

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

**In the matter of an application under
and in terms of Article 138 and 139 of
the Constitution of the Democratic
Socialist Republic of Sri Lanka.**

S.H. Chandana
Public Health Inspector and
Authorized Officer in terms of Food Act.
Udagomadiya.

Plaintiff

**Court of Appeal Case No:
CPA 62/2026**

Vs.

High Court of Tangalle
Case No. 12/2026 Revision

Magistrates Court of Walasmulla
Case No. 83769 PHI

1. Gayan Lakmal Weerakoon
989/A/07,
Weeraketiya Road,
Middeniya.
2. Sarath Wijayananda Alahakoon
No. 9/C, 6th Lane,
Nawala Road,
Rajagiriya.
3. Walisinghe Dharmasiri Alahakoon
No. 174,
Stanley Thilakawardhana Mawatha,
Nugegoda.

4. Dayananda Waniganayaka Yapa
Kumanayake
No. 59/4, St. Anthony's Road,
Kirimetiyagara,
Kadawatha.

Defendants

AND

1. Gayan Lakmal Weerakoon
989/A/07,
Weeraketiya Road,
Middeniya.
2. Sarath Wijayananda Alahakoon
No. 9/C, 6th Lane,
Nawala Road,
Rajagiriya.
3. Walisinghe Dharmasiri Alahakoon
No. 174,
Stanley Thilakawardhana Mawatha,
Nugegoda.
4. Dayananda Waniganayaka Yapa
Kumanayake
No. 59/4, St. Anthony's Road,
Kirimetiyagara,
Kadawatha.

Defendant-Petitioner

Vs,

S.H. Chandana
Public Health Inspector and
Authorized Officer in terms of Food Act.
Udagomadiya.

Plaintiff-Respondent

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

2nd Respondent

AND NOW BETWEEN

1. Gayan Lakmal Weerakoon
989/A/07,
Weeraketiya Road,
Middeniya.
2. Sarath Wijayananda Alahakoon
No. 9/C, 6th Lane,
Nawala Road,
Rajagiriya.
3. Walisinghe Dharmasiri Alahakoon
No. 174,
Stanley Thilakawardhana Mawatha,
Nugegoda.
4. Dayananda Waniganayaka Yapa
Kumanayake
No. 59/4, St. Anthony's Road,
Kirimetiyyagala,
Kadawatha.

Defendant-Petitioner-Petitioners

Vs,

S.H. Chandana
Public Health Inspector and
Authorized Officer in terms of Food Act.
Udagomadiya.

Plaintiff-Respondent- Respondent

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

2nd Respondent- Respondent

Before: Amal Ranaraja, J.

Dr. Sumudu Premachandra, J.

Counsel: Chandana Dias for the Defendants-Petitioners-Petitioners
instructed by the K.C Govinnage.

Supported on: 05.08.2026

Order delivered on: 25.08.2026

Order

Amal Ranaraja, J.,

1. The defendant-petitioner-petitioners (hereinafter referred to as the 'petitioners') have been named as accused in the Magistrates Court of *Walasmulla* in Case No. 83769 PHI, for the alleged commission of offences punishable under Section 18(1)(c)(i) of the Food Act No. 26 of 1980 (As amended).

2. The petitioners have also contended that the second, third and fourth petitioners were named as accused in the Magistrate Courts proceedings on the basis that they were directors of *Country Style Foods (Pvt) Ltd*, connected with the trade name identified in the proceedings as “SMAK”. That they sought to obtain an analyst’s report with regard to the food sample forming the subject matter of the prosecution, but no such sample was available for testing.
3. When the matter had been taken up for trial at the Magistrates Court of *Walasmulla*, the petitioners, as the accused, have raised two grounds of preliminary objections as follows;
 - I. In situations where proceedings have been instituted against a body of persons under Section 27 of the Food Act No. 26 of 1980, action cannot be brought against the directors of an offending company where the company itself has not been arraigned or named as an accused.
 - II. Due to the inability to exercise their rights under Section 24 of the Food Act No.26 of 1980, i.e. to further test and analyse the food sample forming the subject matter of the proceedings, the petitioners’ right to a fair trial have been violated.
4. By order dated 19.12.2025, the learned Magistrate has rejected the preliminary objections raised by the petitioners and allowed for the trial to continue.
5. Aggrieved by this order, the petitioners have invoked the revisionary jurisdiction of the High Court of *Tangalle* in Revision Application No. HCRA 12/2026, seeking to revise and set aside the order dated 19.12.2025.

6. The petitioners have also sought an interim order staying all further proceedings in the Magistrates Court Case No. 83769 PHI, pending the final determination of the application made to the High Court.
7. By order dated 23.06.2026, the learned High Court Judge has refused to grant interim sought by the petitioners, but proceeded to only issue formal notice on the respondents named in the petition.
8. Being further aggrieved by the order of the learned High Court Judge, dated 23.06.2026, the petitioners have preferred the instant application to this Court.
9. 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.
10. Hence, the central question before this Court is whether the petitioner reserves the right to invoke the revisionary jurisdiction of this Court in respect of an order of a High Court made in the exercise of its revisionary powers vested in under Article 154P (3)(b) of the Constitution.
11. 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.
12. 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 therefrom to the Court of Appeal in accordance with Article 138."

13. Thereafter, the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 has been enacted to make provisions regarding the procedure to be followed and the right of appeal to and from the High Court established under Article 154P of the Constitution.

14. Sections 5 and 9 of the High Court of Provinces (Special Provisions) Act No. 19 of 1990 reads as follows;

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 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.

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 case 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.

15. The Superior Courts of Sri Lanka have repeatedly addressed the relationship between Article 154P of the Constitution and the High Court of the Provinces (Special Provisions) Act, when resolving disputes concerning forum and jurisdiction. In doing so the Courts have considered how constitutional provisions on provincial judicial powers interact with the statutory framework establishing and defining the jurisdiction of the provincial High Courts. The resulting case law clarifies which is the proper forum for particular categories of proceedings and the circumstances in which jurisdiction may be exercised or excluded.
16. In the case of *Sharif and Others vs. Wickramasuriya and Others* [2010] 1 SLR 255, Eric Basnayake J. has held,

"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."

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) has held,

"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. It is thus apparent that the Court of Appeal and the Provincial High Court may in some circumstances exercise concurrent jurisdiction.
19. However, where a party seeks relief, by way of a revisionary application in the Provincial High Court, that party cannot later challenge the Provincial High Court's decision by filing a second revision application in the Court of Appeal on the same matter. In doing so the party would be attempting to pursue the same remedy twice.
20. Once the revision route has been used in the provincial High Court, the party is regarded as having exhausted the right (or remedy) available under that procedure. A clearer way to express the underlying legal principle is this; concurrent jurisdiction does not necessarily mean a litigant may 'try again' in a different court, using the same procedural mechanism. Courts typically prevent repeated applications that seek substantially the same

relief because it undermines finality in litigation and can amount to an abuse of process.

21. If the provincial High Court has already dealt with the revision request, the proper course is usually to pursue the correct form of further challenge, such as an appeal, rather than another revision application framed as a fresh attempt. (vide Article 154P (6) and Section 9(b) of High Court of the Provinces (Special Provisions) Act No.19 of 1990).
22. This has been followed by the Superior Courts of Sri Lanka consistently. In the case of *Welisarage Lakshman Nishantha Fernando v. The Hon. Attorney General and Another*, CA/MC/RE Application No. 04/2017, E.A.G.R. Amrasekara, J. has held,

"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."

23. Further, in the case of *Weragama v. Eksath Lanka Wathu Kamkaru Samithiya and Others*, Fernando J, held as follows;

“The Jurisdiction of the Court of Appeal is not an entrenched jurisdiction because Article 130 provides that it is subject to the provisions "of any law". Hence it was always constitutionally permissible for that jurisdiction to be reduced or transferred by ordinary law. (of course, to a body entitled to exercise judicial power).”

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

25. 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