

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 of the
Democratic Socialist Republic of Sri
Lanka.*

Court of Appeal Case No:

CA (PHC) APN/0083/2023

High Court of Colombo

Case No: HCRA 75/2023

Magistrate's Court Colombo Fort

Case No: B/25774/23

S.M.U. Subasingha,

Sub-Inspector of Police,

Officer in Charge,

Cyber Intrusion & Intelligence Unit,

Computer Crime Investigations

Division,

Colombo 01.

COMPLAINANT

Vs.

1. Edirisuriya Arachchige Jayani

Natasha Edirisuriya,

No.418/4,

Arangala, Kaduwela.

2. Vedamulla Madinage Bruno

Divakara,

No. 86/1, Dawasa Mawatha,

Church Road,

Marawila.

SUSPECTS

AND BETWEEN

Tharindu Iranga Jayawardana,

No. 176/3A, Oruthota, Gampaha.

PETITIONER

Vs.

1. Director,

Criminal Investigation Department,

Colombo 12.

1st RESPONDENT

2. Director,

Computer Crime Investigation

Division,

Colombo 12.

2nd RESPONDENT

3. S.M.U. Subasingha,
Sub-Inspector of Police,
Officer in Charge,
Cyber Intrusion & Intelligence Unit,
Computer Crime Investigation
Division,
Colombo 01.

COMPLAINANT-3rd RESPONDENT

4. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

4th RESPONDENT

5. Edirisuriya Arachchige Jayani
Natasha Edirisuriya,
No. 418/4,
Arangala,
Kaduwela.

1st SUSPECT-RESPONDENT

6. Vedamulla Madinage Bruno

Divakara,

No. 86/1, Dawasa Mawatha,

Church Road,

Marawila.

2nd SUSPECT-RESPONDENT

AND NOW BETWEEN

Tharindu Iranga Jayawardana,

No. 176/3A, Oruthota, Gampaha.

PETITIONER-PETITIONER

Vs.

1. Director,

Criminal Investigation Department,

Colombo 12.

1st RESPONDENT-RESPONDENT

2. Director,

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Division,

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Sub-Inspector of Police,
Officer in Charge,
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Computer Crime Investigation
Division,
Colombo 01.

**COMPLAINANT-3rd RESPONDENT-
RESPONDENT**

4. Hon. Attorney General,
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5. Edirisuriya Arachchige Jayani
Natasha Edirisuriya,
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Kaduwela.

**1st SUSPECT-RESPONDENT-
RESPONDENT**

6. Vedamulla Madinage Bruno
Divakara,
No. 86/1, Dawasa Mawatha,
Church Road,
Marawila.

**2nd SUSPECT-RESPONDENT-
RESPONDENT**

Before : Sampath B. Abayakoon, J.
: P. Kumararatnam, J.
Counsel : Saliya Pieris, P.C. with Jhanuka Nandasiri and
Manujaya De Silva for the Petitioner
: Jehan Gunasekara, S.C. for the Attorney General
Argued on : 05-07-2024
Decided on : 30-09-2024

Sampath B. Abayakoon, J.

This is an application by the petitioner-petitioner (hereinafter referred to as the petitioner) invoking the revisionary jurisdiction granted to this Court by Article 138 of The Constitution.

The petitioner is seeking to challenge the order dated 06-07-2023 made by the learned High Court Judge of the Provincial High Court of the Western Province Holden in Colombo, where the revision application filed by him against the orders made by the learned Magistrate of the Magistrate's Court of Colombo Fort on 07-06-2023 and 21-06-2023 was refused without notice being issued to the relevant respondents named in the application.

The said revision application has been made before the Provincial High Court of the Western Province Holden in Colombo urging the Court to exercise the revisionary jurisdiction granted to it in terms of Article 154P of the Constitution.

When this matter was supported for notice, this Court decided to issue notice after having considered the relevant facts, circumstances, and the law urged by the petitioner.

Accordingly, the named respondent-respondents, including the Hon. Attorney General was allowed to file objections to the application. At the hearing of the application, this Court heard the submissions of the learned President's Counsel who represented the petitioner, as well as that of the learned State Counsel who represented the 1st, 2nd, 3rd and the 4th respondent-respondents.

This is an issue that revolves around the matters arising out of the B-report No. B25774-23 filed before the Magistrate's Court of Colombo Fort by the 1st respondent-respondent, the Director of the Criminal Investigation Department (CID).

In the above mentioned B-report, the said Director of the CID has reported facts to the Court in terms of the International Covenant on Civil and Political Rights (ICCPR) Act No-56 of 2007 and also in terms of sections 120, 291(a), 291(b) of the Penal Code and section 6 of the Computer Crimes Act No. 24 of 2007, informing the Court that the 1st suspect-respondent has made statements that are defamatory and hateful in order to disturb religious harmony, and thereby committed offences punishable in terms of the above Acts.

Based on the above information filed before the Court, the 1st suspect-respondent and the 2nd suspect-respondent have been arrested and produced before the Magistrate's Court of Colombo Fort on 28-05-2023 and remanded. Both of them have been later released on bail on 06-07-2023.

When this matter was taken up for consideration before this Court, it was intimated to the Court by the learned State Counsel who represented the 1st to 4th respondent-respondents that after the completion of the inquiry against the 1st and 2nd suspect-respondents, they have been now discharged from the proceedings of the Magistrate's Court as it has been decided to not prosecute them for the alleged offences mentioned in the B-report.

However, the learned President's Counsel who represented the petitioner of this matter urged the Court to consider the application before the Court and pronounce a judgment as required, since the orders made by the learned Magistrate of Colombo Fort, sought to be challenged in this revision application are still in force.

The facts placed before this Court reveals that when the matter where the 1st and 2nd suspect-respondents were produced before the Magistrate's Court from remand custody on 07-06-2023 was mentioned, the CID has informed the Court that the investigations have not been concluded, while the learned President's Counsel who represented the suspects sought bail for them.

At that juncture, submissions have been made by another Counsel on the basis that he is representing the party aggrieved. Yet another Counsel has appeared before the Court informing that he is representing a person from an organization called Sinhala Rawaya, and has informed the Court that after the two suspects in relation to the case were remanded, a person called Widarshana Kannangara has conducted a press briefing and had conducted a media circus by making comments, criticizing the remanding of the two suspects which amounts to contempt of Court. Making extensive submissions in that regard and by filing a video recording of the alleged press conference, he has stated that several others had also participated in the said press conference and that he can also produce photographs. He has urged the Court to conduct an investigation in that regard.

The learned Magistrate of Colombo Fort has made the impugned 1st order on 07-06-2023 in relation to the application for bail, and also in relation to the application made by the Attorney-at-Law who represented the earlier mentioned organization.

The application before this Court by the petitioner relates to the order made by the learned Magistrate in relation to the alleged contempt of Court.

For matters of clarity, I will now reproduce the relevant part of the order made by the learned Magistrate, which reads thus;

“අද දින අගතියට පත් පාර්ශවය වෙනුවෙන් කරුණු දක්වමින් නීතීඥ සුසන්ත කුමාර මහතා දන්වා සිටින්නේ මෙම සිද්ධිය මුල්කරගෙන විවිධ පාර්ශවයන් විසින් මෙම අධිකරණයටද අපහාසයක් හා බලපෑමක් වන ආකාරයේ යම් යම් ප්‍රකාශ නිකුත් කර ඇති බවයි. විශේෂයෙන් විදර්ශන කන්නන්ගර, තර්දු ජයවර්ධන, තර්දු උඩුවෙගෙදර, ලක්මාලි හේමචන්ද්‍ර, විටෝ ප්‍රණාන්දු යන අය විසින් මෙම ප්‍රකාශ සිදුකර ඇති බවට ඡායාරූප හා සී.ඩී තැටියක් අධිකරණයේ අවධානයට යොමු කරයි. එකී සියලු පිටපත් අපරාධ පරීක්ෂණ දෙපාර්තමේන්තුවට අද දිනම භාර දීමට දැනුම් දෙමි. මේ සම්බන්ධයෙන් පුළුල් විමර්ශනයක් සිදු කොට මෙම අධිකරණයට කරුණු වාර්තා කරන ලෙසට අධ්‍යක්ෂක අපරාධ පරීක්ෂණ දෙපාර්තමේන්තුවට මෙයින් නියම කරමි.”

Consequent to this order, on 21-06-2023, the learned Magistrate has made another order, which appears to be a one relating to the earlier mentioned order regarding the complaint of contempt of Court.

The said order reads as follows;

“පසුව,

2023/6/9 දිනැති නියෝගය CID යේ ඉල්ලීම පරිදි අධ්‍යක්ෂ පරීක්ෂක අපරාධ විමර්ශන කොට්ඨාශයේ අධ්‍යක්ෂ වෙතට යොමු කරමි.

අත්/කලේ: මහේස්ත්‍රාත්”

The petitioner being one of the persons named by the learned Magistrate in his order dated 07-06-2023 has filed the impugned revision application before the Provincial High Court of the Western Province Holden in Colombo under the High Court Revision Case No. HCRA 75-2023 in terms of Article 154P of The Constitution. In his application before the High Court, the petitioner has taken up several grounds which he has referred to as exceptional grounds available for him in order to challenge and seek to set aside the orders made by the learned Magistrate of Colombo Fort.

He has urged that the learned Magistrate of Colombo Fort had no jurisdiction in terms of section 55(1) of the Judicature Act to take cognizance of the alleged contempt of Court matter which has occurred outside of his jurisdiction and presence, and therefore, had no jurisdiction to order an investigation in that regard.

It has been urged that if at all, for an alleged contempt of Court of this nature, it is only the Court of Appeal that has jurisdiction in terms of Article 105(3) of The Constitution.

Another ground that had been taken up was that the alleged press conference had been held within the Maradana police area, and therefore, was within the jurisdiction of the Magistrate's Court of Maligakanda, and the learned Magistrate had no jurisdiction to order the CID or the Computer Crimes Investigation Division of the police to conduct investigations in that regard.

It has also been argued that without a proper complaint or application in terms of section 136(1) of the Code of Criminal Procedure Act, the Magistrate had no jurisdiction to entertain a mere statement made by an Attorney-at-Law in Court, in the manner it was done, and therefore, basic principles of law have been ignored and violated.

Urging the above matters as exceptional circumstances available to him, the petitioner has urged the High Court to issue notice in relation to his revision application, and also for stay orders in relation to the orders made on 07-06-2023 and 21-06-2023 by the learned Magistrate of Colombo Fort.

The learned High Court Judge, after having listened to the submissions of the learned President's Counsel who represented the petitioner, has pronounced a considered order on 06-07-2023, where the learned High Court Judge has refused to issue notice on the basis that the petitioner has failed to establish any matter that shocks the conscience of the Court, which amounts to a positive miscarriage of justice.

Although the order made was in relation to the issuing of the notice to the respondents, it appears that the learned High Court Judge has considered each of the matters urged by the petitioner in his petition in detail, before deciding to refuse notice.

In his application before this Court, the petitioner submitted the following grounds, which he termed as exceptional grounds available to him, in order to challenge the order made by the learned High Court Judge of the Provincial High Court of the Western Province Holden in Colombo, as well as the relevant two orders made by the learned Magistrate of Colombo Fort.

For matters of clarity, I will now reproduce the said exceptional grounds urged.

- (a) The learned High Court Judge has erroneously held that the petitioner's name is not mentioned in the order of the learned Magistrate and failed to notice that the name of the petitioner is in fact contained in the order dated 07-06-2023 in the Magistrate's Court case record which was filed along with the Revision Application No. HCRA-75-2023 marked as X1.

- (b) The learned High Court Judge has erred in law by concluding after analyzing section 9(b)(i), that the Fort Magistrate has the power to order an investigation regarding the alleged offence. The Hon. Magistrate has no jurisdiction under section 55(1) of the Judicature Act No. 02 of 1978 to take cognizance of the alleged contempt of Court committed outside of the Magistrate's Court.
- (c) Without prejudice to the above, since the impugned press conference took place in the Maradana police area within the jurisdiction of the Maligakanda Magistrate's Court, the Magistrate's Court of Colombo Fort has no territorial jurisdiction in view of section 9(b)(i) of the Code of Criminal Procedure Act.
- (d) The learned High Court Judge has erred in law by failing to consider that exceptional circumstances are not required in the circumstances of this case as there is no right to appeal from the impugned order of the learned Magistrate.

It is settled law that revision being a discretionary remedy, such a remedy can only be granted under exceptional circumstances. What can be constituted as exceptional circumstances had been defined by our Superior Courts in several consistent judgments pronounced in that regard.

I would like to quote from the case of **Sadi Banda Vs. Officer In Charge of Norton Bridge Police Station (supra)** which I find relevant in the above context.

“The revisionary power of Court is a discretionary power. This is an extraordinary jurisdiction which is exercised by the Court and the grant of relief is entirely dependent of the Court. The grant of such relief is of course a matter entirely in the discretion of the Court, and always be dependent on the circumstances of each case. Existence of exceptional circumstances is the process by which the extraordinary power of revision should be adopted. The exceptional circumstances would vary from case to case and their degree of exceptionality must be correctly assessed and gauged by the Court

taking into consideration all antecedent circumstances using the yardstick whether a failure of justice would occur unless revisionary powers are invoked.”

It was held in the case of **Hotel Galaxy (Pvt) Ltd Vs. Mercantile Hotels Management Ltd (1987) 1 SLR 5** 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 the case of **Wijesinghe Vs. Thamararatnam (Sriskantha Law Report Volume IV page 47)** it was stated that;

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

In the case of **Vanik Incorporation Ltd Vs. Jayasekare (1997) 2 SLR 365**, it was observed,

“Revisionary powers should be exercised where a miscarriage of justice has occasioned due to a fundamental rule of procedure being violated, but only when a strong case is made out amounting to a positive miscarriage of justice.”

Making submissions before this Court, the learned President’s Counsel contended that the learned High Court Judge of the Provincial High Court of the Western Province Holden in Colombo has failed to appreciate the relevant legal provisions when notice was refused in relation to the revision application filed by the petitioner.

Referring to the two orders made by the learned Magistrate of Colombo Fort, it was submitted that there was no basis for the learned Magistrate to act on a mere statement made by an Attorney-at-Law representing a party who was not a party to a case.

It was submitted that the learned Magistrate had no jurisdiction under the contempt of Court provisions or the territorial jurisdiction to determine on the alleged statement made by the Attorney-at-Law on 07-06-2023 when the impugned order was made.

The learned President's Counsel also referred to the fact that in the order, the learned Magistrate has named several persons including the petitioner ordering the CID to conduct investigations in relation to the alleged contempt of Court, whereas, in the statement made before the open Court, the Attorney-at-Law has referred to only one person. He was of the view that the learned Magistrate may have acted on some prior knowledge when he made this order, which, according to him, was not an order the learned Magistrate had jurisdiction to make.

The facts submitted to this Court reveal that the impugned order dated 07-06-2023 in relation to the alleged contempt of Court has been based on a press conference held in Maradana area. This goes on to show that the alleged incident had occurred not in the presence of the Court or committed in the course of any act or proceeding of the said Court.

As correctly pointed out by the learned President's Counsel, if any contempt has been committed by the persons mentioned in the order of the learned Magistrate, the relevant provision under which the Magistrate's Court can take cognizance of such contempt of Court is section 55(1) of the Judicature Act of No. 02 of 1978 as amended by the Amendment Act No. 16 of 1989.

The relevant section 55(1) reads as follows.

55(1). Every District Court, Small Claims Court and Magistrate's Court shall for the purpose of maintaining its proper authority and efficiency, have a special jurisdiction to take cognizance and to punish with the penalties in that behalf as hereinafter provided, every

offence of contempt of court committed in the presence of the Court itself and all offences which are committed in the course of any act or proceeding in the said Court respectively, and which are declared by any law for the time being in force to be punishable as contempt of court.

As I have considered before, the alleged contempt of Court is not something that has been committed in the presence of the Court nor in the course of any act or proceedings in the said Court. Therefore, the only provision under which an action can be brought, if such contempt had been committed in the course of the alleged press conference, would be by filing an action before the Court of Appeal in terms of Article 105(3) of The Constitution.

In my view, that is a matter for the party who claims that such contempt of Court occurred, and not for the learned Magistrate, unless he is the person who is taking the initiative to file contempt proceedings before the Court of Appeal.

It is also the view of this Court that the statement made before the learned Magistrate by an Attorney-at-Law has been in relation to a specific press conference, which has already been concluded by that time. It has been stated that he is producing a compact disc with the relevant video and some photographs to the Court, which means that there was nothing to investigate further on to the matter, but only a matter of commencing contempt of Court proceedings in the correct forum.

Under the circumstances, I do not find any basis for the learned Magistrate to order the CID to conduct an extensive investigation in relation to the alleged contempt of Court and also to refer the matter to the Director of Computer Crimes Investigation Division by his order dated 21-07-2023.

I find that the learned High Court Judge of the Provincial High Court of the Western Province Holden in Colombo was misguided when the learned High Court Judge considered only the journal entry made by the learned Magistrate

to determine that there is no order to conduct an investigation against the petitioner.

I am of the view that the learned High Court Judge was misdirected when section 30 of the Judicature Act and section 9(b)(i) of the Code of Criminal Procedure Act were considered when issuing of notice to the respondents mentioned in the application before the High Court was refused.

I find that the learned High Court Judge has failed to consider the provisions of section 55(1) of the Judicature Act, which is the provision as to contempt of Court proceedings before a Magistrate's Court, in its correct perspective.

Section 30 of the Judicature Act provides the forum jurisdiction for a Magistrate to perform and exercise all powers and duties, which a Magistrate is empowered to exercise and perform by virtue of the provisions of the Penal Code or of the law relating to criminal procedure or any other enactment for the time being in force.

However, it needs to be noted that the Judicature Act in itself has provided for a specific provision in relation to the matters of contempt of Court under section 55(1) of the Act. In such a scenario, I find that it is only in terms of section 55(1), a Magistrate can gain jurisdiction in relation to matters of contempt of Court.

It is the view of this Court that the learned High Court Judge has applied section 9(b)(i) to justify the actions of the learned Magistrate without any acceptable basis.

The relevant section 9(b)(i) reads as follows.

9(b). Jurisdiction -

- (i) To inquire into all offences committed or alleged to have been committed wholly or in part within its local jurisdiction or in relation to which jurisdiction is by this**

Code given to such court to inquire into, to summon and examine all witnesses touching such offences, and to issue warrants and other processes to apprehend and summon all criminals and offenders and deal with them according to law;

There cannot be any argument as to the jurisdiction a Magistrate will have as provided for by the provisions of the Code of Criminal Procedure Act and other applicable statutes. However, it needs to be noted that for the purposes of administration of justice, Sri Lanka has been divided into Judicial Zones, Judicial Districts and Judicial Divisions. It is undoubted that the Magistrate's Court of Colombo Fort comes within the Judicial Division of Colombo, but has been assigned to perform functions of a Magistrate in relation to a particular area within the said Judicial Division.

It is an admitted fact that the alleged press conference has taken place in Maradana area, which falls under the jurisdiction of the Magistrate's Court of Maligakanda.

Therefore, it is clear that the learned Magistrate of Colombo Fort had no jurisdiction to order an investigation or inquiry as it was ordered, in relation to an alleged offence that has been admittedly committed within an area of another Magistrate's Court's jurisdiction. Even if an information is provided to the learned Magistrate of Colombo Fort in relation to an offence, the directive would have been to report facts before the relevant Magistrate under whose jurisdiction the offence has been committed and obtain orders from that Magistrate's Court.

I am of the view that the learned Magistrate of Colombo Fort was acting without jurisdiction when the relevant orders were made to the CID and to the Computer Crimes Investigation Division to conduct a thorough investigation.

For completeness of this judgment, I would like to cite the Supreme Court judgment in **Regent International Hotels Ltd Vs. Siril Gardiner and Others (1978-79-80) 1 SLR 278** which held:

1. That the Court of Appeal has all the powers under Article 105(3) of The Constitution of punishing for contempt whether committed *in facie curiae* or *ex facie curiae*.
2. That the jurisdiction of an inferior Court to punish or for contempt is confined to punishment for contempt as are perpetrated *in facie curiae* and does not extend to those committed out of Court unless express statutory power is given for that purpose.

For the reasons as considered above, I am of the view that the petitioner has adduced sufficient exceptional circumstances for this Court to intervene into the order dated 06-07-2023 made by the learned High Court Judge of the Provincial High Court of the Western Province Holden in Colombo and the relevant part of the order made by the learned Magistrate of Colombo Fort, which I have referred previously in this judgment, in relation to the petitioner and several others on the basis that they should be investigated over contempt of Court. Also the order made on 21-06-2023 where a directive has been made to the Director of the Computer Crimes Investigation Division, as none of the said orders can be allowed to stand.

Accordingly, I set aside the order dated 06-07-2023 of the learned High Court Judge of the Provincial High Court of the Western Province Holden in Colombo, and also set aside the relevant part of the order made by the learned Magistrate of Colombo Fort on 07-06-2023 and the relevant part of the order made by the learned Magistrate of Colombo Fort on 21-06-2023.

Accordingly, the revision application is allowed.

The Registrar of the Court is directed to communicate this judgment to the Provincial High Court of the Western Province Holden in Colombo, and also to the Magistrate's Court of Colombo Fort for necessary information and compliance.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal