

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

In the matter of an application for  
Revision in terms of Article 138 of  
the Constitution of the Democratic  
Socialist Republic of Sri Lanka.

**Court of Appeal**  
**Application No:**  
**CA (PHC)APN 0148/2023**

The Assistant Commissioner of  
Labour,  
Termination Unit,  
Department of Labour,  
Colombo-05.

**Complainant**

**High Court of Colombo**  
**Case No. HC/MCA/184/22**

**Vs.**

**Magistrate Court of Colombo**  
**Case No. 76239/05**

Ceylon Development Engineering  
Co. Ltd,  
No. 140, Dazen Street,  
Colombo-02.  
And  
No.48, Chitra Lane,  
Colombo-05.

**On behalf of**

1. Director-Pam Andry Fernando
2. Director-Nihal Bernard Didacus  
Fernando
3. Director-Thilina Wewegama
4. Director-Waruna Handige  
Parakrama
5. Director- Sunil Abhayawardana

**Accused**

**AND BETWEEN**

Sunil Abhayawardana  
10 A, Chithra Lane,  
Colombo-05.

**5<sup>th</sup> Accused-Appellant**

**Vs.**

1. The Assistant Commissioner of  
Labour,  
Termination Unit,  
Department of Labour,  
Colombo-05.
2. The Attorney General  
Attorney General's Department  
Colombo-12.

**Respondents**

**NOW BETWEEN**

Sunil Abhayawardana

10 A, Chithra Lane,

Colombo-05.

**5<sup>th</sup> Accused-Appellant-Petitioner**

1. The Assistant Commissioner of  
Labour,

Termination Unit,

Department of Labour,  
Colombo-05.

**Complainant-Respondent-**

**Respondent**

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

**Respondent-Respondent**

**AND NOW BETWEEN**

Sunil Abhayawardana

10 A, Chithra Lane,

Colombo-05.

**5<sup>th</sup> Accused-Appellant-**

**Petitioner-Petitioner**

1. The Assistant Commissioner of  
Labour,  
Termination Unit,  
Department of Labour,  
Colombo-05.

**Complainant-Respondent-**  
**Respondent-Respondent**

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

**Respondent-Respondent-**  
**Respondent**

**BEFORE** : **Sampath B. Abayakoon, J.**  
**P. Kumararatnam, J.**

**COUNSEL** : **Darshana Kuruppu with Sahan**  
**Weerasinghe and Tharushi Gamage for**  
**the 5<sup>th</sup> Accused-Appellant- Petitioner.**

**SUPPORTED ON** : **05/02/2024.**

**DECIDED ON** : **01/04/2024.**

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**ORDER****P. Kumararatnam, J.**

This is an application in Revision preferred by the 5<sup>th</sup> Accused-Appellant-Petitioner (Hereinafter referred to as the Petitioner) challenging the conviction dated 30.09.2020 and the sentence dated 23.09.2022 imposed by the Learned Magistrate of Colombo and the order dated 07.11.2023 of the Learned High Court Judge of Colombo.

The Complainant-Respondent-Respondent-Respondent (Hereinafter referred to as the 'Respondent') had filed the case bearing No. 76239/05 under the "Termination of Employment of Workman (Special Provisions) Amendment Act No.45 of 1971 the Ceylon Development Engineering Company Ltd, where the Petitioner and the other Accused persons were the Directors at the relevant time.

After the trial, the Learned Magistrate of Colombo found the Petitioner, 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Accused guilty to the charge and convicted them on 30.09.2020 and sentenced them on 23.09.2022.

On 23.09.2022, the Petitioner was sentenced to 06 months imprisonment and ordered to pay Rs.7123462.50. The Court further ordered to pay a sum of Rs.50/- for each day until the full amount was paid by the Petitioner.

Against the conviction and sentence of the Learned Magistrate of Colombo, the Petitioner a lodged an appeal in the in the High Court of Colombo. Despite several months passing since lodging the appeal, the Petitioner claimed that he did not receive any notice from the High

Court. As such, the Petitioner had personally called on to the Registry of the Colombo High Court No.08 to inquire as to the status of the appeal. According to the Court records, the matter had been taken up on 27.09.2023 and dismissed the same due to non-appearance of the Petitioner.

The Petitioner states the Learned High Court Judge had dismissed his appeal without considering the merit on 27.09.2023 which happened to be a mentioned date for the Respondent to provide the Petitioner's correct address.

Although the Petitioner had filed a re-listing application in the High Court of Colombo, but was dismissed on the ground that the Petitioner had failed to exercise due diligence in prosecuting his appeal.

The Petitioner filing this revision application contends that the Learned High court judge has failed to consider that no appeal can be dismissed on a calling date due to the default appearance of the Petitioner or his Attorney-at-law, as the High Court is required to dispose of criminal appeal exclusively on its merits in terms of Section 349(3) of the Code of Criminal Procedure Act No.15 of 1979 and urge this Court to consider this ground as an exceptional ground.

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.”*

On perusal of the Termination of Employment of workman (Special Provisions) amendment Act No. 45 of 1971 there is no expressed provision to appeal against a judgment passed by the Learned Magistrate Court.

In **Martin v Wijewardena** [1989] 2 SLR 409 the Court held that:

*“A right of appeal is a statutory right and must be expressly created and granted by statute. It cannot be implied.”*

The Above position was endorsed in **Gamhewa v Maggie Nona and others** [1989] 2 SLR 250 by the Court of Appeal.

In **Bakmeewewa, Authorised Officer of People’s Bank v Konarage Raja** [1989] 1 SLR 231 the Supreme Court held that:

*“The jurisdiction exercised by the District Court under Section 72(7) and (80) of the Finance Act as amended is a special jurisdiction and there is no right of appeal from an order made in the exercise of such jurisdiction, unless a right of appeal is expressly provided for in the act. No right of appeal is provided in the act. Hence, the District Court had no jurisdiction to entertain an application for stay of execution pending appeal under Section 763(2) of the Civil Procedure Code.”*

The above cited plethora of judgments clearly endorse the fact that a right of appeal is a statutory right and must be created and granted by statutes.

As there is no appeal provision available in the Termination of Employment of workers (Special Provisions) amended Act No. 45 of 1971, the Petitioner has no legal right to lodge an appeal against the judgment and the sentence pronounced by the Learned Magistrate of Colombo on 30.09.2020 and 23.09.2022 respectively. As such, the Petitioner has no legal status to canvass the order made by the Learned High Court Judge of Colombo on 27.09.2023 in this revision application.

As such, notice is refused in this case.

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

**JUDGE OF THE COURT OF APPEAL**

**SAMPATH B. ABAYAKOON, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**