

**IN THE SEYCHELLES COURT OF APPEAL**

**[Coram: F. MacGregor (PCA) F. Robinson (J.A), G. Dodin (J)]**

**Constitutional Appeal SCA CL 05/2018  
(Appeal from Constitutional Court Decision CP 09/2017)**

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Duraikannu Karunakaran

Appellant

Versus

The Attorney General

Respondent

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Heard: 13 August 2019

Counsel: Mr. Philippe Boullé for the Appellant

Mr. David Esparon for the Respondent

Delivered: 10 September 2019

**JUDGMENT**

F. Robinson (J.A)

**The Background**

1. On the 27 March 2018, a three bench Judge of the Constitutional Court sat to hear a case involving the appellant (then the petitioner), on the one hand, and the Tribunal of Enquiry and the Attorney General on the other hand (then the respondents).
2. According to the record of proceedings, Counsel for the appellant was addressing the Court in submissions from the bar when Mr. Chinnasamy interrupted the proceedings.
3. I find it appropriate to record the interaction below:

*"Mr. Chinnasamy: This is our submission my Lord.*

Court: Yes. Okay.

Mr. Boule: I will stick to the points of my client my Lord. I will stick to the points which are before the Court today which your Lordship had asked us to address today and that is whether the Tribunal carries on with its existence for the purpose of judicial review and can the Judges –

Mr. Chinnasamy: **I think Mr. Karunakaran is coming and giving me absolutely nasty abuses. Absolutely nasty abuses when my blood boils and then as with due respect to this Court I stand with my rules. Now I have to leave this Court. He provoked me to the extent where I cannot stand as a human being here.**

Court (JN): **Yes, let us have it on record what was said to you and the Court will take a stance.**

Mr. Chinnasamy: **He called me an ass licker.**

Court (JN): **What did he say?**

Mr. Chinnasamy: He called me an ass licker.

Court (JN): How can he use that word?

Mr. Chinnasamy: No he just told me just now.

Mr. Karunakaran: No, I did not say this.

Mr. Chinnasamy: No, no he said. He said.

Court (JN): Yes.

Mr. Chinnasamy: He said this word.

Mr. Karunakaran: I did not say this.

...

Mr. Chinnasamy: No my Lord I am not his adversary and he is treating me as – and he treated me, what words he has told me? Do I go home and sleep tonight that I am imagining myself as an ass licker? ... He has to be taken to task and whatever is the end I will face it now.

Court: Alright.

...

Court (JN): Well, let us raise for a few minutes.

...

**CASE STOOD DOWN  
CASE RECALLED**

*Appearances as before*

Court (JN): Okay in the light of the statement made by Mr. Chinnasamy alleging that certain abusive words were used against him we do not disbelieve him. We are convinced that these words were used. We are therefore inviting Mr. Karunakran to present his apology to the Court and to Mr. Chinnasamy. This is the view of the bench.

Mr. Karunakaran: With due respect my Lord, I didn't utter these words.

Court (JN): Well-

Mr. Karunakaran: I never uttered these words. I asked him to make submissions sensibly.

Mr. Chinnasamy: My Lord he is telling a lie, he called me an ass licker.

...

Court: You will sit down. I said you are not entitled to give any instruction whatsoever to anybody on the other side.

Mr. Karunakaran: I am not giving instructions, he is a friend of mine, I was talking to –

Court (JN): He is not your friend here. That is the end of the matter.

Mr. Chinnasamy you will make a formal complaint?

Mr. Chinnasamy: I will make.

Court (JN): And if you have any witnesses he will swear an affidavit. We are adjourning this matter to the next term okay?

...

Court: ***It is an insult to the Court.***

Mr. Chinnasamy: *Yes my Lord.*

...

Mr. Chinnasamy: *I am killed my Lord by this.*

Court (JN): ***Yes it is for mention on 15<sup>th</sup> OF MAY 2018 AT 9 O'CLOCK.***

...

Court (JN): *Okay we will first resolve this first issue. The complaint that has been made and what will be the stand of the Court okay."*

Emphasis supplied

4. As per the record of proceedings of the 27 March 2018, the Court was convinced that the appellant had said those disputed words as related by Mr. Chinnasamy and invited the appellant to tender his apologies to the Court. The appellant refused to apologise and was adamant that he had not said those words. The appellant stated that he had simply asked Mr. Chinnasamy to "*make submissions sensibly*". The question of whether a contempt of court had been committed by the appellant was raised. The Court adjourned the case to the 15 May 2018.
5. In the course of proceedings of 15 May 2018, the Court delivered an order:

***"Order of the Court***

[1] ***In matters of the contempt of Court, this Court is empowered to deal with it, ie contempt in the face of it in virtue of its inherent powers;***

[2] ***We witnessed the behaviour of Mr. Karunakaran, which conduct constitutes an interference with the work of this Court and therefore amounts to contempt. We observed Mr. Karunakaran, moving from his seat and going right behind Mr. Chinnasamy, he spoke to Mr. Subramanian, and we also***

***saw him speaking to Mr. Chinnasamy. We witnessed a very spontaneous reaction from Mr. Chinnasamy, who looked very disturbed and reported to the bench that Mr. Karunakaran had verbally abused him;***

[3] *Additionally, we have received a letter from the Attorney General requesting that action be taken against Mr. Karunakaran, the letter is dated 29<sup>th</sup> of March. And we have received statements from Mr. Thachett and Mr. Subramanian;*

[4] *Accordingly, based on our observations and the documents that we have in our possession we are of the view that sufficient grounds exist for Mr. Karunakaran to show cause as to why he should not be dealt with for contempt of the Court."*

(Emphasis supplied)

6. In the course of proceedings of 15 May 2018, the Court gave Counsel for the appellant a letter from the Attorney General and the statements of Messrs Chinnasamy, Thachett and Subramanian who had made statements regarding this matter to the Attorney General.
7. It appears from the record of proceedings, that Counsel for the appellant had accepted the documents "*under protest*" on the ground that "*if it is a matter of contempt in the face of the Court ... no 3<sup>rd</sup> party can interfere with the case.*" Thereafter, Counsel for the appellant asked the bench whether "*[w]e will have a summons to show cause*". The Court informed Counsel that: "*[i]f there is a motion for a summons from your side we certainly now serve the summons ...*". The Court adjourned the case to the 4 September 2018.
8. I now turn to the summons issued on the appellant, dated the 17 May 2018, to appear before the Court on the 12 June 2018, to show cause why he should not be dealt with for contempt of court, the relevant parts of which are reproduced verbatim:

**"IN THE CONSTITUTIONAL COURT OF SEYCHELLES**

*In the matter concerning contempt of court proceedings against  
Mr. Duraikannu Karunakaran*

***MA 19/18 arising in CP09/17***

CONTEMPT SUMMONS

*WHEREAS at a court holden at the Court House, Ile Du Port, Mahe, Seychelles on the 27<sup>th</sup> day of **March** in the Year **two thousand and eighteen***

*It is alleged that you, Mr. Duraikannu Karunakaran insulted Mr. Chinnasamy Jayaraj in open court and that behaviour disrupted the work of the Court sitting as a Constitutional Court.*

**YOU ARE THEREFORE HEREBY summoned** to appear at a sitting of the Supreme Court to be held at 2 O'clock in the **afternoon** on the 12<sup>th</sup> day of June in the Year **Two thousand and Eighteen** to show cause why you should not be held in contempt, the penalty for which may be a fine or a jail time sentence, or any other sentence which the Court deems fit in accordance with the prevailing law.

*Your answer, if any, to the complaint which is herewith served upon you, must be filed within 7 days after service of this summons upon you, exclusive of the day of service. You are also required to file your answer, if any, to the complaint in the Registry of the Supreme Court.*

*Given under the seal of the Court, this 17<sup>th</sup> day of **May in the Year Two thousand and Eighteen.***

**REGISTRAR OF THE SUPREME COURT**

**To be served on:**

*Mr. Duraikannu Karunakaran C/O Mr. Philip Boule Attorney at Law, Victoria House."*

9. The specific allegation giving rise to the alleged contempt, is set out in the second paragraph which stated: "*[i]t is alleged that you, Durai Karunakaran insulted Chinnasamy Jarayaj in open court and that your behaviour disrupted the court sitting as a Constitutional Court.*"
10. Arising out of the penultimate paragraph of the summons to show cause, the appellant had to show cause by answering the complaint served with the summons which was in

the form of a letter from the Attorney General, dated the 29 March 2018, (at B2 of the records), to which was attached three statements:

- at page B3 of the records, a "[c]omplaint regarding the incident which took place in the Constitutional Court on the 27<sup>th</sup> March 2018", from Mr. Chinnasamy Jayaraj, dated the 28 March 2018;
- at page B4 of the records, a "Statement" from Mr. George Thomas Thachett, dated the 28 March 2018; and
- at page B5 of the records, a "Statement" from Mr. Ananth Subramanian, dated the 28 March 2018.

11. I reproduce the relevant parts of the said letter of the Attorney General:

*"29<sup>th</sup> March, 2018*

*The Registrar*

...

*Dear Madam*

*Re: Durai Karunakaran v/s Tribunal & Attorney General – CC9/2017 – Complaint against Mr. Durai Karunakaran J*

*I write to inform you that Mr. Jayaraj CHINNASAMY, Principal State Counsel, in the Attorney General's Chambers lodged a complaint to me regarding the conduct and behaviour of Mr. Durai Karunakaran, suspended Judge of the Supreme Court, towards him during the court proceedings of the case Durai Karunakaran v/s Tribunal & Attorney General – CC9/2017. A copy of the complaint of Mr. Jayaraj CHINNASAMY and the statements of Messrs. Ananth and Thachett, Assistant Principal State Counsel, are attached herewith for your information.*

*In view of the seriousness of the said behaviour and conduct of Mr. Karunakaran J. in open Court as a party to the proceedings towards an officer of the Court, I would be grateful if you can inform the Chief Justice and/or the Judges that had constituted the panel of the Constitutional Court for the said proceedings of the*

*said complaint in order that appropriate action may be taken against Mr. Durai Karunakaran J.*

*If you require any clarification or further information. Please contact the undersigned or Mr. Jarayaj CHINNASAMY.  
Yours faithfully*

*Frank D.R. Ally  
Attorney General."*

12. The appellant's answer to the summons to show cause, at page C1 of the records, stated:

**"IN THE CONSTITUTIONAL COURT OF SEYCHELLES**

*In the matter concerning contempt of court proceedings against Mr. Durai Karunakaran*

**MA19/18 arising in CP09/17**

**ANSWER TO SUMMONS DATED 17<sup>TH</sup> MAY 2018**

*Mr. Duraikannu Karunakaran will on the 12<sup>th</sup> day of June object to the Summons dated 17<sup>th</sup> May 2018 issued by the Registrar of the Supreme Court on the following grounds:*

- 1. The summons based on an allegation, is misconceived and beyond the powers of the Registrar.*
- 2. The Constitutional Court has no jurisdiction to undertake, hear or determine complaints by a third party to a proceeding before the Constitutional Court.*
- 3. The alleged complaint by Mr. Jayaraj Chinnasamy is not before the Court as it was made to the Attorney General.*
- 4. Mr. Duraikannu Karunakaran has no obligation in law to answer a complaint made by the Attorney General and forwarded to the Constitutional Court or any Court.*
- 5. Mr. Karunakaran has got no legal obligation to show cause as the Constitutional Court has no inherent jurisdiction to hold him in contempt on a complaint to the Attorney General by third parties, over and above which all the evidence that underpins the allegations are unsworn.*



6. *The Constitutional Court is not competent to consider any answer to the complaint which is served upon Mr. Karunakaran as the Constitutional Court has already determined the matter conclusively by its finding made on 27<sup>th</sup> March 2018 that the Court "is convinced that the words were used" after hearing the denial of Mr. Karunakaran.*
7. *The Constitutional Court has admitted that it has no jurisdiction in the matter in its clear statement made in Court on the 27<sup>th</sup> March 2018, that "that is the end of the matter" as far as the Court is concerned...*
8. *Dated this 24 day of May 2018.*

*Philippe Boullé  
Attorney for Duraikannu Karunakaran  
307 Victoria House  
Victoria  
Mahé  
Seychelles"*

13. The Court comprising of the same bench of three Judges resumed proceedings on the 4 September 2018. Neither the appellant, nor Mr. Boule was present on this date. The appellant was represented by Mr. Frank Elizabeth Attorney-at-Law, who had not been sufficiently instructed. The Court delivered its order finding the appellant guilty of contempt.
14. I reproduce the relevant parts of the order of 4 September 2018:

*"1. In this matter, in the course of proceedings before the Court of 27<sup>th</sup> March, in the course of the hearing of the main case 09/2017, this Bench witnessed an incident. **In fact what we witnessed amounted to misbehaviour by Mr. Karunakaran and it amounted to a contempt of Court.***

*2. Now the Bench witnessed Mr. Karunakaran moving from this side where he was supposed to be and went on the right side and we saw him speaking in the ears of Mr. Chinnasamy and at a particular point in time Mr. Chinnasamy got up very spontaneously and informed the Court about a language that was*

*used by Mr. Karunakaran against him and later on when asked as to what Mr. Karunakaran had to say to Mr. Chinnasamy, Mr. Karunakaran said "while he is my best friend and I was advising him to do his case properly". **Now there are two parts to it, we raised the Court and we came back and the Bench invited Mr. Karunakaran to apologise to Mr. Chinnasamy. This in fact did not mean that after his apology the bench could not have pursued any other action open to it.***

*3. **So there was no apology though there was an order from the Court and later on a summons was served upon Mr. Karunakaran to show cause as to why contempt proceedings should not be continued against him.***

*4. **We are satisfied that Mr. Karunakaran is guilty of contempt of Court; that contempt occurred on the 27<sup>th</sup> March.***

*5. **We therefore convict him of contempt of Court and we are sentencing him to pay a fine of Five Thousand Rupees (R5,000), failing which we order that he will serve a sentence of seven days imprisonment. We give him one month to pay the fine...***

Emphasis supplied

15. In summary, the order of 4 September 2018, found as follows:

- *that "what we witnessed amounted to misbehaviour by Mr. Karunakaran and it amounted to a contempt of Court:*
- *that "the Bench invited Mr Karunakaran to apologise to Mr. Chinnasamy";*
- *that the appellant did not tender his apologies;*
- *that a summons was issued on the appellant to show cause as to why contempt proceedings should not be continued against him;*
- *that the Court was satisfied that the appellant was guilty of contempt;*
- *that the appellant was sentenced to pay a fine of 5,000/- rupees, failing which, he would serve a sentence of seven days imprisonment.*

16. On the 5 September 2018, the appellant paid the fine of 5,000/- rupees which had been imposed on him.
17. The appellant has appealed against his conviction by the Constitutional Court for contempt of court.

### **The Appeal**

18. The appellant is seeking by way of relief to quash the conviction of the appellant for contempt of Court.
19. The grounds of appeal are:

*"1. The finding of guilt by the Constitutional Court is without juridical foundation as it fails to rest on the Order of the Court delivered on the 15 May 2018 and summons to show cause and consequently address the objections raised by the Appellant dated the 24 May 2018.*

*2. The Constitutional Court erred in its finding of guilt as it ignores and fails to draw its reasoning from the material facts on record.*

*3. The finding of the contempt is erroneous as it fails to adjudicate on the issues and material facts found to be the substance of contempt in respect of which the Appellant was required to show cause.*

*4. The Order is erroneous as the facts relied on for the finding of guilt does not disclose a contempt of court by the Appellant."*

### *The Analysis*

20. I have considered the records, the grounds of appeal and the written submissions offered on behalf of the appellant and the respondent.
21. A determination of grounds 1, 3 and 4 will suffice to dispose of this appeal. I now deal with the grounds of appeal in the order which appears more appropriate.

*Grounds 1 and 4 of the grounds of appeal*

22. Counsel for the appellant contended that the Court had no jurisdiction to hear the matter as it had *inter alia* prematurely expressed guilt. At page 8 of the record of proceedings of 27 March 2018, the Court said: "[w]e are convinced that the words were used" and in the order, dated the 15 May 2018, at page 14: "[w]e witnessed the behaviour of Mr. Karunakaran, which conduct constitute an interference with the work of this Court and therefore amounts to contempt." Counsel referred to *Marjorie M.F. Serret nee Joubert v The Attorney General CR SCA NO: 9/2011* (31 August 2012).

23. Counsel submitted that these two accusations contained two distinct elements, namely:

- (1) insulting Mr. Chinnasamy in open court; and
- (2) a behaviour that disrupted the Court.

24. He invited us to consider these two accusations on the basis of the law and the facts. In *Mullery v R (No.2) SLR [1956]* at p. 10, the Court of Appeal of Seychelles stated:

*"It is well settled that to come within the definition of contempt of the court there must be involved some act done or writing published calculated to bring a Court or a judge of the Court into contempt or to lower his authority or something calculated to obstruct or interfere with the due course of justice or the process of the Court."*

In relation to the facts, he submitted that the order, dated the 4 September 2018, stated that: *"Mr. Karunakaran moved to the right side and spoke in the ear of Mr Chinnasamy"*.

25. Counsel contended that the above act of the appellant cannot in any way lend support to the finding of contempt of court for the following reasons:

- (1) based on the facts: in terms of the summons to show cause, the facts alleged in the two accusations are not supported by the evidence on record as follows:

- (a) the appellant did not insult Mr. Chinnasamy in open Court and he was not heard by the Bench, nor by the public; and
  - (b) his action did not disrupt the Court.
- (2) based on the applicable law: **Mullery supra**:
- (a) the act of the appellant was not an "[a]ct done calculated to bring a Court or Judge of the Court into contempt or to lower its authority";
  - (b) nor was it an act "calculated to obstruct or interfere with the due course of justice or the lawful process of the court".
- (3) on the issue of jurisdiction: the attempt by the Court, in its order of 15 May 2018, to bring the contempt as one *ex-facie curiae* is further flawed as the Court ruled on a disputed fact i.e., the words spoken by the appellant, which was not in the face of the Court, should have compelled the Court to hear evidence on oath before making a finding. Counsel for the appellant referred to *The State v Walsh & another* (1981) IR 412 at 432, and to *Balogh v St Albans Crown Court* [1975] 1 Q.B 73.
26. The respondent did not accept the contentions offered on behalf of the appellant. Counsel for the respondent submitted that the finding of guilt by the Court had juridical foundation. He rested on paras [2] and [3] of the order dated the 15 May 2018. A court of record has the inherent jurisdiction to punish for contempt. He referred to *Roger Mancienne v Government of Seychelles* (10 of 2004) [2005] SCCA 1 (16 February 2005), and to *In the Matter of Contempt Proceedings Against Kathleen Pillay Criminal Side No. 16 of 1994* (5 July 1994).
27. According to the contention of Counsel for the respondent, the forms of conduct which constituted contempt in the face of the Court were insult to the Court and interruption of

Court proceedings. In the view of Counsel, the act of the appellant, getting up from his place and walking to the other side where Mr. Chinnasamy was seated and saying "**something in the ear of Counsel** [Mr. Chinnasamy]" and Mr. Chinnasamy subsequently appearing visibly shocked and immediately complaining to the Court that the appellant had called him an "*ass licker*", amounted to conduct constituting contempt in the face of the Court.

28. He submitted that when the Court resumed on the 4 September 2018, the date which the appellant himself sought on the ground that he has to engage Counsel from overseas, neither the appellant, nor any Counsel representing the appellant was there. Thus, the Court correctly convicted him of contempt of court and sentenced him to pay a fine of 5000 rupees.
29. Counsel also made the point that the appellant should be considered as having waived his right to appeal by paying the fine.
30. I read from *Halsbury's Laws of England Contempt of Court (Volume 24 (2019)) - 2. Kinds of contempt*, that criminal contempt, with which we are concerned here, consist "*of words or acts which impede or interfere with the administration of justice, or which create a substantial risk that the course of justice will be seriously impeded or prejudiced*".
31. It is undisputed by these parties that the appellant had said "**something in the ear of Counsel** [Mr. Chinnasamy]", and that Mr. Chinnasamy had immediately made a complaint to the Court in relation to the words said to him. The appellant stated that he had simply asked Mr. Chinnasamy to "*make submissions sensibly*". It is also undisputed by these parties that the appellant did not insult Mr. Chinnasamy in open Court, and that he was not heard by the Bench, nor by the public. It is also undisputed by these parties that the words which the appellant have said to Mr. Chinnasamy in his ear was the event that started the whole occurrence.

32. I note that the specific allegation giving rise to the alleged contempt is set out in the second paragraph of the summons to show cause which stated: "*[i]t is alleged that you, Durai Karunakaran insulted Chinnasamy Jarayaj in open court and that your behaviour disrupted the court sitting as a Constitutional Court.*" According to the record of proceedings of 27 March 2018, the Court was "*convinced that the words were used*". Further, in its order of 15 May 2018, the Court found that: "*we witnessed the behaviour of Mr. Karunakaran, which conduct constitutes an interference with the work of this Court and therefore amounts to contempt*". The order of 4 September 2018, stated that: "*Mr. Karunakaran moved to the right side and spoke in the ear of Mr. Chinnasamy.*"
33. Having considered the record of proceedings of 27 March 2018, I accept the submission offered on behalf of the appellant that the action of the appellant: "*Mr. Karunakaran moved to the right side and spoke in the ear of Mr. Chinnasamy*", as per the order made in the proceedings of 4 September 2018, cannot in any way lend support to the finding of contempt of court. It is clear that the facts alleged in para [32] hereof are not supported by the evidence on record. According to the record of proceedings of 27 March 2018:
- (i) the appellant did not insult Mr. Chinnasamy in open Court;
  - (ii) the appellant was not heard by the Bench, nor by the public; and
  - (iii) the appellant's action did not disrupt the Court: see **Mullery** *supra*.

I also agree with the appellant that the attempt by the Court, in its order of 15 May 2018, to bring the contempt as one *ex-facie curiae* was further flawed as the Court ruled on a disputed fact.

34. I now turn to the order of 4 September 2018. It is clear that all the steps which have been described above, were taken in preparation of a full hearing by the Court, although it is to be noted that, when such summons was issued, the Court had already decided that the act of the appellant was contemptuous. The appellant filed his *ANSWER TO SUMMMONS DATED 17<sup>TH</sup> MAY 2018* on the 24 May 2018. As per the record of proceedings of 12

June 2018, the oral hearing did not take place. A hearing did not take place on the 4 September 2018, either. The order of 4 September 2018, made in the absence of the appellant, was in the nature of a summary determination.

35. The order of Court finding guilt did not consider the points of law raised by the appellant in his "*ANSWER TO SUMMONS DATED 17<sup>TH</sup> MAY 2018*". The Court did not justify its decision that it had jurisdiction to hear the case when its power to do so had been challenged.
36. The said order of 4 September 2018, did not explain why the Court chose to accept the version of Mr. Chinnasamy and of his witnesses and to reject the version of the appellant in relation to the words that were allegedly said by the appellant to Mr. Chinnasamy.
37. I turn to the submission of Counsel for the appellant that the Court should not have dealt with the matter because it had *inter alia* prematurely expressed guilt. It is unequivocal that the Court had already decided upon the guilt of the appellant in the present case. In **Marjorie M.F. Serret nee Joubert** *supra*, the Court of Appeal quoted with approval the holding from *DPP v Channel Four Television Co Ltd (1993) 2 All E R 517* and *R v Schot and Barclay (1997) 2 Cr. App. R. 383*, that a judge should refer the matter to another judge or to the Attorney General if he prematurely expresses a view of guilt.
38. For the reasons stated above, I also find that the Court had erred in law in failing to follow appropriate procedures, the rules of natural justice and the fundamental human rights of the appellant that are enshrined and entrenched in the Constitution resulting in a serious miscarriage of justice.
39. In **Balogh** *supra*, the court stated that the summary procedure to deal with contempt of court "*... 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*".
40. I allow grounds 1 and 4 of the grounds of appeal.



*Ground 3 of the grounds of appeal*

41. In relation to ground 3 of the grounds of appeal, Counsel for the appellant contended that it was incumbent upon the Court to adjudicate on the facts alleged in the summons to show cause. I find the submissions offered on behalf of the respondent, in relation to this ground, provide no adequate refutation of the points made by Counsel for the appellant.
42. Para 2 of the summons to show cause stated: "*[i]t is alleged that you, Durai Karunakaran insulted Chinnasamy Jarayaj in open court and that your behaviour disrupted the court sitting as a Constitutional Court.*"
43. *In the Matter of Contempt Proceedings Against Kathleen Pillay Criminal Side No. 16 of 1994 (5 July 1994), the Supreme Court referred to Black's Law Dictionary 5<sup>th</sup> Edition (1979) for the definition of the expression "show cause why you should not be committed for contempt of court". Black's Law Dictionary 5<sup>th</sup> Edition (1979) defined the said expression as "a legal phraseology for calling on an alleged contemnor to give his own explanation of that which is considered contemptuous and to correct any misapprehension as to what he had in fact said or meant." The Supreme Court stated: "[w]hen such summons is issued, the judge has already decided that the act of the respondent was contemptuous. No further evidence was necessary to convince him that it was so. It then falls on the respondent to either apologise or sufficiently explained why he or she should not be dealt with."*
44. As submitted by Counsel for the appellant, the Court in its order of 15 May 2018, made no finding whatsoever with respect to the accusations in the summons to show cause. In relation to the disputed facts, the Court stated in its order of 15 May 2018: "*[n]ow the Bench witnessed Mr. Karunakaran moving from this side where he was supposed to be and went on the right side and we saw him speaking in the ears of Mr. Chinnasamy and at a particular point in time **Mr. Chinasammy got up very spontaneously and informed the Court about a language that was used by Mr. Karunakaran against him** and later*

on when asked as to what Mr. Karunakaran had to say to Mr Chinnasamy, Mr Karunakaran said "while he is my best friend and I was advising him to do his case properly". Emphasis supplied

45. I, therefore, accept the submission of Counsel for the appellant that the finding of guilt of the 4 September 2018, harbours a fatal error.
46. I allow ground 3 of the grounds of appeal.
47. In relation to the question of whether the appellant has waived his right to appeal by paying the fine, it was held in the Mauritian case of *Mactoom v R* [1990 MR 155] that the payment of the fine cannot be construed as an admission of guilt followed by renunciation of the right of appeal: see also *Rossensing Beego v The Independent Commission Against Corruption and Another, And in the matter of: Naushad Maudarbaccus & Another v The Independent Commission against Corruption and Another* [2015 SCJ 19]. The right to appeal is a fundamental human right which cannot be lightly denied to a party.

### **The Decision**

48. For the reasons stated above, I allow the appeal, quash the conviction of the appellant for contempt of court.

F. Robinson (J.A)

Signed, dated and delivered at Ile du Port on 10 September 2019.

