

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

In the matter of an Application for Revision under and in terms of Article 138 of the Constitution against the judgment dated 21/10/2022 in the High Court of the Western Province (Holden in Negombo) Revision Application No. HCRA 04/2022, in the Magistrate Court Case No. 38991/19.

Court of Appeal

Application No:

CA(PHC)APN157/2022

The Officer-in-Charge

Excise Station

Ja-ela.

Complainant

High Court of Negombo

No. HCRA/04/2022

MC Welisara

Case No.38991/19

Vs.

Naullage Prasanna Priyanjana

No.57, Gunasekera Mawatha,

Madduamagala,

Ragama.

Accused

Nenathunga Liyanage Muditha Nishani
Nenathunga
No.57, Gunasekera Mawatha,
Madduamagala,
Ragama.

Claimant in the Provincial High Court

Nenathunga Liyanage Muditha Nishani
Nenathunga
No.57, Gunasekera Mawatha,
Madduamagala,
Ragama.

Claimant-Petitioner

Vs.

1. The Officer-in Charge
Excise Station,
Ja-ela.

Complainant-Respondent

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

Respondent

Now in the Court of Appeal

Nenathunga Liyanage Muditha Nishani
Nenathunga
No.57, Gunasekera Mawatha,
Madduamagala,
Ragama.

Claimant-Petitioner-Petitioner

Vs.

1. The Officer-in Charge
Excise Station,
Ja-ela.

Complainant-Respondent-Respondent

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

Respondent-Respondent

BEFORE

**: Sampath B. Abayakoon, J.
P. Kumararatnam, J.**

COUNSEL

**: Chandana Wijesooriya with Wathsala
Dulanjani for the Petitioner.
I.M.M.Fahim, SC for the Respondent.**

ARGUED ON : **30/11/2023.**

DECIDED ON : **03/04/2024.**

JUDGMENT

P. Kumararatnam, J.

The Complainant-Respondent-Responded (Hereinafter referred to as the Respondent) had filed a charge sheet Under Section 46(a) and 54(2) of the Excise Ordinance against the Accused in the Magistrate Court of Welisara. As the Accused pleaded guilty to the charge sheet, the Learned Magistrate of Welisara had convicted the Accused and imposed a fine of Rs.75,000/- and fixed for an inquiry to confiscate the Vehicle bearing No. WP PI-6212.

At the conclusion of the inquiry, the Learned Magistrate had decided to confiscate the aforesaid vehicle by his order dated 12th February 2020. At the inquiry the Accused and the Petitioner had given evidence.

Being aggrieved by the order of the Magistrate, the Petitioner filed a revision application in the Provincial High Court of Western Holden at Negombo to revise the order of the Magistrate of Welisara. After support, the Learned High Court Judge had issued notice to the Respondent and the matter was fixed for argument. After the inquiry, the Learned High court Judge had dismissed the said revision application. Now the Petitioner filed this revision application to set aside the order of the Learned High Court Judge of Negombo dated 21/10/2022. At present

the vehicle in question was released to the Petitioner on a bond of value of Rs. 500,000/- pending inquiry.

The Appellant submitted following grounds of appeal:

- i. The said judgement is contrary to the facts, materials, evidence placed before the Magistrate Court and the circumstances of this case;
- ii. The learned Judge of the Provincial High Court and the learned Magistrate has misdirected themselves by concluding that the petitioner had failed to take precautions to prevent the vehicle being used for commission of the said vehicle;
- iii. The learned Magistrate and the learned judge of the Provincial High Court misdirected themselves by failing to appreciate that the Petitioner had no knowledge or involvement in the said vehicle being used for commission of the said offence.
- iv. The learned judge of the Provincial High Court misdirected himself has misdirected himself by dismissing the said application of the Petitioner on the delay on the part of the Petitioner, whereas the Petitioner had explained the delay in making the said application and for the said order of the learned Magistrate was *ab initio* void;
- v. The learned Magistrate and the learned judge of the Provincial High Court misdirected themselves by failing to evaluate the evidence led at the said inquiry in the correct manner to, which satisfied the Magistrate Court to release and discharge the said vehicle from confiscation.

- vi. Grave miscarriage of justice has caused by the said order of the learned Magistrate and the order of the learned judge of the Provincial High Court marked “P2”;
- vii. The said judgment is palpably wrong.

It is settled law that revision is a discretionary remedy, and such power shall be invoked only upon demonstration of exceptional circumstances.

In **Ramu Thamodarampillai v. The Attorney General [2004] 3 SLR 180** the court held that:

“the decision must in each case depend on its own peculiar facts and circumstances”.

In **Marian Beebee v. Seyed Mohamed 69 CLW 34** the court held that:

“Power of revision is an extraordinary power of the court which is independent and distinct from the appellate jurisdiction. The object of revisionary jurisdiction is to ensure the due administration of justice and the correction of all errors in order to avoid a miscarriage of justice”.

In the case of **Rasheed Ali v. Mohammed Ali and Others [1981] 1 SLR 262**, the court held that:

“ ...the powers of revision vested in the Court of Appeal are very wide and the Court can in a fit case exercise that power whether or not an appeal lies. When, however, the law does not give a right of appeal and makes the order final, the Court

of Appeal may nevertheless exercise its powers of revision, but it should do so only in exceptional circumstances. Ordinarily the Court will not interfere by way of review, particularly when the law has expressly given an aggrieved party an alternative remedy such as the right to file a separate action, except when non-interference will cause a denial of justice or irremediable harm”.

In **Commissioner of Police v. Tanes (1957-58) 68 CLR 383**, the court held that:

"It is a deep-rooted principle of the law that before anyone can be punished or prejudiced in his person or his property by any judicial or quasi-judicial procedure, he must be afforded adequate opportunity of being heard ... "

In this case the Learned High Court Judge only considering the order of the Magistrate Court of Welisara decided to dismiss the revision application stating that that the Petitioner had failed shock the conscious of the court.

In this case a car had been confiscated for transporting 562,500 ml of illicit liquor.

The Petitioner has given evidence in the court and has claimed that she was unaware of the crime being committed as she has given the vehicle on rent to the Nishan Tours, a rent a car company by an agreement marked 'X1' for a monthly rental of Rs.40,000/- for a period commencing from 11/12/2018 to 11/06/2019.

The said rent a car company had given the same on rent to the Accused on an agreement marked 'X2' for the period commencing from 10.03.2019 to 10.04.2019 and the said agreement had been extended by

an employee of the said Nishan Tours at the request of the Accused by a phone call.

The Learned Magistrate has dismissed the application on the basis that the Petitioner had failed to show that she took all necessary precautions to prevent a crime being committed.

In this case the owner of the vehicle, the Petitioner had given evidence in court. According to her, she had given the vehicle to Nishan Torus on a rent. Her husband Chaminda Pushpakumara is the person who handled the transaction and supervised the vehicle on her behalf.

Chaminda Pushpakumara also gave evidence and corroborated the evidence given by the Petitioner.

The Owner of the Nishan Tours also gave evidence and corroborated the evidence gave by husband of the Petitioner.

In this case the Petitioner had legally entered into an agreement with Nishan Tours and rented her vehicle which is the subject matter of this case. Further she made supervision through her husband about the movement of the vehicle and she also called the Nishan Tours to check her vehicle. Nishan Tours had re-rented the vehicle as per the agreement and the incident had happened without the knowledge of the Petitioner.

Hence, the Learned Magistrate simply dismissing the application on the basis that the Petitioner had failed to show cause that she took all necessary precautions to prevent a crime being committed is not correct in this case.

Endorsing the finding of Learned Magistrate, the Learned High Court Judge had failed to consider the evidence adduced on behalf of the Petitioner properly.

Hence, I set aside the order of the Learned High Court Judge of Negombo dated 21.10.2022 and the order of Learned Magistrate of Welisara dated 12.02.2020.

Therefore, the revision application is allowed.

I direct that the vehicle No. WP-PI-6212 be released to the Petitioner.

The Registrar of this Court is directed to send this Judgment to the High Court of Negombo and the Magistrate Court of Welisara.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL