

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

In the matter of an application for Restitution,
in the nature of *Restitutio-In-Integrum* under
and in terms of Article 138 of the Constitution
of the Democratic Socialist Republic of Sri
Lanka.

Court of Appeal

Case No: RII/0041/2024

Addl MC Anuradhapura

Case No: 41

Officer in Charge,

Special Crimes Investigation Division,
Police Station, Anuradhapura

Complainant

Vs

1. Mohideen Pichche Mohomad Mohamadu,
Boraluhinna Galmola,
Ikirigollawa

2. Galange Gedara Asela Thilanga
Sandaruwan,
No. 133/21/A,
Isurupura,
Anuradhapura.

3. Rathnayaka Mudiyanselage Lalith
Sudarshana Bandra,
Galkadawala,
Anuradhapura.

Accused

And Now Between

Abdul Kadar Abdul Ajeez,
Pandiyankulama,
Nachchaduwa,
Anuradhapura

Virtual Complainant-Petitioner

Vs

1. Officer in Charge,
Special Crimes Investigation Division,
Police Station,
Anuradhapura

Complainant-Respondent

2. Mohideen Pichche Mohomad Mohamadu,
Boraluhinna Galmola,
Ikirigollawa

3. Galange Gedara Asela Thilanga
Sandaruwan,
No. 133/21/A,
Isurupura,
Anuradhapura.

4. Rathnayaka Mudiyanselage Lalith
Sudarshana Bandra,
Galkadawala,
Anuradhapura.

Accused- Respondent

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

Before : R. Gurusinghe, J.

&

Dr. S. Premachandra, J.

Counsel : Sapumal Bandara with Lakshitha Edirisinghe
Instructed by Amanda de Moore
for the Petitioner

Anuja Premaratne, PC. with V. Ratnayake
for the Respondents

Supported on : 07-07-2025

Decided on : 16-07-2025

ORDER

R. Gurusinghe, J.

The 2nd - 4th accused-respondents (hereinafter referred to as accused) were charged in the Magistrate's Court of Anuradhapura under section 457 read with section 32 of the Penal Code, for using a forged document as a genuine document, which is an offence punishable under section 459 of the Penal Code, cheating virtual complainant-petitioner (hereinafter referred to as the petitioner) by obtaining a lease facility of Rs. 1,000,000/=, knowing that the accused was not the owner of the van number 254-188 which is an offence punishable under section 400 of the Penal Code, committing criminal breach of trust by obtaining a leasing facility amounting to Rs. 1,000,000/= for the same vehicle, which is an offence punishable under section 389 of the penal Code, and misappropriating that money dishonestly which is an offence punishable under section 386 of the Penal Code.

The accused pleaded not guilty to the charges, and the trial commenced on October 30, 2017. After trial, the accused were acquitted of all charges by the judgment dated December 10, 2023.

The petitioner filed this *Restitutio-in-Integrum* application before this court seeking the following reliefs *inter alia*;

- b) Grant an interim order staying further proceedings of the case bearing no.41 of the Anuradhapura Magistrate's Court until the final determination of this application,
- c) Grant the petitioner the constitutional remedy of *Restitutio-in-Integrum* and revise and set aside the judgment of the learned Additional Magistrate of Anuradhapura dated 12th of October 2023 at P-3,
- d) Direct the Complainant-Respondent and the 5th Respondent to re-institute the relevant proceedings before the same Magistrate's Court on a new charge sheet naming Anuradha Deshpriya, the Manager of Siyapatha Finance, as an accused,
- e) Direct the 5th Respondent to conduct a fair inquiry against the alleged conduct of the Complainant-Respondent,

f) Direct the learned Additional Magistrate of Anuradhapura to proceed with the trial de novo,

Counsel appeared for the petitioner throughout the trial to ensure the petitioner's rights were safeguarded.

The petitioner states the following facts as exceptional circumstances;

The petitioner's position is that the complainant-respondent (hereinafter referred to as the OIC) should have named the manager of Siyapatha Finance as an accused instead of making him a witness. Petitioner further states that the learned Magistrate had failed to appreciate that the OIC had conducted the trial suspiciously and in favour of the accused. However, counsel appeared for the petitioner did not take up these positions at any time during the trial.

The *Restitutio-in-Integrum* is an extraordinary remedy and will be granted only in exceptional circumstances. In the case of Sri Lanka Insurance Corporation v Shanmugam and another [1995] 1 Sri LR 55 it was held as follows;

Relief by way of Restitutio-in-Integrum in respect of judgments of original courts may be sought:

(a) where judgments have been obtained by fraud by the production of false evidence, non-disclosure of material facts or by force; or

(b) where fresh evidence has cropped up since judgments, which was unknown earlier to the parties relying on it or which no diligence could have helped to disclose earlier, or

(c) where judgments have been pronounced by mistake and decrees entered thereon provided of course it is an error which connotes a reasonable and "excusable error.

It was stated in this case that the court will not relieve parties of the consequences of their own folly, negligence, or laches. Further, it was held that "*Restitution reinstates a party to his original legal condition which he has been deprived of by operation of law*". However, in the case in hand, the petitioner, being the virtual complainant, did not explain what position he wanted to reinstate.

In terms of the provisions in section 320 of the Criminal Procedure Code; "*any person who shall be dissatisfied with any judgment or order pronounced by any Magistrate's court in a criminal case or a matter to which he is a party may prefer an appeal to the Court of Appeal against such judgment for any error in law or in fact -.....*"

The petitioner has filed an appeal against the judgment of the learned Magistrate. However, he has failed to disclose the fact that the appeal was dismissed due to non-compliance with the provisions contained in section 318 of the Criminal Procedure Code. Section 318 reads as follows;

“318: An appeal shall not lie from an acquittal by a Magistrate’s court except at the instance or with the written sanction of the Attorney-General.”

As pointed out above, the court will not relieve the petitioner of the consequences of his own negligence. The petitioner has filed a revision application against the judgment of the Learned Magistrate in the Provincial High Court of North Central province. The outcome of that application is not stated in this application. Restitution is granted only if no other remedy is available to the party aggrieved. The appeal is an effective and most appropriate remedy available for the petitioner. The remedy of *Restitutio-in-Integrum* being an extraordinary remedy, it is not to be given for mere asking or where some other remedy is available. It is a remedy that is granted under exceptional circumstances, and the power of the court should be most cautiously and sparingly exercised.

We see no sufficient grounds to issue formal notices on the respondent. The application of the petitioner is dismissed.

Judge of the Court of Appeal.

Dr. S. Premachandra, J.

I agree.

Judge of the Court of Appeal.