

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

Court of Appeal Case No : CA HC/13/2014

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

Petitioner

Vs.

1.M.G.R.Manoj Kumara,
2.W.Niroshan

Respondents

C.A. No. 13/2014

H.C. Embilipitiya No. 50/2012

BEFORE : S. DEVIKA DE L TENNEKOON, J. &
S. THURAIRAJA, PCJ.

COUNSEL : Anoop de Silva SSC for the Complainant-
Appellant
Saliya Pieris P.C. with Pasindu Thilakaratne for
The Accused-Respondent.

ARGUED AND
DECIDED ON : 19th January, 2018

S. THURAIRAJA, PCJ.

This matter is taken up for argument. Mr. Saliya Pieris, President's Counsel raises a preliminary objection at the very outset and submits that the appeal is contrary to Section 15 of the Judicature Act No. 2 of 1978 and he submits that Section 15(a)(ii) is the operative section reads follows:-

“On a question of fact alone or on a question of mixed law and fact with leave of the Court of Appeal first had an obtained in a trial without a jury.”

In this case, there is no leave obtained from the Court of Appeal. Therefore, the State cannot maintain this appeal and he submits a judgment of H/L Justice Ranjith Silva, in C.A. Appeal No. 210/2005 unreported decided on 26th of March 2010 where His Lordships have

decided if there is no leave obtained, the appellant cannot maintain an appeal.

Learned Senior State Counsel Ms. Anoop de Silva who is appearing for the Attorney General maintaining the highest tradition of Attorney General's Department, concedes that in this case there is a mixed issue of fact and law is averred in the petition of appeal. Therefore, the said section and the act is applicable to them. Further, she submits that in Collet's case the Supreme Court has interpreted what are the "facts". That matter is an appeal from the Court of Appeal to the Supreme Court and its of civil in nature. Further Article 128 is applicable in that case.

Considering all submissions before us we find that the appellant has not obtain leave under Section 15(a)(ii) of the Judicature Act. Therefore, we uphold their preliminary objection and dismiss the appeal.

JUDGE OF THE COURT OF APPEAL

S. DEVIKA DE L TENNEKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL

Kwk/=