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

In the matter of an Appeal from the High Court of Provinces established in terms of relevant article 145P (6) of the Constitution of Democratic Socialist Republic of Sri Lanka against the order of the case bearing No. HCRA 101/2015 of the High Court of Galle dated 20/11/2017.

Court of Appeal Case No: **CA (PHC) 198 /2017**

Provincial High Court of Galle Case No: **PHC Galle Rev 101/15**

Magistrates of Galle Case No: **14730**

Officer – in –Charge

Police Station

Poddhala.

Complainant

Vs.

Pathmasiri Udugampola,

No.18, Yodaya Kanaththa Road,

Alwis Town,

Hendala,

Wattala.

Accused

AND

Pathmasiri Udugampola,

No.18, Yodaya Kanaththa Road,

Alwis Town,

Hendala,

Wattala.

Accused – Petitioner

Vs.

1. Hon.Attorney General,

Attorney General's Department,

Colombo 12.

1st Respondent

2. Officer – in – Charge

Police Station,

Poddala.

Complainant – Respondent

AND NOW BETWEEN

Pathmasiri Udugampola,

No.18, Yodaya Kanaththa Road,

Alwis Town,

Hendala,

Wattala.

Accused – Petitioner – Appellant

Vs.

1. Hon.Attorney General,

Attorney General's Department,

Colombo 12.

1st Respondent – Respondent

2.Officer – in – Charge

Police Station,

Poddala.

Complainant – Respondent – Respondent

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Neville Abeyratne, PC with

Kaushalya Abeyratne Dias

for Accused – Petitioner –

Appellant.

Deshan Aluvihare, SC for

the state.

Argued on: 15.06.2022

Decided on: 26.07.2022

MENAKA WIJESUNDERA J.

The instant application for revision has been filed to set aside the order dated 20.05.2017 of High Court of Galle.

The accused petitioner (hereinafter referred to as the petitioner) had been charged in the Magistrate's Court under Section 314 and 486 of the Penal Code.

As these two offences are compoundable offences under Section 266 of the Code of Criminal Procedure (hereinafter referred to as the CPC), when the matter was called before the magistrate on 13.02.2015, the complaint had been present, the accused had been present and the willingness to settle the matter had been expressed and the matter had been compounded and the proceedings have been terminated.

Thereafter, the virtual complainant had filed an affidavit pleading misinterpretation of facts by the Magistrate and had pleaded that she had no willingness to compound the matter, as such; the Magistrate had refixed the matter for trial on 24.04.2015.

Being aggrieved by this order, the matter had been referred to the High Court and the learned High Court judge had held that, it was an order of *actus curieie neminem gravabit* and has upheld the order of the magistrate.

The President's Counsel appearing for the petitioner stated that under Section 266 of the Criminal Procedure Code, when a matter is compounded based on the willingness of both parties no conditions have been laid down in the Section for the two parties to follow but it amounts to an acquittal as laid down in the case of CA PHC APN 28/2014 by Justice Salam.

He further submitted that, the High Court judge had indicated that the case record had not been signed by either party which is a practice of Court. Therefore, the matter had not been compounded as per Section 266 of the CPC.

The Counsel for the Respondents reiterated the basis upon which the High Court judge had affirmed the order of the Magistrate stating that practices of Court become law after many years.

Having considered the submissions of both parties, this Court draws its attention to Section 266 of the CPC and note that the Section does not stipulate any practices of Court to be followed before compounding an offence but lays down certain conditions needed to be adhered to by the parties, and by no means does it stipulate any following of practices of Court which has been in existence for many years as pleaded by the counsel for the respondents. The Section merely lays down the offences which can be compounded and the willingness of all parties in addition to having a pending case before the Magistrate.

Therefore, we are unable to agree with the contention of the counsel for the respondents.

The High Court Judge has averred that an injustice has been caused to the PW1 by not being able to express her consent for the settlement and has quoted the Latin principle of actus curieie neminem gravabit, which says that no party should suffer in the hands of Court, but the magistrate is also bound by the principles laid down in the laws pertaining to its jurisdiction, and we take in to consideration the Indian case of *Gain Singh* vs. *State of Punjab and Anr* decided on 24.9.2012 Criminal Appeal where it was held that " Court cannot amend the

statute and must maintain judicial restraint…Court should not try to take over the function of the Parliament or the executive".

The High Court has referred to many practices adopted by Courts which have not been laid down in law but are mere practices and have held very firmly that the procedure has not been followed, but this Court notes that Section 266 of the CPC does not speak of any of the practices referred to by the High Court Judge, as such this Court is of the opinion that the instant application for revision should be allowed and the impugned order of the High Court dated 20.11.2017 should be set aside.

Judge of the Court of Appeal.

I agree

Neil Iddawala J.

Judge of the Court of Appeal.