

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

**In the matter of an application under
Article 154P (6) read with Article 138 of
the Constitution of the Democratic
Socialist Republic of Sri Lanka.**

Court of Appeal

CA PHC 0183/2023

Provincial High Court of Gampaha

Case No. HCR 0011/2021

MC Attanagalla

Case No. 80149

1. Ponnaiya Adhistrawelu,
No.194/2,
Wijayabhumi,
Meerigama Road,
Badhuragoda.

2. Ilannada Mudalige Chandana Krishanthi
No. 194/2,
Wijayabhumi,
Meerigama Road,
Badhuragoda.

3. Adhistrawelu Imesha Ramani Krishnika,
No. 194/2,
Wijayabhumi,
Meerigama Road,
Badhuragoda.

4. Adhistrawelu Kavishka Hasini,
No. 194/2,
Wijayabhumi,
Meerigama Road,
Badhuragoda.

Plaintiff

Vs.

1. Rajakaruna Pathirannahalage Kanishka
Dulaj Madushanka,
No. 03,
Keppatiwalana,
Banduragoda.

2. Wickramathanthrige Nilushika Nilmini
Abeyrathna,
No. 03/1,
Keppatiwalana,
Banduragoda.
3. Amarakoon Mudiyansele Ashoka
Sanjeewani,
No. 03/2,
Keppatiwalana,
Banduragoda.
4. Wickramathanthrilage Ajith Kamalsiri,
No. 03/4,
Keppatiwalana,
Banduragoda.
5. Wickramathanthrilage Rohitha
Kamalsiri,
No. 03/2,
Keppatiwalana,
Banduragoda.

Respondent

AND THEN BETWEEN

1. Ponnaiya Adhistrawelu,
No. 194/2,
Wijayabhumi,
Meerigama Road,
Badhuragoda.
2. Ilannada Mudalige Chandana
Krishanthi,
No. 194/2,
Wijayabhumi,
Meerigama Road,
Badhuragoda.

Plaintiff-Petitioner

Vs.

1. Rajakaruna Pathirannahalage Kanishka
Dulaj Madushanka,
No. 03,
Keppatiwalana,
Banduragoda.
2. Wickramathanthrige Nilushika Nilmini
Abeyrathna,
No. 03/1,
Keppatiwalana,
Banduragoda.
3. Amarakoon Mudiyanseage Ashoka
Sanjeewani,
No. 03/2,
Keppatiwalana,
Banduragoda.
4. Wickramathanthrilage Ajith Kamalsiri,
No. 03/4,
Keppatiwalana,
Banduragoda.
5. Wickramathanthrilage Rohitha
Kamalsiri,
No. 03/2,
Keppatiwalana,
Banduragoda.

Respondent-Respondents

6. Officer-in-Charge,
Police Station,
Pallewela.

2nd Respondent

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

3rd Respondent

AND NOW BETWEEN

Wickramathanthrige Nilushika Nilmini
Abeyrathna,
No. 03/1,
Keppatiwalana,
Banduragoda.

2nd Respondent-2nd party Respondent-Appellant

Vs.

1. Ponnaiya Adhistrawelu,
No. 194/2,
Wijayabhumi,
Meerigama Road,
Badhuragoda.
2. Ilannada Mudalige Chandana
Krishanthi,
No. 194/2,
Wijayabhumi,
Meerigama Road,
Badhuragoda.

Plaintiff-Petitioner

3. Rajakaruna Pathirannahalage Kanishka
Dulaj Madushanka,
No. 03,
Keppatiwalana,
Banduragoda.
4. Amarakoon Mudiyanseelage Ashoka
Sanjeewani,

No. 03/2,
Keppatiwalana,
Banduragoda.

5. Wickramathanthrilage Ajith Kamalsiri,
No. 03/4,
Keppatiwalana,
Banduragoda.

6. Wickramathanthrilage Rohitha
Kamalsiri,
No. 03/2,
Keppatiwalana,
Banduragoda.

1st, 3rd, 4th, 5th Respondent-Respondents

8. Officer-in-Charge,
Police Station,
Pallewela.

2nd Respondent-Respondent

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

3rd Respondent-Respondent

Before: **Amal Ranaraja, J.**

Dr. Sumudu Premachandra, J.

Counsel: Mihirani Rathnayake with Dr. Sunil Abeyarathna, Gayani
Kaushalya Pathinayaka and Nimasha Ranathunga for the
Appellant.

Sandamal Rajapaksha with S. Ranathunga for the first Plaintiff-Petitioner-Respondent.

Sanduni Edirimanna with Hemamala Kumari for the first, third, fourth, fifth Respondent-Respondent-Respondents.

Argued on: 02.09.2026

Delivered on: 24.09.2026

ORDER

AMAL RANARAJA, J.

1. The Officer-in-Charge of the *Pallewela Police Station* has filed a report with the *Magistrates Court in Attanagalla*. In this report, the Officer-in-Charge has named the second party second respondent appellant, the second party first, third, fourth and fifth respondents and the plaintiff petitioner respondent as parties.
2. The report has informed the court that the parties were committing a breach of the peace or were engaging in wrongful acts that could lead to a breach of the peace and has requested that action be taken against them as stipulated in section 81 of the Code of Criminal Procedure Act No. 15 of 1979.
3. The learned Magistrate by her order dated March 03, 2021, has released the second party second respondent appellant from the proceedings and has thought it not fit to direct that party to execute a bond to keep the peace.

4. The plaintiff petitioner respondents, dissatisfied with the learned Magistrate's order dated March 03, 2021 have filed an application for revision with the *High Court in Gampaha*, requesting that the order be revised.
5. The learned High Court Judge has revised the disputed order of the learned Magistrate. The second party second respondent appellant aggrieved by the order of the learned High Court Judge dated September 12, 2023, has preferred the instant appeal to this Court.
6. Section 81 of the Code of Criminal Procedure Act No. 15 of 1979 provides as follows:

“Whenever a Magistrate receives information that any person is likely to commit a breach of the peace or to do any wrongful act that may probably occasion a breach of the peace within the local limits of the jurisdiction of the court of such Magistrate, or that there is within such limits a person who is likely to commit a breach of the peace or do any wrongful act as aforesaid in any place beyond such limits the Magistrate may in manner hereinafter provided require such person to show cause why he should not be ordered to execute a bond with or without sureties for keeping the peace for such period not exceeding two years as the court thinks fit to fix.”

7. Under section 81 of the Code of Criminal Procedure Act No. 15 of 1979, the Magistrates Court can take preventive action to require a person to show cause why he should not execute a bond to keep the peace. The ingredients of section 81 are as follows:
 - i) The Magistrate must receive information about a person.
 - ii) Such person must be likely to commit a breach of the peace or do a wrongful act that may cause a breach of the peace.

iii) The anticipated breach of peace must be likely within the local limits of the Magistrate's jurisdiction or a person within the limits is likely to commit the act outside the limits.

iv) The action is strictly preventive not punitive or penal.

8. A Magistrate receives the information often from a peace officer. If satisfied that there are grounds to proceed, the Magistrate will issue summons for the person to appear or a warrant if the person is evading process.

9. Under section 86 of the Code of Criminal Procedure Act No. 15 of 1979, the Magistrate shall inquire into the truth of the information. The Magistrate shall at such inquiry, require the person summoned or brought before court to show cause why he should not be ordered to execute a bond for keeping the peace, proceed to inquire into the truth of the information upon which he has acted and take such further evidence as may appear necessary. Such inquiry shall be held in a manner prescribed for conducting trials in summary cases before a Magistrates Court.

10. In *Fernando Vs. Tamby Sinno* 3 NLR 54 Lawrie, A. C. J. has held as follows:

“When a person appears under an order from a Magistrate to show cause why he should not be ordered to execute a bond for keeping the peace, the Magistrate should proceed to inquire into the truth of the information upon which he has acted and to take such further evidence as may appear necessary. This inquiry must be conducted as if it were a summary trial in the Police Court.”

11. Upon reviewing the journal entries from the case record of the *Attanagalla Magistrates Court* case number 80419, it is evident that the learned Magistrate has not adhered to the correct procedure in conducting such inquiry.
12. This procedural irregularity pertains to the process of investigating the received information's accuracy and the subsequent delivery of the disputed order. The learned High Court Judge has noted this particular procedural flaw and consequently set aside the order made by the learned Magistrate on March 03, 2021.
13. Courts have long affirmed revisionary jurisdiction is a discretionary remedy invoked only in exceptional circumstances. The term "exceptional circumstances" in the case of revisionary jurisdiction has been interpreted to include the following;
- i. An obvious/clear miscarriage of justice
 - ii. A plain error of law apparent on the face of the record
 - iii. A jurisdictional defect that renders the disputed judgement/order void.
14. Accordingly, I am not inclined to interfere with the order of the learned High Court Judge dated September 12, 2023, and proceed to affirm the same.

I dismiss the appeal and make no order regarding costs.

15. The Registrar of this Court is directed to send this judgment to the *High Court in Gampaha* and the *Magistrates Court in Attanagalla* for information/compliance.

Judge of the Court of Appeal

DR. SUMUDU PREMACHANDRA, J.

I agree

Judge of the Court of Appeal