

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

In the matter of an Appeal under and in  
terms of Article 138 of the Constitution of  
the Democratic Socialist Republic of Sri  
Lanka.

CA/(PHC) 125/2019  
HC Colombo Revision  
Application 66/17

Officer in Charge  
Unit 07  
Colombo Fraud Bureau  
Wellawatta  
Colombo 05.

**Complainant**

**Vs.**

1. Hapuhennedige Vasana Raveendra  
Wickramasena  
No. 35/3, Samagi Mawatha  
Thalahena  
Malabe
2. Boshan Harshana Dayaratne  
No. 15/3, Bellantara Road  
Pepiliyana Road  
Dehiwala
3. Shiara Annamarie Madawala  
No. 15/3 , , Bellantara Road  
Pepiliyana Road  
Dehiwala

**Accused**

**And Now between**

Sanjaya Prasad Jayamanna  
No. 223, Vijaya mawatha

Thalahena

Malabe

**Complainant**

**And**

Sanjaya Prasad Jayamanna

No. 223, Vijaya mawatha

Thalahena

Malabe

**Aggrieved Party- Petitioner**

**V.**

Officer In Charge

Unit 07

Colombo Fraud Bureau

Wellawatta

Colombo 05.

**Complainant-Respondent**

**1.** Hapuhennedige Vasana Raveendra

Wickramasena

No. 35/3, Samagi Mawatha

Thalahena

Malabe

**2.** Boshan Harshana Dayaratne

No. 15/3, Bellantara Road

Pepiliyana Road

Dehiwala

3. Shiara Annamarie Madawala  
No. 15/3 , , Bellantara Road  
Pepiliyana Road  
Dehiwala

**Accused –Respondent**

The Attorney General  
Attorney General's Department  
Colombo 12.

**Respondent**

**AND NOW BETWEEN**

1. Hapuhennedige Vasana  
Raveendra Wickramasena  
No. 35/3, Samagi Mawatha  
Thalahena  
Malabe

2. Boshan Harshana Dayaratne  
No. 15/3, Bellantara Road  
Pepiliyana Road  
Dehiwala

3. Shiara Annamarie Madawala  
No. 15/3, Bellantara Road  
Pepiliyana Road  
Dehiwala

**Accused –Respondent-Appellants**

**Vs.**

Sanjaya Prasad Jayamanna  
No. 223, Vijaya mawatha  
Thalahena  
Malabe

**Aggrieved Party- Petitioner- Respondent**

**Vs.**

Officer In Charge

Unit 07

Colombo Fraud Bureau

Wellawatta

Colombo 05.

**Complainant-Respondent-Respondent**

The Attorney General

Attorney General's Department

Colombo 12.

**Respondent-Respondent**

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

Amal Ranaraja, J

**Counsel:** Chandana Liyanapatabandy, PC, Ershan Ariaratnam with Wijaya  
Gamag for the Appellants

Malit Azeez, SC for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents

**Written:** 26.08.2024 (by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Accused-Respondent-Appellant)

**Submission** 27.09.2024 (by the Respondent-Respondent and Complainant-

**On** Respondent-Respondent)

**Argued On :** 21.07.2025

**Judgment On:** 29.08.2025

## JUDGEMENT

**B. Sasi Mahendran, J.**

This is an appeal arising from the order made by the Learned High Court Judge of the Provincial High Court of Western Province, holding in Colombo, in the case No. HCRA/66/17 on 31.07.2019.

According to the Petitioner, the Fraud Investigation Bureau, on a complaint made by the Aggrieved party- Petitioner-Respondent (hereinafter referred to as the Respondent), issued summons to the 1st, 2nd, and 3rd Accused-Respondent-Appellants (hereafter referred to as Appellants)

On 02.07.2015, the following charges were read over to the Appellants,

1. Infringement of the trade name and trademark titled 'CICRA' under section 121 of the Intellectual Property Act, No. 36 of 2003, read with section 186 (2).
2. Dishonest misappropriation of property worth Rs. 4 million purchased by the Respondent for CICRA Institute of Education (Pvt) Ltd, under Section 386 of the Penal Code, read with Section 32 of the Penal Code.

After pleading not guilty to the charges on 26.10.2016, the Appellants proceeded to raise preliminary objections concerning the contents of the charge sheet.

On 23.11.2016, the Learned Magistrate upheld the preliminary objections raised by the Appellants and, exercising powers under Section 186 of the Criminal Procedure Code, acquitted Appellants of all charges.

It is pertinent to set out the relevant portion of the order issued on 23.11.2016.

“එවැනි තත්ත්වයක් තුළ 121 වගන්තිය උල්ලංගනය වීමක්ද සිදුවන්නේ නැත. එපරිද්දෙන්ම 186 (2) යටතේ වරදක් සංස්ථාපනය වන්නේද නැත. වරදක් සංස්ථාපනය නොවූ විටෙක 186 (4) යටතේ දඬුවමක් ලබා දීමටද නොහැක. ඒ අනුව මුල් පැමිණිලිකරු වෙතට 2012.04.02 දින වන විට සික්රා වෙළඳ නාමය හා වෙළඳ සලකුණ ලැබී නොතිබීම මත 2012.03.17 දින එහි අයිතිවාසිකමක් කඩවීමක් උපවය නොවන බැවින් ( මුල් බි වාර්තාවේ 3 වන පිටුවේ 2014.06.24 දින තමාට සහතිකය ලැබී ඇති බව පැමිණිලිකරු කියා තිබීම. ) 1 වන චෝදනාවද මෙම විත්තිකරුවන්ට එරෙහිව පවරා පවත්වාගෙන යාමට නොහැකි බවට තීරණය කළ යුතුය. ඒ අනුව පෙර මා සඳහන් කළ පරිදි 2 වන චෝදනාවද පවරා පවත්වාගෙන යා නොහැකි බවට තීරණය කරමි.

මෙම නඩුවේ ඉහත නීතිමය සිද්ධාන්ත පදනම් කරගෙන අපරාධ නඩු විධාන පනතේ 186 වන වගන්තිය යටතේ නිදොස් කළ හැකිය යන කරුණ සැලකිල්ලට භාජනය කරමි. අපරාධ නඩු විධාන සංග්‍රහ පනතේ 186 වගන්තියේ විධිවිධාන පහත පරිදි වේ.

186. මෙහි මින් පෙර ඇතුළත් කිසිවකින් නඩුවේ යම් කලින් අවස්ථාවකදී වුදිනයා නිදහස් කිරීමෙන් මහේස්ත්‍රාත්වරයා වලක්වනු ලැබෙනැයි සලකනු නොලැබිය යුතු නමුත් එසේ නිදහස් කිරීමට හේතු මහේස්ත්‍රාත්වරයා විසින් වාර්තාගත කරනු ලැබිය යුතුය.

ඒ අනුව ඉහත සිද්ධාන්ත අනුව තීරණය කරමින් මුලික විරෝධතාවය පිළිගන්නා අතර ආපරාධ නඩු විධාන පනතේ 186 යටතේ ක්‍රියා කරමින් වුදිනයින් මෙම නඩුවෙන් නිදහස් කිරීමට තීරණය කරමි'

The primary reason cited by the learned Magistrate for dismissing the charges was that they could not be sustained, given that the virtual complainant and the 1st and 2nd Accused were directors and shared ownership of the CICRA.

Being aggrieved by the said order, the Respondents invoked the revisionary jurisdiction of the Provincial High Court of the Western Province, holding in Colombo.

In their statement of objection, the Appellant raised a preliminary objection, contending that the Respondent had delayed nearly six months in filing the revision application following the order issued by the Learned Magistrate.

Thereafter, the Learned High Court Judge delivered his order on 31.07.2019 and set aside the order of the learned magistrate on the following grounds.

- a) The duty to frame lawful charges is vested upon the learned Magistrate under Section 182 of the CCPA
- b) The Learned Magistrate discharged the Accused (now Appellants) before leading any evidence;
- c) If there were errors in the charge sheet, the learned Magistrate was duty-bound to amend the charge, resorting to Section 167 of the CCPA
- d) The impugned Order contains irrelevant matters, especially the case under the Primary Courts Act and the case before the Commercial High Court.
- e) The Learned Magistrate had arrived at certain findings based on factual matters before any evidence had been led; and, therefore,
- f) The impugned Order is defective.

The Learned High Court Judge also directed the Learned Magistrate to frame the charge sheet and proceed to trial. This appeal challenges the said order main ground urged by the Appellant is that the Learned High Court Judge has failed to consider the preliminary objections raised by them.

We acknowledge that the order challenged by the appellant was issued pursuant to the exercise of revisionary jurisdiction by the Learned High Court Judge, as conferred under the Constitution.

The Learned High Court Judge primarily reasoned that, under Section 182(1) of the Code of Criminal Procedure Act No. 15 of 1979 as amended, it is the Learned Magistrate's statutory duty to frame the charges.

'182(1) - Where the Accused is brought or appears before the court, the Magistrate shall, if there is sufficient ground for proceeding against the Accused, frame a charge against the Accused'

So, in the instant case, the reason given by the Learned Magistrate is that the charges against the Accused are unattainable. It shows that the Learned Magistrate has failed to follow the procedure properly.

The said order arising from the revisionary jurisdiction. Therefore, I am mindful of the following judgements.

**Wijesinghe Vs Tharmaratnam Srikantha's LR (IV) page 47 at page 49 Jameel J. CA 120/80, Decided on 14<sup>th</sup> October 1986**

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

In the case of **Bank of Ceylon Vs Kaleel and others [2004] 1 SLR 284**, Per 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."

I am of the view that the order made by the Learned Magistrate warrants invoking the revision Jurisdiction. Therefore, the Learned High Court Judge correctly considered section 182 (1) of the Criminal Procedure Code and made the said order.

For the above-said reasons, there is no need to interfere with the order made by the Learned High Court Judge dated 31.07.2019.

For the aforesaid reasons, we dismiss the Appeal. No order for costs.

The Registrar is hereby instructed to transmit a copy of this Judgment to the Magistrate's Court of Colombo to ensure compliance with the directive issued by the Learned High Court Judge on 31.07.2019.

**JUDGE OF THE COURT OF APPEAL**

**Amal Ranaraja, J**

**I AGREE**

**JUDGE OF THE COURT OF APPEAL**