

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

In the matter of an application in revision under and in terms of section 3 of the Provincial High court (Special Provisions) Act No. 10 of 1990 read with Article 154 of the Constitution against the Order of the Learned Additional Magistrate of Matugama dated 28/01/2016 and orders incidental thereto.

Court of Appeal Case No:  
**CA (PHC) - 27/2016**

PHC of Western Province Holden in  
Kalutara Case No:  
PHC/WP/RV/01/2016

Magistrate Court of Matugama Case  
No: 12541/2014 (66)

Sisira Senanayake,  
Inspector of Police, Deputy Headquarters  
Inspector, Police Station.  
Matugama.

**The Complainant**

**Vs**

1. Kattadige Robert alias Robert  
Palinda  
Capt. Jeewan Vithana Mawatha,  
Matugama
2. Henage Don Champa  
Priyadarshanie  
No. 31. Sriyani", Capt. Jeewan  
Vithana Mawatha Palligoda South,  
Matugama.
3. Kalawila Pathirage Don Premasiri  
No 64/7A, Aluthgama Road,  
Matugama

**The First Party Respondent**

Nalini Kannangara  
No: 83, Balika Road,  
Matugama

**Intervient Party of the  
1st Party-Respondent**

Pelithanthrige Ranjith Pushpakumara,  
No. 27/2, Arawa Road, Aluthgama Road,  
Matugama

**2<sup>nd</sup> Party Respondent**

Dinusha Prasadaree Pasqual  
No: 164/8, Aluthgama Road,  
Palligoda-South,  
Matugama

**Intervenient Party of the  
2nd Party**

**AND**

Pelithanthrige Ranjith Pushpakumara,  
No. 27/2, Arawa Road, Aluthgama Road,  
Matugama

**2nd Party Respondent-Petitioner**

**Vs**

Sisira Senanayake,  
Inspector of Police, Deputy Headquarters  
Inspector, Police Station,  
Matugama

**The Complainant-Respondent**

1. Kattadige Robert alias Robert  
Palinda  
Capt. Jeewan Vithana Mawatha,  
Matugama
2. Henage Don Champa  
Priyadarshanie  
No. 31, Sriyani", Capt. Jeewan  
Vithana Mawatha Palligoda South,  
Matugama.
3. Kalawila Pathirage Don Premasiri  
No 64/7A, Aluthgama Road,  
Matugama

**The First Party Respondent-  
Respondent**

Nalini Kannangara  
No: 83, Balika Road,  
Matugama

**Intervenient Party of the  
1st Party-Respondent**

Dinusha Prasadaree Pasqual  
No: 164/8, Aluthgama Road,  
Palligoda-South,  
Matugama

**Intervenient Party of the  
2<sup>nd</sup> Party- Respondent**

**AND NOW BETWEEN**

Pelithanthrige Ranjith Pushpakumara,  
No. 27/2, Arawa Road, Aluthgama Road,  
Matugama

[Deceased]

**2<sup>nd</sup> Party Respondent-Petitioner  
-Appellant**

Ekanayaka Mudiyanseage Pushpa  
[Substituted party for the Appellant]

**Vs**

Sisira Senanayake,  
Inspector of Police, Deputy Headquarters  
Inspector, Police Station,  
Matugama

**The Complainant-Respondent-  
Respondent**

1. Kattadige Robert alias Robert  
Palinda  
Capt. Jeewan Vithana Mawatha,  
Matugama
2. Henage Don Champa  
Priyadarshanie  
No. 31, Sriyani", Capt. Jeewan  
Vithana Mawatha Palligoda South,  
Matugama.
3. Kalawila Pathirage Don Premasiri  
No 64/7A, Aluthgama Road,  
Matugama

**The First Party Respondent-  
Respondent-Respondent**

Nalini Kannangara  
No: 83, Balika Road,  
Matugama

**Intervient Party of the  
1<sup>st</sup> Party-Respondent-Respondent**

Dinusha Prasadaree Pasqual  
No: 164/8, Aluthgama Road,  
Palligoda-South,  
Matugama

**Intervient Party of the  
2<sup>nd</sup> Party- Respondent-Respondent**

Before: **Prasantha De Silva, J.**  
**K.K.A.V. Swarnadhipathi, J.**

Counsel: J.M. Wijebandara AAL with Kavindya Kuruwita AAL for the 2<sup>nd</sup>  
Party-Respondent-Petitioner-Appellant.  
Ian Fernando AAL with Tharanga Karunachandra AAL for the 1<sup>st</sup>  
Party Respondent-Respondent-Respondent and Intervient party of  
the 1<sup>st</sup> Party-Respondent-Respondent

Written Submissions: Written submissions filed on 10.05.2023 by 1<sup>st</sup> Party-Respondent-  
Respondent-Respondent  
filed on  
Written submissions filed on 16.01.2020 by 2<sup>nd</sup> Party-Respondent-  
Petitioner-Appellant

Delivered on: 07.08.2023

**Prasantha De Silva J.,**

**Judgment**

The Head Quarters Inspector of the Police station of Matugama had filed an information under section 66(1)(a) of the Primary Courts Procedure Act No. 44 of 1979, pursuant to the complaint made by the 1<sup>st</sup> Party Respondent against the 2<sup>nd</sup> Part Respondent.

The learned Magistrate who was acting as the Primary Court Judge having inquired the dispute between the parties with regard to blocking of a drain, delivered the order on 28.01.2016 directing the 2<sup>nd</sup> Party Respondent-Petitioner-Appellant to remove the obstruction made to the drain in question.

Being aggrieved by the said order, the 2<sup>nd</sup> Party Respondent-Petitioner made an application by way of revision to the Provincial High Court of Kalutara to revise or set aside the said order dated 28.01.2016.

The said application was supported on 24.03.2016 before the learned Provincial High Court Judge of Kalutara. It appears that a lengthy submission was made by the Counsel for the 2<sup>nd</sup> Party Respondent-Petitioner and where the counsel urged court to exercise inherent Jurisdiction of court to take necessary measures to prevent abusing the process of Law.

Furthermore, the Counsel for the 2<sup>nd</sup> Party Respondent-Petitioner reserved a right to support for interim relief *inter-partes* as the application was supported ex-parte and to an order seeking to issue notice on the 1<sup>st</sup> Party Respondent-Respondent.

However, the learned High Court Judge reserved the order for 30.03.2016 and pronounced the said order dismissing Petitioners application without issuing notice on the Respondents *in limine*.

It is seen that the learned High Court Judge has made a very short order, which states that,

“පෙන්සම්කරුගේ උගත් නීතිඥවරයා විසින් විවෘත අධිකරණයේදී ඉදිරිපත් කරන ලද කරුණු ද පෙන්සම් සහ දිවුරුම් පෙන්සමේ සඳහන් කරුණුද, උගත් ප්‍රාථමික අධිකරණ විනිසුරු වරයාගේ නියෝගය ද, එකී ප්‍රාථමික අධිකරණය වෙත ඉදිරිපත් කරන ලද සියළුම සලකුණු කරන ලද ලේඛණ පරීක්ෂා කිරීමේදී පෙනී යන්නේ, උකත් නියෝගය ප්‍රතිශෝධනය කිරීම සඳහා කිසිදු සුවිශේෂී කරුණක් ඉදිරිපත් වී නොමැති බවය.

කරුණු එසේ හෙයින්, මෙම ප්‍රතිශෝධන අයදුම්පත්‍රය මුල් අවස්ථාවේදීම ගාස්තු රහිතව නිෂ්ප්‍රභා කරනු ලැබේ.”

Apparently, the learned High Court Juge has dismissed the said revision application on the basis that the 2<sup>nd</sup> Party Respondent-Petitioner had not established any exceptional grounds to revise the order of the learned Magistrate.

Being aggrieved by the said dismissal, 2<sup>nd</sup> Party Respondent-Petitioner, preferred this appeal to this court seeking to set aside the said order of the learned High Court Judge dated 30.03.2016 and the order made by the learned Magistrate on 28.01.2016.

It is imperative to note that the learned High Court Judge has not analysed and evaluated the evidence placed before the learned Magistrate. Although the learned High Court Judge had not stated in his order that the learned Magistrate has come to the correct finding of fact and law and has come to the correct conclusion to held in favour of the 1<sup>st</sup> Party Respondent-Respondent, by dismissing the impugned revision application seems affirmed the order of the learned Magistrate.

However, when perusing the impugned order of the learned High Court Judge, it is significant to note that the learned High Court Judge has not given sufficient reasons for dismissing the revision application of the 2<sup>nd</sup> Party Respondent-Petitioner. Thus, it is difficult for this court to determine whether the learned magistrates order is tainted with illegality or impropriety or any procedural irregularity.

It was emphasized by Obesekara J. in the case of *Aluthhewage Harshani Chandrika and others Vs. Officer in Charge and others [CA PHC 65/2003 – C.A.M. 21.04.2020]*;

“The Court of Appeal has to look into the matter whether the learned High Court Judge has properly exercised his duty to ascertain any injustice caused to a party or whether there is a miscarriage of justice occurred against the Order of the learned Magistrate and not that the Court of Appeal is empowered to correct the errors made by the learned Magistrate.”

In view of the impugned order of the learned High Court Judge, it is worthy to note that the learned High Court Judge has not properly exercised his duty to ascertain whether the learned Magistrate has made any errors in the order, or any injustice caused to a party.

It is noteworthy, the learned High Court Judge had not stated in his order that there is no injustice caused to any party or there is any miscarriage of justice occurred to any party. Thus, we do not see how the learned High Court Judge had come to the conclusion that no exceptional circumstances exist for the 2<sup>nd</sup> Party Respondent-Petitioner to invoke the revisionary Jurisdiction of the Provincial High Court.

In our Code of Civil Procedure, ingredients of a judgement have been succinctly explained in the following manner,

The judgment shall contain a concise statement of the case, **the points for determination, the decision thereon, and the reasons for such decision**....

In the often-cited case of *Dona Lucihamy Vs Ciciliyanahamy 59 NLR 214* it was held that

*"Bare answers, without reasons, to issues or points of contest raised in a trial are not a compliance with the requirements of section 187 of the Civil Procedure Code."*

As such, it is the considered opinion of the court regardless of which court the Judge is sitting at, it is the duty of a judge to set out reasons for his judgement after careful consideration of the case before him. Even in a revision application before a Judge, if there seems to be prima facie grounds to consider the existence of exceptional circumstances as alleged by the Appellant in the instant case, the adjudicator sitting in judgment has a duty to explain his reasoning behind the refusal to allow such a revision application.

However, impugned Provincial High Court Order which affirm the order of the learned Magistrate is a skeletal order devoid of any reasoning, which has not given due consideration to the exceptional circumstances alleged by the Appellant, and no law was referred, examined or analyzed.

It is my considered view, that the paramount duty of this Court is to safeguard the rights of the parties before Court. The legal *maxim actus curiae neminem gravabit* (an act of court shall prejudice no man) is founded upon justice and good sense in order to administer justice. Hence, this Court must uphold and enforce the said maxim when it is evident that the act of court has caused injury to a suitor before court.

Thus, we are of the view that the impugned order of the learned High Court Judge is without merit and should be set aside.

Therefore, we allow the appeal of the 2<sup>nd</sup> Party Respondent-Petitioner-Appellant and set aside the order of the learned High Court Judge dated 30.03.2016.

Hence, we send this case back to the Provincial High Court of Kalutara for the present High Court Judge to issue notices on the respective parties and take up this case for re-hearing within four months from the date of this Judgement.

*Appeal allowed.*

**JUDGE OF THE COURT OF APPEAL**

**K.K.A.V. Swarnadhipathi, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**