

*Wilmot Abeynayaka v Inspector General of Police and et al*, (CA (writ) Application No. 674/2006) (1/ CA) Decided on 05/08/ 2014

Article 13(3) of the Constitution- the fundamental right to be heard in a fair trial if charged with an offence

Deepali Wijesundara J.

The first respondent has ordered a fresh inquiry into the same allegation in respect of which the petitioner has already been exonerated. Hence, this action was filed in the Court of Appeal requesting to issue a writ restraining the respondents from conducting a fresh inquiry.

**Held;**

W.K.C. Perera Vs Prof. Daya Edirisinghe and others (1995) 1 SLR 148 and Kunanathan Vs University of Jaffna and others (2006) 1 ACR 16 ; holding a fresh investigation on the same material would deny the petitioner a fair trial for which he is entitled under Art 13(3) of the Constitution

The court was on the opinion that two years after the conclusion of the inquiry the 1<sup>st</sup> respondent acting on another anonymous petitioner on the same issue trying to start a fresh inquiry indicates that the 1st respondent has acted maliciously and is trying to harass the petitioner.

Moreover, reopening a file after two years which has been closed and in respect of which the petitioner has been exonerated is unreasonable and is contrary to the principles of natural justice.

Application for a writ of prohibition was allowed.