

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

In the matter of an Appeal in terms of
Article 138 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka

The OIC,
Police Station,
Hettipola.

Complainant

C.A. Case No: **CA (PHC) 38/ 2015**

P.H.C. Kuliyapitiya Case No:
HCA 05/2013

M.C. Hettipola Case No: **24149**

Vs.

1. Kundalabharana Acharige
 Jayantha Ariyaratne
2. Kundalabharana Acharige Ranjith
 Pathmasiri
3. Kundalabharana Acharige Nimal
 Wijesiri
4. Wijendra Gamadallage Wasantha
 Ajith Kumara

Accused

AND BETWEEN

1. Kundalabharana Acharige
 Jayantha Ariyaratne
2. Kundalabharana Acharige Ranjith
 Pathmasiri
3. Kundalabharana Acharige Nimal
 Wijesiri

4. Wijendra Gamadallage Wasantha
Ajith Kumara

Accused-Appellants

Vs.

1. The OIC,
Police Station,
Hettipola.
2. Hon. Attorney General,
Attorney-General's
Department,
Colombo 12.

Complainant-Respondents

AND NOW BETWEEN

- | | |
|-----------------------|-------------|
| 1. Kundalabharana | Acharige |
| Jayantha Ariyaratne | |
| 2. Kundalabharana | Acharige |
| Ranjith Pathmasiri | |
| 3. Kundalabharana | Acharige |
| Nimal Wijesiri | |
| 4. Wijendra | Gamadallage |
| Wasantha Ajith Kumara | |

Accused-Appellants-
Appellants

Vs.

1. The OIC,
Police Station,
Hettipola.

2. Hon. Attorney General,
Attorney-General's
Department,
Colombo 12.

**Complainant-Respondents-
Respondents**

BEFORE : K. K. Wickremasinghe, J.
Janak De Silva, J.

COUNSEL : M.C. Jayaratne, PC with AAL J.C.
Weerasinghe and AAL M.D.J. Bandara for
the Accused –Appellants-Appellants
Jayalakshi De Silva, SC for the
Complainant-Respondents-Respondents

WRITTEN SUBMISSIONS : The Accused –Appellants-Appellants – On
22.01.2019
The Complainant-Respondents-Respondents
– On 07.11.2018

DECIDED ON : 22.03.2019

K.K.WICKREMASINGHE, J.

The accused-appellants-appellants have filed this appeal seeking to set aside the order of the Learned High Court Judge of the Provincial High Court of North Western Province holden in Kuliypitiya dated 11.03.2015 in case No. HCA 05/2013.

Facts of the case:

The accused-appellants-appellants (hereinafter referred to as the 'appellants') were charged before the Magistrate's Court of Hettipola for committing assault, an offence punishable under section 314 of the Penal Code. After concluding the trial, the Learned Magistrate convicted the appellants and sentenced accordingly.

Being aggrieved by the said order, the appellants preferred an appeal to the Provincial High Court of North Western Province holden in Kurunegala which was later transferred to the Provincial High Court of Kuliyaipitiya. The Learned High Court Judge dismissed the said appeal on 11.03.2015.

Being aggrieved by the said dismissal, the appellants preferred an appeal to this Court.

The Learned SC for the complainant-respondents-respondents (hereinafter referred to as the 'respondents') raised a preliminary objection that this Court does not have jurisdiction to hear this appeal.

We observe that the Provincial High Court of North Western Province holden in Kuliyaipitiya has exercised its appellate jurisdiction in deciding the appeal preferred by the appellants against the order of the Learned Magistrate.

In the case of **Wickramasekera V. Officer-in-Charge, Police Station, Ampara (2004) 1 Sri L.R. 257**, it was held that,

"The cumulative effect of the provisions of Article 154(P)(3)(b), 154(P)(6) and section 9 of Act, No. 19 of 1990 is that there is a right of appeal to the Supreme Court from the High Court established in terms of Article 154(P) of the Constitution in the exercise of the appellate jurisdiction..."

For the foregoing reasons, the question referred to this Court by the Court of Appeal is answered as follows:

“The Court of Appeal does not have appellate jurisdiction in terms of Article 138(1) of the Constitution read with Article 154(6) in respect of decisions of the Provincial High Court made in the exercise of its appellate jurisdiction and it is the Supreme Court that has the jurisdiction in respect of appeals from the Provincial High Court as set out in section 9 of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990.”

Accordingly it is well settled law that this Court has no jurisdiction to entertain an appeal against an order made by a Provincial High Court while exercising its appellate jurisdiction. Therefore we decide to uphold the preliminary objection and this appeal should be dismissed *in limine*.

The appeal is hereby dismissed without costs.

JUDGE OF THE COURT OF APPEAL

Janak De Silva, J.

I agree,

JUDGE OF THE COURT OF APPEAL