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

In the matter of an application for Restitution-in-integrum together with an Application for the Revision under and in terms of Article 138 (1) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SI Liyanadura Saman Sri Pathmalal Silva
The Officer -In - Charge
Law Enforcement Unit
Under Panadura SSP Division

Magistrate Court Horana
Case Number 15014/16 **Complainant**

High Court Panadura
Revision Application Number
HCR/19/2024

Court of Appeal Case
No.CA/RII/04/2025

Nature: Application for
Restitutio-In-Integrum

VS.

1. **Ranasinhage Ravindra**
   6B, Sinhagiri, Okalanda, Deniyaya.

2. **Tennakoon Mudiyanselage Hemal Bandara Tennakoon**
   01, Galoyawatta, Yapagama, Dambulla.

3. **Nalin Rangana Jayalath**
   152/A, Pemaduwa, Anurdhapura.

4. **Ranasinghe Archchillage Nihal Prasad Ranasinghe**
   129, Ketamirispitiya, Walawita Getaheththa.

Accused

AND BEWEEN

1. Ranasinhage Ravindra
6B, Sinhagiri, Okalanda, Deniyaya.

2. Tennakoon Mudiyanselage Hemal Bandara Tennakoon
01, Galoyawatta, Yapagama, Dambulla.

3. Nalin Rangana Jayalath
152/A, Pemaduwa, Anuradhapura.

4. **Ranasinghe Archchillage Nihal Prasad Ranasinghe**
   129, Ketamirispitiya, Walawita
   Getaheththa.

ACCUSED-PETITIONERS

VS

1. **IP Liyanadura Saman Sri Pathmalal De Silva**
   Now Attached to Building Division
   2nd Floor, Police Headquarters,
   Colombo 01.

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

COMPLAINANT RESPONDENTS

AND NOW BETWEEN

1. **Ranasinhage Ravindra**
   6B, Sinhagiri, Okalanda, Deniyaya.

2. **Tennakoon Mudiyanselage Hemal Bandara Tennakoon**
   01, Galoyawatta, Yapagama, Dambulla.

3. **Nalin Rangana Jayalath**
   152/A, Pemaduwa, Anuradhapura.

4. **Ranasinghe Archchillage Nihal Prasad Ranasinghe**
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ACCUSED-PETITIONER-PETITIONERS

VS

1. **IP Liyanadura Saman Sri Pathmalal De Silva**
   Now Attached to Building Division
   2nd Floor, Police Headquarters,
   Colombo 01.

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

COMPLAINANT-RESPONDENT-RESPONDENTS

Before: **R. Gurusinghe J.**

&

Dr. S. Premachandra J.

Counsel: Moditha Ekanayaka for the Accused-Petitioner-Petitioner instructed by T.M.K.B.Tennakoon.

Oswald Perera, S.C. for the Respondents.

Written Submissions: Not filed

Supported On: **19/05/2025.**

Order to be

Delivered On: **09/07/2025.**

Dr. S. Premachandra J.

1] The 1st to 4thAccused-Petitioner-Petitioners seek relief under Article 138(1) of the Constitution by filing this application for *Restitutio in Integrum* prayed for the Court to issue notices to the 1st and 2nd Complainant-Respondent-

Respondents and to stay proceedings in Case No. 15014/16 before the Magistrate's Court of Horana until this application is determined. Mainly, the Petitioners challenge and seek to reverse the orders dated 24th February 2023 and 7th February 2024, claiming the Magistrate erred in reopening the case based on an invalid affidavit and the misapplication of Section 39 of the Judicature Act No. 2 of 1978.

2] They also request the reinstatement of the discharge order dated 22nd February 2022, as the complainant failed to provide sufficient grounds under Section 188(1) of the Code of Criminal Procedure to reopen the case. Additionally, the Petitioners urge the Court to take action against the Inspector of Police Liyanadura Saman Sri Pathmalal Silva for misleading the court with a false affidavit intended to conceal his negligence.

3] The learned senior counsel at the argument stressed that the 1st to 4th Accused-Petitioner-Petitioners were correctly discharged by the Learned Magistrate of Horana on 22nd February 2022 under Section 188(1) of the Code of Criminal Procedure due to continuous failure of the prosecution, including the 1st Complainant-Respondent-Respondent, to appear for trial despite repeated summons. However, the same Magistrate erroneously reinstated the case through two orders, dated 24th February 2023 and 7th February 2024, based on two affidavits submitted by the 1st Complainant-Respondent. One of the affidavits lacked a valid jurat, and the other contained false averments that contradicted the official journal entries dated 8th June 2022 and 22nd February 2023. He contended that the Learned Magistrate erred in law and fact by accepting these affidavits without verifying their admissibility or truthfulness and by ignoring the mandatory legal requirement under Section 182(2) of the Code of Criminal Procedure.

4] The Petitioners state that the Revision Application (HCR/19/2024) filed before the High Court of Panadura was dismissed merely on technical grounds, i.e., alleged delay, without notice to Respondents or due consideration of exceptional circumstances such as floods and financial constraints that hindered timely appeal filing. Thus, the Petitioners seek to set aside the three impugned orders and request relief by way of *restitutio in integrum*.

5] The Accused Petitioner-Petitioners submit that, under the *Oaths and Affirmations Ordinance No. 9 of 1895*, an affidavit is considered sworn evidence, and submitting a false affidavit amounts to contempt of court, punishable under Sections 11 and 12 of the Ordinance.

6] The Petitioners challenge three impugned orders: two by the Magistrate of Horana dated 24th February 2023 and 7th February 2024, and one by the High Court Judge of Panadura dated 15th October 2024, which dismissed their

revision application (HCR/19/2024) without notice to the complainant-respondents, solely on the technical ground of delay.

7] I now consider the merits of this application. It is seen that the Petitioners have invoked the jurisdiction of the court by Panadura High Court Case bearing No. HCR/19/2024. They say that the delay of filing the said revision was due to financial hardship, floods, other justifiable impediments and the dismissal was on technical grounds, which cannot be sustained. On that footing, the Petitioners requested this court to quash the reopening or reinstatement of Case No. 15014/16 before the Magistrate's Court of Horana. Thus, being an Appellate Court, this Court cannot superficially verify the facts or embark on a voyage of discovery. It is my considered view that when the facts are disputed by the parties, there can be no relief of restitution.

8] It is seen that the following reinstatement orders, based on affidavits by the 1st Complainant-Respondent-Respondent and the Petitioners, argue that these were either procedurally invalid or based on factually false statements. It should be noted that, being satisfied with the facts, the learned Magistrate had reinstated the case under section 188 of the Criminal Procedure Code.

9] I now consider the ambit of section 188 of the Criminal Procedure Code as amended. It says;

> *"188(1) If the summons has been issued on a complaint under section 136 (1) (a) upon the day and hour appointed for the appearance of the accused or at any time to which the hearing may be adjourned the complainant does not appear and the* ***Magistrate shall notwithstanding anything hereinbefore contained acquit the accused*** *unless for some reason he thinks proper to adjourn the hearing of the case to some other hour or day, and may in addition make an order for payment by the complainant of State costs as hereinafter provided:*
>
> *Provided* ***that if the complainant appears in reasonable time and satisfies the Magistrate that his absence was due to sickness, accident or some other cause over which he had no control, then the Magistrate shall cancel any order made*** *under this subsection.*
>
> *(2) If the summons has been issued on a complainant under section 136 (1) (b) or (c) as the case may be, and* ***on the day fixed for trial the prosecution is not ready the court may discharge the accused*** *unless for some reason the court thinks proper to adjourn the hearing of the case to some other hour or day.*

(3) The order of discharge referred to in subsection (2) shall operate as an acquittal where either: -

(a) it is not set aside and the case against the accused is not reopened within a period of one year from the date of such order; or

(b) the case has been duly reopened and an order of discharge is made for the second time:

Provided that where an application to set aside the order of discharge is pending before a Magistrate or any other court in revision, the order of discharge shall not operate as an acquittal at the end of the period of one year until the Magistrate or such court makes orders refusing the application to set it aside." [Emphasis is added]

10] On careful perusal of the journal entries of the case, charges were read over to the accused on 26/09/2016. Thereafter, summons was issued on the 1st and 2nd prosecution witnesses. PW1 was present on 20/11/2017, which is the second trial date. Thereafter, PW1 & PW2 were present on 14/05/2018, the third trial date; however, the trial was not taken up. PW 1 and 2 were warranted on 29/08/2018. However, 1st accused pleaded guilty to the charges and later, since there was one previous conviction, he withdrew the plea (Vide journals 27/03/2019). On that day, PW1 was present and he had mentioned that he appeared in Kalutara Courts. In between, the Telephone Tower and CCTV footage were called on the application of the Accused. Thereafter, the case was caught up in COVID-19 circumstances. On 22/02/2023, since PW1 was summoned and failed to appear in court, the learned Magistrate had discharged all the accused. After the discharge order was issued within 2 days, the prosecution filed a motion along with the affidavit, and PW1 was also present; the reinstatement order was made. There was no appeal or revision was filed against the reinstatement order by the Petitioners.

11] It is seen that thereafter, the trial was fixed on 31/10/2022 and by motion dated 24/10/2023, the reinstatement was resisted before a week of the trial. The application was challenged mainly on the validity of the Affidavit. The learned Magistrate has observed the following with related to said affidavit;

"එම දිවුරුම් ප්‍රකාශයේ අදාළ අඩුපාඩු ඇති බවද මෙම අධිකරණය නිරීක්ෂණය කරමින් පිළිගන්නා ලද කරුණකි. එසේ වුවද මෙහිදී සලකා බැලිය යුතු වන්නේ නීතියේ ප්‍රතිපාදන අනුව අධිකරණය සෑහීමට පත්වන අයුරින් එසේ නොපැමිණීම කරුණ සම්භන්ධයෙන් පමණි. එසේ වුවද දිවුරුම් ප්‍රකාශයේ ඇති යම් යම් අඩුපාඩු (තාක්ෂණික කරුණු) සලකා බලා එකී දිවුරුම් ප්‍රකාශය සම්පූර්ණයෙන්ම ප්‍රතික්ෂේප කිරීමට හැකියාව ඇත්තේද යන්න මෙහිදී සලකා බැලිය යුතුවේ."

12] On careful perusal of section 188 of the Criminal Procedure, there is no hard and fast rule that an affidavit should support a reinstatement application. Thus, we are of the view that if the said excuse for absence can be accepted by the learned trial judge and satisfied with, that would suffice. Hence, there is no rule that an application must be supported by an affidavit; if the application is supported by an affidavit, it would be much stronger than a bare application. However, it is seen that the said errors were corrected by another affidavit; thus, there is no merit in this contention.

13] In ***Kobbekaduwa vs. Jayewardene and others*** [1983 1 SLR 419], the Supreme Court held the function of an affidavit as;

> *"The function of an affidavit is to verify the facts alleged in the petition. The affidavit furnishes prima facie evidence of the facts deposed to in the affidavit. In an affidavit, a person can depose only to facts to which he is able to testify of his knowledge and observation."*

14] Further, in ***Distilleries Company Ltd vs. Kariyawasam and others*** [2001]3 SLR 119, His Lordship Justice Nanayakkara held that the technical defect of the affidavit should not suppress the justice as follows;

> *"The court should not approach the task of interpretation of a provision of law with excessive formalities and technicality. A provision of law has to be interpreted contextually giving consideration to the spirit of the law".*

15] Thus, the technical defects of the affidavit cannot be considered as major errors which vitiate the application for reinstatement, and we see that the impugned order cannot be faulted with. Further, the two contrary positions according to the fiscal letter, whether summons was served or not, have to be considered on the weight of the attending circumstances. We see that PW1 has come previously, and therefore, there was no apparent intentional default in this matter.

16] Be that as it may, to invoke the jurisdiction of *Restitutio in integrum, there should be an exceptional and extraordinary* situation. In this case, a special leave to appeal lies with the Supreme Court, which was not exercised by the Petitioners. In ***PERERA et al. v. WIJEWICKREME et al*** 15 NLR 411, His Lordship PEREIRA J.- agreeing with His Lordship Ennis J. held that;

> "*Restitutio in integrum is not granted in Ceylon if the applicant has any other remedy equally effectual open to him*"

17] In ***Kumudu Samanthi Akmeemana v. Araliya Kankaanamge Somasiri de Silva & Others*** CA/RII/1/2018, Decided on 21.02.2019, His Lordship Samayawardhena, J held;

> *"It must be stressed that "the power to grant relief by way of restitutio in integrum* ***is a matter of grace and discretion****." (Usoof v. Nadarajah Chettiar, 58 NLR 436)* ***The petitioner cannot seek restitution as of right****. There are several threshold matters to be sorted out before addressing the core issue……. One such important hurdle to overcome is that "relief by way of restitutio in integrum should be sought for with the utmost promptitude." Vide* ***Menchinahamy v. Muniweera****,* ***Babun Appu v. Simon Appu****,* ***Sri Lanka Insurance Corporation Limited v. Shanmugam*** *……, it is crystal clear that the petitioner has not acted with the utmost promptitude when she decided to come before this Court more than two years after the District Court held against her. The delay is too long by any stretch of imagination particularly because the final order of the District Court against her was not ex parte but inter partes……. The explanation for delay over two years is unacceptable. Hence, on that ground alone, the application of the petitioner is liable to be dismissed."* [Emphasis is added]

18] The relief is granted at the grace of court and the circumstances of this case do not make any shock of conscience of this court. Thus, we refuse to issue formal notices. Therefore, the application of *Restitutio in integrum* is dismissed.

JUDGE OF THE COURT OF APPEAL

R. GURUSINGHE J.

I agree

JUDGE OF THE COURT OF APPEAL