

Trial Monitoring report

About the case: FR hearings related to Easter Attacks

Case no.: SC FR 163/2019, SC FR 165/2019, SC FR 166/2019, SCFR 184/2019, SC FR 188/2019, SC FR 191/2019, SC FR 193/2019, SC FR 195/2019, SC FR 196/2019, SC FR No. 197/19, SC FR 198/2019, SCFR 293/2019

Court: Supreme Court - 501

Date of hearing: 4<sup>th</sup> of October, 2022

Author (s) of report: Rasma MRF

1. Who was in courts:

Who	Names / other information	Comments
Judge (s)	Jayantha Jayasuriya, PC, CJ B.P. Aluwihare, PC,J Murdu N.B. Fernando, PC,J S. Thurairaja, PC,J. A.L. Shiran Gooneratne, J A.H.M.D.Nawaz, J . L.T.B.Dehiddeniya, J	
Attorney General's Dept.	Mr. Priyantha Nawana- Senior Additional Solicitor General (SDAG)	
Police (CID / TID etc.)		
Accused / Suspects		
Lawyers for accused / suspects		
Aggrieved party		
Lawyers for aggrieved party		
Supporters of accused / suspects		
Supporters of aggrieved party		
Others	Media reporters, apprentices and many visiting lawyers	

2. What happened in court hearing?

(Specific details as possible)

The submission was continued from the last hearing. Page 109 of the dossier was mentioned, Document marked A9 which was a letter by Mr.Sisira Mendis addressed to the IGP. The letter included the details about the intel information from SIS regarding National Thawheed Jamath (NTJ) associates planning to attack several churches and a certain foreign mission. A contemporaneous document in Page 157 of the dossier which was an endorsement made by Mr.Sisira Mendis which was dispatched to take immediate action concerning the attack was also mentioned.

The SDAG mentioned another small dossier which was already submitted to the Judges. 1<sup>st</sup> synopsis of the second paragraph of a photocopied page in that small dossier contained the provisions of Criminal Procedure Code. The SDAG quoted Section 107 and subsections 1,2,3 to

prove the point that the Police should take necessary action to prevent a cognizable offense. Section 156 of the Police Ordinance was also mentioned in this regard. The SDAG also mentioned the UN resolution 17 of 1979 for Law Enforcement Officials by Committee of Nations to prove the point that 'Maximum ability should be used to prevent a crime'. State Counsel, when furthering his argument told that, usage of word in the resolution "Interpose" contains vital meaning as far as prevention is concerned. It means putting forth the intervention to prevent a crime'.

The SDAG contended that Sisira Mendis and Nilantha Jayawardene acted in a reasonable manner in an administrative sense by transmitting the information to necessary officials. This point of correctness or reasonableness of a public officer was further proven by mentioning the *AP province V Winsbury*.

"The criteria of a police to act is on an information which can be perceived by senses. It was not beta, alpha or any other sign languages, but the right facts that were transmitted" said the SDAG. He also said that the right decision has been made by Sisira Mendis on the input made by Nilantha Jayawardene. And then he mentioned the affidavit by Nilantha Jayawardene dated 9<sup>th</sup> of April 2019 in which he has mentioned four individuals who were key persons in the attack namely, Sahran, Shahid, Milhan and Rilwan.

When the Judge asked as to what actions were taken by the IGP, the SDAG mentioned the document marked R4A in 126<sup>th</sup> page of the dossier. The document contains four correspondences made by the IGP to the following recipients; Senior Deputy Inspector of police (SDIG) (Western province), SDIG (Crimes and STF), SDIG (Special Protection Range) and the Director of Central Investigation Department (CID). Since the documents is a composite one, the SDAG contended that only a summarized table is given in the dossier. Only Priyala Dasanayake replied to the letter by taking action of alerting VVIPs about the information, which the SDAG contended that he did not derelict from his duty. The SDAG also mentioned that according to this, the point is proven that the information given by Sisira Mendis is in fact actionable.

And then the judge asked as to what could have been done by the IGP more than this and the SDAG replied that giving the imminency of the matter, what he did was not enough and obviously the matter cannot be tackled by sending out few letters. Also, the long-term acts of Nilantha J. such as placing concept notes and imminent responses of him to necessary officials did demand action from higher officials.

Nilantha J did not stop right there. Then he followed up on the incident that took place on 16<sup>th</sup> of April, 2019 in Thalankuda, Kattankudy where a motorcycle was exploded. Nilantha J suspected it could be a dry-run and rehearsal for the attacks and properly reported the incident.

The Judge asked that "in normal circumstances, how the letters to these officials are given?" and the SDAG said that they are hand-delivered, yet no evidence to prove the fact. And then the SDAG walked the Judges through a document marked R13 which included the affidavit of Nilantha J that explains the sequence of actions taken by him from 4<sup>th</sup> of April 2019. He did send a letter requesting to arrest those who were involved in the 'motorcycle incident' which was accepted by the IGP, according to his affidavit. Mentioning this, the SDAG told the Judges that all these items are circumstantial evidences to prove Nilantha J's acts to prevent the attack.

The SDAG contended the fact that IGP's (wrong) serial numbering to the correspondences he received from his sub ordinaries and only keeping them in the documentation (not acting upon

it) is dereliction of his duties eviscerated from the state and let the state become the victim. And then the SDAG mentioned it as 'Principle of evisceration' and the Judge asked whether there is a legal principle like that. The SDAG replied that it is a metaphorical term to suggest the removal of duties. And also he stated that the wrong serial numbering of the letters say that the IGP did not understand the weight of the content.

The SDAG told the court that Nilantha J has alerted the higher officials regarding the attack with names, their passport numbers, addresses, telephone numbers etc. page 42 of the dossier contains a list of 42 men provided by Nilantha J who subscribed to religious extremism. In another instance, on 31<sup>st</sup> of January 2019, a letter was sent to DIG Seneviratne containing 129 names and other details of people who subscribed to AL-Qaidha like religious extremism who were members of both National Thawheed Jamath and Jamath-e-Islami. Altogether, 97 reports were submitted to the IGP regarding this and 11 reports to the secretary of defense. SDAG stated that those were not reports of random incidents or isolated ones but a series of documentation.

And then the SDAG mentioned WhatsApp screenshots sent by Nilantha J to SoD, IGP and SDIG-CID on 20<sup>th</sup> April, 2019. Message to the IGP was sent around 4.43 pm. This was further substantiated/corroborated by the affidavit of SoD dated 18<sup>th</sup> April, 2019. The same message was sent to SoD around 6.02 pm. The IGP has replied 'well received' and the SASG asked the honorable courts that whether this is the conduct expected as a rational response when he got an information about an imminent attack? Nilantha J did send the message to SDIG too. He also followed up with a call to SoD at around 5 pm on 20<sup>th</sup> April, 2019. Mentioning that, the SASG told the Judges that there were three affidavits provided by SoD with contradictory positions. In one of the affidavits, the SoD has told that he did not receive such a message.

And then the Judge asked whether the statement of SoD regarding being not informed is in reference to the initial information or the development of incidents. And the SDAG replied saying "what better notice one could get better than the input of WhatsApp message" after quoting all the correspondences made to the SoD. "Well received" and "discussed the matter with DIG" (according to the affidavit of SoD regarding 21<sup>st</sup> of April attack) does not suffice reasonable action, told the SDAG. Further he mentioned that, Priyalal D's act informing/alerting all the VVIPs did not protect the larger community. "A simplest measure like a bag checker could have been employed" said the SDAG mentioning the incident in Katuwapitiya church where the bomber was seen carrying a heavy bag.

The SDAG stated that Nilantha J became the primus inter pares (first among the equals) to act upon it. This information can be transmitted through many sources but it was Nilantha J who gathered them where others could also have gathered, said the SDAG.

The SDAG directed to the document dated 24<sup>th</sup> of April addressed to the director of Terrorism Investigation Division (TID) after the question posed by the Judge asking what steps were taken after the attacks. The IGP was found faulted by the TID, SDAG said. He also stated that compared to the actions taken by Nilantha J, there were no proper actions were taken by both SoD and the IGP.

3. Any significant observations inside court room and outside?

(E.g. intimidating behavior, disturbances, protests etc. – specific details as possible)

**4. Next date & time:** adjourned until 4<sup>th</sup> of October 2022, 1.00 pm

**5. Links to the media reports:**