

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

In the matter of an appeal in terms of Section 798 of the Civil Procedure Code read together with the provisions contained in the Criminal Procedure Act No. 15 of 1979 in relation to a contempt of Court application.

Case No. CA (MISC): 05/16

DC Elpitiya Case No: 155/03 L

1. Thosiya Maliduwigama  
Arachchige Malini.
2. Wanniarachchige Gunasena.

Both of Aluth Road, Mattaka.

**Accused-Appellant.**

Vs

Hemagampda Withanage Upul  
Priyantha  
"Sanjeevani",  
Aluth Road, Mattaka.

**Substituted-Plaintiff-Respondent**

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

**Respondent**

**Before** : L.T.B. Dehideniya J. (P/CA)  
: Shiran Gooneratne J.

**Counsel** : Herath De Mel with J. Jayasooriya for the Defendant  
Appellant.  
: Chaya Sri Nammuni SC for the Respondent.

**Written submissions filed on** 11.10.2017

**Decided on** : 13.11.2017

**L.T.B. Dehideniya J. (P/CA)**

This is an appeal from the District Court of Elpitiya against an order made on a charge of Contempt of Court.

We requested the parties to address the Court on the jurisdiction at the first instance. Though no relief was sought against the 3<sup>rd</sup> Respondent, the Attorney General, on the request of the Court, appeared as *amicus curiae*.

The issue that had to be decided was whether an appeal from a District Court on an order made on a charge of contempt of Court lies in the Provincial High Court or the Court of Appeal.

The appellate procedure on contempt of Court is laid down in section 798 of the Civil Procedure Code which reads as;

*798. An appeal shall lie to the Court of Appeal from every order, sentence, or conviction made by any court in the exercise of its special jurisdiction to take cognizance of, and to punish by way of summary procedure the offence of contempt of court, and of offences by this Ordinance made punishable as contempt of court; and the procedure on any such appeal shall follow the procedure laid down in the Code of Criminal Procedure Act regulating appeals from orders made in the ordinary criminal jurisdiction of Magistrates' Courts.*

This provision of law provides that the appellate jurisdiction on contempt of Court matters to lie on the Court of Appeal. This section has to be interpreted with the provisions contained in the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 and its Amendment Act No. 54 of 2006. The Article 138 of the Constitution defines the jurisdiction of the Court of Appeal as;

*138.(1) The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by the High Court, in the exercise of its appellate or original jurisdiction or by any court of First Instance, tribunal or other institution and sole and exclusive cognizance, by way of appeal, revision and restitutio in integrum. of all causes, suits, actions, prosecutions, matters and things of which such High Court of First Instance, tribunal or other institution may have taken cognizance ;*

*Provided that no judgment, decree or order of any court shall be reversed or varied on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice.*

*(2) The Court of Appeal shall also have and exercise all such powers and jurisdiction, appellate and original, as Parliament may by law vest or ordain.*

After the 13<sup>th</sup> Amendment to the constitution, Article 154P provided to establish the High Court of Provinces. The Article reads as;

*154P*

(1) *There shall be a High Court for each Province with effect from the date on which this Chapter comes into force. Each such High Court shall be designated as the High Court of the relevant Province.*

(2) .....

(3) *Every such High Court shall*

*(a) exercise according to law, the original criminal jurisdiction of the High Court of Sri Lanka in respect of offences committed within the Province;*

*(b) notwithstanding anything in Article 138 and subject to any law, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province;*

*(c) exercise such other jurisdiction and powers as Parliament may, by law, provide.*

(4) .....

Under Sub Article (b) the appellate jurisdiction in respect of convictions, sentences, and orders entered or imposed by the Magistrate Courts or Primary courts was vested with the High Court of the Province. Sub Article (c) kept room for the Parliament to enact other laws to bestow jurisdiction to the High Court of Provinces. The High Court of the Provinces (Special Provisions) Act No. 19 of 1990 was enacted to regulate the procedure in the said High Courts. The preamble of the Act says that;

*An act to make provision regarding the procedure to be followed in, and the right to appeal to, and from, the High Court established*

*under Article 154P of the Constitution; and for matters connected therewith or incidental thereto.*

Under section 4 of the Act the appellate jurisdiction in respect of convictions, sentences and orders of the Magistrate Courts and Primary Courts is vested with the High Court of the Province. The section 5 reads thus;

*5- The Provisions of written law applicable to appeals to the Court of Appeal, from convictions, sentences or orders entered or imposed by a Magistrate's Court, and to applications made to the Court of Appeal for revision of any such conviction, sentence or order shall, mutatis mutandis, apply to appeals to the High Court established by Article 154P of the Constitution for a Province, from convictions, sentences or orders entered or imposed by Magistrate's Courts, Primary Courts and Labour Tribunals within that Province and from orders made under section 5 or section 9 of the Agrarian Services Act, No. 58 of 1979, in respect of land situated within that Province and to applications made to such High Court, for revision of any such conviction, sentence or order.*

With the amendments made to the principal act by the Amendment Act No. 54 of 2006, the Parliament acting under Article 154P(3)(c) of the Constitution, the appellate jurisdiction in respect of the orders and judgments of the District Court was also conferred with the High Court of Provinces. New sections introduced by the amendment were inserted as 5A, 5B, 5C, and 5D immediately after section 5 of the principal act. The new section 5A reads;

5A.

*(1) A High Court established by Article 154P of the Constitution for a Province, shall have and exercise appellate and revisionary jurisdiction in respect of judgments, decrees and orders delivered and made by any District Court or a Family Court within such Province and the appellate jurisdiction for the correction of all errors in fact or in law, which shall be committed by any such District Court or Family Court, as the case may be.*

*(2) The provisions of sections 23 to 27 of the Judicature Act, No. 2 of 1978 and sections 753 to 760 and sections 765 to 777 of the Civil Procedure Code (Chapter 101) and of any written law applicable to the exercise of the jurisdiction referred to in subsection (1) by the Court of Appeal, shall be read and construed as including a reference to a High Court established by Article 154P of the Constitution for a Province and any person aggrieved by any judgment, decree or order of a District Court or a Family Court, as the case may be, within a Province, may invoke the jurisdiction referred to in that subsection, in the High Court established for that Province :*

*Provided that no judgment or decree of a District Court or of a Family Court, as the case may be, shall be reversed or varied by the High Court on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice.*

In the section 798 of the Civil Procedure Code refers to the appellate jurisdiction in respect of “order, sentence, or conviction” but the section 5A of the Act No. 54 of 2006 refers only to “judgments, decrees and orders” of the Court. The 13<sup>th</sup> amendment to the Constitution, the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 and its

Amendment Act No. 54 of 2006 as of a whole intends to allow the litigants easy access to the Appellate Procedure. Therefore, not including the words “convictions and sentences” in the section 5A of the Act does not exclude the jurisdiction in respect of “convictions and sentences” imposed by the District Courts on contempt of Court matters.

The Act No. 54 of 2006 has not vested the exclusive appellate jurisdiction with the High Court of Provinces because of the Constitutional provision on appellate jurisdiction of the Court of Appeal. The High Court of the Provinces and the Court of Appeal were vested with the concurrent appellate jurisdiction.

Acting under section 5D of the High Court of Provinces (Special Provisions) Act no 19 of 1990 as amended by Act No. 54 of 2006, I transfer this case to the High Court of Southern Province holden at Galle exercising Appellate Jurisdiction to hear and conclude this matter.

Parties to bear their own costs in this Court.

President of the Court of Appeal

**Shiran Gooneratne J.**

I agree.

Judge of the Court of Appeal