

**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 read with Section 364 of the Code of Criminal Procedure Act No. 15 of 1979 to revise the Order of the Learned High Court Judge dated 15th October 2024.

OIC Police Station, Bemmulla.

COMPLAINANT

Court of Appeal

CA Case No : CA/CPA/146/24

HC of Gampaha

Case No. REV/201/2024

Gampaha MC case No:

19067(B 3211/22)

Vs.

M.K.A.S.L.K. Gunawardene of No.230,
Kajugahawatta Road,
Doranagoda, Udugampola.

M.K.A.S.L.K. Gunawardene of No.230,
Kajugahawatta Road,
Doranagoda, Udugampola

ACCUSED

AND NOW

M.K.A.S.L.K. Gunawardene of No.230,
Kajugahawatta Road,
Doranagoda, Udugampola.

ACCUSED-PETITIONER

Vs.

01. OIC Police Station, Bemmulla.

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

COMPLAINANTS-RESPONDENTS

D.H.M. Malith Priyamantha Wijesinghe of
No. 271/F, Pedipola,
Udugampola.

**VIRTUAL COMPLAINANT-
RESPONDENT**

AND NOW BETWEEN

M.K.A.S.L.K Gunawardene of
No. 230, Kajugahawatta Road,
Doranagoda, Udugampola.

ACCUSED-PETITIONER-PETITIONER

Vs.

01. OIC Police Station, Bemmulla.

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

COMPLAINANT-RESPONDENT-
RESPONDENT

D.H.M. Malith Priyamantha
Wijesinghe of
No. 271/F, Pedipola,
Udugampola.

ACCUSED-PETITIONER-
PETITIONER

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

Counsel : Kamal Perera with Hansika Lokusathewa instructed by P.S.A Fernando for the Petitioner
Amila Amarasekara for the Virtual Complainant-Respondent-Respondent.
Malik Azeez, CS with Shezan Mahboob, SC for the State.

Written 22.10.2024(by the Respondent)

Submissions:

On

Argued On: 15.05.2026

Judgment On: 10.06.2026

JUDGEMENT

B. Sasi Mahendran, J.

The Accused– Petitioner- Petitioner (hereinafter referred to as the Petitioner) filed this revision application seeking, *inter alia*, to set aside the order of the Learned Judge of the Provincial High Court of Western Province, holden at Gampaha, dated 15.10.2024 in Case No. Rev 201/2024, together with the order of the Learned Magistrate in Case No. 19067/23 dated 22.08.2024.

When the matter was supported, counsel for the Respondent raised jurisdictional objections by way of a preliminary legal objection in relation to the maintainability of this revisionary application on the basis that the Petitioner cannot invoke the revisionary jurisdiction of this Court against the High Court of Western Province, holden at Gampaha in the exercise of the parallel jurisdiction which was vested under Article 154P (3) (b) of the Constitution.

Originally, the revisionary jurisdiction was vested with the Court of Appeal under Article 138 of the Constitution.

Article 138 of the Constitution, before the 13th Amendment, reads as follows:

“The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by any Court of First Instance, tribunal or other institution and sole and exclusive cognizance, by way of appeal, revision and restitutio in integrum of all causes, suits, actions, prosecutions, matters and things of which such Court of First Instance, tribunal or other institution may have taken cognizance.”

After the 13th Amendment, according to Section 5 of the High Court of Provinces (Special Provinces) Act No. 19 of 1990, read with Article 154P (3) (b) of the Constitution, enacted by the 13th Amendment, entitles any person to file a revision application in the High Court of the Province.

According to the judgment of the 13th Amendment to the Constitution (1987) 2 SLR 310, the Supreme Court held that, on page 323;

“The Bills do not effect any change in the structure of the Courts or judicial power of the People. The Supreme Court and the Court of Appeal continue to exercise unimpaired the several jurisdictions vested in them by the Constitution. There is only one Supreme Court and one Court of Appeal for the whole Island, unlike in a Federal State. The 13th Amendment Bill only seeks to give jurisdictions in respect of writs of Habeas Corpus in respect of persons illegally detained within the Province and Writs of Certiorari, Mandamus and Prohibition against any person exercising within the Province any power under any law or statute made by the Provincial Council in respect of any matter in the Provincial Council list and appellate jurisdiction in respect of convictions ‘and sentences by Magistrate’s Courts and Primary Courts within the Province to the High Court of the Province, without prejudice to the executing

jurisdiction of the Court of Appeal. Vesting of this additional jurisdiction in the High Court of each Province only brings justice nearer home to the citizen and reduces delay and cost of litigation.”

Giving life to these provisions, Article 138 of the Constitution was amended by the 13th Amendment, which reads as follows:

*“The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be **committed by the High Court, in the exercise of its appellate or original jurisdiction or by any Court of First Instance, tribunal or other institution and sole and exclusive cognizance, by way of appeal, revision and restitutio in integrum, of all causes, suits, actions, prosecutions, matters and things of which such High Court, Court of First Instance tribunal or other institution may have taken cognizance.**”* (Emphasis added)

Article 154P (3)(b) and Article 154P (6) of the Constitution state as follows:

“(3) Every High Court shall –

(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;

(6) Subject to the provisions of the Constitution and any law, any person aggrieved by a final order, judgment or sentence of any such Court, in the exercise of its jurisdiction under paragraphs (3) (b) or (3) (c) or (4) may appeal there from to the Court of Appeal in accordance with Article 138.”

According to Section 5 of the High Court of Provinces (Special Provinces) Act No. 19 of 1990, the powers given to the Court of Appeal under Article 138 of the Constitution were concurrently given to the Provincial High Court established under Article 154P of the Constitution. By doing so, both Courts are equally

ranked when exercising revisionary jurisdiction. The jurisdiction to hear revisions and appeals is vested in the Provincial High Court by Act No. 19 of 1990 as amended.

Section 5 of the said Act provides that the High Court established under Article 154P of the Constitution for a province shall have and exercise appellate and revisionary jurisdiction in respect of any orders delivered and made by the Magistrates Courts, Primary Courts or Labour Tribunals within the Province and from orders made under Sections 5 and 9 of the Agrarian Services Act.

Section 5 of the said Act is reproduced as follows for the purpose of convenience:

“5. The Provisions of written law applicable to appeals to the Court of Appeal, from convictions, sentences or orders entered or imposed by a Magistrate's Court, and to applications made to the Court of Appeal for revision of any such conviction, sentence or order shall, mutatis mutandis, apply to appeals to the High Court established by Article 154P of the Constitution for a Province, from convictions, sentences or orders entered or imposed by Magistrate's Courts, Primary Courts and Labour Tribunals within that Province¹ and from orders made under section 5 or section 9 of the Agrarian Services Act, No. 58 of 1979, in respect of land situated within that Province and to applications made to such High Court, for revision of any such conviction, sentence or order.”

The central question that arises for consideration in this application is whether this Court can act in revision when the order has been pronounced by a Provincial High Court in terms of Section 5 of Act No. 19 of 1990.

The concept of concurrent jurisdiction exercised by the Provincial High Court and the Court of Appeal is discussed in the following judicial pronouncements.

Justice Mark Fernando J in *Weragama v Eksath Lanka Wathu Kamkaru Samithiya and Others* (1994) 1 SLR 293 at page 296.

“These amendments affected the appellate, revisionary and writ jurisdiction of the Court of Appeal only in two respects. Firstly, Article

*154P (3) (b) conferred appellate and revisionary jurisdiction (but not writ jurisdiction) in respect of Magistrate's Courts and Primary Courts (but not Labour Tribunals, or other courts and tribunals); this was "notwithstanding anything in Article 138" (and that Article was in any event "subject to the provisions of the Constitution"), and so either the jurisdiction of the Court of Appeal was pro tanto transferred to the High Courts or the Court of Appeal and the High Courts had **concurrent jurisdiction.**" [emphasis added]*

Further held that

*"(3) However, the jurisdiction of the court of Appeal under Article 138 is not an entrenched jurisdiction, because Article 138 provides that it is subject to the provisions "of any law"; hence it was always constitutionally permissible for the jurisdiction to be reduced or transferred by ordinary law (of course, to a body entitled to exercise judicial power). That is the reason why I held (in *Swastika textile Industries Ltd v Dayarathne*, that Section 3 of the High Court of the provinces (Special Provisions) Act, No' 19 of 1990, conferred concurrent, appellate and revisionary jurisdiction on the High Courts in respect of labour Tribunals, and that thereafter section 31D3 of the Industrial Disputes Act, as amended by Act No. 32 of 1990, made that jurisdiction exclusive, there by taking away the jurisdiction of the Court of Appeal in the respect."*

In *G.K.D. Stephan Gunaratne v. Maddumage Thushara Indika Sampath and Others*, CA (PHC) APN 54/2013 (REV), Decided on 23.09.2013, A.W.A.Salam, J held that;

"Appreciably, Section 5A of Act No 54 of 2006 quite specifically states that all relevant written laws applicable to an appeal, in the Court of Appeal are applicable to the High Court as well. This undoubtedly demonstrates beyond any iota of doubt that the scheme provided by Act No 54 of 2006 to facilitate an appeal being heard by the Provincial High Court is nothing but a clear transfer of jurisdiction and in effect could be said that as far as

appeals are concerned both the High Court and the Court of Appeal rank equally and are placed on par with each other. Arising from this statement of law, it must be understood that if the Court of Appeal cannot act in revision in respect of a judgment it pronounces in a civil appeal, then it cannot sit in revision over a judgment entered by the High Court in the exercise of its civil appellate jurisdiction as well, for both courts are to be equally ranked when they exercise civil appellate jurisdiction.”

In **Muththusamy Balaganeshan v. The Officer in Charge and Another**, SC/SP/LA No. 79/2015, Decided on 01.04.2016, Priyasath Dep, PC, J (as he was then) held that:

“When the Provincial High Court exercises appellate jurisdiction, it exercises appellate jurisdiction hitherto exclusively vested in the Court of Appeal. It exercises a parallel or concurrent jurisdiction with the Court of Appeal. The High Court when it exercises appellate jurisdiction it is not subordinate to the Court of Appeal. That is the basis for conferring jurisdiction on the Supreme Court under section 9 of the High Court of Provinces (Special Provisions) Act No. 19 of 1990 to hear appeals from the judgments of the High Court when it exercises appellate jurisdiction.”

The question before us is whether this Court has the jurisdiction to entertain the revision application, as the same is in respect of an order made in exercise of revisionary jurisdiction of the High Court, in view of the fact that the Provincial High Courts now exercise the same revisionary jurisdiction, which this Court exercised under Article 138 of the Constitution. If this application is allowed, it will set a bad precedent to allow a party who fails at the High Court to file an application in this Court. In other words, our Courts have expressed that “*a party to an action cannot be given a chance to have a second bite of the same cherry.*”

This concept was considered by His Lordship Kulatunga J in Abeygunasekera v. Setunga and others, 1997 (1) SLR 62,

“At the hearing of the appeal, a preliminary objection was raised that the Court of Appeal has no jurisdiction to entertain the appeal as the same is in respect of an order made in the exercise of the revisionary jurisdiction of the High Court.

.....

In the alternative he submitted that the decision in Gunaratne v Thambinayagam is wrong when it held that Section 9 of Act No. 19 of 1990 does not permit direct appeals to the Supreme Court from orders made in the exercise of revisionary jurisdiction of the High Court of a Province; and that it is the Supreme Court which has the jurisdiction to entertain an appeal from the impugned judgment.

....

The power to review the orders of Magistrate's Courts and Primary Courts by way of appeal and revision is conferred on High Courts by Article 154P (3) (b). Section 3 of Act No. 19 of 1993 extended this power to orders of Labour Tribunals and orders made under Sections 5 and 9 of the Agrarian Services Act. Had these provisions conferred appellate jurisdiction on the High Court to be exercised by way of appeal and revision, the questions of interpretation of the kind which have arisen from time to time may not have arisen. However, the use of the expression "appellate and revisionary jurisdiction" has given rise to such questions.

.....

*In the case before us, Article 154P (3) (b) conferred "appellate and revisionary" jurisdiction on the High Court. Article 154P (6) provides that any person aggrieved by a decision of the High Court **in the exercise of its jurisdiction** inter alia, under paragraph (3) (b) may appeal therefrom to the Court of Appeal in accordance with Article 138. Thus Article 154(P) (6)*

itself has not limited the right of appeal given by it to orders made by the High Court by way of appeal. However, that Article refers back to Article 138 which spells out the jurisdiction of the Court of Appeal and the manner of its exercise.”

The above-mentioned judgment was considered by His Lordship Ananda Coomarasamy, J in Abeywardene v. Ajith de Silva 1998 (1) SLR 134 at pages 139 - 140, along with Their Lordships Amarasinghe J, Wadugodapitiya J, Wijetunga J and Shirani Bandaranayake J agreeing and held that;

*“The cumulative effect of the provisions of Articles 154P (3) (b), 154P (6) and section 9 of Act No. 19 of 1990 is that, while there is a right of appeal to the Supreme Court from the orders, etc., of the High Court established by Article 154P of the Constitution in the exercise of the appellate jurisdiction vested in it by Article 154P (3) (b) or Section 3 of Act No. 19 of 1990 or any other law, there is no right of appeal to the Supreme Court from the orders in the exercise of the revisionary jurisdiction. **An appeal from an order of the High Court in the exercise of its revisionary jurisdiction should be made to the Court of Appeal.** An appeal to the Supreme Court from the decision of the Court of Appeal would lie, with leave.*

.....

It will thus be seen that if a litigant invokes the revisionary jurisdiction of the Court of Appeal, he has one chance for an appeal to the Supreme Court, whereas if he invokes the revisionary jurisdiction of the High Court he will have two chances of appeal, one to the Court of Appeal and then to the Supreme Court, except when the revisionary jurisdiction of the High Court is invoked in relation to an order of a Labour Tribunal, in which case there is only one appeal and that too to the Supreme Court only.

It is further seen that the legislature did intend to have the right of appeal to the Court of Appeal from a revisionary order of the High Court except

when the revisionary jurisdiction of the High Court is invoked in relation to an order of a Labour Tribunal. In response to the question placed before this court, I hold that a direct appeal does not lie to the Supreme Court from the order of the High Court in the exercise of the revisionary jurisdiction. An appeal from the order of the High Court in the exercise of its revisionary jurisdiction should be made to the Court of Appeal. Where a party is dissatisfied with the order of the Court of Appeal, the party may, with leave of the Court of Appeal or when such leave is refused by the Court of Appeal, with leave of the Supreme Court, appeal to the Supreme Court.”(Emphasis added)

In *Welisarage Lakshman Nishantha Fernando v. The Hon. Attorney General and Another*, CA/MC/RE Application No. 04/2017, His Lordship E.A.G.R. Amrasekara, J., along with A.H.M.D.Nawaz J held that:

“However, for the following reasons this court cannot grant reliefs as prayed for in the petition;

- a) The petitioner had filed revision applications in Gampaha High Court seeking revision of the said orders made by the learned magistrate and the said high court has dismissed the applications. (vide paragraph 8 of the petition). It must be noted that high courts now exercised the same revisionary jurisdiction once this court exercised over magistrate courts. As he has filed revision applications on the same orders previously in the High Court of Gampaha he has exhausted his remedy. His position is that his lawyers have not brought to the notice of High Court the facts averred in this petition. A party to an action cannot be given a chance to have a second bite of the same cherry. If this court allows this application it may create a bad precedent to allow a party who fails to present his case properly file another application.”*

Recently, a similar question was considered by His Lordship Samayawardhena J W.T.S. Nilantha Fernando v P.M.S. Nilanthi Perera, SC/APPEAL/65/2025, decided on 10.10.2025, held that,

“Appeal against Judgments and orders of Provincial Criminal High Court exercising revisionary jurisdiction

Since Section 9 of Act No. 19 of 1990 states that appeal to the Supreme Court lies against judgments and orders made by the Provincial High Court “in the exercise of the appellate jurisdiction” in cases such as Gunaratne v. Thambinayagam (1993) 2 Sri LR 355, Abeygunasekera V. Setunga (1997) 1 Sri LR 62, and Abeygunawardene v Ajith De Silva (1998) 1 Sri LR 134, this Court held that a party aggrieved by a judgement or order of a provincial high court in the exercise of its revisionary jurisdiction, as opposed to its appellate jurisdiction, cannot directly appeal to the Supreme court, and such a party must first invoke the appellate jurisdiction of the Court of Appeal, and only thereafter, if unsuccessful, may appeal to the supreme court. In Abeywardene v Ajith De Silva, at Page 137, the Supreme Court observed: “if in consequences of these decisions there would be an undesirable increase of litigation , that is the matter for the legislature.”

.....

The legislative intent in withholding a right of appeal against orders made under Section 66 was not to prolong litigation but to ensure its expeditious disposal. Where no right of appeal is granted by law, it would be illogical to permit two successive appeals to lie – First to the Court of Appeal and thereafter to the Supreme Court- whereas in situations where an appeal is expressly provided, only one appeals lies directly to the Supreme Court.

In this backdrop, I would strongly recommended that the legislature consider amending sections 9 and 10 of act No. 19 of 1990 interpolating the words “or revisionary” after the phrase “in the exercise of the appellate”, so that the provision would read: “a party aggrieved by a

judgment or order of the High Court in the exercise of the appellate or revisionary jurisdiction may appeal therefrom to the Supreme Court”

Thus, I hold that, in the instant application, the Petitioner has already exhausted the remedy available by the statute. Therefore, the Petitioner cannot invoke the same revisionary jurisdiction against the said order where the High Court exercises a parallel or concurrent jurisdiction with this Court. The Petitioner should have come by way of an appeal to this Court.

For the above-mentioned reasons, I dismiss the application without costs.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE.

JUDGE OF THE COURT OF APPEAL