

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

In the matter of an Appeal in terms of Sec.331 of the Code of Criminal Procedure Act No: 15 of 1979 and in terms of Sec.11 of High Court of the Provinces (Special Provisions) Act No.19 of 1990.

**Court of Appeal**  
**Case No. : CA(PHC) 23/2015**

**High Court - Chillaw**  
**Case No. : HCR 31/2013**

**Magistrates Court – Marawila**  
**Case No. : 81353/C**

Kudupitiyage Rexi Pearl Fernando  
No.543, Kobbekaduwa Mawatha,  
Haaldanduwana,  
Dankotuwa.

**Complainant**

-Vs-

1. Rev. Fr. Palliyaraalalage Don  
Priyanjeeva Gunaratne  
Joseph Vazz College,  
Wennappuwa.
2. Udugampalage Joode Udugampola  
“Dulanjali”, Dummaladeniya,  
Wennappuwa.
3. Diluk Sampath Thamel,  
Behind Church Road, Ulhitiyawa,  
Wennappuwa.

**Accused**

**AND**

Kudupitiyage Rexi Pearl Fernando  
No.543, Kobbekaduwa Mawatha,  
Haaldanduwana,  
Dankotuwa.

**Complainant-Petitioner**

-Vs-

1. Rev. Fr. Palliyaraalalage Don  
Priyanjeewa Gunaratne  
Joseph Vazz College,  
Wennappuwa.
2. Udugampalage Joode Udugampola  
“Dulanjali”, Dummaladeniya,  
Wennappuwa.
3. Diluk Sampath Thamel,  
Behind Church Road, Ulhitiyawa,  
Wennappuwa.
4. Hon. Attorney General  
Attorney General’s Department,  
Colombo 12.

**Accused-Respondents**

**AND NOW**

1. Rev. Fr. Palliyaraalalage Don  
Priyanjeewa Gunaratne  
Joseph Vazz College,  
Wennappuwa.
2. Udugampalage Joode Udugampola  
“Dulanjali”, Dummaladeniya,  
Wennappuwa.
3. Diluk Sampath Thamel,  
Behind Church Road, Ulhitiyawa,  
Wennappuwa.

**Accused-Respondent-Appellants**

-Vs-

Kudupitiyage Rexi Pearl Fernando  
No.543, Kobbekaduwa Mawatha,  
Haaldanduwana,  
Dankotuwa.

**Complainant-Petitioner-Respondent**

BEFORE : K. K. Wickremasinghe, J  
Priyantha Fernando, J

COUNSEL : AAL Rienzie Arsacularatne PC with AAL  
Ganeshan Prem Kumar, AAL Namal  
Karunaratne for the Accused-Respondent-  
Appellant  
AAL Harshika Samaranayake for the Complainant-  
Petitioner-Respondent

ARGUED ON : 07<sup>th</sup> June 2019

WRITTEN SUBMISSIONS : The Accused-Petitioner-Appellant on  
30.08.2019  
The Complainant-Petitioner-Respondent on  
13.11.2019

DECIDED ON : 24<sup>th</sup> January 2020

**K.K. WICKREMASIGHE, J.**

The Accused-Respondent-Appellants (herein after referred to as the “appellants”) were discharged by the Magistrate Court Marawila dated 15-11-2013 in the Case No.81353/C. The

Complainant-Petitioner-Respondent (hereinafter referred to as the “respondent”) filed a revision application No.HCR 31/2013 in the High Court of Chillaw seeking to revise the said Order of the Magistrate. The Learned High Court Judge set aside the order of the Magistrate and ordered for a re-trial on 25-03-2015.

Being aggrieved by the aforementioned Judgement, the appellant preferred this appeal to this Court.

No grounds of appeal specifically stated by the Appellant in their Written Submission.

It is submitted by the Appellant that the Learned Magistrate issued summons on the suspect (appellants) returnable on 14-08-2013 (vide page 71 of the brief) without following necessary provisions of Section 139(1) proviso II of the Criminal Procedure Code No.15 of 1979.

The Appellants were charged in MC for Criminal Trespass punishable under Section 433 of Penal Code read with Section 32 and Section 409 read with Section 32 of the Penal Code.

The appellants appeared before Learned Magistrate and thereby the Learned PC appeared for the Appellant submitted to court that Learned Magistrate should not sign the charge sheet in terms of Section 182(1) of the Criminal Procedure Code on the following grounds :-

- a) That the land 1 acre 3 roods and 24 perches in extent has been vested in the Government Gazette No. 116 dated 20-11-1980 marked X5 (vide page 138 and page 220 of the brief)
- b) On or about 05-05-1981 the said land has been handed over for the use of Joseph Vaz Colege Wennappuwa as stated in the letter marked X8 (vide page 220 of the brief)
- c) The 1<sup>st</sup> suspect who is the Principal of Joseph Vaz College Wennappuwa having seen that a building is been erected in the said land in the early hours of the morning of 23-04-2013 summoned the officers of the School Development Society and the Old Boy’s Union and thereafter lodged a complaint at the Wennappuwa police station at 3 am in the morning on the said date.
- d) It is thereafter the complainant lodged her complain to the police station
- e) That the complainant has filed case No. 1727/L in the District Court of Marawila pertaining to this land without making Joseph Vaz College or its Principal a party as surreptitiously got as declaration form the said court that she is the owner of the land (vide pages 158-160 & 164-172 of the brief)

The Learned Magistrate was of the view that the complainant was not possessing the land and therefore the suspects of the MC case (appellants) were discharged. Before arriving the decision the Learned Magistrate has made following observations:-

- a) The Learned Magistrate has considered that the above mentioned construction was not done properly (not followed proper standards)
- b) Merely because of the fact that they commenced construction the complainant cannot say that the complainant was possessing the land.
- c) The DC case filed by the complainant was a case where the suspects were not a party and therefore the suspects were not responsible.

According to X1, the 1<sup>st</sup> complaint was made to the police by the suspects of the MC case (appellants).

Considering above, the Learned Magistrate has decided that the complainant was unable to furnish adequate evidence to proceed against the suspect under Section 182(1) of the Criminal Procedure Code and the suspects were released by acting under 182(2) of Criminal Procedure Code.

The Learned High Court Judge after considering Written Submission of both parties was of the view that once the Learned Magistrate acted under Section 136(1) there is no need to consider the fact again before reading out the charge to suspects. Further stated that it was unbecoming of a Magistrate to take such an act and was a laughing matter.

Per Justice S.N. Silva in *Malanie Gunaratne V. Abeysinghe and another* 1994(3) SLR 196,

*“When a private complaint is filed, section 139(1) requires a Magistrate to form an opinion as to whether there is “sufficient ground for proceeding against some person who is not in custody. The opinion to be formed should relate to the offence, the commission of which, is alleged in the complaint or plaint filed under section 136(1). The words “sufficient ground” embrace both the ingredients of the offence and the evidence of its commission”*

In *Godage V. OIC, Kahawatte Police* [1992] 1 Sri LR 54

*Held, it is an imperative duty of the Magistrate to frame a charge and read it out to the accused, failure to do so is fatal to the conviction.*

At page No. 83 of the brief, it is apparent that the Appellants have admitted committing the crime.

“මොවුන් හොර රහසේ හඳුනා බිල්බිම කඩා දැමීම වරදක්ද? ..... පාසලේ විදුහල්පතිවරයා වශයෙන් මා එය කළ යුතුයි. මා නිදා සිටිය යුතු නැහැ”

Therefore it is evident that there was a prima facie case to frame suitable charges against the suspects in MC (appellants)

While agreeing with the finding of the Learned High Court Judge I strongly state that the Learned Magistrate should have acted under Section 136(1)(a) and called for evidence and

decided the case without releasing the suspects under Section 182(1),(2) which shock the conscience of court and the order of the Learned Magistrate is contrary to the law. Accordingly the order of the Learned Magistrate is illegal.

For the above mentioned reasons the appeal is hereby dismissed.



JUDGE OF THE COURT OF APPEAL

**K. Priyantha Fernando, J.**

I agree,



JUDGE OF THE COURT OF APPEAL