

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

*In the matter of an appeal in terms of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 challenging the order dated 23-01-2018 by the Provincial High Court.*

**Court of Appeal No:**

Katugasthota Police

CA (PHC) 0007/18

**COMPLAINANT**

**PHC Kandy Case No.**

**Vs.**

REV/05/2018

**MC Kandy Case No.**

1. Rambandi Katugahapihille Gedara

61904/13

Sujatha Kumari Rajapaksha

No. 149/3, Yatihalagala.

2. Wijesundara Mudiyanseelage Punchi

Banda Wijesundara

No. 111A/10, Agunawala,

Peradeniya.

3. Weerasekara Mudiyanseelage Nimal

Weerasekara

No. 261, Abhilmigama,

Pilimathalawa.

**ACCUSED**

**AND BETWEEN**

Palawa Watagodagedara Dhammika

Geethasara Rajapaksha

No. 147, Yatihalagala,

Kandy.

**PETITIONER**

**Vs.**

1. Rambandi Katugahapihille Gedara

Sujatha Kumari Rajapaksha

No. 149/3, Yatihalagala.

2. Wijesundara Mudiyanseelage Punchi

Banda Wijesundara

No. 111a/10, Agunawala,

Peradeniya.

3. Weerasekara Mudiyanseelage Nimal

Weerasekara

No. 261, Abhilmigama,

Pilimathalawa.

**ACCUSED-RESPONDENTS**

**AND NOW BETWEEN**

Palawa Watagodagedara Dhammika

Geethasara Rajapaksha

No. 147, Yatihalagala,

Kandy.

**PETITIONER-PETITIONER**

**Vs.**

1. Rambandi Katugahapihille Gedara

Sujatha Kumari Rajapaksha

No. 149/3, Yatihalagala.

2. Wijesundara Mudiyanseelage Punchi

Banda Wijesundara

No. 111a/10, Agunawala,

Peradeniya.

3. Weerasekara Mudiyanseelage Nimal

Weerasekara

No. 261, Abhilmigama,

Pilimathalawa.

**ACCUSED-RESPONDENTS-**

**RESPONDENTS**

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

**Counsel** : S. A. D. S. Suraweera for the 1<sup>st</sup> Respondent  
: Chathura Galhena for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents  
: Petitioner-Petitioner in person

**Argued on** : 19-07-2023

**Written Submissions** : 17-05-2022 (By the 2<sup>nd</sup> and 3<sup>rd</sup> Accused-Respondents)  
: 09-03-2022 (By the Petitioner-Appellant)

**Decided on** : 24-10-2023

**Sampath B. Abayakoon, J.**

The aggrieved party-petitioner-appellant (hereinafter referred to as the appellant) has filed this appeal being aggrieved of the order dated 23-01-2018 by the learned High Court Judge of the Provincial High Court of the Central Province Holden in Kandy, wherein the revision application preferred by him was *in limine* dismissed without the notice being issued to the respondents mentioned in the application.

When this matter was taken up for argument, the appellant appeared in person and made his submissions to the Court, while the first defendant-respondent and the 2<sup>nd</sup> and 3<sup>rd</sup> defendant-respondents were represented by their respective Counsel.

Katugasthota police has filed a complaint and a charge sheet against the accused-respondents named in this appeal charging them for trespassing into a land claimed by the appellant on 22-06-2010 in a place called Yatihalagala, and

thereby committing the offence of criminal trespass punishable in terms of section 433 read with section 32 of the Penal Code.

After trial, learned Additional Magistrate of Kandy by his judgement dated 27-11-2017 has acquitted the accused-respondents on the basis that the prosecution failed to prove the charges against them beyond reasonable doubt. The learned Additional Magistrate has found that the land claimed by the petitioner who was the prosecution witness number 01 at the trial, was a land sold to the 1<sup>st</sup> accused-respondent by way of a bank auction conducted by the Bank of Ceylon, where a certificate of sale has been issued in the name of the 1<sup>st</sup> accused-respondent.

The complaint of the appellant to the police had been based on the premise that the 1<sup>st</sup> accused-respondent and the 2<sup>nd</sup> and the 3<sup>rd</sup> accused-respondents who were bank officials attached to the relevant Bank of Ceylon branch trespassed on to his land.

The learned Additional Magistrate of Kandy has found that there was insufficient evidence to prove the charge against the accused-respondents and accordingly acquitted them of the charge preferred against them.

Against the said judgement, the appellant has preferred an application in revision numbered ෩෪ 05/2018 dated 09-02-2018 before the Provincial High Court of the Central Province Holden in Kandy seeking to set aside the order of the acquittal by the learned Additional Magistrate of Kandy.

When the matter was taken up before the learned High Court Judge of Kandy to support for notices on 23-01-2018, the learned High Court Judge by her order pronounced on the same date has dismissed the revision application without considering the merits of the same.

It appears from the case record that the petitioner has represented himself and when it was informed to the Court by him that he is ready to support his application in person, instead of hearing the appellant, the learned High Court

Judge has put several questions to him. The line of the questioning by the learned High Court Judge appears to be that in terms of section 318 of the Code of Criminal Procedure Act No. 15 of 1979, no appeal shall lie from an acquittal by a Magistrate's Court except at the instance or with a written sanction of the Hon. Attorney General and no sanction has been obtained.

It appears from the answers provided by the appellant to the Court for the questions posed to him that the appellant has written to the Hon. Attorney General, seeking his written sanction to file an appeal challenging the judgement of the learned Additional Magistrate. However, since the required sanction was not forthcoming within the stipulated time limit to file an appeal, the appellant has filed the revision application before the Provincial High Court and he has explained to the Court the reasons for his filing of the revision application.

In his revision application, the appellant who was the petitioner before the High Court has indicated that in addition to the provisions of High Court of the Provinces (Special Provisions) Act No. 19 of 1990, he is relying on section 7 read with section 320(1) of the Code of Criminal Procedure Act to file the revision application before the High Court.

It appears from the line of questioning by the learned High Court Judge, the learned High Court Judge has wanted the appellant to withdraw his revision application on the basis that he has failed to obtain the prior permission of the Hon. Attorney General and had failed to get an order by way of a writ against the Hon. Attorney General.

Since the appellant has indicated that he is willing to accept an order by the Court, the learned High Court Judge of the Provincial High Court of the Central Province Holden in Kandy has pronounced the impugned order against which the appellant has preferred this appeal.

In her reasoning for the dismissal of the appellant's revision application, the learned High Court Judge has stated as follows,

"කිසියම් චූදිතයෙකු නිදොස් කිරීමට අදාලව අභියාචනයක් හෝ ප්‍රතිශෝදන ඉල්ලුම්පත්‍රයක් ඉදිරිපත් කල යුතු අවස්ථාවකදී අනුගමනය කලයුතු පටිපාටිය අපරාද නඩු විධාන සංග්‍රහයේ 318 වන වගන්තියේ පැහැදිලිවම දක්වා ඇත. එහිදී "නීතිපතිවරයාගේ ලිඛිත අනුමැතියක් නොමැතිව කිසිම අභියාචනයක් කල නොහැකි විය යුතුය" යනුවෙන් විධානාත්මක විධිවිධානයක් වශයෙන් දැක්වේ. මෙම නඩුවේ පෙත්සම්කරු දක්වන ලද අන්දමට කිසියම් ආකාරයේ යුක්තිය අපගමනයක් සිදු වී ඇත්නම්, නිසි බලය ඇති අධිකරණයකට ඊට අයදුම් පත්‍රයක් ඉදිරිපත් කරමින් විකල්ප සහනයක් ලබාගැනීමට හැකියාව පවතින අතර අපරාද නඩු විධාන සංග්‍රහයේ 318 වන වගන්තියේ විධි විධානයන්හි දැක්වෙන අන්දමට පටහැනිව ක්‍රියාකරමින් සහනයක් අයද සිටීමට හැකියාවක් නොමැත.

ඉහත සියලු කරුණු අනුව මෙම පෙත්සම්කරු විකල්ප ක්‍රියාමාර්ග පවතිද්දී ඊට අදාලව පියවර නොගනිමින් අපරාද නඩු විධාන සංග්‍රහයේ 318 වන වගන්තියේ දැක්වෙන ප්‍රතිපාදනයන්ට අනුකූල නොවන පරිදි මෙම ප්‍රතිශෝදන පෙත්සම ඉදිරිපත් කර ඇති බැවින් මෙකී ප්‍රතිශෝදන පෙත්සමේ ප්‍රගුණතා සලකා බැලීමකින් තොරව ප්‍රථම අවස්ථාවේ ප්‍රතික්ෂේප කරමි."

In his submissions before this Court, the contention of the appellant was that the application filed by him before the Provincial High Court of the Central Province Holden in Kandy was an application in revision and not an appeal, and the learned High Court Judge was misdirected when he wanted to support his application in determining his application as an application that should have been filed in terms of section 318 of the Code of Criminal Procedure Act. He moved for the setting aside of the order made by the learned High Court Judge solely on that basis, and sought reliefs as prayed for in his petition of appeal.

The contention of the learned Counsel for the 1<sup>st</sup> accused-respondent was that the learned High Court Judge was correct when the revision application was dismissed since there was no basis for the appellant to file a revision application before the High Court. The learned Counsel for the 2<sup>nd</sup> and the 3<sup>rd</sup> accused-respondents took up the position that the petitioner has filed the revision application before the High Court without pleading any exceptional ground

which requires the intervention of the Court by invoking its revisionary jurisdiction and has failed to follow the necessary rules of procedure when filing his revision application by failing to file together with his petition and the affidavit, the proceedings before the Magistrate's Court or even the charge sheet filed before the Magistrate's Court against the respondents. The learned Counsel for the accused-respondents moved for the dismissal of the appeal on that basis.

There cannot be any argument that in terms of the 13<sup>th</sup> Amendment to the Constitution, the High Courts of the Provinces established under the amendment shall have the same revisionary jurisdiction granted to the Court of Appeal in terms of Article 138 of The Constitution.

The relevant Article 154P(3)(b) of the Constitution reads as follows.

**154P(3)(b). Notwithstanding anything in Article 138 and subject to any law, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrate's Court and Primary Courts within the province.**

It is clear that the relevant article was silent on revisionary jurisdiction in respect of acquittals. However, it is settled law that the Court is empowered to exercise its jurisdiction in revision on an application of an aggrieved person who is even not a party to the record. (see **Appuhamy Vs. Weerathunga 23 NLR 467**)

It is also settled law that the revisionary jurisdiction is an extraordinary discretionary remedy granted in terms of the Constitution to the relevant appellate Court which should be exercised only in exceptional circumstances and having regard to the facts of each case.

I find that the learned High Court Judge should have allowed the appellant to support his application for revision, rather than having a confrontational approach towards him, and decided whether the appellant has a legal basis to get the notices issued against the respondents mentioned or not. I find that the learned High Court Judge was totally misdirected and has given a wrong



interpretation to section 318 of the Code of Criminal Procedure Act on the basis that it refers to an appeal or a revision application against an order of acquittal whereas section 318 only refers to the filing of an appeal against an acquittal.

I find that the learned High Court Judge was wrong when the application of the petitioner was refused without its merits being considered to find out whether there exists any basis to issue notices against the respondents mentioned.

I find that if the application was considered in its correct perspective, there would have been no basis for the appellant to get the notices issued against the respondents mentioned as the 1<sup>st</sup> accused-respondent had a legal right to obtain the possession of the land purchased by her through a bank auction and there was no evidence that she was trespassing on to the land under the possession of the appellant. There was no basis for the charge to be maintained against the 2<sup>nd</sup> and the 3<sup>rd</sup> accused-respondents who were bank officials engaged in fulfilling their official commitments.

I find that the learned Additional Magistrate of Kandy was correct in dismissing the action filed by the Katugasthota police against the accused-respondents as the prosecution has failed to establish the charge against the said respondents.

As I considered above, although the learned High Court Judge was misdirected as to the way the revision application filed by the appellant was *in limine* dismissed, I am of the view that even if the revision application was considered on its merit, there would have been no basis for the appellant to get the notices issued to the accused-respondents mentioned.

I am of the view that sending the case back to the relevant High Court for the consideration of whether to issue notices or not on the merits of the application would serve no purpose under the circumstances as I have considered above.

For the above reasons considered, the appeal is dismissed, as it would serve no purpose in maintaining the application filed before the Provincial High Court of the Central Province Holden in Kandy any further.

The Registrar of the Court is directed to communicate this judgement to the Registrar of the Provincial High Court of the Central Province Holden in Kandy for information, together with the original case record.

Judge of the Court of Appeal

**P. Kumararatnam, J.**

I agree.

Judge of the Court of Appeal