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

In the matter of an Application for Revision of the Order dated 11.05.2023 made by the High Court of the Western Province Holden in Colombo under and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka read together with Section 11 of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990.

Court of Appeal Case No.
CA/CPA/0061/2023

High Court Revision
Application No.
HCRA 45/2023

Magistrate's Court of Colombo
Case No. B3200/4/18

Ali Asger Shabbir Gulamhusein,
No.980/4, Wickramasinghe Place,
Ethul Kotte.

Suspect-Petitioner

Vs.

1. **P.V.S.S. Karunathilake**,
   Officer-in-Charge,
   Homicide Investigation Unit,
   Criminal Investigation Department,
   Colombo 01.

2. **Kavinda Piyasekara,**
   Director,
   Criminal Investigation Department,
   Colombo 01.

3. **Deputy Inspector General of Police**,
   Criminal Investigation Department,
   Colombo 01.

4. **Hon. Attorney General**,
   Attorney General's Department,
   Colombo 12.

Respondents

AND NOW BETWEEN

Ali Asger Shabbir Gulamhusein,
No. 980/4, Wickramasinghe Place,
Ethul Kotte.

Suspect-Petitioner-Petitioner

Vs.

1. **P. V. S. S. Karunathilake**,
   Officer-in-Charge,
   Homicide Investigation Unit,
   Criminal Investigation Department,
   Colombo 01.

2. **Kavinda Piyasekara,**
   Director,
   Criminal Investigation Department,
   Colombo 01.

3. **Deputy Inspector General of Police**,
   Criminal Investigation Department,
   Colombo 01.

4. **Hon. Attorney General**,
   Attorney General's Department,
   Colombo 12.

Respondent-Respondents

Idris Shabbir Gulamhusein,
No. 11/1, Havelock Road,
Colombo 05.

Intervenient-Petitioner- Respondent

Before : **M. T. MOHAMMED LAFFAR, J (ACT.P/CA).**
K. M. S. DISSANAYAKE, J.

Counsel : Dappula de Livera, P.C. with Damithu Surasena and Dimithra Abeysekara instructed by Sanjaya Edirisinghe for the Suspect -Petitioner - Petitioner.

Rienzie Arseculeratne, P.C. with Pasindu Gamage for the Intervenient-Respondent

Suharshie Herath, D.S.G for the 4th Respondent-Respondent.

Written Submissions of the Suspect-Petitioner -Petitioner tendered on : 07.05.2025

Written Submissions of the Intervenient -Petitioner- Respondent tendered on : 07.05.2025

Decided on : 04.06.2025

K. M. S. DISSANAYAKE, J.

The instant application in revision had been instituted by the Suspect-Petitioner-Petitioner against the 1st to 4th Respondent-Respondents under and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka to be read with section 11 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990, seeking *inter-alia*, an order revising and quashing the Order of the learned High Court Judge of Colombo dated 11.05.2023 made in the Revision Application bearing No. HCRA/45/2023 and the order of the learned Magistrate of Colombo dated 13.03.2023, which was delivered on 17.03.2023 made in the case bearing No. B3200/4/18. During the pendency of the instant application in revision, one Idris Shabbir Gulamhusein had been added thereto as the Intervenient-Petitioner-Respondent by order of this Court dated 27.06.2023 (Vide-Minutes of Court dated 27.06.2023). Statement of objections had then, been furnished to this Court by both the 2nd to 4th Respondent-Respondents and the Intervenient-Petitioner-Respondent. The counter affidavit had thus, been furnished to this Court by the Suspect-Petitioner-Petitioner wherein, two objections to the statement of objections of the Intervenient-Petitioner-Respondent had been raised by him on the basis that;

a) that, the said statement of objections was filed on behalf of the 2nd Respondent and not the Intervenient-Petitioner-Respondent; (Vide-paragraph 7 of the counter affidavit of the Suspect-Petitioner-Petitioner);
b) that, the affidavit of the Intervenient-Petitioner-Respondent had been affirmed on 24.10.2023 while, the statement of objections had been dated 25.10.2023 (Vide-paragraph 8 of the counter affidavit of the Suspect-Petitioner-Petitioner);

It was thus, urged in his counter affidavit, by the Suspect-Petitioner-Petitioner that, in the light of the said two objections so raised by him to the statement of objections of the Intervenient-Petitioner-Respondent, it should be disregarded and dismissed *in-limine*.

However, it is significant to observe that when, this matter came on before this Court on, 01.07.2024, this Court was informed of, by the learned Counsel for the Intervenient-Petitioner-Respondent that, there had been a typographical error in the statement of objections and therefore, correction needed to be effected thereon, thereby, substituting for the words "the 2nd Respondent" occurred therein, of the words "Intervenient-Respondent". This Court then, directed to effect the so-called correction before the Registrar subject however, to the condition that a copy of the so-called correction be served on all the parties while, reserving to themselves the right to object thereto (Vide-Minutes of Court dated 01.07.2024).

When this matter came on before this Court on 25.10.2024 for argument on the top of the list, the learned President's Counsel for the Suspect-Petitioner-Petitioner had urged not to accept the amended statement of objections of the Intervenient-Petitioner-Respondent and the matter was thus, fixed for inquiry into the said objections so raised by the learned President's Counsel for the Suspect-Petitioner-Petitioner, to be disposed by way of written submissions. Court then, directed parties to file written submissions and written submissions were thus, filed for the Suspect-Petitioner-Petitioner and Intervenient-Petitioner-Respondent. Hence, order on the inquiry into the said objections so raised by the learned President's Counsel for the Suspect-Petitioner-Petitioner was reserved for today on the strength of the written submissions.

Let me now, firstly, deal with the objection **a)** as enumerated above and it may be reproduced as follows;

a) The said statement of objections was filed on behalf of the 2nd Respondent and not the Intervenient-Petitioner-Respondent.

As manifest from a careful reading of the statement of objections of the Intervenient–Respondent dated 25.10.2023 filed of record, the opening paragraph thereof reads thus; "The statement of objections of the 2nd Respondent above-named" instead of "The statement of objections of the Intervenient-Respondent above-named".

Hence, it is manifest that the person filing the said statement of objections, namely; Intervenient–Respondent, had been erroneously, described therein, as the 2nd Respondent, instead of describing himself as "the Intervenient–Respondent". It was this error that had led the Suspect-Petitioner to have raised objections as such, as to the legality of the statement of objections of the Intervenient–Respondent filed in this Court 25.10.2023 based on the said premise.

It is to be noted that, the statement of objections of the Intervenient–Respondent consists of 16 paragraphs apart from the opening paragraph thereof where the said error had occurred. However, upon a careful perusal and scrutiny of all those 16 paragraphs in the statement of objection of the Intervenient–Respondent in its totality, it becomes abundantly, clear, that apart from the opening paragraph thereof where the said error had occurred, Intervenient–Respondent had been properly, and correctly, described and referred to, in all those 16 paragraphs in the statement of objections of the Intervenient–Respondent as "the Intervenient–Respondent". Not only that, but also, had the Attorney-At-Law placed his signature thereto, at the foot thereof, clearly, and unequivocally describing himself as the Attorney-At-Law for the Intervenient–Respondent.

Furthermore, it is significant to observe that the corresponding affidavit, dated 24.10.2024 too, properly and correctly describes and refers to the declarant thereto as “the Intervenient–Respondent above named”.

Upon a careful perusal and scrutiny of all those 16 paragraphs in the statement of objections of the Intervenient–Respondent in its totality in conjunction with the opening part of the corresponding affidavit as aforesaid, it becomes abundantly, clear, that it is the statement of objections of the Intervenient–Respondent nevertheless, the error so occurred in the first part thereof, describing himself as the 2nd Respondent therein.

Hence, it becomes abundantly, clear, that it is the statement of objections of the Intervenient–Respondent nevertheless, the error so occurred only in one instance in the first part thereof, where he had described himself as the 2nd Respondent therein.

Upon a careful perusal and consideration of the written submissions in its totality, the objection so raised by the Suspect-Petitioner as enumerated above, appears to be based on the premise that, the purported amendment would if allowed, cause prejudice to the rights of the Suspect-Petitioner.

However, it is to be observed in the first place that, nowhere in the objection so raised in paragraph 7 of the counter affidavit of the Suspect-Petitioner or in the written submissions of his, had he described and or elaborated of the nature and/or the kind of alleged prejudice that would if an amendment as such, is allowed, cause to the rights of the Suspect-Petitioner except for the mere utterance and/or statement of the Suspect-Petitioner so made therein.

It is also, to be observed in the second place that, that upon a plain and simple reading of the statement of objections of the Intervenient–Respondent in its totality, in conjunction with the corresponding affidavit filed along therewith by

a person of ordinary prudence, it will clearly, and unequivocally, appear to him that, it is the statement of objections of the Intervenient–Respondent.

In view of my findings as aforesaid with regard to the objection **a)** enumerated above, the submissions so made in the written submissions by the Suspect-Petitioner and the decisions cited therein in support thereof, are in my view, of no assistance to substantiate and or to establish the same.

In the light of the above, I would hold that, the objection **a)** enumerated above, cannot in any manner, sustain both in fact and in law, and therefore, it should be overruled *in-limine*.

b) That, the affidavit of the Intervenient-Petitioner-Respondent had been affirmed on 24.10.2023 while, the statement of objections had been dated 25.10.2023.

However, upon a careful perusal of the written submissions of the Suspect-Petitioner, it unmistakably, shows, that the Suspect-Petitioner in his written submissions filed in this Court, had not in any manner, addressed this objection and therefore, he had opted to abandon the same at the inquiry into those objections so raised by him as aforesaid and it would thus, remain as an unproven and unsupported objection.

In the result, I would hold that, the objection **b)** enumerated above, too, should be overruled and rejected *in-limine* for want of proof.

In the Circumstances, I am of the view that, objections **a)** and **b)** above, are not entitled to succeed both in fact and law.

In the light of the above, I would proceed to overrule and reject the objections of the Suspect-Petitioner namely; **a)** and **b)** above with costs payable by the Suspect-Petitioner to the Intervenient–Respondent.

JUDGE OF THE COURT OF APPEAL

MOHAMMED LAFFAR, J (ACT.P/CA).

I agree.

PRESIDENT (ACTING) OF THE COURT OF APPEAL