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

In the matter of an Appeal in terms of Article 138 read with Article 154P of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Officer in Charge,
Criminal investigation Division,
Police Station,
Ratnapura.

Complainant

C.A. Case No: **CA (PHC) 06/2014**

P.H.C. Rathnapura Case No:
RA 05/2014

M.C. Rathnapura Case No: **55438**

Vs.

Thalangama Manannalage Jayasena,
c/o Dole Kade,
Seekaradeniya,
Marapana, Rathnapura.

Accused

AND BETWEEN

Wilpitiyalage Ransa,
No. 80, Seekaradeniya,
Marapana.

Petitioner

Vs.

Thalangama Manannalage Jayasena,
c/o Dole Kade,
Seekaradeniya,
Marapana, Rathnapura.

Accused-Respondent

Officer in Charge,
Criminal investigation Division,
Police Station,
Ratnapura.

Complainant-Respondent

The Attorney General
Attorney-General's Department,
Colombo 12.

Respondent

AND NOW BETWEEN

Wilpitiyalage Ransa,
No. 80, Seekaradeniya,
Marapana.

Petitioner-Appellant

Vs.

Thalangama Manannalage Jayasena,
c/o Dole Kade,
Seekaradeniya,
Marapana, Rathnapura.

Accused-Respondent-Respondent

Officer in Charge,
Criminal investigation Division,
Police Station,
Ratnapura.

Complainant-Respondent-Respondent

The Attorney General
Attorney-General's Department,
Colombo 12.

Respondent-Respondent

BEFORE	:	K. K. Wickremasinghe, J. Mahinda Samayawardhena, J.
COUNSEL	:	AAL Chathura Amarathunga for the Petitioner-Appellant AAL Nihara Randeniya for the Accused-Respondent-Respondent Nayomi Wickremasekara, SSC for the 2nd & 3rd Respondent-Respondents
ARGUED ON	:	03.04.2019
WRITTEN SUBMISSIONS	:	The Petitioner-Appellant – On 13.05.2019 The Accused-Respondent-Respondent – On 16.05.2019 The 2nd & 3rd Respondent-Respondents – On 06.05.2019
DECIDED ON	:	04.06.2019

K.K.WICKREMASINGHE, J.

The petitioner-appellant filed this appeal seeking to set aside the order of the Learned High Court Judge of the Provincial High Court of Sabaragamuwa Province holden in Ratnapura dated 10.02.2014 in Case No. HCR/RA 05/2014 and

seeking to set aside the order of the Learned Magistrate of Ratnapura dated 02.12.2013 in Case No. 55438.

Facts of the case:

The petitioner–appellant (hereinafter referred to as the 'appellant') made a complaint to the complainant–respondent-respondent (hereinafter referred to as the '2nd respondent') that the accused-respondent-respondent (hereinafter referred to as the 'accused-respondent') has stolen her gold chain. The 2nd respondent filed B report against the accused–respondent in the Magistrate's court of Rathnapura, under section 369 and section 394 of the Penal Code.

Accordingly the Learned Magistrate framed charges against the accused-respondent and upon the charge sheet being read, the accused-respondent pleaded not guilty. At the trial, the appellant and a police officer testified for the prosecution and the defence did not call any witnesses. The accused-respondent chose to remain silent.

The Learned Magistrate acquitted the accused-respondent from the charges by the order dated 02.12.2013. Moreover, the Learned Magistrate ordered to release the gold chain in question, to the accused-respondent.

Being aggrieved by the said order the appellant filed a revision application to the Provincial High Court of Rathnapra.

The Learned High Court Judge dismissed the revision application *in limine* without issuing notice to the other parties.

Being aggrieved by the said dismissal, the appellant preferred this appeal.

The appellant submitted following grounds of appeal;

1. The Learned High Court Judge erred in law by considering section 318 of the Code of Criminal Procedure Act since the appellant filed a revision application to which section 318 is not applicable
2. The order of the Learned High Court Judge is contrary to law since the appellant did not challenge the sentencing order and only prayed about the production, namely the gold chain.
3. Not issuing notice is contrary to law since the statements made to the Police by the accused-respondent reveals that the gold chain belonged to the appellant.

The Learned SSC for the State contended that the appellant has no right to invoke revisionary jurisdiction of the Provincial High Court of Rathnapura in respect of a part of the judgment of the Learned Magistrate dated 02.12.2013. Accordingly the Learned SSC raised two questions of law i.e.

i. Whether the decision to release the gold chain to the accused forms part of the judgment of acquittal or whether it is a separate and a distinct order from the judgment

ii. If the decision to release the gold chain is part and parcel of the judgment, whether law permits, to prefer an appeal or revision against a part of a judgment as opposed to a judgment at its entirety.

In support of her contention, the Learned SSC submitted that an appeal will lie only when the right of appeal is expressly provided statutorily and it can be said that *sine qua non* to have the right to prefer partial appeals should also be expressly created by statutes. Accordingly it was contended that Sri Lankan legal system does not identify a right to partial appeal.

However it is noteworthy that the application filed before the Learned High Court Judge was not an appeal but an application for revision. In the said petition submitted to the High Court, the appellant prayed as follows;

> "(අ) උගත් මහේස්ත්‍රාත්තුමාගේ 2013.12.02 දිනැති නියෝගය ඉවත් කරන ලෙසත්
>
> (ආ) එකී නඩුවේ නඩු භාණ්ඩය වන රන්මාලය පෙත්සම්කාරියට මුදාහරින ලෙස සහ/හෝ නඩු භාණ්ඩය පිළිබඳ විමසීමක් කරන ලෙසට නැවත උගත් මහේස්ත්‍රාත්තුමකු හට නියෝග කරන ලෙසත්..."

Accordingly it is evident that the appellant prayed to have revised the entire order of the Learned Magistrate dated 02.12.2013. Therefore I am of the view that the contention of the Learned SSC for the 2nd respondent and the 2nd ground of appeal of the appellant are untenable.

Now I wish to consider whether the Learned High Court Judge erred in law by considering section 318 of the Code of Criminal Procedure Act in dismissing the application *in limine.*

It is settled law that revision is a discretionary remedy and such power shall be invoked only upon demonstration of exceptional circumstances.

Section 318 of the Code of Criminal Procedure reads that;

> *"An appeal shall not lie from an acquittal by a Magistrate's Court except at the instance or with the written sanction of the Attorney-General."*

In the recent judgment of **L.R. Watawala, Chairman/Director General, Board of Investment of Sri Lanka V. Chandana Karunathilake [SC Appeal 31/2009 and SC Appeals 35/2009–78/2009 decided on 06.07.2018]**, His Lordship Priyantha Jayawardena observed section 318 as a partial ouster clause which

retains the jurisdiction of courts subject to imposing certain restrictions on jurisdiction. In the said case it was further held that,

> *"Notwithstanding the provision of total ouster clauses, the courts exercise revisionary powers where they deem fit...*
>
> *Moreover, in Nissanka v The State [2001] 3 SLR 78, the Court of Appeal considered a Petition of Appeal that was filed out of time as an Application for Revision on the basis that the revisionary powers that had been conferred by Section 364 of the Code of Criminal Procedure Act No. 15 of 1979 as amended is wide enough to permit the exercise of revisionary powers in this instance as it is warranted to meet the ends of justice.*
>
> *Therefore, it is evident that in appropriate instances, the Court has entertained Revision Applications when there was no right to appeal."*

In the case of **Rasheed Ali V. Mohamed Ali and Others [1981] 1 SLR 262,** it was held that,

> *"...the powers of revision vested in the Court of Appeal are very wide and the Court can in a fit case exercise that power whether or not an appeal lies. When, however, the law does not give a right of appeal and makes the order final, the Court of Appeal may nevertheless exercise its powers of revision, but it should do so only in exceptional circumstance. Ordinarily the Court will not interfere by way of review, particularly when the law has expressly given an aggrieved party an alternate remedy such as the right to file a separate action, except when non-interference will cause a denial of justice or irremediable harm."*

In the case of **Mariam Beebee V. Seyed Mohamed [68 NLR 36]** it was held that,

> *"The power of revision is an extraordinary power which is quite independent of and distinct from the appellate jurisdiction of this court. Its object is the due administration of justice and the correction of errors, sometimes committed by this court itself, in order to avoid a miscarriage of justice..."*

In the case of **Bank of Ceylon V. Kaleel and others [2004] 1 Sri L R 284,** it was held that;

> *"In any event to exercise revisionary jurisdiction the order challenged must have occasioned a failure of justice and be manifestly erroneous which go beyond an error or defect or irregularity that an ordinary person would instantly react to it - the order complained of is of such a nature which would have shocked the conscience of court."*

In light of above it is understood that the Court has discretion to exercise revisionary powers in appropriate instances regardless of the right to appeal.

At this juncture it is important to consider whether the appellant is entitled to file the said revision application.

In the case of **Ederawasam Gmage Roshan Fernando V. Attorney General [CA (PHC) APN 101/2013 – decided on 14.12.2016],** it was held that,

> *"Article 138 (1) of the Constitution confer jurisdiction to act in revision. The Court of Appeal Appellate Procedure Rules specify the procedure of tendering a revision application. The learned Counsel for the Petitioner submits that the rules do not specify the person who is entitle to institute a revision application. Therefore, he argues that any person can institute a revision application. That cannot be so, because the relief can be granted only to a person entitle to it. The person who is entitled to bring a revision application is a "person aggrieved" only...*

...A revision application can be presented to Court for redress only by a party aggrieved by what has been done by the lower Court..."

It is obvious that the appellant has been affected by the order of the Learned Magistrate and therefore entitled to be heard. Considering above, I am of the view that the Learned High Court Judge clearly erred in dismissing the revision application *in limine* without hearing the submissions of the appellant. Since there had been an error on the part of the Learned High Court Judge I decide to send this case back to the High Court in order to be considered on merits.

Accordingly I revise the order of the Learned High Court Judge dated 10.02.2014 and send back the case to the High Court for a fresh hearing on merits.

This appeal is hereby allowed.

JUDGE OF THE COURT OF APPEAL

Mahinda Samayawardhena, J.

I agree,

JUDGE OF THE COURT OF APPEAL