

**WASANTHA
VS.
OFFICER IN CHARGE, POLICE STATION
SEEDUWA AND ANOTHER**

COURT OF APPEAL,
BALAPATABENDI. J. (P/CA),
BASNAYAKE. J.,
CA(PHC) REV, 148/2005.
H. C. NEGOMBO 49/2004.
MARCH 23, 2006.
JUNE 1, 27, 2006.

Penal Code - charged under section 317 – Conviction - Appeal - Is a certificate by a lawyer certifying that there is a legal question fit for adjudication necessary? - Criminal Procedure Code Section 320 (A), section 322 (1) Section 322 (2)– Industrial Disputes Act, section 31D (2)(5).

- HELD:** (1) Where a party makes an appeal on a matter of law a certificate is required in terms of section 322(2) certifying that such matter of law is a fit question for adjudication. This certificate has to be issued by an Attorney - at- Law.
- (2) The certificate is needed only in a situation when an appeal could be made only on a point of law. Any party is entitled to appeal against any judgment for any error of fact as well; in such a situation no certificate is necessary.

APPLICATION in Revision from an order of the High Court of Negombo - On a Preliminary objection being taken.

Cases referred to :-

1. Weerasekera vs. Subramaniam - 44 NLR 545
2. Solicitor General vs Perera - 17 NLR 413
3. Thevarayan vs Balakrishnan - 1984 1Sri LR 189 (distinguished)

Anil Silva for accused - appellant - petitioner.
Kumudini Wickremanayake SSC for respondents.

September 21, 2006.

ERIC BASNAYAKE. J.

The accused appellant petitioner (accused) was charged in the Magistrate's Court of Negombo under section 317 of the Penal Code for
2-CM 8428

causing grievous injuries to Kolomba Wasantha Deepal on 07.06.2001. After trial the accused was convicted and sentenced to two years rigorous imprisonment. The accused appealed against the said conviction and the sentence to the High Court of Negombo. When this case was taken up for argument in the High Court, the learned State Counsel took up a preliminary objection.

The Preliminary Objection

The preliminary objection taken up was that the accused cannot have and maintain this action as he has failed to file a certificate by a lawyer certifying that there is a legal question fit for adjudication. The learned High Court Judge held that the accused violated the provisions of section 322 (2) of the Code of Criminal Procedure Act. Thereby he upheld the preliminary objection and dismissed the appeal. In one sentence the learned High Court Judge dealt with the merits as well. The learned High Court judge stated that the learned Magistrate had made a proper evaluation of the evidence and therefore the conviction is reasonable.

Section 322 (2) is as follows :

Where the appeal is on a matter of law the petition shall contain a statement of the matter of law to be argued and shall bear a certificate by an attorney-at-law that such matter of law is a fit question for adjudication by the Court of Appeal.

This section should be read with section 320(1) of the Code which is as follows :

(1) Subject to the provisions of sections 317, 318 and 319 any person who shall be dissatisfied with any judgment or final order pronounced by any Magistrate's Court in a criminal case or matter to which he is a party may prefer

**an appeal to the Court of Appeal against such judgment
for any error in law, or in fact (emphasis added).**

Where a party makes an appeal on a matter of law, a certificate is required in terms of section 322(2) certifying that such matter of law is a fit question for adjudication. This certificate has to be issued by an attorney at law. Wijewardena J in *Weerasekara vs. Subramaniam*⁽¹⁾ said that "I think section 340(2) of the Criminal Procedure Code (same as section 322(2) of the Code of Criminal Procedure Act) is applicable only to cases in which a party has no right of appeal except on a point of law. Pereira J in *Solicitor General vs. Perera*⁽²⁾ expressed a similar opinion. It is clear therefore that a certificate is needed only in a situation where an appeal could be made only on a point of law. Any party is entitled to appeal against any judgment on any error of fact as well. In such a situation no certificate need be filed.

The learned High Court Judge referred to the case of *Thavarayan vs. Balakrishnan*⁽³⁾. This is an appeal against the judgment of a learned President of the Labour Tribunal. In terms of section 31D (2) and (5) of the Industrial Disputes Act an appeal from an order of the Labour Tribunal must be on a question of law only. In terms of section 322(2) of the Code of Criminal Procedure Act, when an appeal is filed on a question of law, a certificate is required by an Attorney at law certifying that it is a fit case for adjudication by the Court of Appeal. Therefore the judgment in that case is not relevant to the facts of the present case.

It is apparent that the learned High Court judge had not considered the merits of this case, but only the preliminary objection. I am of the view that the learned judge has erred in upholding the preliminary objection. Hence I direct the learned High Court judge to reconsider the appeal on its merits. The appeal is allowed.

BALAPATABENDI J. -I agree.

*Preliminary objection overruled.
Appeal to be reconsidered on
the merits by the High Court.*