

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

No. CA(PHC) 105/2003

1. W. M. Deshabandu, President,  
Badulla District Co-operative  
Savings & Thrift Society,
2. General Manager/Secretary,  
P. M. Yaso Menike, Kopiwatta  
Road, Badulla

M.C.Bandrawela 408

Plaintiff Petitioner

Badulla HC(Rev) 82/2000

1. Office in Charge, Police Station  
Bandarawela
2. Nagoor Pitchai Abdul Raheem  
No. 108 Padinawela, Boragas
3. Hon. Attorney General

Respondents

BEFORE

A. W. A. Salam J.,  
Sunil Rajapaksa J.,

COUNSEL

Amila Palliyage for the Petitioner Appellant

W. Dayaratne P. C., with Ms. Sakunthala Jayalath for  
the 2<sup>nd</sup> Respondent

**ARGUED ON**      16.05.2013

**DECIDED ON**      01.11.2013

**Sunil Rajapakse J.,**

This is an appeal filed by the Complaint-Petitioner-Appellants against the Judgment of the learned High Court Judge of the Provincial High Court of Badulla and the Order of the learned Magistrate of Bandarawela.

The 2<sup>nd</sup> Respondent Respondent accused was charged with an offence under the provisions of offences against Public Property Act. When the case was called on 13.05.1998 in the Magistrate's Court of Bandarawela, the 2<sup>nd</sup> Respondent-Respondent Accused undertook to pay Rs. 296,400/- as a settlement. After this settlement the 2<sup>nd</sup> Respondent accused completed his payment by way of instalments on 19.02.1999.. On that day the learned Magistrate discharged the 2<sup>nd</sup> Respondent Accused from the proceedings. Thereafter on the representations made by the potato farmers of Bandarawela area Attorney General through his letter dated 15.10.1999 informed the Superintendent of Police, Bandarawela not to institute cases against the farmers who had obtained loans to purchase potato seeds. On the strength of letter sent by Attorney General the Respondent accused filed a Motion in the Magistrate's Court of Bandarawela and made an application for the recovery of money which was paid by him as a settlement. After considering the request made by the Respondent Accused the learned Magistrate ordered the Complainant Appellants to pay back the sum of Rs. 296,400/- on 25.01.2000

which was paid by the 2<sup>nd</sup> Respondent accused as a settlement. I note that the 2<sup>nd</sup> Respondent completed the payment of the entire amount on 26.05.1999 and the learned Magistrate directed the repayment of the said amount on 25.01.2000.

In this case the Appellant's main contention is that the Magistrate was wrong in ordering the repayment of the money paid by the 2<sup>nd</sup> Respondent on the strength of the said letter sent by the Attorney General.

In considering the material facts submitted by both parties, it is proved that the letter sent by the Attorney General to the Superintendent of police, Bandarawela was sent on 15.10.1999. But it was on 19.02.199 that the 2<sup>nd</sup> Respondent was discharged after payment of the full amount to the complainant Respondent. Therefore the said letter has no retrospective effect with regard to the cases that had been already concluded. Further Court holds that the letter sent by the Attorney General is not the letter submitted to the Magistrate by the Police or Attorney General. That letter is addressed to the Superintendent of Police Bandarawela and submitted to Court by the 2<sup>nd</sup> Respondent Accused. Therefore I am of the view that the Magistrate cannot satisfy with the truth of the said letter. Further, the number of the Magistrate Court case relevant to this matter was not mentioned in the Attorney General's letter dated 15.10.1999. He had not made any reference to the cases which had been already concluded. Before submitting the letter sent by the Attorney General to the Magistrate Court the respective money which ought to be paid as a settlement had been paid by the 2<sup>nd</sup> Respondent accused to the complainant

Appellants. The learned Magistrate directed the repayment of the said amount on 25.01.2000.

I therefore hold that the Magistrate was wrong in ordering repayment of money paid by the 2<sup>nd</sup> Respondent accused. Proceedings of this case have been concluded after the settlement and after the payment of Rs. 296,400/-. No appeal has been made against the repayment that was done in accordance with the settlement. Therefore I hold that the Magistrate has no jurisdiction to cancel the order that was given by the Magistrate on 13.05.1998. Further the court holds that it cannot be considered as a "per incuriam" order.

In this regard I cite the following authorities – Hettiarachchi vs Senevirathna – 1994 – 3 SLR page 293 and CA (PHC) 215/2012.

In Hettiarachchi vs Seneviratne case it was held"

*"It was well established rule that in general a court cannot re-hear, review, alter or vary its own judgment once delivered. The rationale that rule is that there must be a finality to litigation interest republicae ut sit finis litium. A Court whose judgments are subject to appeal cannot set aside or vary its judgment, even if plainly wrong in fact or in law, that can be done only on appeal. It may, of course, have a limited power to clarify its judgment, and to correct accidental slips or omissions.*

*A decision will be regarded as given per incuriam if it was in ignorance of some inconsistent statute or binding decision, but not simply because the court had not had the best argument."*

After analyzing the submissions made by the Appellant and the 2<sup>nd</sup> Respondent Accused, court considered that the order made by the learned Magistrate on 13.05.1998 was not a per incuriam order and the successor has

no power to set aside the said order. These facts have not been taken into consideration properly by the learned High Court Judge of Badulla. Therefore I hold that the order of the Magistrate dated 25.01.2000 and the order of the learned High Court Judge dated 10.09.2002 cannot be sustained.

I therefore set aside the Order of the learned Magistrate dated 25.01.2000 together with the learned High Court Judge's Order dated 10.09.2002.

Appellants' appeal is allowed.

JUDGE OF THE COURT OF APPEAL

Salam, J.,

I agree.

JUDGE OF THE COURT OF APPEAL