*Privy Council Appeal No. 53 of* 1950

**Arthur Reginald Perera** - - - - - - - - *Appellant*

*v.*

**The King** - - - - - - - - - - - - *Respondent*

FROM

## THE SUPREME COURT OF CEYLON

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## REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 28TH FEBRUARY, 1951

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*Present at the Hearing :*

LORD SIMONDS
LORD MORTON OF HENRYTON
LORD RADCLIFFE

[*Delivered by* LORD RADCLIFFE]

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This is an appeal by special leave from an Order of the Supreme Court of Ceylon dated 25th July, 1950, whereby the Appellant was ordered to pay a fine of Rs. 500 and, in default of payment, to undergo six weeks rigorous imprisonment. This sentence was imposed by the Court (*Basnayake, J.*) as a punishment for a contempt of Court of which he held the Appellant to have been guilty.

Owing to the nature of the proceedings there could be no appeal in Ceylon from this Order. The Appellant was however granted special leave to appeal by His Majesty in Council ; and Their Lordships have applied to his case the same general rules as it is their practice to apply on the occasions when appeals from criminal convictions are before the Board. The Respondent was not represented at the hearing of the appeal or of the petition for special leave.

The Appellant, Mr. Perera, is a member of the House of Representatives in Ceylon. On the 20th June, 1950, he paid a visit to the Remand Prison at Colombo and was escorted round the prison by one of the jailors. It appears that for many years past it was the practice that members of the State Council should make occasional visits to public institutions for the purpose of information or inspection, and after 1948, when the House of Representatives came into being, the practice was continued by members of that House. The Prison Amendment Ordinance (No. 53 of 1939) S. 35 makes provision for the Jailor of a prison to keep, *inter alia,* a Visitors' Book in which Judges of the Supreme Court, Senators or members of the House of Representatives (as it now reads) and members of the Board of Prison Visitors may record observations or recommendations after a visit paid to the prison ; and by the same Ordinance a direction is given that a copy of each new entry in the Visitors' Book is to be forwarded to the Inspector-General of Prisons.

In the course of this visit Mr. Perera received a complaint from some prisoners to the effect that they had not been present in Court when their appeals against conviction were being heard. He asked the jailor accompanying him whether it was the case that some prisoners were not taken to Court on such occasions and was told " We do not take all the prisoners, but only those who are undefended ".

It has become clear in these proceedings that that was not an accurate answer. The only foundation for it was the then prevailing practice of the High Court in dealing with unstamped petitions of appeal. These petitions were referred to a Judge in Chambers, Mr. Justice Basnayake, who either rejected the petition for want of compliance with the due procedure or acted in revision in any that he regarded as deserving cases. This practice, which has since been abandoned, appears to have originated in an order of the former Chief Justice. It involved no differentiation between prisoners who were and prisoners who were not defended : nor did it amount to the hearing of anything that could be called an appeal in the absence of the Appellant. But these particulars Their Lordships have extracted from a letter which the Registrar of the Supreme Court furnished to Mr. Perera, at his request, after the Court had found him guilty of contempt and imposed its fine. They were not known to him at the date of his visit to the Remand Prison.

Relying on what he had heard from the prisoners and the Jailor, Mr. Perera made the following entry in the prison Visitors' Book :—

> " Visited Remand Prison in the company of Jailor Wijewardena. Premises Clean. Adequate library facilities required. The present practice of appeals of Remand prisoners being heard in their absence is not healthy. When represented by Counsel or otherwise the prisoner should be present at proceedings. In my opinion not more than one prisoner should be in a cell (7 × 9) approximately."

It can be said at once that there was no reason at all to suppose that Mr. Perera, in making these observations, was acting with any other purpose than that of calling attention to an undesirable practice which had been brought to his attention. His visit to the Prison had been undertaken as part of his public duties, and the Visitors' Book no doubt presented itself to him as the obvious place in which to record his comments and recommendations. On the day following his visit he wrote a letter to the Minister of Home Affairs and Rural Development bringing to his notice the substance of what he had recorded in the Visitors' Book and asking him to have these matters inquired into and redress provided.

The rest of the story can be shortly told. On the 29th June, 1950, the acting Commissioner of Prison and Probation Services forwarded Mr. Perera's remarks to the Registrar of the Supreme Court, asking for his observations. The Registrar submitted the paper to Basnayake, J. as the judge in charge of unstamped petitions from prisoners in jail and the learned judge then wrote upon it the following Minute :—

" Registrar,

> The statement is incorrect and is a contempt of the Court. Issue a rule on A. Reginald Perera returnable on Tuesday the 25th. I shall sit specially on that day.
>
> (Sgd.) *Hema Basnayake,*
> 11/7/50."

Thereupon a Rule returnable on the 25th July was issued and served on Mr. Perera, ordering him to appear before Basnayake, J. on that day and show cause why he should not be punished for Contempt of Court in making in the Visitors' Book of Colombo Remand Prison the entry that has been set out above. On the day named Mr. Perera attended the Court. He first requested that he might have further time, since he needed to obtain some documents not in his possession and further legal advice. This request was refused. He then made a statement to the Judge.

It is not necessary to go through it. Its purport was to explain without ambiguity the circumstances that had led to his making the entry complained of and to inform the Court that in so doing he had acted in pursuance of his duties as a member of the Legislature and that he had no intention of bringing the Court into disrepute or contempt. In response to the Judge's questioning he made it clear that he had acted on the strength of the information given to him by the jail authority and that he had not been able to investigate the matter for himself. Finally, he submitted that his entry in the Visitors' Book did not amount to Contempt of Court. The learned Judge pronounced him to be guilty of contempt and sentenced him to pay a fine of Rs. 500, in default to undergo six weeks rigorous imprisonment.

Their Lordships are satisfied that this Order ought not to have been made. They have given the matter the anxious scrutiny that is due to any suggestion that something has been done which might impede the due administration of justice in Ceylon. And it is proper that the Courts there should be vigilant to correct any misapprehension in the public that would lead to the belief that accused persons or prisoners are denied a right that ought to be theirs. But Mr. Perera too has rights that must be respected, and Their Lordships are unable to find anything in his conduct that comes within the definition of Contempt of Court. That phrase has not lacked authoritative interpretation. 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 lawful process of the Courts" : see *Reg* v. *Gray* 1900 2 Q.B. 36.

What has been done here is not at all that kind of thing. Mr. Perera was acting in good faith and in discharge of what he believed to be his duty as a member of the Legislature. His information was inaccurate, but he made no public use of it, contenting himself with entering his comment in the appropriate instrument, the Visitors' Book, and writing to the responsible Minister. The words that he used made no direct reference to the Court, or to any judge of the Court, or indeed to the course of justice, or to the process of the Courts. What he thought that he was protesting against was a prison regulation, and it was not until some time later that he learnt that, in so far as a petitioner had his petition dealt with in his absence, it was the procedure of the Court, not the rules of the prison authorities, that brought this about. Finally, his criticism was honest criticism on a matter of public importance. When these and no other are the circumstances that attend the action complained of there cannot be Contempt of Court.

At the time of the hearing of the appeal the Respondent had not entered an appearance. It was however brought to Their Lordships' attention that there seemed to be some misunderstanding on the Respondent's part as to the parties to the appeal. In the special circumstances they therefore gave a direction that, before tendering their advice to His Majesty, they would hear any representations that the Respondent might wish to place before them, such representations to be confined to the question of costs. At an adjourned hearing the Respondent appeared by Counsel. Having taken into consideration what was urged before them Their Lordships have humbly advised His Majesty that the appeal should be allowed and the Order of the Supreme Court of Ceylon dated 25th July, 1950 set aside, any moneys paid by the Appellant by way of fine to be repaid to him and the Respondent to pay his costs (if any) of the proceedings in Ceylon. The Respondent must pay the Appellant's costs of the appeal, excluding any costs of the adjourned hearing.

(11663) Wt. 8137—69 100 5/51 D.L./PI/3

**In the Privy Council**

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**ARTHUR REGINALD PERERA**

*v.*

**THE KING**

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DELIVERED BY LORD RADCLIFFE

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