

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

KASIPPILLAI MANOHARAN, *et al.*,

Plaintiffs,

v.

Civil Action No. 11-235 (CKK)

PERCY MAHENDRA (“MAHINDA”)
RAJAPAKSA,

Defendant.

**MOTION TO ENTER ORDER VALIDATING SERVICE OF PROCESS OR, IN
THE ALTERNATIVE, AUTHORIZING SERVICE BY MAIL TO PERSONAL
U.S. POST OFFICE ADDRESS, FACEBOOK, AND TWITTER**

Come now Plaintiffs, through their undersigned attorney, and moves this Court to enter an order validating service of the summons and complaint on Defendant, or, in the alternative, authorizing service to be effectuated by transmission of the summons and complaint to Defendant’s personal U.S. Post Office address, Facebook, and Twitter accounts. A Memorandum in Support of the Motion is submitted below.

**MEMORANDUM IN SUPPORT OF MOTION TO ENTER ORDER
VALIDATING SERVICE OF THE SUMMONS AND COMPLAINT
OR AUTHORIZING ALTERNATIVE SERVICE**

I. INTRODUCTION

On January 28th, 2011, Plaintiffs a filed Torture Victims Protection Act complaint against Mahinda Rajapaksa in his individual capacity based on his alleged command responsibility for extra-judicial killings of civilians under color of foreign law. Plaintiffs attempted to serve the summons and complaint on Defendant via the Hague Convention on International Service of Process, and via registered mail to Defendant Rajapaksa's address in Colombo, Sri Lanka and to the Sri Lankan Embassy in the United States. Exhibit 1. Defendant evaded service by invoking a national sovereignty exception to the Hague Convention, and by refusing to accept mail service. Furthermore, Plaintiffs sought to serve the Defendant in person on September 24, 2011, but were thwarted by the Plaintiff's bodyguards. Exhibit 2.

On October 13, 2011, this Court entered an order granting in part Plaintiffs' Motion for Alternate Service pursuant to Rule 4(f)3 of the Federal Rules of Civil Procedure. Exhibit 3. The order authorized service via posting a copy of the summons and complaint on the TamilNet website, and by staggered publication over four weeks in Sri Lanka newspapers ranking first and second in circulation.

II. DEFENDANT'S FRUSTRATION OF SERVICE VIA NEWSPAPER PUBLICATION

The Complaint and Summons were posted on the TamilNet website on October 23, 2011, and remain posted at <http://www.tamilnet.com/art.html?catid=13&artid=34555>.

Plaintiffs intend to maintain the posting of the summons and complaint indefinitely.

Exhibit 4

On November 3, 2011, Plaintiffs via FEDEX dispatched letters to the three most prominent Sri Lankan newspaper publishers requesting to purchase advertising space to publish the summons and complaint. These packets also contained both English and Sinhalese copies of the Summons and Complaint labeled “Advertisement” and “Supplement,” respectively. Exhibits 5, 6 and 7. Plaintiffs also transmitted the letters to the Sri Lankan newspapers electronically via email. The letters requested responses no later than November 16, 2011. Email reminders of the advertising requests were sent by Plaintiffs to the Sri Lankan newspapers on November 14, 2011. Exhibit 8.

As of this date, the Sri Lankan newspapers have yet to respond. Plaintiffs submit that Defendant has intimidated the newspapers into silence or tacit rejection of Plaintiffs’ advertising request. The Committee to Protect Journalists headquartered in New York City, New York, states the following about freedom of the press in Sri Lanka under the presidency of Mahinda Rajapaksa:

“The government’s effort to silence critical media has been brutally effective as politically motivated deaths, attacks, and disappearances go uninvestigated and unprosecuted. The websites Groundviews and its sister Sinhala and Tamil site Vikalpa became the last independent online news presence based in Sri Lanka, following a series of attacks on the website Lanka eNews. After arsonists attacked the offices of Lanka eNews in January, authorities arrested the site’s Colombo-based news editor Bennet Rupasinghe in March and was held for several days in police custody for allegedly

threatening a brother of a suspect over the arson attack before being released on bail. Published from London, the site was temporarily banned in April and was no longer available in October. Authorities have turned the notion of law enforcement on its head, obstructing justice in numerous attacks against journalists. Prime examples are the unsolved 2010 disappearance of cartoonist Prageeth Eknelygoda, and the unsolved 2009 murder of prominent editor Lasantha Wickramatunga. But those cases are hardly unusual. President Mahinda Rajapaksa has presided over an appalling era in which every journalist murder—nine since he rose to high office—has gone unpunished. Anti-press violence continued in 2011. In July Gnanasundaram Kuhanathan, news editor of the Tamil-language daily Uthayan, was assaulted in northern Sri Lanka by assailants wielding iron bars. There have been no arrests in the case. Media access to the northern, predominantly Tamil areas of the country remains restricted for local and international media.” Exhibit 9.

In addition to the systematic intimidation of the press, the Defendant has also begun a campaign to censor and restrict the Internet. As the Committee to Protect Journalists notes, “shutdown could have stemmed from Lanka eNews' October 15 coverage (<http://www.lankaenews.com/English/news.php?id=12350SafariHTML%5CShell%5COpen%5CCommand>) of a shootout involving parliamentarians close to Defense Secretary Gothabaya Rajapaksa, brother of President Mahinda Rajapaksa.”¹ Furthermore, the Committee to Protect Journalists notes: “The sites were blocked because

¹ Committee to Protect Journalists, *In Sri Lanka, Anti-Government Website Blocked*, <http://www.cpj.org/2011/10/in-sri-lanka-access-to-anti-government-website-blo.php> (last visited 2011-11-19)

they had maligned top government officials, the secretary of the media ministry told the BBC. A Sri Lankan official said, ‘A number of websites have already been blocked because they have engaged in ‘character assassination’ of the president [Mahinda Rajapaksa],’ the BBC reported.” The news report continues: “Lanka eNews, a staunchly anti-government website, has been under attack for more than two years. In April, the site’s staff members were arrested then released weeks later, and in the same month, the site was temporarily banned by a court order. In January, the offices were hit with an arson attack. The site’s political cartoonist, Prageeth Eknelygoda, has been missing since January 2010.”² Exhibit 10, Exhibit 11.

Plaintiffs submit that circumstantial evidence justifies the conclusion that Defendant has frustrated Plaintiffs’ efforts to publish the summons and complaint in major Sri Lankan newspapers by creating a specter of retaliation against them—including assassination. A cardinal principle of justice frowns on enabling a party to litigation to profit from his own wrongdoing. *Riggs v. Palmer*, 115 NY 506, 514 (1889) (“a widow should not, for the purpose of acquiring, as such, property rights, be permitted to allege a widowhood which she has wickedly and intentionally created.”) See also *Prudential Ins. Co. of America v. Athmer*, 178 F.3d 473, 475-6 (1999) (“The principle that no person shall be permitted to benefit from the consequences of his or her wrongdoing has long been applied to disqualify murderers from inheriting from their victims, whether the route of inheritance is a will, an intestacy statute, or a life insurance policy).” Accordingly,

² Committee to Protect Journalists, *Sri Lankan Government Blocks Websites*, <http://cpj.org/2011/11/sri-lankan-government-blocks-websites.php> (last visited 2011-11-19)

Plaintiffs move this Court to waive its requirement of service via newspaper publication in Sri Lanka because compliance has been frustrated by Defendant's alarming attack on freedom of the press there. Plaintiffs accordingly request this Court to enter an order validating service of the summons and complaint on Defendant by Plaintiffs' posting on TamilNet.

According to a Sri Lankan news report dated October 18, 2011: "Neither President Rajapakse nor I on his behalf will answer questions on war crimes," Director of the Presidential Media Unit told Lanka Standard today. The defiance from the Presidential Secretariat came when Lanka Standard asked the President's spokesperson how the President reacts to the new order by the US District Court on alternative service of summons. Slammed by litigation and police investigation into war crimes Sri Lanka's beleaguered President is running scared. In New York's Buddhist Vihara this September, the 65 year old Rajapakse refused to alight from his vehicle until two agents, there to serve summons on him in the Manoharan case filed in the US District Court of Washington DC, had been safely escorted out of the premises and the vicinity by his body guards...

'On being asked whether the government or President Rajapakse will take action against any local newspapers that published the summons and full 29-page complaint,' the Director snarled: 'In US none of the journalists are even allowed to talk to Obama and that is their democracy. But here anyone can talk to President Mahinda Rajapakse but he will not answer and is not answerable to these allegations. These summons have been published in pro LTTE websites. There are certain protocols to be followed. Speak to our Ambassador in

Washington.”³ That remark is circumstantial evidence that the TamilNet posting was read by the Defendant and his agents. TamilNet is routinely maligned by the defendant as “pro LTTE [website].” Exhibit 12.

As an alternative to now validating service of the summons and complaint, Plaintiffs request authority to effectuate service on Defendant via his individual U.S. Post Office Address, Facebook, and Twitter Accounts. Plaintiffs erred by characterizing these contacts of Defendant as “official.” Plaintiffs intended meaning was “authentic.” Defendant established the post office address and Facebook and Twitter accounts in his individual, not his official capacity. Seeking re-election to the presidential office, for instance, is an individual endeavor, not an official presidential duty. Accordingly, in the event this Court declines to validate service of the summons and complaint based on the existing circumstances, Plaintiffs’ again request authorization to effectuate service by sending a copy of each document to Defendants’ individual post office address in the United States and to his individual Facebook and Twitter accounts.

III. Conclusion

For the reasons set forth above, Plaintiffs’ motion to enter order validating service of process should be granted. In the alternative, Plaintiff should be authorized to effectuate service via Defendants’ individual post office address in the United States and his individual Facebook and Twitter accounts.

³ Nirmala Kannangara, BREAKING NEWS: *Rajapakse Will Not Answer, Summons Published On Pro LTTE Websites Says Media Chief*, <http://www.lankastandard.com/2011/10/breaking-news-rajapakse-will-not-answer-summons-published-on-pro-ltte-websites-says-media-chief/> (last visited 2011-11-19)

DATED: November 21, 2011
Respectfully submitted,

/S/ BRUCE FEIN

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_____ /

[PROPOSED] ORDER

Having considered the relevant law and facts, on this ____ day of _____, 2011, Plaintiff’s Motion [To Enter Order Validating Service Of Process] [OR] [Authorizing Service By Mail To Personal U.S. Post Office Address, Facebook, And Twitter] is hereby GRANTED.

DATED: _____

UNITED STATES DISTRICT COURT JUDGE