

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

*In the matter of an application for Revision  
in terms of Articles 154 (p) and 138 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka read with the  
provisions of the High Courts of the  
Provinces (Special Provisions) Act No. 13 of  
1990.*

**CA PHC/0085/17**

**High Court Kandy**

**Case No. Revision 113/16**

**Magistrate Court Dambulla**

**Case No. 72361**

The Officer in Charge,

Vice Prevention Unit,

Police Station,

Dambulla.

**Complainant**

**Vs.**

Gona Pinuwala Witharanage Danushka  
Nadeera de Silva *alias* Baba

No. 12, Vihara Maluwa, Dambulla

**Accused**

Gona Pinuwala Witharanage Danushka

Nadeera de Silva *alias* Baba

No. 12, Vihara Maluwa, Dambulla.

**Accused-Petitioner**

**Vs.**

The Officer in Charge,

Vice Prevention Unit,

Police Station,

Dambulla.

The Attorney General,

Attorney General's Department,

Colombo 12.

**Complainant-Respondents**

**AND NOW BETWEEN**

Gona Pinuwala Witharanage Danushka

Nadeera de Silva *alias* Baba

No. 12, Vihara Maluwa, Dambulla

**Accused-Petitioner-Appellant**

**Vs.**

The Officer in Charge,  
Vice Prevention Unit,  
Police Station,  
Dambulla.

The Attorney General,  
Attorney General's Department,  
Colombo 12.

**Complainant-Respondent-Respondents**

**Before** : Sampath B. Abayakoon, J.

: P. Kumararatnam, J.

**Counsel** : Mohan Weerakoon, P.C. with Nuwan de Alwis and  
Sandamali Peiris for the Accused-Petitioner-Appellant

: Maheshika Silva, DSG for the Complainant-  
Respondent-Respondents

**Argued on** : 21-10-2022

**Decided on** : 30-11-2022

**Sampath B Abayakoon, J.**

This is an appeal by the accused-petitioner-appellant (hereinafter referred to as the petitioner) on the basis of being aggrieved by the judgment dated 07-06-2017 by the learned High Court Judge of Kandy, wherein his application for revision

of the Order dated 05-10-2016 by the learned Magistrate of Dambulla was dismissed.

The petitioner was charged by the learned Magistrate of Dambulla for possessing 16 grams of Cannabis, and thereby committing an offence punishable in terms of Section 78 (5) (a) read with Section 52 (1) of the Poisons Opium and Dangerous Drugs Ordinance as amended by Amendment Act No. 13 of 1984.

Apart from the above charge, he was also charged for transporting the said quantity of Cannabis in violation of Section 52 (1) of the above-mentioned Ordinance and thereby committing an offence punishable in terms of Section 78 (5) (a) of the Ordinance.

When he was charged before the learned Magistrate, the petitioner pleaded guilty for both the charges preferred against him. He had been sentenced accordingly.

Thereafter, the learned Magistrate has decided to hold an inquiry in terms of Section 79 of the Poisons Opium and Dangerous Drugs Ordinance (hereinafter referred to as the Ordinance), allowing the petitioner to show cause as to why the vehicle which was used in the commission of the offences should not be confiscated.

When the matter was taken up for inquiry on 04-07-2016, the petitioner who had been represented by an Attorney-at-Law, has specifically informed the learned Magistrate that he is not claiming the vehicle numbered CP-KT-7850, which was the vehicle mentioned in relation to the charges that were formulated against the petitioner. Accordingly, he has been required to sign the case record to confirm that he is not claiming the vehicle.

It has been revealed that this vehicle was subjected to a finance leasing facility, and although the petitioner was the registered owner of the vehicle, the absolute owner was LB Finance Ltd, as the lessor of the vehicle.

At the inquiry conducted in terms of Section 79 of the Ordinance, it had been the absolute owner of the vehicle who has given evidence and claimed the vehicle.

The petitioner too had given evidence on behalf of the absolute owner and has stated that he is not claiming the vehicle.

After the conclusion of the inquiry, the learned Magistrate of Dambulla by his order dated 05-10-2016 has determined that the absolute owner has failed to show sufficient reasons to satisfy the Court that the mentioned vehicle should not be confiscated. Therefore, the learned Magistrate has decided to confiscate the vehicle to the State.

It is to be noted that the claimant before the learned Magistrate, namely the absolute owner of the vehicle has not filed any application if the claimant was aggrieved by the decision of the learned Magistrate.

However, it was the petitioner who informed the learned Magistrate that he is not claiming the vehicle, who has filed the revision application in the High Court of Kandy Case No- Revision 113/16, on the basis of being aggrieved by the decision of the learned Magistrate.

The learned High Court Judge of Kandy after having considered the submissions made on behalf of the petitioner as well as the submissions by the State, has dismissed the application of the petitioner by her judgement dated 07-06-2017. It had been determined that the petitioner is not entitled to seek the discretionary remedy of revision as he has informed the learned Magistrate that he is not claiming the vehicle and therefore, he is estopped from claiming that he is an aggrieved party. It had been also decided by the High Court Judge that the failure of the petitioner to name the absolute owner who claimed the vehicle before the Magistrate Court as a necessary party to the revisionary application before the High Court was also a fatal defect.

At the hearing of this appeal, it was the contention of the learned President's Counsel on behalf of the petitioner that there was no provision to charge a person in terms of Section 52 (1) of the Ordinance for transporting a dangerous drug. It was also his view that the petitioner has been charged for committing the same offence twice, which was not in accordance with the relevant principles of law.

Hence, it was his position that holding an inquiry and confiscating the vehicle owned by the petitioner was wrong, and therefore, his application should be allowed.

It was the position of the learned Deputy Solicitor General (DSG) on behalf of the Attorney General that any offence committed in terms of the Ordinance attracts the forfeiture provision in terms of Section 79 of the Ordinance. It was her contention that the learned Magistrate has held a due inquiry and there was nothing illegal in the procedure followed by the learned Magistrate. She pointed out that the petitioner who has specifically informed that he is not exercising his right to claim the mentioned vehicle before the learned Magistrate, cannot now come before this Court or go before the High Court and claim the vehicle as he cannot be considered an aggrieved party.

She pointed out further that the correct aggrieved party, if at all, has not gone before the High Court and hence, the judgement by the learned High Court Judge was correct. It was her view that the said judgement as well as the order of the learned Magistrate needs no interference by this Court.

The petitioner has gone before the High Court of Kandy on the basis of being aggrieved by the order pronounced by the learned Magistrate of Dambulla in Magistrate Court of Dambulla Case No-72361, where the vehicle which is the subject matter of this action was confiscated.

There cannot be any argument that the petitioner was not a claimant before the learned Magistrate, although he was the registered owner of the vehicle at that time. The claimant had been the absolute owner which was a finance company.

In the case of **Wijesinghe vs. Tharmaratnam (Sri Kantha Law Reports) Vol IV page 47**, it was held that revision is a discretionary remedy and will not be available unless the application discloses circumstances which shocks the conscience of the Court.

It was held in the case of **Nonohamy Vs. Dunuwilla (Sri Kantha Law Reports) Vol IV page 30**, that any party or a party seeks to be made a party can invoke revisionary jurisdiction if such party is an aggrieved party by an order of Court.

It has been determined by our Superior Courts that even if the aggrieved person was not a party on the record, such a person too can invoke the revisionary jurisdiction.

In the case of **Appuhamy Vs. Weerathunga 23 NLR 467**, it was held that the Supreme Court is empowered to exercise its jurisdiction in revision on application of an aggrieved person who is not a party to the record.

I find that what is stated in **Perera Vs. People's Bank (Bar Journal (1995) Vol IV Part 1 Page 12)** is also relevant at this juncture. It was held that revision is a discretionary remedy and the conduct of the petitioner is intensely relevant for the granting of such relief.

As considered earlier, by informing the learned Magistrate that he is not claiming the vehicle, the petitioner cannot claim under any circumstances that he is a person aggrieved by the decision of the learned Magistrate. If at all, it should be the absolute owner who can claim aggrieved by the order of confiscation. The absolute owner had not gone before the High Court nor had been made a party to the revision application filed by the petitioner. I find that the learned High Court Judge have correctly considered the non-inclusion of the absolute owner as a party to the petitioner as a fatal irregularity as considered in **Kesara Senanayake Vs. Attorney General (2010) 1 SLR 149**.

It was held by **Dr. Amarasinghe J** in the case of **Ibrahim Vs. Nadaraja (1991) 1 SLR 131** that;

*“It has always therefore, been the law that it is necessary for the proper constitution of an appeal that all parties who may be adversely affected by the result of the appeal should be made parties and, unless they are, the petitioner of appeal should be rejected.”*

I am of the view that this rule should be applicable to any application before the High Court requiring it to exercise its discretionary jurisdiction of revision or for any such application before the Court of Appeal.

I also find that as determined correctly by the learned High Court Judge, the petitioner cannot claim to be a party who was adversely affected by the order of the learned Magistrate of Dambulla, since he has specifically stated that he is not claiming the vehicle which was the subject matter of the inquiry held.

I am of the view that the petitioner had no locus standi to file the revision application before the High Court and therefore, has no basis to succeed in an appeal against the decision of the learned High Court Judge.

Accordingly, I agree with the learned DSG's submission that this appeal should stand dismissed on the above considered grounds alone.

In view of the above, considering the other grounds of appeal urged on behalf of the petitioner needs no further consideration.

The appeal therefore is dismissed. The judgement of the learned High Court Judge of Kandy is affirmed.

The Registrar is directed to send copies of this judgement to the High Court of Kandy as well as the Magistrate Court of Dambulla for necessary information.

Judge of the Court of Appeal

**P. Kumararatnam, J.**

I agree.

Judge of the Court of Appeal