IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an application for Special Leave to Appeal from the judgment of the Court of Appeal of the Democratic Socialist Republic of Sri Lanka under and in terms of Article 128(2) of the Constitution.

Thuraiappah Nithyanandan
No. 12902/1, Nawala Road,
Narahenpita,
Colombo 5.

Plaintiff

SC Appeal No: 101/2009
SC/SPL/LA Application No. 47/2009
CA/LA Application No: 223/2003
District Court of Colombo
Case No. 27115/M

Vs.

Sherman Sons Limited.
No.23, Sri Sangaraja Mawatha,
Colombo 10.

Defendant

AND BETWEEN

Sherman Sons Limited.
No.23, Sri Sangaraja Mawatha,
Colombo 10.

Defendant-Appellant

Vs.

Thuraiappah Nithyanandan.
No. 12902/1, Nawala Road,
Narahenpita,
Colombo 5.

Plaintiff-Respondent

AND NOW BETWEEN

Sherman Sons (Private) Limited.
(formerly known as Sherman Sons Limited.)
No.23, Sri Sangaraja Mawatha,
Colombo 10.
Presently of No. 194F, Nawala Road,
Narahenpita,
Colombo 5.

Defendant-Appellant-Appellant

Vs

Thuraiappah Nithyanandan
No. 12902/1, Nawala Road,
Narahenpita,
Colombo 5.

Plaintiff-Respondent- Respondent

Before : Priyantha Jayawardena PC, J
Achala Wengappuli, J
Arjuna Obeyesekere, J

Counsel : Sanjeewa Jayawardena, PC with Ms. Lakmini Warusewitane, Gimhani Aththanayake and Punyajith Dunusinghe for the Defendant-Appellant-Appellant

Plaintiff-Respondent-Respondent was absent and unrepresented

Argued on : 18th of July, 2023

Decided on : 29th of February, 2024

Priyantha Jayawardena PC, J

This is an appeal filed against the judgment of the Court of Appeal dated 2nd of February, 2009 which affirmed the Order of the District Court of Colombo dated 11th of June, 2003, where it was held that the alleged cause of action pleaded in the District Court was not prescribed.

The plaint

The plaintiff-respondent-respondent (hereinafter referred to as the "respondent") filed a plaint in the District Court dated 27th of April, 2001. In the said plaint, he stated that on the 22nd of December, 1986, the defendant-appellant-appellant (hereinafter referred to as the "appellant-company"), made a false complaint to the Fraud Investigation Bureau of the Police alleging that the respondent attempted to fraudulently obtain a sum of Rs. 950/- from the said appellant-company through a letter dated 17th of December, 1986 by fraudulently and falsely entering a trade advertisement of the appellant-company in a diary for the year 1987.

The Police stated that the respondent attempted to cheat the appellant-company of Rs. 950/-. It was alleged that this was done by producing the forged letter dated 17th of December, 1986, signed by the manager of the appellant-company stating that the said manager had approved the publication of an advertisement by the appellant company.

Subsequently, based on said complaint, the respondent was arrested on the 22nd of December, 1986 by the Police and was produced in the Magistrate's Court of Maligakanda. Thereafter, the learned Magistrate remanded him. Therefore, the Police instituted proceedings in the Magistrate's Court for the offence of attempting to cheat the appellant-company of a sum of Rs. 950/-.

The respondent had pleaded not guilty to the said charge, and the case proceeded to trial. However, at the end of the trial the learned Magistrate, by judgment dated 7th July, 1999 acquitted the respondent of the said charge. Further, the appellant-company had not appealed against the said judgment.

At the trial, the respondent stated that he never claimed any money in respect of the said advertisement published by the appellant-company. He further stated that the letter under reference was neither written by him nor did it contain his signature.

Moreover, the respondent stated that, though the appellant-company was well aware that he never cheated, charges were pursued against him, without a valid reason. Further, the respondent stated that the appellant-company maliciously set the law in motion against him without a reasonable cause and initiated the said action bearing No.72587 in the Magistrate's Court against him.

Furthermore, he stated that he was arrested and remanded, and as a result, it adversely affected his professional work. Further, he suffered loss and damage to his profession, personality, character, and reputation, and it caused him mental and physical pain. Accordingly, the respondent stated that he suffered loss and damage valued at Rs.50, 000,000/-.

Further, the respondent stated that he sent a letter of demand to the appellant-company, demanding a sum of Rs.50,000,000/- as damages. However, the appellant company neglected and/or failed to pay the said sum of money. Hence, a cause of action has accrued to him to sue the appellant-company to recover damages valued at Rs.50, 000,000/- with legal interest. In the circumstances, the respondent prayed, *inter alia*, for the recovery of Rs.50,000,000/- with legal interest from the 22nd of December, 1986.

Answer filed in the District Court

The appellant-company filed its answer on the 22nd of January, 2002 denying the allegations stated in the plaint. Further, it was stated that the respondent's action is prescribed in terms of section 9 of the Prescription Ordinance, and the plaint should be rejected in limine, in terms of section 46 (2) (i) of the Civil Procedure Code.

The said section 9 of the Prescription Ordinance reads as follows;

> *"No action shall be maintainable for any loss, injury, or damage, unless the same shall be commenced within two years from the time when the cause of action, shall have arisen."*

The answer filed by the appellant-company further stated that the appellant-company was unaware of the allegation stated in the plaint and therefore denied the said allegations. Further, the appellant-company stated that it was unaware that the respondent was an Attorney-at-law and the fact that he was practicing as an Attorney-at-Law.

Furthermore, the appellant-company denied that on the 22nd of December, 1986, it made a false complaint to the Police alleging that the respondent attempted to fraudulently obtain a sum of Rs.950/- from the said appellant-company by sending the letter dated 17th December, 1986. Moreover, the appellant-company stated that it was unaware that, on the basis of a complaint made by it, the respondent was taken into custody by the Police on 22nd of December, 1986.

The appellant-company further stated that the Police investigated the complaint made by the appellant-company against the respondent because the Police officers were of the opinion that there was a prima facie case against the respondent. Accordingly, the appellant-company denied that it falsely initiated the criminal proceedings against the respondent. However, the appellant-company admitted that the respondent was acquitted after the trial of the said case. Further, the appellant-company admitted that it did not appeal against the said judgment. In the circumstances, the appellant-company pleaded, *inter alia*, for the plaint to be rejected and to dismiss the respondent's action.

Subsequently, the appellant-company had moved the court to answer the selected issues No. 9 and 10 as questions of law in terms of section 147 of the Civil Procedure Code which states;

> *"When issues both of law and of fact arise in the same action, and the court is of the opinion that the case may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined."*

Order of the District Court

The District Court delivered its Order dated 11th of June, 2003 in respect of the aforementioned issues No. 9 and 10 and held that it is not clear whether the cause of action is based on malicious prosecution or setting the law in motion. The learned District Judge in his judgement held as follows;

> *"මෙම අධිකරණයට පෙනී යනුයේ, පැමිණිල්ල පවරා ඇත්තේ ද්වේශ සහගතව නඩු පැවරීමට පෙළඹවීම් පාදක කර ගෙන බවයි. එලෙස එකී නඩුව මෙහෙයවීමට පෙළඹවීම ද්වේශ සහගත යැයි කියමින් නඩු*

පැවරිය හැක්කේ එකී නඩුවේ නීන්දුව දුන්නායින් පසුව ය. එකී නඩුවේ නීන්දුව දී ඇත්තේ, එක්ස්:02 දරණ ලේඛණයට අනුව 1999.07.07 දින දී ය. නඩු පැවරීමේ කාලය ගිණිය යුත්තේ 1999.07.07 වන දින සිට වන අතර, 2001.04.27 දින වන විට අවුරුදු දෙකක කාලයක් තුළ මෙම නඩුව පවරා ඇති බවට මෙම අධිකරණයට පෙනී යයි. එසේ හෙයින් 09 වන විසඳිය යුතු ප්‍රශ්නයට "නැත" යනුවෙන් පිළිතුරු දෙන අධිකරණය 10 වන විසඳිය යුතු ප්‍රශ්නයට ද "නැත" යනුවෙන් පිළිතුරු දෙනු ලබයි. විත්තිකරු ගේ 11 වන විසඳිය යුතු ප්‍රශ්නයද 09 වන විසඳිය යුතු ප්‍රශ්නය හා සබැඳි විසඳිය යුතු ප්‍රශ්නයක් වන හෙයින් මෙම අවස්ථාවේදී 11 වන විසඳිය යුතු ප්‍රශ්නයටද මෙම අධිකරණය "නැත" යනුවෙන් පිළිතුරු දෙනු ලබයි."

Further, it was held that the respondent's action is not prescribed under and in terms of section 9 of the Prescription Ordinance and the case was fixed for further trial on the 29th of September 2003.

Appeal to the Court of Appeal

Being aggrieved by the said judgment of the District Court, the appellant-company made an application for leave to appeal to the Court of Appeal against the said judgment of the District Court. Thereafter, the Court of Appeal granted leave to appeal and heard the appeal.

Judgment of the Court of Appeal

After considering the submissions made by the parties, the Court of Appeal upheld the said judgment of the District Court, which stated that the cause of action set out in the plaint is on the delict of malicious prosecution.

It was further held that in order to institute an action to recover damages in respect of malicious prosecution, the criminal case should be terminated, and only if it is terminated in favour of the accused. Further, the cause of action arises from the date of the acquittal of the accused by the court.

Moreover, it was held that making a complaint to the Police does not give rise to a cause of action, and a cause of action would accrue to the respondent only upon criminal proceedings being terminated in his favour.

Appeal to the Supreme Court

Being aggrieved by the said judgment of the Court of Appeal, the appellant made an application for Special Leave to Appeal to the Supreme Court, and after considering the submissions of the appellant company, this court granted Special Leave to Appeal on the following questions of law;

"

1. *Did the Court of Appeal err by failing to recognise the fact that no action could be maintained for damages for delict/tort unless there is (a) injuria and malicious intent and (b) patrimonial loss?*
2. *Did the Court of Appeal err by failing to recognise and identify that there is only one paragraph in the plaint which speaks of patrimonial loss and that paragraph is paragraph 12, which speaks of setting in motion, the law, as a result of which the Respondent was arrested and remanded, thereby directly resulting in alleged loss and damage in a sum of Rupees Fifty Million (Rs. 50,000,000/-) (patrimonial loss?)*
3. *Did the Court of Appeal fail to appreciate that the Respondent had elected, of his own volition not to seek damages nor to claim patrimonial loss for the criminal action/prosecution, but limited his claim of loss and damage (patrimonial loss) and recovery of money on account of the arrest and remand alone?*
4. *Did the Court of Appeal fall into substantial error by failing to consider that the "wrong for redress of which an action was brought," was the tort of abuse of process and not malicious prosecution, on the Respondent's own showing?*
5. *Did the Court of Appeal fall into substantial error by completely ignoring the provisions of Section 9 of the Prescription Ordinance?*

6. *Did the Court of Appeal err by failing to appreciate that the Respondent's action is prescribed in terms of section 9 of the Prescription Ordinance, in as much as on the respondent's own admission, his stated cause of action that patrimonial loss of Rupees Fifty Million (Rs. 50,000,000/-) has only been claimed in respect of setting the law in motion by an allegedly unjustified complaint, leading to the Respondent's arrest and remand?"*

Did the Court of Appeal fall into substantial error by failing to consider that the "wrong for redress of which an action was brought," was the tort of abuse of process and not malicious prosecution, on the Respondent's own showing?

Trial in the District Court begins with making admissions and raising issues under section 146 of the Civil Procedure Code

Once the admissions are marked and the issues are raised in a trial, the trial will proceed based on the said admissions and issues marked at the trial. However, if a need arises the parties may mark new admissions and raise new issues during the course of the trial with the permission of court. Further, once the admissions and issues are raised, the pleadings filed in the court will not be taken into consideration in deciding the case. A similar view was expressed in ***Dharmasiri vs. Wickrematunga*** **(2002) 2 SLR 218,** where it was held;

"1. Once issues are framed and accepted, pleading recede to the background…."

Further, in ***Bank of Ceylon vs. Chellaiahpilli*** **64 NLR 25**, it was held;

"A case must be tried upon the issues on which the right decision appears to the court to defend, and it is well settled that the framing of such issues is not restricted by pleadings."

Accordingly, the admissions marked and issues raised at the trial will be considered first in this judgment in considering the questions of law where Special Leave to Appeal was granted by this court.

The respondent instituted action in the District Court of Colombo against the appellant-company, seeking damages in a sum of Rs. 50 million and legal interest from the 22nd of

December, 1986. Thereafter, the appellant-company filed its answer denying the averments in the plaint and raised preliminary objections with regard to the maintainability of the plaint.

After the pleadings were completed, the trial had commenced by marking admissions and raising issues.

Admissions marked at the trial

The admissions marked in the District Court were as follows;

> *"1) අධිකරණ බලය.*
>
> *2) පැමිණිල්ලේ 2 අ, ආ ඡේදයන්හි පරිදි විත්තිකාර සමාගම ශ්‍රී ලංකාවේ සමාගම් නීතිය යටතේ නිසි ලෙස සංස්ථාපානය කරන සීමාසහිත වගකීමක් සහිත එහි ප්‍රධාන ව්‍යාපාරික ස්ථානය පැමිණිල්ලේ ශීර්ෂයේ දක්වා ඇති බවත්, නෛතික පුද්ගල බව හිමි ප්‍රාදේශීය බල සීමා තුල පිහිටා ඇති බව පිළිගනී*
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> *3) පැමිණිල්ලේ 9 වන ඡේදයේ දක්වා ඇති පරිදි පැමිණිලිකරු මාළිගාකන්ද මහේස්ත්‍රාත් අධිකරණයේ නඩු අංක 72857 දරණ නඩුවේ චුදිත ලෙස ඉදිරිපත් වී විත්ති වාචක ඉදිරිපත් කර එයින් නිදෝස කොට නිදෝස් කළ බව පිළිගනී.*
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> *4) එම නියෝගයට එරෙහිව විත්තිකාර සමාගම අභියාචනයක් ඉදිරිපත් කර නොමැති බව පිළිගනී."*

Issues raised in the District Court

After the admissions were marked, the following issues were raised by the respondent and were accepted by the District Court;

"1) පැමිණිල්ලේ 1වන ඡේදයේ සඳහන් පරිදි පැමිනිල්කරු වෘත්තියෙන් නිතිඥවරයෙකු වන්නේද?

2) විත්තිකාර සමාගම විසින් පැමිණිල්ලේ 4වන ඡේදයක් දක්වා ඇති පරිදි පැමිණිලිකරුට එරෙහිව රු: 950/- ක මුදලක් වංචාවෙන් ලබා ගැනීමට තැත් කාලය යනුවෙන් පොලිසියේ වංචා විමර්ශන අංශයට පැමිණිල්ලක් කරන ලද්දේද?

3) පැමිණිල්ලේ 5වන ඡේදයේ දක්වා ඇති පරිදි එකී පැමිණිල්ල හේතුකොටගෙන 1986.12.22 වන දින පොලීසිය විසින් පැමිණිලිකරු අත් අඩංගුවට ගෙන රිමාන්ඩ් බන්ධනාගාරගත කරන ලද්දේද?

4) පැමිණිලිකරුගේ පැමිණිල්ලේ සඳහන් මාලිගාකන්ද මහේස්ත්‍රාත් අධිකරණයේ නඩු අංක 72857 දරන නඩුකරය පැවරීමට සහ හෝ පවත්වාගෙන යාමට පැමිණිල්ලේ 4 වන ඡේදයේ සඳහන් විත්තිකාර සමාගම විසින් පොලිසියට යවන ලද ලිපිය අනුව නොහැකිය?

5) පැමිණිල්ලේ 11වන ඡේදයේ සඳහන් පරිදි පැමිණිලිකරුට එරෙහිව එවැනි පැමිණිල්ලක් කිරීමට තරම් කිසිදු සාධාරන හේතුවක් හෝ කාරණයක් නොමැතිව විත්තිකරු විසින් පැමිණිලිකරුට එරෙහිව ද්වේශ සහගත ලෙස පැමිණිලි කරන ලද්දේද?

6) ඉහත සඳහන් 72857 දරණ මාලිගාකන්ද මහේස්ත්‍රාත් අධිකරණ නඩුකරය පවරා පවත්වාගෙන යාමට විත්තිකාර සමාගම වක්‍රව හෝ සෘජුව කටයුතු කරන ලද්දේද?

7) පැමිණිල්ල ඉහත සඳහන් අංක 72857 දරන නඩුකරය හේතුකොටගෙන පැමිණිලිකරුට පැමිණිල්ලේ 12 වන පරිච්ඡේදයේ සඳහන් පරිදි බලවත් අලාභ හා පාඩු සිදුවීද?

8) ඉහත සඳහන් පිළිගැනීම හේතුකොටගෙන සහ විසඳනාවන්ගෙන් එකකට හෝ කිහිපයකට හෝ සියල්ලටම පැමිණිලිකරුගේ වාසියට පිළිතුරු ලැබෙන්නේ නම් පැමිණිලිකරුගේ පැමිණිල්ල ඉල්ලා ඇති සහනයන් ලබා ගැනීමට හිමිකමක් ඇත්ද?"

The prayer to the plaint, stated as follows;

"රුපියල් මිලියන පනහක (රු. 50,000,000/=) මුදලක් ද, වර්ෂ 1986 ක්වූ දෙසැම්බර් මස 22 වන දින සිට නීත්‍යනුකූල ප්‍රකාශයේ දින දක්වා, එම මුදල මත වූ නෛතික පොළිය ද සහ එතැන් පටන් නීත්‍යනුකූල ප්‍රකාශයේ මුළු මුදල සම්පූර්ණයෙන් ගෙවා, නිමවන තෙක්, එම මුළු මුදල මත නෛතික පොළිය ද සමග අයකර ගැනීම සඳහා ඉහත කී විත්තිකරුට එරෙහිව නඩු නීත්‍යනුකූලයක් ඇතුලත් කරන ලෙසත්"

Thereafter, the following issues, *inter alia*, were raised on behalf of the appellant-company and were accepted by the District Court;

"09) උත්තරයේ 1(අ) ඡේදයේ අයැද ඇති පරිදි පැමිණිල්ලෙහි සඳහන් ප්‍රකාශය අනුව පැමිණිලිකරුගේ නඩුව කාලාවරෝධී පනතේ 9 වන වගන්තිය යටතේ කාලාවරෝධ වන්නේද?

10) එසේ නම් පැමිණිලිකරුගේ නඩුව සිවිල් නඩු විධාන සංග්‍රහයේ 46(2) වගන්තිය යටතේ ඉවතලිය යුතුද?

11) උත්තරයේ 1(අ) ඡේදයේ අයැද ඇති පරිදි පැමිණිලිකරුගේ නඩුව කාලාවරෝධ වන්නේද?

12) (අ) උත්තරයේ 12 වැනි ඡේදයේ අයැද ඇති පරිදි විත්තිකරු මාලිගාකන්ද මහේස්ත්‍රාත් උසාවියේ නඩු අංක 72857 නඩුවේ පාර්ශවකරුවකු නොවුනිද?

(ආ) එකී නඩුවේ නඩු නීත්‍යනුකූලයට විරුද්ධව අභියාචනයක් ඉදිරිපත් කිරීමට විත්තිකරුට හිමිකමක් නොතිබුනේද?

13) ඉහත කී විසඳනා 9 සිට 13 සහ හෝ ඉන් කිහිපයකට විත්තිකරුගේ වාසියට පිළිතුරු ලැබෙන්නේ නම් පැමිණිලිකරුගේ නඩුව නිෂ්ප්‍රභා කළ යුතුද?"

Paragraph 1(අ) of the Answer filed by the appellant company stated;

"1. පැමිණිල්ලට මූලික විරෝධතාවක් වශයෙන් විත්තිකරු මෙසේ ප්‍රකාශ කර සිටී :-

(අ) පැමිණිලිකරුගේ නඩුව, පැමිණිල්ලේ ප්‍රකාශ වලින්, කාලාවිරෝධී ආඥා පනතේ 9 වන වගන්තිය ප්‍රකාරට කාලාවිරෝධී වී ඇති බව පෙනී යන බවත්, එබැවින් එය නීතියේ නඩ්‍ය රීතියකින් බාධනය කරන ලද නඩුවක් වන බවත් එමනිසා, පැමිණිල්ල ප්‍රමාද දෝෂයකින් පිළිගෙන ඇති බවත් එබැවින්, සිවිල් නඩු විධාන සංග්‍රහයේ 46(2)(1) වන වගන්තිය යටතේ සහ ඒ ප්‍රකාරව ප්‍රතික්ෂේප කළ යුතුය."

The learned President's Counsel for the appellant-company submitted that the cause of action and relief prayed by the respondent were based **not** on the delict of malicious prosecution but on the delict of abuse of process/setting the law in motion and as such, on the face of the plaint the alleged cause of action is prescribed. Further, it was submitted that the delict of malicious prosecution is distinct and different to the delict of abuse of process/setting the law in motion.

In Roman Dutch Law, which is the common law in Sri Lanka, there is a clear distinction between the delict of setting the law in motion and abuse of process, as opposed to malicious prosecution.

In ***"The Law of Delict"*** **by R. G. McKerron (7th Edition),** at page 259, it states;

"Every person has a right to set the law in motion, but a person who institutes legal proceedings against another maliciously, without reasonable and proper cause abuses that right and commits an actionable wrong.

The chief classes of proceedings to which the rule applies are: 1. malicious criminal prosecution: 2. malicious imprisonment or arrest 3. malicious

execution against property 4. Malicious insolvency and liquidation proceedings and 5. malicious civil actions."

Furthermore, at page 259 it states;

"It is also an actionable wrong to procure the imprisonment or arrest of anyone by setting the law in motion against him maliciously and without reasonable cause."

Section 5 of the Civil Procedure Code as amended, defined the cause of action as;

" "cause of action" is the wrong for the prevention or redress of which an action may be brought, and includes the denial of a right, the refusal to fulfill an obligation, the neglect to perform a duty and the infliction of an affirmative injury"

A careful consideration of the aforementioned issues show that the cause of action is set out in issue number 5 raised at the trial. Further, the issue numbers 2, 3, 4, 5, 6, and 7 were based on the delict of setting the law in motion with the intent of malice.

The plaint filed in the District Court

In the plaint filed in the District Court, the respondent alleged that the arrest and remand affected his profession, and the damages are claimed from the date of his arrest, which took place on the 22nd of December, 1986. Moreover, the claim of damages pleaded in the prayer to the plaint is linked to the averments in the plaint in respect of the arrest and remanding of the respondent**.**

Further, the cause of action set out in averments 12, 13 and 14 of the plaint, was based on the delict of setting the law in motion and the claim for damages is linked to the arrest and remanding of the respondent**.** Thus, the cause of action stated in averment 12 of the plaint are followed by averments 13 and 14, and also connected to the prayer (a), which stated that the respondent sought damages in a sum of Rs. 50 million and interest to be calculated from the 22nd of December, 1986.

Furthermore, the cumulative effect of the issues raised by the respondent show that the 22nd of December, 1986 was the date on which the respondent was arrested and remanded upon the

complaint made by the appellant-company. Thus, it is apparent that the cause of action is based on the appellant-company making a complaint to the Police against the respondent, and setting the law in motion against the respondent which resulted in arresting and remanding him.

Did the Court of Appeal fall into substantial error by completely ignoring the provisions of Section 9 of the Prescription Ordinance?

Moreover, in terms of section 9 of the Prescription Ordinance, action for damages should be filed within 2 years of the arrest. However, the alleged arrest and remanding of the respondent had taken place on the 22nd of December, 1986 and he filed the action on the 27th of April, 2001. Hence, the alleged cause of action is *ex facie* time barred by a positive rule of law.

However, the District Court and the Court of Appeal have held that, the cause of action pleaded by the respondent is for damages arising from the delict of malicious prosecution and that the prescriptive time period, should be calculated not from the date of arrest and remanding him, but from the date of acquittal from the Magistrates' Court which was the 7th of July, 1999. Hence, the action instituted on 27th of April, 2001 was within the two year prescriptive period as set out in the Prescription Ordinance. As stated above, a careful consideration of the averments in the plaint and particularly the issues raised at the trial shows that the District Court and the Court of Appeal erred in law by holding that the cause of action pleaded by the respondent is the delict of Malicious Prosecution.

In the circumstances, I set aside the judgments delivered by the learned District Judge dated 11th of June, 2003 and the learned Judges of the Court of Appeal dated 2nd of February, 2009 and answer the questions of law as follows;

"4. Did the Court of Appeal fall into substantial error by failing to consider that the "wrong for redress of which an action was brought," was the tort of abuse of process and not malicious prosecution, on the Respondent's own showing?"

Yes

"5. Did the Court of Appeal fall into substantial error by completely ignoring the provisions of Section 9 of the Prescription Ordinance?"

Yes

Further, taking into consideration the aforementioned legal position, I answer the 6th question of law as follows;

"6. Did the Court of Appeal err by failing to appreciate that the Respondent's action is prescribed in terms of section 9 of the Prescription Ordinance, in as much as on the respondent's own admission, his stated cause of action that patrimonial loss of Rupees Fifty Million (Rs. 50,000,000/-) has only been claimed in respect of setting the law in motion by an allegedly unjustified complaint, leading to the Respondent's arrest and remand?"

Yes

In view of the answers given to the above questions of law, it is not necessary to answer the other questions of law where Leave to Appeal was granted. In these circumstances, I answer the following issues raised in the District Court as follows;

Issue no. 9; "*උත්තරයේ 1(අ) ඡේදයේ අයැද ඇති පරිදි පැමිණිල්ලෙහි සඳහන් ප්‍රකාශය අනුව පැමිණිලිකරුගේ නඩුව කාලාවරෝධී පනතේ 9 වන වගන්තිය යටතේ කාලාවරෝධ වන්නේද?*

Yes

Issue no. 10; "*එසේ නම් පැමිණිලිකරුගේ නඩුව සිවිල් නඩු විධාන සංග්‍රහයේ 46(2) වගන්තිය යටතේ ඉවතලිය යුතුද?"*

Yes

Issue no. 11; "*උත්තරයේ 1(අ) ඡේදයේ අයැද ඇති පරිදි පැමිණිලිකරුගේ නඩුව කාලාවරෝධ වන්නේද?"*

Yes

Issue no. 13; "*ඉහත කී විසඳනා 9 සිට 13 සහ හෝ ඉන් කිහිපයකට විත්තිකරුගේ වාසියට පිළිතුරු ලැබෙන්නේ නම් පැමිණිලිකරුගේ නඩුව නිෂ්ප්‍රභා කළ යුතුද?*"

Yes

Appeal is allowed. The aforementioned plaint filed in the District Court is dismissed.

No costs.

Judge of the Supreme Court

Achala Wengappuli, J

I agree

Judge of the Supreme Court

Arjuna Obeyesekere, J

I agree

Judge of the Supreme Court