

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

In the matter of an appeal from an order of the High Court in terms of Article 138 and 154P(3)(b) read with 154P (6) of the Constitution of the Democratic Socialist Republic of Sri Lanka and the provisions of Act No.19 of 1990.

Court of Appeal

Application No:

CA/PHC/ 0155/2018

The Officer-in-Charge

Police Special Investigation Unit,

Wehara, Kurunegala.

Complainant

High Court of Kurunegala

Case No. HCR/127/14

Vs.

Magistrate Court of Kurunegala

Case No. 42165

N.P.Nelson Nawarathna

Dematagahapalassa,

Kurunegala.

Accused

AND

1. Hewa Pedige Sanjeewa Prasanna
Kumara
No. 15, Seetha Ela Road,
Dematagahapalassa,
Kurunegala.
2. Embalamulla Durayalage Upali
Senevirathna
Acre 5,
Dematagahapalassa,
Kurunegala.

Aggrieved Party Petitioner

Vs.

1. The Officer-in-Charge
Police Special Investigation Unit,
Wehara, Kurunegala.

Complainant-Respondent

2. N.P.Nelson Nawarathna
Dematagahapalassa,
Kurunegala.

Accused-Respondent

AND NOW BETWEEN

1. Hewa Pedige Sanjeewa Prasanna
Kumara
No. 15, Seetha Ela Road,
Dematagahapalassa,
Kurunegala.

2. Embalamulla Durayalage Upali
Senevirathna
Acre 5,
Dematagahapalassa,
Kurunegala.

Aggrieved Party Petitioner-

Appellants

Vs.

1. The Officer-in-Charge
Police Special Investigation Unit,
Wehara, Kurunegala.

Complainant-Respondent

2. N.P.Nelson
Dematagahapalassa,
Kurunegala.

Accused-Respondent

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

Respondent-Respondent

BEFORE

: Sampath B. Abayakoon, J.

P. Kumararatnam, J.

COUNSEL : **Thilak Wijesinghe instructed by
A.W.Gunasekera for the Petitioner-
Appellants.
Isuru Jayawardena for the Accused-
Respondent.
Anoopa De Silva, DSG for the Attorney
General.**

SUPPORTED ON : **12/03/2024.**

DECIDED ON : **16/07/2024.**

JUDGMENT

P. Kumararatnam, J.

This is an appeal preferred by the Aggrieved Party-Petitioner-Appellants (Hereinafter referred to as the Appellants) challenging the acquittal of the Accused-Respondent-Respondent (Hereinafter referred to as the Accused) by the judgment of the Learned Magistrate of Kurunegala dated 29.08.2014.

Being aggrieved by the said judgment, the 1st Appellant wrote to a letter dated 10.09.2014 to the Hon. Attorney General seeking his sanction to appeal against the acquittal of the Accused. The Hon. Attorney General after examining the proceedings and the judgment of Learned Magistrate of Kurunegala, informed the 1st Appellant by a letter dated

23.09.2014 that there were no sufficient grounds to prefer an Appeal under Section 320(2) of the Code of Criminal Procedure act No. 15 of 1979 against the judgment of Learned Magistrate of Kurunegala.

As a next step, the Appellants after laps of 04 months filed a revision application before the Provincial High Court of Kurunegala. After the notice, the parties had filed their objections and written submissions. On 05.09.2018, the Learned High Court Judge delivered her judgment and dismissed the revision application filed by the Appellants on the grounds that the Appellants had not presented any exceptional circumstances to invoke revisionary jurisdiction of the High court which could shock the conscience of the Court.

Being aggrieved by the said judgment of the High Court, the Appellants now filed this appeal before this Court.

It is well settled law that the revision is a discretionary remedy that can be granted only upon exceptional circumstances.

In **Wijesinghe v. Tharmaratnam** (Sri kantha Law Report Vol-IV 47), the court held that:

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

In **Hotel Galaxy (Pvt) Ltd. v. Mercantile Hotels Management Ltd.** 1987 1 SLR 5 the Court held that:

“It is settled law that the exercise of the revisionary powers of the appellate Court is confined to cases in which exceptional circumstances exist warranting its intervention.”

In this case the prosecution had called 15 witnesses and marked documents P1-P15 in support of their case. When the prosecution closed their case, the Learned Magistrate of Kurunegala had called for the defence. The Accused giving evidence from witness box, closed his case. On 29.08.2014, the Learned Magistrate delivered her judgment and acquitted the Accused from all the charges.

The one and only exceptional circumstances urged before this Court is that the Learned Magistrate of Kurunegala had failed to take into consideration of the documents marked P1-PW15 during the trial. As these are vital documents, the Counsel for the Appellants strenuously argued that the Learned Magistrate should have perused and considered them before delivering her judgment.

On perusal of the judgment of the Learned Magistrate of Kurunegala, she had very correctly analysed the evidence adduced by the prosecution and documents marked in the trial. Further, she had very correctly considered the defence version before she arrived at her decision. After considering the evidence presented by both parties, the Learned Magistrate had concluded that the prosecution had failed to prove the charges against the Accused beyond reasonable doubt. Therefore, the Accused was acquitted from the case.

The Judgment of the Learned Magistrate does not show any miscarriage of justice or error in law. The grounds mentioned in the petition of appeal do not warrant any exceptional circumstances which shock the conscience of the Court. Hence, the judgment dated 05.09.2018 of the Learned High Court of Kurunegala dismissing the revision application too had not caused any miscarriage of justice and is according to law. Therefore, this appeal is dismissed.

The Registrar of this Court is directed to send this judgment to the High Court of Kurunegala and the Magistrate Court of Kurunegala for information.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL