

**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 read with Section 364 of
the Code of Criminal Procedure Act No.
15 of 1979.**

The Democratic Socialist Republic of Sri Lanka

Revision Application
No. CA/CPA/44/2026

Complainant

Vs.

High Court of Colombo
Case No. HC/TAB/504/2025

1. Samarappulige Niraj Roshan
2. Samarappuli Hewage Uchitha Nishan
Dhammika
3. Kadupitiyage Chandana Kumara
4. Gamlath Arachchi Appuhamilage
Shashika Chanuka Gamlath
5. Palihapitiya Gamage Jayalath
6. Hettipathirana hennalage Priyanka
Sanjeevani
7. Peskuwal Fonseka Upali Padmasiri
8. Ranasinghalage Damith Chathuranga

Accused

AND BETWEEN

Samarappulige Niraj Roshan,
No. 363/3,
Gemunu Mawatha,
Pelenwatta,
Pannipitiya.

1st Accused-Appellant-Petitioner

Vs.

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

Respondent

AND NOW BETWEEN

Samarappulige Niraj Roshan,
No. 363/3,
Gemunu Mawatha,
Pelenwatta,
Pannipitiya.

1st Accused-Appellant-Petitioner-Petitioner

Vs.

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

Respondent-Respondent

Before: **Amal Ranaraja, J.**
 Dr. Sumudu Premachandra, J.

Counsel: Maithri Gunarathne, P.C. with Iresh Senevirathne, Kisal Senanayake and Methmi Ariapperuma for the 1st Accused-Appellant-Petitioner-Petitioner.

Oswald Perera, S.C. for the Respondent-Respondent.

Supported on: 03.08.2026

Decided on: 21.09.2026

ORDER

AMAL RANARAJA, J.

1. The 1st accused-appellant-petitioner-petitioner (hereinafter referred to as the “petitioner”) along with others have been indicted in a trial-at-bar before the High Court in case number HC TAB 504/2019.
2. The petitioner together with the other accused, have been indicted of twenty-eight charges, out of which twelve have been leveled against the petitioner. At the conclusion of the trial, by judgment dated September 19, 2025, the learned Judges of the trial-at-bar before the High Court have convicted the petitioner of the twenty-seventh and twenty eighth charges, which are as follows:

Charge 27

On or about August 31, 2015, in *Arawwala*, in the district of *Colombo*, within the jurisdiction of this Court, the petitioner had in his custody an elephant which was not registered and had no

permit which the petitioner had intimated as the elephant bearing registration no. 350; and have thereby committed an offence punishable under section 22A(7) read with section 22A(1) of the Fauna and Flora Protection Ordinance as amended by Act No. 49 of 1993 and Act No. 22 of 2009.

Charge 28

In the same transaction as above, on or about August 31, 2015, in *Arawwala*, in the district of *Colombo*, within the jurisdiction of this Court, the petitioner had in his custody, an elephant which was not registered and had no permit which the 01st Accused had intimated as the elephant bearing registration No: 350 and knowing or having reason to believe that the said elephant was a stolen elephant and was Public property; and have thereby committed an offence punishable under section 5(3) of the Offences against Public Property Act No. 12 of 1982 as amended by Act No. 76 of 1988 and Act No. 28 of 1999 read with section 22 A (12) of the Fauna and Flora Protection Ordinance as amended by Act No. 49 of 1993 and Act No.22 of 2009.

3. Upon conviction, the learned Judges of the trial-at-bar before the High Court have proceeded to sentence the petitioner as follows:
 - i. Five years rigorous imprisonment and a fine of Rs. 200000.00 with a term of three months imprisonment in default, in respect of the twenty-seventh charge.
 - ii. Fifteen years rigorous imprisonment and a fine of Rs. 20400000.00 with a term of four years imprisonment in default, in respect of the twenty eighth charge.

4. Being aggrieved by the judgment, conviction and the sentencing order, the petitioner has filed an appeal to the Supreme Court, in terms of section 451(3) of the Code of Criminal Procedure Act No. 15 of 1979 read with Article 127 of the Constitution.
5. Subsequently, whilst the appeal was pending in the Supreme Court, the petitioner has filed a bail pending appeal application dated October 24, 2025, before the trial-at-bar before the High Court. By the order dated February 27, 2026, the learned Judges of the trial-at-bar before the High Court have refused to enlarge the petitioner, on bail pending appeal.
6. The petitioner being aggrieved by the order of the learned Judges of the trial-at-bar before the High Court dated February 27, 2026, has preferred the instant revision application to this Court.
7. In preferring the instant application to this Court, the petitioner has sought to invoke the revisionary jurisdiction of this Court granted to it in terms of Article 138 of the Constitution.
8. Hence, the question before this Court is whether the revisionary jurisdiction of this Court can be invoked to revise an order delivered by the judges of a trial-at-bar before the High Court.
9. Section 451 of the Code of Criminal Procedure Act No. 15 of 1979 reads as follows:

(1) In every case of a trial at Bar before the High Court under section 450, the relevant provisions of the Judicature Act shall apply on the question of the nomination of the Judges of the Court and the place where such trial shall be held.

(2) The Chief Justice may nominate more than one Bench of Judges to constitute High Courts at Bar to hear trials in the same zone or province, and the benches so nominated may commence and continue their hearings at the same time.

(3) Anything to the contrary in this Code or any other law notwithstanding an appeal shall lie from any judgement, sentence or order pronounced at a trial under section 450. Such appeal shall be to the Supreme Court and shall be heard by a Bench of not less than five Judges of that Court nominated by the Chief Justice- It shall be lawful for the Chief Justice to nominate himself to such Bench.

(4) The provisions in this Code and of any other written law governing appeals to the Court of Appeal from judgments, sentences and orders of the High Court in cases tried without a jury shall, mutatis mutandis, apply to appeals to the Supreme Court, under sub section (3) from judgments, sentences and orders pronounced at a trial held before the High Court at Bar under section 450.

10. Section 451(3) of the Code of Criminal Procedure confers the appellate jurisdiction to the Supreme Court, in respect of any judgments and orders pronounced by a trial-at-bar before the High Court. Therefore, where such jurisdiction is expressly conferred, this Court cannot exercise its appellate or revisionary jurisdiction over the same matter, solely on the premise of Article 138 of the Constitution.

11. In *W.T.S. Nilantha Fernando Vs. P.M.S. Nilanthi Perera*, S.C. Appeal 65/2020 decided on 10.10.2025, Samayawardhane, J. has stated:

“The rationale is clear and straightforward. Article 138 of the Constitution is not an entrenched provision but only an enabling

provision. As Article 138(1) expressly states, the jurisdiction of the Court of Appeal to be exercised “by way of appeal, revision and restitutio in integrum” is “subject to the provisions of the Constitution or of any law”. This makes it abundantly clear that the scope and availability of such jurisdiction are dependent upon specific constitutional or statutory authority. Article 138(2) reinforces this position by stipulating that “The Court of Appeal shall also have and exercise all such powers and jurisdiction, appellate and original, as Parliament may by law vest or ordain.”

12. In *Attorney General Vs. Perpetual Treasuries Limited and Others*, S.C. Appeal 161/2023, decided on 01.06.2026, Samayawardhena, J. has outlined the rationale underpinning this dicta as follows:

“Where the legislature has vested appellate jurisdiction in the Supreme Court, whether by way of direct appeal or with leave obtained, the Court of Appeal cannot exercise concurrent jurisdiction over the same matter by way of appeal, an application for leave to appeal, revision, or restitutio in integrum. To permit such parallel recourse may, inter alia, result in conflicting determinations, thereby creating an anomalous situation which the legislature could not have contemplated. The legislative scheme, in providing for a direct appeal or an appeal with leave to the Supreme Court, is intended to ensure expedition and finality, and not to permit a multiplicity of proceedings resulting in delay and uncertainty.”

13. The legal effect of this is that, while this Court possesses its revisionary jurisdiction in respect of orders pronounced by the High Court, its jurisdiction does not extend to those pronounced by a trial-at-bar before the High Court.

14. In those circumstances, I am inclined to conclude that this Court does not have jurisdiction to entertain the instant application. Accordingly, I proceed to dismiss the same in the first instance, but make no order regarding costs.

Application dismissed.

Judge of the Court of Appeal

DR. SUMUDU PREMACHANDRA, J.

I agree

Judge of the Court of Appeal