

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

CA (PHC) 88/2010

PHC Negombo Case 317/2010. Rev.

Hary Helen Shriyani Dabarera
No: 62,
Sethsiri Place,
Kaluwa,
Negombo.

Petitioner

Vs.

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

Officer in-charge
Police Station,
Kochchikade.

Respondent-Respondent

C.A (PHC) 88/2010.

PHC Negombo Case
317/2010. Rev.

Before : A.W.A.Salam J &
Deepali Wijesundera J.

Counsel : Mahendra Kumarasinghe for the Appellant.
Anoopa de Silva S.C for the Respondent

Argued &
Decided on : 10.10.2012.

A.W.A. Salam J.

Argument concluded.

Mahendra Kumarasinghe counsel for the Appellant heard in support of the Appellant's case. Ms. Anoopa de Silva, State Counsel states that she has no objection to the impugned order of the learned Magistrate being set aside and the matter referred back to the Magistrate Court for inquiry. The background to this appeal starts with a report filed by the police complaining of an obstruction of a water course by the Appellant which ended up in the Magistrate having made an order for the removal of the soil from the purported water course up to an extent of 25 feet. The Appellant had denied in the Magistrate's Court that she was ever a party to the act complained of. She

specifically took up the position that the water course was never obstructed in any manner by her.

Learned Counsel for the Appellant complained that the order of the learned Magistrate has been made in excess of his jurisdiction and without clearly identifying the width of the water course and also without any supporting evidence of witnesses possessed with competent knowledge in the relevant field.

The Learned State Counsel has quite rightly and in keeping with the highest tradition of the Attorney-General's department has conceded that the order of the learned Magistrate on the face of it, is liable to be set aside as it is not supported by any credible evidence particularly of persons having expert knowledge on the subject. We are in agreement with those submissions and of the view that the impugned order cannot be allowed to stand, in the absence of any supporting evidence as to the real existence of the water course on the ground, its width and positive proof that it is the Appellant and no one else who is responsible for having obstructed it.

In the result the order of the learned Magistrate and that of the High Court Judge are set aside and matter sent back to the Magistrates' Court for re-inquiry.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera, J.

I agree.

JUDGE OF THE COURT OF APPEAL

Vkg/-