

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

In the matter of an
Application for the
Revision in terms of
Article 138 of the
Constitution and Section
364 of the Code of
Criminal Procedure Act
No.15 of 1979

CA (PHC) APN: 33/2017

HC Kaluthara: HC RA
29/2016

MC Kaluthara: BR 1976/14

The Officer in Charge
Police Station,
Thebuwana

Complainant

Vs

1. Wellichoru
Hewage Renuka
Damayanthi
2. Raigama Korale
Kodithuwakkuge
Jagath Priyantha
3. Seneratne
Weerasinghe Silva
4. Guneththi
Gnanaka
Damayantha
5. Thibiripola
Arachchige
Chandrawanthi
6. Weerasinghe
Ruwan Kumara

7. Dehinga
Wimalawathi
8. Ranmuni
Sumanasiri Justin
De Silva
9. Weerasinghege
Anusha Priyangani
Amarasekara
10. Karunamuni
Thilakawathi
11. Wellichoru
Hewage Sriyani
12. W.T.C. Sanjeewa
Mendis
13. H. Jayatissa Silva
14. N. Nihal Silva
15. L. Shamila
Nishanthi
16. H. Somawathi
17. H.R. Kusumalatha

All of Delgoda,
Palahena

1st Party

- 1) General Manager,
United Granite
Products,
[UGP(Private) Limited]
- 2) General Manager,
Star Construction
- 3) General Manager,
Sate Engineering
Corporation,
Paathakade,
Galpaatha.

2nd Party

AND BETWEEN

1. Wellichoru
Hewage Renuka
Damayanthi
2. Raigama Korale
Kodithuwakkuge
Jagath Priyantha
3. Seneratne
Weerasinghe Silva
4. Guneththi
Gnanaka
Damayantha

9. Weerasinghege
Anusha Priyangani
Amarasekara

11. Wellichoru
Hewage Sriyani

1st Party Petitioners

Vs

1) General Manager,
United Granite Products,
[UGP (Private) Limited]
Delgoda,
Palahena.

**2nd party 1st
Respondent**

2) General Manager,
Star Construction

**2nd party 2nd
Respondent**

3) General Manager,
Sate Engineering
Corporation,
Paathakade,
Galpaatha.

**2nd party 3rd
Respondent**

AND NOW BETWEEN

1) General Manager,
United Granite Products,
[UGP (Private) Limited]
Delgoda,
Palahena.

2nd Party 1st Respondent

VS

1. The Officer in Charge,
Police Station,
Thebuwana

Complainant Respondent Respondent

2. Raigama Korale
Kodithuwakkuge Jagath
Priyantha
3. Seneratne Weerasinghe
Silva
4. Guneththi Gnanaka
Damayantha
5. Thibiripola Arachchige
Chandrawanthi
6. Weerasinghe Ruwan
Kumara
7. Dehinga Wimalawathi

All of Delgoda, Palhena.

1st Party Petitioners Respondent

Hon. Attorney General
Attorney General's Department
Colombo 12

Respondent

Before: P.Padman Surasena (P/CA)

K.K.Wickramasinghe

Counsel: AAL Nilmini Wickramasinghe for the 1st Party Petitioners

Respondent

DSG Varunika Hettige for the Complainant Respondent –

Respondent and the 8th Respondent

Argued on: 25/01/2018

Written Submission of the 1st party Petitioner: 05/01/2018

Written Submission of the 2nd party 1st Respondent: 15/12/2017

Written Submission of the 8th Respondent: 12/12/2017

Decided on: 28/2/2018

K.K.Wickramasinghe

The 1st Complainant Respondent Respondent (hereinafter referred to as the 1st Respondent), filed a B report in the Magistrate court of Kaluthara under number BR 1976/14 in terms of section 98(1) of the Code of Criminal Procedure Act No. 15 of 1979 in informing the learned Magistrate that the 1st to the 11 members of the 1st party have complained that a large scale rock blasting operation carried on by the Petitioner causes illness of the children, sound pollution, cracking the walls of certain houses and that although Renuka Damayanthi, one of the members of the 1st party has complained to several authorities. The petitioner states that the police informed Court that rocks blasting operations are also carried out by a Company called Star Constructions (Pvt) Ltd., the 2nd party 2nd respondent above named and the State Engineering Corporation, the 2nd Party 3rd respondent above named, causing harassment to the public and has asked for notice to be issued on them too.

The petitioner states that thereafter the Learned Magistrate having considered the application made by the complainants acting in terms of Section 98(1) of the Code of Criminal Procedure Act No. 15 of 1979, ordered the temporary closure of the petitioner's business named United Granite Products (Pvt) Ltd., and called for the reports from the aforesaid authorities in order to ascertain whether in fact a public nuisance is taking place, owing to the operations carried out by the petitioner and other two 2nd party respondents and postponed the case.

The Learned Magistrate after listening to the submissions of the Counsel, who appeared on behalf of the petitioner, vacated the said order made earlier closing down the business operation of the petitioner and permitting the petitioner to carry on their metal quarry. The petitioner states that the Learned Magistrate on another date discharged the said Star Constructions (Pvt) Ltd., from further proceedings as the Police have filed separate B reports in Court pertaining to the said Star Construction (Pvt) Ltd.

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The petitioner states that as the Learned Magistrate was going to issue a conditional order, the Petitioner filed a revision application and the said application was dismissed without issuing notice to the respondents.

Written submissions of the 1st Party and the petitioner were filed on 21/7/2016 and on 08/09/2016, the Learned Magistrate delivered order rejecting the granting of a conditional order against the petitioner, in terms of Section 98(1) (b) of the Criminal Procedure Act No. 15 of 1979.

Being aggrieved by the order the 1st Party Petitioners-Respondents (hereinafter referred to as 2nd -7th Respondents) sought to revise same in the High Court of Kaluthara under case no HCR 29/2016. At that point the petitioner took up the objection that the 2nd to 8th respondents have not demonstrated exceptional circumstances and sought a ruling on that preliminary objection first. Being aggrieved by the said order the Petitioner seeks to revise the above mentioned order of the High Court of Kaluthara dated 20/01/2017.

The 8th Respondent did not file any objections in the main matter; however regarding the issue of first dealing with preliminary objections the 8th respondent filed written submissions. The preliminary objection was to invoke the revisionary jurisdiction of the Court of Appeal with exceptional circumstances must be necessarily as a preconditioned be demonstrated.

The learned counsel for the 1st party Petitioner-Respondents states that the preliminary objections of the petitioner's respondents state that the application of the petitioner should be dismissed in limine for the following reasons:

- a) The petitioner has suppressed or misrepresented the material facts and therefore not entitled to have and maintain this application before the Court of Appeal.
- b) The petitioners have not disclosed, averred, pleaded or urged any exceptional circumstances warranting the exercise of Court of Appeal's revisionary jurisdiction.
- c) The petitioner has not disclosed as to why he has not resorted to statutory remedies available before preferring this revision application.

d) The petitioner has sought the instant relief by adding various facts that were not submitted before the Learned High Court Judge.

Further, regarding the misjoinder of the 2nd party 2nd and 3rd Respondents to the aforesaid matter in the High Court on making an order to discharge the aforesaid parties from the said revision application as per the reasons set out in the aforesaid order.

Regarding the fact that the absence of the exceptional circumstances in making the aforesaid revision application as against the order of the Learned Magistrate could be determined after taking up the inquiry pertaining to the revision application, about the facts and circumstances of the case before the Learned High court Judge specially being a revision application from an order made by the Learned Magistrate under section 98(1) of the criminal Procedure Code.

The legal question to be answered by the Learned High Court Judge in the aforesaid revision application warrants the necessity of going into the merits of the case, before the matter to be disposed only on the preliminary objection on exceptional circumstances.

Further in any event the Learned High Court Judge is not restricted by law, to consider a matter relating to Sec. 98(1) of the Criminal Procedure Code as an exceptional circumstance in exercising revisionary jurisdiction. The Petitioner has not disclosed any valid reason for the Court of Appeal that warrants the issuance of any interim relief by the Court of Appeal.

The Court of Appeal has to consider the nuisance faced by the public and the damage caused on the environment. The learned counsel for the Petitioner-Respondents seeks to vacate the interim relief so far granted taking severe environmental and public damage caused by the activities of the petitioner.

“The Supreme Court has the power of revising the proceedings of all inferior courts. This power The object at which the Supreme Court aims in exercising its powers of revision is the due administration of justice; and whether any particular person has complained against an order; proposed to be revised, or prejudiced by it, is not to be taken into account in the exercise of such power”

In the case of **Rasheed Ali V Mohamed Ali and others [1981]1 SLR 262** remarked that thus;

“The powers of revision conferred on the Court of Appeal are very wide and the Court has the discretion to exercise them whether an appeal lies or not whether an appeal has been taken or not. However, this discretionary remedy can be invoked only where there are ‘exceptional circumstances’ warranting the intervention of the Court.”

On an appeal to the Supreme Court, His Lordship affirmed these views and added *“The powers of revision vested in the Court of Appeal are very wide and the Court can in a fit case exercise that power whether or not an appeal lies. Where the law does not give a right of appeal and makes the order final, the Court of Appeal can nevertheless exercise the powers of revision, but it should do so in ‘exceptional circumstances’. Ordinarily the court will not interfere by way of review, particularly when the law has expressly given an aggrieved party an alternate remedy such as the right to file a separate action except when the non-interference will cause a denial of justice or irremediable harm.”*

In the case of **Caderamanpulle V Ceylon Paper Sacks Ltd. [SLR -2001] Vol.3, Page No-112** states that *“The existence of exceptional circumstances is a pre-condition for the exercise of powers of revision”*

In the case of **Wajira Prabath Wanasinghe V Janashakthi Insurance Company Ltd. SC(HC) LA Application No. 68/2012** it was held that

“The Court can consider whether leave to appeal against the impugned order of the Commercial High court should be granted in the circumstances of this case only after first dealing with the preliminary objections raised by the Learned President’s counsel for the respondent and only in the event that the said objections are overruled. It is therefore necessary to consider these preliminary objections at the outset”.

It is trite law that unless exceptional circumstances are demonstrated Revisionary jurisdiction will not be exercised.

objections are overruled. It is therefore necessary to consider these preliminary objections at the outset”.

It is trite law that unless exceptional circumstances are demonstrated Revisionary jurisdiction will not be exercised.

Considering the above, this court sees no reason to interfere with the findings of the Learned High court Judge.

The revision application is hereby dismissed without costs.

JUDGE OF THE COURT OF APPEAL

P. Padman Surasena J.

I agree,

PRESIDENT OF THE COURT OF APPEAL