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

In the matter of an Appeal under and in terms of High Court of Provinces (Special Provisions) Act No 19 of 1990 read with Article 154P of the Constitution of the republic of Sri Lanka.

Horathal Pedige Prishriya Rathna Vilochani,
Kohombadeniya,
Dorawaka.

Registered Owner-Petitioner-Appellant

Court of Appeal Application No: **CA/PHC/90/18**

Vs.

High Court of Kegalle
No: **5380/REV**

Hon. Attorney General
Attorney General's Department
Colombo 12

Magistrate Court of Warakapola
No**: 88608**

Respondent

BEFORE : Menaka Wijesundera J
Neil Iddawala J

COUNSEL : Kasun Liyanage for the Appellant

Ridma Kuruwita SC for the Respondents.

Argued on : 15.06.2022

Decided on : 25.07.2022

Iddawala – J

This is an appeal filed against an order of the High Court of Kegalle dated 14. 06.2018, which dismissed the revision application of the appellant *in limine.* The said revision application was filed against an order under the Forest Ordinance as amended by Act No. 65 of 2009 (*hereinafter the Act*) delivered by the Magistrate Court of Kegalle on 19.05.2017, which ordered the appellant's vehicle (SG 40-5792) to be confiscated. The appellant is the registered owner of the said vehicle, and she has preferred the instant appeal to this Court to assess whether the High Court was justified in dismissing her application *in limine.*

The counsel for the appellant contends that the impugned order is erroneous as the learned High Court judge has exceeded the role expected of him at the support stage of the application by delving into the merits of the matter. The counsel submitted that he vehemently relies on Sarath Andarahennadi v Officer in Charge, Police Station Sigiriya CA/PHC/APN/117/2017 CA Minute dated 27.03.2019 in support of this contention.

Sarath Andarahennadi case (supra) was a revision application, and it dealt with a matter arising from an information filed under Section 66(1)(a) of the Primary Courts Procedure Act in the Magistrate Court of Dambulla. It dealt with specific preliminary objections raised by the respondent prior to the matter being supported before the Court of Appeal. Given such a context, the Court examined what constituted a 'preliminary objection', set out a criterion by which such an examination could be made and held that those objections which do not fall within that criterion will not be dealt with at the current stage. After the said assessment, the Court concluded that out of the four objections raised by the respondent, only two amounts to preliminary objections and refused to entertain the former at the current stage.

The counsel for the appellant in the instant matter relies on an observation made by the Court of Appeal in Sarath Andarahennadi case (supra) wherein the Court refused to treat one objection as a preliminary objection on the basis that the

examination of it required a consideration of the merits. The said observation is as follows:

> *"for example, admittedly the petition at paragraph 13 identifies what are said to be exceptional circumstances but whether they in fact amount to exceptional circumstances requires a consideration of the merits of the case. In my view, it is inappropriate for a court to consider whether exceptional circumstances exist in a revision application at the stage of notice for if that is the correct approach the issue of exceptional circumstances ends there. There is no further matter to be considered at the stage of argument on exceptional circumstances. At the stage of support, Court need only to consider whether the petitioner has made out a prima facie case for notice".*

The counsel for the appellant also referred to Ingiriya Multi-Purpose Co-operative Society Ltd v Kalubalage Dona Laitha Srimathi CA/PHC/123/16 CA Minute dated 17.05.2022, which echoed a similar sentiment.

> *"When the matter is at the support stage, the court is not required to assess whether the purported exceptional circumstances do in fact amount to an exceptionality of a nature that warrants the invocation of the revisionary jurisdiction. That matter must be decided on the merits of the case. In the instant matter, the petitioner has not patently omitted to aver exceptional circumstances. Paragraph 28 sets out the exceptional circumstances averred by the petitioner in the petition. Nevertheless, the impugned order states that there are exceptional circumstances are not apparent. However, the learned Magistrate does not refer to the averments of Paragraph 28 of the petition, nor a determination has been made or reasons given whether they are in fact exceptional circumstances warranting the invocation of the revisionary jurisdiction or mere substantial questions of law outside the revisionary ambit (see Elangakoon v Officer in Charge, Police Station, Eppawala (2007) 1 SLR 398). The impugned order merely says that exceptional circumstances are not apparent."*

The commonality in both the Sarath Andarahennadi case (supra) and Ingiriya case (supra), is that the Court of Appeal was required to assess the respective applications prior to issuing notices to the respondents. When considering the impugned orders in the Sarath Andarahennadi case (supra) and the Ingiriya case (supra), one of the grounds relied upon by the respective High Courts to dismiss the petitioner's applications in revision, was the lack of exceptional circumstances. In both instances, the Court of Appeal observed that exceptional circumstances were, in fact, averred in the petitions (Para 28 in the Ingiriya case, para 13 in the Sarath Andarahennadi case). In both instances, the Court of Appeal affirmed the thinking that if an application purports exceptional circumstances, despite them having the likelihood of failing to amount to an exceptionality in the eyes of the Court when merits are considered at a later stage, such likelihood alone will not make an application liable to be dismissed *in limine*.

Hence, an extrapolation of the Sarath Andarahennadi case (supra) and Ingiriya case (supra) reveals that prior to issuing notices to a respondent, an application invoking the revisionary jurisdiction of the Court ought to set out exceptional circumstances in the body of the petition. Whether the averred circumstances satisfy the threshold expected by the Court should be decided after notices are issued to the respondents, and both parties are given an opportunity to make respective submissions.

However, this contention does not impose a blanket ban on the Court against considering the averred exceptional circumstances at the support stage for the purpose of issuing notices. Such a blanket ban would essentially limit judicial discretion endowed within the revisionary jurisdiction. At the support stage, the Court is required to make an assessment as to whether the resources of the Court ought to be exhausted by proceeding to the next stage by issuing notice to the respondents. That determination is at the discretion of the judge and is made by ascertaining whether the purported exceptional circumstances require further examination or not. If the Court determines that such an examination is not warranted, it can dismiss the application *in limine*, thus preserving the Court's

resources for a more deserving application. This entire process is an act of judicial discretion, which falls in line with the revisionary jurisdiction of both the Court of Appeal and the Provincial High Courts as a petitioner cannot invoke the revisionary jurisdiction of the Court as of right. A blanket ban from even referring to the exceptional circumstances at the support stage, on the other hand, would amount to ousting the said discretion vested with the Court acting in revision. The Courts can refer to the exceptional circumstances averred during the support stages **to the extent of examining whether a *prima facie* case has been made out** in the application so as to warrant the issuance of notice on the respondents. To illustrate this, reference can be made to the bail jurisdiction where exceptionality is required in certain instances: reference to family conditions is usually (this may vary depending on the facts of each case) disregarded as 'exceptional' in drug related cases, so as reference to the implications of the COVID virus which is a global pandemic common to all. These types of purported circumstances are *prima facie* non-exceptional and does not warrant any further examination.

Especially within the revisionary jurisdiction, which is a discretionary remedy, it is well within the scope of the presiding judge to make an assessment on the *prima facie* exceptionality (or the lack thereof) of the purported circumstances in order to filter the applications that ought to proceed to the next stage. Hence, even when a petition purports exceptional circumstances, if the Court is able to determine at the support stage itself (without having gone into the merits), that a *prima facie* case does not exist (thereby rendering an examination of the merits futile) then, such Court can dismiss the application *in limine*. This reinforces the judicial discretion within the ambit of revisionary jurisdiction of the Court.

In the instant case, the role of the High Court judge during the support stage of the appellant's application is to assess whether a *prima facie* case has been made out against the Magistrate Court order dated 19.05.2017, showcasing that it ought to be interfered with by way of a revision. The way such a determination is made rests with the judicial discretion of the High Court judge, and the Court of

Appeal will only interfere with the exercise of such discretion if there exists some miscarriage of justice, irregularity, or illegality that shocks the conscience of the Court.

Having set out the legal position, it is incumbent upon this Court to assess whether the learned High Court judge in delivering the impugned order has acted in excess of what is expected at the support stage of a revision application.

In delivering the impugned order, the learned High Court judge has inquired whether there exists patent illegality in the order of the Magistrate that shocks the conscience of the Court, thereby underpinning the principles surrounding the discretionary remedy that is revision. The impugned order examines the applicable law (proviso to Section 40 (1) of the Act), ascertaining that the primary burden on the Magistrate is to determine whether the appellant has satisfactorily proved that she had taken all precautionary measures to prevent the use of her vehicle for the commission of a forest offence (Vide Page 18, para 2). The learned High Court judge identifies the submission upon which the application of revision pivots and refers to the appellant's assertion that she had given verbal instructions as a precautionary measure (Vide Pages 18 – 19 of the Brief). In doing so, the learned High Court judge determines the same to be *prima facie* inadequate to the extent that any examination of the merits would be rendered futile and dismisses the application of the appellant *in limine.* In the impugned order, reference has been made to the judgment of Mary Matilda Silva v IP Police Stattion Habarana CA/PHC/APN/86/87 CA Minute dated 08.09.2010 which has considered the adequacy of giving verbal instructions alone as means of dispensing the burden under the proviso to Section 40(1) of the Act, and the learned High Court judge has drawn a parallel to the facts of the instant case where no indication prevails as to measures taken other than or in support of the verbal instructions the appellant has purported to give. (The learned High Court judge has also distinguished the instant case from Abubackerge Jaleel v OIC Anuradhapura and Another CA/PHC/108/2010 CA Minute 26.08.2014).

Hence, the learned High Court judge has focused on the primary burden cast upon the appellant under the Act, a fact upon which the entire revision application pivots, and has assessed the measures taken by the appellant in dispensing such a burden as *prima facie* inadequate. This determination of the learned High Court judge has led to the conclusion that it is futile to proceed to an examination of the merits of the case and has dismissed the appellant's application *in limine.* The appellant has failed to satisfy the learned High Court judge that there exist any *prima facie* irregularity, illegality or impropriety in the Magistrate Court order dated 19.05.2017 which needs further examination.

Hence, it is clear that the High Court judge has not been alerted to any *'glittering circumstances'* which shock the conscience of the Court. Therefore, the learned High Court judge has used his discretion and has dismissed the appellant's application *in limine*. We do not see the said determination by the learned High Court judge as acting outside his role during the support stage. It is well within the scope of his discretion to dismiss the application *in limine*, when there is no *prima facie* case to intervene with the Magistrate's order.

At this juncture, it is pertinent to refer to the Magistrate Court order dated 19.05.2017 that was sought to be canvassed before the High Court. The appellant has given contradictory position where evidence revealed that she was aware of the loading of timber on to her vehicle without a valid permit, but claimed she was unaware that such act was illegal. (Vide page 48 and 62 of the Brief). While reinforcing the maxim *Ignorantia juris non excusat* (ignorance of the law is no excuse), it is the view of this Court that the proceedings in the vehicle inquiry also points to the lack of a *prima facie* case in seeking to revise the order of the Magistrate dated 19.05.2017.

In consideration of all the above facts within the context of wide judicial discretion vested with the Court in exercising its revisionary jurisdiction (*see Weerasinghe Arachchilage Deepa Nandani v Officer in Charge, Police Station Marawila CA/PHC/APN/134/20 CA Minute dated 20.07.2021*), it is the view of this Court that the impugned order has dismissed the appellant's revision application for

the lack of a *prima facie* case and has rightfully recorded reasons for such dismissal. The impugned order is not erroneous or irregular in its determination and we see no reason to interfere with it.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL