

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

In the matter of an Application for
revision against an order of Provincial
High Court pronounced in exercising its
revisionary jurisdiction.

C A (PHC) APN 175 / 2017

Provincial High Court of

Western Province (Colombo)

Case No. Rev 181 / 2009

Magistrate's Court Mount Lavinia

Case No. 47733

1. Okanda Silva
2. Rajeewa S Lokugamhewa
3. T Dilhani S Silva
4. M B D Silva

5. Chamila J Sanndage

All were Directors of Vayamba

Development Farming

Corporation Ltd,

No 22/1A,

Waidya Road,

Dehiwala.

ACCUSED - PETITIONER -

PETITIONERS

Chandrika Kumari,

Thambawita,

No. 179/16,

Suhada Mawatha,

Arawwala,

Panniptiya.

COMPLAINANT-RESPONDENT -

RESPONDENT

Before: K K Wickremasinghe J

P. Padman Surasena J

Counsel; J P Gamage with Sumudu Liyanarachchi for the Petitioners.

Supported on : 2017-11-29.

Decided on : 2017 - 12 - 04

JUDGMENT

The Accused - Petitioner - Petitioners (hereinafter sometimes referred to as the Petitioners) are accused in a case filed by the Complainant - Respondent - Respondent in the Magistrate's Court of Mount Lavinia. They had filed a revision application in the Provincial High Court of Western Province holden in Colombo seeking a revision of the order of the Magistrate's Court dated 2009-08-14. Learned Magistrate in that order had decided to issue summons on the Petitioners after considering the contents of a plaint filed under section 136 (1) (a) of Code of Criminal Procedure Act No. 15 of 1979. The Provincial High Court by order dated 2014-05-21 had refused the said revision application with costs.

The Petitioners seek to challenge in this proceeding, the said order of the Provincial High Court delivered in the year 2014

The Petitioners have also filed an appeal against the impugned order. This court has assigned a number to the said appeal. That number is CA (PHC) 148/2014.¹ The Petitioners have paid brief fees also. Thus, that appeal is only to be listed shortly for argument. This position is reflected from the documents produced ,Marked **P1 N** and **P1 M** ². Admittedly the Petitioner has filed this application only to obtain a stay order to halt the proceedings in the Magistrate's Court.

It is the order dated 2017-10-17, made by the learned Magistrate of Mount Lavinia produced Marked **P2** which had prompted the Petitioners to file this application despite the fact that the appeal regarding the same issue is to be listed for argument shortly.

When there is a right of appeal provided for by law, an applicant in a revision application must show the existence of exceptional circumstances for any intervention by a revisionary Court. Perusal of the Petition shows

¹ Paragraph 17 of the petition.

² Paragraph of the petition.

that the grounds urged therein cannot be accepted as exceptional circumstances.

Further, this court is of the opinion that the mere facing the trial in the Magistrate's Court cannot cause any prejudice to the Petitioners.

In these circumstances, this Court has no basis to issue notices on the Respondents.

Therefore, this Court decides to dismiss this application without costs.

Appeal is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL