

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

Appeal from the Sabaragamuwa  
Provincial High Court holden in  
Embilipitiya Number 23/2007 upon  
the Judgment dated 27.06.2007

Officer in Charge,  
Police Station,  
Kolonna.

**Complainant**

**VS.**

**CA(PHC) 71/2007  
High Court, Embilipitiya  
Case No.23/2007  
Embilipitiya Magistrate's  
Court No. 33179**

1. Adaviya Manannalage Somapala,  
Koswatiya, Pallebadda.
2. Wickramage Manjula Prasad,  
05 Kanuwa, Panamura.

**Accused**

**AND NOW**

Weerasinghe Jayawardene Alexander  
Abeyratne,  
No. 750, Sumanasekarapura,  
Walipillawa, Dedigamuwa.

**Petitioner.**

**VS.**

Officer in Charge,  
Police Station,  
Kolonna.

**Complainant-Respondent**

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

**Respondent.**

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

**COUNSEL** : Appellant was absent and unrepresented.  
V. Hettige S.C. for the Respondent.

Argued on : 19.10.2015

Written submissions  
filed on : 28.10.2015.

Decided on : 28.01.2016

**Malinie Gunaratne, J.**

The Petitioner – Appellant (hereinafter called and referred to as the Appellant) has preferred this Appeal to impugn the Order of the learned High Court Judge of Embilipitiya dated 27.06.2007, wherein the learned High Court Judge had dismissed the Petition filed by the Appellant.

The facts that have given rise to the present application are briefly as follows:

A.M. Somapala and W. Manjula Prasad, who were the accused in Case No. 33179, were charged in the Magistrate's Court of Embilipitiya on two charges under the Animal Act. They pleaded guilty to the charges and a date was fixed for inquiry regarding the vehicle.

The Appellant was absent on inquiry dates 04.05.2006, 08.06.2006, 14.09.2006, 02.11.2006 and 22.03.2007. Accordingly, warrants also had been issued on him.

When the case was taken up for inquiry on 22.03.2007, the Appellant was absent and unrepresented. As such, the learned Magistrate had confiscated the vehicle and ordered the Officer in Charge of Kolonna Police Station to retrieve the vehicle, since the vehicle had been released by the learned Magistrate to the Appellant on a bond before the inquiry.

Being aggrieved by the said Order made by the learned Magistrate, the Appellant moved the High Court of Embilipitiya in revision of the aforesaid Order; but the learned High Court Judge by her Order dated 27.06.2007, dismissed the Petition due to lack of exceptional circumstances. Being aggrieved by the said Order the Appellant has preferred this Appeal to this Court praying for the annulling of the said Order.

The Appeal was scheduled for argument on 19.10.2015. Only the Respondent was present in Court and the Appellant was absent and unrepresented although notices had been issued on him several times. Accordingly, the submissions were made on behalf of the Respondent only.

Under Section 349 (3) of the Criminal Procedure Code, if the Appellant does not appear to support the Appeal, the Court shall consider the Appeal and make an order therein as it may deem fit.

Accordingly, I will now consider the merits of the Appeal.

The Appellant by this Appeal has challenged the Order of the learned High Court Judge of Embilipitiya made on 27.06.2007.

On a perusal of the Order made by the learned High Court Judge, it appears that the reason given by her to dismiss the Petition is, that the Appellant had failed to plead any exceptional circumstances that are necessary for the invocation of the Revisionary Jurisdiction of the Court, which is a discretionary remedy.

The Revisionary power of the Court is a discretionary power and its exercise cannot be demanded as a right unlike the statutory remedy of appeal. Existence of exceptional circumstances is the process by which the Court should select the cases in respect of which the extraordinary power of revision should be adopted.

In *Dharmarathna and Another vs. Palm Paradise Cabanas Ltd.* (2003) 3 S.L.R. 24, Gamini Amaratunga J. stated that the practice of Court to insist on the existence of exceptional circumstances for the exercise of revisionary powers has taken deep root in our law and has got hardened into a rule which should not be lightly disturbed. The trend of authorities clearly indicates that the revisionary powers of the Court will be exercised if the exceptional circumstances exist only.

It is abundantly clear that the Appellant had not specifically pleaded such exceptional circumstances in the body of the Petition other than that he is dissatisfied with the Order of the learned Magistrate. I am of the view that it cannot be considered as an exceptional circumstance.

For the reasons set out above I hold that the learned High Court Judge's Order for dismissing the Petition is correct and as such there is no reason to set aside the said Order. Therefore it is not necessary to interfere with the Order of the learned High Court Judge. Accordingly no ground exists which justifies the intervention of this Court to set aside the Order of the learned High Court Judge.

Without prejudice to the aforesaid decision it is relevant to note the conduct of the Appellant. The Appellant had repeatedly failed to appear before this Court in support of his appeal. It is significant to note that he had failed to appear before the Magistrate's Court too to face the inquiry. It is important to note that in the Revision Application filed in the High Court by the Appellant he has stated (Para 4) that he was unable to appear in the Magistrate's Court on 22.03.2007 due to the fact that he had mistaken the date. This was the date the learned Magistrate had ordered the confiscation of the vehicle.

It is significant to note that in the Petition of Appeal filed he has stated (Para 3) that due to floods in his area he was unable to appear on the due date and that his Counsel had informed the Court of his absence. It clearly shows that he has contradicted his position in the Petition of Appeal.

On perusal of the Journal Entries in the Magistrate's Courts as per Journal Entry dated **02.11.2006**, it is clear that the Appellant's Counsel had

informed Court that the Appellant was unable to appear in Court due to floods in his area on **02.11.2006** and not on **22.03.2007**.

It is clear therefore, that the learned Magistrate's Order to confiscate the vehicle was made on **22.03.2007** and not on **02.11.2006**. It is also important to note that after **02.11.2006** the Appellant had appeared in Court on **23.11.2006** and **07.12.2006**. Since the inquiry was not held on **07.12.2006** it had been postponed to **22.03.2007** on which date the Appellant was absent, and since he was absent and unrepresented the learned Magistrate has ordered to confiscate the vehicle.

In the circumstances outlined above it is abundantly clear that the Appellant has tried to mislead the Court and given false reasons for his non-appearance on the due date which the inquiry was held. Hence, the Appellant has tendered a false Affidavit along with the Petition to the High Court with regard to his non-appearance in the Magistrate's Court.

It is important to note, that the Appellant has not come with clean hands to this Court. Be that as it may, he has failed to appear before this Court to pursue his own application. In the Magistrate's Court too he had not made any attempt to place any evidence to disclose the burden placed on him by law. Since the Appellant had failed to discharge the burden the learned Magistrate had made an order to confiscate the vehicle.

In the above circumstances, it is my considered view, that the learned Magistrate was correct, when the Order was made to confiscate the vehicle; as such there is no reason to set aside the Order made by the learned Magistrate.

For the above reasons, I hold that there is no merit in the Appeal and I dismiss it.

**JUDGE OF THE COURT OF APPEAL**

P.R. Walgama, J.

I agree

**JUDGE OF THE COURT OF APPEAL**

Appeal is dismissed.