

**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 read with Article
154P(3)(b) of the Constitution of the
Democratic Socialist Republic of Sri Lanka
against the order of Provincial High Court
of Western Province holden its jurisdiction
in Gampaha.*

Officer-in-Charge,
Police Station,
Nittambuwa.

Complainant

Vs.

Court of Appeal Application
No: **CA/CPA/131/2021**

High Court of Gampaha
No: **AP 30/20**

Magistrate's Court of
Attanagalla No:
56387
B1651/2010

Gerad Shiran Johnson,
No. 245/3,
Shanthy Road, Hendala,
Wattala.

Suspect

And Between

Gerad Shiran Johnson,
No. 245/3,
Shanthy Road, Hendala,
Wattala.

Petitioner

Vs.

Officer-in-Charge,
Police Station,
Nittambuwa.
Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

And Now Between

Gerad Shiran Johnson,
No. 245/3,
Shanthy Road, Hendala,
Wattala.

Accused-Appellant-Petitioner

Vs.

Officer-in-Charge,
Police Station,
Nittambuwa.

Complainant-Respondent

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

Respondent -Respondent

BEFORE : Menaka Wijesundera J
Neil Iddawala J

COUNSEL : Dishan Dharmasena for the Accused-
Appellant-Petitioner
Kanishka Rajakaruna SC for the state

Argued on : 14.02.2023

Decided on : 04.04.2023

Iddawala – J

This is a revision application against the order of the Gampaha High Court dated 10/12/2021 which affirmed the order of the Attanagalla Magistrate Court dated 03/02/2020 where the accused-appellant-petitioner (hereinafter sometimes referred to as the petitioner) was convicted for three offences under the Penal Code and the Motor Traffic Act.

On or around 20/09/2010 the petitioner, was driving the car WP KD-9026 (hereinafter the said vehicle) when an accident took place killing 1 passenger in the said vehicle, (designated driver of the vehicle) who was sitting in the rear seat. The evidence claims to state that, at the time of the accident there were 3 individuals travelling in the vehicle and that the accident took place few minutes after they resumed their journey after stopping for dinner. Upon the consideration and evaluation of evidence given at trial by the witnesses including the evidence of the petitioner, the learned Magistrate convicted the accused- petitioner for the offence committed. The accused petitioner was convicted for 3 charges under the Penal Code and the Motor Traffic Act.

- *Charge 1*: the accused-appellant petitioner was sentenced to a 1-year rigorous imprisonment which was suspended for 5 years for the conviction of negligently causing a deadly road accident under Section 298 of the Penal Code.
- *Charge 2 & 3*: the accused-appellant petitioner was fined Rs. 2500/- x 2 (Rs.5000/-) for being convicted for 2 road offences under the Motor Traffic Act.

Further the accused-appellant was ordered to pay Rs. 100,000/- as compensation to the victim's family.

Aggrieved by the said order of the learned Magistrate of Attanagalla, the accused-appellant petitioner appealed to the High Court of Gampaha which affirmed the same and dismissed the application. Thereby the accused-appellant petitioner through a revision application to the Court of Appeal seeks this Court to set aside the order of Attanagalla Magistrate Court dated 03/02/2020 and the order of the Gampaha High Court dated 10/12/2021.

The ultimate objective, when a revision application is filed through Article 138 of the Constitution, is to assess whether the order/s in concern are subjected to any irregularities, illegalities, or improprieties.

Kulatilake v Attorney General (2010) 1 SLR 212 p. 215 held that *“Court would exercise the revisionary jurisdiction, it being an extraordinary power vested in Court specially to prevent miscarriage of justice being done to a person and or for the due administration of justice.”*

As enunciated in **Attorney General vs. Ranasinghe and others** (1993) 2 SLR p.81, the revisionary power of the Court can be exercised for the following purposes:

1. To satisfy this Court as to the legality of any sentence or order passed by the High Court or Magistrate's Court
2. To satisfy this Court as to the propriety of any sentence or order passed by such Court.
3. To satisfy this Court as to regularity of the proceedings of such Court.

At the outset, it must be highlighted that revision is a discretionary remedy that will only be invoked in exceptional circumstances that have been submitted. In the case of **Abdul Hassan Mohamed Kaleel v**

Mohamed Kaleel Mohamed Imithiyas CA/PHC/APN/141/16 CA Minute dated 25.01.2017 at page 6, His Lordship Justice L. T. B. Dehideniya after considering several authorities expressed the view that; *“Thus the existence of exceptional circumstances is the process by which the Court selects the cases*

in respect of which this extra-ordinary method of rectification should be adopted. If such a selection process is not there, revisionary jurisdiction of this Court will become a gateway for every litigant to make a second appeal in the garb of a revision application or to make an appeal in situations where the legislature has not given right of appeal. The practice of the Court to insist on the existence of exceptional circumstances for the exercise of revisionary powers has taken deep root in our law and has got hardened into a rule which should not be lightly disturbed. The words used by the legislature do not indicate that it ever intended to interfere with this 'rule of practice'. (Emphasis added).

Nevertheless, the accused-appellant petitioner through the revision application to this Court has failed to satisfy the court of any valid exceptional circumstance to pivot the said orders.

Through the revision application made to this Court, the counsel for the accused-appellant petitioner stressed over the fact that the learned Magistrate had erred in stating that the fatal accident took place due to the accused-appellant petitioner negligently driving in high speed.

The evidence given by witnesses including the accused-appellant and the 3rd passenger of the vehicle, both stated that the road they were travelling seemed to be wet and that they saw something like a stone ahead of the vehicle. And when the accused-appellant was trying to avoid it, the accident took place, and the vehicle slipped away, knocked, and toppled over.

Reflecting the evidence of the witnesses this Court too is of the opinion that if the accused-appellant was driving in a controllable speed, he could have avoided the stone in a conscientious manner and further could have avoided the accident too.

Considering all facts and evidence of the present case it is clear the learned Magistrate in delivering the order has correctly examined all aspects of the case prior to the conviction of the accused-appellant petitioner. Further, the compensation ordered in this case can be considered as a nominal amount and thus cannot be claimed as excessive. Thus, in the circumstances this Court does not find any irregularities, illegalities, or improprieties in the said

order of the learned Magistrate dated 03/02/2020 nor in the affirmed order by the learned High Court judge dated 10/12/2021.

Accordingly, this Courts finds no reason to interfere with the order of the learned Judge of the Gampaha High Court dated 10/12/2021 and order of the learned Magistrate of Attanagalla dated 03/02/2020. Thereby, this Court affirms the same.

The application is hereby dismissed.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL