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

In the matter of an application for Revision in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Officer-in-Charge
Special Crimes Prevention Unit,
Police Station,
Jaffna.

Complainant

Vs.

Court of Appeal Application No: **CA (PHC) APN 05/2017**

High Court of Jaffna Case No: **1816/2015**

Magistrate's Court of Jaffna Case No: **B 936/2013**

Jesuthasan Robinson
No. 3/01,
1st Lane,
Pashishur,
Jaffna.

Accused

And Now

Weligamage Priyantha Botheju
No. 48,
Kanaththa Road,
Thalapathpitiya,
Nugegoda.

Petitioner

Vs.

1. Nawaratnaraja Krishnaruban
   Playground Road,
   Kalviyankadu.

Respondent

2. Jesuthasan Robinson
   No. 3/01,

1st Lane,
Pashishur,
Jaffna.

Accused-Respondent

3. Officer-in-Charge
Special Crimes Prevention Unit,
Police Station,
Jaffna.

Complainant-Respondent

And Now Between

Weligamage Priyantha Botheju
No. 48,
Kanaththa Road,
Thalapathpitiya,
Nugegoda.

Petitioner-Petitioner

Vs.

1. Nawaratnaraja Krishnaruban
Playground Road,
Kalviyankadu.

Respondent-Respondent

2. Jesuthasan Robinson
No. 3/01,
1st Lane,
Pashishur,
Jaffna.

Accused-Respondent
-Respondent

3. Officer-in-Charge
Special Crimes Prevention Unit,
Police Station,
Jaffna.

Complainant-Respondent-Respondent

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

Respondent

Before	:	Menaka Wijesundera J. Neil Iddawala J.
Counsel	:	Amila Palliyaguruge with S. Udugampola for the Petitioner. Ridma Kuruwita, SC for the State. K.V.S. Ganesharajan with Deepiga Yogarajah and Nagultarajah for the Respondent – Respondent.
Argued on	:	03.11.2022
Decided on	:	15.12.2022

Iddawala – J

This case concerns an application for revision in terms of Article 138 of the Constitution. Weligamage Priyantha Botheju (hereinafter the 'petitioner') pleads that in Magistrate's Court of Jaffna Case No. B 936/2013, the learned Magistrate has erroneously released the impugned vehicle bearing number 62-3928 to the respondent-respondent

(hereinafter the 'first respondent'), in contradiction to the prevailing law on the subject.

The facts of the instant case are as follows. The petitioner claims that the accused-respondent-respondent (hereinafter the 'second respondent') took ownership of the impugned vehicle (a van) which was originally owned by the petitioner, through fraudulent means by supplying the petitioner with invalid cheques. After this initial transaction took place between the petitioner and the second respondent, the ownership of the impugned vehicle has passed onto several other people, until it was vested with the first respondent. The police who have been tracking the said vehicle upon complaints by the petitioner of cheque fraud, have finally seized the vehicle while it was under the alleged ownership of the first respondent. The impugned vehicle and the first respondent were produced before the Magistrate's Court of Jaffna under the case number B 936/2013 for an inquiry under section 431 of the Code of Criminal Procedure Act.

The learned Magistrate by order dated 11.03.2015 released the vehicle to the first respondent, as the vehicle had been seized from his possession. Thereafter, a separate case under section 403 of the Penal Code for 'cheating and dishonestly inducting a delivery of property' has been filed against the second respondent pertaining to the alleged fraud committed by him, which is currently in progress in Jaffna High Court. The petitioner being aggrieved by the learned Magistrate's decision to release the vehicle back to the first respondent, has made a revision application to the High Court of Jaffna, and the learned High Court judge has dismissed the application and affirmed the learned Magistrate's decision by order dated 27.07.2015. Thereafter, the petitioner has preferred the instant revision application to this Court to have the above two decisions set aside and release the impugned vehicle to the petitioner.

For ease of reference, section 431(1) of the Code of Criminal Procedure Code Act, No.15 of 1979 it reproduced below:

(1) The seizure by any police officer of property taken under section 29 or alleged or suspected to have been stolen or found under circumstances which create suspicion of the commission of any offence shall be immediately reported to a Magistrate who shall forthwith ***make such order as he thinks fit respecting the delivery of such property*** *to the person entitled to the possession thereof, or if such person cannot be ascertained respecting the custody and production of such property.*

(2) If the person so entitled is known the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. If such person is unknown the Magistrate may detain it and shall in such case publish a notification in the court notice-board and two other public places to be decided on by the Magistrate, specifying the articles of which such property consists and requiring any person who may have a claim thereto to come before him and establish his claim within six months from the date of such public notification.

(3) Such notification may also, if the Magistrate thinks fit, be published at least once in newspapers published in Sinhala, Tamil and English if the value of the property amounts to two thousand five hundred rupees or more. (Emphasis added)

Punchinona v. Hinniappuhamy 60 NLR 518 is a case that bears similarity to the instant case, and it concerned the corresponding provision then in force (Section 419 of the Criminal Procedure Code) In this case H.N.G. Fernando J, held, affirming **Costa v. Peries** 35 NLR 326 that;

"[the Magistrate's Court] has either to return the property to the same person, or refuse to do so if it thinks it necessary to detain the property for the purposes of proceedings before it…it has no power under the section to order property seized and removed from the possession of one person to be given to another person, because the possession of property cannot be lightly interfered with…If the Magistrate does not consider "official" custody to be necessary, he has no alternative but to order

delivery back to the person from whose possession the property was seized."

Therefore, it is apparent that Section 431 of the Code of Criminal Procedure Act is not a provision that confers the jurisdiction on the court to decide disputed claims to possession, but bears the objective of providing for the Magistrate to be promptly brought in to official touch with the property seized by the Police.

And as per the dictum in **Silva and Another v. Officer-in-Charge, Police Station, Tambuttegama** (1991) 2 SLR 83, there is a degree of discretion vested in the Magistrate by section 431 of the Code (cited above) in that it provides for the Magistrate to make an order as he thinks fit regarding the delivery of an impugned property. Therefore, in exercising this discretion, it is pertinent to determine whether the leaned Magistrate has considered all the relevant factors and provided reasons for the decision. The learned Magistrate has noted in his order that the petitioner has only taken steps to make a police complaint five months after the transaction to transfer the ownership to the second respondent, and by that time the ownership has passed on to several people. It is also noted that all the documents pertaining to the vehicle, namely, its registration, insurance documents, revenue license, signed MTA6 Form etc. have all been handed over to the second respondent, who claims that the transaction took place amicably. These documents have thereafter been ultimately handed over to the first respondent when he bought the impugned vehicle. The learned Magistrate has also considered that the police investigations have not revealed that the said vehicle has been utilized in any illegal activity, nor that the vehicle was transferred from the petitioner to the second respondent through coercion or force, but amicably. Based on such reasons the learned Magistrate has deliberated on releasing the vehicle to the second respondent.

Bearing the above in mind, it is pertinent to evaluate the present revision application against the thresholds stipulated in Article 138(1) of the Constitution which states as follows:

> *(1) The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be [committed by the High Court, in the exercise of its appellate or original jurisdiction or by any Court of First Instance], tribunal or other institution and sole and exclusive cognizance, by way of appeal, revision and restitutio in integrum, of all causes, suits, actions, prosecutions, matters and things [of which such High Court, Court of First Instance] tribunal or other institution may have taken cognizance :*
>
> *Provided that* ***no judgement, decree or order of any court shall be reversed*** *or varied on account of any error, defect or irregularity,* ***which has not prejudiced the substantial rights of the parties or occasioned a failure of justice****.* (Emphasis added)

In the milestone case of **Bank of Ceylon v. Kaleel and Others** [2004] 1 SLR 284 at page 287 (CA) it was held as follows:

> *"In any event, for this Court to exercise revisionary jurisdiction the order challenged must have occasioned a failure of justice and be manifestly erroneous which go beyond an error or defect or irregularity that an ordinary person would instantly react to it. In other words, the order complained of is of such a nature which would have shocked the conscience of Court."*

This view was reinforced by Edusuriya J in **Vanik Incorporation Ltd v. Jayasekara** [1997] 2 SLR 365 (CA) where he stated that,

> *"Revisionary powers should be exercised where a miscarriage of justice has occurred due to a fundamental rule of procedure being violated, but only when a strong case is made out amounting to a positive miscarriage of justice."*

In line with the above well-established precedent, the present application should be evaluated. The petitioner in her pleadings has failed to establish a strong case depicting a positive miscarriage of justice, and a manifestly erroneous decision of such a nature that would shock the conscience of the Court. She has only cited **Silva v. Officer-in-Charge** (supra) on the interpretation of the phrase 'person entitled to the possession' and that the impugned vehicle is an item having potential evidentiary value - "fruits of the crime" and thus should not be handed over to the first respondent.

However, in line with the above evaluation of the section 431 of the Code and Article 138 of the Constitution, the petitioner has failed to establish that the learned Magistrate and the learned High Court Judge have made manifestly erroneous orders of such a nature that would shock the conscience of the Court, resulting in a failure of justice. For the above reasons, this Court affirms the order of the Magistrate Court dated 11.03.2015 and order of the High Court dated 27.07.2015.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL