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

In the matter of an appeal under and in terms of Article 154 9P) of the Constitution of the democratic socialist republic of Sri Lanka read with Section 11 (2) of the High Court of Provinces (Special Provisions) Act No 19 of 1990.

CA (PHC) 88/2020

HC Ratnapura Case No: HCRA/27/2020

Officer In Charge
Police Station
Balangoda

Plaintiff

v.

1. Andra Hennadige Nila Dinesh
   Sarawathie Road
   Udaellepola
   Balangoda

Defendant

2. Poruwaththe Nirmala Gayani Ppriyadarshani
   No. 88
   Kumaragama
   Balangida

Applicant

AND BETWEEN

Poruwaththe Nirmala Gayani Priyadarshani
No. 88
Kumaragama
Balangida

Applicant-Petitioner

v.

Officer In Charge
Police Station
Balangoda

Plaintiff-Respondent

Hon. Attorney General

Attorney General Department

Hulftsdorp

Colombo 12

Respondent

AND Now (BY AND BETWEEN)

Poruwaththe Nirmala Gayani Priyadarshani
No. 88
Kumaragama
Balangida

Applicant-Petitioner-Appellant

v.

Officer In Charge
Police Station
Balangoda

Plaintiff-Respondent-Respondent

Hon. Attorney General
Attorney General Department
Hulftsdorp
Colombo 12

Respondent-Respondent

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

Counsel: Nilum devapura for the Applicant-Petitioner-Appellant
Maheshika Silva DSG or the AG

Argued On: 30.01.2025

Order On: 11.03.2025

Order

B. Sasi Mahendran, J.

The Applicant- Petitioner- Appellant (hereinafter referred to as the Appellant) filed this application on 12.07.2024 seeking to set aside the order of the High Court of Sabaragamuwa Province holden in Ratnapura dated 08.07.2020.

According to the Appellant, the Defendant was taken into custody on 24.05.2017 while transporting timber using the Lorry bearing No. WP LG 7193 without a license being obtained from the competent authority and charged under Sections 40, 40(a), 40(b) and 52 read together with Section 25(2) of the Forest Ordinance as amended. Thereafter, an inquiry was held where the Appellant as the registered owner of the vehicle gave evidence. According to the Appellant, the Defendant had requested the said lorry for the purpose of transporting cement and roofing sheets for his house which was under construction. The Appellant contends that she did not intend that the said lorry would be utilized for an illegal purpose by the Defendant. This evidence of the Appellant was corroborated by the testimonies of the Appellant's husband and his brothers.

Thereafter, the Learned Magistrate by order dated 21.05.2020 confiscated the said lorry. Being aggrieved by the said order, the Appellant preferred a revision application along with an appeal in the Provincial High Court of Sabaragamuwa Province.

We are mindful that originally, there was a specific right of appeal granted to a party aggrieved by an order of confiscation in terms of Section 44 of the said

Ordinance. The said right of appeal was taken away by the Amendment Act No. 13 of 1982 by repealing the said Section 44.

When the revision application was supported before the Learned High Court Judge on 08.07.2020, the Learned High Court Judge refused to issue notice to the Respondents on the premise that the Appellant had already instituted an appeal in the same Court and that the Appellant was guilty of laches as she has filed this revision application after 48 days.

Against the said order, the Appellant has preferred the present appeal in this Court.

We are mindful that generally, our Courts have allowed the revision application when the applicant has no other remedy. But it is also now settled law that revisionary powers would be exercised by even though there is an alternative remedy. However, this could be exercised only in exceptional circumstances.

The object of revisionary jurisdiction is to ensure the due administration of justice and correction of errors regarding either the law or the facts in order to avoid miscarriage of justice.

In Mariam Beebee, Vs. Seyed Mohamed, 68 NLR page 36 at page 38, His Lordship Sansoni, C.J. stated that:

> "The power of revision is an extraordinary power which is quite independent of and distinct from the appellate jurisdiction of this Court. Its object is the due administration of justice and the correction of errors, sometimes committed by this Court itself, in order to avoid miscarriages of justice. It is exercised in some cases by a Judge of his own motion, when an aggrieved

person who may not be a party to the action brings to his notice the fact that, unless the power is exercised, injustice will result."

This judgment was followed by His Lordship Aluwihare PC. J in Wijesiri Gunawardane and Others v. Chandrasena Muthukumarana and Others, SC Appeal No. 111/2015 with SC Appeal No. 113/2015 and SC Appeal No. 114/2015, decided on 27.05.2020 and further held that;

"The above argument is firstly premised on the assumption that the revisionary jurisdiction and the appellate jurisdiction are one and the same. It is only if the former is a subset of the latter, could the taking away of the appellate power results in automatically suspending the revisionary powers. However, historically, it has been the opinion of our Courts that the revisionary jurisdiction is distinct from appellate jurisdiction. One basic distinction would be that while the appellate rights are statutory, the exercise of revisionary power is discretionary. Although revisionary jurisdiction shares characteristics with the appellate jurisdiction, they are not one and the same."

Therefore, we hold that the Learned High Court Judge has misdirected himself with regard to the revisionary jurisdiction. We further hold that the revisionary jurisdiction is quite independent and distinct from the appellate jurisdiction of the court. We are also mindful that to invoke the revisionary jurisdiction, the applicant should disclose circumstances that shock the conscience of the Court.

In Wijesinghe V. Tharmaratnam CA 120/80, Decided on 14th October 1986, page 47 at page 49 Srikantha's Law Reports, Volume (IV) His Lordship Jameel J. held that,

> "Revision is a discretionary remedy and will not be available unless the application discloses circumstances which shocks the conscience of court."

This was further established in Bank of Ceylon Vs Kaleel and others [2004] 1 SLR 284, Per His Lordship Wimalachandra J,

> "In any event to exercise revisionary jurisdiction the order challenged must have occasioned a failure of justice and be manifestly erroneous which go beyond an error or defect or irregularity that an ordinary person would instantly react to it; the order complained of is of such a nature which would have shocked the conscience of court."

In the instant case, we hold that the Learned High Court Judge has failed to consider that there is no right of appeal for the Appellant although she has instituted such an application in the High Court. The Learned High Court High Judge has come to the wrong conclusion that there is a right of appeal for the Appellant against the said order when dismissing the said action. This shocks the conscience of this Court.

Our Courts have held that to exercise revisionary jurisdiction, the order challenged must have occasioned a failure of justice and be manifestly erroneous which goes beyond an error.

Therefore, we are of the view that the Learned High Court Judge should have issued notice to the parties and proceeded to hear the application. As such we are

of the view that we should not go to the merit of this application. We set aside the judgment dated 08.07.2020 delivered in the Provincial High Court holden in Ratnapura in case bearing No. HC/RA 27/2020 and direct the Learned High Court Judge to issue notice on the Respondent and to hear the revision application filed by the Appellant.

Application allowed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.
I AGREE

JUDGE OF THE COURT OF APPEAL