

**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 of the Democratic Socialist Republic of Sri Lanka and section 364 and section 365 of the Code of Criminal Procedure Act No. 15 of 1979.

CA Case NO : CA/CPA/99/25

HC of Colombo Case NO: HC 1830/20

Hon. Attorney General, Attorney General's
Department,

Colombo 12.

COMPLAINANT

Vs.

1. Athgulu Gahagamage Priyankara Indunil
Perera

2. Saman Prasanna

3. Mirihana Arachchige Edward Sunil Perera

4. Christopher Francis Peiris

ACCUSED

AND NOW BETWEEN

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

COMPLAINANT-PETITIONER

Vs.

1. Athgulu Gahagamage Priyankara Indunil Perera
2. Saman Prasanna
3. Mirihana Arachchige Edward Sunil Perera
4. Christopher Francis Peiris

ACCUSED-RESPONDENTS

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

Counsel : Shehan De Silva with Nawan Premadasa for the 1st Accused- Respondent

 Maheshika Silva DSG for the State

 Maithri Gunaratne PC with Iffal Shahabdeen for the 3rd Accused-
 Respondent

Supported

On: 31.03.2026

Order On: 30.04.2026

ORDER

B. Sasi Mahendran, J.

This is a revisionary application filed by the Complainant-Petitioner (hereinafter referred to as the Petitioner), Honorable Attorney General, invoking the revisionary jurisdiction of this court, seeking the following reliefs prayed in the petition dated 23rd October 2025.

The Petitioner has *inter alia* prayed for the following reliefs;

1. Issue notice on the Respondent;
2. Issue a Stay Order in High Court Colombo Case No. HC/1830/20 preventing the learned High Court Judge from taking any further action in the said case until the final determination of the instant application by Your Lordship's Court.
3. Call for and examine the case record of case number HC 1830/20 of the High Court (04) of Colombo
4. To revise and set aside the Order dated 09.07.2025 of the learned High Court Judge of Colombo in HC 1830/20
5. To substitute the Order dated 09.07.2025 in High Court Colombo case bearing No. HC/1830/20 with a Lawful Order permitting the application of the prosecution on 09.07.20025 to mark the legal copy of the Bank Draft and the Cheque return notice marked as "P1."
6. Grant such further and other reliefs

This order pertains to the issuance of notice to the Respondents.

The following facts are relevant to the application

The Accused Respondents (hereinafter referred to as the Respondents) were indicted before the High Court of Colombo in case No. HC 1830/20 for following offences:

1. That during the period 31.12.2008 and 03.01.2009 Respondents conspired to commit the offence of criminal misappropriation of Rs. 84,083,121.75/- sum of money being public property by presenting a forged foreign bank draft to the Peoples Bank punishable under Section 113, 102 and 386 of the Penal Code read with Section 5(1) of the Public Property Act as amended.
2. That at the same place, time and in the same course of transaction the 1s Respondent committed the offence of criminal misappropriation of Rs. 84,083, 121.75/- sum of money being public property by presenting a forged foreign bank draft to the Peoples Bank punishable under Section 386 of the Penal Code read with Section 5(1) of the Public Property Act as amended.
3. That at the same place, time and in the same course of transaction the 2nd Respondent has aided and abetted the 1st Respondent to commit the offence referred to in the 2nd charge punishable under Section 102, 386 of the Penal Code read with Section 5(1) of the Public Property Act as amended.
4. That at the same place, time and in the same course of transaction the 3rd Respondent has aided and abetted the 1s Respondent to commit the offence referred to in the 2nd charge punishable under Section 102, 386 of the Penal Code read with Section 5(1) of the Public Property Act as amended.
5. That at the same place, time and in the same course of transaction the 4th Respondent has aided and abetted the 1st Respondent to commit the offence referred to in the 2nd charge punishable under Section 102, 386 of the Penal Code read with Section 5(1) of the Public Property Act as amended.

During the trial, the Prosecution marked a copy of the forged bank draft subject to the production of the original. As the original draft could not be traced, having been misplaced while in the custody of the CID, the Prosecution made an application under Section 63 of the Evidence Ordinance to lead secondary evidence. However, by order dated 26.03.2025, the Learned High Court Judge rejected this application, and I note that the said order has not been challenged. Subsequently, through PW2, the Prosecution sought to mark the legal copy of the bank draft contained in the notice of dishonour (අගරු නිවේදනය), listed as item no. 25 in the additional productions.

The defence objected on the ground that the document was merely a scanned copy generated from a computer. It was therefore argued that the Prosecution was required to give forty-five days' notice in terms of Section 7(1)(a) of the Evidence (Special Provisions) Act No. 14 of 1995. The Learned High Court Judge upheld the objection and further held that the document in question was only a true copy, and accordingly, the Prosecution was obliged to produce the original document.

It is relevant to refer to the said portion of the impugned order

මාගේ නියෝගය නීතියට අනුකූල හෝ නීතියට පටහැනි හෝ කාර්ය පටිපාටියට පටහැනි ද යන්න මේ අවස්ථාවේදී ප්‍රශ්න කළ නොහැක. අවස්ථාවේදී එම නියෝගය ආපසු හැරවීමටද මා හට හැකියාවක් නැත. ඒ අනුව එදින කාර්ය සටහනේ වාර්තා වී ඇති අනෙකුත් කරුණු අනුව සාක්ෂි විශේෂ විධිවිධාන පනත යටතේ දැන්වීමක් කළ යුතු බවට සහ කර ඇති බවට සහ එසේ නොකර ඇත්නම් කිරීමට අවසර දී ඇති අවස්ථාවකදී සහ එම ලේඛනය සාක්ෂි විශේෂ විධි විධාන පනත යටතට වැටෙන බවට තීරණය කර ඇති අවස්ථාවක දී එයින් අපගමනය වී 2006 අංක 19 දරණ පනතේ විධි විධාන යටතේද මෙය ඇතුළත් කොට සාක්ෂි මෙහෙයවීම සඳහා අවසර දීමට නොහැකි බවට තීරණය කරමි.

එසේම ඉදිරිපත් කරනු ලබන මෙම ලේඛනය True Copy ලෙස අත්සන් කර ඇති ලේඛනයක් වන අතර, මෙය මුල් අවස්ථාවේදී ලබා ගන්නා ලද ලේඛනයද නැතහොත් මුල් ලේඛනයෙන් ලබා ගන්නා සහතික පිටපතක්ද යන කාරණය මේ අවස්ථාවේදී නිශ්චිත නැත. ඒ අනුව සාක්ෂිකරු විසින් මෙම ලේඛනය දුටු බවට ඔහුගේ අත්සනක්ද එම ලේඛනයේ ඇති බවත් අනාවරණය වන්නේ නැත. ඒ අනුව විත්තියේ විරෝධතාවය පිළිගනිමි. මෙම ලේඛනය මෙම සාක්ෂිකරුගෙන් සලකුණු කිරීමට අවසර නොදෙමි.

I am mindful that the scanned copy could be admitted as secondary evidence under section 65 of the Evidence Ordinance. The said scanned copy, which constitutes secondary evidence 63 (2) of the Evidence Ordinance, reads as follows,

63. Secondary evidence means and includes -

(2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

It is undisputed that the original bank draft has been lost. Once this fact is established, the Prosecution is entitled to lead secondary evidence, through which the contents of the original document may be proved.

The prosecution has relied on Sections 21 and 22 of the Electronic Transactions Act and claimed there is no need for them to issue a notice under Section 7(1) of the Evidence (Special Provisions) Act No. 14 of 1995. Counsel for the Respondents submitted that the documents in question, particularly the notice of refusal, fall within the interbank system. By virtue of the amendments introduced through Act No. 25 of 2017, specific sections were inserted into the relevant Acts,

Electronic Transactions Act No 19 of 2006

Section 23 reads as follows,

23. The provisions contained in this Act shall not apply to -

- (a) the creation or execution of a will, or any other testamentary disposition by whatever name called ;*
- (b) a license for a Telecommunication system issued under subsection (6) of section 17 of the Telecommunications Act, No. 25 of 1991 ;*
- (c) a Bill of Exchange as defined in subsection(1) of section 3 of the Bills of Exchange Ordinance (Chapter 82) ;*
- (d) a Power-of-Attorney as defined in section 2 of the Power of Attorney Ordinance (Chapter 122) ;*
- (e) a Trust as defined in the Trusts Ordinance (Chapter 87) excluding a constructive, implied and resulting trust ;*
- (f) a contract for sale or conveyance of immovable property or any interest in such property ;*
- (g) or any other document act or transaction specified by the Minister by regulations made under section 24.*

Electronic Transactions (Amendment) Act, Act No 19 of 2006

15. Section 23 of the principal enactment is hereby amended as follows:-

(1) by the insertion immediately after paragraph (c) thereof, of the following new paragraph:-

"(ca) any financial matter in the nature of the following:-

(i) transactions on a regulated exchange;

(ii) foreign exchange transactions;

(iii) inter-bank payment systems, inter-bank payment agreements or clearance and settlement systems relating to securities or other financial assets or instruments; and

(iv) the transfer of security rights in sale, loan or holding of or agreement to repurchase securities or other financial assets or instruments held with an intermediary;"

(2) by the repeal of paragraph (e) thereof and the substitution therefor, of the following:-

"(e) a trust as defined in the Trusts Ordinance (Chapter 87) excluding a constructive, implied and resulting trust;"

I am mindful that the notice of dishonours (අගරු නිවේදනය) was issued by City Bank, the Sri Lankan agent of the Royal Bank of Canada, after the Respondents had withdrawn the money when the original bank draft was presented to the People's Bank. Thereafter, the Foreign Transactions Unit of the People's Bank forwarded the said draft to City Bank.

The bank subsequently informed that the notice of dishonours (අගරු නිවේදනය) constituted an interbank document. Such a document does not fall within the scope of Sections 21 and 22, which exempt compliance with the Evidence (Special Provisions) Act. Since the document is only a scanned copy and the original document is available to be produced, I

hold that the Learned High Court correctly determined that a notice under Section 7(1) must be issued.

I note that the learned High Court Judge has correctly followed the procedure.

For the foregoing reasons, I am of the considered view that there is no necessity to issue notice to the Respondents.

Accordingly, I am disinclined to direct the issuance of such notice.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL