

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

In the matter of an Appeal in terms of Article 138 and 154P(6) of the Constitution read with the Provisions of the High Court of the Provinces (Special Provisions) Act No.19 of 1990 in respect of a Judgment of the High Court exercising revisionary jurisdiction in terms of Article 154P(3) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with the High Court of the Provinces (Special Provisions) Act No.19 of 1990

**CA PHC / 06/21**

HC of Negombo: HCRA/ 448/20

MC of Negombo: M/1211

Central Environmental Authority  
No. 104,  
Denzil Kobbekaduwa Mawatha  
Battaramulla

**Complainant**

**-Vs-**

Hayleys Free Zone Ltd  
400, Deans Road,  
Colombo 10

**Accused**

**And then between**

Hayleys Free Zone Ltd  
400, Deans Road  
Colombo 10

**Accused-Petitioner**

**Vs.**

Central Environmental Authority  
No. 104,  
Denzil Kobbekaduwa Mawatha  
Battaramulla

**Complainant-Respondent**

The Attorney General  
Attorney General Department  
Colombo12.

**Respondent**

**AND NOW BETWEEN**

Hayleys Free Zone Ltd  
400, Deans Road  
Colombo 10

**Accused-Petitioner-Appellant**

**Vs.**

Central Environmental Authority

No. 104,  
Denzil Kobbekaduwa Mawatha  
Battaramulla

**Complainant-Respondent –Respondent**

The Attorney General  
Attorney General Department  
Colombo12.

**Respondent –Respondent**

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

**Counsel :** Anuil Silva, PC with Arindra Silva for the Accused- Appellant  
Anoopa de Silva, DSG for the Respondent

**Written** 20.02.2026 ( by the Accused-Appellant)

**Submissions:** 22.01.2026 (by the Respondent)

**On**

**Argued On :** 20.01.2026

**Judgment On:** 28.04.2026

### **JUDGEMENT**

**B. Sasi Mahendran, J.**

The Accused-Petitioner-Appellant (hereinafter referred to as the "Appellant") has filed this appeal seeking to set aside the order delivered by the learned High Court Judge of the Provincial High Court of the Western Province, holden in Negombo, dated 27<sup>th</sup>

January 2021, in Case No. HCRA 448/20, where the learned High Court Judge affirmed the order of the Learned Magistrate of Negombo on 12<sup>th</sup> March 2020 in Case No. M 1211.

**The facts and circumstances of this case are as follows,**

On or about 5 August 2019, the Complainant–Respondent-Respondent (hereinafter referred to as “the Respondent”) purported to institute proceedings against the Appellant under Section 136(1)(a) of the Code of Criminal Procedure Act. The allegation was that on or about 22<sup>nd</sup> of July 2019, at Katunayaka, the Appellant company did operate an industry engaged in solid waste recovery, recycling, and processing with a capacity of 10 or more metric tons per day, without obtaining an EPL (Environmental Protection License) punishable under Section 23A(3)(a) and Section 23A(3)(b) of the National Environmental Act Number 47 of 1980, as amended by Acts Number 56 of 1988 and 53 of 2000.

Following the purported institution of proceedings, the Learned Magistrate of the Magistrate’s Court of Negombo issued summons on the Appellant. On 19<sup>th</sup> September 2019, when the matter was called, an agent of the Appellant Company appeared before the Magistrate's Court of Negombo and raised the following 2 preliminary objections with regard to the maintainability of the plaint.

1. The principal enactment did not give the CEA the legal authority to file complaints under the said Act.
2. With regard to the non-availability of an Affidavit along with the plaint.

Thereafter, both parties presented their submissions and filed written submissions. On 12 March 2020, the Learned Magistrate delivered an order addressing only the second preliminary objection. By that order, the preliminary objection raised by the Appellant was overruled, and the matter was subsequently fixed for trial.

Being aggrieved by the order of the learned Magistrate the Appellant invoked the revisionary jurisdiction of the High Court of the Western Province, holden at Negombo, in Case No. HCRA 448/20.

After the filing of objections, the Court directed both parties to submit written submissions. Upon hearing both sides, the Court reserved judgment. On 27 January 2021, the Learned High Court Judge delivered the order dismissing the revision application and directed the Learned Magistrate to proceed with the trial.

Being aggrieved by the said Judgment of the Learned High Court judge, this appeal was filed by the Appellant.

When the matter was taken up for argument on 26 January 2026, counsel for the Appellant submitted that the Respondent, the Central Environmental Authority, lacked the authority to institute proceedings under the National Environmental Act No. 47 of 1980.

The question before us is whether the CEA, Respondent has powers to institute actions against anyone who violates the provision of Section 23 A (2) (a) and Section 23A(2)(b) and thereby committed an offence punishable under Section 23A(3)(a) and Section 23A(3)(b) of the National Environmental Act No. 47 of 1980, as amended by Acts Number 56 of 1988 and 53 of 2000.

The Respondent instituted actions against the Appellant in terms of Section 136(1)(a) of the Code of Criminal Procedure Act No 15 of 1979. The Section 136(1) reads as follows,

*“136*

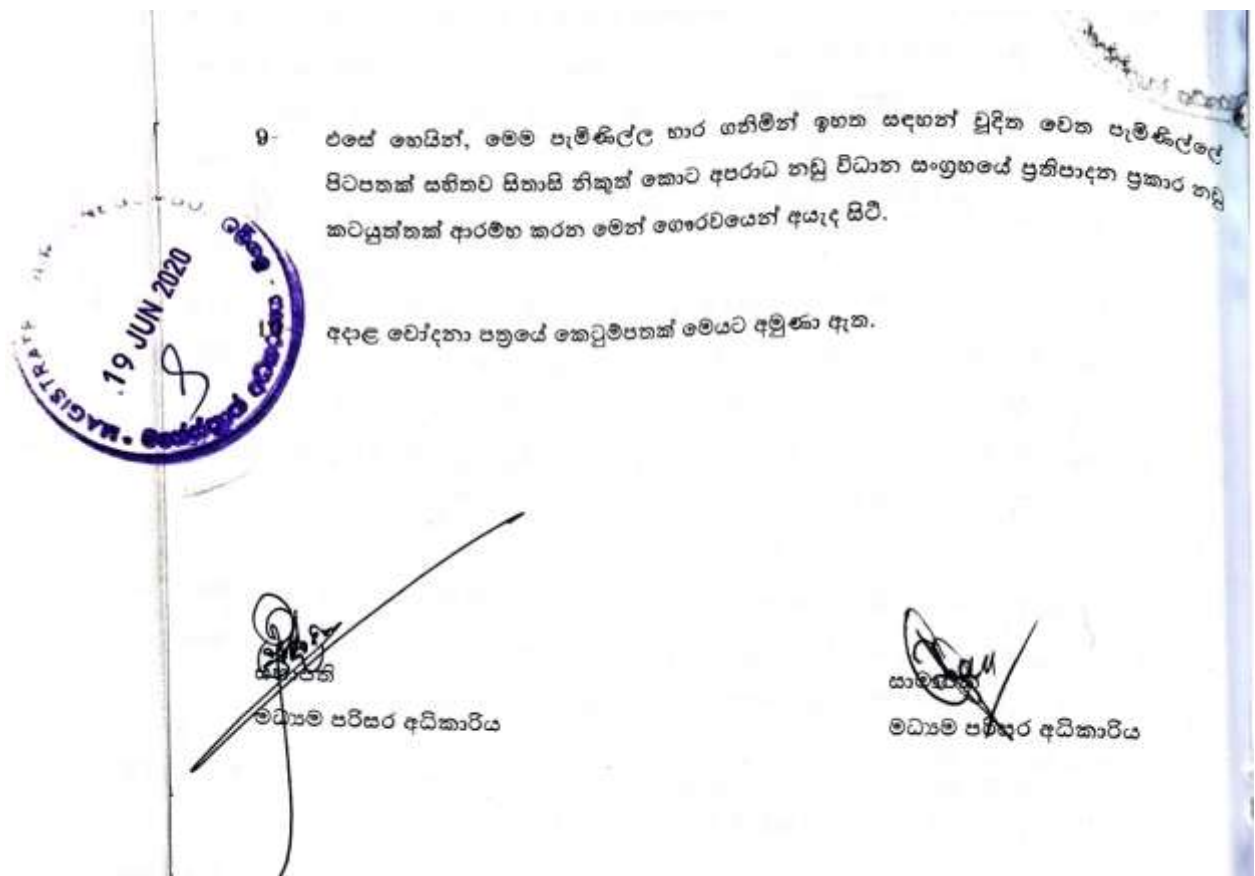
*(1) Proceedings in a Magistrate's Court Proceedings in shall be instituted in one of the following ways :-*

*(a) on a complaint being made orally or in writing to a Magistrate of such Court that an offence has been instituted committed which such court has jurisdiction either to inquire into or try provided that such a complaint if in writing shall be drawn and countersigned by a pleader and signed by the complainant; or*

*b) on a written report to the like effect being made to a Magistrate of such court by an inquirer appointed under Chapter XI or by a peace officer or a public servant or a servant of a Municipal Council or of an Urban Council or of a Town Council; or*

In the instant case, the Respondent has instituted actions under section 136(1)(a) of the Code of Criminal Procedure Act. When we peruse the said document, it was signed only by the competent authority.

It is pertinent to refer to the relevant document



According to Section 136(1) of the Code of Criminal Procedure Act, certain conditions must be satisfied before a person may lawfully institute proceedings.

- a. The complaint has been made orally or in writing
- b. The court should have the jurisdiction
- c. If it is in writing, it should be signed by the complainant and countersigned by a pleader

In the said case, the document was signed only by the complainant and was not countersigned by a pleader. Generally, Section 136(1)(a) of the Code of Criminal Procedure applies solely to private plaints. The Central Environmental Authority (CEA), established under the National Environmental Act No. 47 of 1980, derives its powers from that statute. However, it must be noted that the Act does not confer authority upon the CEA to institute criminal proceedings before a Magistrate's Court.

What is instituted? The term institute refers to the formal establishment, initiation, or commencement of a legal action, policy, or proceeding. Prosecution, on the other hand,

denotes the legal process of initiating and conducting a criminal case against an accused person, carried out by a government attorney (prosecutor) on behalf of the State.

It is pertinent to consider other statutory authorities in order to examine how they derive their power from the enabling legislation to institute criminal proceedings.

#### **Animals (Amendment) Act No. 10 of 2009**

*“37B. Every Government Veterinary Surgeon shall be deemed to be a peace officer within the meaning of the Code of Criminal Procedure Act, No. 15 of 1979, for the purpose of exercising in relation to any offence under this Act, any power conferred on a peace officer by that Act.”*

#### **Food Act No. 26 of 1980**

*“20. (1). A prosecution for an offence under this Act or any regulations made thereunder shall not be instituted*

*(a) except by an Authorized Officer; and*

*(b) after the expiration of a period of three months from the date of detection of that offence.*

*(2) Where at any time during the trial of any offence under this Act or any regulations made thereunder, the court is satisfied on the evidence adduced before it that any person other than the person charged with the offence was knowingly concerned in the commission of the offence, the court may notwithstanding subsection (1) (b); withdraw the charge against the person charged with the offence and proceed against that other person as though a prosecution has been instituted against that person.”*

#### **Sri Lanka Bureau of Foreign Employment Act No. 21 of 1985**

*“3. No prosecution under this section shall be instituted except with the sanction of the Secretary to the Ministry of the Minister.”*

## Forest Conservation Ordinance

*“49A. Penalty for Obstructing or assaulting forest officers.*

*Any person who threatens, intimidates, assaults or obstructs or in any way or interferes with a forest officer, police officer or any other officer authorised to act in that Behalf in the exercise, performance and discharge of his powers, duties and functions under this Ordinance shall be guilty of an offence and shall on conviction be liable to imprisonment of either description for a term not less than three years and not exceeding seven years or to a fine not less than fifty thousand rupees and not exceeding one hundred and fifty thousand rupees, or to both such fine and imprisonment:*

*Provided that a prosecution shall not be instituted under this section, except with the sanction of an officer not below the rank Divisional Forest Office Gover Superintendent of Police.”*

Upon perusal of the said Act, it is evident that no provision expressly confers authority upon the Respondent to institute criminal proceedings in the Magistrate’s Court. Both the Learned Magistrate and the Learned High Court Judge failed to consider whether the Respondent possessed the requisite power to institute action under Section 136(1)(a) of the Code of Criminal Procedure.

During the stage of argument, it was submitted that, in terms of Section 27 of the Act, all members, officers, and servants of the Authority are deemed to be public servants and, therefore, could institute criminal proceedings in the Magistrate’s Court. However, this provision merely extends the definition of “public servant” for the purposes of the Penal Code and does not, in itself, confer prosecutorial authority to initiate criminal proceedings.

Section 27 reads as follows,

*“All members, officers, and servants of the Authority shall be deemed to be public servants within the meaning of and for the purposes of the Penal Code.”*

There is no indication that the particular officer is deemed to be a peace officer within the meaning of the Code of Criminal Procedure Act. Therefore, they have prevented initiating action under Section 136(1) (b) of the Code of Criminal Procedure Act. It should be noted that there is power given to the director general or his officers to make an application to

the court for the closure of that institution after the court has found that the person has been convicted. It is pertinent to refer to section 23 A (4) of the said Act.

*“Section 23 A*

*(4) Where any person convicted under subsection (3), continues to carry on such activity without obtaining a licence within the time determined by court under that subsection, the court shall upon on application for closure being made by the Director-General or any officer authorised in that behalf by the Director-General, order the closure of the factory or premises in which such prescribed activity is being carried on, until such person obtains a licence under subsection (2) and copy of the licence so obtained is produced before court.”*

From the above section, it is clear that the Authority has not been vested with the power to institute criminal proceedings against a person. Its role arises only after a person has been found guilty, at which stage the Authority may approach the Court for further action.

The fact that the authority does not have the legal authority to institute proceedings has been further highlighted by the proposed amendment to the Environmental Authority Act Gazetted on 22.04.2026. Thus, one of the proposed amendments to enable the authority to institute proceedings is as follows;

*“35. Section 27 of the principal enactment is hereby repealed and the following substituted therefor:-*

*27. All members, officers and employees of the Authority shall be deemed to be –*

*(a) public servants within the meaning of, and for the purposes of the Penal Code (Chapter 19); and*

*(b) public servants within the meaning of section 136 of the Code of Criminal Procedure Act, No. 15 of 1979 for the purpose of instituting proceedings in respect of offences under this Act.”*

For the foregoing reasons, I hold that the Respondent has instituted this action without lawful authority. Consequently, the Learned Magistrate lacked jurisdiction to entertain the matter.

Accordingly, I set aside the order of the Learned Magistrate dated 12 March 2020 and the order of the Learned High Court Judge dated 27 January 2021.

Appeal Allowed

**JUDGE OF THE COURT OF APPEAL**

**Amal Ranaraja, J.**

**I AGREE**

**JUDGE OF THE COURT OF APPEAL**