

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

**In the matter of an application for
revision under Article 138 of the
Constitution of the Democratic
Socialist Republic of Sri Lanka read
with Section 364 of the Code of
Criminal Procedure Act No. 15 of 1979**

Democratic Socialist Republic of Sri
Lanka

Complainant

CA CPA 0020/2026

High Court of Colombo

Case No. HC 4118/2022

Vs.

1. Tyutkalo Vitaly,
No. 100, Pamunugama Road,
Dungalpitiya Beach, Pitipana South,
Aluthkuruwa, Negombo
2. Sea Consortium Lanka (Pvt) Ltd,
No. 256, Sri Ramanathan Mawatha,
Colombo 02
3. Arjuna Indrajith Thisera Hettiarachchi,
No. 44, Rudra Mawatha,
Colombo 06

4. Devinda Indrajith Thisera
Hettiarachchi,
No. 14/2104, Kavanagh Street,
South Bank, Melbourne,
Victoria 3006, Australia
5. Milimda Indrajith Thisera
Hettiarachchi,
No. 14/2104, Kavanagh Street,
South Bank, Melbourne,
Victoria 3006, Australia
6. Aminda Indrajith Thisera
Hettiarachchi,
No. 44, Rudra Mawatha,
Colombo 06
7. Panduka Weerasekara,
No. 80, Chitra Lane,
Colombo 05
8. Sanjeewa Lakpriya Samaranayake,
No.197/2, High Level Road,
Colombo 06

Accused

AND NOW BETWEEN

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

Complainant-Petitioner

Vs

1. Tyutkalo Vitaly,
No. 100, Pamunugama Road,
Dungalpitiya Beach, Pitipana South,
Aluthkuruwa, Negombo
2. Sea Consortium Lanka (Pvt) Ltd,
No. 256, Sri Ramanathan Mawatha,
Colombo 02
3. Arjuna Indrajith Thisera Hettiarachchi,
No. 44, Rudra Mawatha,
Colombo 06
4. Devinda Indrajith Thisera
Hettiarachchi,
No. 14/2104, Kavanagh Street,
South Bank, Melbourne,
Victoria 3006, Australia
5. Milimda Indrajith Thisera
Hettiarachchi,
No. 14/2104, Kavanagh Street,
South Bank, Melbourne,
Victoria 3006, Australia
6. Aminda Indrajith Thisera
Hettiarachchi,
No. 44, Rudra Mawatha,
Colombo 06

7. Panduka Weerasekara,
No. 80, Chitra Lane,
Colombo 05

8. Sanjeewa Lakpriya Samaranayake,
No.197/2, High Level Road,
Colombo 06

Accused-Respondents

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

Counsel: Madhawa Tennakoon, DSG with Fazly Razick, DSG, Malik
Azeez, SC, R. Wickramage, SC and Githmi Wijenarayane, SC
for the Complainant-Petitioner.

Nipuna Wimalasekara with Niranjan de Silva, Shane Foster,
Daham Siriwardana and Anuji Anjana for the 1st Accused-
Respondent.

Sarath Jayamanne, PC with Asith Siriwardhana and
Vineshka Mendis for the 2nd Accused-Respondent.

Chaminda Athukorala with Suranga Wimalasena, Kasun
Sarathchandra, Akila Amunugama and Ajitha Lokubandara
instructed by Vidanapathirana Associates for the 3rd, 6th,
and 7th Respondents.

Anil Silva, PC with Suren Gnanaraj, Sakuni Weerarathne
and Anuk Dharmasena instructed by Vidanapathirana
Associates for the 4th and 5th Respondents.

Argued on: 24.06.2026

Order on: 23.07.2026

Order

Amal Ranaraja. J,

1. The accused-respondents had been named as accused in High Court of Colombo Case No. 4118/2022. They had been charged with offences punishable under Section 26(a) of the Marine Pollution Prevention Act No. 35 of 2008.
2. Upon the accused-respondents pleading not guilty to the charges, the trial has commenced. Thereafter, the petitioner has begun leading evidence through its witnesses and also filed an application seeking to add further documents to a list of productions on the back of the indictment. By order dated February 23rd, 2026, the learned High Court Judge has partly allowed the petitioner's application.
3. Aggrieved by that order, the petitioner has tendered a petition of appeal. However, by order dated March 9th, 2026, the learned High Court Judge has rejected the petition of appeal. Being further aggrieved by the order dated 9th March 9th, 2026, the petitioner has filed the present application before this Court, seeking revision of the learned High Court Judge's order dated March 9th, 2026.
4. The petitioner has contended that the provisions outlined in Section 15(b) of the Judicature Act No. 2 Of 1978 (as Amended), grants the petitioner the right to submit a petition of appeal to challenge an order similar to the one issued by the learned High Court Judge on February 23rd, 2026.

5. The accused-respondents have contended as follows;

- I. The right of appeal is purely statutory and must be expressly created and granted by statute.
- II. The petitioner must resort to Section 331 of the Code of Criminal Procedure Act No. 15 of 1979 (as Amended) for the procedure governing the filing of an appeal. That Section 331 applies only to orders that are final in nature.
- III. Section 9(b) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 provides for an appeal from a final order, made by a High Court when exercising its original jurisdiction.
- IV. The Superior Courts of Sri Lanka have treated Sections 14,15 and 16 of the Judicature Act as a unified appellate scheme. Accordingly, the Court's interpretation of what constitutes a final order applies with equal force to the phrase "any order" in Section 15(b) of the Act.

6. Section 15 of the Judicature Act No 2 Of 1978 provides as follows;

15. *The Attorney-General may appeal to the Court of Appeal in the following cases: -*

(a) from an order of acquittal by a High Court-

(i) on a question of law alone in a trial with or without a jury;

(ii) on a question of fact alone or on a question of mixed law and fact with leave of the Court of Appeal first had and obtained in a trial without a jury;

(b) in all cases on the ground of inadequacy or illegality of the sentence imposed or illegality of any other order of the High Court.

7. A plain reading of the above provision grants/enables the Attorney General to appeal in instances mentioned therein to the Court of Appeal, which is vested with forum jurisdiction, according to Article 138 of the Constitution. The instances mentioned therein are as follows,

- i. An order of acquittal
- ii. Inadequacy or illegality of sentences
- iii. Illegality of any other order (Section 15(b))

8. In *Director General Commission to Investigate Allegations of Bribery or Corruption Vs. Sandesh Ravindra Karunanayake and Another SC Appeal No. 61/2024* decided on 30th May 2025, Obeyesekare J, has held,

“Thus, the mere fact that the court of Appeal has forum jurisdiction, does not enable it to entertain an appeal unless the person invoking such jurisdiction has been statutorily conferred a right of appeal to invoke such forum jurisdiction.”

9. Where a statute confers a substantive right, that right cannot be overridden, limited or defeated by procedural provisions. Accordingly, the statutory right to appeal against any order of the High Court cannot be restricted by general procedural provisions contained in the Code of Criminal Procedure Act No. 15 of 1979 or in the High Court of the Provinces (Special Provisions) Act.

10. In *Saiyad Mohammed Bakar El-Edroos Vs. Abdulhabib Hasan Arab and Others* (1998) 4 SCC 343, Misra J, has held,

“A procedural law is always subservient to the substantive law. Nothing can be given by a procedural law what is not sought to be given by a substantive law, and nothing can be taken away by the procedural law what is given by the substantive law.”

11. Also, the instances in which the Courts in Sri Lanka have held that Section 331 of the Code of Criminal Procedure Act No. 15 of 1979 was a fetter, have been those in which the appellant was an accused named in an indictment, not the Attorney General. Besides, Section 2 of the Code of Criminal Procedure Act interprets “a person” to include a body of persons whether incorporated or not. The Attorney General is not included.

12. Further, the rationale for not granting the right of appeal against each and every order delivered by a High Court, prior to a conviction or an acquittal has been set out by the second accused respondent. It has been contended that the rationale for the same was to ensure that the proceedings are concluded expeditiously, effectively and efficiently.

13. In *Ravi Karunanayake Vs. Attorney General CA(PHC) Application No. 66/2010* decided on 25.05.2010, Sisira de Abrew J, has held,

“If this argument is correct, whenever a party is dissatisfied with an order of the trial court whether it is a final order or not files a petition of appeal, the proceedings of the trial court must be stayed. If this procedure is adopted by the trial courts, can the trial court conclude cases expeditiously? I say no. If the said procedure is adopted, it will lead to an absurd situation and the public faith in the judicial system of this country will start eroding. Adoption of the said procedure will undoubtedly frustrate the smooth functioning of the trial court. Therefore, if a party dissatisfied with an order of the High Court files a petition of appeal, the order appealed against, in my view, must be a final order. This contention is strengthened by provisions of Section 331(2) of the CPC which contemplates of a final order.”

14. A delay in a criminal trial can significantly disadvantage the prosecution. First and foremost, time can erode the quality of evidence.

As time passes physical evidence may degrade or become compromised. Moreover, witness testimony is inherently vulnerable to the passage of time. Witnesses may forget critical details or in some instances, may no longer be available to testify due to various reasons such as illness. This can create gaps in the prosecution's narrative weakening their position.

15. Further, as witnesses' memories fade their reliability may come into question, making their testimonies less persuasive. In these circumstances, it would not be beneficial for the Attorney General, acting as the prosecutor, to engage in an abuse of process by appealing against every single order.
16. The *ejusdem generis* rule (Latin for "of the same kind") is a legal principle used to interpret ambiguous statutes and contracts. When a list of specific items is followed by a general catch all phrase, Courts limit the general phrase to items of the same class or nature as those specifically listed.
17. For the principle to apply, certain conditions must be met according to statutory interpretation guidelines;
 - i. The statute must contain a list of specific items.
 - ii. The specific items must constitute a distinct class, category or genus.
 - iii. The specific list must be followed by a general word.
 - iv. The specific items must not have already exhausted the whole class.

Reliance on *ejusdem generis* may obscure the broader legislative intent behind a statute. Often the drafters of legislation aim to address issues comprehensively considering various scenarios and contingencies.

By focusing solely on the enumerated items and by reading the general term strictly Courts may ignore the underlying purpose of the law. The first accused-respondent has not clearly addressed the above concerns of this Court in a cogent manner.

18. '*Noscitur a sociis*' is a Latin legal principle meaning, it is known by its associates, or a word is known by the company it keeps. In statutory interpretation, it dictates that the meaning of an unclear or ambiguous word should be determined by the context of the words immediately surrounding it. When a statute or contract contains a list of words, or a general word is placed next to more specific ones, the Courts use this legal principle to ensure the words share a common theme.
19. The reliance on the legal principle *noscitur a sociis* could overlook the importance of legislative history and the broader context of statutory evolution. Statutes often emerge from complex socio-political backgrounds, and limiting interpretation to the immediate surroundings of specific terms can neglect these critical dimensions.
20. Courts should prioritise a holistic view of legislative intent. Ignoring these facets in favour of the legal principle *noscitur a sociis*, could undermine the democratic principles that underpin the legislative enactments.
21. In these circumstances, the second accused-respondent has merely argued that the legal principle of *noscitur a sociis* suggests that the phrase "any other order", refers exclusively to a final order. However, this argument appears to be superficial, lacking depth and persuasiveness required to support such a significant claim. Without a comprehensive analysis, the argument fails to convince and does not resonate with the intended legal implications.

22. In *Attorney General Vs. Perpetual Treasuries Ltd and Others* SC Appeal 161/2023 decided on 1.06.26, his Lordship Samayawardhana J, has held as follows,

“Attorney-General’s right of appeal

Section 15 of the Judicature Act sets out the right of appeal available to the Attorney-General. In terms of section 15(a), the Attorney-General is entitled to prefer a direct appeal to the Court of Appeal against an order of acquittal made by the High Court of the Republic of Sri Lanka or a Provincial High Court, in a trial with or without a jury, on a question of law. In addition, the Attorney-General may, with leave, appeal against an acquittal on a question of fact or on a question of mixed law and fact in a trial before a judge sitting without a jury.

Section 15(b), however, is of wider import. It confers on the Attorney General a right of appeal, as of right, in all cases on the ground of the inadequacy or illegality of the sentence imposed, or the illegality of any other order made by the High Court of the Republic of Sri Lanka or a Provincial High Court. The contention advanced on behalf of the Attorney-General, based on section 15(a), that a right of appeal arises only in respect of an order of acquittal, and that no such right exists in the present case since the Trial at Bar merely discharged the accused, cannot be accepted and is clearly misleading. This argument conveniently overlooks section 15(b), which expressly enables the Attorney-General to prefer a direct appeal on the ground of illegality of any order made by the High Court at any stage of the proceedings”

23. Accordingly, I am inclined to conclude that the phrase “any other order” in Section 15(b) of the Judicature Act No. 2 of 1978 enables the Attorney General to initiate an appeal on the ground of illegality, concerning any order made by the High Court at any stage of the proceedings.

24. Hence, I proceed to set aside the disputed order of the learned High Court Judge dated March 9th, 2026. I direct the learned High Court Judge to accept the petition of appeal and take the necessary follow up action in that regard, but make no order as to costs.

Application allowed.

25. The Registrar of this Court is directed to send this order the High Court of Colombo for information and compliance.

Judge of the Court of Appeal

Dr. Sumudu Premachandra, J.

I agree

Judge of the Court of Appeal