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

In the matter of a Revision Application under Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Democratic Socialist Republic of Sri Lanka

Complainant

CA/PHC/APN/ CPA 019/25

HC of Colombo Case No:

HC4814/2024

Vs.

1. Sirinayaka Pathiranage Ruwan Chamila Prasanna alias Dematagoda Ruwan
2. Sirinayaka Pathiranage Tharidu Maduzsanka
3. John Peterlage Shanuka Lakmini

Accused

AND NOW

1. Sirinayaka Pathiranage Ruwan Chamila Prasanna alias Dematagoda Ruwan

2. Sirinayaka Pathiranage Tharidu Madusanka
3. John Peterlage Shanuka Lakmini

Accused

Vs.

The Attorney General
Attorney Generals Department
Colombo 12.

Complainant-Respondent

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

Counsel: Sandeepani Wijesooriya for the Petitioners

Supported On: 29.05.2025

Order On: 30.06.2024

ORDER

B. Sasi Mahendran, J.

This is the Revision application filed by the Accused-Petitioners(hereinafter referred to as the "Petitioners") seeking to set aside the order delivered by the Learned High Court Judge on 17th December 2024 in case no. HC 4814/24.

According to the Petition, the Petitioners were indicted before the High Court of Colombo for several offences, including an offence that falls under Section 3(1) of the Prevention of Money Laundering Act.

According to the said indictment, all three individuals were charged with purchasing three vehicles using funds derived from unlawful activities. The said vehicles were listed as productions in the indictment.

According to the Petition, the accused filed an application on 11.11.2024, seeking the release of the vehicles on bond until the conclusion of the said case. However, the learned Judge refused the application, stating that the vehicles had already been detained by an order of another court, and therefore, he had no authority to release the said vehicles.

For ease of reference, I have reproduced the relevant excerpt from the aforementioned order

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"තවද අදාළ වාහන සම්බන්ධයෙන් අත්හිටුවීමේ නියෝගයක් මේ වන විටත් වෙනත් අධිකරණ ක්‍රියාවලියක් තුලදී ලබා දී තිබෙන බවට පැමිණිල්ල වෙනුවෙන් පෙනී සිටි නියෝජ්‍ය සොලිසිටර් ජෙනරාල්වරිය මෙම අධිකරණයේ අවධානයට ලක් කර ඇති අතර ඒ අනුව අදාළ වාහන තුන සම්බන්ධයෙන් එලෙස වෙනත් අධිකරණ ක්‍රියාවලියක් තුලදී ලබා දී තිබෙන නියෝගයක් මා ඉදිරියේ ඇති මෙම නඩුවේ දී හබකල නොහැකි අතර එලෙස කල හැකිවනුයේ අදාළ වාහන සම්බන්ධයෙන් අත්හිටුවීමේ නියෝගයක් මේ වන විටත් වෙනත් අධිකරණ ක්‍රියාවලියක් තුලදී ලබා දී තිබෙන බැවින් එකී අධිකරණ නියෝගයට එරෙහිව ඉහල අධිකරණයක් ඉදිරියේ අභියාචනයක් හෝ ප්‍රතිශෝධ අයදුම්පත්‍රයක් ඉදිරිපත් කිරීම තුලින් පමණි"

Furthermore, we are mindful that the Petitioners have invoked the discretionary remedy of revision, as conferred upon this Court under Article 138 of the Constitution. The purpose of the Court's revisionary jurisdiction is to uphold the due administration of justice by rectifying errors of law or fact, thereby preventing a miscarriage of justice.

In Mariam Beebee, v Seyed Mohamed, 68 NLR page 36 at page 38, His Lordship

Sansoni, CJ. 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."

In Wijesinghe v Tharmaratnam CA 120/80, Decided on 14 th October 1986, page 47

at page 49, Srikantha's Law Reports, Vol (IV) 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."

Bank of Ceylon v Kaleel and others [2004] 1 SLR 284, Wimalachandra J. held that,

"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 present case, we have to consider whether the order made on **17th December 2024** shocks the conscience of the Court.

The police officer made an application before the High Court under Section 8 of the Prevention of Money Laundering Act, seeking confirmation and extension of the existing freezing order. Such an order is typically issued when there are reasonable grounds to believe that a person is involved in activities related to money laundering. Accordingly, the learned High Court Judge has extended the said order.

We are mindful of the proviso of section 8 (2) of the Money Laundering Act of 2006.

"Provided that where indictment is filed for the offence of money laundering in respect of the account, property or investment which is subject to the Freezing Order, such Freezing Order shall unless vacated by Court for reasons to be recorded, remain in force until the conclusion of the trial in respect of such offence, or where an appeal is preferred against a conviction for such offence, until the determination of the appeal."

In this case, the aforementioned freezing order was not vacated, and this fact was taken into consideration by the learned High Court Judge when issuing the order. When such a freezing order is in effect, the Prevention of Money Laundering Act provides specific provisions relating to the affected property.

According to Section 10 of the Prevention of Money Laundering Act No.5 of 2006:

" In confirming a Freezing Order made under section 7, the High Court may on an application made in that behalf, if it is of opinion that such an Order could damage legitimate business or other interests of any person affected thereby, and that essential transactions relating to such account, property or investment as may have been prohibited by such Freezing Order may be legitimately carried out, make order permitting the carrying on of such transactions subject to supervision by and under the direction of a person appointed in that behalf by Court or of a receiver appointed in that behalf under section 11."

According to the aforementioned section, if an application establishes that the freezing order hinders legitimate business activities or transactions, the court

may issue an order permitting such transactions to be carried out, subject to supervision and under the direction of a person authorized by the court. However, no such application was made in the present case.

For the above-mentioned reasons, we find no necessity to interfere with the said order.

In the said application, the learned Counsel has indicated that the learned High Court judge has failed to consider the judgment delivered by this court on the case no CA/CPA/42/24. Nalaka Wickramasinghe Senanayake v. Marasinghe Pedige Thushara Kumarasiri, , Decided on 13.09.2024.

In the said judgment, the court has come to the following conclusion.

"When this matter was argued before this Court, it was the contention of the learned Counsel for the petitioner that the actions taken by the police and the procedure followed, apparently in terms of the Act were illegal and nothing known to the law. It was his position that the police cannot take the law into their own hands under the provisions of the Act in the guise of a freezing order and to act in the manner they have acted.

…….

It was also submitted that the police have misled the High Court to show that the freezing order that the police wanted the Court to approve was issued in accordance with the law and has failed to inform the Court that the police took custody of the two vehicles, among other things contrary to the provisions of the Act.

……

This clearly shows that the police have taken into custody the relevant two buses and several other properties from the house of the petitioner well before the purported freezing order submitted to the High Court of Gampaha by the Senior Superintendent of Police was issued. The said freezing order has been issued on 05-01-2024 after the goods were seized by the police on a date prior to 28-12- 2023, whereas, the police had no right to do so under the provisions of the Act. What

they should have done was to issue a Freezing Order as per the provisions of the Act, and not to seize the property as they have done.

…….

It appears that when this application was made before the High Court, the learned High Court Judge has been misdirected in interpreting the provisions of section 10 of the Act in relation to section 11, where provisions have been made for the appointment of a receiver (ප්‍රතිග්‍රාහකයෙක්).

……..

Another matter that needs serious attention of the Court is the procedure that appears to have been adopted by the police after the seizure of the property mentioned in the B-report filed before the Magistrate's Court of Gampaha. As I have stated before, there is no provision in the Act to seize property from anybody's custody other than issuing a freezing order in terms of section 7 of the Act and to proceed therefrom. If the police seize any property on the basis that the said property relates or is suspected to be used in the commission of any offence, the police should have acted in terms of section 431 of the Code of Criminal Procedure Act No.15 of 1979."

My considered view is that the above-mentioned judgment, the court has failed to consider Section (12) of the Prevention of Money Laundering Act (Amendment) Act No 40 of 2021, which is as follows.

"Section 12 of the principal enactment is hereby amended as follows:—

(1) by the repeal of all the words from "Any Police Officer" to the end of paragraph (a) of subsection (1) of that section and the substitution therefor of the following:—

"Any police officer not below the rank of an Assistant Superintendent of Police shall take possession of, and otherwise deal with, any account, property or investment, which is subject to a Freezing Order, and the Court may on application made by the said police officer and for the purpose of determining who

owns, possesses or is in control of such account, property or investment to which the Freezing Order relates, order"

According to the above section, it is clear that the Act grants power to police officers to take possession of any property involved, provided that the property is subject to a freezing order. Once the property is taken into possession under such an order, the officer may then make an application to the court to extend the duration of the freezing order.

I hold that the Money Laundering Act contains a provision empowering the seizure of property when there is reason to believe that it has been acquired through unlawful activity. Thereafter, in order to prevent the commission of further such acts, an order may be issued under Section 7 of the said Act. Such an order is commonly referred to as a freezing order. Accordingly, for the aforementioned reasons, we dismiss the application

The appeal is accordingly dismissed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.
I AGREE

JUDGE OF THE COURT OF APPEAL