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

An Appeal filed in terms of Article 154(G) and Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with the Provisions of Provincial High Court (Special Provisions) Act No. 19 of 1990.

Court of Appeal Case No: **CA (PHC) 159 / 2016**

High Court of Kuliyapitiya Case No: **HCR 05 / 15**

Magistrates of Kuliyapitiya Case No: **66522**

Officer – in – Charge,

Special Crime Investigation Bureau,

Police Superintendent Officer,

Kuliyapitiya.

Complainant

Vs.

1. Jayasinghe Arachchige Amila Nishantha

2. Pohorambage Chandi Sureka Perera

3. Wijesekarage Dona Ayesha Lasanthi

4. Pohorambage Nalin Chamilka Wijethunga

5. Lakshman Ananda Wijemanne

Accused

AND NOW

Lakshman Ananda Wijemanne,

No.42/7, Koongahawatte Road,

Mount Lavinia.

5th Accused – Petitioner

Vs.

Officer – in – Charge,

Special Crime Investigation Bureau,

Police Superintendent Officer,

Kuliyapitiya.

Complainant – Respondent

Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Respondent

AND NOW BETWEEN

Lakshman Ananda Wijemanne,

No.42/7, Koongahawatte Road,

Mount Lavinia.

5TH Accused – Petitioner – Appellant

Vs.

Officer – in – Charge,

Special Crime Investigation Bureau,

Police Superintendent Officer,

Kuliyapitiya.

Complainant – Respondent – Respondent

Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Respondent – Respondent

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Kapila Waidyaratne, PC with Asela Muthumudalige, Akila Jayasundera and Nipuna Jagodarachchi for the Accused – Petitioner – Appellant.

Maheshika Silva, DSG with Chathurangi Mahawaduge, SC and Rangika Rajapaksha, SC for the state.

Argued on: 16.06.2022

Decided on: 19.07.2022

MENAKA WIJESUNDERA J.

The instant appeal from 143/16 to 163/16 has been filed to set aside the order dated 06.09.2016 of the High Court of Kuliyapitiya. Therefore it was agreed by both parties that one judgment would be applicable to all the appeals from 143/16 to 163/16.

The appellant in the instant matter has held the power of attorney for a land belonging to his sister who had been residing in the United States of America. The appellant is supposed to have obtained the services of the 1st accused of the case in the magistrate's Court of Kuliyapitiya by the number 66575 to dispose the land. Several buyers had come forward to purchase the land and the appellant had signed over the deeds pertaining to those plots. But, several other persons had complained to the police against the first accused and three others for taking over their money and not giving the land. Therefore, Police had reported facts on numerous occasions against the said suspects. The Magistrate on several occasions had taken steps to settle the matter, but it had failed. Thereafter, the Magistrate had for some reason instructed the police to add the appellant as the 5thaccused in the matter. The appellant had surrendered himself to the Magistrate.

Therefore, the appellant alleges that he was added as an accused without even his statement being recorded.

Therefore he further averred in Court that the matter in hand was not properly investigated and the Magistrate did not have sufficient material to frame a charge against the appellant. The Magistrate had charged the appellant along with the four others under Section 389 and 403 of the Penal Code.

The appellant had made an application to discharge him but the Magistrate had refused and the same had been made to the High Court but the High Court also had refused.

The respondents averred that the Magistrate had ample ground to add the appellant as an accused based on the statement of the watcher of the land in question and the statement of the Notary who had executed the deeds pertaining to the land in issue.

If one may go through the two statements referred to by the respondents the watcher had stated that the appellant had told him that he has sold the land to the 1st accused in the Magistrate Court and to facilitate him in dealing with the prospective buyers, and he had seen some people giving money to the 1st accused but he makes no other reference to the appellant.

The Notary who had executed some of the deeds pertaining to the sale of the land had said that the appellant signed the deeds as he held the power of attorney but the fees of the Notary had been paid by the 1st accused.

Therefore the material furnished before the Magistrate only reveals facts which the appellant has also stated before this Court. But, the Magistrate based on these two statements has proceeded to instruct the police to add the appellant as an accused in the matter. This action of the Magistrate, this Court notes with surprise because the above mentioned two statements does not reveal any material constituting an offence. The most Magistrate should have done in the opinion of this Court is to direct the police to investigate the matter further and seek the advice of the Attorney General. This Court notes with displeasure that the Magistrate had proceeded to instruct the police to add the appellant as an accused even without recording a statement of his.

At this point this Court draws its attention to the case of ***Victor Ivan vs. Sarath Silva Attorney General and others*** **1998 1 SLR 340** in which Mark Fernando J has held that **"A citizen is entitled to a proper investigation-one which is fair competent timely and appropriate – of a criminal complaint whether it be by him or against him. The criminal law exists for the protection of his rights – of a person's property and reputation – and lack of due investigation will deprive him of the protection of the law."**

Under chapter XXVII section 182 (1) of the Criminal procedure Code it is very clearly stated how a Magistrate should act when an accused is produced before him and it says very clearly that "Where the accused is brought or appears before the court the Magistrate shall if there is sufficient ground for proceeding against the accused, frame a charge against the accused".

Therefore it is very clear that there has to be sufficient ground for the Magistrate to frame a charge against an accused as stipulated under Section 182(1) of the CPC. At this point, this Court draws its attention to the case ***Abdul Sameem v Bribery Commission CA No.1/90*** decided on 09.10.1990 in which **Gunawardena J.** has held that **"Furthermore whilst appreciating the pressure on time and the large volume of work the Magistrate's Courts are called upon HANDLE, it is nevertheless important, that the rights of an accused person are safeguarded and that he be brought to trial according to accepted fundamental principles of criminal procedure."**

Therefore as stated above every citizen has a right to be properly investigated in to before being framed for a criminal offence.

Hence this Court is of the opinion that the learned High Court Judge has failed to address his mind to the above legal principles before affirming the Order of

the Magistrate. The learned High Court Judge has based his Order on the delay of the appellant to file action before the High Court. But, this Court notes that the delay referred to by the high Court Judge is minute in view of the glaring violation of procedure adopted by the Magistrate's Court.

As such the instant appeal is allowed and the order of the learned High Court Judge dated 06.09.2016 is set aside. The instant judgment would prevail for the appeals from 143/16 to 163/16.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.