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

In the matter of an Application for Revision made under and in terms of Article 138 of Constitution of the Democratic Socialist Republic of Sri Lanka read together with Section 11 of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990.

Court of Appeal Case No:
CPA 61/2023
High Court Revision Application No:
HCRA 45/2023
Magistrate's Court of Colombo
Case No: B 3200/4/18

Ali Asger Shabbir Gulamhusein,
No.980/4, Wickramasinghe Place,
Ethul Kotte.

SUSPECT-PETITIONER

Vs.

1. P. V. S. S. Karunathilake
   Officer-in-Charge,
   Homicide Investigation Unit,
   Criminal Investigation Department,
   Colombo 01.

2. Kavinda Piyasekara,
   Director,
   Criminal Investigation Department,
   Colombo 01.

3. Deputy Inspector General of Police,
   Criminal Investigation Department,
   Colombo 01.

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

RESPONDENTS

AND NOW BETWEEN

Ali Asger Shabbir Gulamhusein,
No.980/4, Wickramasinghe Place,
Ethul Kotte.

SUSPECT-PETITIONER-PETITIONER

Vs.

1. P. V. S. S. Karunathilake
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   Criminal Investigation Department,
   Colombo 01.

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

RESPONDENT-RESPONDENTS

Idris Shabbir Gulamhusein,
No 11/1, Havelock Road,
Colombo 05.

INTERVENIENT-RESPONDENT

BEFORE : **P. Kumararatnam, J.**
R. P. Hettiarachchi, J.

COUNSEL : **Dappula De Levera, PC with Dimithra Abeysekara instructed by Sanjay Edirisinghe for the Suspect-Petitioner-Petitioner.**
Suharshi Herath, DSG, for the Respondents.
Rienzie Arsecularatne, PC with Dilini Silva for the Intervenient Respondent.

ARGUED ON : **19/12/2025.**

DECIDED ON : **03/06/2026.**

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ORDER

P. Kumararatnam, J.

The Suspect-Petitioner-Petitioner (hereinafter referred to as the Petitioner) in this case has filed this Revision Application by way of a Petition dated 31.05.2023 to invoke the Revisionary Jurisdiction of this Court in order to revise the order of the Learned High Court Judge of Colombo dated 11. 05. 2023 of Case No. HCRA 45/2023.

By way of this Order dated 11.05.2023, the Learned High Court Judge had refused to issue notice on the Respondent-Respondents (hereinafter referred to as the Respondents) and had dismissed the said Application. The said Order was made by the High Court in the exercise of its Revisionary Jurisdiction over an Application made by the Petitioner to revise the Order of the Magistrate's Court of Colombo in Case No. B 3200/04/18 dated 17. 03. 2023.

As such, the Petitioner has filed this Court of Appeal matter namely CPA-061/2023 as the Revision Application stating that he is permitted in law to invoke such Revisionary Jurisdiction of this Court under Article 138 of the Constitution to be read together with Section 11 of the High Court of the Provinces (Special Provisions) Act 19 of 1990.

The petitioner has cited *inter alia* the following exceptional circumstances that warrant the exercise of this Court's Revisionary jurisdiction:

i. The Learned High Court Judge has erred in law and misdirected himself by proceeding to make Order justifying the Learned Magistrate's Order that the inquest held was bad in law as the inquirer had acted negligently and in dereliction of her duty and thereby justifying the holding of another inquest on a wrong legal premise.
ii. The Learned High Court Judge has erred in law and misdirected himself by failing to appreciate that the Learned Magistrate had failed to consider fresh or new evidence when deciding to hold an inquest.
iii. The Learned High Court Judge has erred in law and misdirected himself by proceeding to make Order inter alia dismissing the Application of the Petitioner by *inter alia* ruling that proof of the commission of a crime would justify the holding of a new inquest.
iv. The Learned High Court Judge has erred in fact and law and misdirected himself in interpreting the ratio and decision of G.A.D. Seneviratne v Attorney General 71 NLR 439 by ruling that the Petitioner is precluded from revising the impugned Order of the Learned Magistrate by

interpreting the inability of a party to move in revision in respect of the findings of an inquirer as against a Judicial Order to proceed with the conduct of an inquest by a Magistrate not acting as an inquirer.

v. The Learned High Court Judge failed to appreciate settled law that an inquest cannot be subject to judicial review and erred in law and misdirected himself by proceeding to validate the Learned Magistrate's Order to conduct a new inquest by inter alia in effect and impliedly acting in judicial review and invalidating the first inquest.

vi. The exceptional circumstances that the Learned High Court Judge has failed to give due regard to in the High Court of Colombo Revision Application No. HCRA/45/2023 (as mentioned in the Petition).

The Learned Counsel for the Respondents have objected on a jurisdictional basis, founded on the claim that allowing a revision application in the Court of Appeal against a High Court's revisionary order would result in a "revision on revision" scenario which is not permitted within the applicable law. The argument brought forward on this basis is that the Court of Appeal lacks jurisdiction to entertain an application for revision against a judgment or order entered by the High Court in the exercise of its appellate or revisionary jurisdiction.

The pertinent issue that must therefore be considered is whether the Court of Appeal has the jurisdiction to revise an Order made by the High Court of Colombo in the exercise of its revisionary jurisdiction.

The relevant Sections under the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 have been reproduced as follows:

9. Subject to the provisions of this Act or any other law, any person aggrieved by

> (a) a final order, judgment, decree or sentence of a High Court established by Article 154P of the Constitution in the exercise of the appellate jurisdiction vested in it by paragraph (3) (b) of Article 154P of the Constitution or section 3 of this Act or any other law, in any

matter or proceeding whether civil or criminal which involves a substantial question of law, may appeal therefrom to the Supreme Court if the High Court grants leave to appeal to the Supreme Court *ex mero motu* or at the instance of any aggrieved party to such matter or proceedings :

Provided that the Supreme Court may, in its discretion, grant special leave to appeal to the Supreme Court from any final or interlocutory order, judgment, decree or sentence made by such High Court, in the exercise of the appellate jurisdiction vested in it by paragraph (3) (b) of Article 154P of the Constitution or section 3 of this Act, or any other law where such High Court has refused to grant leave to appeal to the Supreme Court, or where in the opinion of the Supreme Court, the ease or matter is fit for review by the Supreme Court:

Provided further that the Supreme Court shall grant leave to appeal in every matter or proceeding in which it is satisfied that the question to be decided is of public or general importance; and

(b) a final order, judgment or sentence of a High Court established by Article 154P of the Constitution in the exercise of its jurisdiction conferred on it by paragraph (3) (a), or (4) of Article 154P of the Constitution may appeal therefrom to the Court of Appeal.

11.

(1) The Court of Appeal shall have and exercise, subject to the provisions of this Act or any other law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by any High Court established by Article 154P of the Constitution in the exercise of its jurisdiction under paragraph (3) (a), or (4) of Article 154P of the Constitution and sole and exclusive cognizance

by way of appeal, revision and restitution interim of all causes, suits, actions, prosecutions, matters and things of which such High Court may have taken cognizance :

Provided that, no judgment, decree or order of any such High Court, shall be reversed or varied on account of any error, defect, or irregularity which has not prejudiced the substantial rights of the parties or occasioned a failure of justice.

(2) The Court of Appeal may in the exercise of its jurisdiction, affirm, reverse, correct or modify any order, judgment, decree or sentence according to law or it may give directions to any High Court established by Article 154P of the Constitution or order a new trial or further hearing upon such terms as the Court of Appeal shall think fit.

(3) The Court of Appeal may farther receive and admit new evidence additional to, or supplementary of, the evidence already taken in any High Court established by Article 154P of the Constitution touching the matters at issue in any original case, suit, prosecution or action, as the justice of the case may require.

Further, Article 138(1) of the Constitution provides that:

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:

Provided that no judgement, decree or order of any court shall be reversed or varied on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice.

As clearly laid out in the above Sections of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as well as Article 138 of the Constitution, it is quite evident that the Court of Appeal has been granted appellate jurisdiction, quite specifically over the orders and judgments of the High Court. However, the point in contention in this case is whether the above laid out laws provide for High Court judgments made in the exercise of its revisionary powers; on which this Court would like to emphasize the exclusion of such High Court revisionary orders from the Court of Appeal's jurisdiction.

This would be so, to prevent a "revision on revision" scenario where the Court of Appeal exercises its revisionary jurisdiction over a High Court judgment where the revisionary jurisdiction had already been exercised. The underlying objective in preventing such "revision on revision" scenarios is to avoid the creation of multiple levels of the same revisionary powers being exercised, over the same matter.

In this matter, the Petitioners have relied on the Supreme Court judgment of Aluwihare, J. in the case of **Gunawardane v Muthukumarana** [2020] 3 SLR 306 to support their arguments against the jurisdictional objection that was raised. However, it must be noted that in this case, the question of law that needed to be determined by the Supreme Court was, as follows:

> *"Having failed to exercise the right to file an appeal in terms of Section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended, could a person invoke the revisionary jurisdiction of the Court of Appeal referred to in Article 138 of the Constitution of the Republic of Sri Lanka in order to canvass a decision made by a Provincial High Court exercising its appellate powers?"*

As such, it is noted by this Court that the question of law that was dealt in the above mentioned case differs from the question of law in this matter, as the case of **Gunawardane v Muthukumarana** examines whether the Court of Appeal can exercise its revisionary jurisdiction over High Court decisions made in within its appellate jurisdiction, whereas, on the other hand, in this matter before this Court, the pertinent legal issue is whether the Court of Appeal can exercise its revisionary jurisdiction over decisions **where the revisionary jurisdiction has already been exercised by the High Court**.

Similarly, the Petitioners have relied on the case of **Abeywardene v Ajith Silva** [1998] 1 SLR 134, where it was held that:

> *"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."*

However, this was clearly examined and revisited in **SC/APPEAL/65/2025** decided on 10.10.2025. It was held by Samayawardhena, J. that:

> *"A party dissatisfied with a judgment of the Provincial High Court cannot create a third tier of appellate scrutiny by describing the route as revision or restitutio in integrum. In the impugned order, the Court of Appeal, following Gunawardane v. Muthukumarana [2020] 3 Sri LR 306, held that such a party may invoke its revisionary jurisdiction on the basis that it is distinct from its appellate jurisdiction. I am unable to agree with that view.*
>
> *Consider, for instance, a situation in which a Provincial High Court, in the exercise of its appellate jurisdiction, enters judgment for the plaintiff. Two defendants, independently contesting the case, thereafter pursue divergent appellate remedies: one appeals to the Supreme Court with leave obtained, whilst the other files a revision application before the Court of Appeal. If the*

Supreme Court were to affirm the judgment of the Provincial High Court while the Court of Appeal were simultaneously to set it aside, the result would be an untenable jurisdictional conflict. Such a situation would not only create inconsistency and uncertainty in the administration of justice, but would also erode the hierarchical finality envisaged by the Constitution, which recognises the Supreme Court as the apex judicial body.

Recognition of such a practice would also encourage "judge shopping" or "forum shopping" to secure a favourable forum, which a Five Judge Bench of this Court in JMC Jayasekara Management Centre (Pvt) Limited v. Commissioner General of Inland Revenue [2024/25] BLR 557 at 566 emphatically declared "must be stopped at any cost".

It was also clearly highlighted in this case that:

"A party cannot pursue successive appeals before two courts of coordinate jurisdiction in respect of the same matter. This strikes at the very root of the issue. Such a practice is inimical to legislative intent, imposes unnecessary burdens on the judicial system, and undermines the principle of finality in litigation. These considerations make clear that concurrent jurisdiction was intended to provide an alternative forum for appellate review, not to create an additional tier in the appellate hierarchy."

As such, it was determined that appeals from the Provincial High Court appellate decisions must be dealt with by the Supreme Court, and not the Court of Appeal. It was noted above that a different procedural label, whether it was named "appeal", "revision" or "restitutio in integrum" cannot make way for the creation of a third tier of appellate scrutiny. Thus, the Court of Appeal would lack jurisdiction to deal with an application for revision against a judgment or order of the High Court in its exercise of appellate or revisionary jurisdiction.

Further, in **SC/APPEAL/65/2025** it was also noted that the case of ***Gunawardane v. Muthukumarana*** had not been followed in several subsequent decisions, such as **Abeydasa v. People's Bank** (CA/CPA/124/2021, CA Minutes of 05.06.2023) and **Malwatta v. Softlogic Finance PLC and Others** (CA/CPA/152/2022, CA Minutes of 31.08.2023). It was observed by the Court that in the latter case it involved a party who, being dissatisfied with a judgment of the Provincial High Court of Civil Appeal delivered in the exercise of its revisionary jurisdiction, sought once again to invoke the revisionary jurisdiction of the Court of Appeal against the judgment of the Provincial High Court. It was held in this case that:

> *"Moreover, if litigants are allowed to file a revision application in the Court of Appeal against a judgment or order given by the Provincial High Court exercising revisionary jurisdiction it would lead to unnecessary duplication of court proceedings. This could result in a revision application being filed in the Court of Appeal while an appeal is pending in the Supreme Court. It would also have the effect of the Court of Appeal being given an opportunity to overrule a judgment of the Supreme Court if the revision application is successful while the appeal to the Supreme Court is not, which is an unintended absurdity."*

Further, in the case of **Seylan Bank PLC v. Christobel Daniels** (CA/PHC/APN/58/2014, CA Minutes of 14.12.2016), Nawaz J. held that:

> *"The structure of Article 138 would also prevent this Court exercising revisionary jurisdiction when the sole and exclusive jurisdiction has been vested in the Supreme Court. The revisionary jurisdiction is bestowed in the Court of Appeal thus in Article 138 of the Constitution.*
>
> *"..... and sole and exclusive cognizance by way of appeal, revision and restitutio in integrum, of all causes, suits, actions, prosecutions, matters and things which such High Court, Court of First Instance, tribunal or other institution may have taken cognizance".*

It is crystal clear beyond any scintilla of doubt that the revisionary power of this Court lies only against orders made by such High Court, Court of First Instance, tribunal or other institution when they have taken cognizance of causes, suits, actions, prosecutions, matters and things. The words "such High Court, Court of First Instance, tribunal or other institution" must be read ejusdem generis and such collocation of words read together with the words causes, suits, actions, prosecutions, matters and things clearly indicates that these Courts exercise original jurisdiction. Only when the High Court of First Instance, tribunal or other institution has exercised original jurisdiction, revision lies to this court. In other words, only when the High Court has exercised original jurisdiction, the revisionary jurisdiction of this Court can be invoked. In my view Article 138 intentionally suggests such a deliberate intendment of Parliament and when the High Court has sat in its appellate jurisdiction as has happened in this case, no revision lies to this Court."

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

"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. 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."

Citing the above case, in **CA (PHC) APN No. 33/2024**, in the Order dated 30.10.2025, it was held by B. Sasi Mahendran, J. that:

> *"We 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."*

Further, this was reaffirmed in **CA/CPA/0073/2025** dated 31.10.2025, where K. M. S. Dissanayake J., by citing the above-mentioned authorities, held that:

> *"In view of the law set out above, I would hold that, the Petitioners cannot invoke the revisionary jurisdiction of this Court against the order dated 18.07.2025 made by the learned High Court Judge of the Southern Province holden in Hambantota (P3) in the exercise of concurrent or parallel revisionary jurisdiction vested in it by Article 154P(3)(b) to be read with Article 138 of the Constitution and section 5 and 12 of the Act for; the Petitioners have already exhausted the remedy available by the law as enumerated above, and therefore, the Petitioners are now, debarred from invoking the concurrent or parallel revisionary jurisdiction of this Court against the said order of the learned High Court Judge of the Southern Province holden in Hambantota made in the exercise of concurrent or parallel jurisdiction, as rightly, contended by the Respondent."*

Thus, as considered in the number of authorities cited above, it has been clearly highlighted that in a situation where a Provincial High Court has exercised its appellate or revisionary jurisdiction, a party dissatisfied with that particular appellate decision cannot attempt to create a second appellate/revision application through revision by the Court of Appeal. Rather, an appeal must be made to the Supreme Court.

Allowing such a "revision on revision" scenario would permit conflicting appellate decisions to be brought about, where inconsistent and conflicting outcomes would result in institutional inefficiency; which defeats the very purpose of the introduction of Provincial High Courts into the Court hierarchy; which is to expedite justice.

Considering the above, I hold that the jurisdictional objection has merit, and is maintainable in relation to this instant application in revision.

Therefore, I dismiss this instant application in revision *in limine* with costs.

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL