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 154P of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 5 of the High Court of the Provinces (*Special Provisions*) Act No. 19 of 1990 (as amended).

Mahendran Subramanium,
No. 146/5, Havelock Road,
Colombo-05.

Complainant

Court of Appeal Revision Application No: **87/2020 (APN)**

HC Colombo Revision Application No: HCRA/155/2019/4

MC Colombo Case No: 12302/05/19

Vs.

1. Sasitharan Ganeshan,
   No.175, Sri Sumanatissa Mawatha,
   Colombo 12.

2. Sathyamoorthy Haridarshan,
   No.175, Sri Sumanatissa Mawatha,
   Colombo 12.

3. Niranthari Thayaparan,
   No.175, Sri Sumanatissa Mawatha,
   Colombo 12.

Defendants

AND

1. Sasitharan Ganeshan,
   No.175, Sri Sumanatissa Mawatha,
   Colombo 12.

2. Sathyamoorthy Haridarshan,
   No.175, Sri Sumanatissa Mawatha,
   Colombo 12.

3. Niranthari Thayaparan,
   No.175, Sri Sumanatissa Mawatha,
   Colombo 12.

Defendant-Petitioners

Vs.

Mahendran Subramanium,
No. 146/5, Havelock Road,
Colombo-05.

Complainant-Respondent

AND NOW

1. Sasitharan Ganeshan,
   No.175, Sri Sumanatissa Mawatha,
   Colombo 12.

2. Sathyamoorthy Haridarshan,
   No.175, Sri Sumanatissa Mawatha,
   Colombo 12.

3. Niranthari Thayaparan,
   No.175, Sri Sumanatissa Mawatha,
   Colombo 12.

Defendant-Petitioner-Petitioners

Vs.

Mahendran Subramanium,
No. 146/5, Havelock Road,
Colombo-05.

Complainant-Respondent-Respondent

Before: **Prasantha De Silva, J.**

K.K.A.V. Swarnadhipathi, J.

Counsel: Romesh De Silva PC with N.R.Sivendran and
K.V. Sri Ganesharajan for the Defendant- Petitioner-Petitioners.
Nalinda Indatissa PC with Suresh Kariyawasam and Nishan
Premathirathne for the Complainant-Respondent-Respondent.

Application supported on: 02.02.2022

Decided on: 23.02.2022

Prasantha De Silva, J.

Order

This revision application emanates from the Order dated 26.05.2014 by the learned High Court Judge of Colombo, where the Defendant-Petitioner-Petitioners had canvassed the Order of the learned Magistrate dated 10.09.2019.

It appears that the Complainant instituted action by way of a private plaint dated 6th of June 2019, in the Magistrate's Court of Colombo, case bearing No. 12302/5/19 against the 1st, 2nd and 3rd Defendants, under Section 136(1) (a) of the Code of Criminal Procedure Act read with Section 511 and 512 (1) of the Companies Act.

The Complainant supported the application on the 14th of June 2019 and thereafter the Court issued summons on the Defendants. Consequently, the Defendants appeared in Court on the 17th of July 2019 and the Counsel who appeared for the Defendants had moved Court to recall the summons on the basis that no summons could have been issued in the first instance and had taken up the position that

a) Summons had been issued only on the affidavit that was filed by the Complainant-Respondent and therefore, on the affidavit no summons could have been issued.
b) Since the Complainant-Respondent had **suppressed material facts** and therefore, the Complainant-Respondent was not entitled to have obtained summons in the first instance.
c) Before summons could be issued on an Accused the **learned Magistrate was obliged and duty bound to examine and be satisfied** whether summons in the first instance should be issued as it affects the liberty of persons, has a possibility of the Accused being jailed and further the freedom of movement of the Accused could be curtailed too.
d) As such, the learned Magistrate in the first instance should have been satisfied that summons could be issued inasmuch as it affects the free movement of the person named as the Respondent.

Therefore, it was the contention of the Defendants that summons should not have been issued in the first instance since the Complainant was guilty of suppressing material facts and obtaining

summons by deceit. Therefore, the Defendant had moved Court that, the said summons issued should be recalled.

On this premise, oral submissions were made on behalf of the parties and subsequently, they were allowed to file written submissions. On 10th of September 2019, the learned Magistrate delivered the Order refusing the application of the Defendants to recall the summons on the Defendants.

In this instance, it is worthy to observe the impugned Order of the learned Magistrate dated 10.09.2014 which was canvassed before the High Court of Colombo, and states ;

"අපරාධ නඩු විධාන සංග්‍රහ පනතේ 136 (1) වගන්තිය යටතේ සහ සමාගම් පනතේ 515 වගන්තිය යටතේ මුල් අවස්ථාවේදී පොලිස් පැමිණිල්ලක් සිදු කිරීමට කිසිදු නෛතික අවශ්‍යතාවයක් නොමැති අතර සෘජුවම අධිකරණයේ සහාය පතා ඉදිරිපත් වීමට හැකියාවක් ඇත. පැමිණිල්ල සහ දිවුරුම් ප්‍රකාශයෙන් ඉදිරිපත් වන කරුණු සහ 01 සිට 07 දක්වා ලේඛනවල සඳහන් කරුණු පරීක්ෂාකර බැලීමේදී සමාගම් පනතේ 511, 512 වගන්තිවල විෂය පථයට අයත්වන අපරාධමය වරදක් සම්බන්ධයෙන් කටයුතු කරගෙන යාම සඳහා පැමිණිලිකරුට ප්‍රමාණවත් හේතු ඇති බවට බැලූ බැල්මට පෙනී යන අතර මෙහි අපරාධමය වරදක් අනාවරණය නොවන බවටත් මෙම නඩුකරයේ ස්වභාවය සිවිල් නඩුකරයක් වන බවටත් ගෙන එන විරෝධතා ද පිළිගැනීමට හැකියාවක් නොමැත. ඒ අනුව 1979 අංක 15 දරන අපරාධ නඩු විධාන සංග්‍රහ පනතේ 139 (1) වගන්තිය ප්‍රකාරව මෙම නඩුවේ චූදිතයන්ට විරුද්ධව කටයුතු කරගෙන යාම සඳහා ප්‍රමාණවත් හේතු ඇති බවට ඉදිරිපත් වී ඇති කරුණු මත පැහැදිලිව පෙනී යන බවට ඇති කර ගන්නා ලද මතය වන මුල් අවස්ථාවේදී සිතාසි නිකුත් කිරීමට නියෝග කර ඇති බවටත් චූදිතයන් වෙනුවෙන් ඉදිරිපත් කර ඇති විරෝධතා හේතුවෙන් එකී නියෝගය ඉවත් කිරීමට ප්‍රමාණවත් වන හේතු කිසිවක් ඉදිරිපත් නොවන බවටත් පෙනී යන හෙයින් මෙම නඩුවේ චූදිතයන් වෙනුවෙන් ඉදිරිපත් කර ඇති හේතු දැක්වීම ප්‍රතික්ෂේප කර නඩුවේ කටයුතු ඉදිරියට පවත්වාගෙන යාමට නියෝග කරමි".

In view of the said Order, it is apparent that there is no legal requirement of filing a police complaint to institute action in the Magistrate's Court in terms of the Section 136 (1) of the Code of Criminal Procedure Act and Section 515 of the Companies Act. According to Section 63 (1) of the Code of Criminal Procedure Act, Court may in any case in which it is empowered by this Code to issue summons for the appearance of any person other than a Juror, issue, after recording its reasons in writing, a warrant for his arrest. It is to be observed that in terms of Section 63 (1), there is no duty cast on the Judge to hear the Accused or any other person against whom process is being issued, prior to the issue of the warrant of first instance. Hence, in terms of Section 139 (1) of the

Code of Criminal Procedure Act, it clearly manifests that the Magistrate has discretion to issue summons in the first instance, if he is satisfied that sufficient grounds exist to issue summons.

The Defendant-Petitioner-Appellant had raised an objection before the learned Magistrate that although the Complainant-Respondent-Respondent had annexed with the affidavit only two petitions filed by the Complainant-Respondent-Respondent in HC (civil) case Nos. 92/2018 CO, 94/2018 CO and the *ex-parte* orders obtained by the Complainant, and had not annexed the statement of objections and documents filed by the Defendant-Petitioner-Appellants and also other Orders relevant to the case, thereby suppressed the material facts.

The Defendant-Petitioners had tendered the statement of objections filed in the said HC (civil) case Nos. 92/2018 CO and 94/2018 CO to the learned Magistrate. However, it is apparent that in terms of Section 136 (1) (a) of the Code of Criminal Procedure Act, and in terms of Section 515 of the Companies Act, there is no requirement to state all the facts to Court. Therefore, disclosing about the HC (civil) case Nos. 92/2018 CO and 94/2018 CO by producing the petitions filed in those cases would be a sufficient ground which embraces both the ingredients of the 'offence' and the 'evidence' of its commission.

Therefore, the objection with regard to the suppression of material facts is untenable and need not be considered as a reason to recall the summons already issued.

Furthermore, the learned Magistrate had not accepted the contention of the Defendants that no Criminal offence had been revealed on the material placed before Court and the nature of the action is being based on a Civil wrong. Since there is *prima facie* evidence of the offence being committed in terms of Sections 511 and 512 of the Companies Act, the learned Magistrate ordered to proceed further in terms of Section 139 (1) of the Code of Criminal Procedure Act, as there were no sufficient reasons to set aside the order of issuing of summons in the first instance. As such, the application to recall the summons issued in the first instance, was rejected by the learned Magistrate.

Being aggrieved by the said Order of the learned Magistrate, the Defendant-Petitioners invoked the revisionary jurisdiction of the Provincial High Court of Colombo, in case bearing No. 155/2019.

The Complainant-Respondent had filed statement of objections and an affidavit of the Complainant-Respondent together with documents marked R1 and R2. Thereafter, the Defendant-Petitioners also filed counter objections together with documents marked P4 to P16. However, after the conclusion of the inquiry, the learned High Court Judge delivered the Order/Judgment on 26th of May 2020 dismissing the application of the Defendant-Petitioners.

Being aggrieved by the said Order, the Defendant-Petitioners invoked the revisionary jurisdiction of the Court of Appeal to revise, nullify and annul or set aside the Order/Judgment dated 26th of May 2020, on the following grounds;

a) On the material placed before Court, there is no charge that could have been framed and therefore, no summons could have been issued;
b) Since the **Complainant-Respondent had signed the Annual Report**, the correctness of the Annual Report cannot be now challenged and the Complainant-Respondent was not entitled to file this action for the issuance of summons on the Defendant-Petitioners;
c) The **Board of Directors of Built Element Ltd., had approved the Annual Report and the Complainant-Respondent is also a part of the said Board of Directors** of Built Element Ltd., who **had signed approving** of the final accounts;
d) The Complainant-Respondent had annexed with the affidavit only the two (2) petitions filed by including the Complainant-Respondent in H.C.(Civil) Case Nos.92/2018/CO and 94/2018 CO and had not annexed and **deliberately suppressed the statement of objections and documents filed by the Defendant-Petitioners and Built Element Ltd.**;
e) Although the Complainant-Respondent has only filed the petition filed by including the Complainant-Respondent in H.C.(Civil) Case Nos.92/2018/CO and 94/2018/CO has **deliberately not filed the statement of objections filed by the Honourable Attorney General representing the Registrar General of Companies wherein the Honourable Attorney General has moved Court to dismiss the petition of the Complainant-Respondent in the Commercial High Court**;
f) The Complainant-Respondent had only annexed the *ex-parte* Orders that the Complainant-Respondent had obtained in H.C.(Civil) Case Nos. 92/2018/CO and 94/2018/CO and had not annexed the other Orders relevant to the case in the said HC (Civil) Case Nos.92/2018/CO and 94/2018/CO;

It is worthy to note the learned High Court Judge's observations when arriving at the Order/Judgment where no exceptional circumstances exist, to revise the Order of the learned Magistrate issuing summons on the Defendant-Respondents.

"ඒ අනුව උගත් මහේස්ත්‍රාත්වරිය මුල් අවස්ථාවේදී සිතාසි නිකුත් කිරීම මඟින් වගඋත්තරකරුට එරෙහිව නඟා ඇති චෝදනාවේ වරදේ අංගයන් සම්බන්ධයෙන් මෙන්ම එම වරද කල බවටද වන සාක්ෂි සම්බන්ධයෙන්ද සෑහීමකට පත් වී ඔහුට එරෙහිව කටයුතු කරගෙන යාමට ප්‍රමාණවත් හේතු ඇති බවට සාධාරණ අනුමිතියකට එළඹී ඇති බව පැහැදිලිය. එවන් අනුමිතියකට එළඹී පසු සියලු පාර්ශවයන්ට නඩුවේ සාක්ෂි ඉදිරිපත් කිරීමට අවස්ථාව නොදී මූලික විරෝධතාවයක් මත ලිඛිත දේශණ හෝ වාචික දේශණ පමණක් සලකා බලා අවසාන තීරණයකට එළඹීම ප්‍රඥාගෝචර නොවන අවදානම් සහිත ක්‍රියාවකි. ලිඛිත දේශණ හෝ වාචිකව පවත්වනු ලබන දේශණ සාක්ෂි වශයෙන් සැලකිය නොහැක. එමඟින් නඩුවේ සිද්ධිමය කරුණු සම්බන්ධයෙන් නිවැරදි ඇගයීමක් කිරීමට පාර්ශවයන්ට අවස්ථාවක නොලැබේ. එබැවින් වඩාත් සුදුසු ක්‍රියාමාර්ගය වන්නේ, අදාල කරුණු සම්බන්ධයෙන් විශේශයෙන් සිද්ධිමය කරුණු සම්බන්ධයෙන් මූලික විරෝධතාවයක් මත තීරණයකට එළඹීමෙන් තොරව නඩුවේ සාක්ෂි විභාගය අවසානයේ ඉදිරිපත් වී ඇති කරුණු සලකා බලා තීරණයකට එළඹීමය.

පෙත්සම්කරුවන් වෙනුවෙන් සඳහන් කර සිටින්නේ අදාල සියලු කරුණු හෙලිදරව් නොකිරීමත්, වැරදි කරුණු ඉදිරිපත් කිරීමත් මඟින් අපරාධ අධිකරණයක පිළිගත් අධිකරණයක පිළිගත් නීතිමය සිද්ධාන්තයක් වන උපරිම විශ්වාසය (*uberima fide*) අනුව කටයුතු කිරීමට වගඋත්තරකරු අපොහොසත්වීම නිසා ඒකපාර්ශ්වික සිතාසි නිකුත් කිරීමේ නියෝගය වැරදි සහගතව ලබා ගෙන ඇති බැවින් සිතාසි නිකුත් කිරීමේ නියෝගය ආපසු කැඳවන ලෙසයි. සිය ස්ථානය තහවුරු කිරීම පිණිස ***[1987] 1 SLR 5*** හි වාර්තාගත ***Hotel Galaxy (PVT) Ltd. and others Vs. Mercantile Hotels Management Ltd.*** සහ ***[1997] 1 SLR 293*** හි වාර්තාගත ***Walker Sons & Co. Ltd. Vs. Wijayasena*** නඩු කෙරෙහි ද අධිකරණයේ අවධානය යොමු කර ඇත. කෙසේ වෙතත් මෙම උපරිම විශ්වාසය යන නීතිමය සංකල්පය යන්න බොහෝ විට අදාල කරගනු ලබන්නේ හුදෙක් අධිකරණයේ අභිමතය ක්‍රියාත්මක කරමින් කටයුතු කරනු ලබන රිට් ආඥා, තහනම් නියෝග සහ ප්‍රතිශෝධන ඉල්ලීම වැනි සිවිල් ස්වභාවයේ නෛතික ක්‍රියාමාර්ගයන් හිදීය. අ.න.වි.ස පනතේ 139 (1) (අ) වගන්තිය ප්‍රකාර සිතාසි නිකුත් කිරීමේ නියෝගයක් කිරීම හුදු අභිමතය පරිදි අධිකරණය විසින් සිදු කරන කාර්යයක් නොවේ. එවැනි නියෝගයක් කිරීමට ඉදිරිපත් කර ඇති මත යමෙකුට විරුද්ධව ක්‍රියා කිරීම "ප්‍රමාණවත් හේතු" පවතින බවට සෑහීමකට පත්වීම අනිවාර්යය. ඒ බව ඉහතින් සඳහන් කර කළ ***Malinie Gunaratne*** නඩු තීන්දුවෙන්ද පැහැදිලි වේ. එසේ ප්‍රමාණවත් හේතු පවතින්නේ නම් සියලු හා සම්පූර්ණ කරුණු හෙළිදරව් කරමින් උපරිම විශ්වාසයෙන් කටයුතු කිරීමේ අවශ්‍යතාවයක් ඉහත139 (1) (අ) වගන්තිය ප්‍රකාර සිතාසි නිකුත් කරවා ගැනීමේ දී පැන නොනගී. සිද්ධිමය කරුණු මත උපරිම විශ්වාසයෙන්

කටයුතු කිරීමක් සිදුව නොමැති බව කියා සිටින්නේ නම් ඒ සඳහා සුදුසුම අවස්ථාව වන්නේ නඩු විභාග අවස්ථාවයි".

On behalf of the Defendant-Petitioner, it was submitted that when issuing summons on a private plaint filed under Section 136 (1) (a) of the Criminal Procedure Code, the learned Magistrate has to satisfy himself whether there are sufficient grounds for proceeding against the Defendant-Petitioner-Appellant. The Court has to take into account that, there had been a full disclosure by disclosing all factual matters pertaining to the case seeking summons in the first instance by a party filing a private plaint.

The learned President's Counsel for the Defendant-Petitioner relied on the case of ***Malinie Gunaratne, Additional District Judge, Galle Vs. Abeysinghe and another [1994] 3 SLR 196,*** which held;

> "When a private plaint is filed, Section 139 (1) requires a Magistrate to form an opinion as to whether there is sufficient ground for proceeding against some person who is not in custody The opinion to be formed should relate to the offence, the commission of which, is alleged in the complaint or plaint filed under Section 136 (1). The words sufficient grounds embraces both the ingredients of the offence and the evidence of its commission. Since the opinion relates to the existence of sufficient ground for proceeding against the person accused, the material acted upon by the magistrate should withstand an objective assessment. The proper test is to ascertain whether on the material before Court, *prima facie*, there is sufficient ground on which it may be reasonably inferred that the offence alleged in the complaint of plaint has been committed by the person who is accused of it".

In view of the said Judgment, the learned Magistrate has to form an opinion as to whether there are sufficient grounds for proceeding against a person. The words "sufficient grounds" *encompass both the ingredients of the offence and the evidence of its commission.*

In this respect, it is relevant to note the Order of the learned Magistrate, which states;
"136 (1) වගන්තිය යටතේ සිතාසි නිකුත් කිරීමක් සිදු කිරීම සඳහා ප්‍රමාණවත් වේ. නඩුවට අදාළව පැමිණිල්ල සහ දිවුරුම් ප්‍රකාශ පැමිණිලිකරු විසින් මුල් අවස්ථාවේදී ගොනුකර ඇති ඇති අතර පැ1 සිට පැ7 දක්වා ලේඛණ ලකුණු කර ඉදිරිපත් කර ඇත. එම දිවුරුම් ප්‍රකාශය සහ ඉදිරිපත් කර ඇති ලේඛණ

පරීක්ෂාකර බැලීමේදී, සමාගම් පනතේ 511, 512 වගන්ති යටතේ චෝදනා නැගීමට ප්‍රමාණවත් කරුණු පැමිණිලිකරුට ඇති බවට මුල් අවස්ථාවේදී පැහැදිලිව පෙනී ගොස් ඇත. චූදිතයන් වෙනුවෙන් ප්‍රකාශ කර සිටින පරිදි ඉහත සඳහන් චූදිතයන් දක්වා ඇති කරුණු මත, පැමිණිලිකරු උපරිම සද්භාවයෙන් ක්‍රියාකර නොමැති බවට නිගමනයන්ට එළඹීමට හැකියාවක් නොමැත....."

It was further submitted by the Defendant-Petitioner that, a party who makes an application on a private plaint and seeks summons on a party, has a greater obligation and duty than *uberima fides* in a civil action inasmuch, as the liberty of the party is at stake which in turn affects the fundamental rights of that party. It is pertinent to note that the requirement of *uberima fides* mostly applies in civil litigation where a party seeks orders for the grant of injunctions or issue of writs and revision applications, which are being granted at the discretion of Court.

Thus, it is imperative to note that the cases ***Hotel Galaxy (PVT) Ltd. and others Vs. Mercantile Hotels Management Ltd. [1987] 1 SLR 5*** and ***Walker Sons & Co. Ltd. Vs. Wijayasena [1997] 1 SLR 293*** relied upon by the learned President's Counsel for the Defendant-Petitioner are pertaining to civil litigation where the Court has to exercise its discretion judicially.

Issuing of enjoining orders and interim injunctions *ex-parte* may cause great hardships and injustices to parties who have not been heard. Thus, it seems that the party concerned should have acted with *uberima fides*. In the case in hand, the Court issued summons on the Defendant-Petitioner-Petitioners to appear in Court, to give an opportunity to present or defend their case to take up the matter *inter-partes*. As such, the principle of *uberima fides* is not strictly applicable in terms of Section 139 of the Code of Criminal Procedure Act.

According to Section 63 (1) of the said Act, no duty is cast on the Judge to hear the suspect prior to the issuing of both summons and warrant in the first instance although it carries dire consequences.

Therefore, it is apparent that the case ***Hotel Galaxy (PVT) Ltd. and others Vs. Mercantile Hotels Management Ltd. [supra]*** is not applicable to the case at hand.

The Court draws the attention to the charge sheet, where charges have been framed in terms of Section 113B of the Penal Code read with Sections 511 and 512 (1) (b) of the Companies Act No. 7 of 2007. Section 113B of the Penal Code deals with the punishment for conspiracy and Sections

511 and 512 (1) (b) of the Companies Act are pertaining to the penalty for false statement and penalty for falsification of records.

Section 511 of the Companies Act states;

"Where in any return, report, certificate, balance sheet or other document, required by or for the purposes of this Act, any person wilfully makes a statement which is false in any material particular knowing it to be false, shall be guilty of an offence and be liable on conviction to a fine not exceeding one million rupees or to imprisonment for a term not exceeding five years or to both such fine and imprisonment".

Whereas, Section 512 (1) (b) of the Companies Act states;

"Any person who, with intent to defraud or deceive a person, makes or is a party to the making of a false entry in any register, accounting records, book, paper or other document belonging or relating to a company, shall be guilty of an offence and be liable on conviction to a fine not exceeding one million rupees or to a term of imprisonment not exceeding five years or to both such fine and imprisonment".

Apparently, the charges framed against the Petitioners are for making false entries in the accounting records or other documents and for making false statements pertaining to cost of goods sold and finished goods inventory in the Annual Report of the Built Element Ltd. for the year 2017.

It was contended by the Petitioners that, as the Board of Directors of Built Element Ltd had approved the Annual Report and since the Complainant-Respondent, being a director, had signed the annual report, the correctness of the annual report cannot be challenged now and that the Complainant-Respondent was not entitled to file the instant action and moved Court to issue summons on the Defendant-Petitioners.

It is worthy to note that HC (civil) case No. 92/2018 CO and HC (civil) case No. 94/2018 CO had been filed against the Defendant-Petitioner in the Commercial High Court prior to the institution of the instant action in the Magistrate's Court of Colombo.

In this respect it is submitted that criminal liability and civil liability are distinct liabilities and the said cases bearing Nos. 92/2018 CO and 94/2018 CO are pertaining to civil liability, whereas the

instant case pertains to criminal liability. Thus, it is seen that a person's civil liability does not relieve him from criminal liability and *vice versa*. As such, the Complainant-Respondent is not precluded by instituting action in the Magistrate's Court while the civil litigation is pending in the Commercial High Court.

Due to the aforesaid reasons, the Complainant-Respondent-Respondent instituted the instant action in the Magistrate's Court of Colombo in terms of Section 136 (1) (a) of the Code of Criminal Procedure Act against the Defendant-Petitioner-Petitioners accusing them of committing the offences under Section 113 (b) of the Penal Code read with Section 511 and 512 (1) (b) of the Companies Act No. 07 of 2007.

Under these circumstances, we see no reason for us to interfere with the Order of the learned Magistrate dated 10th September 2019 as well as the Order/Judgment dated 26th May 2020 by the learned High Court Judge at this stage. Thus, we are not inclined to grant reliefs prayed in prayer (e), (f) and (g) of the petition dated 30th July 2020.

Since, the learned Magistrate had made the Order on 10th September 2019 and the learned High Court Judge delivered the Order/Judgment on 26th May 2020 and there was no stay order obtained by the Defendant Petitioners to stay the proceedings in the Magistrate's Court of Colombo, it is observable that the Magistrate's Court summary trial ought to have proceeded from 10th of September 2019 until now, for nearly two years.

In view of the aforesaid reasons, we refuse the application to recall the summons issued on the Defendant-Petitioner-Petitioners in Magistrate's Court case No. 12302/5/19.

JUDGE OF THE COURT OF APPEAL

K.K.A.V. Swarnadhipathi, J.
I agree.

JUDGE OF THE COURT OF APPEAL