JUDGMENTS

FUNDAMENTAL RIGHTS

SUPREME COURT

Mangalasiri Amarasinghe v IP Police Station Kurunegala
SC (FR) 264/2006

Decided On: 06/08/2010

S. Tilakawardena J, K. Sripavan J and P. A. Ratnayake J

Fundamental Rights – Articles 11 and 126 of the Constitution – Standard of Proof of torture – Delay in filing the application - Computation of time

The Petitioner alleged that he was assaulted by the 1st Responder police officer and as such the Petitioner's fundamental rights as guaranteed under Article 11 of the Constitution have been infringed.

The Primary issue to be determined in the case was whether the Petitioner has proved the allegation of torture or cruel, inhuman or degrading treatment against the 1st Respondent.

Petitioner had failed to inform that he was assaulted at the time he was produced before the Magistrate.

The Respondents also raised the objection that the application was time barred.

Held:

01. It is by now, well established that in a Fundamental Rights case the standard of proof is that applicable in civil case which is on a balance of probability or on a preponderance of evidence as opposed to beyond reasonable doubt as in a criminal case.

02. Failure of the Petitioner to complain to the Medical Officer or the Magistrate before whom he was produced must be viewed and against the backdrop of his being at that time held in Police custody with no access to any form of legal representation, and it is unfair to hold that such a failure of the Petitioner is fatal to establishing the required proof for the Petitioner's case.

03. During the time the Petitioner was remanded he was prevented from seeking legal redress for reasons beyond his control, such as continuous detention after the violation of his rights, and as such the computation of time will begin to run from the date he was under no restraint in his access to Court.

The Petitioners Fundamental Rights under Article 11 of the Constitution have been violated by the 1st Respondent and the 1st Respondent was ordered to pay a sum of Rs. 50,000/- to the Petitioner in his personal capacity as compensation.

01 / 04 / 2010

BRIBERY ACT

COURT OF APPEAL

DG for the Prevention of Bribery and Corruption v Sunil Illangarathna
Court of Appeal Case No. CA 210/2005
HC Colombo Case No. : 1426/2003

Decided On: 26/03/2010

Ranjith Silva J and D. C. S. Lecamwasam J

Petition of Appeal – Leave to Appeal – Judicature Act – Question of Law

The Respondent was indicted in the High Court of Colombo under the Bribery Act, and was acquitted. The Appellant (the Director General for the Prevention of Bribery and Corruption) filed the instant appeal against the said acquittal.

Held:

01. According to Section 15 of the Judicature Act the Court of Appeal was vested with jurisdiction to entertain an appeal on a question of law, if it is pure question of law without leave, but on any other matter involving questions of fact and questions of aw and facts, such appeals can be entertained only with the leave of the Court.

02. If the appeal is filed on the first limb (pure question of law) the petition of appeal should indicate that there is a fit question of law to be tried. This requirement is for nothing but to decide at the very inception whether the Court should allow the appeal or not.

Appeal Dismissed

02 / 04 / 2010

JUDGMENTS

ANIMALS ACT
COURT OF APPEAL

Mary Matilda Silva v IP Police Station Habarana
Court of Appeal Case No. CA (PHC) APN 86/97
HC Anuradhapura Revision : 51/96

Decided On: 08/07/2010
Sisira de Abrew J and Upali Abeyrathne J

Section 3 of the Animals Act – Confiscation of vehicles – Owners liability to prove a ground stated in Section 3A of the Animals Act.

The Petitioner was the owner of the vehicle which was arrested by the police while transporting 27 cattle in contravention of the provisions of the Animals Act and Cruelty to Animals Act. Driver and three others were convicted. The learned Magistrate confiscated the lorry after an inquiry. The Petitioner filed a revision application against the said order in the High Court and the said application was refused.

The Petitioner contended that the owner of the vehicle did not have knowledge of the commission of the offence, and it was not considered by the learned Magistrate.

Held:

01. In terms of the proviso to section 3A of the Animals Act, an order for confiscation cannot be made if the owner establishes one of the following two matters;
    i) that he has taken all precautions to prevent the use of the vehicle for the commission of the offence;
    ii) that the vehicle has been used for the commission of the offence without his knowledge.

02. The owner of the vehicle cannot discharge his burden under the above grounds by giving mere instructions is not sufficient. It must be established that he took every endeavour to implement the instructions given to the driver. Failure to make an attempt to implement the instructions is indicative of the fact that genuine instructions had not been given.

03. Petitioner had failed to prove either of the two grounds on a balance of probability.

Appeal Dismissed

03 / 04 / 2010

BRIBERY ACT
COURT OF APPEAL

DG for the Prevention of Bribery and Corruption v Anuruddha Ratwatta
Court of Appeal Case No. CA 325/07
HC Colombo Case No. : 1579/05

Decided On: 13/07/2010

Ranjith Silva J and D. C. S. Lecamwasam J

Section 23 A (4) of the Bribery Act – Show cause – Opinion of the Commissioner –

The Director General of the Bribery Commission filed action against the accused under Section 23A(3) of the Bribery Act. At the end of the prosecution case defence took up an objection to the effect that the prosecution failed to submit a certificate of dissatisfaction on the show cause and failed to satisfy pre conditions embodied in section 23 A(4) of the Bribery Act and therefore moved the court to acquit the accused. The High Court Judge upheld the objection and discharged the accused.

Held:

1. Section 23A(4) of the Bribery Act reveals clearly that giving "an opportunity" to show cause is of paramount importance and no action can be instituted without giving such an opportunity. If such opportunity is not given it tantamount to a patent lack of jurisdiction.

2. Once an opportunity is given and no cause is shown or if the commission is not satisfied with the explanation then the legal action will fallow.

3. Section 12(2) of the Bribery Act stipulates the documents that shall be annexed to every indictment; hence by not including the certificate of dissatisfaction in the said section the legislature never intended to include such a certificate of dissatisfaction or any analogous document along with the indictment, and it is not a pre condition.

Appeal Allowed

04/04/2010