

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

*In the matter of an application for revision under and in terms of Article 138 of the Constitution read with Article 154P (6) of the Constitution and the High Court of the Provinces (Special Provisions) Act No. 19 of 1990.*

**C.A. Revision Application No:**

CA(PHC) APN 24/2016

Meththasinghe Arachige Samantha,

Public Health Inspector,

Municipal Council, Chilaw.

**High Court of Chilaw**

Revision No. HC/RA/02/2016

**PETITIONER**

**Vs.**

**Magistrate Court of Chilaw**

Case No. B/1152/15

Adikari Arachchilage Nimal Chandrasiri,

Kurunegala Merchants Pvt Ltd,

No. 175, Bazaar Street,

Chilaw.

**RESPONDENT**

**AND**

Meththasinghe Arachige Samantha,  
Public Health Inspector,  
Municipal Council, Chilaw.

**PETITIONER-PETITIONER**

**Vs.**

Adikari Arachchilage Nimal Chandrasiri,  
Kurunegala Merchants Pvt Ltd,  
No. 175, Bazaar Street,  
Chilaw.

**RESPONDENT-RESPONDENT**

**AND NOW BETWEEN**

Adikari Arachchilage Nimal Chandrasiri,  
Kurunegala Merchants Pvt Ltd,  
No. 175, Bazaar Street,  
Chilaw.

**RESPONDENT-RESPONDENT-**

**PETITIONER**

**Vs.**

Meththasinghe Arachige Samantha,  
Public Health Inspector,  
Municipal Council, Chilaw.

**PETITIONER-PETITIONER-**  
**RESPONDENT**

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

: P. Kumararatnam, J.

**Counsel** : Saliya Pieris, P.C. with Yohan Pieris and

Sanjeewa Kaluarachchi for the Respondent-Petitioner

: Shanaka Wijesinghe, A.S.G., P.C. for the Respondent

**Argued on** : 09-06-2023

**Decided on** : 09-08-2023

**Sampath B. Abayakoon, J.**

This is an application by the respondent-respondent-petitioner (hereinafter sometimes referred to as the petitioner) invoking the revisionary jurisdiction of this Court under and in terms of Article 138 of the Constitution on the basis of being aggrieved by the order dated 16-02-2016 by the learned High Court Judge of the Provincial High Court of North Western Province holden at Chilaw.

The petitioner has also filed an appeal bearing Case No. PHC-0022-16 to this Court challenging the same order pronounced by the learned High Court Judge.

At the hearing of this application, the parties agreed that the judgement pronounced in this revision application shall be applicable to the above-

mentioned appeal filed as well. Therefore, this judgement shall conclude both the applications before this Court.

The facts relevant to the order pronounced by the learned High Court Judge can be summarized in the following manner.

The petitioner-petitioner-respondent (hereinafter referred to as the respondent) initiated proceedings against the petitioner who was the area sales agent of Ceylon Tobacco Company before the Magistrate Court of Chilaw under the National Authority on Tobacco and Alcohol Act No. 27 of 2006 (hereinafter referred to as the Act) as amended by Amendment Act No. 03 of 2015, alleging that he had in his possession, six cardboard boxes containing tobacco products namely, cigarettes, manufactured by the Ceylon Tobacco Company without the required pictorial warnings as stipulated by the Act on the said six boxes. It appears from the report filed before the learned Magistrate that the petitioner has allegedly committed an offence in terms of section 34 (1) of the Act.

In this process, the respondent had seized following items from the possession of the petitioner.

1. 3 cardboard boxes containing 10000 Gold leaf cigarettes each, in properly prepared cigarette packets with the necessary pictorial warning.
2. 01 cardboard box containing 12000 Gold leaf cigarettes in properly prepared cigarette packets with the necessary pictorial warning.
3. 02 cardboard boxes containing 10000 Bristol cigarettes each, in properly prepared cigarette packets with the necessary pictorial warning.

When these items were produced before the learned Magistrate of Chilaw, the petitioner has admitted that the 6 large cardboard boxes which contained in the cigarette packets in separate cartons had no pictorial warnings. It had been his position that since these large cardboard boxes were only used to transport the packets of cigarettes, the said boxes would not be sold to the end user or the

customer. He has further taken up the position that, the individual cigarette packets or the cigarette cartons which contained several separate cigarette packets had the necessary pictorial warnings in terms of the Act and therefore, he was not in violation of the relevant provisions of the Act.

When the seizure of these items was reported to the Magistrate Court, it clearly appears that there was no dispute that the cigarettes seized are products manufactured by the Ceylon Tobacco Company. Therefore, they are legally manufactured cigarettes, where the company has paid the due taxes to the government and can be sold in the open market as stipulated by the law.

When this matter was taken up before the learned Magistrate of Chilaw on 8<sup>th</sup> December 2015, the petitioner has made an application to the learned Magistrate that since the petitioner has admitted that there were no pictorial warnings in the 6 large cardboard boxes and since the cigarettes are legally manufactured cigarettes valued at Rs. 1786080/=, it should to be released to the petitioner. It has been informed to the Court that there are two types of cigarettes in these 6 boxes. In 5 boxes, there are cigarette packets containing 20 cigarettes each and in the other box, the cigarette packets contain 12 cigarettes each, and in total 3500 cigarette packets in all 6 boxes which has a total of 62000 cigarette sticks.

The learned Magistrate has inspected the relevant cardboard boxes in open Court and has observed that these cigarette packets are in separate cartons, however, has not made an order in relation to the application by the petitioner, but has directed the parties to file written submissions.

When this matter was mentioned again on 15-12-2015, the respondent had been represented by a Senior State Counsel of the Attorney General's Department, and she has made oral submissions before the Court, and after making lengthy submissions, has requested the Court to send the productions in its totality, namely, the 6 large sealed cardboard boxes together with its contents to the Government Analyst requiring the Government Analyst to answer the following questions.

1. මෙම ඇසුරුමට අදාළ දුම්කොළ සමාගමටම අයත් මුල් ඇසුරුම්ද යන්න සම්බන්ධයෙන් රස පරීක්ෂක ඔහුගේ මතය ඉදිරිපත් කළ යුතුය.
2. මෙම ඇසුරුම් කලින් විවෘත කළ තිබේද?
3. මෙම ඇසුරුම් 2015 අංක 03 දරන දුම්කොළ හා මද්‍යසාර පිලිබඳ ජාතික අධිකාරිය (සංශෝදන) පනතේ 2 හා 3 වගන්ති උල්ලංගනය කර තිබේද?
4. මෙම ඇසුරුම් පනතේ සඳහන් කාඩ්බෝඩ් පෙට්ටි ගණයට අයත්ද?

It had been the position of the learned Senior State Counsel that the answers to the above questions can be provided only by the Government Analyst, and there cannot be admissions recorded in that regard, and that this information would be necessary for the prosecution to prove its case.

It had been the position of the learned Counsel who represented the petitioner before the Magistrate Court of Chilaw, that the petitioner was not in violation of the requirements of the Act, and had moved for the release of the productions and discharge of the petitioner from the proceedings on the basis that the prosecution has failed to show any *prima facie* basis that an action can be maintained against the petitioner. He has also contended that there was no necessity to send the productions to the Government Analyst.

The learned Magistrate of Chilaw has pronounced his order in relation to the applications made by both the parties on 12-01-2016. In his order, he has decided to allow the application made by the learned Senior State Counsel to send the productions to the Government Analyst.

However, considering the admissions made in open Court and facts undisputed in relation to this matter, he has decided that sending the legally manufactured cigarettes valued over Rs. 1.7 Million to the Government Analyst would not be necessary for the purposes of this action. Accordingly, he has directed the Registrar of the Court to retain the 6 cardboard boxes which are the disputed boxes without the alleged pictorial warnings in terms of the Act, and also to retain one carton each which has several cigarette packets in it from each of the

6 boxes and to release the rest of the cigarettes on a bond to the petitioner. He has decided that he will decide on the other objections taken by the petitioner at the conclusion of the case.

Once this order was pronounced, the learned Senior State Counsel has requested the learned Magistrate to order that two large boxes, inclusive of the cigarettes contained therein to be sent to the Government Analyst although her previous application was to send the entire consignment of cigarettes along with the 6 large boxes. However, the learned Magistrate had refused the said request as he had already pronounced his order in that regard.

The respondent has preferred an application in revision through a Senior State Counsel on the basis of being aggrieved by the said order of the learned Magistrate of Chilaw, in terms of Article 154P of The Constitution to the Provincial High Court of North Western Province holden at Chilaw challenging the said order.

In his petition before the High Court, the relief sought by the respondent had been as follows.

(අ) වගදන්තරකරුවන්ට නොතේසි නිකුත් කරන ලෙසත්

(ආ) 2016-01-12 වන දින ගරු උගත් මහේස්ත්‍රාත්වරයාගේ නියෝගය අත්හිටුවීමට නියෝගයක් ප්‍රකාශයට පත්කරන ලෙසත්

(ඇ) නඩු භාණ්ඩ මුදා හැරීමේ නියෝගය අත්හිටුවන ලෙසත්

(ඈ) අධිකරණයට මැනවයි හැඟෙන වෙනත් සහ වැඩිවෙනත් සහනයන් ලබා දෙන ලෙසත්ය

It needs to be noted that the respondent has not sought any final relief against the order of the learned Magistrate, but has sought only to stay the learned Magistrate's order.

In terms of the appellate procedure rules, a party seeking an interim order in relation to an order or a judgement pronounced by a Court of First Instance, has to give notice to the opposing party, unless the party challenging the order or the

judgement seeks to dispense with the said requirement on the basis of urgency. I find no averment or averments containing such a statement in the petition filed by the respondent through a learned Senior State Counsel of the Attorney General's Department.

However, this matter has been supported on 21-01-2016 before the learned High Court Judge of Chilaw without notice to the opposing party, and the learned Senior State Counsel who supported the petition has sought the suspension of the order dated 12-01-2016 by the learned Magistrate of Chilaw and also the release of the productions as directed by the learned Magistrate, and for notice on the respondent's mention in the petition.

The learned High Court Judge after considering the application has determined that the facts submitted to him are facts that shocks the conscience of the Court and therefore, has determined that there is a need for immediate interference into the order of the learned Magistrate. Accordingly, has ordered the suspension of the release of the productions of the petitioner, and has directed that notice should be sent to the respondents mentioned in the petition.

The petitioner, being the respondent mentioned in the application before the High Court has taken up a preliminary objection as to the maintainability of the application on the basis that the respondent who was the petitioner in the application has no right to maintain a revision application before the High Court without a final relief being sought, and also on the basis that the respondent being the petitioner, has failed to tender all the necessary documents relating to the order pronounced by the learned Magistrate of Chilaw along with his petition, which was in violation of the Supreme Court Rules of Procedure in relation to an application of this nature.

However, this preliminary objection has been overruled by the learned High Court Judge on the basis that if the Court grants permission for a stay order of the order dated 12-01-2016 pronounced by the learned Magistrate that itself amounts to a final relief, and the respondent who is the petitioner in the



application, by filing documents marked P-01 to P-07, has cumulatively provided sufficient information to the Court to determine the matter.

After hearing the parties, the learned High Court Judge by his order dated 16-02-2016 has made the impugned order sought to be challenged in this revision application before the Court.

For matters of clarity, I would now reproduce the said order in its entirety which reads as follows.

නියෝගය

පරිශෝදන පෙත්සමේ ඉදිරිපත් වී ඇති කරුණු වලට සහ වගදන්කරකාර පාර්ශවය වෙනුවෙන් ඉදිරිපත් කර ඇති කරුණු වලට අවධානය යොමු කරමි.

මෙම නඩුවේ පරිශෝදන පෙත්සමට අවධානය යොමු කළ විට හලාවත මහේස්ත්‍රාත් අධිකරණයේ පවත්නා අංක බී.1152/2015 නඩුවේ සැකකරු ලෙසට නම් කර ඇති හා පරිශෝදන පෙත්සමේ වගදන්කරකරු ලෙසට නම් කර ඇති පාර්ශවය විසින් 2015 අංක 03 දරන දුමකොළ මද්‍යසාර පිලිබඳ ජාතික අධිකාරිය (සංශෝදන) පනත යටතේ යම්කිසි වරදක් සිදුකර ඇතැයි යන කාරණය සම්බන්ධයෙන් විමර්ශන පවත්වන අවස්ථාවේදී විමර්ශනයට සහය පතමින් උගත් මහේස්ත්‍රාත්තුමා ගෙන් පෙත්සම්කාර පාර්ශවය වෙනුවෙන් නියෝගයක් ලබා ගැනීමට උත්සාහයක යෙදී ඇති බවට පැහැදිලි වේ.

අපවාද කරන නියෝගයට අවධානය යොමු කළ විට උගත් මහේස්ත්‍රාත්තුමා අදාළ විමර්ශනයට සහය වීමක් නොව අදාළ විමර්ශනය කරගෙන යායුතු ආකාරය සම්බන්දයෙන් කොන්දේසි පැනවීමක් හෝ ඊට සමාන කාර්යයක් සිදු කර ඇති බවට පැහැදිලි වේ. එම තත්වය 1979 අංක 15 දරන අපරාධ නඩු විධාන සංග්‍රහයේ 124 වගන්තියේ විධිවිධානවලට පටහැනිය.

ඒ අනුව උගත් මහේස්ත්‍රාත්තුමා හලාවත මහේස්ත්‍රාත් අධිකරණයේ පවත්නා අංක බී.1152/2015 නඩුවේ 2016.01.12 දින දානමින් ප්‍රකාශයට පත් කර ඇති අපවාද කරන නියෝගය හා මැදිහත් වීමට තීරණය කරමි. එම නියෝගය ඉවත් කරමි. උගත් මහේස්ත්‍රාත්තුමාට පෙත්සම්කාර පාර්ශවය විසින් සාර්ථකව විමර්ශන පවත්වාගෙන යාමට සහය ඉල්ලා සිටි විටක ඊට සහය පල වන ආකාරයට අදාළ ඉල්ලීම සලකා බලා සුදුසු නීත්‍යානුකූල නියෝගයක්/ නියෝගයන් නිකුත් කරන ලෙසට දැන්ව සිටිමි.

මෙම නියෝගයේ පිටපතක් හලාවත මහේස්ත්‍රාත් අධිකරණය වෙත යැවීමට මෙම අධිකරණයේ රේජිස්ට්‍රාර් මහතාට දැනුම් දෙමි.

It is against the above order the petitioner has come before this Court invoking the revisionary jurisdiction of this Court.

When the order dated 16-02-2016 reached the learned Magistrate of Chilaw. The learned Senior State Counsel who represented the respondent has informed the Court that she is not objecting to the release of the contents in four of the six cardboard boxes and has requested the Court to send 2 sealed cardboard boxes with its contents to the Government Analyst and call for the report as requested earlier. It has also been informed that she would not be objecting for the release of the rest of the cigarettes to the petitioner.

However, when this application was supported before this Court, this Court issued a stay order preventing the learned Magistrate from proceeding any further in the matter before the Magistrate Court, and as a result, it is now informed to this Court that the said productions have not been sent to the Government Analyst as yet. However, it appears from the Magistrate Court case record that apart from two boxes, the contents of the balance four boxes had been released to the petitioner on a bond, and the mentioned two boxes along with its contents are in the Court custody. It had been informed to the Court that the expiry date of the cigarettes manufactured will be 6 months from the date of manufacture.

At the hearing of this matter, this Court had the benefit of listening to the learned President's Counsel, and also had the opportunity of listening to the views expressed by the learned Additional Solicitor General who represented the respondent.

The facts that have been presented before the learned Magistrate of Chilaw and before this Court clearly demonstrates that the matter that had to be determined by the learned Magistrate was whether the petitioner has violated the provisions of section 34 (1) of the Act by failing to display the required pictorial warning on the 6 large cardboard boxes used to transport the packets of cigarettes produced before the Court.

As stated before, the position of the petitioner had been that there was no violation of the provisions of the relevant section. Since there was no dispute as to the fact that the cigarettes contained in the boxes are legally manufactured cigarettes and the packets of cigarettes and the cartons found inside the boxes had the necessary pictorial warning, the matter that had to be decided by the Court was only whether the outer 6 boxes which admittedly had no pictorial warning violates the provisions of the Act and nothing else.

It is clear from the applications initially made before the learned Magistrate of Chilaw, those applications had been made with the clear intention of causing maximum difficulties and loss to the petitioner. The cigarettes the petitioner had in his possession were legally manufactured products permitted to be sold in the open market. There cannot be any argument that the relevant manufacturer has paid due taxes for the cigarettes manufactured before releasing them to its authorized agent for the purpose of sale. It is an admitted fact that the end product that would in fact go into the hands of a consumer or a customer had the necessary warning as required by law. Therefore, the matter that would necessarily be required to be determined by the learned Magistrate was a matter of a technical nature.

I do not find any basis for the application made by the learned Senior State Counsel who represented the respondent before the Magistrate Court to send all the 6 large boxes along with its contents to the Government Analyst.

As pointed out correctly by the learned President's Counsel, the Government Analyst would not be able to answer any of the questions raised in a positive manner, if the productions were in fact sent to the Government Analyst.

There was no dispute before the Court that the tobacco found in the cigarettes belongs to the Ceylon Tobacco Company. The Government Analyst would not be able to express an opinion whether the petitioner has violated the provisions of the Act which is a matter for the Court to determine after a proper trial. There was no dispute that the 6 large boxes are boxes made of cardboard.

I find no basis for the contention that it is only the Government Analyst who can provide answers to these questions and the answers, if provided, are necessary for the prosecution to prove whatever the possible charge against the petitioner.

Therefore, it is the considered view of this court that the learned Magistrate of Chilaw was correct in refusing to act as a rubber stamp of the learned Senior State Counsel when he refused the application as to the manner how the productions should be sent to the Government Analyst.

The learned Magistrate after considering the submissions made by the parties and admissions before him, had decided only to send samples taken out of the 6 boxes and release the rest of the cigarettes to the petitioner which was the correct order the learned Magistrate should have pronounced under the circumstances.

It is trite law that a judge should not be a rubber stamp of a prosecutor or investigating officer under the guise of his duty to assist investigations in a criminal matter.

The relevant section 124 of the Code of Criminal Procedure Act which was considered by the learned High Court Judge in his order to determine that the learned Magistrate has failed to assist the investigator reads as follows.

**124. Every Magistrate to whom application is made in that behalf shall assist the conduct of an investigation by making and issuing appropriate orders and process of Court and may, in particular hold, or authorize the holding of, an identification parade for the purpose of ascertaining the identity of the offender, and may for such purpose require a suspect or another person to participate in such parade, allow a witness to make his identification from a concealed position and make or cause to be made a record of the proceedings of such parade.**

It is noteworthy to mention that under the section, a Magistrate is required to make and issue only the appropriate orders and process, and not all the orders requested by an investigator.

In the case of **Mahanama Tillakaratne Vs. Bandula Wickramasinghe and Others (1999) 1 SLR 372** which was a Fundamental Rights violation application which involved issuing of an arrest warrant, it was stated by **Deeraratne, J.** at page 382,

*“Issuing a warrant is a judicial act involving the liberty of an individual and no warrant of arrest should be lightly issued by a Magistrate simply because a prosecutor or an investigator thinks it is necessary. It must be issued as the law requires, when a Magistrate is satisfied that he should do so, on the evidence taken before him on oath. It must not be issued by a Magistrate to satisfy the sardonic pleasure of an opinionated investigator or prosecutor.”*

His Lordship echoed the words of **Sampayo, J.** in **Wills Vs. Sholay Cangany (1915) 18 NLR 443** which reads thus,

*“The issue of a warrant is a serious matter and the Magistrate should exercise his own independent judgement on the facts before he does this judicial act. In every case, it is the duty of the Magistrate to see that the complainant or the other person, when icing what purports to be oral evidence, gives it consciously and with due sense of his own responsibility and that he not merely adopts general statements already printed and furnished to him by the proctor. The Magistrate should himself record that evidence from the witness’s own mouth and should in no case recognize printed matter contained in forms which the proctor may keep in stock. I think the practice followed in this case is reprehensible, and I hope not to see another instance of it.”*

The underlying principles enunciated in the above judgement was considered by **Shiranee A. Bandaranayake, J.** (as she was then) in **Danny Vs. Sirinimal Silva,**

**Inspector of Police and Others (2001) 1 SLR 30**) by expressing the following view;

*“I must express my concern over Magistrates issuing orders of remand mechanically, simply because the police want such orders made...Remanding a person is a judicial act and as such a Magistrate should bring his judicial mind to bear on that matter before depriving a person of his liberty.”*

It is, therefore, trite law that judges are there not to sanction applications by the prosecutors or investigators merely because they wanted certain things to be done in the guise of seeking assistance in terms of section 124 of the Code of Criminal Procedure Act.

It is very much clear from the order of the learned Magistrate of Chilaw that he has been mindful of this legal principle when he refused to send all 6 boxes and the cigarettes in it as requested by the prosecution. He has well evaluated the necessity to send the productions as sought by the prosecution and has determined that only the samples and the larger cardboard boxes should be sent to the Government Analyst, although in my view, even that would be a futile exercise, given the questions of law involved in this matter.

I find that the learned High Court Judge of Chilaw was misdirected as to the facts and the relevant law when it was determined that the learned Magistrate has failed to assist the investigation in this matter. I find that there was no basis for the learned High Court Judge to come to such a conclusion if the proceedings before the learned Magistrate was evaluated in the correct perspective.

I find that the petitioner has adduced sufficient exceptional grounds for this Court to interfere with the order of the learned High Court Judge of Chilaw.

Accordingly, it is my considered view that the order dated 16-02-2016 by the learned High Court Judge of Chilaw cannot be allowed to stand. Hence, the order

is hereby set aside. I affirm the order dated 12-01-2016 by the learned Magistrate of Chilaw pronounced in the Magistrate Court of Chilaw Case No. B 1152/2015.

However, since more than seven years have passed from the order, it is the view of this Court that sending the productions as ordered by the learned Magistrate in 2016 for a Government Analyst Report should be reconsidered by the learned Magistrate, as I find it would not serve any purpose as considered earlier in this judgement.

Although the cigarettes that were detained along with 2 cardboard boxes have now passed their expiry date, the learned Magistrate is directed to release the detained cigarette packets after keeping samples, to a nominated representative of the Ceylon Tobacco Company who manufactured those cigarettes for the purpose of disposing them in a suitable manner, as they no longer can be used.

The Registrar of the Court is directed to communicate this judgement to the High Court of Chilaw as well as to the Magistrate Court of Chilaw for necessary action.

Judge of the Court of Appeal

**P. Kumararatnam, J.**

I agree.

Judge of the Court of Appeal