

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

Case No. SC Appeal 128/19

Case No. SC/SPL/LA/436/2018

**Appeal No. HC Kurunegala
56/2017**

MC Kurunegala Case No. 33548

In the matter of an Application for Special Leave to Appeal from the Judgment pronounced on 12.11.2018 by the High Court of the North-Western Province Holden in Kurunegala in High Court Appeal No.56/2017 in terms of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990 read with Article 154P of the Constitution and Supreme Court Rules 1990.

B. A. H. M. Balasuriya,
Public Health Inspector/
Authorized Officer,
Pansiyagama.

Complainant

Vs.

1. W. R. M. Sumanathissa Bandara,
Sumanathissa Boutique,
Angulgamuwa,
Pansiyagama.
2. Manager,
Chanthima Distributors,
No. 419, Dampitiya Watta,
Thorayaya,
Kurunegala.
3. Coca-Cola Beverages Sri Lanka
Ayathanaya,
Tekkawatta,
Biyagama.

Accused

AND BETWEEN

1. W. R. M. Sumanathissa Bandara,
Sumanathissa Boutique,
Angulgamuwa,
Pansiyagama.
2. Coca-Cola Beverages Sri Lanka
Ayathanaya,
Tekkawatta,
Biyagama.

1st and 3rd Accused – Appellants

Vs.

B. A. H. M. Balasuriya,
Public Health Inspector/
Authorized Officer,
Pansiyagama.

**Complainant -
Respondent**

Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondent

AND NOW BETWEEN

Coca-Cola Beverages Sri Lanka
Ayathanaya,
Tekkawatta,
Biyagama.

**3rd Accused – Appellant -
Appellant**

Vs.

B. A. H. M. Balasuriya
Public Health Inspector/
Authorized Officer,
Pansiyagama.

**Complainant – Respondent –
Respondent**

Hon. Attorney General,
Attorney General’s Department,
Colombo 12.

Respondent – Respondent

W. R. M. Sumanathissa Bandara,
Sumanathissa Boutique,
Angulgamuwa,
Pansiyagama.

**1st Accused – Appellant –
Respondent**

BEFORE:

Hon. Murdu N. B. Fernando, PC., J.
Hon. K. Kumudini Wickremasinghe, J.
Hon. Achala Wengappuli, J.

COUNSEL:

Gamini Marapana, PC., with Navin
Marapana, PC., Uchitha Wickremesinghe and
Thanuja Meegahawatta for the 3rd Accused-
Appellant-Appellant.

Madhawa Tennakoon, DSG, for the Hon.
Attorney General.

ARGUED ON:

07.03.2022

WRITTEN SUBMISSIONS:

25.02.2020 and 07.04.2022 by the 3rd
Accused- Appellant- Appellant

18.01.2021 by the Respondents

DECIDED ON: 27.10.2022

K. KUMUDINI WICKREMASINGHE, J.

The 3rd Accused- Appellant- Appellant Company (hereinafter referred to as the “Appellant”) engages in manufacturing and bottling of carbonated drinks. In this appeal, the Appellant seeks to set aside the Judgment delivered by the High Court of Kurunegala which affirmed the Judgment and Sentencing Order of the Learned Magistrate of Kurunegala.

By application dated 14.12.2018, the Appellant sought Special Leave to Appeal from the Supreme Court to set aside and/ or vary the Provincial High Court Judgment.

Having heard submissions of both Counsel, this Court was inclined to grant Special Leave to Appeal on the following question of law;

“Has the learned High Court Judge erred in Law by failing to consider the objection of the Accused that the action had been instituted against them by the Complainant after the lapse of 3 months from the detection of the alleged offence in contravention of the provisions in Section 20(1)(b) of the Food Act as amended?”

The 1st, 2nd and 3rd Accused were respectively charged in the Magistrate’s Court of Kurunegala under Section 2(1)(b) of the Food Act, No. 26 of 1980 read with Section 2 (1) (a) of the Food (Amendment) Act, No. 20 of 1991 for having sold, distributed and manufactured Fanta Cream Soda unfit for human consumption with impurities. The said bottle was purchased by one Abeysuriya on 10.02.2011. However, he had lodged a complaint to the Public Health Inspector only on 24.05.2011, after a lapse of 3 months from the date of purchasing the bottle.

By way of original Charge Sheet dated 27.05.2011, the prosecution was instituted against the 1st, 2nd and 3rd Accused. By way of an amended Charge Sheet dated 09.12.2011, the charges against the accused were altered to having sold, distributed and manufactured Fanta Cream Soda unfit for human consumption with an impurity consisting of black spots & white substance. After the accused pleaded not guilty to the charges, the case proceeded to trial.

At the conclusion of the trial, the 3rd Accused tendered written submissions, after which a date was fixed for the pronouncement of the judgment. This date was subsequently postponed several times. The court had thereafter, on its own accord, caused to summon the Additional Approved Analyst to lead evidence for the prosecution, overruling the objections of the Accused.

On 15.09.2017, the Learned Magistrate acquitted the 2nd accused and convicted the 1st and 3rd accused. Thereafter imposed a fine of Rs. 10,000/- each on the 1st and 3rd accused. Aggrieved by the Judgment and Sentence, the 1st and 3rd accused preferred an appeal to the High Court of the North-Western Province holden in Kurunegala, which dismissed the appeal while affirming the Judgment of the Magistrate Court.

The Appellant has now preferred the instant appeal to the Supreme Court seeking to set aside the Judgment of the High Court dated 12.11.2018 and the conviction and sentence imposed by the Learned Magistrate dated 15.09.2017.

The 3rd Accused- Appellant- Appellant was charged with committing an offence under Section 2(1)(b) of the Food Act read together with Section 2(1)(a) of the Food (Amendment) Act for having manufactured, on or about 18.01.2011, Fanta Cream Soda with an impurity, an offence punishable under Section 18(1)(a) of the Act read with Section 14(1)(a) of the amendment.

Section 2(1)(b) of the Food Act, as amended by Act No. 20 of 1991, is as follows:

No person shall manufacture, import, sell, expose for sale, store or distribute any food that is unfit for human consumption;

Section 18(1)(a) of the Food Act, as amended, imposes penalties for contravening the provisions of the Act.

Now I will proceed to address the question of law based on which leave to appeal was granted. It is the contention of the Appellant Company that the prosecution which was instituted by the Complainant is statutorily time barred in terms of Section 20 (1) (b) of the Food Act.

Section 20 (1) of the Food Act, as amended, is reproduced as follows:

20. (1) A prosecution for an offence under this Act or any regulations made thereunder shall not be instituted-

- a) except by an Authorized Officer; and*
- b) after the expiration of **three months**, from the date of detection of that offence or where sampling is done, from the date of sampling;*

It is evident that Section 20 (1) (b) prescribes a time bar in relation to instituting a prosecution for any offence committed under the Food Act. There are two distinct strands of authority relating to the issue whether the non-adherence with this statutory time bar should, by itself, be held against a prosecution instituted by the State.

The first line of authority is based on the common law principle *nullum tempus occurrit regi*, which means, ‘no time runs against the King’. The maxim purports to exempt the State from instituting prosecution for an offence despite the period of limitation, and is inconceivably based on the

general rule of criminal justice that crime never dies. On the other hand, arguments have also been instituted based on the maxim *vigilantibus et non dormientibus, jura subveniunt*, which means, ‘the law assists the vigilant and not the sleepy’.

There are several judicial pronouncements which observe that, given that the object of criminal law is to punish perpetrators of crime, Courts should not dismiss the prosecution solely on the ground of a delay in instituting the action.

In ***Raja Nanayakkara vs. Mercy Jayasinghe and Others [2004 2 Sri L.R. 416]***, the Court of Appeal of Sri Lanka observed that:

“Section 9 of the Prescription Ordinance speaks of “within two years from the time when the cause of action shall have arisen”. It appears that the word “from” means that the computation of the two year period commences after excluding the day on which the cause of action accrued.”

It is evident from the abovementioned case that the amount of time for prescription commences “**from**” the day the cause of action arose which is the date of purchase of the Fanta Cream Soda Bottle.

In ***Attorney General vs. Wilson and others [1997 2 Sri L.R. 349]***, the Court of Appeal of Sri Lanka observed that:

“We can thus conclude that the position of the Crown in regard to limitations is that in so far as prescription is claimed against the Crown in actions instituted by it, there is no principle of law upon the basis of which immunity from prescription may be claimed by the Crown, where its inalienable rights are not involved”. In the present case the Attorney General has on behalf of the State sought to recover damages six and a half years after the alleged cause of action had arisen. This claim for

damages by the State is prescribed after the lapse of a period of three years according to the Roman Dutch Law.”

An obvious conclusion can be drawn from the abovementioned case that the time bar contained in section 20 (1) (b) of the Food Act applies to all actions including actions instituted by the crown and therefore the action is prescribed.

In ***Japani Sahoo vs. Chandra Sekhar Mohanty [AIR 2007 SC 2762]***, the Supreme Court of India observed that:

“The general rule of criminal justice is that “a crime never dies”. The principle is reflected in the well- known maxim nullum tempus aut locus occurrit regi (lapse of time is no bar to Crown in proceeding against offenders)... It is settled law that a criminal offence is considered as a wrong against the State and the Society even though it has been committed against an individual. Normally, in serious offences, prosecution is launched by the State and a Court of Law has no power to throw away prosecution solely on the ground of delay. Mere delay in approaching a Court of Law would not by itself afford a ground for dismissing the case though it may be a relevant circumstance in reaching a final verdict.”

The Supreme Court of India also adopted this opinion in ***Assistant Collector of Customs vs. U.L.R. Malwani and another [AIR 1970 SC 962]***, where it was held that:

“The question of delay in filing a complaint may be a circumstance to be taken into consideration in arriving at the final verdict. But by itself it affords no ground for dismissing the complaint. Hence we see no substance in the contention that the prosecution should be quashed on the ground that there, was delay in instituting the complaint.”

Conversely, in the aforementioned **Japani Sahoo** judgment (*supra*), the Court extensively discussed arguments in favour of prescribing periods of limitation for criminal prosecutions. Among the justifications set out by the Court are that such periods of limitation would prevent the prosecution story being doubted due to uncertainty of evidence caused by inordinate delay, that it would be in accordance with the sense of social retribution which would otherwise be adversely affected by the delay, and that it would serve the wider interest of administration of criminal justice in pressuring the organs of State in ensuring the quick detection and punishment of the crime.

In the Indian Judgment of **State of Punjab v. Sarwan Singh, [AIR 1981 SC 1054]** the Supreme Court, while observing the implications of setting out a period of limitation in the provisions of its Criminal Procedure Code, held that;

“The object of the Criminal Procedure Code in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time, as a result of which material evidence may disappear and also to prevent abuse of the process of the court by filing vexatious and belated prosecutions long after the date of the offence. The object which the statutes seek to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Art. 21 of the Constitution of India. It is, therefore, of the utmost importance that any prosecution, whether by the State or a private complainant must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation.”

Prior to analyzing the arguments of the instant case, it is also pertinent to briefly touch on Section 473 of the Code of Criminal Procedure of India (1973) for contextual purposes. The section provides for an extension of the period of limitation in certain cases, and reads as follows:

Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may make cognizance of an offence after the expiry of the period of limitations, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

However, it must be noted herein that no equivalent provision to the abovementioned section exists within the law of Sri Lanka. Section 456 of the Code of Criminal Procedure Act, No. 15 of 1979 merely stipulates a generally applicable statutory bar on the right of the prosecution for crimes or offences.

Section 456 is as follows:

The right of prosecution for murder or treason shall not be barred by any length of time, but the right of prosecution for any other crime or offence (save and except those as to which special provision is or shall be made by law) shall be barred by the lapse of twenty years from the time when the crime or offence shall have been committed.

Accordingly, it is now evident that Section 20 (1) (b) of the Food Act is a special provision which falls within the aforementioned exception, as it expressly provides for a time limit within which a prosecution for an offence committed under the Act ought to be instituted. Therefore, the statutory time bars set out in Section 20 (1) (b) of the Food Act and Section 456 of the Code of Criminal Procedure ought to be interpreted in light of the object of Article 13 (3) of our Constitution, which guarantees to every person the fundamental right to a fair trial.

Having stated these considerations, I will now proceed to determine, with reference to the facts and circumstances of this case, whether the prosecution was actually instituted within the statutorily mandated time period.

The Fanta Cream Soda bottle in question was purchased by one Abeysuriya on 10.02.2011. However, he had lodged a complaint to the Public Health Inspector only on 24.05.2011, which, by itself, is after a lapse of over 3 months from the date of purchasing the bottle. Thereafter, the charge sheet was filed and prosecution was instituted against the 1st, 2nd and 3rd Accused on 27.05.2011. Section 20 (1) (b) of the Food Act requires a prosecution for an offence under the Act to be instituted no more than 3 months from the *date of detection of the offence*. (වරද අනාවරණය කර ගත් දිනයේ සිට, or, as stated in the Amendment, වරද අල්ලාගත් දිනයේ සිට)

The Learned Counsel for the Appellant submits that the actual point of detection for purposes of Section 20 (1) is from the date when the virtual complainant himself *detects* or *discovers* the commission of the alleged offence, and not from the date of complaint to the Authorized Officer. Therefore, it is submitted that, as the offence was detected on 10.02.2011, and as the prosecution was instituted only after the lapse of 3 months from the said date (that is, on 27.05.2011), the action ought to be statutorily time barred under Section 20 (1) (b) of the Food Act.

On the other hand, the Learned Deputy Solicitor General for the Respondents contends that the action against the Appellant was instituted well within the stipulated time. The central argument of the Respondents is that the word 'detection' as used in Section 20 of the Food Act has been used with a specific meaning to it, *i.e., the detection of an offence by law enforcement officials and/or for law enforcement purposes*. Therefore, it is the submission of the Respondents that the point of detection should not be 10.02.2011, but instead be the date on which the complaint was received by the Authorized Officer, that is, 24.05.2011.

The Respondents also buttress this point stating that, in the same manner as Section 20 requires a prosecution to be conducted by an 'Authorized Officer', the detection of the offence too ought to be done by a similar

Authorized Officer. As Abeysuriya, who purchased the bottle of Fanta Cream Soda, could not be considered an Authorized Officer under the Food Act, it cannot be said that the offence was detected by him. Therefore, it is claimed that the date of detection is the date of receiving the complaint.

The Oxford English Reference Dictionary (Oxford University Press, 1995) sets out the definition of the word “detection” as follows:

1a- the act or an instance of detecting: the process of being detected.

b- an instance of this.

Furthermore, the word “detect”, is defined as:

1a- to reveal the guilt of: discover

b- discover (a crime)

2- discover or perceive the existence or presence of

It is a cardinal rule of statutory interpretation, that if the language used by the Legislature is clear and unambiguous, a court of law has only to expound the words in their natural and ordinary sense. The same is espoused in the legal maxim *verbis plane expressis omnino standum est*. In the landmark case of ***Nokes vs. Doncaster Amalgamated Collieries [1940] AC 1014*** the Lord Chancellor Viscount Simon held that “[T]he golden rule is that the words of a statute must *prima facie* be given their ordinary meaning.”

Furthermore, in the ***Sussex Peerage Case [1844] 8 ER 1034*** Lord Tindal observed that

“The rule for the construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are of themselves precise and unambiguous, then no more can be necessary than to expound those

words in their natural and ordinary sense. The words themselves do, in such case, best declare the intention of the Legislature.”

N. S. Bindra’s Interpretation of Statutes (8th Edition, 1997) explains at page 435 on the ordinary and natural meaning of words to be adhered to in the first instance:

In construing a statutory provision, the first and foremost rule of construction is the literary construction... If the provision is unambiguous and if from that provision, the legislative intent is clear, we need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intention is not clear.

In the context of these authorities, it is my view that the argument of the Respondents in giving an unnaturally broader meaning to the phrase ‘detection of an offence’ under Section 20 so as to construe detection being done by law enforcement officials and/or for law enforcement purposes, would create unnecessary confusion and be antithetical to the intention of Parliament. It would certainly be in conflict with the Legislative intent behind prescribing a period of limitation for criminal prosecutions instituted under the Food Act. Furthermore, it would divert from the object of the judiciary to construe a word which is precise and unambiguous in its natural and ordinary meaning.

In the judgment of **L. H. M. B. B. Herath, Chief Manager Welfare and Industrial Relations, Sri Lanka Ports Authority vs. Morgan Engineering (Pvt.) Ltd. (S C Appeal No. 214/2012 decided on 27th June 2013)** at page 6 His Lordship Justice Sripavan (as His Lordship was then), when interpreting the provisions of the State Lands (Recovery of Possession) Act, observed as follows:

“If the language of the enactment is clear and unambiguous, it would not be legitimate for the Courts to add words by implication into the language. It is a settled law of interpretation that the words are to be interpreted as they appear in the provision, simple and grammatical meaning is to be given to them, and nothing can be added or subtracted.”

It is well-known that the primary duty of the Court is to give effect to the intention of the Legislature as expressed by the words of a statute. When the statutory language shows no ambiguity or confusion, it would be unwise for the Court to impart its own gloss on it so as to accord it some meaning contrary to that set out in the language of the law. For this reason, I hold that the Respondents’ argument on the interpretation of Section 20 (1) (b) of the Food Act holds no merits.

It is contended that the intention of the Legislature by imposing a time bar as contained in Section 20 (1) (b) of the Food Act for instituting an action was to ensure *inter alia* credibility of the Complainant, as it is with the expectation that a Complainant will initiate an action by bringing the offence to the notice of the relevant Officers at the earliest point of discovery that the offence had taken place. The fact that the Complainant in this case waited for a period of an excess of 3 months from the date of detection before lodging the complaint to the Public Health Inspector can create a doubt in the prosecution.

As a period of three months had lapsed since the date of detection of the offence, I hold that the prosecution is time barred under the provisions of Section 20 (1) (b) of the Food Act. Accordingly, I hold that the substantive question on which leave to appeal has been granted by this Court should be answered in the affirmative and in favour of the Appellant.

Section 20 is a provision in the Food Act which requires mandatory compliance, and the failure of the Respondents to adhere to its provisions

had caused a procedural irregularity which has violated the right of the 3rd Accused- Appellant- Appellant to a fair trial.

For the foregoing reasons, this appeal is allowed and hold that the 3rd Accused- Appellant- Appellant be acquitted and discharged. Accordingly, the conviction and the sentence imposed on the 3rd Accused- Appellant- Appellant in the Magistrates Court of Kurunegala dated 15.09.2017 and the judgment of the High Court of Kurunegala dated 12.11.2018 are hereby set aside. This Court does not make an order for costs in the circumstances of this case.

JUDGE OF THE SUPREME COURT

MURDU N. B. FERNANDO, PC., J.

I agree.

JUDGE OF THE SUPREME COURT

ACHALA WENGAPPULI, J.

I agree.

JUDGE OF THE SUPREME COURT