

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

*In the matter of an Appeal from the
Provincial High Court of Kandy in
terms of section 331 of the Criminal
Procedure Code.*

Court of Appeal Case No.

CA (PHC) 82/2018

Segusahib Mohamed Aswar,
No. 01, Habarana Road,
Ganewalpola,
Kekirawa.

Provincial High Court Case No.

Rev - 12/2018

COMPLAINANT

Vs.

Magistrate Court Case No.

77178

1. Thajudeen Mohamed Hameem,
Elamalpotha, Vahakotte,
Matale.

2. Burhanuddin Amanulla,
Attorney-At-Law & Notary Public,
Company Secretary &
Commissioner for Oaths,
Dambulla Road, Galewela, Matale.

RESPONDENTS

AND NOW BETWEEN

Segusahib Mohamed Aswar,
No. 01, Habarana Road,
Ganewalpola,
Kekirawa.

PETITIONER

Vs.

1. Thajudeen Mohamed Hameem,
Elamalpotha, Vahakotte,
Matale.

2. Burhanudden Amanulla,
Attorney-At-Law & Notary Public,
Company Secretary &
Commissioner for Oaths,
Dambulla Road, Galewela, Matale.

ACCUSED-RESPONDENTS

3. The Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENT

AND NOW BETWEEN

Segusahib Mohamed Aswar,
No. 01, Habarana Road,
Ganewalpola,
Kekirawa.

COMPLAINANT-PETITIONER-
APPELLANT

Vs.

1. Thajudeen Mohamed Hameem,
Elamalpotha, Vahakotte,
Matale.

2. Burhanuddin Amanulla,
Attorney-At-Law & Notary Public,
Company Secretary &
Commissioner for Oaths,
Dambulla Road, Galewela, Matale.

ACCUSED-RESPONDENTS-
RESPONDENTS

3. The Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENT

Before : Sampath B. Abayakoon, J.

: P. Kumararatnam, J.

Counsel : A. L. M. Farook with Rudane Zahir for the appellant
: Nihara Randeniya instructed by Salman Ameen for
the respondents

Argued on : 04-07-2023

Written Submissions : 20-07-2022 (By the Respondent)

: 24-03-2022 (By the Appellant)

Decided on : 21-09-2023

Sampath B. Abayakoon, J.

This is an appeal preferred by the complainant-petitioner-appellant (hereinafter referred to as the appellant) on the basis of being aggrieved by the order dated 02-05-2018 of the learned Provincial High Court Judge of the Central Province Holden in Kandy.

The learned High Court Judge, after having considered an application filed by the appellant seeking to invoke the revisionary jurisdiction of the Court in order to challenge an order made on 22-11-2017 by the learned Magistrate of Dambulla has refused to issue notice in relation to the said revision application. It is against the said refusal, the appellant had filed this appeal.

At the hearing of this appeal, the learned Counsel for the appellant contended that the learned High Court Judge was wrong when it was refused to issue the notices in relation to the revision application filed by the appellant and urged this Court's intervention to vacate the said order and also to vacate the order dated 22-11-2017 made by the learned Magistrate of Dambulla.

The facts relating to this matter can be summarized in the following manner.

The appellant has filed a private plaint in terms of section 136 (1) (a) of the Code of Criminal Procedure Act No. 15 of 1979 against two persons. The said two persons are the accused-respondents named in this appeal.

By the said private plaint, the appellant has intended to charge the two accused-respondents on three counts in terms of the Penal Code. The counts being section 389, section 400 and section 457. The 2nd accused-respondent mentioned has been named in relation to the 3rd count only.

When this matter was considered before the learned Magistrate of Dambulla for the purposes of issuing summons against the mentioned accused-respondents, the learned Magistrate has very correctly considered the relevant law in that regard and has decided that he must be satisfied that there is a sufficient ground to commence proceedings against the accused mentioned in the charges.

Accordingly, the learned Magistrate has decided to allow the appellant to lead evidence to establish that there is a sufficient basis for him to maintain this private plaint.

The appellant has given evidence in that regard and according to his evidence, he has filed this private plaint against the first accused mentioned in the charge sheet on the basis that although he agreed to lease out a fuel filling station, owned by him to the 1st accused for a period of two years, the 1st accused in breach of that agreement has prepared a lease agreement to cover a period of four years and got him and other witnesses to the agreement to sign on blank papers in that regard.

He has charged the 2nd accused on the basis that he was the Notary who prepared the claimed fraudulent document.

It is clear from the order of the learned Magistrate that the allegations made by the appellant against the accused-respondents have been well considered by the learned Magistrate. The learned magistrate has concluded that there is no basis

for him to conclude that the relevant document marked by the appellant as P-1 in the Court is a fraudulent document and a document prepared contrary to the instructions given by the appellant to the 2nd accused-respondent mentioned.

The learned Magistrate has also considered the fact of the failure by the appellant to make a proper complaint to the police, which is the primary investigative agency in relation to a matter like this and had considered this failure as a material point which is not the normal behaviour of a person who claims that he was made to sign a blank document and deprived of his rights as claimed by him.

The learned Magistrate has also considered that the unavailability of any evidence other than the claim made by the appellant to support his contention before the Court as relevant for the purposes of this matter.

Accordingly, being not satisfied that the appellant has established sufficient grounds for him to get the summons issued against the accused-respondents has refused to issue summons.

When this order was challenged before the learned Provincial High Court Judge of the Central Province in Kandy, the learned High Court Judge too had correctly considered the relevant legal provisions and had come to a correct conclusion that the appellant has failed to establish that he has a sufficient basis to proceed in this private plaint and to get the summons issued by the learned Magistrate of Dambulla.

It is on that basis that the learned High Court Judge has refused to issue notice and dismissed the revision application.

Although the learned counsel for the petitioner submitted that the learned Magistrate as well as the learned High Court Judge was misdirected when the relevant orders were made, I find no basis to agree with the submissions made by the learned counsel for the appellant.

Accordingly, the appeal is dismissed for want of any merit.

The Registrar of the Court is directed to forward a copy of this judgement to the Provincial High Court of the Central Province Holden in Kandy and to the Magistrate's Court of Dambulla for information.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal