

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

*In the matter of an appeal from the  
Provincial High Court Holden in  
Kalmunai in terms of Section 331 of  
the Code of Criminal Procedure Act to  
the Court of Appeal.*

CA (PHC) 0247/17

Provincial High Court of Kalmunai

Case No. EP/HCK/Rev/176/2016

Aboobucker Sabir,

No. 96/4, Ampara 11<sup>th</sup> Road,

Sammanthurai.

**COMPLAINANT**

Magistrate's Court of Sammanthurai

Case No. 8240/PVT/13

**Vs.**

1. Abdul Hameed Jameel
2. Abdul Hameed Reyah *Alias*  
Najeem
3. Nona Aboothahir Janeer
4. Sinnarasa Aboothahir *Alias*  
Janeer
5. Abdul Hameeth Habsha Bebi
6. Sinnarasa Fasreen
7. Abdul Hameed Rubena
8. Abdul Hameed Thuraiya
9. Mohamed Aliyar Sinnarasa

All of them at  
No. 352/6, Block J, East-01,  
Sammanthurai.

**ACCUSED**

**AND NOW BETWEEN**

Aboobucker Sabir,  
No. 96/4, Ampara 11<sup>th</sup> Road,  
Sammanthurai.

**COMPLAINANT-PETITIONER-  
APPELLANT**

**Vs.**

1. Abdul Hameed Jameel
2. Abdul Hameed Reyah *Alias*  
Najeem
3. Nona Aboothahir Janeer
4. Sinnarasa Aboothahir *Alias*  
Janeer
5. Abdul Hameeth Habsha Bebi
6. Sinnarasa Fasreen
7. Abdul Hameed Rubena
8. Abdul Hameed Thuraiya
9. Mohamed Aliyar Sinnarasa

All of them at  
No. 352/6, Block J, East-01,  
Sammanthurai.

**ACCUSED-RESPONDENTS**

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

**RESPONDENT**

**Before** : Sampath B. Abayakoon, J.

: P. Kumararatnam, J.

**Counsel** : A. Mohammed Farook for the complainant-petitioner-  
Appellant.

: Shihar Hassan for the accused-respondent-  
respondents.

: Azard Navavi, D.S.G. for the respondent-respondent

**Argued on** : 05-06-2023

**Decided on** : 27-07-2023

**Sampath B. Abayakoon, J.**

The complainant-petitioner-appellant (hereinafter referred to as the appellant) instituted proceedings against the accused-respondent-respondents (hereinafter referred to as the respondents) by filing a private plaint in terms of section 136(1) of the Code of Criminal Procedure Act No 15 of 1979 before the Magistrate Court of Sammanthurai.

The 1<sup>st</sup>, 2<sup>nd</sup> and the 3<sup>rd</sup> count preferred had been against all the respondents.

In the 1<sup>st</sup> count it had been alleged that on 24-02-2013, the respondents assaulted the appellant and also caused damage by throwing stones at his house

and thereby committed offences punishable in terms of sections 314 and 373 of the Penal Code.

In the 2<sup>nd</sup> count it had been alleged that the appellant lost several personal belongings of him as mentioned in the charge, valued at Rs. 100000/-, as a result of the assault incident, and thereby the respondents committed an offence punishable in terms of section 410 of the Penal Code.

In the 3<sup>rd</sup> count it had been alleged that the that the appellant lost several personal belongings of him as mentioned in the charge, valued at Rs. 100000/- as a result of the assault incident, and thereby the respondents committed an offence punishable in terms of section 410 of the Penal Code

It appears that the 3<sup>rd</sup> count was a repetition of the 2<sup>nd</sup> count.

The 4<sup>th</sup> count preferred was only against the 1<sup>st</sup> accused respondent, where it had been alleged that he at the same incident and at the same transaction caused damages to a value of Rs. 25000/- by attacking a motorcycle and thereby he committed an offence punishable in terms of section 410 of the Penal Code.

At the trial, it had been revealed that the appellant had filed the private plaint based on two complaints he made to the Sammanthurai police station on 24-02-2013. It has been established that the police have referred the two complaints to the Mediation Board of Sammanthurai, as the dispute was a matter that shall be referred to the Mediation Board before filing any action before the Magistrate Court.

The Mediation Board of Sammanthurai has issued the certificate of settlement dated 31-03-2013, in terms of section 11 of the Mediation Boards Act No- 72 of 1988.

The learned Magistrate, after considering the factual matters brought to his notice, and after considering the relevant law in that regard, has dismissed the private plaint filed by the appellant by his order dated 09-05-2016 as there was

no basis for the appellant to maintain his action against the respondents on a matter that has already been settled before the Mediation Board.

The appellant has preferred an application in revision in terms of Article 154P of the Constitution before the Provincial High Court of the Eastern Province holden at Kalmunai on the basis of being aggrieved by the said order of the learned Magistrate of Sammanthurai.

After hearing the parties, the learned High Court Judge of Kalmunai, by his well-reasoned out judgment dated 16<sup>th</sup> October 2017, has dismissed the revision application for want of any merit.

It is against the said judgment the appellant has preferred this appeal.

### **The Grounds of Appeal**

At the hearing of this appeal, the learned Counsel for the appellant formulated the following ground of appeal for the consideration of the Court.

- (1) The learned Magistrate and the learned High Court Judge erred in law by failing to consider that the matter has not been settled before the Mediation Board.

It was the position of the learned Counsel for the appellant that although the matter was initially settled before the Mediation Board, the appellant informed the Board that the settlement was withdrawn by him, and that fact has not been duly considered by the Court.

The learned Counsel for the respondent brought to the notice the judgment of the learned High Court Judge, where it has been held that the appellant had suppressed material facts to the trial Court and had produced additional documents in violation of the Rule No 3(1) of the Court of Appeal (Appellate Procedure) Rules of 1990, before the High Court.

It was also pointed out the requirements of section 14A of the Act if the matter was not settled as claimed by the appellant.

## **Consideration of the Grounds of Appeal**

It is clear from the proceedings before the learned Magistrate of Sammanthurai, that the Court has been informed that the matter mentioned in the private plaint filed by the appellant was a matter that had been settled between the parties by the Mediation Board before the appellant filed the action in the Magistrate Court.

The learned Magistrate, after being satisfied that the certificate of settlement issued by the Mediation relates to the same dispute, has decided to terminate the proceedings before him in terms of section 11 of the Mediation Boards Act, as a private plaint cannot be entertained on a matter that had been duly settled in accordance with the law.

When this matter was considered before the learned High Court Judge of Kalmunai, the appellant has produced documents marked P-02, P-03, P-04 which were documents not produced before the Magistrate Court. These were not documents that confirm the appellant's claim that the matter was not settled.

The relevant section 14A of the Mediation Board Act as amended by Mediation Board (Amendment) Act no 15 of 1997 reads as follows;

**14A. Where a settlement of any dispute or offence or the resolution of any differences that have arisen between the disputants after a settlement, has not been possible under the provisions of the Act, the Chairmen or the Chief Mediator, as the case may be, shall issue a certificate on non- settlement in the prescribed form signed by the Chairmen or the Chief Mediator, as the case may be, stating that it has not been possible to settle such dispute or offence by mediation and stating therein the reason for non-settlement.**

It is the view of this Court that for the appellant to claim that the matter was not settled, he needs to produce a certificate of non-settlement as required by section 14A of the Act, which was not the case.

As viewed correctly by the learned High Court Judge, he has suppressed vital material facts to the original Court and has come out with new material before the High Court which has no value in order to challenge the determination of the learned Magistrate.

It is, therefore, abundantly clear that the appellant had no basis to challenge the order when he filed the application in revision before the Provincial High Court. The learned High Court Judge has well considered the factual and legal provisions in that regard, and had correctly dismissed the application.

Accordingly, I find no reasons to interfere with the order of the learned Magistrate of Samanthurai as well as the judgment of the learned High Court Judge of the Provincial High Court of Eastern Province holden at Kalmunai.

It is the view of this Court that the appellant has filed this appeal before this Court, not for anything else, but to cause the maximum possible harassment to the respondent, knowing very well the strength of his appeal.

The appeal is dismissed as it is devoid of any merit.

The Registrar of the Court is directed to communicate this judgment to the High Court of Kalmunai and to the Magistrate Court of Sammanthurai for information.

Judge of the Court of Appeal

**P. Kumararatnam, J.**

I agree.

Judge of the Court of Appeal