Court to infer that fact from his evidence. The witness called by him did not clearly support this position either.

- It is a fundamental tenet in Criminal Law, that the prosecution must prove its case beyond reasonable doubt while the accused remain silent as there is absolutely no burden on him to establish anything, unless he relies on a general exception. The fact that an accused opted to cross examine the prosecution witnesses, made suggestions to them or even opted to offer evidence does not ordinarily mean that he is obliged to do any of these. The purpose of cross examination of prosecution witnesses by an accused is to provide material for the Court to properly evaluate credibility and reliability of the evidence presented by that witness and not an attempt to "raise" a reasonable doubt in the prosecution case. Upon the material elicited from prosecution witnesses through cross examination by an accused, a Court may or may not entertain a reasonable doubt in the prosecution's case.
- Cross examination also is a tool for an accused to elicit from a prosecution witness that there could have been another version to the narrative, as spoken to by that witness. Having suggested a different version to the one presented by the prosecution; an accused may opt to give evidence in support of the positions he suggested. If he failed to offer any evidence in support of the suggestions put to the prosecution, those suggestions would lose its value both in its consistency and content.
- Accordingly, the Judgments of the Magistrate's Court as well as of the Provincial High Court are affirmed along with the enhanced sentence imposed by the appellate Court on 13.03.2019.

The appeal of the Appellant is dismissed.

Full Judgment

https://www.supremecourt.lk/images/documents/sc_appeal_82_2019.pdf

JSALR 2024/I//V

Jayaweera Mudiyanselage Gunathilaka Vs. The Officer in Charge, Crimes Investigation Division, Police Station, Badulla and Hon. Attorney General

Sc Appeal No : 118/2010

Before : S. Thurairaja, Pc, J;
A.h.m.d. Nawaz, J &
Achala Wengappuli, J.

Section 192 of the CPC.

Decided On : 23rd November 2023.

S. Thurairaja, PC, J.

- The Appellant was present at the initial stage in Court when the trial proceeded against him but was absent during the latter stages of the trial. Therefore, the relevant part of the provision is Section 192 (1)(a) of the Code of Criminal Procedure Act. This Section only requires the learned Magistrate to be satisfied with the situation and it does not specify the course of action that must be adopted by the Magistrate to satisfy himself. This Section has given the discretion to the Magistrate to proceed with the trial if he is satisfied that the accused is absconding.

  Section 192 is there to proceed in the absence of an accused, and it empowers the Magistrate to continue the trial in the absence of an accused. If the Magistrate is satisfied that the accused is absconding.
- Section 192, as discussed earlier, empowers the Magistrate to commence and proceed with the trial in the absence of the accused.
- The learned Counsel for the Appellant submits that, there was no inquiry was held under Section 192(1) of the Code of Criminal Procedure Act therefore, in terms of the law, the learned

Magistrate had caused a fundamental error by this. I am of the view that although an inquiry was not held under Section 192(1) of the Code of Criminal Procedure Act, a determination was made under the said section. There were sufficient reasons for the Learned Magistrate to satisfy himself that the Appellant was absconding from the Court Proceedings for a considerable period of time. Further, as I observed, the Appellant was present before the learned Magistrate on 6th April 2001, and from 17th July 2001, he was absent in several instances and not represented by an proceedings. I am of the view that due to the abovementioned facts, the Appellant possessed prior knowledge of the next dates and/ or steps of the Court proceedings. Further, as he was occasionally present before the Court, the Appellant is not entitled to claim any relief under section 192 of the Code of Criminal Procedure Act.

Full Judgment

https://www.supremecourt.lk/images/documents/sc_appeal_118_10.pdf

JSALR 2024/I//VI

Andra Hannadige Sarathchandra Vs. Ceylon Electricity Board and 5 others

SC Appeal No. : 63/2023

Before : P. Padman Surasena, J.
Mahinda Samayawardhena, J.
K. Priyantha Fernando, J.

The ingredients of the tort of malicious prosecution based on action injuriarum, proof of malice.

Decided on : 03.04.2024

Samayawardhena, J.

The Plaintiff-Respondent-Appellant (hereinafter sometimes referred to as the Plaintiff) was charged in the Magistrate's Court under the Electricity Act for theft of electricity by tampering with electric meters of his business premises. After trial, he was acquitted. Thereafter he filed action in the District Court seeking damages against six defendants. The 1st defendant is the Ceylon Electricity Board and the 2nd-6th defendants are its employees. After trial, the District Court entered judgment for the plaintiff. On appeal, the High Court of Civil Appeal reversed it. The Plaintiff appealed to the Supreme Court against the said order of the High Court of Civil Appeal.

Hence the court considered the ingredients of the tort of malicious prosecution and its burden of proof in this appeal.

Held:

I. In order to succeed in a lawsuit for damages on malicious prosecution, the plaintiff must prove that the defendant: (a) Instituted or initiated legal proceedings against the plaintiff; (b) acted without reasonable and probable cause; (c) acted with malicious intent; (d) that the proceedings concluded in favour of the plaintiff; and (e) resulted in actual injury to reputation or the person or pecuniary interests of the plaintiff.

II. The plaintiff must prove that the defendant initiated, instituted or continued legal proceedings, thereby demonstrating that it was the defendant who set the law in motion against him.

III. It is necessary to conduct both an objective and subjective assessment to prove the absence of reasonable and probable cause. Reasonable and probable cause refers to an honest belief, based on reasonable grounds, that the initiation of the proceedings was justified.

IV. The plaintiff must prove on a balance of probabilities that the unsuccessful prosecution was initiated by the defendant without reasonable and probable cause and with malice. The positive requirement of malice, and the negative requirement of absence of reasonable and probable cause, remain as separate elements which the plaintiff must prove in order to succeed in an action for malicious prosecution. The failure to prove the charge does not ipso facto prove malice. It may be practically difficult to prove malice by direct evidence. The proof of malice will often be a matter of inference from other facts established in Court.

V. In the context of a public prosecution initiated by a police officer or another authority, where the prosecutor lacks personal interest in the matter and has no personal knowledge of the parties, and is merely fulfilling a public duty, these factors, along with the institutional framework within which the decision to prosecute is made, are pertinent in determining the presence of malice.

Accordingly it had been decided that there was no sufficient evidence to establish that the defendants acted maliciously.

The judgment of the High Court of the Civil Appeal was affirmed and the appeal was dismissed without costs.

Full Judgment

https://www.supremecourt.lk/images/documents/sc_appeal_63_2023.pdf

JSALR 2024/I//VII

LOLC Factors Limited Vs. Airtouch Internationa (Private) Limited and others

SC Appeal No. : SC/CHC/APPEAL/20/2015

Before : S. Thurairaja, PC, J.
E. A. G. R. Amarasekara, J.
Mahinda Samayawardhena, J.

Section 85(1) of the Civil Procedure Code, burden of proof in an ex-parte trial, the degree of proof within the standard of proof of the balance of probabilities

Decided on : 03.04.2024

Samayawardhena, J.

The Plaintiff-Appellant (hereinafter sometimes referred to as the Plaintiff) instituted action relevant to this case in the Commercial High Court against Defendant-Respondents (hereinafter sometimes referred to as the Defendants) seeking to recover a sum of Rs. 8,004,744/58 with interest thereon based on the cheque discounting agreement marked P1 entered into between the Plaintiff and the 1st Defendant. Summons were served on all four respondents but none of the appeared before court to contest the case. The Commercial High Court fixed the case for ex-parte trail against all the defendants and directed the Plaintiff to lead evidence by way of an Affidavit' the Affidavit evidence was tendered together with the originals of the documents and ex-pate judgment was fixed for 05.11.2014. The Commercial High Court, by its judgment, dismissed the plaintiff's action on two grounds;

a) Notwithstanding the plaintiff's assertion in the affidavit evidence that both the plaintiff and the 1st defendant are incorporated companies, the plaintiff failed to provide documentary evidence to prove their incorporation and registration;

(b) The Chief Legal Officer of the plaintiff company has signed the proxy on behalf of the plaintiff company instead of the directors.

The central question considered in this appeal is as to the burden of proof in an ex-parte trial and the degrees of proof within the standard of proof of the balance of probabilities.

Held:

I. In a civil case the standard of proof is on a balance of probabilities. Even though there are no degrees of proof within the standard of proof of the balance of probabilities in theory, practically such degrees do exist. The civil standard of a balance of probabilities is flexible, to be applied with varying degrees of strictness depending on the gravity of the matter to be proved.

II. In terms of section 85(1), what the plaintiff is required to do at the ex parte trial is to lead evidence to satisfy the court that he is entitled to the relief claimed; no higher degree of proof is required. If there is no satisfactory evidence, the Court shall dismiss the plaintiff's case.

III. In an ex parte trial, the plaintiff is only required to present evidence on a prima facie basis, demonstrating the constituent elements of his cause of action. Prima facie evidence means evidence that, on its face and without further explanation, is sufficient to establish a fact or raise a presumption of fact unless contradicted or rebutted.

IV. When the defendant refuses to come to Court after service of summons along with a copy of the plaint which contains the claim against him, the judge need not form defences on behalf of the defaulter unless the judge is convinced that the plaintiff's claim is baseless.

Accordingly it had been decided that there is no reason for the learned High Court Judge to dismiss the plaintiff's action on the basis that certificates of incorporation and registration of the plaintiff and the 1st defendant have not been tendered with the affidavit evidence. If the Court had some doubt about the incorporation and registration of the plaintiff and the 1st defendant, the Court should have sought clarification from the plaintiff rather than unilaterally dismissing the action in its entirety. It was further decided that if the learned High Court Judge thought the proxy to be defective, he ought to have drawn it to the attention of the plaintiff first and thereafter, if necessary, given an opportunity to rectify the defect of the proxy.

The judgment of the Commercial High Court was set aside and the appeal was allowed. The Commercial High Court was directed to enter ex parte decree against all four defendants as prayed for in the prayer to the Plaint.

Full Judgment

https://www.supremecourt.lk/images/documents/sc_chc_appeal_20_2015.pdf

JSALR 2024/I//VIII

Hettiarachchie Ariyadasa Vs. Ruhunu Development Bank & others

SC Appeal No. : 179/2016

Before : Jayantha Jayasuriya, PC, CJ.
Vijith K. Malalgoda, PC, J.

Janak De Silva, J.

Certificate of Sale under Section 15(1) of the Recovery of Loans by Banks (Special Provisions) Act, No. 4 of 1990.

Decided on : 27.03.2024

Jayantha Jayasuriya, PC, CJ.

The 1st plaintiff-respondent (hereinafter referred to as the "1st plaintiff-respondent") and the 2nd plaintiff-appellant-respondent (hereinafter referred to as the "2nd plaintiff-respondent") jointly instituted action in the District Court of Walasmulla against

the appellant and the 1st defendant-respondent-respondent (hereinafter referred to as the "respondent bank").

As per the evidence of the case, the 1st Plaintiff-Respondent obtained a loan of Rs 200,000/= from the respondent bank and pledged the property that was more fully described in the schedule to the plaint, as security. The 2nd plaintiff-respondent (who is the brother of the 1st plaintiff-respondent) was the lawful owner of the aforesaid property. Two and half years later the 1st plaintiff-respondent had been informed that the board of directors of the respondent bank decided to auction the aforesaid property as the 1st Plaintiff-Respondent failed to repay the aforesaid loan. Accordingly, the respondent bank proceeded with the auction and had initially purchased the property on the basis that there was no proper bid at the auction. The respondent bank has issued a Certificate of Sale under Section 15(1) of the Recovery of Loans by Banks Act, No 4 of 1990. Subsequently, the appellant purchased the aforesaid property from the respondent bank.

The Plaintiffs filed action in the District Court alleging that the Respondent bank undervalued the property which is worth Rs.500000/- and that Plaintiffs were not informed of the auction in advance. The learned District Judge by his judgment dated 27.10.2011 dismissed the 1st and 2nd Plaintiff-Respondents' case on the basis that the respondent bank had issued the certificate of sale as provided in the Act in relation to the disposal of the property concerned and that the District Court lacks jurisdiction to decide on the issues raised at the trial.

The 2nd Plaintiff-Respondent appealed to the Civil Appellate High Court and Learned judges of the Civil Appellate High Court, set aside the judgment of the District Court while allowing the appeal and held that the resolution of the board of directors of the Respondent bank to go for parate execution in respect of the property in question is illegal and null and void. The 2nd Defendant Appellant appealed to the Supreme Court against the aforesaid judgment of the Civil Appellate High Court.

The central question to be decided in this appeal is whether the District Court has jurisdiction to invalidate a certificate of sale issued under section 15(1) of the Recovery of Loans by Banks (Special Provisions) Act No.4 of 1990.

Held:

I. As per the judgment in a seven judge Bench of Supreme Court in Sunpac Engineers (Private) Ltd and another v DFCC Bank PLC and others, SC Appeal 11/2021 (SC minutes of 13.11.2023), it is lawful for a bank to invoke provisions in the Recovery of Loans by Banks (Special Provisions) Act and effect parate execution in relation to a property pledged as security to a loan when the borrower had defaulted despite the fact that such property belongs to a third party.

II. The respondent bank has acted within the powers vested on it under the provisions in the Act when it took steps to auction the property concerned and issued the certificate of sale. According to the provisions of section 15(2) of the Act, such certificate of sale stands as conclusive proof that all the provisions of this Act relating to the sale of such property have been complied with.

III. Learned District Judge was correct in holding that he did not have jurisdiction to hear the case and learned judges of the High Court erred when they decided to give the judgment in favour of the plaintiffs as prayed for in the Plaint.

The appeal was allowed and the judgment of the Civil Appeal High Court of Tangalle dated 01.10.2015 was set aside.

Full Judgment

https://www.supremecourt.lk/images/documents/sc_appeal_179_2016.pdf

JSALR 2024/I//IX

Saffany Chandrasekera & another Vs. Indian Overseas Bank

SC Appeal No. : 48/2021

Before : Vijith K. Malalgoda, PC, J.
Yasantha Kodagoda, PC, J.
Arjuna Obesekere, J.

Section 6(2)(b) of the Debt Recovery (Special Provisions) Act, ability to consider a security offered at the time of obtaining a loan facility as a security for the purposes of obtaining leave to appear in terms of Section 6(2)(b) of the Act.

Decided on: 23rd January 2024

Obeysekere, J.

The Plaintiff-Respondent-Respondent (hereinafter sometimes referred to as the Plaintiff) instituted action relevant to this case on 12.10.2017 in the District Court of Colombo against the Defendant-Appellant-Appellants (hereinafter sometimes referred to as the Defendants) acting in terms of Section 3 of the Debt Recover (Special Provisions) Act. No. 2 of 1990 as amended by Act No. 4 of 1994. The Plaintiff had claimed that the Defendants were offered a cash credit facility of Rs. 75 million for a period of 12 months, with interest to be calculated at the Primary Lending Rate [PLR], plus a margin of 1.5% per annum. The Credit facility was secured by the personal guarantees of the Defendants and by a mortgage of an immovable property. The loan account was reconciled by the Plaintiff on 30th September 2013, 31st March 2014 and 31st March 2015. After the renewal of the credit facility, the Defendants had defaulted the settlement of the balance outstanding which the Plaintiff claims was the debit balance outstanding of Rs. 83,883,674/99 as at 24th August 2017.

The District Court issued a decree nisi for the sum prayed for in the Plaint. The decree nisi having been served, the Defendants made an application supported by an affidavit seeking leave to appear and show cause against the decree nisi being made absolute. Accordingly, by its Order dated 21st February 2019, the District Court granted the Defendants leave to appear and show cause in terms of Section 6(2)(a), that is upon the payment of the sum of money specified in the decree nisi, or alternatively in terms of Section 6(2)(b), that is upon the furnishing of security sufficient to satisfy the said decree, in the event of it being made absolute.

The Defendants did not move that the property already mortgaged by them as security for the aforementioned credit facility by Mortgage Bond No. 8776, and which property had been valued at Rs. 75 million in 2012, be accepted as security, nor had the District Court given its mind to such fact, even though the District Court proceeded to act in terms of Section 6(2)(b) of the Act.

Accordingly, the central question to be decided in this appeal is whether a security offered at the time of obtaining a loan facility can be considered as a security for the purposes of obtaining leave to appear in terms of Section 6(2)(b).

Held:

I. It is mandatory for a plaintiff to produce with the plaint the instrument, agreement or document on which the plaintiff is suing and which contains the written promise or agreement and it is sufficient for the original of the said instrument, agreement or document sued upon to be available for production, if called upon by the Court.

II. A defendant against whom action has been filed under the Act is required to follow a two tiered

process – the first is to obtain leave of Court in terms of the criteria laid down in the Act to defend the action, and the second is, if leave is granted, to thereafter satisfy Court that the monies claimed are not due from the defendant and that accordingly, the decree nisi should be discharged.

III. A close examination of Section 6(2) reveals that there are five requirements that need to be complied with by a defendant who wishes to seek and obtain the leave of Court to appear and show cause.

- The first is to make a written application seeking leave of Court to appear and show cause.
- The second is that such application must be supported by an affidavit.
- The third is that the application and affidavit must deal specifically with the plaintiff's claim, as held in Seylan Bank PLC v Farook [(2021) 3 Sri LR 1].
- The fourth is that the application and affidavit must state clearly and concisely what the defence to the claim is and what facts are relied upon to support it.
- The fifth and final requirement is for the defendant to choose under which paragraph of Section 6(2) he or she is seeking the leave of Court to appear and defend. However, there is nothing to prevent a defendant seeking leave, alternatively under each of the three paragraphs.

IV. Even where the application of the defendant is silent with regard to the paragraph under which leave is sought or where it is apparent that the defendant is seeking leave only under Section 6(2)(c) and not under Section 6(2)(a) or (b), the District Court must consider leave, first under paragraph (c) and if not satisfied that leave can be granted under paragraph (c), then under paragraphs (a) or (b).

V. Where a defendant has already pledged an immovable property as security for the same loan that is sought to be recovered through the action filed under the Act and the defendant moves that leave to appear and show cause be granted by accepting the said property as security, the learned District Judge must consider if such security is adequate for the purposes of Section 6(2)(b) and whether it is reasonable and sufficient for satisfying the sum mentioned in the decree nisi;

VI. However, this is subject to one crucial condition, that being that the onus of satisfying the learned District Judge that the security already in place is reasonable and sufficient to satisfy the sum mentioned in the decree nisi shall always be with the defendant;

VII. Although the Defendants did raise the issue before the Supreme Court, the Defendants completely failed to demonstrate to the District Court and the High Court that the value of the property is sufficient to cover the amount of the decree nisi or at least a part thereof. Hence, it cannot be said that the High Court erred in law when it failed to consider the adequacy of the security already mortgaged to the Plaintiff for the purposes of Section 6(2)(b).

The Order of the District Court delivered on 21.02.2019 and the judgment of the High Court dated 15.07.2020 were affirmed. The appeal was dismissed, with costs fixed at Rs.100,000/-.

Full Judgment

https://www.supremecourt.lk/images/documents/sc_appeal_48_2021.pdf

COURT OF APPEAL

JSALR 2024/I//X

Punala Vidanalage Lakshitha Thushara Manel Vs. Hon. Attorney General

C.A. Case No : HCC-55/20

Before : Menaka Wijesundera, J.
Wickum A. Kaluarachchi, J.

Common intention, Mere presence and Participatory presence. Failure to suggest the defence of the accused to the prosecution witnesses.

Decided On : 04.03.2024

Wickum A. Kaluarachchi, J.

The 2nd accused-appellant together with another two accused were indicted in the High Court of Gampaha in terms of Section 296, 300, 317, and 314 of the Penal Code. The 1st accused died before the commencement of the trial. After trial, the 3rd accused was acquitted from the charges against him. The 2nd accused-appellant was convicted by the judgment dated 29.07.2020 for committing the murder of one Wasantha Ranjith Abeysinghe, an offence punishable under Section 296 of the Penal Code. This appeal has been preferred against the said conviction.

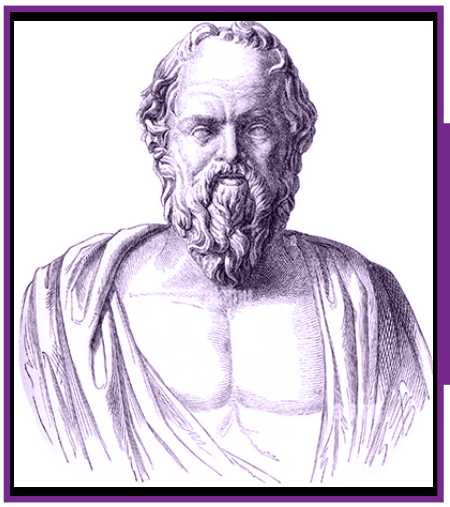
- This incident had taken place on 23.06.2006. The deceased 1st accused and the 2nd accused-appellant are twins. The eyewitnesses who gave evidence regarding the incident are PW-1, PW-3, and PW-4. PW-1 is the wife of the deceased. PW-3 is a neighbour of the deceased. PW-4 is the wife of the elder brother of the deceased.
- It is precisely clear from the aforesaid items of evidence that the appellant's presence at the scene is not "mere presence," but a "participatory presence." It is established from the evidence of PW-1, PW-4, and PW-12 that the first accused and the appellant came together armed with an iron bar and a dagger in search of the deceased, both of them caught the deceased, assaulted the deceased when fighting with him; even after the deceased fell on the ground, they continuously beat the deceased for some time; during this attack, one of them caused the fatal injury to the deceased by using the iron bar. After causing the fatal injury, when they saw police officers, both of them ran away.
- Therefore, from the very inception of the incident until they ran away after causing the fatal injury to the deceased, the appellant was not only physically present at the crime scene but also actively engaged with the first accused in committing the crime with murderous intention. Hence, whoever of them inflicted the fatal blow to the deceased using the iron bar, sharing of common intention by the appellant with the first accused to commit the murder is well established by the manner in which the appellant acted. Even if the first accused had inflicted the fatal blow by using the iron bar, the appellant is liable under Section 32 of the Penal Code for committing the offence of murder, as it is evident from the circumstances explained above that the appellant and the first accused were acting in furtherance of their common intention to kill the deceased.
- The learned Trial Judge observed that the defence that was taken in the dock statement that he went to the place of the incident to settle the dispute had not been suggested to the prosecution witnesses and therefore, the unreliable dock statement does not cast a reasonable doubt on the prosecution case. The contention of the learned President's Counsel was that the said observation

is erroneous because it amounts to proving of the defence case.

- I regret that I am unable to agree with the said contention of the learned President's Counsel because if the appellant took up a certain position that was not taken up in cross-examining the prosecution witnesses, it is correct to conclude that it is an unacceptable afterthought.
- When PW-1 and PW-4 stated in their evidence that the appellant and the first accused came together armed with an iron bar and a dagger, it has not been even suggested to these witnesses that the appellant did not come with the first accused, and he came later to that place. In addition, it has not been suggested to the prosecution witnesses that the appellant came to this place to settle the dispute that had arisen between the deceased and his brother, the 1st accused. So, these items of evidence are unchallenged.
- Therefore, the evidence of the prosecution that the appellant came together with the first accused to the house of the deceased armed with an iron bar and a dagger is unchallenged. In the circumstances, the learned Trial Judge is correct in not accepting the entirely different story narrated by the appellant from the dock.

  Accordingly, the Judgment dated 29.07.2020, the Conviction and the Sentence imposed on the 2nd accused-appellant are affirmed.

The appeal is dismissed.



Understanding a question is half an answer.

- Socrates -

Acts passed in 2024

SECURED TRANSACTIONS (AMENDMENT) ACT, No. 17 OF 2024
http://documents.gov.lk/files/act/2024/4/17-2024_E.pdf

REGISTRATION OF DOCUMENTS (AMENDMENT) ACT, No. 18 OF 2024
http://documents.gov.lk/files/act/2024/4/18-2024_E.pdf

TRUST RECEIPTS (AMENDMENT) ACT, No. 19 OF 2024
http://documents.gov.lk/files/act/2024/4/19-2024_E.pdf

MORTGAGE (AMENDMENT) ACT, No. 20 OF 2024
http://documents.gov.lk/files/act/2024/4/20-2024_E.pdf

FINANCE LEASING (AMENDMENT) ACT, No. 21 OF 2024
http://documents.gov.lk/files/act/2024/4/21-2024_E.pdf

INLAND TRUST RECEIPTS (AMENDMENT) ACT, No. 22 OF 2024
http://documents.gov.lk/files/act/2024/4/22-2024_E.pdf

COMPANIES (AMENDMENT) ACT, No. 23 OF 2024
http://documents.gov.lk/files/act/2024/4/23-2024_E.pdf

SOCIAL SECURITY CONTRIBUTION LEVY (AMENDMENT) ACT, No. 15 OF 2024
http://documents.gov.lk/files/act/2024/3/15-2024_E.pdf

VALUE ADDED TAX (AMENDMENT) ACT, No. 16 OF 2024
http://documents.gov.lk/files/act/2024/3/16-2024_E.pdf

CONTEMPT OF A COURT, TRIBUNAL OR INSTITUTION ACT, No. 8 OF 2024
http://documents.gov.lk/files/act/2024/2/08-2024_E.pdf

ONLINE SAFETY ACT, No. 9 OF 2024
http://documents.gov.lk/files/act/2024/2/09-2024_E.pdf

THE RECOGNITION AND ENFORCEMENT OF INTERNATIONAL SETTLEMENT AGREEMENTS RESULTING FROM MEDIATION ACT, No. 5 OF 2024
http://documents.gov.lk/files/act/2024/1/05-2024_E.pdf

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Guidelines:

1. The article should be written in English on any legal topic relating to law or administration of justice.
2. It should be an original work of the author and should not have been published elsewhere earlier.
3. The average length of articles should be between 3000 to 6000 words in length (including footnotes).
4. The font type should be Times New Roman only and font sizes should be as follows:
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6. Author should include self 'academic qualifications and details of the current employment. Those biographical details should be starred (*) and preceded with footnotes.
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Please be kind enough to send your articles as a Microsoft Word Document by way of e-mail to nuwankaushalya85@gmail.com on or before 31st August 2024 with contact details.

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