

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

In the matter of an Appeal from an  
order of the High Court of Colombo  
acting in revision .

**CA (PHC) 146/2010  
Case No. HCRA- 117/08  
Magistrate Court of  
Colombo Case No. 8345/M.**

M.B. Lal Kumara,  
Public Health Inspector,  
Colombo Municipal Council,  
Colombo 07.

**Plaintiff**

**VS.**

S. Padmasekaran  
No. 07, Joseph Lane,  
Colombo 04.

**Defendant**

S. Padmasekaran,  
No. 07, Joseph Lane,  
Colombo 04.

**Defendant - Petitioner**

**VS.**

1. M.B. Lal Kumara,  
Public Health Inspector,  
Colombo Municipal Council,  
Colombo 07.

**Plaintiff – Respondent**

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

**Respondent**

**AND NOW**

S. Padmasekaran,  
No.07, Joseph Lane,  
Colombo 04.

**Defendant-Petitioner-Appellant**

**VS.**

1. M.B. Lal Kumara,  
Public Health Inspector,  
Colombo Municipal Council,  
Colombo 07.
2. Hon. Attorney General,  
Attorney General's  
Department,  
Colombo 12.

**Respondents**

**BEFORE: W.M.M. Malinie Gunaratne, J. and  
P.R. Walgama, J.**

**COUNSEL: C. Nilenduwa with P.R. Ranamukhaarachchi  
For Plaintiff-Respondent-Respondent**

**A. Bary, Senior State Counsel for the 2<sup>nd</sup> Respondent.**

Argued on : 22.06.2015

Written submissions filed on : 7.07. 2015

Decided on: 16.11. 2015

**Malinie Gunaratne, J.**

The Plaintiff-Respondent-Respondent (hereinafter referred to as the Respondent) instituted proceedings under the case No.8345/M against the Respondent-Petitioner-Appellant (hereinafter referred to as the Appellant), in the Magistrate's Court of Maligakanda, complaining that the Appellant had permitted to lay a dilapidated car and some refuse of building materials in front of the house, under Section 2(1) of the Nuisance Ordinance.

The Appellant pleaded not guilty to the charge and the case was taken for trial. At the trial, while complainant was giving evidence, the Counsel for the Appellant raised a preliminary objection on the basis that the case filed by the Respondent is prescribed under Section 19 of the Nuisance Ordinance.

After hearing submissions made by both parties, the learned Magistrate delivered the Order on 17.06.2008, over-ruling the preliminary objection raised by the Appellant.

Aggrieved by the said Order, the Appellant sought to move in revision against the said Order by Revision Application No. 117/08, filed before the High Court of Colombo.

The learned High Court Judge of Colombo, after having considered the submissions made by both parties, pronounced the judgment dated 23.06.2010, dismissing the Revision Application of the Appellant.

The Appellant has preferred this appeal seeking to set aside the judgment of the learned High Court Judge.

The Appellant was charged by the Respondent in the Magistrate's Court of Maligakanda under Section 2(1) of the Nuisance Ordinance, complaining that the Appellant had permitted to lay a dilapidated car and some refuse of building materials in front of the house.

At the trial a witness, for the prosecution stated, that the dilapidated car and some used building materials had been lying at the place in question for over five years. At that stage Counsel for the Appellant raised a preliminary objection on the basis that the offence is prescribed under Section 19 of the Nuisance Ordinance.

When this case was taken up for argument, the Appellant was absent and unrepresented. Hence, the Court heard only the submissions made by the Counsel for the Respondent. The learned Counsel for the Respondent submitted, that the act of nuisance complained by the Respondent was a continuing offence and therefore Section 19 of the Nuisance Ordinance has no application. It is the contention of the learned Counsel that the offence created by Section 19 of the Nuisance Ordinance was essentially a continuing one and as long as the said dilapidated car and the used building materials are on the said road, the statutory bar will not run against the offence.

The said Section 19 of the Nuisance Ordinance reads as follows:

“No person shall be liable to any fine for any offence committed under this Ordinance unless the complaint respecting such offence shall have been made before a Magistrate within three months next after the commission of such offence”.

Section 2(1) of the Nuisance Ordinance reads as follows:

“Whosoever shall commit any of the following offences shall be liable to a fine not exceeding fifty rupees:-

- (1) Whosoever, being the owner or occupier of any house, building or land in or near any road, street or public thoroughfare, whether tenantable or otherwise, shall keep or suffer the same to be in a filthy and unwholesome state, or overgrown with rank and noisome vegetation, so as to be a nuisance to or injurious to the health of any person”.

The learned Counsel for the Petitioner in support of the above submissions relied on the following decided cases.

- Bartholomeusz vs. Ismail 37 N.L.R 301;
- Akbar vs. Slema Lebbe C.L.R. Vol. II No. 32 at Page 12.

On the strength of the decisions of the above cases, it is evident that the offence complained by the Respondent in the instant case is also a continuing offence and the statutory bar does not prevent the Respondent filing of this case.

On perusal of the judgment of the learned High Court Judge, it is apparent that the learned High Court Judge has come to the correct conclusion and I do not see any error in the manner in which the learned

High Court Judge has considered the facts and the way in which he has applied the law in this instance.

The Appellant has preferred this appeal seeking to set aside the Order dated 17.06.2008 made by the learned Magistrate and the judgment dated 23.06.2010, pronounced by the learned High Court Judge. Having perused the Order and the Judgment, I see no reason to interfere with the decisions of the learned Magistrate and the learned High Court Judge.

For the reasons stated above, I dismiss the appeal.

**JUDGE OF THE COURT OF APPEAL**

P.R.Walgama, J.

I agree

**JUDGE OF THE COURT OF APPEAL**

Appeal dismissed.