

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

In the matter of an application for
Revision in terms of Article 154 P
(3) (B) of the Constitution of the
Democratic Socialist Republic of Sri
Lanka read with Section 5 of the
High Court of the Provinces
(Special Provisions) Act No. 19 of
1990.

The Officer in Charge
Police Station,
Thirukkovil

Complainant

VS.

**CA (PHC)APN 01/2015
HC Kalmunai No. HCEP/REV/122/14
MC Pothuvil Case No. 19878/PC/14**

1. Muhammed Ibrahim Abdul
Rasheed,
2. Muhammadu Mustafa Razik,
3. Atham Lebbe Mufazir,
4. Seenimuhamad Muhamed Ismail,
5. Sulaimalebbe Muhamaed Uwais,

1st Party

1. Alagappa Murugan,
2. Sinnathamby Annathurai,
3. Thangarasa Poobalapillai,
4. Yogenathan Nitthiyananthan,

2nd Party

AND BETWEEN

1. Alagappa Murugan
2. Sinnathamby Annathurai
3. Thangarasa Poobalapillai
4. Yogenathan Nithyananthan

2nd Party – Petitioner

VS.

The Officer in Charge
Police Station
Thirukkovil

1st Respondent

1. Muhammed Ibrahim Abdul Rasheed
2. Muhammadu Mustafa Razik
3. Atham Lebbe Mufazir
4. Seenimuhamad Muhamed Ismail
5. Sulaimalebbe Muhamaed Uwais

1st Party Respondent

AND NOW BETWEEN

1. Muhammed Ibrahim Abdul Rasheed,
No.191, Udaiyar Road,
Akkaraipattu
2. Muhammadu Mustafa Razik,
No. 8, Beach
Akkaraipattu.

3. Atham Lebbe Mufazir,
No. 127, Jumma Mosque
Road,
Thakkanagar,
Attalaichchenai – 16
4. Seenimuhamed Muhamed
Ismail,
No.37, Sub Post Office Road,
Akkaraipattu 01.
5. Sulaimalebbe Muhamaed
Uwais,
No. 106 A, 2/3, Common
Road,
Akkaraipattu.

**1st Party Respondent
Petitioners.**

VS.

The Officer in Charge,
Police Station,
Thirukkovil

1st Respondent

1. Alagappa Murugan,
Kolavil – 02,
Akkaraipattu.
2. Sinnathamby Annathurai
Sagamam Road,
Kolavil – 01,
Akkaraipattu.

3. Thangarasa Poobalapillai
Kopal Road, Kolavil-02,
Akkaraipattu.

4. Yogenathan
Nithyananthan,
R.K.M. Road
Akkaraipattu 08.

**2nd Party- Petitioner
Respondents.**

**BEFORE: W.M.M. Malinie Gunaratne, J. and
P.R. Walgama, J.**

**COUNSEL: H.G. Hussain with S.A. Mohamed
for the Petitioners
D.N. Thanboo for the 2nd Respondent
P.Puvitharan for the 4th Respondent
Ravindranath. Dabare for 1st, 3rd Respondents.**

Argued on : 05.05.2015

Written submissions

filed on : 03.07.2015, 09.07.2015 and 10.09.2015.

Decided on : 17.12.2015

Malinie Gunaratne, J.

In this Petition the First Party – Respondent – Petitioners (hereinafter referred to as the Petitioners) among other reliefs are seeking to set aside the Orders dated 17.11.2014 and 01.12.2014, made by the learned High Court Judge of Kalmunai.

The facts which led to the making of the said Order by the learned High Court Judge are as follows:

The Petitioners are paddy farmers from the Wattumadu area in the District of Ampara and the 2nd Party – Petitioners – Respondents (hereinafter referred to as the Respondents) are by occupation herdsmen and they are also from villages in the District of Ampara.

Since there was a dispute and a tense situation prevailing on 24th of October 2014 between the Petitioners and Respondents, the Officer in Charge of the Pothuvil Police Station, produced both parties under Section 81 of the Code of Criminal Procedure Act before the learned Magistrate of Pothuvil in Case No. 19875/PC/14 on 29th October 2014 and moved that they be asked to show cause why they should not be bound over against committing a breach of the peace.

Without doing so, the learned Magistrate has made an order permitting Petitioners to cultivate the paddy lands and further ordered to erect a fence around the paddy lands which is in dispute. Against this Order of the learned Magistrate dated 05.11.2014 the Respondents, filed a revision

application before the Provincial High Court Holden in Kalmunai to revise the Order of the learned Magistrate.

The learned High Court Judge after hearing the Respondents' Party on 17.11.2014, granted an interim relief staying the Order dated 05.11.2014 of the learned Magistrate until the conclusion of the application. On 1st December 2014, the learned High Court Judge made another interim order staying the entire proceedings before the Magistrate's Court of Pothuvil until conclusion of the Revision Application.

The Petitioners have now invoked the jurisdiction of this Court to intervene by setting aside the said Orders of the learned High Court Judge on the circumstances mentioned in Paragraph 15 of the Petition.

In the hearing of this case, it was the contention of the learned Counsel for the Petitioners that the learned High Court Judge had erred in law in arriving at a definite finding of illegality of the Order of the learned Magistrate made on 05.11.2014 without hearing the Petitioners. The learned Counsel for the Respondents contended that the learned Magistrate has gone beyond the limits of his powers conferred on him by Section 81 of the Code of Criminal Procedure Act and after hearing both sides the learned High Court Judge acted correctly in staying the proceedings before the Magistrate's Court of Pothuvil.

Hence, now the sole question arising for decision in this case is whether the learned High Court Judge has acted legally and reasonably when issuing the two impugned interim orders.

It is an admitted fact by both parties that the land in question is already declared as a forest reserve and governed by the Forest Department.

It is the contention of the learned Counsel for the Respondents, that an area has been declared as a pasture land by the Government and it was allocated only for cattle grazing and no cultivation or farming activities allowed within the said area of land. But the learned Counsel for the Petitioners contended, that the Petitioners are farmers engaged in paddy cultivation with the permission from the relevant authorities, within the said area.

The learned Counsel further contended however that the Respondents had disturbed and threatened the Petitioners preventing them from engaging in farming activities and a tense situation prevailed. Hence, the Officer in Charge of Pothuvil Police Station has produced both parties filing a report under Section 81 of the Code of Criminal Procedure before the learned Magistrate filing an application and had moved that they be asked to show cause why they should not be bound over against committing a breach of the peace.

Section 81 of the Code of Criminal Procedure Act reads as follows:

“Whenever a Magistrate receives information that any person is likely to commit a breach of the peace within the local limits of the jurisdiction of the Court of such Magistrate, or that there is within such limits a person who is likely to commit a breach of the peace or do any wrongful act as aforesaid in any place beyond such limits the Magistrate in any manner hereinafter provided require such person to show cause why he should not be ordered to execute a bond with or without sureties for keeping the peace for such period not exceeding two years as the Court thinks fit to fix”.

After the proceedings were initiated in that manner, the learned Magistrate should follow the procedure laid down in Section 85, 86 and 87. When a person appears or brought before a Magistrate, he shall proceed to inquire into the truth of the information upon which he has acted and to take such further evidence as may appear necessary. (Section 86(1)).

If upon such inquiry it is proved that it is necessary for keeping the peace or maintaining good behaviour, that the person in respect of whom the inquiry is made should execute a bond with or without sureties, the Magistrate shall make an order accordingly. (Section 87).

It is significant to note that the learned Magistrate without complying with the aforesaid procedure, has made an order, which he is not entitled to make in an application under Section 81 of the Code of Criminal Procedure Act, allowing some farmers to cultivate the land and erect a fence around the land in dispute, governed by the Forest Department.

The learned Magistrate has erred in law making an order in regard to the possession in this case. He cannot decide on the possession of the land and cannot by his order permit to erect a fence round the land in dispute.

Hence, it is very clear that the learned Magistrate has gone beyond the limits of his powers conferred on him by Section 81 of the Code of Criminal Procedure Act, and not in any way contribute to the maintenance of peace.

Hence, the view of the Court is, the learned High Court Judge considering that the learned Magistrate has no power to make such an order in an application under Section 81 of the Code of Criminal Procedure Act, has correctly granted the stay order. Accordingly, the facts stated in the

Petition do not warrant to interfere with the order of the learned High Court Judge.

In the above setting, I am of the view that the Petitioner's argument is devoid of merits and should stand dismissed.

Accordingly, this petition is dismissed with costs.

JUDGE OF THE COURT OF APPEAL

P.R. Walgama, J.

I agree

JUDGE OF THE COURT OF APPEAL

Petition is dismissed.