

## SERRET v ATTORNEY-GENERAL

(2012) SLR 290

Appellant appeared in person  
C Jayaraj, Principal State Counsel as amicus curiae

**Judgment delivered on 31 August 2012**

**Before MacGregor P, Fernando, Twomey JJ**

**FERNANDO J:**

The appellant appeals against her conviction by the Supreme Court for contempt of court and the sentence of 7 days imprisonment imposed on her on 4 July 2011 by the trial judge who heard an application filed by her to stay the execution of the judgment given by the same trial judge, in respect of matrimonial property in Divorce case No 152 of 2006, where she was the petitioner.

She seeks by way of relief to set aside the sentence of imprisonment passed on her on 4 of July 2011.

The grounds of appeal are:

- (1) The Honourable Judge erred in law in his finding of a contempt of court as against the appellant, ie that the evidence, facts and circumstances did not divulge or lead to such a finding in law.
- (2) The Honourable Judge erred in law in failing to follow appropriate procedures, legal principles, the rules of natural justice and the appellant's fundamental and constitutional rights.
- (3) The Honourable Judge erred in principle in sentencing the appellant to 7 days imprisonment on the facts and circumstances.

When the application for a stay of execution of the judgment of the Supreme Court came up before it on 16 June 2011 it had been adjourned to 1 July for filing of defence.

The application for a stay of execution of the judgment had thereafter come up before the Supreme Court on 4 July 2011. It appears from a discussion between the trial judge and counsel for the respondent to the application that the file was not before the Court although the case was cause listed for 1 July 2011. Presumably it was for this reason that the case had come up before the Court on 4 July 2011.

When it came up before the Court, the trial judge had inquired as to what the case was about. After a few queries by the trial judge in regard to the documents filed in the case the trial judge had remarked: "*We must have this because that lady insulted me all the time.*" [emphasis by us]

We have thought it necessary to record the proceedings before the Court on 4 July, verbatim, from the time the trial judge made the remark referred to above.

Court: Do you know that and it is a contempt of court.

Mr Gabriel (Counsel, who appeared for the appellant on 4 July before the Supreme Court): Yes.

Court: *I will send her to prison you know that.* She insulted me right here before the court. [emphasis by us]

Mr Gabriel: Who?

Court: Your client.

Mr Gabriel: I'm sorry I was not here.

Court: *You must watch me carefully. I'll send her in and you will not be able to defend her,* tell her. [emphasis by us]

Mr Gabriel: I apologize as I was not aware.

Court: *Tell her right now if the file was there I was going to send her for 15 days contempt of court insulting the Judge.* [emphasis by us]

Mr Gabriel: I will get her to apologize.

Court to Petitioner

Q: Right, then I'm not a joker.

A: Ask him when.

Q: *When I say I say.* [emphasis by us]

A: What has he to do with all that?

Mr Gabriel: I will speak to her my Lord.

Court to Petitioner

Q: *You shut up and I will send you right now.* You have to respect me and respect the court. [emphasis by us]

A: I always respect you. I always.

Court to Petitioner

Q: By insulting me.

A: In the court. I have a right.

Court to Petitioner

Q: You stand up and come here.

A: OK.

Court: Mr Gabriel warns (sic) your client I'm taking her now for contempt of court and for insulting me in court.

Mr Gabriel: Mrs Serret please apologise to the court.

A: *I have not insulted him.* [emphasis by us]

Court to Petitioner

Q: *Are you apologizing or not?* [emphasis by us]

A: *No I have not insulted him so I cannot apologize to him.* [emphasis by us]

Court order: Madam for contempt of court and for refusing to apologize to me for the purging of your contempt I send you for 7 days to prison for contempt of court.

A: No I will not apologize even if you will send me to prison. *I can't apologize something which I have not done* even though you're a Judge. [emphasis by us]

Court: Right now in court she is arguing with me.

A: You can judge me if you want.

Court: Case adjourned to 18 July 2011 at 2.00pm.

The proceedings do not disclose the date, time or the words used by the appellant to insult the trial judge nor is there any evidence or affidavit to that effect. The appellant

has denied that she insulted the trial judge. It is difficult to conclude from the statement made by the trial judge: "Right, then I'm not a joker" that it was a retort to what the contemnor possibly said, but taken in conjunction with the trial judge's statement "that lady insulted me all the time", gives an indication that the statement made by the contemnor, if at all, is a personal insult hurled at the Judge. Generally the purpose of contempt power is used not to uphold the reputation of a judge but to maintain the dignity and vindicate the authority of the court so that it could function. In *Balough v Crown Court at St Albans* [1975] QB 373 the defendant told the Judge in Court "You are a humourless automaton. Why don't you self-destruct?" Lord Denning said that such insults are best treated with disdain, and took no action. In the case of *R v Commissioner of Police* [1968] 2 QB 150 Lord Denning said:

Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us.....

In view of the absence of proceedings in respect of the date, time or the words used by the appellant to insult the trial judge, we are in a difficulty in making a determination on the first ground of appeal. However this appeal can be determined on the basis of the second and third grounds of appeal.

The proceedings of 4 July 2011 as set out at paragraph 8 above leave no doubt in our minds that the appellant has to necessarily succeed in her second and third grounds of appeal. Under our criminal justice system and as required by article 19 of the Constitution, every person charged with an offence has the right to a fair hearing by an impartial court. The Constitution states that such a person is innocent until the person is proved or has pleaded guilty; shall be informed in detail of the nature of the offence; given adequate time and facilities to prepare a defence to the charge; has a right to examine, in person or by legal practitioner, the witnesses called to testify against her; and shall not be compelled to confess guilt.

Section 181(1) of the Criminal Procedure Code dealing with the procedure in trials before the Supreme Court in its summary jurisdiction states:

The substance of the charge or complaint shall be stated to the accused person by the court, and shall be asked whether he admits or denies the truth of the charge.

It has been held by the East African Court of Appeal that the arraignment of an accused is not complete until he or she has pleaded. In the Sri Lankan case of *Daniel Appuhamy v Queen* [1963] AC 474, the Privy Council stated that the rule that no person shall be punished for contempt of court, which is a criminal offence, unless the specific offence charged is distinctly stated and an opportunity of answering it given to him, applies in relation to summary punishment for giving false evidence. Although there is no necessity to provide the contemnor with a written charge sheet, it is incumbent upon the court to inform the contemnor in detail of the nature of the contempt committed. We do not see that this has been done in this case.

In the case of *Wilkinson v S* [2003] 1 WLR 1254 (CA) (Civ Div) it was said that in many cases, where there had to be a delay between the alleged contempt and the summary trial, it would be wise to refer the matter to another judge if only to forestall arguments as to apparent bias. It is clear from the proceedings at paragraph 8 above that the alleged insult had been prior to 4 July, the day the appellant was summarily dealt with for contempt.

The question by Court to the appellant: "Are you apologizing or not?" in our view is more in the nature of a compulsion to the appellant by Court to confess guilt rather than giving her an opportunity to apologize. In *DPP v Channel Four Television Co Ltd* [1993] 2 All ER 517 (DC) and *R v Schot and Barclay* (1997) 2 Cr App R 383 (CA) it was held that a judge should refer the matter to another judge or to the Attorney -General if the judge prematurely expresses a view of guilt. A perusal of the proceedings of 4 July makes it clear that not only was the trial judge biased against the contemnor but had already decided upon her guilt.

We also do not find on record a finding of guilt nor conviction. It was held in the case of *Ahkon v Republic* (1977) SLR 43 that such a defect is fatal and cannot be cured.

In the case of *R v Moran* (1985) 81 Cr App R 51 it was held that a decision to imprison a person for contempt should never be taken too quickly and that there should always be time for reflection as to what is the best course to take. The judge should also consider whether that time for reflection should not extend to a different day because overnight thoughts are sometimes better than thoughts on the spur of the moment. It was also held in *R v Huggins* (2007) 2 Cr App R 8 (CA) that the judge should consider whether that time for reflection should extend overnight.

The proceedings of 4 July as set out at paragraph 8 above make it clear that the trial judge had erred in law in failing to follow appropriate procedures, the rules of natural justice and the appellant's fundamental human rights that are enshrined and entrenched in the Constitution, resulting in a serious miscarriage of justice.

We therefore do not hesitate to allow the appeal, quash the conviction and grant the relief as prayed for in the notice of appeal.

As guidelines that may be followed in the future in cases of this nature we wish to state that where a judge considers summarily punishing the alleged contemnor, certain procedures should ordinarily be followed. These are particularly important when the contemnor is at risk of committal to prison, and may in appropriate cases include:

- (i) the immediate arrest and detention of the offender;
- (ii) telling the offender what the contempt is, and recording the substance of the charge;
- (iii) giving a chance to apologize;

- (iv) affording the opportunity of being advised and represented by counsel and making any necessary order for legal aid for that purpose,
- (v) granting any adjournment that may be required;
- (vi) call upon the contemnor to show cause why he should not be convicted;
- (vii) give the contemnor an opportunity to reply;
- (viii) entertaining counsel's submission; and,
- (ix) if satisfied that punishment is merited, imposing it, having given adequate time for reflection.

It must however be stated that 'summary procedure' to deal with contempt of court as stated in *Balough v St Alban's Crown Court* [1975] QB 73 at 90 -

...must never be invoked unless the ends of justice really require such drastic means: it appears to be rough justice; it is contrary to natural justice; and it can only be justified if nothing else will do.

This is in line with our 'right to a fair hearing' clause enshrined and entrenched in article 19 of our Constitution.