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

In the matter of an Appeal for order dated 08/10/2018 of the Revision Application bearing No. HC 12/2013 made by the Provincial High Court of Western Province Holden at Gampaha in the exercise of its jurisdiction under and in terms of Article 154P (3)(b) of the Constitution.

Assistant Commissioner of Labour
(Termination)
Labour Department
Colombo 05.

Court of Appeal No. CA (PHC) 211/2018
HC Gampaha Rev 12/2013
MC Gampaha Case No 13311/LB

COMPLAINANT

Vs.

Jewel Arts Limited
No 79, 5th Lane
Colombo 03.

ACCUSED

AND THEN BETWEEN

Jewel Arts Limited
No 79, 5th Lane
Colombo 03.

ACCUSED-PETITIONER

Vs.

1. Assistant Commissioner of Labour

(Termination)
Labour Department
Colombo 05.

COMPLAINANT-RESPONDENT

2. The Attorney-General
Attorney-General's Department
Colombo 12.

RESPONDENT

AND NOW BETWEEN

Jewel Arts Limited
No 79, 5th Lane,
Colombo 03.

ACCUSED-PETITIONER-APPELLANT

Vs.

1. Assistant Commissioner of Labour
(Termination) Labour Department
Colombo 05.

COMPLAINANT-RESPONDENT-RESPONDENT

2. The Attorney-General
Attorney-General's Department
Colombo 12.

RESPONDENT-RESPONDENTS

Before: S. U. B. Karalliyadde, J.

Dr. D. F. H. Gunawardhana, J.

Counsel:

Shavindra Fernando, P. C. with NimeshaWanaguru, M. T. M. Ahamed, Amanda Imbulana, and R. Fernando for the Accused-Petitioner-Appellant

Sudharshana De Silva, S. D. S. G. for the Complainant-Respondent-Respondent

Written submissions tendered on:

08.07.2025 by the Accused-Petitioner-Appellant

Argued on: 01.07.2025

Decided on: 31.07.2025

Dr. D. F. H. Gunawardhana, J.

Background facts

The Accused-Petitioner-Appellant (hereinafter referred to as the Appellant) is a body corporate incorporated under the laws of Sri Lanka. Therefore, it is capable of suing and being sued in its corporate name. Its main business was running a garment factory. It is the Appellant's position that due to the non-conducive conditions prevailed in the country due to political turmoil and economic hardships, the Appellant had to close down its garment factory, established in the District of Gampaha, resulting in retrenchment of its employees.

After the closure of the said factory, the 1st Respondent, had taken steps to initiate proceedings in the learned Magistrate's Court of Gampaha by filing a charge sheet[1] purported to be filed in terms of Section 7 of the Termination of Employment Workmen (Special Provision) Act, No. 45 of 1971. According to the said charge sheet, the Appellant is liable to pay a sum of Rs.

[1] Page 487 of the brief

100,727,203.27 (One hundred million, seven hundred twenty-seven thousand, two hundred three and twenty-seven cents) to their employees in lieu of compensation. However, it is the position taken up by the Appellant as its defence that it is liable only to pay Rs. 10,680,611.66 (Ten million six hundred eighty thousand six hundred and eleven). However, at a certain point of time without proper inquiry, on certain admissions made by the Attorney-at-Law representing the Appellant, the learned Magistrate convicted the Appellant by the order dated 25th November 2011, and ordered it to make the payment of Rs. 100,727,203.27 (One hundred million, seven hundred twenty-seven thousand, two hundred three and twenty-seven cents).

The Petitioner sought to invoke the revisionary jurisdiction of the Provincial High Court of Gampaha, in Revision Application bearing No. PHC Gampaha Rev 12/13, against the said order of the learned Magistrate dated 25th November 2011. After an inquiry, the learned High Court Judge of Gampaha by the order dated 08th October 2018 has dismissed the said application, whilst holding that the Appellant is only liable to pay Rs. 10,680,611 (Ten million six hundred eighty thousand six hundred and eleven)

Being aggrieved by the said order of the learned High Court Judge dated 08th October 2018, the Appellant had appealed to this Court, which thereafter, was argued on 01st of July 2025. Hence, this judgement.

Following arguments were advanced at the hearing;

First argument advanced by Mr. Fernando, the learned President's Counsel, is that the institution of proceedings in the Magistrate's Court by the 1st Respondent is flawed, without filing a certificate or a determination under the Termination of Employment Workmen (Special Provision) Act, No. 45 of 1971(as amended) the 1st Respondent has directly filed the charge

sheet; therefore, he argued that the 1st Respondent could not have instituted proceedings before the Magistrate's Court of Gampaha by merely filing a charge sheet which is at page 487 of the brief.

In addition to that Mr. Fernando P.C. having drawn the attention of the Court to different dates of proceedings, argued that the entire proceedings that took place before the learned Magistrate is flawed. Thus, the order made by the learned Magistrate dated 25th November 2011 is erroneous.

As such, the learned President Counsel contended that the learned High Court Judge having accepted the position of the Appellant, held that he was only liable to pay Rs. 10,680,611 (Ten million six hundred eighty thousand six hundred and eleven) and erred in dismissing application bearing number PHC/GAMPAHA 12/13.

Therefore, he submitted that as one part of the said order was favourable to the Appellant, and the other part of the order, which is unfavourable to him, should be set aside.

However, Mr. Silva S.D.S.G. on the other hand, argued that if this Appeal is allowed, the rights of the employees who had been retrenched, and had lost their employment would be affected adversely and the 1st Respondent would not be able to make orders under any other statutory provision.

Mr. Silva further argued that the learned High Court Judge was justified in dismissing the application since the learned Magistrate's Court's proceedings had not been concluded and is still alive. As in such circumstances, the relief sought by the Appellant can still be sought in the Magistrate's Court.

Learned President's Counsel Mr. Fernando submitted that he is satisfied if the erroneous part of the order of the learned High Court Judge dated 08th October 2018 is set aside in the impugned order of the learned Magistrate dated 25th November 2011.

Before dealing with the legality or illegality of the impugned order of the learned High Court judge dated 08th October 2018, this Court wishes to advert to the facts that led to the application to revise the order of the learned Magistrate dated 25th November 2011.

Common ground

It is common ground that the Appellant had been running a garment factory in the District of Gampaha, having employed a number of employees. It is also common ground that the said garment factory was closed in 1990 resulting in retrenchment of all its employees; thus, losing their employment. It is also conceeded that the 1st Respondent as the Commissioner of Labour had initiated proceedings in terms of Sections 7 and 8 of the Termination of Employment Workmen (Special Provision) Act, No. 45 of 1971 (as amended).

The Magistrate Court's proceedings

It must also be noted that, except for the said charge sheet other than the list of witnesses, which is also a part of the said charge sheet annexed to the same; neither any notice of any order of the 1st Respondent nor any certificate reflecting any order or certificate has been filed along with the said charge sheet, in terms of Sections 6, 7 or 8 of the Termination of Employment of Workmen (Special Provision) Act No. 45 of 1971. Therefore, it is not clear how the Commissioner arrived at the decision to order the payment of back wages; or whether he, in fact, inquired into the matter; or whether in fact he had made any order or sent any notice thereof to the parties, as required by Section 6 of the Termination of Employment of Workmen (Special Provision) Act, No. 45 of 1971. Therefore, as argued by Mr. Fernando, the very institution of the proceedings is flawed. Now, for the purpose of the record, I wish to reproduce the Section 6 of the Termination of Employment of Workmen (Special Provision) Act, No. 45 of 1971.

> *"6. Where an employer terminates the scheduled employment of a workman in contravention of the provisions of this Act, the* ***Commissioner may order such employer*** *to continue to employ the workman, with effect from a date specified in such order, in the same capacity in which the workman was employed prior to such termination, and to pay the workman his wages and all other benefits which the workman would have otherwise received if his services had not been so terminated; and* ***it shall be the duty of the employer to comply with such order.*** *The Commissioner shall cause notice of such order to be served on both such employer and the workman."* (Emphasis is mine)

I highlighted the operative part of the Section applicable to the case in hand.

It must always be remembered that the proceedings in a Magistrate's Court can be instituted in terms of Section 7 only on non-compliance by an employer of such an order made by the Commissioner in terms of Section 6 after an inquiry. Therefore, Section 6 requires and presupposes that such an order is made by the Commissioner against the employer. Therefore, the report or the certificate of such an order, along with proof of notice thereof given to the parties, is a pre-condition to the institution of proceedings. Therefore, it is my view that the arguments advanced by Mr. Fernando, learned President's Counsel, based on the Revision Application, hold water.

Strict Liability

Further, for clarity I wish to reproduce Section 7 as well, since on a perusal thereof a strict liability is imposed on the employer.

> *"7. (1) Where an employer fails to comply with the provisions of section 6, such*

employer shall be guilty of an offence under this Act, and shall be liable on conviction after summary trial before a Magistrate to imprisonment of either description for a term of not less than six months and not exceeding two years.

(2) In any prosecution for an offence under subsection (1), ***the burden of proving that the employer has complied with the provisions of section 6 shall lie on the accused.****"*
(Emphasis is mine)

On a perusal of Section 7, I am of the view that strict liability is imposed on an employer who, in fact, when prosecuted before a Magistrate, is presumed to be guilty unless and until he discharges his burden by proof of his innocence. As the provisions of the said section attribute the liability to the employer, despite any *mens rea* to be established on the part of the employer. As such, in a situation where an employer is not a natural person but a juristic person, an opportunity should be accorded to such a juristic person as an employer to discharge its burden. Therefore, a responsible officer should be called upon to plead guilty to the charge. Admitting liability, that is similar in a civil case by the Counsel or the Attorney-at-Law, is not pleading guilty in a criminal case.

In addition to that, I hold that when an interpretation is given to a penal section—particularly when the procedure is flawed from the very commencement—a punishment cannot be imposed. In support of this view, I rely on the following passage of the classical textbook "Interpretation of Statutes" by N. S. Bindra[2].

[2] Bindra N. S., *Classical Textbook of Interpretation of Statutes*, (13th edition, Lexis Nexis Publishers) Page 817.

> *"Another accepted canon of interpretation is that a penal statute should be construed strictly and that in case of doubt the benefit should go to the subject. Where there is a reasonable ground for doubt as to the correct interpretation of an enactment, that interpretation should be adopted which is most in favour of the person to be penalized."*

To buttress this view, I further rely upon an observation deduced by His Lordship Justice Basnayake in *Eastern Bus Company v Inspector of Labour*[3]. In the said case, Inspector of Labour of Batticaloa on a special motion-initiated prosecution, to prosecute the Managing Director of the Eastern Bus Company who was an employer. Despite the objection taken, the learned Magistrate overruled the same. However, in appeal it is His Lordship's observation that;

> "*An accused person cannot under our law be convicted of an offence unless he has had an opportunity of being heard. Our Criminal Procedure Code contains provisions designed to achieve that end. The first question that arises for consideration is whether the Eastern Bus Company has been duly summoned and was afforded, in the manner prescribed by law, an opportunity of being heard. Clearly the summons has not been served on the Secretary. Where summons is not served on the "Secretary" section 45 (3) requires that it should be served on an "other like officer. The word "like" to my mind indicates that the other officers contemplated by the section are officers ejuademgeneris of Secretary. The Managing Director of a company is not of the same genus as its Secretary, who is usually a paid servant of the company. In view of the qualification imposed by the word "like", the persons contemplated by the words "other like officer" cannot therefore be persons belonging to a category different to that of the Secretary. They must be persons of a like status, such for instance as the Manager and Assistant Secretary."*

[3] [1951] 53 NLR 372

> *As to the meaning of the word "officer" in Company Law, there is no hard and fast rule. Its meaning would depend on the context in which it occurs, but generally speaking the Managing Director of a company or even its Directors are not understood to be its officers in the sense in which its Secretary is its officer.*

In support of my view, I further wish to quote certain passages from *Harding v Price*[4]*;* though it is somewhat old, the law is not archaic.

In the said case*,* on 24th July 1947, at about 12 noon, the Appellant was driving a lorry with a trailer attached thereto on a road in Swansea Island. While the lorry and the trailer passed a motor car parked close to the curb on the Appellant's side, it collided with the motor car, causing damage to the motor car. By reason of the noise and vibration caused, the Appellant did not know that the accident had occurred. Therefore, the Appellant did not stop after the accident, and the Appellant did not inform the police, as required by Section 22 of the Road Traffic Act, 1930. According to the amended provisions of the law, the knowledge or ignorance of the Appellant is immaterial; accordingly, the Appellant was found guilty in the original court. On appeal, for and on behalf of the King's Bench Division, this is what the Court held:

> *"The general rule applicable to criminal cases is actus non facit reum nisi mens sit rea, and I venture to repeat what I said in Brend v. Wood (4) : " It is of the utmost importance for the protection of the liberty of the subject that a court should always bear in mind that, unless a statute either clearly or by necessary implication rules out mens rea as a constituent part of a crime, the court should not find a man guilty of an offence against the criminal law unless he has a guilty mind." In these days when offences are multiplied by various regulations and orders to*

[4] [1948] 1 KB 695

an extent which makes it difficult for the most law-abiding subjects in some way or at some time to avoid offending against the law, it is more important than ever ..."[5]

"There are two possible ways of construing s. 22, and, in my view, the court ought not to adopt one which would mean that a person is called on to do the impossible, or to suffer conviction if he fails to do it, when there is another equally reasonable construction which avoids that position arising.

I am of opinion that the appeal should be allowed, and the conviction quashed" [6]

Errors by the Learned Magistrate's Court

On a perusal of the record, particularly the proceedings dated 25th March 2011, the Attorney-at-Law for the Appellant appears to have made an admission on behalf of the Appellant. Therefore, it is clear that no responsible officer of the Appellant has personally pleaded to the charges except for the admission made by the Attorney-at-Law. It is not the proper way of pleading to a charge in criminal proceedings. A plea has to be made by an accused or, in this case, by a responsible officer of the Appellant (as a juristic person); therefore, the proceedings are also flawed.

By the impugned order made by the learned Magistrate dated 25th November 2011, the learned Magistrate had come to the conclusion that since it had been admitted on behalf of the Appellant company that the amount mentioned in the charge sheet should be paid, the Appellant should pay the same. However, the Appellant had challenged the amount mentioned in the charge sheet to be paid, an amount of Rs. 100,727,203.27 (One hundred million, seven hundred twenty-seven thousand, two hundred three and twenty-seven cents), from the very commencement of the proceeding before the learned Magistrate's Court. In those circumstances, the said order of the

[5] Harding v Price [1948] 1 KB 700
[6] Harding v Price [1948], 1 KB 704

learned Magistrate dated 25th November 2011 has derived from the admission by an Attorney-at-Law made for and on behalf of the Appellant company, not by a responsible officer of the Appellant company; therefore, the learned Magistrate's order is also flawed.

In fact, in the said circumstances, the learned High Court Judge has by the impugned order dated 08th October 2018 clearly held that the sum of Rs. 10,680,611 (Ten million six hundred eighty thousand six hundred and eleven) ordered by the learned Magistrate on the order dated 25th November 2011 was made on the basis that the Appellant company had made, erroneously.

Errors by the Learned High Court

The learned High Court Judge had erroneously dismissed the application. As such, it is my view that the learned High Court Judge should have allowed the revision application. In these circumstances, we allow this Appeal and set aside that part of the impugned order dated 08th October 2018 by which the learned High Court Judge has dismissed the revision application, and further make an order that the other part of the order favourable to the Appellant should stand as it is.

The referred part of the impugned order that is unfavourable to the Appellant is as follows;

> *"Apparently, the Accused-Petitioner has failed to disclose material facts and had attempted to evade the liability. As such, the Accused-Petitioner's conduct does not warrant to invoke the revisionary jurisdiction of this Court.*
>
> *In view of the foregoing reasons, it is submitted that there is no misconstruction of law to exercise the revisionary jurisdiction of this court in respect of this matter, and no reason to interfere with the orders of the learned Magistrate dated 25.11.2011 and 16.10.2012.*

Hence, the impugned application for revision is dismissed with costs fixed at Rs. 50,000/-. The execution of the orders dated 25.11.2011 and 16.10.2012 by the Magistrate's Court of Gampaha is stayed for six weeks from today."

In the circumstances; for the reasons adumbrated above, it is my view that this Court should grant reliefs, partly as prayed for in prayer (a) of the Petition dated 18th October 2018, without any costs; and we grant relief accordingly.

Further, judgement of this Appeal should not affect the employees or any statutory authorities in making any order in favour of the employees who had lost their employment under any other law.

Dr. D. F. H. Gunawardhana, J.

JUDGE OF THE COURT OF APPEAL

S. U. B. Karalliyadde, J.

I agree.

JUDGE OF THE COURT OF APPEAL