

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST**

**REPUBLIC OF SRI LANKA.**

In the matter of an application for Leave to Appeal in terms of Section 16 of the Judicature Act No 2 of 1978 read with Section 340 of the Code of Criminal Procedure Act No 15 of 1979.

Leave to Appeal Application No: **CA / LTA / 05 / 2021**

High Court Colombo Case No: **HC / 1824 / 20**

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

**Complainant**

Vs.

1. Patalie Champika Ranawaka
2. Walawe Mahadurage Dilum Thusith Kumara
3. Wasala Atapattu Samarakoon Mudiyanseelage Ralahamige Sudath Asmadala

**Accused**

**Now Between**

Patalie Champika Ranawaka

**1<sup>st</sup> Accused Petitioner**

Vs.

Attorney General,  
Attorney General's Department,  
Colombo 12.

**Complainant – Respondent**

Walawe Mahadurage Dilum

Thusitha Kumara

**2<sup>nd</sup> Accused – Respondent**

Wasala AtapattuS amarakoon

Mudiyanselage Ralahamige

Sudath Asmadala

**3<sup>rd</sup> Accused – Respondent**

Before : Menaka Wijesundera J.

P. Kumararathnam J.

Counsel: Faisz Musthapa, PC, Saliya Peiris, PC, Anuja Premaratne, PC, Inoka

Hettiarachchi with keerthi Tillekararne for the

1<sup>st</sup> Accused – Petitioner.

Anil Silva, PC for the 3<sup>rd</sup> Accused – Respondent.

Dileepa Peiris, SDSG with Akila Dalpatadu, SC for the Complainant –  
Respondent.

Argued On: 21.02.2022

Decided On: 29.03.2022

**MENAKA WIJESUNDERA J.**

The instant Leave to Appeal application has been filed to set aside the order of the High Court dated 2.12.2021.

In the instant matter the 1<sup>st</sup> accused petitioner (hereinafter referred to as the petitioner) had been indicted in the High Court along with the 2<sup>nd</sup> and the 3<sup>rd</sup> accused respondents for offences under the **penal code under sections 190, 198,200 and 215 to be read with sections 113(A) and 102 of the penal code.**

Upon the indictment being served the petitioner had taken up a preliminary objection to the said indictment on the basis that ***the incident pertaining to the subject matter in the indictment has been gone in to in the Magistrates Court in case nu 23254/7/2017 and the 2<sup>nd</sup> accused respondent has already pleaded guilty and therefore the High Court has no jurisdiction.***

The incident pertaining to the matter had taken place on 28 the of February 2016 when the vehicle bearing nu WPKT 7545 had collided with a motor bicycle by the nu WP BAT 2001and caused injuries to one Sampath Gunawardena.

The incident had been investigated and charges were filed against the 2<sup>nd</sup> accused respondent in the Magistrates Court under the provisions of ***the Motor Traffic Act and section 329 of the Penal Code.***

The offences filed in the High Court are offences ***of fabricating false evidence, causing disappearance of evidence, giving false information, a public servant framing an incorrect record.***

The learned High Court Judge had averred that although the charges in the Magistrates Court and the High Court emanate from the same incident the

Code of Criminal Procedure Code has made provision for suspects to be charged for ***every distinct offence of which any person is accused of and there shall be a separate charge for every offence and every such charge shall be tried separately.***

The Counsel for the petitioner argued further that apart from the two cases emanating from the same incident the main basis for both these actions stem from the identity of the driver of the vehicle which met with the accident.

***But if one may go through the charges filed in the High Court they are offences which had taken place after the alleged incident, and according to the provisions of the Criminal Procedure Code section 173 clearly states that “for every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately”.***

***Furthermore the second accused respondent has pleaded guilty in the Magistrates Court and the Magistrate has not gone in to the merits of the case. However the identity of the driver is an issue which needs to be decided at the main trial and not at this stage. Furthermore as stated above the second accused respondent has not taken up an objection to the indictment.***

Therefore the learned High Court Judge has held that although the two actions in the High Court and the Magistrates Court emanate from the same and one incident the offences leveled against the accused in the High Court have been leveled are distinctly different in nature, from the offences in the Magistrates Court.

According to chapter xxvii of the Code of Criminal Procedure under section 314 (1) it has been said that **“no person to be tried twice for the same offence”**, but in the proceeding sections it has been very clearly stated that a person

acquitted or convicted of one offence may be charged separately or later for an offence committed under the transaction in a subsequent case.

The respondents while drawing the attention of Court to the above chapter in the Code of Criminal Procedure code has cited some judgments which had adopted the same.

This Court also notes that the petitioner was not an accused in the Magistrates Court Proceedings

Therefore it is the opinion of this Court that the learned High Court judge has correctly held that the proceedings in the Magistrates Court is not a bar for the High Court to proceed in the instant matter as the charges leveled in the two forums are not the same, therefore the matters before the High Court has not been adjudicated before.

As such this Court sees no legal basis in the submissions of the petitioner hence the instant application for leave to appeal is hereby dismissed without issuing notices to the respondents.

**Judge of the Court of Appeal.**

**I agree.**

**P. Kumararatnam J.**

**Judge of the Court of Appeal.**