IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF

SRI LANKA

Hettiarachchige Chandana Kumarasinghe,
Additional Commotional of Agrarian Service,
Agrarian Development District Office,
Sri Bodhi Road,
Gampaha.

Plaintiff

Court of Appeal Case No:
CA PHC **0035/2016**

Provincial High Court (Gampaha)
Case No. 33/2013 (Revision)

Magistrate's Court (Pugoda)
Case No: 66555

Vs.

1. R.D Somadasa,
   206/1, Giridara,
   Kapugoda.

2. R.D Sumanarathna,
   207, Giridara,
   Kapugoda.

Respondents

AND NOW

1. R.D Somadasa,
   206/1, Giridara,
   Kapugoda.

2. R.D Sumanarathna,
   207, Giridara,
   Kapugoda.

Respondent-Petitioners

Vs.

Additional Commotional of Agrarian Service,
Agrarian Development District Office,
Sri Bodhi Road,
Gampaha.

Plaintiff-Respondent

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

Respondent

AND NOW BETWEEN

1. R.D Somadasa,
   206/1, Giridara,
   Kapugoda.

2. R.D Sumanarathna,
   207, Giridara,
   Kapugoda.

Respondent-Petitioner-Appellants

Vs.

Additional Commotional of Agrarian Service,
Agrarian Development District Office,
Sri Bodhi Road,
Gampaha.

Plaintiff-Respondent-Respondent

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

Respondent-Respondent

Before: **Prasantha De Silva, J.**
K.K.A.V. Swarnadhipathi, J.

Counsel: Damitha Wickrama Arachchi for the Respondent-Petitioner-Appellants.
S. Samaratunga JASA with S. Ahamed S.C for the Plaintiff-Respondent-Respondent and Respondent-Respondent.

Written Submissions Tendered on: 27.12.2021 by the Respondent-Petitioner-Appellant.
02.10.2020 by the Plaintiff-Respondent-Respondent and the Respondent-Respondent.

Argued on: Parties agreed to dispose this matter by way of written submissions.

Decided on: 04.04.2022

Prasantha De Silva, J.

Judgment

The Plaintiff-Additional Commissioner of Agrarian Services instituted action in the Magistrate's Court of Pugoda bearing case No. 66555 against the 1st and 2nd Respondents in terms of Section 90(4) of the Agrarian Development Act No. 46 of 2000 as amended by Act No. 46 of 2011.

The said action had been taken up for Trial and after the conclusion of the Trial, the learned Magistrate delivered the Judgment on 15.09.2009, in favour of the Plaintiff and had found the 1st and 2nd Respondents guilty of the charge. 1st and 2nd Respondents were sentenced for six months imprisonment and for a fine of Rs. 5000/-, and in default another six months imprisonment. Being aggrieved by the said Judgment 1st and 2nd Respondents preferred an appeal to the High Court of Gampaha. Since no right of appeal lies against the said Judgment, the 1st and 2nd Respondents had thereafter invoked the revisionary jurisdiction of the High Court of Gampaha in revision application bearing No. 33/2013.

However, the learned High Court Judge having inquired the said revision application had made an Order on 23.02.2016, upholding the Judgment of the learned Magistrate but partly allowing the said revision application by suspending the rigorous imprisonment for a period of 5 years.

Being aggrieved by the said Order of the learned High Court Judge dated 23.02.2016, the 1st and 2nd Respondent-Petitioner-Appellants [hereinafter sometimes referred to as the Appellants] had preferred this appeal seeking to set aside the Order of the Magistrate's Court of Pugoda dated 15.09.2009 and the said Order of the learned High Court Judge.

It appears that this revision application was made on 31.07.2013, against the Order of the learned Magistrate dated 15.09.2009, nearly four years from date of the impugned Order of the learned Magistrate.

However, the Appellants have explained the delay in filing the revision application. It was submitted by the Appellants that the Appellants had preferred an appeal bearing No. 76/2009 against the Order of the learned Magistrate on 16.09.2009, to the High Court of Gampaha, which was dismissed on 05.01.2013, since there was no right of appeal given against an Order made under Section 90 of the Agrarian Development Act.

Subsequently, the Appellants had filed a leave to appeal application on 24.01.2013 to the Supreme Court against the said Order of the learned High Court Judge dated 09.01.2013, which was also dismissed on a technical defect refusing to grant a leave to appeal of the said application to Supreme Court.

Be that as it may, it is relevant to note that the appeal before this Court is an appeal preferred against the Order made by the learned High Court Judge exercising revisionary jurisdiction. As such, it is seen that the duty of this Court is to consider an appeal preferred against the Order of the Provincial High Court in exercising its revisionary jurisdiction and not to consider an appeal made against the Order of the learned Magistrate.

It was held in the case of ***Nandawathi and another Vs. Mahindasena [(2009) 2 SLR 218],***

> "When an Order of a Primary Court Judge is challenged by way of revision in the High Court, the High Court can exercise only the legality of that Order and not the correction of that Order".

It was emphasized by *Ranjith Silva J.* that;

> "I am of the opinion that this particular right of appeal in the circumstances should not be taken as an appeal in the true sense, but in fact as an application to examine the correctness, legality or the propriety of the Order made by the High Court Judge in the exercise of revisionary powers. The Court of Appeal should not under the guise of an appeal attempt to re-hear or re-evaluate the evidence led in the main case".

In view of the aforecited Judgment, we are not supposed to consider this as an appeal preferred against the Order of the Magistrate's Court. We are of the view that the task before this Court is

to ascertain whether this appeal emanates from an Order pronounced by the Provincial High Court in the exercise of its revisionary jurisdiction. Thus, the Court of Appeal is empowered to evaluate the correctness of the exercise of the revisionary jurisdiction by the Provincial High Court.

Similarly, the Provincial High Courts too be needful when exercising revisionary jurisdiction in respect of the applications made against the Orders of the Magistrate's Court and should be considered these as revision applications and not as appeals.

It appears that the Defendant-Petitioner [Appellants] had invoked the revisionary jurisdiction of the Provincial High Court in terms of Article 138 of the Constitution read with Article 154 (3) (b) of the Constitution.

Article 154 (3) (b) states that, notwithstanding anything in Article 138 and subject to any Law, a Provincial High Court shall exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrate's Court and Primary Court within the province.

Since this appeal emanates from the Order of the Provincial High Court exercising revisionary jurisdiction against the Order of the Magistrate who found the Appellant guilty for the charge levelled against them and punished for six months imprisonment with a fine of Rs. 5000/-, it clearly manifests that the provisions relating to revision, in Chapter XXIX of the Code of Criminal Procedure Act No. 15 of 1979, are applicable to the exercise of revisionary jurisdiction of the Provincial High Court in respect of the Orders made by the Magistrate's Court.

It appears that the Court exercising revisionary jurisdiction in terms of Section 364 of the Code of Criminal Procedure Act, Court had power to call for and examine the record of any case irrespective of whether they are already fixed as pending, in the High Court or the Magistrate's Court. This power can be exercised for any of the following purposes;

1. To satisfy Court as to the legality of any Sentence or Order passed by the High Court or the Magistrate's Court.
2. To satisfy this Court as to the propriety of any Sentence or Order passed by such Court.
3. To satisfy this Court as to the regularity of proceedings of such Court.

Thus, it is seen that revisionary jurisdiction in terms of Section 364 of the Code of Criminal Procedure Act No. 15 of 1979 is wide and is specifically directed at vesting a jurisdiction in this Court to satisfy itself as to the legality or propriety of any sentence passed by the High Court or the Magistrate's Court [***Attorney General Vs. Ranasinghe & Others (1993) 2 SLR 81***].

It is to be observed that the learned High Court Judge had considered the Judgment of the learned Magistrate and had upheld the reasoning therein.

> "අදාල කම්බි වැට ඉවත් කළ බව තහවුරු වන නමුත් ගොවිජන සේවා සහකාර කොමසාරිස් වරයාගේ නියෝගයට එරෙහිව යමින් නැවත වතාවක් විත්තිකරුවන් දෙදෙනා විසින් ගොවීන්ට පාරේ ගමන් කිරීමට නොහැකි වන ආකාරයට එය අවහිර කොට තිබෙන බව හෙළිදරව් වේ. පැමිණිල්ල වෙනුවෙන් කැඳවන ලද සාක්ෂි සමස්තයක් සේ සලකා බලන විට පැහැදිලිවම නිගමනය කළ හැක්කේ අදාළ චෝදනා සාධාරණ සැකයෙන් ඔබ්බට තහවුරු වී තිබෙන බවයි. ඒ අනුව පැමිණිල්ලේ සාක්ෂි මත විත්තිකාර පෙත්සම්කරුවන් දෙදෙනා වරදකරුවන් බවට තීරණය කිරීම දෝෂ සහගත නොවේ යැයි මමද නිගමනය කරමි.....
> .....උගත් අතිරේක මහෙස්ත්‍රාත්වරයා විසින් විත්තිකරුවන් දෙදෙනා වරදකරු කිරීම සහගත නැත. එබැවින් දණ්ඩන නියමයට එරෙහිව පමණක් මෙම ප්‍රතිශෝධන ඉල්ලීම සලකා බැලීම මේ අවස්ථාවේදී සුදුසු බව පෙනී යයි."

It is noteworthy that the learned Magistrate had also taken into consideration the settlement entered on 11.07.2008 in case bearing No. 1299, where the Appellants had agreed for the Agrarian Officers to clear the obstructions on the agricultural road.

Apparently, the learned High Court Judge has determined the Order of the learned Magistrate was correct in facts and Law regarding the charges against the Appellant.

The learned High Court Judge had only suspended the sentencing and has not in any way amended the decision pertaining to the culpability of the Appellants.

Furthermore, the learned Magistrate had determined that, there was an agricultural road in use since 1950's road via which even tractors and farming equipment had been taken to the paddy fields. This roads had been obstructed by the Appellants since 2001 and it had been temporarily removed by the Agrarian Officers. Moreover, the Appellants had once again obstructed the agricultural road at another point which reflects they were guilty of an offence in terms of the Law.

In view of the aforesaid reasons, it is observable that the Appellants had not satisfied Court with regard to the criterion embodied in Section 364 of the Code of Criminal Procedure Act to consider in revisionary proceedings such as, legality of any Order, propriety of any Order and regularity of the proceedings of such Court.

It appears that the Appellants had justified the delay of filing the impugned application for revision.

We are of the view that the learned High Court Judge had analysed and evaluated the evidence placed before the learned Magistrate and had affirmed the Order of the Magistrate, thus, the Order of the learned High Court Judge is well founded.

In this instance, it is submitted that, to exercise revisionary powers against the Order challenged, it must be manifestly erroneous and needs to have occasioned a miscarriage of Justice, which goes beyond an error, defect or irregularity that an ordinary person would instantly react to it and the impugned Order, would have shocked the conscience of Court.

Apparently, in view of the findings of the learned High Court Judge, the Appellants had not disclosed exceptional circumstances, which would warrant the intervention of the Provincial High Court by way of an application for revision.

Thus, it clearly manifest that the learned High Court Judge had correctly affirmed the Order of the learned Magistrate and had dismissed the Appellants' application for revision. As such, we see no reason for us to interfere with the Order dated 09.01.2013 by the learned High Court Judge and the Order dated 15.09.2009 by the learned Magistrate. Hence, we dismiss the appeal with cost fixed at Rs. 50,000/-.

JUDGE OF THE COURT OF APPEAL

K.K.A.V. Swarnadhipathi, J.
I agree.

JUDGE OF THE COURT OF APPEAL