

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.*

CA (Rev) Application No:
CPA/16/2023

The Officer in Charge,
Police Station,
Slave Island.

High Court Colombo

COMPLAINANT

Case No: HCRA/26/2022

Vs.

SC Appeal No. 92/2017

1. Darshana Rajitha Hallabagamage

2. Millage Acharige Nirosh Buddika

SC Special Leave to Appeal

3. Aluth Mohandiramlage Suneth

App. No: SC(SPL)LA No. 121/2015

Anuradha Wijekerthi

4. Walakumbure Kapuralage Tiron

High Court Colombo

Nalaka Chandrasekara

Case No: HCMCA/222/2013

5. Walakumbure Kapuralage

Suranga Upul Chandrasekara

Magistrate's Court Colombo Fort

SUSPECTS

Case No: B 148/09

AND NOW

Darshana Rajitha Hallabagamage,
No. 70B, Kosnathota,
Godakawela.

1ST SUSPECT-CLAIMANT-
PETITIONER

Vs.

1. Sri Lanka Insurance Corporation
No. 21, Rakshana Mandiraya,
Vauxhall Street,
Colombo 02.

VIRTUAL COMPLAINANT-
CLAIMANT-RESPONDENT

2. The Officer in Charge,
Police Station,
Slave Island.

COMPLAINANT-RESPONDENT

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

RESPONDENT

AND NOW BETWEEN

Darshana Rajitha Hallabagamage
No. 70B, Kosnathota, Godakawela.
(Appearing by his Power of Attorney
Holder Hallambha Gamage Thisara
Ravindranath
No. 70B, Kosnathota, Godakawela.)

**1ST SUSPECT-CLAIMANT-
PETITIONER-PETITIONER**

Vs.

1. Sri Lanka Insurance Corporation
No. 21, Rakshana Mandiraya,
Vauxhall Street,
Colombo 02.

**VIRTUAL COMPLAINANT-
CLAIMANT-RESPONDENT-
RESPONDENT**

2. The Officer in Charge,
Police Station,
Slave Island.

**COMPLAINANT-RESPONDENT-
RESPONDENT**

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

RESPONDENT-RESPONDENT

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

Counsel : Upul Kumarapperuma with Radha Kuruwita
Bandara and Duvini Godagama for the 1st suspect-
claimant- petitioner-petitioner
: Leon Fernando with Manjula Jayathilake for
the virtual complainant-claimant-respondent

Supported on : 12-07-2023

Order on : 09-10-2023

Sampath B. Abayakoon, J.

This is an application by the first suspect-claimant-petitioner-petitioner (hereinafter referred to as the petitioner) seeking to invoke the revisionary jurisdiction of this Court granted in terms of article 138 of the Constitution.

The petitioner is seeking to set aside several orders pronounced by the learned Magistrate of Colombo Fort as well as the learned High Court Judge of Colombo, and had sought interim relief as well. Hence, the notices in this regard were sent to the respondents mentioned in the application, the virtual complainant-claimant-respondent-respondent, namely Sri Lanka Insurance Corporation (hereinafter sometimes referred to as the respondent) was represented when this

matter was supported before this Court for notices and the interim reliefs asked for.

The petitioner has been arrested by the Officer in Charge of the Police Southern Province Crime Investigation Division on 17th January 2009 on the basis that he had committed illegal and suspicious acts. At that time, 10 pieces of melted gold weighing 1 Kilogram and 817 grams had also been recovered from his possession.

Police have reported facts under case number 23442 to the learned Magistrate of Galle, and had obtained a detention order to keep the petitioner under detention for 48 hours, and they have later reported facts stating that he has committed offences punishable in terms of sections 367, 380 and 394 of the Penal Code.

Upon an order made by the learned Magistrate of Galle, the National Gem and Jewellery Authority by its valuation report dated 29-01-2009 has valued the melted gold pieces for a total sum of Rs. 5927860/-. Subsequent to that development, it has been informed to the Court that the petitioner is connected to a complaint made on 19-01-2009 to the Slave Island Police Station by the Chief Auditor of the respondent, namely Sri Lanka Insurance Corporation regarding a theft of gold jewellery that was in the custody of the corporation in a locker at their headquarters valued at Rs. 5270190/-.

The facts have been reported in that regard before the Magistrate's Court of Colombo Fort Case No. B 148/09 and the petitioner had been produced as a suspect in that case as well, and it appears that the earlier recovered mentioned gold had been produced as productions in the Magistrate's Court of Colombo Fort case.

However, the petitioner had been subsequently discharged from the said case for want of evidence, and since the petitioner as well as the respondent corporation has claimed the gold recovered from the possession of the petitioner, an inquiry in terms of the Code of Criminal Procedure Act had been held.

Pronouncing his order on 19-08-2013, the learned Magistrate of Colombo Fort had declared that it is the petitioner who is entitled to the gold recovered by the police, and accordingly the said gold had been released to the petitioner.

It is the stand of the petitioner that since there were no conditions attached, he disposed the melted gold returned to him.

Being aggrieved by the order dated 19-08-2013 by the learned Magistrate of Colombo Fort, the respondent has filed an appeal, as well as an application in revision, bearing Case Number HC-MCA-222-2013, and HC-RA-144-2013 respectively, before the Provincial High Court of the Western Province Holden in Colombo.

When these matters were taken up before the High Court of Colombo, since the petitioner has informed the Court that he no longer possesses the melted gold, the learned High Court Judge of Colombo has ordered the petitioner to submit a bank guarantee for a sum of Rupees 6 Million until the conclusion of the matter before the High Court, which the petitioner has complied with.

It is an admitted fact by the petitioner that he joined the respondent corporation as a chartered trainee on 20th January 2006 on contract basis for a period of one year and subsequently at the completion of the said training period, resigned in February 2007, which may be the reason why the petitioner was named as a suspect in the Magistrate's Court of Colombo Fort case.

After hearing the applications before the High Court, the learned High Court Judge of Colombo dismissed both the appeal and the revision application filed by the respondent by the order dated 04-06-2015, and affirmed the order dated 19-08-2013 by the learned Magistrate of Colombo Fort releasing the melted gold to the petitioner. As a result, the petitioner has withdrawn the bank guarantee provided by him to the Court.

Being aggrieved by the said decision of the High Court of Colombo, the respondent corporation has preferred Special Leave to Appeal Application No.

92/2017 to the Supreme Court seeking leave to appeal against the said order, which has been granted by the Supreme Court.

The Supreme Court by its judgement dated 12-02-2021 decided the matter in favour of the respondent corporation and made the following orders.

1. Set aside the judgement of the learned High Court Judge of Colombo dated 04-06-2015 and the order of the learned Magistrate of Colombo Fort dated 19-08-2013.
2. The respondent is entitled to receive the productions in the case (melted gold)
3. The learned Magistrate of Colombo Fort was directed to act in accordance with the judgement dated 12-02-2021 of the Supreme Court.

According to the averments of the petition before this Court, upon receiving this judgement of the Supreme Court, the petitioner was summoned before the learned Magistrate of Colombo Fort where the learned Magistrate informed him that he shall handover the productions released to him or pay the value of the productions to the respondent corporation. Since the productions were not available with the petitioner, the learned Magistrate had ordered the National Gem and Jewellery Authority to submit a valuation report as to the present value of the gold.

According to the valuation report dated 05-03-2021, the authority has reported the present value of the gold amounts to Rs. 20352090.40/- which had been referred to as the value of the gold as at 12-02-2021, the date of the Supreme Court judgement.

The petitioner admits that when the matter was taken up in the Magistrate's Court on 23-05-2022, the learned Magistrate of Colombo Fort asked him whether he would agree to the value mentioned, and he agreed to it as in the valuation report and agreed to pay the said value to the Court. The petitioner also admits that he was represented by a Counsel and his Counsel made an application to

allow the petitioner to pay the amount mentioned in the valuation report on installment basis.

Accordingly, the learned Magistrate allowed him to pay the first installment of Rs. 5 Million and further directed him to enter into two surety bonds worth Rs. 10 Million and ordered him to make the first deposit on 27-06-2022.

In the petition before this Court, the petitioner claims that he agreed to the value and to deposit the same in the Magistrate's Court without thinking rationally and without having sufficient time to consider the valuation report and in the spur of the moment.

The petitioner has failed to deposit the said amount as agreed on 27-06-2022 and had failed to appear before the Magistrate's Court, which had resulted in a warrant been issued against him.

The petitioner has stated in his petition that being aggrieved by the order dated 10-01-2022, wherein the learned Magistrate of Colombo Fort ordered a valuation report to be called of the gold returned to the petitioner, he filed an application in revision before the Provincial High Court of the Western Province Holden in Colombo bearing Case No. HCRA/26/22.

The learned High Court Judge of Colombo after having considered the subsequent developments of the case before the learned Magistrate of Colombo Fort has dismissed the said revision application by his order dated 15-06-2022. In the said order, the learned High Court Judge has considered that subsequent to the order sought to be challenged by the petitioner before the High Court, he has admitted the valuation report filed and the value contained, therein and also had agreed to pay the value as mentioned in the report.

It has been determined that the learned Magistrate has acted in accordance with the Supreme Court directive and since the petitioner himself had agreed to pay the value of the gold based on the valuation report and had sought time to pay, the petitioner has no basis to seek the revisionary jurisdiction of the High Court.

It is the said order the petitioner is now seeking to challenge, invoking the revisionary jurisdiction of this Court.

In this process, he is also seeking to challenge the order dated 23-05-2022 made by the learned Magistrate of Colombo Fort, wherein the petitioner has agreed to the value of the gold mentioned in the valuation report and to pay the value mentioned and also sought permission from the Court to pay the value in installments.

In the petition filed before this Court, the petitioner has urged the following grounds, as the grounds which entitles him to invoke the revisionary jurisdiction of this Court, among other grounds, that may be urged by his Counsel at the hearing of the application.

- a. That the learned Magistrate has erred in law by calling for a valuation report and directing the petitioner to settle the amount mentioned in the said valuation report.
- b. That the Supreme Court has only held that the respondent is entitled to the production of the case, which is the melted gold, and has not made any discretion to the learned Magistrate to act beyond the scope of the judgement.
- c. That the learned Magistrate had not been granted any authority or discretion by the judgement of the Supreme Court to call for a valuation report for the melted gold as at the date of the judgement of the Supreme Court.
- d. That there is no condition imposed on the petitioner at the time of releasing the production and the bank guarantee.
- e. That there are no legal provisions in existence to recover the amount mentioned in the said valuation report from the petitioner.

Although the petitioner has failed to mention that the above grounds are the exceptional grounds which entitles him to invoke the revisionary jurisdiction of this Court, and had failed to aver the said grounds as exceptional grounds, I will

now proceed to consider whether they constitute any basis for the petitioner to obtain notices in relation to the revision application filed before this Court and to obtain interim reliefs as sought for in the prayer of the petition.

In supporting for notice and the interim relief, it was the contention of the learned Counsel for the petitioner that if the learned Magistrate found the melted gold was not available to be returned to the respondent corporation, he should have referred the matter back to the Supreme Court for specific directives rather than acting on his own. It was his view that the learned Magistrate has acted beyond the scope of the judgement by the Supreme Court and the orders made by the learned Magistrate amounts to orders pronounced having no legal validity before the law. It was his contention that the learned High Court Judge was also misdirected as to the relevant legal provisions when the petitioner's revision application was dismissed.

The learned Counsel who represented the respondent corporation was of the view that none of the orders made by the learned Magistrate were orders made without the consent of the petitioner. He pointed out that the learned Magistrate has correctly taken steps to give effect to the judgement of the Supreme Court and has called for a valuation report of the melted gold previously handed over to the petitioner. The petitioner has admitted the value and agreed to pay the amount. He has sought permission from the Court to pay it in installments, which has also been granted.

He also pointed out the fact that the petitioner has been represented by his Counsel throughout this process and he has no basis to claim that he acted without knowing the consequences of his actions. The learned Counsel moved for the dismissal of the petition *in limine* as the petitioner has failed to show any basis for his application to succeed.

As considered earlier, their lordships of the Supreme Court pronouncing the judgement in SC Appeal No. 92/2017 has clearly decided that it is the

respondent corporation who is entitled to receive the productions in the case, and had directed the learned Magistrate to act in accordance with the judgement.

It is my considered view that once the judgement reaches the learned Magistrate of Colombo Fort, it was his duty to give effect to the judgement, where it has been stated that it is the respondent corporation who is entitled to the melted gold.

However, by that time, the petitioner has disposed the melted gold released to him. At the time of the initial production of the melted gold before the learned Magistrate of Galle, the National Gem and Jewellery Authority have valued the said melted gold for a sum of Rs. 5927860/- which was the value as at 29-01-2009. There cannot be any argument that it was the petitioner who has benefited from the orders made previously to the judgement by the Supreme Court, and it is he who had disposed the gold given to him.

According to the Supreme Court judgement, since the respondent corporation had been determined as entitled to the gold, and as the petitioner has admitted that he is no longer in possession of the said gold, I find nothing wrong in the learned Magistrate's decision to obtain the value of the gold as at the judgement of the Supreme Court. I am of the view that if otherwise; there would have been no way for the respondent corporation to obtain the value of the gold in lieu of obtaining the melted gold which was handed over to the petitioner.

I find that there was no necessity for the learned Magistrate to refer the matter back to the Supreme Court for clarification as the judgement of the Supreme Court was very much clear, and it was the duty of the learned Magistrate to give a meaningful effect to the judgement of the Supreme Court under the relevant facts and the circumstances.

I am of the view that there is no basis for the petitioner to claim that he could not understand the proceedings before the Court and agreed to pay the amount without knowing the consequences of it, as he had been well represented by a

Counsel and it is on his application the learned Magistrate of Colombo Fort has allowed him time to pay the sum in installments.

I find that the learned High Court Judge was correct in dismissing the revision application of the petitioner after having well considered the relevant facts and the circumstances.

For the reasons above considered, the revision application of the petitioner is hereby dismissed without notice being issued to the respondents mentioned for want of any merit.

The proceedings terminated.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal