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

In the matter of an Application for revision in terms of Article 138 of the Constitution of the Democratic Socialist republic of Sri Lanka.

COURT OF APPEAL CASE NO:

CA/PHC/APN 151/2024

HC/RA/02/2024 :

Range Forest Officer
Range Forest Office
Thanamalwila

Complainant

Vs.

1. Dapan Durage Dinushika
   No. 45/3,Shanthapura, Ata Hamara
   Suriyawewa

2. Gamage Sanjaya Kumara
   No. 536, Kiri Ibbanwewa
   Sevanagala

Accused

Peramadu Gamlath Rallage Tharanga Chandra Kumara
No. 4268, Mahagama Colony
Sewanagala

Claimant Owner

AND NOW BETWEEN

Peramadu Gamlath Rallage Tharanga Chandra Kumara
No. 4268, Mahagama Colony
Sewanagala

Claimant Owner-Petitioner

Vs.

1. Range Forest Officer
Range Forest Office
Thanamalwila

Complainant-Respondent

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

Respondent

AND NOW BETWEEN

Peramadu Gamlath Rallage Tharanga Chandra Kumara
No. 4268, Mahagama Colony
Sewanagala

Claimant Owner-Petitioner-Petitioner

Vs.

3. Range Forest Officer
Range Forest Office

Thanamalwila

Complainant-Respondent-Respondent

4. Hon. Attorney-General
Attorney General's Department
Colombo 12.

Respondent-Respondent

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

Counsel: Nihara Randeniya for he Petitioner
Osward Perera SC. for the Respondents

Argued On: 10.03.2025

Order On: 28.03.2025

Order

B. Sasi Mahendran, J.

The Claimant owner - Petitioner- Petitioner (hereinafter referred to as the Petitioner) filed this application on 02.12.2024 seeking to set aside the orders of the High Court of Embilipitiya dated 22.10.2024 and the Magistrate Court of Embilipitiya dated 19.01.2024.

According to the Petitioner, the two Accused were charged for transporting 16 trunks of Margosa, Helamba, and Teak worth Rs. 101,084.80 using the Lorry bearing No. 41-8223 without a license being obtained from the competent

authority and charged under Section 25 (1) read with Sections 40(1) A, 40(1) B and Section 52 of the Forest Ordinance as amended. The Petitioner states that upon pleading guilty on 11.02.2021, both Accused were fined a sum of Rs. 50,000/- each in default 2 months simple imprisonment.

Thereafter, an inquiry was held by the Magistrate where the Petitioner claimed the said vehicle to be released to him on a bond worth Rs. 1.5 Million.

The Learned Magistrate by order dated 19.01.2024 confiscated the said lorry ordering the vehicle to be handed over to the custody of the Magistrate's Court on the basis that the Petitioner has failed to establish that he has taken all the precautions to prevent the use of the said vehicle for the commission of the offence. Being aggrieved by the said order, the Petitioner preferred a revision application to the High Court of Embilipitiya on the following grounds;

a. The order of the Learned Magistrate is unlawful, contrary to the law as well as the accepted legal norms
b. The Learned Magistrate has arrived at his decision by misconceiving the law and facts of the case.
c. The Learned Magistrate had made the order without considering the evidence placed before him to prove the precautionary measures that had been taken.

The Petitioner avers that the said revision application was dismissed by the Learned High Court Judge by order dated 22.10.2024 affirming the order of the Learned Magistrate on the basis that the Petitioner has failed to establish exceptional circumstances or miscarriage of justice that shocks the conscience of the Court. further, he has indicted in the order that, the Petitioner has failed to

place any evidence at the inquiry that he has taken precautionary measures to prevent the use of the vehicle to commit the offence.

Against the said orders, the Petitioner has preferred the present revision application in this Court.

The question that we are faced with is whether this Court can exercise its revisionary jurisdiction in respect of the order of the High Court of the Provinces in the exercise of its revisionary jurisdiction in terms of Article 154P (3) (b) of the Constitution.

Originally, the revisionary jurisdiction was vested with the Court of Appeal under Article 138 of the Constitution.

Article 138 of the Constitution before the 13th Amendment reads as follows:

> "The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by any Court of First Instance, tribunal or other institution and sole and exclusive cognizance, by way of appeal, revision and restitutio in integrum of all causes, suits, actions, prosecutions, matters and things of which such Court of First Instance, tribunal or other institution may have taken cognizance."

After the 13th Amendment, according to Section 5 of the High Court of Provinces (Special Provinces) Act No. 19 of 1990 read with Article 154P (3) (b) of the Constitution enacted by the 13th Amendment, entitles any person to file a revision application in the High Court of the Province.

According to the judgment of the 13th Amendment to the Constitution (1987) 2 SLR 310, the Supreme Court held that, on page 323;

"The Bills do not effect any change in the structure of the Courts or judicial power of the People. The Supreme Court and the Court of Appeal continue to exercise unimpaired the several jurisdictions vested in them by the Constitution. There is only one Supreme Court and one Court of Appeal for the whole Island, unlike in a Federal State. The 13th Amendment Bill only seeks to give jurisdictions in respect of writs of Habeas Corpus in respect of persons illegally detained within the Province and Writs of Certiorari, Mandamus and Prohibition against any person exercising within the Province any power under any law or statute made by the Provincial Council in respect of any matter in the Provincial Council list and appellate jurisdiction in respect of convictions 'and sentences by Magistrate's Courts and Primary Courts within the Province to the High Court of the Province, without prejudice to the executing jurisdiction of the Court of Appeal. Vesting of this additional jurisdiction in the High Court of each Province only brings justice nearer home to the citizen and reduces delay and cost of litigation."

This judgment was cited and followed by His Lordship Eric Basnayake J in Sharif and Others vs. Wickramasuriya and Others (2010) 1 SLR 255 at page 265;

"I am of the view that the jurisdiction enjoyed by the Court of Appeal through Article 138 remains intact. Through Article 138 one has the liberty to invoke the jurisdiction of the Court of Appeal or to resort to a Provincial High Court in terms of Article 154P (3) (b). If one chooses to go to the High Court, an appeal would lie to the Supreme Court with leave first obtained from the High Court (Section 9 of the Act 19 of 1990). If one invokes the jurisdiction of the Court of Appeal under Article 138 an appeal would lie from any final order or judgement of the Court of Appeal to the Supreme Court with leave of Court of Appeal first obtained (Article 128(1) of the Constitution). **It is thus clear that both courts enjoy concurrent jurisdiction on matters referred to in Article 154P (3) (b).** The jurisdiction enjoyed

by the Court of Appeal had not been disturbed by Articles of the Constitution or by the Acts of Parliament." (Emphasis added)

Article 154P (3)(b) and Article 154P (6) of the Constitution state as follows:

"(3) Every High Court shall –

(b) notwithstanding anything in Article 138 and subject to any law, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province;

(6) Subject to the provisions of the Constitution and any law, any person aggrieved by a final order, judgment or sentence of any such Court, in the exercise of its jurisdiction under paragraphs (3) (b) or (3) (c) or (4) may appeal there from to the Court of Appeal in accordance with Article 138."

It should be noted that in the said Article, revision was excluded by implication and only provides for an appeal to the Court of Appeal.

Giving life to these provisions, Article 138 of the Constitution was amended by the 13th Amendment which reads as follows:

"The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be **committed by the High Court, in the exercise of its appellate or original jurisdiction or by any Court of First Instance**, tribunal or other institution and sole and exclusive cognizance, by way of appeal, revision and restitutio in integrum, of all causes, suits, actions, prosecutions, matters and things **of which such High Court, Court of First Instance** tribunal or other institution may have taken cognizance." (Emphasis added)

According to Section 5 of the High Court of Provinces (Special Provinces) Act No. 19 of 1990, the powers given to the Court of Appeal under Article 138 of the Constitution were concurrently given to the Provincial High Court established under Article 154P of the Constitution. By doing so, both Courts are equally ranked when exercising revisionary jurisdiction. The jurisdiction to hear revisions and appeals is vested in the Provincial High Court by Act No. 19 of 1990 as amended.

Section 5 of the said Act provides that the High Court established under Article 154P of the Constitution for a province shall have and exercise appellate and revisionary jurisdiction in respect of any orders delivered and made by the Magistrates Courts, Primary Courts or Labour Tribunals within the Province and from orders made under Section 5 and 9 of the Agrarian Services Act.

Section 5 of the said Act is reproduced as follows for the purpose of convenience:

> "5. The Provisions of written law applicable to appeals to the Court of Appeal, from convictions, sentences or orders entered or imposed by a Magistrate's Court, and to applications made to the Court of Appeal for revision of any such conviction, sentence or order shall, mutatis mutandis, apply to appeals to the High Court established by Article 154P of the Constitution for a Province, from convictions, sentences or orders entered or imposed by Magistrate's Courts, Primary Courts and Labour Tribunals within that Province1 and from orders made under section 5 or section 9 of the Agrarian Services Act, No. 58 of 1979, in respect of land situated within that Province and to applications made to such High Court, for revision of any such conviction, sentence or order."

The central question that arises for consideration in this application is whether this Court can act in revision when the order has been pronounced by a Provincial High Court in terms of Section 5 of Act No. 19 of 1990.

The concept of concurrent jurisdiction exercised by the Provincial High Court and the Court of Appeal is discussed in the following judicial pronouncements.

In G.K.D. Stephan Gunaratne v. Maddumage Thushara Indika Sampath and Others, CA (PHC) APN 54/2013 (REV), Decided on 23.09.2013, A.W.A.Salam, J held that;

> "Appreciably, Section 5A of Act No 54 of 2006 quite specifically states that all relevant written laws applicable to an appeal, in the Court of Appeal are applicable to the High Court as well. This undoubtedly demonstrates beyond any iota of doubt that the scheme provided by Act No 54 of 2006 to facilitate an appeal being heard by the Provincial High Court is nothing but a clear transfer of jurisdiction and in effect could be said that as far as appeals are concerned both the High Court and the Court of Appeal rank equally and are placed on par with each other. Arising from this statement of law, it must be understood that if the Court of Appeal cannot act in revision in respect of a judgment it pronounces in a civil appeal, then it cannot sit in revision over a judgment entered by the High Court in the exercise of its civil appellate jurisdiction as well, for both courts are to be equally ranked when they exercise civil appellate jurisdiction."

In Muththusamy Balaganeshn v. The Officer in Charge and Another, SC/Sp/LA No. 79/2015, Decided on 01.04.2016, Priyasath Dep, PC, J (as he was then) held that:

> "When the Provincial High Court exercises appellate jurisdiction, it exercises appellate jurisdiction hitherto exclusively vested in the Court of Appeal. It exercises a parallel or concurrent jurisdiction with the Court of Appeal. The High Court when it exercises appellate jurisdiction it is not subordinate to the Court of Appeal. That is the basis for conferring jurisdiction on the Supreme Court under section 9 of the High Court of Provinces (Special Provisions) Act No. 19 of 1990 to

hear appeals from the judgments of the High Court when it exercises appellate jurisdiction."

The question before us is whether this Court has the jurisdiction to entertain the revision application as the same is in respect of an order made in exercise of revisionary jurisdiction of the High Court, in view of the fact that the Provincial High Courts now exercise the same revisionary jurisdiction, once this Court exercised under Article 138 of the Constitution. If this application is allowed, it will set a bad precedent to allow a party who fails at the High Court and file an application in this Court. In other words, our Courts have expressed that "a party to an action cannot be given a chance to have a second bite of the same cherry."

This concept was considered by His Lordship Kulatunga J in Abeygunasekera v. Setunga and others,1997 (1) SLR 62,

> "At the hearing of the appeal, a preliminary objection was raised that the Court of Appeal has no jurisdiction to entertain the appeal as the same is in respect of an order made in the exercise of the revisionary jurisdiction of the High Court.
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> ……..
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> In the alternative he submitted that the decision in Gunaratne v Thambinayagam is wrong when it held that Section 9 of Act No. 19 of 1990 does not permit direct appeals to the Supreme Court from orders made in the exercise of revisionary jurisdiction of the High Court of a Province; and that it is the Supreme Court which has the jurisdiction to entertain an appeal from the impugned judgment.
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> ….

> The power to review the orders of Magistrate's Courts and Primary Courts by way of appeal and revision is conferred on High Courts by Article 154P (3) (b). Section 3 of Act No. 19 of 1993 extended this power to orders of Labour Tribunals and orders made under Sections 5 and 9 of the Agrarian Services Act. Had these provisions conferred appellate jurisdiction on the High Court to be exercised by way of appeal and revision, the questions of interpretation of the kind which have arisen from time to time may not have arisen. However, the use of the expression "appellate and revisionary jurisdiction" has given rise to such questions.
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> ……..
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> In the case before us, Article 154P (3) (b) conferred "appellate and revisionary" jurisdiction on the High Court. Article 154P (6) provides that any person aggrieved by a decision of the High Court **in the exercise of its jurisdiction** inter alia, under paragraph (3) (b) may appeal therefrom to the Court of Appeal in accordance with Article 138. Thus Article 154(P) (6) itself has not limited the right of appeal given by it to orders made by the High Court by way of appeal. However, that Article refers back to Article 138 which spells out the jurisdiction of the Court of Appeal and the manner of its exercise."

The above-mentioned judgment was considered by His Lordship Ananda Coomarasamy, J in Abeywardene v. Ajith de Silva 1998 (1) SLR 134 at pages 139 - 140, along with Their Lordships Amarasinghe J, Wadugodapitiya J, Wijetunga J and Shirani Bandaranayake J agreeing and held that;

> "The cumulative effect of the provisions of Articles 154P (3) (b), 154P (6) and section 9 of Act No. 19 of 1990 is that, while there is a right of appeal to the Supreme Court from the orders, etc., of the High Court established by Article 154P of the Constitution in the exercise of the appellate jurisdiction vested in it by

Article 154P (3) (b) or Section 3 of Act No. 19 of 1990 or any other law, there is no right of appeal to the Supreme Court from the orders in the exercise of the revisionary jurisdiction. **An appeal from an order of the High Court in the exercise of its revisionary jurisdiction should be made to the Court of Appeal.** An appeal to the Supreme Court from the decision of the Court of Appeal would lie, with leave.

……

It will thus be seen that if a litigant invokes the revisionary jurisdiction of the Court of Appeal, he has one chance for an appeal to the Supreme Court, whereas if he invokes the revisionary jurisdiction of the High Court he will have two chances of appeal, one to the Court of Appeal and then to the Supreme Court, except when the revisionary jurisdiction of the High Court is invoked in relation to an order of a Labour Tribunal, in which case there is only one appeal and that too to the Supreme Court only.

It is further seen that the legislature did intend to have the right of appeal to the Court of Appeal from a revisionary order of the High Court except when the revisionary jurisdiction of the High Court is invoked in relation to an order of a Labour Tribunal.

In response to the question placed before this court, I hold that a direct appeal does not lie to the Supreme Court from the order of the High Court in the exercise of the revisionary jurisdiction. An appeal from the order of the High Court in the exercise of its revisionary jurisdiction should be made to the Court of Appeal. Where a party is dissatisfied with the order of the Court of Appeal, the party may, with leave of the

Court of Appeal or when such leave is refused by the Court of Appeal, with leave of the Supreme Court, appeal to the Supreme Court." (Emphasis added)

In Welisarage Lakshman Nishantha Fernando v. The Hon. Attorney General and Another, CA/MC/RE Application No. 04/2017, His Lordship E.A.G.R. Amrasekara, J. along with A.H.M.D.Nawaz J held that:

"However, for the following reasons this court cannot grant reliefs as prayed for in the petition;

a) The petitioner had filed revision applications in Gampaha High Court seeking revision of the said orders made by the learned magistrate and the said high court has dismissed the applications. (vide paragraph 8 of the petition). It must be noted that high courts now exercised the same revisionary jurisdiction once this court exercised over magistrate courts. As he has filed revision applications on the same orders previously in the High Court of Gampaha he has exhausted his remedy. His position is that his lawyers have not brought to the notice of High Court the facts averred in this petition. A party to an action cannot be given a chance to have a second bite of the same cherry. If this court allows this application it may create a bad precedent to allow a party who fails to present his case properly file another application."

Thus, we hold that, in the instant application, the Petitioner has already exhausted the remedy available by the statute. Therefore, the Petitioner cannot invoke the same revisionary jurisdiction against the said order where the High Court exercises a parallel or concurrent jurisdiction with this Court. The Petitioner should have come by way of an appeal to this Court.

For the above said reasons we dismiss the application without costs.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL