

**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.**

Officer In Charge,
Police Station,
Ruwanwella.

Court of Appeal
Revision Application
No. CA/CPA/57/2026

Complainant

Vs.

High Court of Kegalle
Case No. HC/7299/2025

1. Hetti Arachchilage Jayatilaka,
Minwana,
Molagoda,
Kegalle.
2. Athugalge Darshana Nirmana
Chandrasekara,
No. B 8/3,
Godaliyedda Watta,
Halmessa,
Morontota.

Accused

3. Kahatagahawatte Gedara Karunatilaka,
Kivulpola,
Mologoda,
Kegalle.

Registered Owner

AND BETWEEN

Kahatagahawatte Gedara Karunatilaka,
Kivulpola,
Mologoda,
Kegalle.

Registered Owner-Petitioner

Vs.

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

Respondent

2. Officer-in-Charge,
Police Station,
Ruwanwella.

Complainant-Respondent

3. Hetti Arachchilage Jayatilaka,
Minwana,
Molagoda,
Kegalle.
4. Athugalge Darshana Nirmana
Chandrasekara,
No. B 8/3,
Godaliyedda Watta,
Halmessa,
Morontota.

Accused-Respondents

AND NOW BETWEEN

Kahatagahawatte Gedara Karunatilaka,
Kivulpola,
Mologoda,
Kegalle.

Registered Owner-Petitioner-Petitioner

Vs.

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

Respondent-Respondent

2. Officer-in-Charge,
Police Station,
Ruwanwella.

Complainant-Respondent-Respondent

3. Hetti Arachchilage Jayatilaka,
Minwana,
Molagoda,
Kegalle.
4. Athugalge Darshana Nirmana
Chandrasekara,
No. B 8/3,
Godaliyedda Watta,
Halmessa,
Morontota.

Accused-Respondents-Respondents

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

Counsel: Dr. Sunil Cooray with Hemanthi Botheju for the Registered
 Owner-Petitioner-Petitioner.

Supported on: 08.07.2026

Decided on: 31.07.2026

ORDER

AMAL RANARAJA, J.

1. The petitioner-petitioner (hereinafter referred to as the “petitioner”) is the registered owner of the vehicle bearing registration number SG LB-9798. He has employed the first accused-respondent-respondent (hereinafter referred to as the “first accused”) to transport old rubber trees as firewood to tea factories.
2. On September 03, 2020, the first accused has requested permission to use the vehicle to transport timber belonging to the second accused-respondent-respondent (hereinafter referred to as the “second accused”). The petitioner has granted his permission for the intended purpose.
3. Later the same day, the petitioner has learned that the first and second accused have been arrested by the Police, along with the seizure of the said vehicle for allegedly transporting timber exceeding the scope of a valid permit.
4. Thereafter, the officer in charge of the *Ruwanwella Police Station* has filed action in the *Magistrates Court of Ruwanwella* against the first and second accused in Case No. 88328, for transporting Jack, Mahogany and Teak timber without a valid permit, an offence punishable in terms of section 25(2) read with section 40(1)(a) and (b) of the Forest Ordinance No. 16 of 1907 (as amended).
5. Both the first and second accused upon pleading guilty to the charge has been convicted of the same and sentenced.
6. Subsequently, a confiscation inquiry has been held regarding the vehicle bearing registration number SG LB-9798. At the conclusion of the

inquiry, by order dated April 24, 2025, the learned Magistrate had ordered the confiscation of the said vehicle.

7. Aggrieved by the order, the petitioner has filed an application in revision [7299/ඉබ්/2025] in the *High Court of Kegalle* in terms of Article 154P (3)(b) of the Constitution read together with Article 138 of the Constitution and Section 7 of the Provincial High Court (Special Provisions) Act No. 19 of 1990.
8. The learned High Court Judge by his order dated May 15, 2026, has dismissed the revision application and affirmed the order of the learned Magistrate dated April 24, 2025.
9. The petitioner also being aggrieved by the order of the learned High Court Judge dated May 15, 2026, has preferred the instant revision application to this Court.
10. 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.
11. Hence, the question before this Court is whether the revisionary jurisdiction of this Court can be invoked in respect of an order of a High Court made, in the exercise of its revisionary powers vested in it under Article 154P (3)(b) of the Constitution.
12. Following the 13th Amendment to the Constitution, Section 5 of the High Court of Provinces (Special Provinces) Act No. 19 of 1990 read together with Article 154P (3)(b) of the Constitution vested revisionary jurisdiction in the High Court of Provinces.

13. Article 154P (3)(b) and Article 154P (6) of the Constitution provides 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."

14. Section 5 of the High Court of Provinces (Special Provisions) Act No. 19 of 1990 reads as follows:

"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 Province 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."

15. In the case of *Sharif and Others vs. Wickramasuriya and Others* [2010] 1 SLR 255, Eric Basnayake J. stated:

"I am of the view that the jurisdiction enjoyed by the Court of Appeal through Article 138 remains intact. Through Article 138 one has the liberty to invoke the jurisdiction of the Court of Appeal or to resort to a Provincial High Court in terms of Article 154P (3) (b). If one chooses to go to the High Court, an appeal would lie to the Supreme Court with leave first obtained from the High Court (Section 9 of the Act 19 of 1990). If one invokes the jurisdiction of the Court of Appeal under Article 138 an appeal would lie from any final order or judgement of the Court of Appeal to the Supreme Court with leave of Court of Appeal first obtained (Article 128(1) of the Constitution). It is thus clear that both courts enjoy concurrent jurisdiction on matters referred to in Article 154P (3) (b). The jurisdiction enjoyed by the Court of Appeal had not been disturbed by Articles of the Constitution or by the Acts of Parliament."

16. Accordingly, where a revision application has been considered by a High Court in respect of an order of a Magistrates Court, it may only come to this Court by way of appeal as per Article 138 of the Constitution.

17. In *Muththusamy Balaganeshn 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."

18. In *Welisarage Lakshman Nishantha Fernando v. The Hon. Attorney General and Another*, CA/MC/RE Application No. 04/2017, E.A.G.R. Amrasekara, 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."

19. As the petitioner has exhausted the remedy by way of a revisionary application in the *High Court of Kegalle*, he cannot invoke the jurisdiction of this Court in respect of the instant application as both courts exercise a concurrent jurisdiction.

20. In those circumstances, I dismiss the application without costs.

Application dismissed.

Judge of the Court of Appeal

DR. SUMUDU PREMACHANDRA, J.

I agree

Judge of the Court of Appeal