

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

Muththusamy Balaganeshan
No.65/138, Crow Island
Mattakkuliya
Colombo 15.

Accused-Appellant-Appellant

Vs

C.A. [PHC] No.37/05

H.C.NEGOMBO CASE NO.HCA 300/2003

M.C.NEGOMBO CASE NO.H 36051

1. Officer-In-Charge
Police Station
Seeduwa
2. Hon.Attorney General
Attorney General's Department
Colombo 12

Complainant-Respondent-Respondents

BEFORE	:	K.T.CHITRASIRI, J. W.M.M.MALINIE GUNARATNE, J.
COUNSEL	:	N.Srikanthan with S.Panchadasan for the Accused-Appellant Anoopa de Silva S.S.C. for the Complainant-Respondents
ARGUED ON	:	04.12.2014
WRITTEN SUBMISSIONS	:	02.02.2015 by the Accused-Appellant 10.03.2015 by the Complainant-Respondents
DECIDED ON	:	25. 03. 2015

CHITRASIRI, J.

When this matter was taken up for argument, learned Senior State Counsel who appeared for the two respondents submitted that this Court has no jurisdiction to hear and determine this appeal in view of the decision in Wickremasekera vs. Officer-In-Charge, Police Station, Ampara. [2004] (1) SLR 257] In view of the submissions referred to above, both parties moved that they be given an opportunity to file submissions in writing on the aforesaid issue as to the jurisdiction of this Court.

This appeal has been filed to challenge *inter alia* the decision dated 17.01.2005 of the learned High Court Judge in Negombo. The aforesaid judgment of the learned High Court Judge had been made pursuant to an appeal filed in that Court to challenge the decision dated 18.08.2003 of the learned Magistrate in Negombo. In that decision learned Magistrate convicted the accused for an offence under Section 298 of the Penal Code. Therefore, it is clear that the learned Provincial High Court Judge has exercised appellate powers in this instance.

Being aggrieved by the aforesaid decision of learned High Court Judge, the appellant filed this appeal addressing it to this Court. Accordingly, learned Senior State Counsel took up the position that this Court has no jurisdiction to hear and determine this appeal, in views of the decision in Wickremasekera vs. Officer-In-Charge. Police Station, Ampara. (supra)

Learned Counsel for the appellant in his written submissions has referred to the decisions in the cases of ***Abeygunasekera v. Setunga and others*** [1997 Sri Lanka Law Reports (Vol.1) at page 62] and ***Abeywardene v. Ajith de Silva*** [1998 Sri Lanka Law Reports (Vol.1) at page 134] in support of his case. Accordingly, learned Counsel for the appellant has contended that this Court is vested with jurisdiction in terms of Article 138(1) and Article 154 P (6) of the Constitution to hear and determine this appeal and therefore this Court has the jurisdiction to entertain this appeal.

The identical issue had been discussed comprehensively by Shirani Bandaranayake,J (as she then was) in Wickremasekera vs. Officer-In-Charge, Police Station, Ampara. (supra) In that decision, she has referred to Article 138(1) and Article 154 P (6) of the Constitution as well and has dealt with the issue in length. She has also referred to the two cases namely ***Abeygunasekera v. Setunga and others*** (supra) and ***Abeywardene v. Ajith de Silva*** (supra) relied upon by the learned Counsel for the appellant.

Therefore, it is clear that the identical issue had been dealt with by the Supreme Court having referred to the authorities relied upon by the learned Counsel for the appellant. In such a situation this Court is bound to follow the decision in Wickremasekera vs. Officer-In-Charge, Police Station, Ampara (supra).

Accordingly, as decided in the case of Wickremasekera vs. Officer-In-Charge, Police Station, Ampara, (supra) I conclude that this Court does not possess jurisdiction to hear and determine this appeal.

For the aforesaid reasons, this appeal is dismissed. The Registrar of this Court is directed to inform the learned Magistrate of Negombo, to implement the sentence passed on the accused-appellant on 15.08.2003 after the appealable period is lapsed allowing the appellant to lodge an appeal against the decision of this Court if he wishes so.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

MALINIE GUNARATNE, J.

I agree

JUDGE OF THE COURT OF APPEAL