

**IN THE COURT OF APPEAL OF DEMOCRATIC OF**  
**SOCIALISL REPUBLIC OF SRI LANKA.**

Ashoka Padma Priya Kuruppu,  
No: 40/6,  
Uniqud View Road,  
Nuwara Eliya.

C.A. Appeal No:

CA (PCH) 56/2011

**Petitioner – Respondent –**  
**Appellant**

Provincial High Court      Vs.

Nuwara Eliya Case No:

09/2009

John Silvester Horashiyo Joshuwa,  
No: 60/2 A, Uneque View Road,  
Nuwara Eliya.

Primary Court Nuwara Eliya

Case No: 61765

**Respondent – Petitioner –**  
**Respondent**

Before      : W.M.M. Malinie Gunarathne, J

: P.R.Walgama, J

**Counsel : Chathura Galhena with Ms. Manoja Gunawardena for  
the Petitioner – Respondent - Appellant.  
: Thusitha Wijehoon for the Respondent.**

**Argued on : 24.07.2015**

**Decided on: 23.10.2015**

**CASE- NO-CA/(PHC)-56/ 2011- JUDGMENT- 23.10.2015**

**P.R.Walgama, J**

The Learned Magistrate of Primary Court of Nuwara Eliya, has sent the notice and the charge sheet which are undated , to the Petitioner - Respondent to appear in Court to reply the charges against him for misrepresenting facts in the affidavits and doing so has tendered a false affidavit to Court on 13.02.2001 and 31.05.2001, which amounts to a contempt of Court.

The Respondent - Petitioner by his affidavit dated 03.03.2006, has stated thus;

That the Petitioner – Respondent instituted action against the Respondent – Petitioner in terms of Section 66 of the Primary Court Act No. 44 of 1979, and moved inter alia for the relief for an interim injunction to prevent Respondent – Petitioner from constructing a parapet wall

and to remove the gate that has obstructed the pathway of the Petitioner - Respondent.

It is the contention of the Respondent - Petitioner that the facts stated in the Affidavit of the Petitioner - Respondent is not truthful and trustworthy.

It is also stated by the Respondent - Petitioner that after his complaint to the Nuwara eliya Police regarding the above said affidavit tendered by the Petitioner - Respondent, an indictment was filed against the Petitioner - Respondent in the High Court of Badulla.

In the above setting it is said that the Petitioner- Respondent should be dealt in terms of Section 183 (b) and in terms of Chapter LXV of the Civil Procedure Cade for contempt of Court.

As I had stated above, after the Respondent - Petitioner tendered the affidavit the Learned Primary Court Judge has made an order dated 28.04.2003, as to whether summons should be issued to the Petitioner-Respondent, taking into consideration of the section below.

Section 183(b)

“where any person willfully makes any false statement by affidavit or otherwise, in the course of any of the proceedings aforesaid he may be punished as for a contempt of court,

besides his liability to be tried and punished under the Penal Code for the offence of giving false evidence, which such statement is on oath or affirmation”.

Section 78 of the Primary Court Act states thus;

“If any matter should arise for which no provision is made in this Act, the provisions in the Code of Criminal Procedure Act governing alike matter where the case or proceeding is a criminal prosecution or proceeding and the provisions of the Civil Procedure Code governing alike matter where the case is a civil action or proceeding shall with suitable adoptions as the justice of the case may require be adopted and apply.”

The Learned District Judge who has acted under the Primary Court Act was of the view, as there is an indictment filed in the High Court for the same charge, there is no basis to charge the Petitioner-Respondent in terms of the above section of the Civil Procedure Code. Therefore the Learned District Judge who exercised the jurisdiction of the Primary Court was of the view that there is no basis to issue summons to the Petitioner – Respondent.

Aggrieved by the said order the Respondent Petitioner came by way of Revision to the High Court to have the said order set aside and proceed to issue summons on the Petitioner - Respondent accordingly.

In the above application in Revision to the High Court, the Respondent - Petitioner had urged the following reliefs; To dismiss the order of the Primary Court Judge dated 28.04.2005 and or to revise the said order,

To order the Primary Court to issue summons in the Case bearing No. 61765 to the Respondent and to proceed further for necessary action.

The Learned High Court Judge by his order dated 05.07.2006 had observed the following;

That the Petitioner has made the application in terms of Section 183(b) read with Chapter LXV of the Civil Procedure for contempt of Court, and the said application has been made by a party to this action. Therefore according to the above Section, such application could be made by a person who is not a party to an action, and therefore the Petitioner cannot maintain this application.

In the above setting it was held that the application made by the Petitioner is bad in law, and as such the Learned High Court Judge was of the view that there is no reason to interfere with the decision of the Learned Primary Court Judge, and had dismissed the application of the Petitioner accordingly.

Thereafter the Respondent- Petitioner made an application to this Court.

By Revision to have the said impugned order of the Learned High Court Judge be set aside and to make order to issue summons to the Petitioner - Respondent.

Their lordships by the order dated 15.01.2009, had set aside the impugned order of the Learned High Court of Kandy dated 05.07.2006. Further has ordered that the High Court Judge should inquire into the issue of “double jeopardy” afresh and make an appropriate order.

Pursuant to the afore said order, the Learned High Court Judge has inquired in the application of the Petitioner and had made order, dismissing the order of the Primary Court Judge dated 28.04.2005, and to issue summons on the Respondent in case No. 61765 in the Primary Court of Nuwaraeliya, and proceed as per petition tendered by the Respondent- Petitioner, accordingly.

Being aggrieved by the said order the Respondent – Petitioner has come by way of Revision to have the said order set aside or be vacated.

The Learned High Court Judge has adverted to the case of BROWN & COMPANY LTD .VS. ADHIKARIARACHCHI, LABOUR OFFICER AND ANOTHER (1984) 1 SLR- 220 which has been observed thus;

“Our Code of Criminal Procedure Act recognizes the plea of autrefois acquit or autrefois convict only to the limited extent set out in Section 314 of our Code of Criminal Procedure Act No.” 15 of 1979.

Section 314(1) aforesaid provides thus, person who has been tried by a Court of Competent jurisdiction for an offence and convicted and acquitted of such offence shall while such conviction or acquittal remain in force not liable to be tried again for the same offence.”

“It is therefore perfectly clear that in law for the principle of double jeopardy to be applicable the Respondent should have been either convicted or acquitted by a court of competent jurisdiction after trial.”  
(emphasis added)

It was also observed by Their Lordships that the Respondent has never claimed that he had been either convicted or acquitted by any court of law.

In the exposition of the law and thereto the Learned High Court Judge was of the view that the Respondent has not

been punished by any court of law and as such the principle of double jeopardy will not be applicable in this situation.

Being aggrieved by the said order of the Learned High Court Judge the Petitioner - Respondent - Appellant has preferred the instant appeal on the ground albeit brief as follows;

That the Learned High Court Judge has erred in law in making the said order, as it is against the accepted principles of law, and the question of Res Judicata will not be applicable to the case before this Court.

Thus the Appellant moves this Court to set aside the order of the Learned High Court Judge dated 19.05.2011, and affirm the order of the Learned Primary Court Judge, dated 28.04.2005.

The Counsel for the Appellant has adverted Court to the fact that the doctrine of "double jeopardy", will not be applicable in this instance as there is no acquittal or conviction regarding the afore said charge, but nevertheless there is an indictment against the Petitioner – Respondent - Appellant.



It is a salutary principle that a person cannot be charged for the same offence in two jurisdictions. In the instant matter the Respondent - Petitioner - Respondent, moved the Primary Court to issue summons on Petitioner - Respondent for tendering a false affidavit, in an application made under Section 66 of the Primary Court Procedure Act, and thereby committing an act amounts to a Contempt of Court. The Learned Magistrate has refused to issue notice on the Respondent Appellant on the basis that there is a action pending in the High Court of Badulla, regarding the same charge of Contempt of Court in the case bearing No.128/2003.

The above principle echoes in the case of Sellaiya Sribalan .vs. the Attorney General decided on 29.03.2012, which has stated thus;

“I hold the view that the Attorney General has the power to send an indictment to the High Court in respect of summery offence (an offence triable by the Magistrate) and when such an indictment is forwarded, the High Court Judge has the power to hear, try and determine the case and that the Magistrate loses jurisdiction to hear such a case.” (emphasis added)

It is apparent that the identical matter is now been adjudicated in the High Court of Badulla, which is a higher forum,

than the Primary Court. Hence the above does not merit any action to be taken in the Primary Court, for Contempt of Court.

For the above compelling reasons, this court will set aside the impugned order of the Learned High Court Judge dated 19.05.2007, and allow the Appeal accordingly.

Appeal is allowed.

We order no costs.

**JUDGE OF THE COURT OF APPEAL**

W.M.M.Malinie Gunarathne, J

I agree,

**JUDGE OF THE COURT OF APPEAL**