

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, read with Article 154P(3)(b) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (PHC) 62/2020

HC of Kandy Case No:
HC (Rev) 18/15

J.A. Anura
Public Health Inspector
Officer of Public Health Inspector

Rahathungoda

Complainant

Vs.

1. G.M. Chandrakumaru Manawadu
Mandiya,
No 154,
Hospital Road,
Galaha.
2. The Manager
Nestle (Lanka) Limited,
440, Darley Road, Colombo-10.
3. Steward Yung
06, Second House,
Alfred Place,
Colombo-03.

4. Mahendra Dayananda
15, Welsi Garden,
Colombo-03.
5. Alfred Kyelin
440, T.B.Jaya Mawatha,
Colombo-10.
6. M.A.L. Rajapaksha
291/24, Havelock Terrace,
Colombo -05.
7. M. Roland
440, T.B.Jaya Mawatha,
Colombo-10.
8. Ranjeevan Sivarathnam, No: 4/6, Station
Court 19,
19, Station Road,
Colombo-06.

Accused

AND NOW BETWEEN

1. K.G. Siripala Karunarathna
529/11, kurundumanda Road,
Horape,
Ragama,
2. 2.Nestle (Lanka) P.L.C
440, T.B.Jaya Mawatha,
Colombo-10.

Petitioners

-Vs-

J.A. Anura

Officer Authorized Under the Food Act
and Public Health Inspector,
Office of Public Health Inspector,
Rahathungoda.

Complainant-Respondent

Vs.

1. G.M. Chandrakumaru Manawadu
Mandiya,
No 154,
Hospital Road,
Galaha.
2. The Manager
Nestle (Lanka) Limited,
440, Darley Road, Colombo-10.
3. Steward Yung
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15, Welsi Garden,
Colombo-03.
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440, T.B.Jaya Mawatha,

Colombo-10.

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291/24, Havelock Terrace,
Colombo -05.
7. M. Roland
440, T.B.Jaya Mawatha,
Colombo-10.
8. Ranjeevan Sivarathnam, No: 4/6,
Station Court 19,
19, Station Road,
Colombo-06.

Accused-Respondents

Hon. Attorney General
Attorney General's Department
Colombo 12

Respondent

AND NOW Between

1. K.G. Siripala Karunaratna
529/11, kurundumanda Road,
Horape,
Ragama,
2. Nestle (Lanka) P.L.C
440, T.B.Jaya Mawatha,
Colombo-10.

Petitioner-Appellants

Vs.

J.A. Anura

Public Health Inspector

Officer of Public Health Inspector

Rahathungoda

Complainant-Respondent-Respondent

1. G.M. Chandrakumaru Manawadu
Mandiya,
No 154,
Hospital Road,
Galaha.
2. The Manager
Nestle (Lanka) Limited,
440, Darley Road, Colombo-10.
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Colombo-10.

8. Ranjeevan Sivarathnam, No: 4/6,
Station Court 19,
19, Station Road,
Colombo-06.

Accused-Respondent-Respondent

Hon. Attorney General
Attorney General's Department
Colombo 12

Respondent-Respondent

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

Counsel: Asthika Devendra with Kaneel Maddumage Petitioner- Appellants
Anoopa de Silva. DSG for the State

Argued On: 19.05.2025

Written

Submissions: 09.05.2025 (by the Petitioner-Appellant)

On

Judgment On: 30.06.2025

JUDGMENT

B. Sasi Mahendran, J.

The 1st and 2nd Accused-Petitioner-Appellants (hereinafter referred to as the "Appellant") have filed this appeal seeking to set aside the order delivered by the learned High Court Judge of the Provincial High Court of the Central Province, Kandy, dated 11th June 2020 in Case No. HC/Rev/18/15, along with the order issued by the learned Magistrate of Kandy on 20th November 2014 in Case No. 10790.

The Appellant has *inter alia* prayed for the following reliefs;

(a) To set aside and revise that part of the judgment dated 11.06.2020, delivered by the learned High Court Judge of Kandy in case no. HC Rev. 18/15, which is relating to the 3rd to 8th Accused-Respondent-Respondents,

(b) To set aside and revise that part of the judgment dated 11.06.2020, delivered by the learned High Court Judge of Kandy in Case No. HC Rev. 18/15, wherein the Court directed proceedings to be continued against the 3rd to 8th Accused-Respondent-Respondents in Magistrate's Court case no. 10790; and accordingly, to discharge the said Accused-Respondent-Respondents from the proceedings before the Magistrate's Court of Kandy,

(c) To set aside and revise the order dated 20.11.2020, issued by the learned Magistrate of Kandy in case no. 10790, and to discharge the 3rd to 8th Accused-Respondent-Respondents from the said proceedings.

The Complainant-Respondent (hereinafter referred to as the "Complainant") instituted a plaint on 30th October 2008 before the Magistrate's Court of Kandy against the Appellant, relying on the provisions of the Food (Labelling and Advertising) Regulations of 2005, enacted under the Food Act No. 26 of 1980 (as amended).

When the matter was taken up on 2nd December 2010, counsel for the 2nd Accused raised a preliminary objection, asserting that proceedings could not be sustained against the said party on the basis that the 2nd Accused was a non-existent legal entity. As a result, the prosecution sought to amend the charge sheet.

On 06.11.2011, the prosecution submitted an amended plaint, naming the directors of Nestlé Lanka PLC as the 3rd to 8th Accused, in addition to the original 1st and 2nd Accused. When the matter was taken up on 06.03.2014, several preliminary objections were raised on behalf of the Accused-Appellant.

Consequently, the Court directed them to file written submissions. These objections were overruled by the learned Magistrate on 20.11.2014. Dissatisfied with this decision, the Accused-Appellant filed a revision application before the High Court of Kandy. By order dated 11.06.2020, the learned High Court Judge granted the prosecution leave to include the names of the 3rd to 8th Accused in the charge sheet.

Being aggrieved by the said order, the Appellant preferred this appeal

We note that, as per the amended charge sheet, the date of detection is recorded as 22.10.2008. Although the original plaint was filed on 30.10.2008, the amended plaint—filed on 06.01.2011—now includes the 3rd to 8th Accused-Appellants, who are directors of Nestlé Lanka (Pvt) Ltd., as additional accused.

When the matter was taken up before this Court on 19.03.2025, the learned Deputy Solicitor General, representing the Complainant-Respondent, apprised the Court that, in view of the Supreme Court’s judgment in SC Appeal No. 128/19 delivered on 27.10.2022, the legal position pertinent to the present appeal now stands resolved in favour of the Petitioner-Appellant.

The issue before this Court is whether the recently added Accused-Respondents—namely, the directors of Nestlé Lanka PLC—may be brought within the ambit of these proceedings under the provisions of the Food Act, in light of the aforementioned judgment of the Supreme Court.

As per both the original and amended charge sheets, the alleged offence was detected on 22 October 2008. The original plaint was filed shortly thereafter, on 30 October 2008. However, the amended plaint, which includes the 3rd to 8th Accused—being directors of Nestlé Lanka PLC—was filed on 6 January 2011, over two years after the date of detection.

Section 20(1)(b) of the Food Act No. 26 of 1980 (as amended) read as follows:

“Section 20(1)

A prosecution for an offence under this Act or any regulations made thereunder shall not be instituted-

- a) except by an Authorized Officer; and
- b) after the expiration of three months, from the date of detection of that offence or where sampling is done, from the date of sampling.”

The above Section was considered by her Ladyship Justice **K.K. Wickramasinghe, in M.A.A.D.J.N. Munasinghe v. The manager of Ceylon Cold Stores, LTD, CA(PHC) 292/2006, decided on 26.07.2019, held that;**

“I observe that as per section 20(1) (b) of the Food act as amended by Act No. 20 of 1991, a prosecution for an offence under the Act shall not be instituted “ after the expiration of three (3) months from the date of detection of that offence or where sampling is done, from the date of sampling”. In the instant case, the complaint was filed on 07.01.2005, nearly after one and a half years of detection of offence.

further held that;

In light of above and upon perusal of the proceedings, it is understood that the instant case was instituted after filing of the complaint on 07.01.2005. It is clear that the period of three months was lapsed as mentioned in section 20 of the Food Act. Therefore the contention of the Learned President's Counsel for the appellant should be answered in affirmative. Accordingly I am of the view that both the Learned High Court Judge and the Learned Magistrate erred in overruling the preliminary objection.”

Her Ladyship K.K. Wickremasinghe, J in B.A.H.M. Balasuriya v. W.R.M. Sumanathissa Bandara and Others, SC Appeal 128/19, Decided on 27.10.2022,(agreed by Murdu N.B Fernando, PC,J (as she was then) and Achala Wengappuli,J) held that:

“Accordingly, it is now evident that Section 20 (1) (b) of the Food Act is a special provision which falls within the aforementioned exception, as it expressly provides for a time limit within which a prosecution for an offence committed under the Act ought to be instituted. Therefore, the statutory time bars set out in Section 20 (1) (b) of the Food Act and Section

456 of the Code of Criminal Procedure ought to be interpreted in light of the object of Article 13 (3) of our Constitution, which guarantees to every person the fundamental right to a fair trial.

Further held that:

It is well-known that the primary duty of the Court is to give effect to the intention of the Legislature as expressed by the words of a statute. When the statutory language shows no ambiguity or confusion, it would be unwise for the Court to impart its own gloss on it so as to accord it some meaning contrary to that set out in the language of the law. For this reason, I hold that the Respondents' argument on the interpretation of Section 20 (1) (b) of the Food Act holds no merits.

It is contended that the intention of the Legislature by imposing a time bar as contained in Section 20 (1) (b) of the Food Act for instituting an action was to ensure inter alia credibility of the Complainant, as it is with the expectation that a Complainant will initiate an action by bringing the offence to the notice of the relevant Officers at the earliest point of discovery that the offence had taken place. The fact that the Complainant in this case waited for a period of an excess of 3 months from the date of detection before lodging the complaint to the Public Health Inspector can create a doubt in the prosecution."

The learned Deputy Solicitor General, representing the Attorney General and adhering to the respected traditions of the Attorney General's Department, brought the aforementioned judgments to the attention of this Court. The Court records its appreciation to the learned Deputy Solicitor General for highlighting the relevant issues.

In light of the foregoing, we find that the inclusion of the accused, who are Directors of Nestlé Lanka, constitutes a violation of the aforesaid Act. Accordingly, we hold that both the Learned High Court Judge and the Learned Magistrate erred in addressing the preliminary objections raised by the Petitioner. I am therefore of the opinion that this Court must exercise its revisionary jurisdiction to correct this error.

I hereby set aside the portion of the order dated 11.06.2020 in Case No. HC/Rev/18/15 of the High Court of Kandy, wherein the learned High Court Judge affirmed the Magistrate's order dated 20.11.2014, which rejected the preliminary objection to the inclusion of the directors as the 3rd to 8th Accused.

We further direct the learned Magistrate to discharge the 3rd to 8th Accused in Case No. 10790 before the Magistrate's Court of Kandy, and to continue proceedings solely against the 1st and 2nd Accused, against whom the plaint was originally filed on 30.10.2008.

This revisionary application is partially allowed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL