

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

**In the matter of an application for
revision in terms of Article 138 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.**

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

Complainant

Court of Appeal Case No.

CA CPA 113/2024

Vs.

High Court of Chilaw Case No.

HC 63/23

1. Jayasinghe Appuhamilage Nirosh
Chaminda Jayasingha,
Kandewatta,
Wilagedara,
Gonawila.
2. Adikari Mudiyanseelage Ajoth Hemantha
Adhikari,
Kandewatta,
Wilagedara,
Gonawila.

Accused

AND NOW BETWEEN

1. Jayasinghe Appuhamilage Nirosh
Chaminda Jayasingha,
Kandewatta,
Wilagedara,
Gonawila.
2. Adikari Mudiyanseelage Ajith Hemantha
Adhikari,

Kandewatta,
Wilagedara,
Gonawila.

Accused-Petitioners

Vs.

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

Complainant-Respondent

Before: **B. Sasi Mahendran, J.**
 Amal Ranaraja, J.

Counsel: Anil Silva, P.C. with Anjana Abeyratne for the Petitioner.

Disna Warnakula, D.S.G. for the Respondents.

Supported on: 22.07.2025

Decided on: 23.09.2025

ORDER

AMAL RANARAJA, J.

1. This is an application filed by the Accused-Petitioners (hereinafter referred to as the "Petitioners") seeking to invoke the discretionary remedy of revision granted to this Court by Article 138 of the Constitution.

2. The disputed indictment has been initially signed on January 28, 2022, and subsequently forwarded to the *High Court* in the judicial zone of *Negombo*.
3. Upon receipt, the indictment has been registered and the case number HC 61/2022 assigned to it.
4. However, it has been later revealed that the incident referred to in the charges of the indictment has occurred in an area located within the judicial zone of *Chilaw*.
5. In response to this discovery, the learned High court Judge of *Negombo* has issued an order on November 14, 2022, returning the indictment to the Attorney General's Department to enable the prosecution to forward such indictment to the *High Court of Chilaw*.
6. The indictment has not been amended. The Attorney General has instead drafted a fresh indictment incorporating into it the same charges as those in the indictment which was returned and forwarded the fresh indictment to the *High Court of Chilaw*.
7. The fresh indictment forwarded as aforementioned, has been signed on September 15, 2023.
8. The petitioners have subsequently raised a preliminary objection in the *High Court of Chilaw*, asserting that the right to prosecute the offences outlined in the charges of the indictment has expired. In support of

their claim, the petitioners have referred to the provisions in section 456 of the Code of Criminal Procedure Act No. 15 of 1979.

9. Following the inquiry regarding the preliminary objection, the learned High Court Judge has rejected the petitioner's argument.
10. Aggrieved by the High Court's order dated June 07, 2024, the petitioners have filed the present application before this Court.
11. The learned President's Counsel for the petitioners have contended that the right of prosecution arises only when an accused is brought before a High Court for the indictment, along with the accompanying annexes to be formally presented to such accused.
12. In contrast, the learned Deputy Solicitor General has disagreed with this interpretation. The learned Deputy Solicitor General has argued that the right of prosecution arises as soon as information regarding the commission of an offence is provided to a police officer or an inquirer.
13. In her effort to support her argument, the learned Deputy Solicitor General has directed the Court's attention to Ordinance No. 15 of 1843, which has been enacted to provide for a more efficient administration of justice in criminal cases, in this island. She has also referred to the judgment in *Queen vs. Don Louis* as reported in [1863] Ramanathan Reports at page 97 and drawn parallels to the current provisions that echo those of the aforementioned Ordinance, specially with the Code of Criminal Procedure Act No.15 of 1979.

14. The “right of prosecution” refers to the legal authority and responsibility to bring criminal charges against a person accused of a crime, typically vested in a prosecutor or a private individual in certain circumstances. This involves investigating the alleged crime, gathering evidence, deciding if there is sufficient evidence to proceed and then presenting that case in Court to prove the guilt of the accused.

15. The initiation of such a process is triggered by providing information either orally or in writing, to a public officer or an investigator as stipulated in section 109 of the Code of Criminal Procedure Act No. 15 of 1979.

16. Section 456 of Code of Criminal Procedure Act No.15 of 1979 provides as follows;

“The right of prosecution for murder or treason shall not be barred by any length of time, but the right of prosecution for any other crime or offence (save and except those as to which special provision is or shall be made by law) shall be barred by the lapse of twenty years from the time when the crime or offence shall have been committed.”

17. In *Queen vs. Don Louis* as reported in [1863] Ramanathan Reports at page 98, it was held as follows;

“The question in this case proceeds on the words of the 45th clause of Ordinance No.15 of 1843 which is as follows
“The right of prosecution for any crime or offence (other than treason or murder) shall be barred by the lapse of 20 years from the time when the crime or offence was committed.” The court is

unanimously of opinion that the words “the right of prosecution” or must be taken to mean “the right to commence a prosecution” or in other words, a prosecution for any offence other than treason or murder must be commenced before the lapse of 20 years from the time when the offence was committed.

A prosecution before the Supreme Court in this colony may be commenced by the information of a private person before a justice of the peace and afterwards continued by the Queen’s Advocate, and the court considers that as one and the same prosecution. Any doubt as to what forms the commencement of a prosecution was determined by the judgment of the fifteen English judges in *R.v.Brooks* 1 Den.C.O.217 and 2 O. & K. 402, in which they adjudged that a prosecution is commenced by information and issue of the warrant of apprehension or at least by the apprehension of the prisoner. **In the case before the court, the information was laid down before the justice of peace by an affidavit sworn in November, 4th 1862, that is, before the lapse of 20 years from the committal of the offence charged, and there were continued proceedings founded on that affidavit leading in due course to the trial and conviction.**

The Court is of the opinion that the prosecution was commenced in time, or in the words of the Ordinance, that the right of prosecution was exercised before the lapse of 20 years necessary to bar it”.

18. In the aforementioned judgment, it has been established that the right of prosecution must be taken to mean the right to commence a prosecution and the information provided by an individual regarding the commission of an offence to the Justice of Peace effectively marks the commencement of a prosecution.

19. The Ordinance No. 15 of 1843 as stated above, has been enacted to provide for a more efficient administration of justice in criminal cases. It has empowered the Justice of Peace to arrest individuals and has authorized him to issue warrants that enables specified officers to carry

out arrests and present the detained individuals before the Justice of Peace. Additionally, the Justice of Peace has been authorized to summon individuals for examination, commit suspects to trial before the supreme court or the district court and transmit the proceedings to the *Queen's Advocate*. Furthermore, the Justice of Peace had been entrusted with the power to grant bail to detained individuals; [*vide* sections 2, 3, 5, 7, 20, 21, 28, 32, 33 and 36 of the Ordinance No. 15 of 1843].

20. Section 31 of the Ordinance stipulates that the Justice of Peace responsible for recording the information laid before him about a serious offence must personally inspect the location where the crime occurred. Additionally, the Justice of Peace, is required to create or caused to be created a detailed plan of the scene in an instance he can conveniently do so.

21. Although the Justice of Peace has been required to examine witnesses and allow cross-examination of witnesses on behalf of a suspect, there has been no obligation to frame or read out a charge prior to such examination. This suggests that the role of the Justice of Peace may not fully engage in a judicial function, instead, it leans more towards to the investigation of an offence.

22. Accordingly, the comprehensive process of recording information related to an offence, the attendance of individuals who can provide relevant information, the examination of witnesses, the search of evidence and the conclusion of investigations as outlined in chapter XI of the Code of Criminal Procedure Act No.15 of 1979, tasked to *Police Officers* and *Magistrates* has been carried out by the Justice of Peace in accordance with the provisions of Ordinance No. 15 of 1843.

23. Section 120 of the Code of Criminal Procedure Act No. 15 of 1979 mandates that an investigation must be completed without undue delay. Subsection (3) stipulates that if the report prepared as a result of such an investigation indicates that a suspect has committed or has been involved in committing an offence, that suspect must be prosecuted in accordance with the Code of Criminal Procedure Act No.15 of 1979. It is important to note that this provision is initiated when an individual provides information pertaining to the commission of an offence. Therefore, the right of prosecution being exercised with the making of the first complaint to the police regarding the commission of an offence orally or in writing, in the present context.
24. One key date that warrants careful consideration is the date of the first complaint. Recognising this date as the official commencement of the right of prosecution offers numerous benefits enhancing the efficiency and effectiveness of the judicial process.
25. Using the date of the first complaint establishes a clear and unequivocal starting point to legal actions. This clarity reduces ambiguity about when an individual's right of prosecution begins, allowing both the accuser and the accused to understand their positions within the legal framework. It provides a standardised reference that can facilitate smoother legal processes minimising disputes over timelines that can often complicate cases.
26. By acknowledging the date of the first complaint as important in the right of prosecution, the legal system amplifies the voice of the victims. It empowers them to seek justice promptly after they have made their grievances known. This approach not only validates the experiences of

the victims but also encourages others to come forward, knowing there is a structured and supportive avenue for their complaints to be taken seriously.

27. Recognising the date of the first complaint as the official date for the right of prosecution incentivises victims to report offences sooner rather than later. This can lead to stronger cases, as evidence is often readily available shortly after an incident occurs. Timely reporting allows for better preservation of evidence, witness accounts and overall case strength.
28. It fosters greater consistency and fairness in legal outcomes. Courts can apply this standard uniformly across cases, reducing the potential for discrepancies that can arise from varying interpretations of complaint timelines. This consistency not only promotes fairness for victims but also protects the rights of the suspects, ensuring that all parties are treated equitably under the law.
29. In these circumstances, this Court is inclined to conclude that the right of prosecution for any crime or offence, except for treason and murder [save and except those as to which special provision is or shall be made by law] shall commence at the moment an individual provides information about the commission of an offence, either orally or in writing, to a police officer or inquirer, as stipulated in section 109 of the Code of Criminal Procedure Act No.15 of 1979.
30. The offences stated in the disputed indictment has been committed on May 17, 2002. The complaint regarding the same made to the *Wennapuwa Police* on the same day, well before the expiration of 20 years from the time when the offences were committed. Therefore, the

right of prosecution of the offences outlined in the charges of the indictment bearing number HC 63/23 in the *High Court of Chilaw* has not expired or is not time barred.

31. In those circumstances, I am not inclined to interfere with the disputed order of the learned High Court Judge of Chilaw dated June 07,2024 and dismiss the instant application.

I make no order regarding costs.

Application dismissed.

32. The Registrar of this Court is directed to send this order together with the original case record of such Court to the *High Court of Chilaw* for information and for further action to be taken in accordance with the provisions of the law.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree

Judge of the Court of Appeal