

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

In the matter of an Appeal against
judgment of Provincial High Court
exercising its revisionary jurisdiction.

C A (PHC) / 136 / 1998

High Court of Colombo

Case No. HCRA 903 / 1997

Magistrate's Court of Gangodawila

Case No. 2798

Kandy Tyre Rebuilding Co. Ltd,
No 361,
Peradeniya Road,
Kandy.

PETITIONER - APPELLANT

-Vs-

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1. Vithanage Don Prematunga,
9A,
Kanatta Road,
Gangodawila.

1st RESPONDENT - RESPONDENT

2. Anuruddha Wasantha Warnakula,
No. 361,
Peradeniya Road,
Kandy.

**ACCUSED - RESPONDENT -
RESPONDENT**

3. Officer in Charge
Special Crimes Investigation
Bureau,
Mirihana,
Nugegoda.

**COMPLAINANT - RESPONDENT -
RESPONDENT**

Before: K K Wickremasinghe J

P. Padman Surasena J

Counsel; Ranjith Meegaswaththa for the Petitioner - Appellant.

Charaka De Silva for the 1st Respondent - Respondent.

Varunica Hettige DSG for the Attorney General.

Decided on : 2017 - 11 - 21

JUDGMENT

P Padman Surasena J

Learned counsel for both the Parties, when this case came up on 2017-09-14 before this Court, agreed to have this case disposed of, by way of written submissions, dispensing with their necessity of making oral submissions. They agreed that this Court could pronounce the judgment after considering the written submissions they had already filled.

Therefore, this judgment would be based on the material adduced by parties in their pleadings and the written submissions.

At the outset learned counsel for the 1st Respondent - Respondent took up two preliminary objections with regard to the maintainability of this appeal. It would be prudent to deal with the said 2nd Preliminary objection first.

The said 2nd preliminary objection is that the Appellant in this case has no right of appeal to prefer this appeal as he has never been a party to these proceedings at any previous occasion.

It is a fact that the Appellant has not been a party to this case either at the Magistrate's Court proceedings or at the High Court proceedings.

What the Appellant in this case is seeking to challenge is a settlement entered into between the 1st Respondent - Respondent and the 2nd Respondent - Respondent. The 2nd Respondent - Respondent who stood as the accused in the case filed against him in the Magistrate's Court had undertaken to pay a sum of money and hand over some vehicles along with their documents to the 2nd Respondent - Respondent who was the virtual Complainant in the case. It was upon the 2nd Respondent - Respondent's complaint that the 3rd Respondent - Respondent (Special Crimes Investigation Bureau - Nugegoda) had instituted this proceeding in the Magistrate's Court. Thus, the Appellant has had no involvement in any capacity in any of the transactions referred to in the proceedings in Court.

It could be further noted as admitted by learned counsel for all the parties that the 1st Respondent - Respondent and 2nd Respondent - Respondent did not represent the Appellant company although both of them had been directors of the company at some given time.

The Appellant has failed to show to the satisfaction of this Court as to how he becomes entitled to a right of appeal in the instant case.

In these circumstances, this Court has no basis to hold that the Appellant in this case has a legitimate right of appeal to prefer the instant appeal.

Therefore, this Court upholds the 2nd preliminary objection raised by the learned counsel for the 1st Respondent - Respondent that the Appellant has no right of appeal in this case. Thus, he is not entitled to maintain this appeal.

The 1st preliminary objection raised by the learned counsel for the 1st Respondent - Respondent is that the Appellant has failed to make all necessary parties to this appeal. It has to be noted that Hon. Attorney General was a party in this case at the High Court. Indeed he had been made a party as it was a public official namely Officer in Charge of the District Frauds Investigation Bureau Nugegoda who had instituted

proceedings in this case in the Magistrate's Court. However, the Appellant has not made Hon. Attorney General a party to this proceeding.

In view of the finding with regard to the 2nd preliminary objection, it would not be necessary for this Court to make a ruling on the 1st preliminary objection referred to above.

For the foregoing reasons, this Court decides to dismiss this appeal with costs payable by the Appellant to the 1st Respondent - Respondent and the 2nd Respondent - Respondent.

Appeal is dismissed with costs.

JUDGE OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL