

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST**

**REPUBLIC OF SRI LANKA**

Court of Appeal Case No:  
**CPA / 102 / 2022**

High Court of Matara Case No:  
**HC 11 /2020**

In the matter of an application for Revision under and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka from the order of the Provincial High Court of the Southern Province Holden in Matara dated 09.09.2022 issued in Case bearing No. HC 11/2020.

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

**Complainant**

Vs.

Nadun Chinthaka Wickramaratne,  
No. 158, Pitiduwa Road,  
Midigama, Weligama.

**Accused**

**AND NOW BETWEEN**

Nadun Chinthaka Wickramaratne

Appearing through his power of attorney holder

Nelson Mervin Wickramasatne

Of No. 158, Pitiduwa Road,  
Midigama, Weligama.

**Accused – Petitioner**

Vs.

Hon. Attorney General,

Attorney General's Department,

Colombo 12.

**Complainant – Respondent**

1. Director/ Officer in Charge  
Police Organized Crime  
Prevention Division  
Mihindu Mawatha,  
Colombo 12.
  
2. Officer in Charge  
Interpol Division – Sri Lanka  
Police / National Central  
Bureau for Sri Lanka.  
Police Headquarters,  
Colombo 01.

**Respondents**

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Saumya Wijesinghe, Nadeesha Kannangara, Sanjaya Ariyadasa with  
Anura Maddegoda, PC instructed by Thamila Perera for the  
Petitioner.

Argued on: 10.10.2022

Decided on: 11.10.2022

**MENAKA WIJESUNDERA J.**

The learned President's Counsel supported the instant application to obtain a stay order against the impugned order dated 09/09/2022 being carried out. The President's Counsel submitted that the impugned order has been obtained by misrepresenting facts to the learned High Court Judge. He cited the document marked A5 (a) in which he referred to the 3<sup>rd</sup> page of the document and the highlighted portions marked as X 01 (a) and X 01 (b), which has stated that the **subject was present in Court** which he urges is misleading.

The learned Deputy Solicitor General appearing for the Attorney General objected to this application and stated that in the said document the 1<sup>st</sup> and the 2<sup>nd</sup> pages are very informative and clear. But of course, that the portions referred to as X 01 (a) and x 01 (b) has stated that the subject had been present in Court when the application was made.

Having considered the submissions of both parties we conclude that in the document referred to by the President's Counsel pages 1 and 2 are very clear on the facts reported to Court and further in the impugned page referred to by the President's Counsel also we observe that in the portion stated as

“additional facts of the case”, the correct position of the case has been reported. At this stage we draw our attention to the law pertaining to the principles that have been laid down by our Courts to be followed in granting a stay order had been analyzed in the case of, ***DUWEARATCHI AND ANOTHER v. VINCENT PERERA AND OTHERS (1988) 2 Sri L.R*** which has identified three grounds to be followed and they are,

**(i) Will the final order be rendered nugatory if the petitioner is successful?**

**(ii) Where does the balance of convenience lie?**

**(iii) Will irreparable and irremediable mischief or injury be caused to either party?**

**The court did not determine the controversial issues in the case but held that the final**

**order would not be rendered nugatory nor the balance of convenience be titled against the petitioners nor irreparable damage be caused to them because there would still be left nine tennis courts for the use of their Playing Section even if the Minister’s order was complied with Further the Minister's order had been made in the national interest for the purpose of training promising players for an international tournament. Therefore the interim stay order should be vacated and not extended.**

As such, in the instant application we not see any misleading facts being reported to the learned High Court Judge, as such, the application for a stay order is refused.

**Judge of the Court of Appeal.**

**I agree.**

**Neil Iddawala J.**

**Judge of the Court of Appeal.**