

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

In the matter of an application for  
revision under Sec. 138 of the  
Constitution and Sec. 364 of the Code  
of the Criminal Procedure Act No. 15  
of 1979.

**MC Galle Case No: 97171**

**HC Galle Case No:**

**HCRA 92/2015**

**CA Case No:**

**CA (PHC) APN: 20/2015**

The Officer in Charge,  
Police Station,  
Colombo 12.

**Complainant**

**Vs.**

Ahangama Withanage Jayatissa,  
Kanaththagada watte,  
Andragoda Road,  
Dikkumbura,  
Ahangama.

**Respondent**

**And Between**

Ahangama Withanage Jayatissa,  
Kanaththagada watte,  
Andragoda Road,

Dikkumbura,  
Ahangama.

**Respondent – Petitioner**

**Vs.**

1. The Officer In Charge,  
Police Station,  
Galle.

**Complainant – Respondent**

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

**Respondent**

**And Now Between**

Ahangama Withanage Jayatissa,  
Kanaththagada watte,  
Andragoda Road,  
Dikkumbura,  
Ahangama.

**Respondent – Petitioner –**

**Petitioner**

**Vs.**

1. The Officer In Charge,

Police Station,  
Galle.

**Complainant – Respondent**  
**– Respondent**

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

**Respondent – Respondent**

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

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

**Counsel : R. Areshkularathne PC for the Petitioner.**

**: Anupa De Silva S.S.C for the Respondent.**

**Argued on : 07.08.2015**

**Decided on: 13.10.2015**

**CASE NO- CA (PHC) APN 20/2015- ORDER- 13.10.2015**

**P.R.Walgama, J**

The instant order concerns an application made by the Petitioner to have set aside the orders of the Learned Magistrate dated

12.12.2014, and the order of the Learned High Court Judge dated 12.02.2015.

The facts germane to the present application are as follows;

The Officer in charge of the Galle Police station filed information in the Magistrate Court Galle, in terms of Section 98(1) of the Code of Criminal Procedure Act No. 15 of 1979, in the case bearing No. 97171.

The said information filed, as the investigation in to the alleged nuisance has been caused by the Petitioner by using a Metal Quarry, as a result of which the Public health and Physical Comfort has been affected. Hence the Complainant urged the Learned Magistrate to issue orders in terms of Section 104(1) and 106(1) of the Criminal Procedure Code.

Thereafter the Complainant has tendered a comprehensive report regarding the above situation. Pursuant to the afore said report the Learned Magistrate has made an order, to stop the operation of the said Metal Quarry. Subsequently, the Learned Magistrate after an inspection of the relevant Quarry, and receiving evidence of many witnesses had made the above conditional order "absolute" in terms of Section 101 of the Code of Criminal Procedure Act No. 15 of 1979 and had made over for the Petitioner to remove the business operation situated in Haupe, within one month from the date of the said order. Being aggrieved by the said order the Petitioner filed a Revision application in the High Court, of Galle which application was dismissed by the order dated 12.02.2015.

The Learned High Court Judge has dismissed the said application in Revision on the basis that the Petitioner has not established exceptional circumstances for the High Court Judge to exercise the revisionary jurisdiction to resolve the issue in dispute.

The Petitioner has assailed the said order of the Learned High Court Judge by the instant Revision Application to this Court. It is the contention of the Petitioner that the Learned Magistrate's order making the conditional order absolute, when at a time there was no conditional order in force, hence the order absolute is obnoxious to the above section 102 of the Code of Criminal Procedure Act.

The Respondent, also concedes the fact that the Learned High Court Judge has not afforded an opportunity to the Petitioner to place his case, but has dismissed the application in limine, which is a violation of the Principles of Natural Justice.

The Counsel for the Respondent also admits the fact that the Learned Magistrate has made his order on mere speculations, and further more it is stated by the Counsel for the Respondent that the Learned Magistrate has made a blatant error regarding the exhibits marked V16 AND V17, and agreed to the vacation of the order of the Learned Magistrate and for a institution of a fresh action based on V16,

The Counsel for the Petitioner submits that the Counsel for the Respondent has admitted the fact that the Learned Magistrate has flawed in making the impugned order, and should not be allowed to stand. Further it is agreed that the Petitioner should only operate the "Vawulagala Metal Quarry" situated at the Bangalakakanda Estate, only having obtained the license, for the above purpose, from the Central Environmental Authority and from the Geological Survey and Mines Bureau.

Thus it was submitted by the Counsel for the Respondent, the vital issue that remains for consideration is the maintenance of the road that leads to the Vawulagala Metal Quarry which is in a bad condition. It is categorically admitted by the Counsel that the Petitioner will undertake to repair the road that leads to the Vawulagala Metal Quarry and maintain same in a condition suitable for the use of the villages in the said area.

In the above setting it is agreed by both parties that orders of the Learned Magistrate dated 17.10.2012 and 12.12.2014, and the order of the Learned High Court Judge dated 12.02.2015b to be set aside and the same is vacated accordingly.

Further it is ordered hereby that the Petitioner could operate the Vawulgala Metal Quarry after obtaining the permit from the Central Environmental Authority and the Geological Survey and Mines Bureau. And shall repair the road that leads to the

Vawulagala Metal Quarry and maintain the road suitable for the use of the villages in the area.

Accordingly appeal is allowed subject to the above conditions.

**JUDGE OF THE COURT OF APPEAL**

W.M.M.Malinie Gunarathne, J

I agree,

**JUDGE OF THE COURT OF APPEAL**