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

In the matter of revision in terms of Article 138 of the Constitution, from the Order dated 29th May 2019 of the Provincial High Court of Western Province holden in Homagama in case bearing No. 31/2018 Appeal.

Court of Appeal No:
CA/PHC/APN/105/2019

Provincial High Court Appeal No. **31/2018**

Kaduwela Magistrate's Court No: **60043**

Y.I.D. Goonawardena,
Additional Agrarian Development Commissioner,
District Office of Agrarian Development,
No.336, Rev. Baddegama Wimalawansha Mw,
Colombo-10

Applicant

Vs.

W.A.D.Piyasiri,
No.85/A, Thalahena, Malabe

Respondent

AND BETWEEN

W.A.D.Piyasiiri,
No.85/A, Thalahena, Malabe

Respondent-Appellant

Vs.

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

1st Respondent

2. Y.I.D. Goonawardena,
   Additional Agrarian Development Commissioner,
   District Office of Agrarian Development,
   No.336, Rev. Baddegama Wimalawansha Mw,
   Colombo-10.

Applicant-Respondent

AND NOW BETWEEN

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

1st Respondent-Petitioner

2. Y.I.D. Goonawardena,
   Additional Agrarian Development Commissioner,
   District Office of Agrarian Development,
   No.336, Rev. Baddegama Wimalawansha Mw,
   Colombo-10.

Applicant-Respondent-Petitioner

Vs.

W.A.D.Piyasiiri,
No.85/A, Thalahena, Malabe.

Respondent-Appellant-Respondent

Before:	**Prasantha De Silva, J.** **K.K.A.V. Swarnadhipathi, J.**
Counsel:	A. Gajadeera, SC for the Petitioners Saumya Hettiarachchi for the Respondent-Appellant-Respondent
Written Submissions tendered on:	09.03.2022 by the 1st Respondent-Petitioner and Applicant-Respondent- Petitioner 30.07.2021 by the Respondent-Appellant-Respondent
Argued on:	Parties agreed to dispose this matter by way of written submissions
Decided on:	24.05.2022

Prasantha De Silva, J.

Order

The Applicant being the Additional Agrarian Development Commissioner, had instituted action bearing No. 60043 in the Magistrate's Court of Kaduwela against the Respondent to obtain an Order restraining the Respondent from filling/removing any soil from/erecting any structure on

the paddy land morefully described in the schedule to the application dated 11.02.2015, under Section 33(3) of the Agrarian Development Act No. 46 of 2000 as amended.

Consequent to the said application, the learned Magistrate of Kaduwela issued an Interim Order on 23.02.2015, restraining the Respondent from filling/removing any soil from/erecting any structure, on the disputed paddy land under Section 33 (4) of the Agrarian Development Act. The Respondent appeared before the Magistrate's Court and moved Court to file objections in respect of the issuance of the said Interim Order.

After Applicant filed the counter objections, both Counsel were allowed to make oral submissions. Having considered the oral submissions of both parties, the learned Magistrate pronounced the Order on 05.12.2016 confirming the said Interim Order issued against the Respondent. Being aggrieved by the said Order, the Respondent had preferred an appeal to the Provincial High Court of Western Province holden in Homagama.

The Applicant-Respondent had raised a preliminary objection regarding the maintainability of the appeal on the ground that there is no right of appeal available under the Agrarian Development Act. The said preliminary objection was disposed on written submissions of both parties and the learned High Court Judge delivered the Order on 29.05.2019, dismissing the said preliminary objection raised by the Applicant-Respondent. Since no right of appeal is conferred in the Agrarian Development Act, the learned High Court Judge converted the appeal into a revision application and decided to proceed with the matter.

Being aggrieved by the said Order of the learned High Court Judge, the Applicant-Respondent-Petitioner [hereinafter sometimes referred to as the Petitioner] invoked the revisionary jurisdiction of this Court on the following grounds;

I. The learned High Court Judge has erred in Law in determining that settled Law of the country is to convert appeals into revisions, when there is no right of appeal granted by the applicable Law.

II. The learned High Court Judge has erred in Law by failing to give any reasons as to why the appeal of the Respondent required to be converted into a revision.

III. The learned High Court Judge has erred in Law by failing to answer/determine the specific legal objections raised by the Petitioner pertaining to whether there exists a right of appeal under the Agrarian Development Act.

It was submitted on behalf of the Appellant-Respondent-Petitioner that revisionary jurisdiction of the Provincial High Court *vis a vis* the Agrarian Services Act was strictly limited to Sections 5 and 9 of the Agrarian Services Act and the aforementioned revisionary jurisdiction could only have been exercised in respect of Orders made under Sections 5 or 9 of the Agrarian Services Act No. 58 of 1979. This reasoning is equally applicable to the new enactment, Agrarian Development Act No. 46 of 2000. It is a well-known principle of statutory construction that when the words of an old statute are made part of a new statute, the legal interpretation which has been put upon the former by Courts of Law is applicable to those same words in the new statute. This principle of law was emphasized in the cases ***Nilamdeen Vs. Nanayakkara [76 N.L.R. 169]*** and ***Hewaperuma Kapugamage Champika Jayanath Vs. P. Manamperi, Assistant Co-operative Commissioner [CA (PHC) 237/2004] C.A.M. 31.05.2018.***

In terms of the High Courts' of the Provinces (Special Provisions) Act No. 19 of 1990, a Provincial High Court's revisionary power in relation to the Agrarian Development Act is restricted to Orders made under Section 7 of the Agrarian Development Act as Section 7 is the corresponding provision to the old Section 5. It is pertinent to note that there is no corresponding provision to Section 9 of the Agrarian Services Act in the Agrarian Development Act No. 46 of 2000.

It is to be observed that, Section 7 of the Agrarian Development Act stipulates three types of orders.

I. The first is an Order made by the Commissioner General of Agrarian Services directing a party occupying a paddy land to vacate it. [Section 7(7) (b) (ii)].

II. The second is an Order made under Section 7(9).

III. The third is an Order made by the Commissioner General of Agrarian Services directing a sub tenant cultivator who is occupying a paddy land without the owner's consent to vacate the land. [Section 7(10)-second proviso].

According to the Order dated 24.05.2019, the learned High Court Judge set aside the preliminary objection raised in respect of the jurisdiction and had stated that the said Order has been made in view of Section 16 of the Agrarian Development (Amendment) Act No. 46 of 2011 which reads as follows.

> ‘‘The principal enactment is hereby amended by the substitution for the words “Court of Appeal” wherever those words appear in the principal enactment, of the words “High Court of the Province”.

It appears that the learned High Court Judge has specifically mentioned the Provincial High Court is empowered through the substitution of the words ‘High Court of the Province’ in place of the words ‘Court of Appeal’ and has stated that the said amendment has become a ‘background fact’ which has resulted in the aforesaid Order.

The above Section has no effect/relevance whatsoever with the disputed issue in the instant case because the provision in terms of which the original order was made does not refer to any involvement of the Court of Appeal, i.e. Sections 33(3) and 33 (8) of Agrarian Development Act are the operative Sections in respect of the particular offence placed before the learned Magistrate in keeping with stipulated procedural requirements.

It was the contention of the Petitioner that as per the facts and circumstances of this matter, the Respondent has no basis in Law whatsoever to rely on the provisions of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 to invoke the revisionary jurisdiction of the Provincial High Court-notwithstanding the legal objections resorting to the peculiar and exceptional procedural step available to a Court of Law to convert an “appeal” before the Court into a “revision application” and proceed to hear the same.

This aspect of law has been discussed in the case of ***Weragama Vs. Eksath Lanka Wathu Kamkaru Samithiya [(1994) 1 SLR 293].*** This modification has been carried out by Section 3 of the High Courts of the Provinces Act No. 19 of 1990 and Section 5A of the High Courts’ of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006. Thus, Provincial High Court has revisionary jurisdiction in respect of;

- Convictions, sentences and orders entered or imposed by Magistrate's Courts and Primary Courts within the Province [Article 154P (3) (b)].
- Orders made by Labour Tribunals within that Province and orders made under Section 5 or Section 9 of the Agrarian Services Act No. 58 of 1979 (to be read as also encompassing Section 7 of the Agrarian Development Act in light of the reasoning of *His Lordship Janak De Silva J.* in ***Assistant Commissioner of Agrarian Development Vs. Sepala Francis Perera Vs. Norman Appuhamy [CA (PHC) 168/2013])*** in respect of any land situated within that province (in terms of Section 3 of the High Courts of the Provinces Act No 19 of 1990).
- Judgments, decrees and orders delivered and made by any District Court or a Family Court within such Province [Section 5A of the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006]

It was further submitted in the case of ***Abeygunesekera Vs. Wijesekera [(2002) 2 S.L.R. 269]*** and ***Kamala Vs. Andris [41 N.L.R. 71]*** it is trite law that inherent powers of Court cannot be invoked to disregard express statutory provisions. In this type of situation, the learned High Court judge in the instant matter could not have invoked the High Court's inherent powers to exercise a revisionary jurisdiction which goes above and beyond constitutional provisions and the Law conferring the forum jurisdiction to the Provincial High Court to exercise revisionary powers.

It was contended by the Petitioners that the learned High Court judge in the instant matter has gone beyond the scope of revisionary powers vested with the Provincial High Court and resorted to a peculiar procedural measure of converting a petition of appeal to a revision with a view to consider the merits of an application, the consideration of which is barred by the specific provisions of Law, as orders under Section 33 (8) of the Agrarian Development Act (as the successor to the Agrarian Services Act) are not included in the scope of powers conferred upon the Provincial High Court. Moreover, it is of particular significance that Court has proceeded to exercise the 'revisionary jurisdiction' purportedly under the 'inherent powers of High Court' which is therefore contrary to the Constitution and the applicable laws.

In the case of ***Sunil Chandra Kumara Vs. Veloo [(2001) 3 SLR 91]*** it has been held that revision is available even where there is no right of appeal, but not as of a right, and only on the indulgence of Court to remedy a miscarriage of justice.

Since, revision is a discretionary remedy, it is not available as of right. This power that flows from Article 138 is exercised by the Court of Appeal, on application made by a party aggrieved or *ex mero motu* and this power is available even where there is no right of appeal. The Petitioner in a revision application only seeks the indulgence of Court to remedy a miscarriage of justice. He does not assert it as a right. Revision is available, unless it is restricted by the Constitution or any other Law.

The need for confirming the scope of this exceptional remedy to miscarriage of justice was aptly reasoned in ***Dharmaratne and another Vs. Palm Paradise Cabanas Ltd and others [(2003) 3 SLR 24]*** in page 29 by *His Lordship Gamini Amarathunga J.* after considering several authorities where he expressed the following view:
'The requirement of exceptional circumstances for the exercise of revisionary jurisdiction is not a requirement statutorily laid down anywhere.'

As *Gunawardana J.* himself has referred to *Abrahams CJ.* in ***Ameen Vs. Rasheed [38 NLR 288]*** explained the rationale for insisting on the existence of exceptional circumstances for the exercise of revisionary jurisdiction.

According to *Abrahams CJ,* revision of an appealable order is an exceptional proceeding and a person seeking this method of rectification must show why this extra-ordinary method is sought rather than the ordinary method of appeal. As *Hutchinson CJ.* stated in ***Perera Vs. Silva [supra],*** it is not possible to contend that the power ought to be exercised or that the legislature could have intended that it should be exercised so as to give the right of appeal practically in every case.

Thus, the existence of exceptional circumstances is the process by which the Court selects cases in respect of which this extra-ordinary method of rectification should be adopted. If such a selection process is not there, revisionary jurisdiction of this Court will become a gateway for

every litigant to make a second appeal in the garb of a revision application or to make an appeal in situations where the legislature has not given right of appeal.

It must be observed that the learned High Court Judge is of the view that since there is no right of appeal conferred in the provisions of Agrarian Development (Amendment) Act No.46 of 2000, the appeal preferred by the Respondent-Petitioner to the High Court can be converted into a revision and proceeded with. It is important to note that in these circumstances, the learned High Court Judge had not considered whether the Respondent-Petitioner had exceptional circumstances to invoke the revisionary jurisdiction of the High Court.

The Respondent-Petitioner-Respondent had relied upon the recent order delivered in this Court in case ***Don Rohana Ranjith Mahawithana and two others Vs. Commissioner of Co-operative Development of the Southern Province*** bearing No. ***CA (PHC) 37/2017*** dated 09.07.2021. In the said case, the Court exercised the inherent jurisdiction and used its discretion to convert an appeal into revision since there was a miscarriage of justice before the proceedings of the Magistrate's Court case and certain irregularities had occurred which the Court considered as a miscarriage of justice and also as the interest of justice so demanded. However, in the instant case the Respondent-Petitioner-Respondent had not been able to show cause that there is an injustice being caused to the Respondent or that any exceptional circumstances exist to shock the conscience of Court to show there is a miscarriage of justice.

In view of the aforesaid reasons, the Respondent-Petitioner-Respondent has failed to establish that, the impugned paddy land was partly filled with the approval of the relevant authorities and/or that the Respondent had a valid approval by the Commissioner to conduct ornamental fish farming project.

It is observable that the learned Magistrate of Kaduwela has made the impugned Order in terms of Section 33 (1) of the Agrarian Development Act which states;

“(1) No person shall fill any extent of paddy land or remove any soil from any extent of paddy land or erect any structure on any extent of paddy land except with the written permission of the Commissioner-General.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence under this Act.

(3) Where the Commissioner-General, or the Additional Commissioner-General or Commissioner or Deputy Commissioner or Assistant Commissioner is informed that any person is acting in contravention of the provision of subsection (1) the Commissioner-General or the Additional Commissioner-General or Commissioner or Deputy Commissioner or Assistant Commissioner may make an application in writing, substantially in the Form set out in the Schedule to this Act to the Magistrate’s Court within whose local jurisdiction such extent of paddy land or any part thereof, is situated and praying for the issue of an order restraining the person so contravening the provisions of subsection (1) and his agents and servants from acting in contravention of the provisions of subsection (1).

(5) Upon receipt of the application the Magistrate shall determine whether an act has been committed in contravention of this section and upon arriving at such determination the Magistrate shall make an interim order restraining the person named in the application and his servants or agents from acting in contravention of subsection (1) and shall forthwith issue summons on the person or persons named in the application to appear and show cause on the date specified in such summons, as to why such person or and servants or agents should not be restrained, as prayed for in the application.

(8) If after the inquiry, the Magistrate is not satisfied that the person showing cause has lawful authority to fill the extent of paddy land or remove any soil therefrom or erect a structure thereon, he shall confirm the interim order made under subsection (5)

restraining such person and his servants and agents from doing any act in contravention of this section".

In terms of the provisions of the Agrarian Development Act, it appears that the Respondent has to satisfy Court that he has the lawful authority from the Commissioner-General of Agrarian Development to fill a paddy land. In this respect, it was submitted on behalf of the Respondent-Petitioner-Respondent [hereafter sometimes referred to as the Respondent] that the learned Magistrate has failed to evaluate the documents and evidence tendered by the Respondent at his show cause. Especially "වි3" to "වි11" in the original case record (which are in these proceedings and marked as "A1" to "A9") indicate that the disputed paddy land was already filled, and it was accepted by the officials of the Agrarian Development office.

It was further submitted that the disputed paddy land was already filled, and that the Respondent obtained permission from the Agrarian Officials according to "වි12" [A10] to "වි14" [A12]. However, the learned Magistrate without properly evaluating the evidence placed before him at the inquiry had made his order in favour of the Applicant-Respondent-Petitioner. As such, it was the position taken up by the Respondent that the impugned land owned by his predecessor was entirely different from the land which was described by the Petitioner to this action. The Respondent further explained that the land owned by his predecessor was already filled and that the impugned land is not a paddy land as per the Law.

The Respondent had contended that the Petitioner has wilfully concealed the fact that the Petitioner issued a licence to the Respondent to conduct an ornamental fish project other than cultivation. The attention of Court was drawn to the documents marked as "A13" and "A14" produced before the learned Magistrate, in which the licence given by the Agrarian Development Commissioner General allowing the Respondent to conduct an ornamental fish project other than cultivation was included.

It is to be observed that the document "වි13" [A11] is a letter sent to the Divisional officer [ප්‍රාදේශීය නිලධාරී] of the Agrarian Services Centre-Malabe from District Assistant Commissioner of Agrarian Development, requesting to inspect the impugned land and calling for the reports and

observations and also recommendations pertaining to the application of the Respondent to develop an ornamental fish project.

The document "වි14" [A12] is a committee report undated and issued under the circular bearing No. 4/2009. The said document states that;

4/2009 චක්‍රලේඛය අනුව සුපරීක්ෂණ කමිටු වාර්තාව

මෙම ලේඛනය ගොවිජන සංවර්ධන දෙපාර්තමේන්තුවේ අභ්‍යන්තර තීරණ ගැනීමේ පටිපාටිය සඳහා පමණක් යොදා ගනු ලබන්නකි. මෙහි අඩංගු තොරතුරු මත වෙනත් බාහිර පුද්ගලයකු හෝ බාහිර ආයතනයක් විසින් ගනු ලබන ඕනෑම තීරණයක් හෝ කරනු ලබන ඕනෑම ක්‍රියාවක් ශූන්‍ය හා බල රහිත වේ. එය නීති විරෝධී ක්‍රියාවක් නම් ඒ සඳහා අදාළ දඬුවම් පමුණුවාලීමට මෙහි අඩංගු නිර්දේශ මගින් බලපෑමක් ඇති නොවේ.

In view of the said documents "වි11" [A11] and "වි14" [A12], it does not substantiate that the Respondent was issued a licence to conduct an ornamental fish project.

It was the contention of the Respondent that the learned Magistrate had failed to assess the evidentiary value of the documents "වි3" to "වි11" tendered by the Respondent, which indicates that the disputed paddy land was already filled and it was accepted by the Officials of the Agrarian Development Office.

It appears that the documents "වි3", "වි4", "වි5" and "වි6" are minutes dated 13.10.1999, 19.07.2000 and 19.01.2000 of the meetings conducted by the Divisional Agrarian Committee at the Divisional Secretariat-Kaduwela. These minutes reveal that despite the promise made by the Urban Development Authority to remove earth dumped to the Respondent's paddy field within the road reservation, the said Authority had removed a part of it only and not the entirety as promised. Therefore, it is apparent that the Respondent had attempted to mislead Court by saying that the impugned paddy land was already filled.

It is pertinent to note that the Respondent got rights to the impugned paddy land on 26.08.2008 by Deed of Transfer bearing No. 1492 dated 26.08.2008 attested by H.M.Dharmadasa Notary Public.

The impugned paddy field is described in the schedule of the said Deed of Transfer bearing No. 1492 dated 26.08.2008, as 5 Kurunis in extent and the said portion of land was surveyed by Indatissa Kotabage by plan bearing No. 526 dated 09.12.2000. The impugned paddy field is depicted in the said plan as Lot 1, described as හික්ගහකුඹුර හෙවත් මොරගහකුඹුර surrounded by paddy fields. Thus, it clearly shows that in the year 2008, the Respondent got rights to a paddy field and not a paddy field already filled.

The Court draws the attention to the follwoing :

"වගඋත්තරකරු ගේ කුඹුරට, මහා මාර්ගය සංවර්ධනය කිරීමේදී දමා ඇති පස් වලින් කොටසක් ඉවත් කර අනෙක් කොටස ඉවත් කිරීම සිදුකරන බවට මහාමාර්ග සංවර්ධන අධිකාරිය පොරොන්දු වී ඇති බවත් එකී පොරොන්දු ප්‍රකාර කටයුතු කර නොමැති....."

Although, the Road Development Authority promised to remove the earth filled to the Respondent's paddy field during the road construction, the said authority has removed only a part of earth disposed to the Respondent's paddy fields and not the entirety.

It is interesting to note that document marked "වි11", is a letter dated 08.09.2009, addressed to Assistant Commissioner of Agrarian Development by the Deputy General Manager-Sri Lanka Land Reclamation and Development Corporation.

The letter "වි11" dated 08.09.2009 states;

"……පහත සඳහන් කොන්දේසි යටතේ, ඉඩම සංවර්ධනය කිරීම සඳහා නිර්දේශ කරන බව කරුණාවෙන් දන්වා සිටිමු. (අදාළ සැලසුම් පහත අමුණා ඇත).

1. අමුණා ඇති සැලසුම්පතේ දක්වා ඇති පරිදි මීටර් 15ක් පළලැති හා මීටර් 30ක් ගැඹුරැති ප්‍රදේශයක් පමණක් පිරවීම් කළ යුතු අතර පිරවූ පස් බාදනය වැළැක්වීම සඳහා, ඉඩමේ CDE මායිම දිගේ පැති බැම් ඉදි කළ යුතුය.
2. ඉඩමේ ඉතිරි ප්‍රදේශ දැනට පවතින පොළොව මට්ටමේ උසට වඩා අඩි 1ක් පමණ පුරවා යෝජිත මාළු ටැංකි මැන ස්ථාපනය කළ යුතුය.
3. අමුණා ඇති සැලසුම්පතේ දක්වා ඇති පරිදි ABC මායිම දිගේ අඩි 1.5ක් පළලැති සහ අඩි 1.5ක් ගැඹුරැති කාණුවක් සැකසිය යුතුය.

4. මාර්ග සංවර්ධන අධිකාරියේ සහ විදුලිබල මණ්ඩලයේ උපදෙස් පරිදි පාරට හා ඉඩමේ පිහිටා ඇති විදුලි කුළුණට අවශ්‍ය රක්ෂිත අනුපිළිවෙළින් තැබිය යුතුය.
5. ඇල රක්ශිතය සඳහා මීටර් 6.5ක පටු බිම් තීරුවක් කිසිදු පිරවීමකින් හෝ ස්ථිර ඉදිරි කිරීමකින් තොරව තැබිය යුතුය.
6. සියළුම සංවර්ධන කාර්යයන් අදාල පළාත් පාලන ආයතන මගින් අනුමත කරගත යුතුය.
7. අවුරුද්දක කාලයක් ඇතුළත මෙම ජල ප්‍රවාහන කොන්දේසි නිසියාකාරව ඉටුකල යුතු අතර එසේ නොකලහොත් දෙන ලද අනුමැතිය අවලංගු වේ.
8. යෝජිත ජලාපවාහන වැඩිදියුණු කිරීම අවසන් කිරීමෙන් පසු, මෙම සංස්ථාව වෙත ලිඛිතව දන්වා ඉඩම පිරවීම සඳහා අවසර ගත යුතුය.
9. මෙම ලිපියේ සඳහන් කොන්දේසි වලට අනුව, ඉඩමේ සංවර්ධන කටයුතු සිදු කරමින් පවතින විට එය අනවසර ක්‍රියාවක් නොවන බව තහවුරු කිරීමට, මෙම ලිපියේ පිටපතක් ඉඩමේ ප්‍රදර්ශනයට තැබීම හෝ සංවර්ධන කටයුතු සිදු කරන පුද්ගලයා වෙත ලබාදිය යුතුය.
10. අප සංස්ථාවෙන් නිකුත් කරන ලද මෙම අනුමැතිය වෙනත් පුද්ගලයකුට පැවරිය නොහැකි බව සලකන්න.”

According to the said letter “වි11”, the Sri Lanka Land Reclamation and Development Corporation recommended to develop the impugned paddy land subjected to the aforesaid 1-10 conditions. The Respondent had failed to fulfil the aforesaid conditions. Since the Respondent had failed to fulfil particularly the said 7th condition within a year beginning from date of approval given under the 7th condition by document “වි11” dated 08.09.2009, the said recommendations to develop the impugned land had been invalidated by letter “වි11” [A9] itself.

Therefore, it is apparent that although developing the impugned paddy land for the setting up of an ornamental fish project was recommended and permitted, failure to fulfil the conditions stipulated in letter “වි11” [A9] within the specified period precluded the Respondent from developing the paddy land and converting to an ornamental fish project.

The Assistant Agrarian Development Commissioner had informed the learned Magistrate that the Respondent had been trying to fill 1 rood and 26 perches of an extent of a paddy land, and since the Respondent has no legal authority to fill the impugned land, the learned Magistrate had very correctly issued an Interim Order restraining the Respondent, his agents and servants from filling

the paddy land and after the due inquiry had confirmed the Interim Order made within the provisions of law. Since there is no injustice caused to the Respondent, no exceptional circumstances exist for the Respondent to show cause that any miscarriage of justice which shock the conscience of court.

In view of the aforesaid reasons, it is apparent that this is not a case fit to be converted from appeal to revision. Thus, I hold that the learned High Court Judge has erred in law by rejecting the Applicant-Respondent-Petitioner's preliminary objections to converting an appeal to revision and allowing to proceed with the case.

Therefore, we set aside the Order dated 26.08.2019 by the learned High Court Judge and affirm the Order of the learned Magistrate dated 05.12.2016. Hence, the application of the Applicant-Respondent-Petitioner is allowed. Petitioners are entitled to cost of the application fixed at Rs. 25,000.

JUDGE OF THE COURT OF APPEAL

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

JUDGE OF THE COURT OF APPEAL