

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

In the matter for an application to Appeal  
to the Court of Appeal in terms of Article  
154 (P) (6) of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.

Gamraralage Somawathie,  
1/215, Godawella Road, Kachcheri,  
Ruwanwella.

**Plaintiff.**

Vs.

CA (PHC) No.

200/2003

High Court Kegalle

(Rev):1784

M.C.Ruwanwella No.

24015

1. W.M.R. Wijesiri, Divisional Sectary,  
Ruwanwella.

2. Gaminie Thilakerathne, Grama Niladari,  
Ruwanwella.

3. Rathna Jayaweera, Parivasa Karyalaya,  
Ruwanwella.

4. W.D. Karunaratne,  
Assistant Commissioner,  
Parivasa and Lamaraksha,  
Palath Sabawa, Rathnapura,

5. Y.G. Panyarathne, No.13, Ruwanwella.

6. U.G. Jayakodi, Imbulana, Waharaka,  
Ruwanwella.

7. Keeniwitage Kamal Jayasooriya,  
Janapada Neladhari,  
Divisional Sectary Office,  
Ruwanwella.
8. Hon Attorney General,  
Attorney General's Department,  
Colombo 12.

**Defendants.**

**AND**

Gamaralalage Somawathie,  
1/215, Godawella Road, Kachcheri,  
Ruwanwella.

**Plaintiff - Petitioner**

**Vs.**

1. W.M.R. Wijesiri, Divisional Sectary,  
Ruwanwella.
2. Gaminie Thilakerathne, Grama Niladari,  
Ruwanwella.
3. Rathna Jayaweera, Parivasa Karyalaya,  
Ruwanwella.
4. W.D. Karunaratne,  
Assistant Commissioner,  
Parivasa and Lamaraksha,  
Palath Sabawa, Rathnapura.

5. Y.G. Panyarathne, No.13, Ruwanwella.
6. U.G. Jayakodi, Imbulana, Waharaka,  
Ruwanwella.
7. Keeniwitage Kamal Jayasooriya,  
Janapada Neladhari,  
Divisional Sectary Office,  
Ruwanwella.
8. Hon Attorney General,  
Attorney General's Department,  
Colombo 12.

**Defendants - Respondents**

AND NOW VETWEEN

Gamaralalage Somawathie,  
1/215, Godawella Road, Kachcheri,  
Ruwanwella.

**Plaintiff - Petitioner - Appellant**

Vs.

1. W.M.R. Wijesiri, Divisional Sectary,  
Ruwanwella.
2. Gaminie Thilakerathne, Grama Niladari,  
Ruwanwella.

3. Rathna Jayaweera, Parivasa Karyalaya,  
Ruwanwella.
4. W.D. Karunaratne,  
Assistant Commissioner,  
Parivasa and Lamaraksha,  
Palath Sabawa, Rathnapura.
5. Y.G. Panyarathne, No.13, Ruwanwella.
6. U.G. Jayakodi, Imbulana, Waharaka,  
Ruwanwella.
7. Keeniwitage Kamal Jayasooriya,  
Janapada Neladhari,  
Divisional Sectary Office,  
Ruwanwella.
8. Hon Attorney General,  
Attorney General's Department,  
Colombo 12.

**Defendants - Respondents -  
Respondents**

**Before : W.M.M.Malanie Gunarathne, J**

**: P.R.Walgama, J**

**Counsel : Appellant is absent and unrepresented.**

**: H. Jayanetti SC for the Respondent.**

Argued on : 07.07.2015

Decided on : 11.08.2015

CASE- NO-CA-(PHC)- 200/2003- JUDGMENT-11.08.2003

**P.R.Walgama, J**

The Plaintiff- Appellant (herein after sometimes called and referred to as the Appellant) instituted action against the Defendant- Respondents in terms of Section 136(1) of the Criminal Procedure Code, alleging that the Defendants forcibly entered the Appellant's land and committed an offence punishable under Section 433 of the Penal Code.

The above Section 433 deals with the punishment for committing the offence of ~~committing~~ criminal trespass, and enumerates thus;

**Section 433**

"Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to three months, or with fine which may extend to one thousand rupees or with both."

The Section 427 of the Penal Code deals with the act of Criminal Trespass thus;

"Whoever enters into or upon property in the occupation of another with intent to commit an offence or to intimidate, insult, or annoy any person in occupation of such property,

Or having lawfully entered into or upon such property unlawfully remains there with intent there to intimidate, insult, or annoy any such person, or with intent to commit an offence, is said to commit "Criminal Trespass."

On the day the case was fixed for trial in the Magistrate Court the Learned State Counsel informed court that the Honorable Attorney General has decided to take over the prosecution case in terms of Section 191 of the Criminal Procedure Code.

**Section 191 (2)**

"If the complaint is one filed under paragraph (a) of subsection (1) of section 136, the Attorney General, Solicitor General, a State Counsel or pleader specially or generally authorized by the Attorney-General shall except where such complaint has been filed against an officer or employee of the state in respect of a matter connected with or relating to the discharge of the official duties of such officer or employee, not have the right to appear for the complainant without his consent."

As per journal entry dated 17.06.2003, the Learned State Counsel has informed court that the Hon. Attorney General acting under Section 191(2) has decided to take over the prosecution, and decided not to adduced evidence for the prosecution, and in effect moved to acquit and discharge the Accused -Respondents.

Pursuant to the submissions made by both counsel the Learned Magistrate by his order dated 17.06.2003, acquitted and discharged the Accused- Respondents from the said charge.

Being aggrieved by the said order the Plaintiff- Appellant has made an application by way of revision to have the said order set aside.

The Learned High Court Judge by his order dated 23.07.2003, dismissed the revision application on the basis that the Hon. Attorney General acting under Section 191(2) of the Criminal Procedure Code, has the right to take over the prosecution without the consent of the Plaintiff, when the alleged wrongful act, has not been committed in the discharge of the official duty.

It is salient to note that the alleged charge is one punishable under Section 433 of the Penal Code, for criminal trespass, and not for an act done in discharging of an official duty. Therefore the Learned High Court Judge was of the view that the Hon. Attorney General is empowered in terms of Section 191(2) to take over the prosecution, and proceed to trial.

Being aggrieved by the said order of the Learned High Court Judge , the Petitioner -Appellant has lodged the instant appeal and sought to set aside the said order.

In the said application to this Court the Appellant has only moved to vacate only the order of the High Court Judge dated

23.06.2003, and not the order of the Learned Magistrate as stated above.

In the instant matter, although the Appellant has obtained the brief, she has never appeared in court and nor was she represented. Therefore the Court is only possessed with the argument for the Respondents.

It is contended by the Respondents that the alleged dispute arose in respect of a state land which has been identified for the purpose of constructing a Probation Office for the Ruwanwella Magistrate's Court.

The Respondents had also brought to the notice of this Court that the Appellant has filed a Fundamental Rights Application under Article 11 of the Constitution in the Supreme Court bearing No. SCFR/18/2001, and the same has been dismissed by the Supreme Court.

Further it was asserted by the Counsel for the Respondents that Appellant in the said application to the Supreme Court has not denied the position taken up by the Respondents of the fact that the disputed land is required for the purpose of building a Probation Office for the Magistrate Court of Mawanella. It is also to be noted that the Supreme Court has refused the application of the Petitioner-Appellant. In fact the Supreme Court has observed the fact that the Respondents had cut some trees in the disputed land which belongs to the State, and the same has been allocated for the construction of the Probation and



Child Care Regional office at Ruwanwella. Hence it is now established that the Respondents had entered a State Land and not the land belonging to the Petitioner- Appellant. Thus the entry to the said disputed land cannot be a criminal trespass an offence punishable under Section 433 of the Penal Code.

In the above setting it is crystal clear that the Respondents cannot be charged for committing criminal trespass, for two obvious reasons. Firstly the land in dispute is a state land, Secondly there was no act of trespass on the part of the Respondents.

Therefore a cursory glance at the charge leveled against the Respondents does not reflect any merits and the Appellant has no locus standi to maintain the same.

The stand out judicial example of the said Section 191 of the Criminal Procedure Code is discussed by Sansoni J in the case of ATTORNEY- GENERAL .VS. SIVAPRAGASAM - in 60.NLR. 468, has held thus;

“In a prosecution initiated under section 148(1)(a) of the Criminal Procedure Code in a case where a Magistrate’s Court has power to try summarily, a Crown Counsel is entitled, under Section 199 of the Criminal Procedure Code, to appear and conduct the prosecution even against the complainant’s will. In such a case if the Crown Counsel informs the Magistrate that, in the interest of justice, he will not be placing any evidence against the Accused, it is not open to the Magistrate, instead of

acquitting the accused, to permit the complainant to lead evidence for the prosecution.”

The said interpretation was also recognized in the case of THE ATTORNEY GENERAL .VS. C. SUNDARALINGAM- 75. NLR- 527 HELD THUS;

“The right granted to the Attorney General by Section 199 of the Criminal Procedure Code to appear and conduct the prosecution in any case triable summarily extend even to a case initiated by the filing of a private plaint, unless there is sufficient to show that the Attorney General is acting mala fide and improper purpose.”

Hence it is ostensible in the instant matter the Respondents had acted in their official capacity to cut certain trees as the disputed land was a State land and the land was identified for the purpose of constructing a Probation Office for the Magistrate Court’s Ruwanwella.

In the said backdrop I am of the view that the Learned Magistrate has acted in terms of Section 191 of the Criminal Procedure Code, by allowing the Attorney General to take over the prosecution.

Further in the case of KODIPPILIGE SEETA .VS. A.E. SHARVANANDA ET AL -Colombo Appellate Law Reports- (1988) ii C.A.L.R- 222- has followed the above decisions in interpreting the above Section 191 of the Criminal Procedure Code.

Thus in the above exposition of law and facts as stated above  
I am of the view that <sup>the</sup> Learned Magistrate has arrived at the  
correct determination, which was up held by the Learned High  
Court Judge by his afore said order.

Accordingly the Appellant fails in this application, appeal is  
dismissed hereby, subject to a cost of Rs. 10,000/.

Appeal is dismissed.

**JUDGE OF THE COURT OF APPEAL**

W.M.M.Malanie Gunarathne, J

I agree,

**JUDGE OF THE COURT OF APPEAL**