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

In the matter of an appeal under and in terms of Article 138, read with Article 154P(3)(b) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA No: PHC 131/18

HC of Kurunegala Case No:

Revision Application No: 64/2015

MC Pillassa Case No: 68866/11

D.I. Samaranayake
Authorized Officer under the Food Act
Public Health Inspector
Diggampitiya.

Complainant

Vs.

1. Nestle Lanka PLC
   Colombo 10.
2. Antonio Helio Waszyk
3. Alois Hofwaure
4. Syed Saiful Islam
5. Pierre Shaufelberger
6. Mahendra Dayananda
7. Ranjeeva Seevaratnam

2nd to 7th Defendants all being Directors of Nestle Lanka PLC, Colombo 10.

Accused

AND NOW BETWEEN

1. Nestle Lanka PLC
   Colombo 10.

2. Mahendran Dayananda
   Director-nestle Lanka PLC
   Colombo 10.

3. Ranjeevan Seevaratnam
   Director-nestle Lanka PLC
   Colombo 10.

Accused-Petitioners

-Vs-

1. D.I. Samaranayake
   Authorized Officer under the Food Act
   Public Health Inspector
   Digampitiya

Complainant-Respondent

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

Respondent

3. Antonio Helio Waszyk

4. Alois Hofwaure
5. Syed Saiful Islam
6. Pierre Shaufelberger

3rd to 6th Accused-Respondents all being Directors of Nestle Lanka PLC, Colombo 10

Accused-Respondents

AND NOW BETWEEN

1. Nestle Lanka PLC
   Colombo 10.

2. Mahendran Dayananda
   Director-nestle Lanka PLC
   Colombo 10.

3. Ranjeevan Seevaratnam
   Director-nestle Lanka PLC
   Colombo 10.

Accused-Petitioner-Appellants

-Vs-

1. D.I. Samaranayake
   Authorized Officer under the Food Act

Public Health Inspector
Digampitiya

Complainant-Respondent-Respondent

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

Respondent-Respondent

3.Antonio Helio Waszyk

4. Alois Hofwaure
5. Syed Saiful Islam
6. Pierre Shaufelberger

3rd to 6th Accused-Respondents all being Directors of Nestle Lanka PLC, Colombo 10

Accused-Respondents-Respondents

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

Counsel: Saliya Peiris, PC with Varuna De Saram for the 1st to 3rd Accused-Petitioner-Appellant
Jehan Gunasekara SC for the respondents

Written Submissions: 03.03.2022 (by the 1st to 3rd Accused-Petitioner-Appellant)

08.09.2022 (by the 1st and 2nd Respondent)

On

Argued On: 11.09.2025

Order On: 15.10.2025

ORDER

B. Sasi Mahendran, J.

The 1st, 2nd and 3rd Defendant-Petitioner-Appellants (hereinafter referred to as the "Appellants") have filed this appeal seeking to set aside the order delivered by the learned High Court Judge of the Provincial High Court of the North Western Province holden in Kurunegala dated 8th August 2018 in Revision Application No. 64/2015, along with the judgement issued by the learned Magistrate of Pillassa on 24th April 2015 in Case No. 68866/11.

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

a. Allow this appeal,

b. Set aside the order dated 8th August 2018 of the learned High Court Judge of the North Western Province holden at Kurunegala in HCRA 64/2015;

c. Grant the reliefs prayed for in the prayers to the revision application of the Petitioners in HCRA 64/2015 in the High Court of the North Western Province holden at Kurunegala, dated 10th of September 2015;

d. Grant costs and

e. Grant such other and further reliefs.

The Complainant-Respondent-Respondent (hereinafter referred to as the "Complainant") instituted an action in the Magistrate court of Pillassa under and in terms of the provisions of the Food Act (as amended) by charge sheet dated 17 November 2011 naming the manager

as the 1st Appellant and the trader namely Mohmed Anas of the Wayamba Lanka Traders, who sold the packet of Milo on 29th of May 2011.

On 15.03.2012, the prosecution submitted an amended complaint, naming the Manager of Nestle Lanka Private Limited as the 1st Accused, the Nestle Lanka PLC as the 2nd Accused and the Directors of Nestle Lanka PLC as the 3rd to 8th Accused. A further amended complaint has been filed on 2012.08.09 naming Nestle Lanka PLC as the 1st accused and the Board of Directors of the company as the 2nd to 7th accused.

When the matter was taken up on 23rd May 2013, counsels for the Accused raised a preliminary objection, asserting that proceedings could not be sustained against the said party on the basis that the 2nd Accused was a non-existent legal entity. As a result, the prosecution sought to amend the complaint.

Consequently, the Court directed them to file written submissions. These objections were overruled by the learned Magistrate, and the learned Magistrate proceeded with the trial. After the conclusion of the trial, the Learned Magistrate, by judgment dated 24.04.2015, found the Accused guilty of all charges. Dissatisfied with this decision, the Accused-Appellant filed a revision application before the High Court of Kurunagala. By order dated 08.08.2018, the learned High Court Judge dismissed the revision application and upheld the judgment of the Learned Magistrate.

Being aggrieved by the said order, the Appellant preferred this appeal.

When the matter was taken up before this Court on 11.09.2025, the learned state counsel representing the Complainant-Respondent apprised the Court that, in view of the *Supreme Court's judgment in SC Appeal No. 128/19* delivered on 27.10.2022, the legal position pertinent to the present appeal now stands resolved in favour of the Petitioner-Appellant.

It is observed that the amended charge sheet records the date of detection as 28th June 2011. While the original plaint was filed on 17th November 2011, the amended plaint dated 9th August 2012 includes the 2nd to 7th Accused-Appellants directors of Nestlé Lanka (Pvt) Ltd. as additional accused.

The issue before this Court is whether the recently added Accused-Respondents namely, the directors of Nestlé Lanka PLC may be brought within the ambit of these proceedings under the provisions of the Food Act, in light of the aforementioned judgment of the Supreme Court.

As per both the original and amended charge sheets, the alleged offence was detected on 28th June 2011. The original plaint was filed shortly thereafter, on 17 November 2011. However, the amended plaint, which includes the 2nd to 7th Accused being directors of Nestlé Lanka PLC, was filed on 09.08.2012, over more than one year after the date of detection.

Section 20(1)(b) of the Food Act No. 26 of 1980 (as amended) reads as follows;

"Section 20(1)

A prosecution for an offence under this Act or any regulations made thereunder shall not be instituted-

a) except by an Authorized Officer; and

b) after the expiration of three months, from the date of detection of that offence or where sampling is done, from the date of sampling:"

The above Section was considered by her Ladyship Justice **K.K. Wickramasinghe, in M.A.A.D.J.N. Munasinghe v. The manager of Ceylon Cold Stores, LTD, CA(PHC) 292/2006, decided on 26.07.2019, held that;**

"I observe that as per section 20(1) (b) of the Food act as amended by Act No. 20 of 1991, a prosecution for an offence under the Act shall not be instituted " after the expiration of three (3) months from the date of detection of that offence or where sampling is done, from the date of sampling". In the instant case, the complaint was filed on 07.01.2005, nearly after one and a half years of detection of offence.

further held that;

In light of above and upon perusal of the proceedings, it is understood that the instant case was instituted after filing of the complaint on 07.01.2005. It is clear that the period of three months was lapsed as mentioned in section 20 of the Food Act. Therefore the contention of the Learned President's Counsel for the appellant should

be answered in affirmative. Accordingly I am of the view that both the Learned High Court Judge and the Learned Magistrate erred in overruling the preliminary objection."

Her Ladyship K.K. Wickremasinghe, J in **B.A.H.M. Balasuriya v. W.R.M. Sumanathissa Bandara and Others, SC Appeal 128/19, Decided on 27.10.2022,(agreed by Murdu N.B. Fernando, PC, J (as she was then) and Achala Wengappuli,J)** held that:

"Accordingly, it is now evident that Section 20 (1) (b) of the Food Act is a special provision which falls within the aforementioned exception, as it expressly provides for a time limit within which a prosecution for an offence committed under the Act ought to be instituted. Therefore, the statutory time bars set out in Section 20 (1) (b) of the Food Act and Section 456 of the Code of Criminal Procedure ought to be interpreted in light of the object of Article 13 (3) of our Constitution, which guarantees to every person the fundamental right to a fair trial.

Further held that:

It is well-known that the primary duty of the Court is to give effect to the intention of the Legislature as expressed by the words of a statute. When the statutory language shows no ambiguity or confusion, it would be unwise for the Court to impart its own gloss on it so as to accord it some meaning contrary to that set out in the language of the law. For this reason, I hold that the Respondents' argument on the interpretation of Section 20 (1) (b) of the Food Act holds no merits.

It is contended that the intention of the Legislature by imposing a time bar as contained in Section 20 (1) (b) of the Food Act for instituting an action was to ensure inter alia credibility of the Complainant, as it is with the expectation that a Complainant will initiate an action by bringing the offence to the notice of the relevant Officers at the earliest point of discovery that the offence had taken place. The fact that the Complainant in this case waited for a period of an excess of 3 months from

the date of detection before lodging the complaint to the Public Health Inspector can create a doubt in the prosecution."

In light of the foregoing, we find that the inclusion of the accused, who are Directors of Nestlé Lanka, constitutes a violation of the aforesaid Act. For the said reason, we set aside the order dated 8th August 2018 in case number Revision Application No. 64/2015 of the High Court of Kurunagala, wherein the learned High Court Judge affirmed the Magistrate's order dated 24th April 2015, where the Learned Magistrate convicted the 2nd to 7th Accused appellants who are the directors of the Nestle Lanka (Private Ltd).

The 1st Defendant-Petitioner-Appellant, Nestle Lanka Private Limited, is a corporate entity whose directors have been acquitted; accordingly, the conviction against the company cannot be sustained. Therefore, I quash the conviction and the sentence entered against the 1st Accused. In light of the foregoing reasons, the conviction entered by the Learned Magistrate on 24th April 2015 is set aside.

This appeal is allowed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE.

JUDGE OF THE COURT OF APPEAL