

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

Court of Appeal Case No:  
**CA (PHC) 235/2018**

Kurunegala High Court Case No. **HCA  
46/2017**

Magistrate Court Kurunegala Case  
No: **78050**

In the matter of an Appeal under and in terms  
of Article 138 read with Article 154P (3)(b)  
and Article 154P (6) of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.

S.M.K.S. Bandara,  
Public Health Inspector,  
Mawathagama.

Applicant

**Vs.**

Leslie Sumith Ananda,  
No.337, Desimount Watta,  
Pilessa.

Respondent

**AND**

Leslie Sumith Ananda,  
No.337, Desimount Watta,  
Pilessa.

Respondent- Appellant

**Vs.**

1. S.M.K.S. Bandara,  
Public Health Inspector,  
Mawathagama.

Applicant- Respondent

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

Respondent

**AND NOW BETWEEN**

Leslie Sumith Ananda,  
No. 337, Desimount Watta,  
Pilessa.

**Respondent-Appellant-Appellant**

**Vs.**

1. S.M.K.S. Bandara,  
Public Health Inspector,  
Mawathagama.

**Applicant-Respondent-Respondent**

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

**Respondent-Respondent**

Before: **Damith Thotawatte, J.**  
**K.M.S. Dissanayake, J.**

Counsels: P.K. Prince Perera with Karunathilake Pitumpe and S.  
Panchadsaram for the Respondent-Appellant-Appellant.  
Shezan Mahboob, SC for the Respondent-Respondent (State).

Argued: 17.11.2025

Written submissions  
tendered on: 21.03.2024 by Respondents.  
19.04.2022 and 24.07.2024 by Respondent-Appellant-  
Appellant.

Order Delivered: 17.02.2026

**Thotawatte, J.**

## **Introduction**

The proceedings culminating in CA (PHC) No. 235/18 originated from a report filed by the Applicant-Respondent-Respondent, the Public Health Inspector of Mawathagama, before the Magistrate's Court of Pilessa under Section 98(1) of the Code of Criminal Procedure Act No. 15 of 1979, alleging the existence of a public nuisance attributable to the Respondent-Appellant-Appellant, Leslie Sumith Ananda (hereinafter sometimes referred to as "Appellant"). Acting on the said report, the learned Magistrate issued a conditional order dated 12.02.2016 directing compliance with specified remedial measures.

However, in spite of many opportunities being given the Appellant has failed to take remedial measures and considering reports submitted by the Central Environment Authority, the learned Magistrate, by order dated 07.06.2017, had made the conditional order absolute. An appeal preferred against the order dated 07.06.2017 to the Provincial High Court of the North Western Province holden at Kurunegala (HCA No. 46/2017) was dismissed by judgement dated 10.12.2018 by the learned Judge of the High Court following the consideration of the written submissions submitted by parties.

## **Jurisdictional Objection**

The present appeal before this Court has been instituted against the judgment of the Provincial High Court dated 10.12.2018. The Respondents have raised a preliminary objection to the maintainability of this appeal contending that this Court lacks jurisdiction to entertain the appeal. This objection necessarily needs to be considered prior to any examination of the substantive grounds advanced by the Appellants, as it goes to the very competence of this Court to assume jurisdiction and, if upheld, would result in the dismissal of the appeal without recourse to the substantive issues.

## **Nature of the Impugned Order**

The impugned order sought to be challenged before this Court is a final order of the High Court of the Province, rendered in the exercise of its appellate jurisdiction under Article 154P(3)(b) of the Constitution, affirming an order made by the Magistrate's Court under Section 98(1) of the Code of Criminal Procedure Act.

It is therefore not disputed that the High Court acted not in its original jurisdiction, but as an appellate court constituted under Article 154P of the Constitution.

## Constitutional and Statutory Scheme of Appeals

Article 154P(3)(b) of the Constitution reads thus;

High Court      **154P.**

(3) Every such High Court shall –

(a) .....

(b) notwithstanding anything in Article 138 and subject to any law, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province;

Article 154P(3)(b) of the Constitution expressly vests appellate jurisdiction in the Provincial High Courts in respect of convictions, sentences, and orders made by Magistrates' Courts within the Province and functions as the appellate forum for decisions of Magistrates' Courts. In conferring such jurisdiction directly by the Constitution, a clear structural distinction is drawn between the appellate jurisdiction so exercised by the Provincial High Courts under Article 154P and the distinct revisionary and appellate jurisdiction conferred on this Court by Article 138. Consequently, a judgement or order delivered by a Provincial High Court in the exercise of such appellate jurisdiction does not, by that fact alone, give rise to a further right of appeal to this Court. The jurisdiction of this Court thereafter remains confined to its revisionary role and does not extend to a re-hearing of matters already determined on appeal by the Provincial High Court.

Section 9(a) of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990 provides as follows:

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| Appeal to Supreme Court from High Court in | <b>9.</b> Subject to the provisions of this Act or any other law, any person aggrieved by  |
|  | (a) a final order, judgment, decree or sentence of a High Court established by Article 154P of the Constitution in the exercise of the appellate jurisdiction vested in it by paragraph (3) (b) of Article 154P of the Constitution or |

certain cases.

section 3 of this Act or any other law, in any matter or proceeding whether civil or criminal which involves a substantial question of law, may appeal therefrom to the Supreme Court if the High Court grants leave to appeal to the Supreme Court ex mero motu or at the instance of any aggrieved party to such matter or proceedings: Provided that the Supreme Court may, in its discretion, grant special leave to appeal to the Supreme Court from any final or interlocutory order, judgment, decree or sentence made by such High Court, in the exercise of the appellate jurisdiction vested in it by paragraph (3) (b) of Article 154P of the Constitution or section 3 of this Act, or any other law where such High Court has refused to grant leave to appeal to the Supreme Court, or where in the opinion of the Supreme Court, the case or matter is fit for review by the Supreme Court:

Provided further that the Supreme Court shall grant leave to appeal in every matter or proceeding in which it is satisfied that the question to be decided is of public or general importance; and

- (b) a final order, judgment or sentence of a High Court established by Article 154P of the Constitution in the exercise of its jurisdiction conferred on it by paragraph (3) (a), or (4) of Article 154P of the Constitution may appeal therefrom to the Court of Appeal.

The right of appeal from a final order of a High Court exercising appellate jurisdiction under Article 154P(3)(b) is not vested in the Court of Appeal, but is expressly regulated by section 9(a) of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, which provides that an appeal against such final orders lies exclusively to the Supreme Court, subject to leave being first sought and granted.

In *Wickramasekera v. O.I.C., Police Station, Ampara*<sup>1</sup>, as adverted to by His lordship Salam, J. in *Hapugastanne Plantations Ltd v. Asst. Labour Commissioner*<sup>2</sup>, it was decided that the Court of Appeal has no jurisdiction to entertain an appeal from a judgment of the High Court pronounced in the exercise of its appellate jurisdiction.

This statutory scheme gives effect to the Constitution's express allocation of appellate jurisdiction by identifying the Provincial High Court as the designated forum of appeal. Where the Constitution has so provided, that allocation cannot be displaced by the manner in which an application is framed or by recourse to the general appellate jurisdiction of this Court.

Jurisdiction can arise only where it is conferred by law, and not by discretion. Accordingly, reliance on considerations of fairness, access to justice, or a preferred interpretation cannot create jurisdiction where none exists, nor can general provisions of criminal procedure or broad principles of justice be invoked to override an express constitutional and statutory scheme governing the forum of appeal. Where the law has imposed a clear bar on appellate recourse. General ideas of fairness or justice cannot be used to get around a clear legal rule.

This statutory scheme gives effect to the constitutional allocation of appellate jurisdiction and cannot be circumvented by the characterisation of the application, or by invoking the general appellate jurisdiction of this Court, where the Constitution has expressly designated the Provincial High Court as the appellate forum.

The Appellant's attempt to invoke broader notions of fairness, access to justice, or statutory interpretation cannot operate to create jurisdiction where none exists. Jurisdiction is conferred, not assumed, and no equitable or interpretative exercise can enlarge the constitutional limits placed on this Court.

Equally, reliance on general provisions relating to criminal procedure or fundamental principles of justice cannot override an express constitutional and statutory bar governing the forum of appeal.

The Respondents have correctly submitted that the proper and exclusive remedy available to the Appellants, if at all, from a final order of the Provincial High Court made in the

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<sup>1</sup> (2004) 1 Sri. L.R 257

<sup>2</sup> CA (PHC) 47/2004 CAM 05.03.2014

exercise of appellate jurisdiction under Article 154P(3)(b) of the Constitution, in respect of an order of a Magistrate's Court, lies only to the Supreme Court of Sri Lanka, upon leave to appeal being granted by the High Court in terms of section 9(a) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990; and, where such leave is refused, by the grant of special leave to appeal by the Supreme Court in the exercise of its discretionary power under the proviso to that same provision, read with Article 128(2) of the Constitution, and not by way of an appeal to this Court.

## Conclusion

For the foregoing reasons, I hold that no appeal lies to the Court of Appeal from an order of a Provincial High Court made in the exercise of its appellate jurisdiction under Article 154P(3)(b) of the Constitution, and therefore this Court lacks jurisdiction to hear and determine the instant application.

Accordingly, the preliminary jurisdictional objections raised by the Respondents are upheld. The application is dismissed *in limine* for want of jurisdiction subject to cost.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal