

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

Percy Denipitiya,
City Undertakers (Pvt) Ltd.,
Hospital Junction, Kurunegala.

Court of Appeal No.
CA (PHC) 300/2006
High Court of Kurunegala
No. HCR 100/2004
Magistrate Court Kurunegala
No. 81548

Accused – Petitioner - Appellant

v.

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

1st Respondent - Respondent.

2. Assistant Commissioner of Labour,
District Labour Office,
Kurunegala.

Complainant – Respondent - Respondant

Before : P.R. Walgama J.
: L.T.B. Dehideniya J.

Counsel : Accused Petitioner Appellant absent and unrepresented
: Suranga Wimalasen SSC for the Respondents.

Argued on : 15.02.2016

Decided on : 13.06.2016

L.T.B. Dehideniya J.

The Complainant Respondent - Respondent (hereinafter called and referred to as the Respondent) filed a certificate in the Magistrate Court of

Kurunegala under section 38(2) of the Employees Provident Fund (EPF) Act to recover the unpaid EPF to one employee G.J.D.A.Malwana . He was in employment in the institute named City Undertakers from 1971 to 1993. The said institute has now been converted to City Undertakers Private Limited. The Accused Petitioner Appellant (hereinafter called and referred to as the Appellant) was the owner of the City Undertakers as well as the new institute called City Undertakers Private Limited. The certificate filed against the Appellant.

The Appellant was given the opportunity to show cause and after considering the facts and circumstances and the relevant law, the Learned Magistrate allowed the application of the Respondent. Being aggrieved by the said order, the Appellant moved in revision in the High Court of Kurunegala where the Learned High Court Judge has affirmed the order of the learned Magistrate. This appeal is from the order of the High Court.

On the day fixed for argument, the appellant was absent and unrepresented. Notices issued on Appellant under registered cover for several times and finally his Attorney at Law was also informed and thereafter the Appellant was represented by a Counsel on 06.10.2015. the Court fixed this case for argument on 15.02.2016 in the presences of Counsel for both parties. On the date of argument, the Appellant was absent and unrepresented. The Court heard the submission of the learned Counsel for the Respondents and on the direction of the Court, filed written submissions too.

The Respondent filed the certificate in the Magistrate Court under section 38(2) of the EPF Act.

Atchuvely Multi-Purpose Co-Operative Society Ltd. V. S. Balasingham 72NLR 180, is a case where a sum of money was due under an award made under the Co-operative Societies Ordinance is sought to be

recovered in terms of the provisions of section 53A (4) of the Co-operative Societies Ordinance. The court observed that *the Court has no option but to direct that writ of execution do issue, not upon a decree or order entered by Court but on the award filed before it.*

In the case of Abdulally v. Additional Government Agent, Jaffna 68 NLR 168 it was held that;

When a Government Agent issues to a Magistrate a certificate in terms of section 4 (1) of the Heavy Oil Motor Vehicles Taxation Ordinance for the recovery of unpaid tax, the Magistrate's Court is merely a collecting agency and it is not necessary that a charge should be framed against the accused.

In the case of Duraiappah v. The Municipal Commissioner Jaffna 73 NLR 230 it was held that;

Where a Municipal Commissioner makes an application to a Magistrate in terms of section 226 (6) of the Municipal Councils Ordinance to recover a sum certified by an auditor to be due from a person as a surcharge, the Court acts in an administrative capacity and has no jurisdiction to hold any judicial inquiry relating to the surcharge.

Section 38(3) of the EPF Act provides that the certificate filed under section 38 is sufficient evidence that the amount due under this Act from the defaulting employer has been duly calculated and that such amount is in default and the contents of the certificate cannot be called in question in Court. The section 38(3) reads thus;

(3) The correctness of any statement in a certificate issued by the Commissioner for the purposes of this section shall not be called in question or examined by the court in any proceedings under this section, and accordingly nothing in this section shall authorize the

court to consider or decide the correctness of any statement in such certificate, and the Commissioner's certificate shall be sufficient evidence that the amount due under this Act from the defaulting employer has been duly calculated and that such amount is in default.

Under these circumstances I see no reason to interfere with the finding of the Learned High Court Judge. The appeal dismissed without costs.

Judge of the Court of Appeal

P.R.Walgama J.

I agree.

Judge of the Court of Appeal