

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

In the matter of an application for  
revision against a judgment of the  
Provincial High Court in the exercise of  
its revisionary jurisdiction.

C A (PHC) APN 121 / 2015

Provincial High Court of

Western Province (Colombo)

Case No. (HCRA) 122 / 2013

Magistrate's Court Colombo

Case No. 45151 / 05

Assistant Commissioner of Labour,  
Labour Commissioner's Office,  
Colombo South.

**COMPLAINANT - PETITIONER -**

**PRTITIONER**

**Vs**

1. Adelphie (Pvt) Ltd.,

140 A,

Vauxhall Street,

Colombo 02.

2. Ahmed Sabri Hafeel (Director),

No: 07,

Davidson Road,

Colombo 04.

3. Upul Mahendra Colomba Mudalige,

(Director),

No: 46C,  
Katugasthara,  
Gampaha.

**ACCUSED - RESPONDENT - RESPONDETS**

**Before: P. Padman Surasena J (P/CA)**

**K K Wickremasinghe J**

Counsel: Susantha Balapatabendi SDSG with Ganga Wakishta Arachchi  
SSC for the Complainant - Petitioner - Petitioner.

Mohomed Nazir for the Accused - Respondent - Respondent

Argued on : 2017 - 10 - 19

Decided on : 2018 - 05 - 28

JUDGEMENT

**P Padman Surasena J (P/CA)**

Pursuant to an application made by an employee of the 1<sup>st</sup> Accused – respondent - Respondent (hereinafter referred to as the 1<sup>st</sup> Respondent), the Labour Tribunal had pronounced its order on 2009-04-27 directing a payment of Rs. 490,000 in favour of the said applicant. It is to be noted that the 1<sup>st</sup> Respondent Company had not taken any step to challenge the said Labour Tribunal order.

As the 1<sup>st</sup> Respondent Company failed to deposit the said sum of Rs. 490,000 in the office of the Commissioner of Labour as directed by the Labour Tribunal. The Commissioner of Labour had instituted proceedings in the Magistrate's Court of Colombo against the Accused - Respondent - Respondent in terms of section 40 (1) (q) read with section 43 of the Industrial Disputes Act No 43 of 1950 as amended.

Learned Magistrate by his Judgment dated 2013-02-19 had acquitted the 2<sup>nd</sup> and 3<sup>rd</sup> Accused - Respondent - Respondents (hereinafter referred to as the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents) holding that they were not liable to pay the said sum of money.

Being aggrieved by the said judgment of the learned Magistrate, the Petitioner had preferred an application for revision to the Provincial High Court of Colombo seeking a revision of the said order of the Magistrate. Learned Provincial High Court Judge having considered the material before Court, by her judgment dated 2015 - 04 - 02, had affirmed the judgment dated 2013-02-19 of the learned Magistrate and dismissed the said revision application.

It is that order that the Petitioner seeks to challenge in this revision application before this Court.

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents had taken up the position before the Magistrate's Court that they were not directors of the said company but mere employees. It is on that basis that they had stated that they were not liable to pay the sum of money to be recovered.

This Court observes that the evidence of 4 witnesses have been recorded before the learned Magistrate. They include an officer from the District Labour Office, an Assistant Secretary of the Labour Tribunal - Colombo, and an officer of the office of Registrar of Companies.

The witness who had given evidence representing the Registrar of Companies had established that the 1<sup>st</sup> Respondent Company is still active and that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are in fact the present directors of the 1<sup>st</sup> Respondent Company.

It is to be noted that the 1<sup>st</sup> Respondent company has been reregistered under the provisions of the new Companies Act No. 07 of 2007. Thus, the provisions with regard to the resignation of the directors of a Company shall apply in the instant case.

It is important to note that section 207 of the Companies Act No. 07 of 2007 has subjected itself to section 208 thereof.

The aforesaid section 208 states as follows.

Section 208

- 1) Where a company has only one director, that director may not resign office until that director has called a meeting of shareholders to receive notice of the resignation, and to appoint one or more new directors.*
- 2) Notwithstanding its terms, a notice of resignation given by the sole director of a company shall not take effect until the date of the meeting of shareholders, called in accordance with subsection (1).*

The above provision clearly shows that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents being the last set of directors could not have legally resigned until the above requirements are fulfilled. It has to be further noted that the evidence of the Registrar of Companies also clearly establish that 2<sup>nd</sup> and 3<sup>rd</sup> Respondents remain to be directors of the relevant Company. Therefore, in terms of the applicable law, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents shall remain to be directors of the said company.

Section 40 of the Industrial Disputes Act states that any person who being an employer, fails to comply with any order made in respect of him by a labour tribunal, shall be guilty of an offence. Further, section 41 thereof states that in the case of any offence under the Act committed by a body of

persons and where such body is a body corporate, every director and officer of that body corporate shall be deemed to be guilty of that offence.

Thus, it is clear that in terms of the above provisions of law, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents being the directors of the relevant company are directly liable for the offences committed by the said company.

It is the view of this Court that both the learned Magistrate as well as the learned High Court Judge had failed to appreciate the above legal positions. They had erroneously concluded that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are not liable to pay the said sum of money due to be recovered.

In these circumstances, this Court decides to set aside the order dated 2013-02-19 pronounced by the learned Magistrate acquitting the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents as well as the order pronounced by the learned Provincial High Court Judge dated 2015-04-02 affirming the said judgment of the Magistrate. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents at no stage has taken up any other position with regard to their liability.

For the foregoing reasons, this Court decides to convict the 2<sup>nd</sup> and 3<sup>rd</sup> Accused Respondents on the charges framed against them. The 2<sup>nd</sup> and 3<sup>rd</sup>

Accused Respondents are each sentenced to a term of 01 year RI. Each of them is also sentenced to a fine of Rs. 5000/= with a default sentence of 03 months being attached to it. Learned Magistrate is directed to take necessary steps to enforce this judgment.

**PRESIDENT OF THE COURT OF APPEAL**

**K K Wickremasinghe J**

I agree,

**JUDGE OF THE COURT OF APPEAL**