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

In the matter of an application for Revision in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Alliance Finance Company PLC
No 84, Ward Place
Colombo 07.

Plaintiff

Vs.

Court of Appeal Application No: **CA/CPA/47/20**

High Court of Chilaw No: HCRA**/51/2019**

Magistrate Court of Chilaw No: **12212/19**

Warnakulasuriya Sherin Krismalika Perera
Nanayakkarawatta
Wattakkalliya
Chilaw.

Accused

And

Alliance Finance Company PLC
No 84, Ward Place
Colombo 07.

Plaintiff - Petitioner

Vs.

Warnakulasuriya Sherin Krismalika Perera
Nanayakkarawatta
Wattakkalliya
Chilaw.

Accused-Respondent

And now between

Alliance Finance Company PLC
No 84, Ward Place
Colombo 07.

Plaintiff – Petitioner - Petitioner

Vs.

1. Warnakulasuriya Sherin Krismalika Perera
   Nanayakkarawatta
   Wattakkalliya
   Chilaw.

Accused – Respondent – Respondent

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

Respondent

BEFORE : Menaka Wijesundera J
Neil Iddawala J

COUNSEL : Harith Adikary with Narada Amarasinghe and Dhanushika Dissanayake instructed by Achala Wanniarachchi for the Petitioner

Chathuranga Bandara SC for the 2nd Respondents.

Argued on	:	16.03.2022
Written Submissions on	:	10.03.2022
Decided on	:	05.05.2022

Iddawala – J

This is a revision application filed on 16.06.2020 by Alliance Finance Company (*hereinafter the petitioner)* impugning an order dated 12.03.2020 delivered by the High Court of Chilaw in Case No HCRA/51/2009 which refused the petitioner's revision application without issuing notice to the respondent. As such, the petitioner has invoked the revisionary jurisdiction of this Court to set aside the impugned order.

Background

The petitioner, acting under and in terms of Section 136(1)(a) of the Code of Criminal Procedure Act No 15 of 1979 (*hereinafter the CPC*), instituted proceedings in the Magistrate Court of Chilaw (Case No 12212/19) against the 1st respondent on 28.05.2019 for committing an offence under Section 25(1)(a) of the Debt Recovery (Special Provisions) Act No.2 of 1990 (as amended) for dishonoured cheques. On the same day, an affidavit was filed requesting the Magistrate to issue summons on the respondent inviting the Magistrate Court to act under Section 139 of the CPC. The matter was fixed for oral submissions on 28.06.2019. After the oral submissions, the learned Magistrate made an order on 28.06.2019, refusing to issue summons on the respondent.

Aggrieved by such refusal, the petitioner preferred a revision application to the High Court under HCRA/51/2009. The matter was supported, and the High Court dismissed the application on 12.03.2020 without issuing notice to the respondent. The instant application impugns the said order dated 12.03. 2020.Though this Court issued notice

of this instant application on accused respondent -respondent, he refused to accept the notice. (Vide- journal entry 07.10.2020).

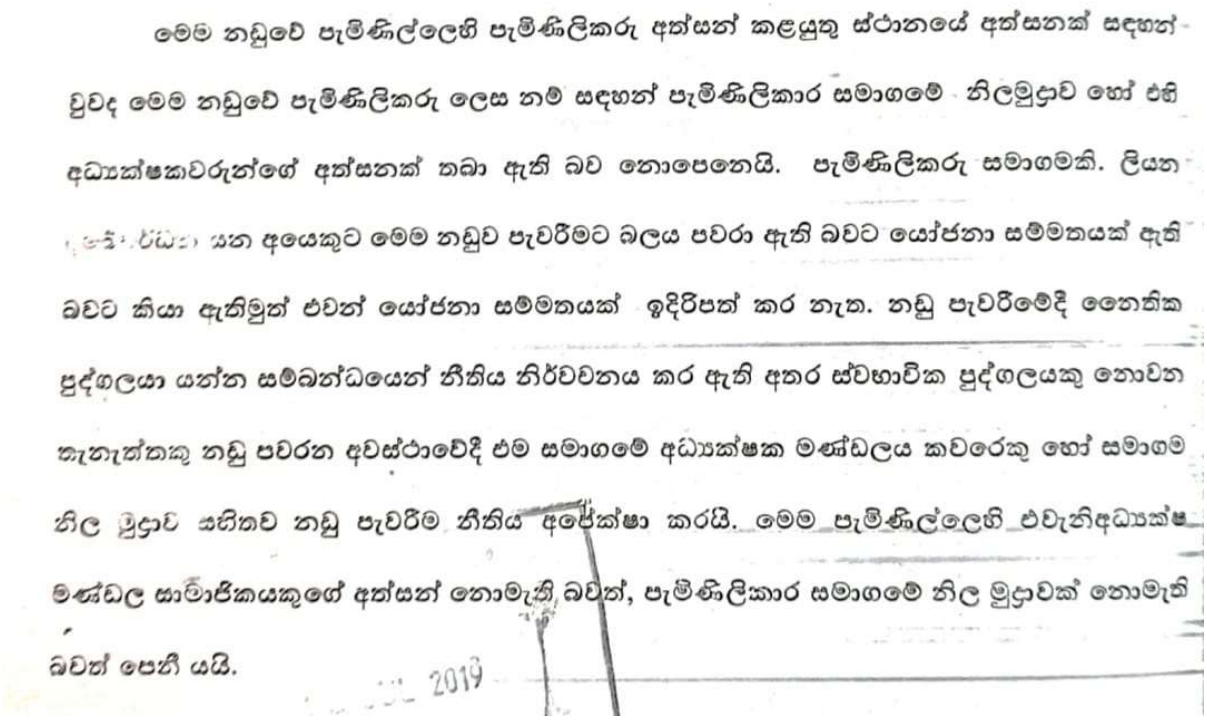
Impugned Order

The High Court, in refusing the application of the petitioner, has found that the private plaint filed in the Magistrate Court in Case No 12212/19 has not been properly constituted.

The High Court refers to Section 136(1)(a) of the CPC and examines whether the petitioner has fulfilled the necessary requisites to file a private plaint. The learned High Court Judge has examined the plaint dated 28.03.2019 and has observed that a signature has been placed above the reference 'පැමිණිලිකරු' (complainant) and that above such signature is a clause describing that the petitioner company, by way of a Board Resolution, has empowered the executive officer 'Liyana Abeywardhanage Wickremasinghe' to file a plaint and place his signature. (Vide Page 36 of the Brief). Thereafter, the learned High Court Judge refers to a letter dated 24.04.2019 (addressed to the Registrar of the Magistrate Court of Chilaw and signed by an Executive Officer), which refers to 'Liyana Abewardhanage Wickremasinghe' as appearing on behalf of the petitioner company. Based on such observations, the High Court makes the following pronouncement and dismisses the revision application of the petitioner without issuing notice.

> "ඒ අනුව පැමිණිලිකාර-පෙත්සම්කාර සමාගම විසින් හලාවත මහේස්ත්‍රාත් අධිකරණයේදී එකී පැමිණිල්ල ගොනු කිරීමේදී අපරාද නඩු විධාන සංග්‍රහ පනතේ 136(1)ඒ වගන්තියේ දක්වා ඇති නෛතික අවශ්‍යතාවය තෘප්ත කිරීමකින් තොරව එම පැමිණිල්ල ඉදිරිපත් කර ඇති බව පැහැදිලි වේ.
>
> උගත් අතිරේක මහේස්ත්‍රාත්වරයා එකී පැමිණිල්ල නිෂ්ප්‍රභ කිරීමේදී එම කරුණු පිළිබඳව අවධානය යොමු කරමින් එම නියෝගය ලබා දී ඇත" (Vide Page 37 of the Brief)

On this same regard, the Magistrate order, which was sought to be revised before the High Court made the following observations vide Page 84 of the Appeal Brief:



මෙම නඩුවේ පැමිණිල්ලෙහි පැමිණිලිකරු අත්සන් කළයුතු ස්ථානයේ අත්සනක් සඳහන් වුවද මෙම නඩුවේ පැමිණිලිකරු ලෙස නම් සඳහන් පැමිණිලිකාර සමාගමේ නිලමුද්‍රාව හෝ එහි අධ්‍යක්ෂකවරුන්ගේ අත්සනක් තබා ඇති බව නොපෙනෙයි. පැමිණිලිකරු සමාගමකි. ලියන [illegible] යන අයෙකුට මෙම නඩුව පැවරීමට බලය පවරා ඇති බවට යෝජනා සම්මතයක් ඇති බවට කියා ඇතිමුත් එවන් යෝජනා සම්මතයක් ඉදිරිපත් කර නැත. නඩු පැවරීමේදී නෛතික පුද්ගලයා යන්න සම්බන්ධයෙන් නීතිය නිර්වචනය කර ඇති අතර ස්වභාවික පුද්ගලයකු නොවන කැනැත්තකු නඩු පවරන අවස්ථාවේදී එම සමාගමේ අධ්‍යක්ෂක මණ්ඩලය කවරෙකු හෝ සමාගම නිල මුද්‍රාව සහිතව නඩු පැවරීම නීතිය අපේක්ෂා කරයි. මෙම පැමිණිල්ලෙහි එවැනි අධ්‍යක්ෂ මණ්ඩල සාමාජිකයකුගේ අත්සන් නොමැති බවත්, පැමිණිලිකාර සමාගමේ නිල මුද්‍රාවක් නොමැති බවත් පෙනී යයි.

2019

Submissions

Both the counsel appearing on behalf of the petitioner and 2nd respondent, respectively made submissions on the contention that the petitioner's private plaint has duly satisfied the requirements of Section 136(1)(a) and Section 139 of the CPC. Both counsels relied on the precedent set by **Malani Gunaratne, Additional District Judge Galle Vs Abeysinghe and Another (1994) 3 SLR 196** to submit that preconditions to the operation of Section 139 of the CPC have been sufficiently fulfilled by the petitioner. As such, it was submitted that the only threshold a Magistrate should be satisfied with to issue summons is 'sufficient ground' to proceed. It was urged that Section 136(1)(a) does not impose any other condition at this initial stage of issuing summons. Furthermore, it was argued that a mere statement detailing the ingredients of the offence and the evidence in the plaint should suffice to issue summons and that other materials would be presented and deliberated during the trial, not at the first instance.

The counsel contended that the instant application deals with an offence against the society, which is a strict liability offence under the law and the facts of the case, i.e. issuance of cheques without sufficient funds where the Bank has dishonoured the same

for want of funds, serve as *prima facie* evidence of an offence. It was urged that based on such material; the Magistrate can form an opinion for the purpose of issuing summons. And that delivering a complaint in writing, signed by the complainant and countersigned by the pleader, along with a clause detailing the Board Resolution of the complainant-company is a per se satisfaction of the requirements of Section 136(1)(a) of the CPC.

It was submitted that the petitioner has correctly submitted the plaint according to Section 136(1)(a) of the CPC, where the relevant authorized officer has signed the plaint, and it was countersigned by the pleader (Attorney-at-Law). It was further contended that the petitioner had submitted an affidavit under Section 139 of the CPC to satisfy the court to issue summons by relying on the financial agreement between the petitioner and the 1st respondent and the dishonoured cheques.

The submissions reiterated that as per the **Malani Gunaratne Case** (supra), a Magistrate acting under Section 139 of the CPC, the court must see whether the plaint explained the offence and its ingredients and has included the evidence the complainant wishes to rely on to proceed. In conclusion, it was submitted that the petitioner has fulfilled the requirements of Section 136(1)(a) to issue summons at the initial stage, prior to framing of charges and the commencement of trial.

Analysis

The instant application pivots on the issue of whether the petitioner has satisfied the requirements envisioned in Section 136(1)(a) of the CPC in filing a private plaint. As such, this Court will have to determine whether the order of the learned High Court Judge in holding that the petitioner has failed to fulfil such requirement and thereby dismissing the application Case No HCRA/51/2009 without issuing notice to the respondent, is good in law.

At the outset, the law relating to Section 136(1)(a) must be examined. The Section provides as follows:

> *(1) "Proceedings in a Magistrate's Court shall be instituted in one of the following ways*

(a) on a complaint being made orally or in" writing to a Magistrate of such court that an offence has been committed which such court has jurisdiction either to inquire into or try:
Provided that such a complaint if in writing shall be drawn and countersigned by a pleader and signed by the complainant; or"

Speaking on the said Section, **Malani Gunaratne Case** (supra) made the following observation:

"Section 139 (1) requires a Magistrate to form an opinion as to whether there is sufficient ground for proceeding against some person who is not in custody. I am of the view that the opinion to be formed should relate to the offence the commission of which is alleged in the complaint or plaint filed under section 136 (1). ***The words "sufficient ground" embraces both, the ingredients of the offence and the evidence as to its commission****. The use of the word opinion does not make the action of the Magistrate a purely subjective exercise. Since the opinion relates to the existence of sufficient ground for proceeding against the person accused, the material acted upon by the Magistrate should withstand an objective assessment. I am of the view that the proper test is to ascertain whether on the material before Court, prima facie,* ***there is sufficient ground on which it may be reasonably inferred that the offence as alleged in the complaint or plaint has been committed by the person who is accused of it****."* (Emphasis added)

In **Alliance Finance PLC vs Yeshan Harendra Samarasekara CA/PHC/APN /67/2015,** where it is argued that the failure to tender the board resolution with the complaint should have been considered by the Magistrate Court as fatal and summons should have not been issued. Yet, the court held that *"The complaint made to the Magistrate Court contains the statement that a resolution has been passed by the Board of Directors authorising him to file action. The learned Magistrate had enough material to issue summons, the rest is to be proved at the trial".*

Conclusion

As such, it is clear that at the stage of issuing summons, the Magistrate ought to be satisfied with the commission of an offence as asset out in the plaint. Here, the

Magistrate can utilize the 'reasonable man' test where objectively, he may ascertain whether the material available before him reveals that an offence has been committed.

When one examines the impugned orders, it is clear that the learned Judges have focused on the technical composition of the plaint. They have scrutinized the signature and the authority of the signatory rather than considering the offence and its ingredients. The impugned orders have failed to ascertain the criminality of the alleged acts and whether the ingredients of the offence and the submitted evidence forms 'sufficient ground'.

Therefore, it is the considered view of this Court that the learned Magistrate and High Court Judge, in delivering the order dated 28.06.2019 and 12.03.2020 respectively have erred in law by omitting to apply the legal principles enunciated in **Malani Gunaratne Case and Alliance Finance PLC vs Yeshan Harendra Samarasekara** (supra).

Hence, we incline to set aside the order of the learned High Court Judge dated 12.03.2020, and order dated 28.06.2019 of the learned Magistrate and direct to issue summons as requested by the petitioner.

Application allowed.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL