

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

**REPUBLIC OF SRI LANKA.**

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

Court of Appeal Case No:  
**CA (PHC) 189/2019**

High Court of Gampaha Case No:  
**HCRA 13/2019**

Magistrate's Court of Mahara  
Case No: **14010 /17**

Officer in Charge

Police Station

Peliyagoda.

**Complainant**

Vs.

Abdul Hafeel Ahamad Abbas,

573, Sudharma Mawatha,

Vanavasala.

**Accused**

**AND**

Abdul Hafeel Ahamad Abbas,

573, Sudharma Mawatha,

Vanavasala.

**Accused – Petitioner**

Vs.

01. Attorney General  
Attorney General's Department  
Colombo 12.

**Respondent**

02. Officer in Charge  
Police Station  
Peliyagoda

**Complainant – Respondent**

**AND NOW BETWEEN**

Abdul Hafeel Ahamad Abbas  
573, Sudharma Mawatha  
Vanavasala

**Accused – Petitioner –  
Appellant**

Vs.

01. Attorney General  
Attorney General's Department  
Colombo 12.

**Respondent – Respondent**

02. Officer in Charge  
Police Station  
Peliyagoda

**Complainant – Respondent –  
Respondent**

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Ashan Fernando for the Appellant.

Hansa Abeyratne, SC for the State.

Argued on: 07.02.2023

Decided on: 22.03.2023

**MENAKA WIJESUNDERA J.**

The instant application for revision has been filed to set aside the order dated 10.9.2019 of the High Court of Gampaha.

The appellant in the instant matter had been arrested by the police on 10.7.2013 for allegedly possessing Wallapatta and facts had been reported to the Magistrate. But on 22.9.2016 the police had informed the Magistrate that a charge sheet would not be filed against the suspect and to discharge him, and as such the Magistrate had discharged the suspect.

But on the 24.8.2017 the Attorney General had instructed the police to file a charge sheet against the suspect for the same offence he was taken into custody for.

But the appellant had objected on the basis that the appellant had been discharged by the Magistrate previously and as such he cannot be charged, in fact the Magistrate should have acquitted the suspect, he had submitted.

The Magistrates had overruled the objection and had proceeded to trial and being aggrieved by the said order the appellant had made an application for revision to the High Court and the learned High Court Judge had held with the Magistrate.

The instant application is against the said orders.

The appellant in the submissions made orally and in writing had taken the same position and the Attorney General had objected to the application.

Upon consideration of the submissions of both sides it is pertinent to note the manner in which legal proceedings are commenced before the Magistrate.

Under chapter XIV of the Criminal Procedure Code, it is stated that criminal proceedings commences before the Magistrate once a plaint and charge sheet is filed.

But in the instant matter when the Magistrate made the order for the suspect to be discharged on 22.9.2016 there had been no charge sheet or plaint filed against the suspect. Hence the Magistrate could not have acquitted the suspect because he was only a suspect and not an accused.

Therefore, it is the considered view of this Court that there was no bar for the Attorney General to have instructed the police to file charges under the relevant act against the suspect and for the learned Magistrate to have accepted the same.

As such we see no irregularity or an illegality in the order of the learned High Court Judge in holding with the Magistrate.

As such we dismiss the instant application for revision as it carries no merit.

**Judge of the Court of Appeal.**

**Neil Iddawala J.**

**I agree.**

**Judge of the Court of Appeal.**