

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 read with section 364 of the Code of
Criminal Procedure Act No.15 of 1979 to
revise the Order of the learned High Court
Judge dated 25th April 2024 made under
section 10 of the Prevention of Money
Laundering Act No. 5 of 2006 as amended
by Amendment Act No. 40 of 2011.*

Court of Appeal No:

CA/CPA/0042/24

Nalaka Wickramasinghe Senanayake,
Senior Superintendent of Police – I,
Gampaha.

PETITIONER

Vs.

High Court of Gampaha

Case No: SPL/1/2024

Marasinghe Pedige Thushara Kumarasiri,
No. 134/D/2, Malkona Pethiyagoda,
Gampaha.

RESPONDENT

AND NOW BETWEEN

Marasinghe Pedige Thushara Kumarasiri

No. 134/D/2, Malkona Pethiyagoda,

Gampaha.

(Presently at Mahara Prison)

RESPONDENT-PETITIONER

Vs.

1. Nalaka Wickramasinghe Senanayake,

Senior Superintendent of Police – I,

Gampaha.

2. Kosala - Chief Inspector,

OIC of Divisional Crime Investigation

Bureau, SSP Office,

Gampaha.

3. The Hon. Attorney General,

Attorney General's Department,

Colombo 12.

PETITIONERS-RESPONDENTS

Before

: Sampath B. Abayakoon, J.

: P. Kumararatnam, J.

Counsel : Kamal Suneth Perera instructed by P.S.A. Fernando
for the Petitioner

: Sudharshana De Silva, S.D.S.G., with Jayalakshi De
Silva, S.S.C. for the Respondents

Argued on : 03-07-2024

Decided on : 13-09-2024

Sampath B Abayakoon, J.

This is an application in revision preferred by the respondent-petitioner (hereinafter referred to as the petitioner) seeking to invoke the revisionary jurisdiction granted to this Court in terms of Article 138 of The Constitution.

He is the respondent named in the High Court of Gampaha Case Number SPL/1/2024. The petitioner is seeking to set aside or revise the order dated 25-04-2024 made by the learned High Court Judge of Gampaha in the above-mentioned case.

When this matter was supported for notice and a stay order, after having considered the relevant facts, circumstances and the law, this Court decided to grant notice to the petitioner-respondents named in the application and also issue interim orders required for the effective consideration of the application before the Court.

At the hearing of this application, we heard the submissions of the learned Counsel for the petitioner and the submissions of the learned Senior Deputy Solicitor General (SDSG) who opposed the application and argued that the order made by the learned High Court Judge should remain, as it was an order made after considering the relevant provisions of the law.

This is a matter where the Senior Superintendent of Police of Gampaha Division I has made an application under High Court of Gampaha Case Number

SPL/1/2024, apparently on the basis of section 7 of the Prevention of Money Laundering Act No. 5 of 2006 as amended by the Amendment Act No. 40 of 2011 (hereinafter referred to as the Act).

In his application, which has been supported by the prosecuting State Counsel of Gampaha High Court, the said applicant has informed the Court that he conducted an investigation against the petitioner in terms of the Act, and as a result, he issued a freezing order relating to two passenger transport buses, numbered NG-4666 and NG-3666, and had moved to extend the freezing order for a further period of 3 months enabling him to proceed with his investigations under the Act. He has also submitted the relevant freezing order issued by him dated 05-01-2024 to the petitioner in that regard, marking the said freezing order as P-02.

In the same application, he has produced another freezing order, which has been marked as P-03, relating to a motorbike numbered WP-BII-8938 belonging to the wife of the petitioner and has moved to extend the freezing order in relation to that as well, on the same basis.

When this application was made and supported on 11-01-2024, the learned High Court Judge, after having considered the application made *ex parte*, has pronounced the following order.

නියෝගය

“ඉදිරිපත් කර ඇති කරුණුවලින් සැහීමට පත් වෙමි. ඒ අනුව දැනටමත් පි.2, පි.3 වශයෙන් නිකුත් කර ඇති ක්‍රියාවිරහිත කිරීමේ නියෝග තහවුරු කර අද දින සිට මාස තුනකට දීර්ඝ කරමි. එම නියෝග භාෂා තුනෙන් පුවත්පත් තුනක පළ කරන්න. මෙම වාහන සම්බන්ධව නිකුත් කරන ලද ක්‍රියාවිරහිත කිරීමේ නියෝග පිළිබඳව මෝටර් රථ ප්‍රවාහන කොමසාරිස්ට දන්වා යවන්න.”

Thereafter, on 29-01-2024, the petitioner, through his Counsel has made an application to the High Court informing the Court that the police took into their custody, not only the mentioned buses and the motorcycle, but also several other items from his house including some other vehicles, some title deeds and household items, and had reported to the learned Magistrate of Gampaha of that

fact under the Magistrate's Court of Gampaha Case Number B4371-23, contrary to the provisions of the Act.

However, making submissions before the High Court, the learned Counsel for the petitioner has made an application in terms of section 10 of the Act to allow the petitioner to use the two buses mentioned in the alleged freezing order so that it can be used for carrying out legitimate business. It has been submitted that he has been using these buses for passenger transport in terms of the relevant permits issued by the relevant authorities, and also to transport workers of a garment factory where he earns legitimate income. It has also been pointed out that the petitioner has been in possession of these buses since 2013 and had obtained them under financial facilities obtained through a leasing company. The learned Counsel has justified reasons for his application by making submissions in that regard.

At that point, the prosecuting State Counsel has objected to the application on the basis that the petitioner has no *locus standi* to make such an application in terms of section 10 of the Act.

Apparently, this has resulted in the learned High Court Judge making a Directive for the applicant of the application filed before the High Court, namely the Senior Superintendent of Police, to be personally present in Court. The proceedings of the days that followed the said order shows that lengthy submissions have been made by the prosecuting State Counsel opposing this application by the petitioner. It has also been proposed to appoint a receiver (ප්‍රතිග්‍රාහකයෙක්) to make use and maintain the two buses.

The petitioner has also made submissions in that regard, and the learned High Court Judge has finally made the impugned order on 25-04-2024. In his order, the learned High Court Judge has considered the provisions of section 10 and 11 of the Act as the relevant provisions in relation to the application, and has considered the reasons urged by the petitioner for the release of the buses to his possession.

In this process, the learned High Court Judge has reached determinations, which I believe should be reproduced in verbatim for better understanding of the order. (At pages 66 and 67 of the case brief)

"දේපල ක්‍රියාවිරහිත කිරීමේ නියෝගයක් නිකුත් කිරීම සඳහා ඉල්ලීමක් පොලිස් අධිකාරී නිලයට පහත නොවන පොලිස් නිලදාරියෙකු විසින් හෝ එවැනි නිලදාරියෙකු නොමැති අවස්ථාවක සහකාර පොලිස් නිලදාරියෙකු විසින් හෝ කල යුතුය. ඉන් පෙනී යන්නේ එවැනි ඉල්ලීමක් ඉතා වගකීමෙන් කල යුතු වැදගත් ඉල්ලීමක් වන බවකි. ඉහල පොලිස් නිලදාරියෙකු විසින් විමර්ශනය කර ගොනු කරනු ලබන මෙවැනි ඉල්ලීමකදී යම් වැදගත් කරුණු හෙළිවී ඇතැයි අධිකරණයට උපකල්පනය කල හැකිය. එබැවින් එම දේපල මුදල් විශුද්ධීකරණයට යටත් නොවන බවට කරන ලබන හුදු ප්‍රකාශයක් පමණක් අධිකරණයට පිළිගැනීමට හැකියාවක් නැත. එම ක්‍රියාවිරහිත කිරීමේ දේපල වගදන්තරකරුගේම පාලනය යටතේ ව්‍යාපාර සඳහා යොදවනු ලැබුවහොත් දිගින් දිගටම එම දේපල හරහා මුදල් විශුද්ධීකරණය කිරීමෙන් නිසි පරිදි විමර්ශනයක් කිරීමට නොහැකි වන බවට ගෙනෙන තර්කය ප්‍රබල විය හැකි භාවයකින් යුක්ත වේ. පෙත්සම්කරු යෝජනා කර ඇති පරිදි ප්‍රතිග්‍රාහකයෙකු පත් කර බස් රථ ධාවනය කිරීමෙන්, වගදන්තරකරුට සිදුවිය හැකි හානිය ඉතාමත් අවම කරගත හැකි බවට පෙනී යයි. ඒ සඳහා වගදන්තරකරු අකමැති වන හේතුව පෙනෙන්නට නැත. ඉහල පොලිස් නිලදාරියෙකු විසින් විමර්ශනය කර, මුදල් විශුද්ධීකරණය සඳහා සැකකරමින් දැනටමත් ක්‍රියාවිරහිත කර ඇති දේපල භාවිතයෙන් දිගටම මුදල් විශුද්ධීකරණය සිදුවීමට ඉඩ නොතැබීම අධිකරණයේ වගකීම වේ. එම තත්වය පවතිද්දී වගදන්තරකරුට අවම හානියක් වන පරිදි ක්‍රියාවිරහිත කිරීම පවත්වා ගැනීමට පියවර ගත යුතුය. ඒ සඳහා සුදුසුම පියවර වන්නේ ප්‍රතිග්‍රාහකයෙකු පත් කර බස් රථ ධාවනය කිරීමට සැලැස්වීම බව තීරණය කරමි.

ඒ අනුව ක්‍රියාවිරහිත කිරීමට අදාළ බස් රථ දෙක ධාවනය සඳහා වගදන්තරකරු වෙතම මුදාහැරීමට කරන ඉල්ලීම ප්‍රතික්ෂේප කරමි. ඒ වෙනුවට පෙත්සම්කරු විසින් යෝජනා කර ඇති කොන්දේසිවලට යටත්ව ප්‍රතිග්‍රාහකයෙකු ලෙස ඩිපෝ කළමනාකරු ශ්‍රී ලං.ග.ම., ගම්පහ ප්‍රාදේශිකය, ගම්පහ ඩිපෝව නම් කර පෙත්සම්කරු විසින් ඉදිරිපත් කර ඇති කොන්දේසි මත ධාවනය කිරීමට නියම කරමි. ඒ සම්බන්ධව පවත්වාගෙන යනු ලබන ගිණුම් වාර්තාවලට වගදන්තරකරුට ප්‍රවේශය හිමිවේ."

When this matter was argued before this Court, it was the contention of the learned Counsel for the petitioner that the actions taken by the police and the procedure followed, apparently in terms of the Act were illegal and nothing known to the law. It was his position that the police cannot take the law into

their own hands under the provisions of the Act in the guise of a freezing order and to act in the manner they have acted.

It was also submitted that the police have misled the High Court to show that the freezing order that the police wanted the Court to approve was issued in accordance with the law and has failed to inform the Court that the police took custody of the two vehicles, among other things contrary to the provisions of the Act.

It was his view that anything that flows from misrepresentation of facts and the law to the Court can have no legal validity.

However, it was submitted by the learned Counsel that if the police wants to conduct an investigation in terms of the Act, they can do so, and also they can keep the other properties taken into their custody for the purposes of the purported investigations. It was his position that despite the illegality of the actions of the police, the petitioner made this application before the High Court of Gampaha in terms of section 10 of the Act, as he is entitled, only in relation to the two buses mentioned in the purported freezing order marked P-02.

He also pointed out the justifications he had in relation to the application when the application was made to the High Court. It was the position of the learned Counsel for the petitioner that the learned High Court Judge was wrong in deciding to appoint a receiver (ප්‍රතිග්‍රාහකයෙක්) in this regard, as appointing a receiver would not arise in a situation like this, where the petitioner is the registered owner of the two buses mentioned from whose custody the police have already taken the buses. Under the circumstances, he prayed for the reliefs as prayed for in his petition.

Making submissions opposing the application of the petitioner, it was the position of the learned SDSCG that, out of the 7 reliefs sought by the petitioner in his petition filed before this Court, the 1st three reliefs, namely the issuing of notice to the respondents, and the two interim orders sought by him, have already been granted by the Court.

Referring to the other 4 reliefs that has been sought by the petitioner, namely, setting aside of the impugned order dated 25-04-2024, allowing of the petitioner's application made to the High Court in terms of section 10 of the Act, seeking a Directive to the learned High Court Judge to order the release of the 2 buses, and any other reliefs the Court may think fit, it was the submission of the learned SDSG that since the petitioner has failed to challenge the original freezing order made by the Senior Superintendent of Police, or the extension of it by the learned High Court Judge, this Court has no basis to grant any of the reliefs sought by the petitioner.

He was also of the view that this Court cannot grant reliefs, which had not been asked for or prayed for by the petitioner.

On the above basis, the learned SDSG submitted that he is not going to make submissions in reply to the allegations made in relation to the procedures adopted by the police, as they are not relevant to the matter.

However, it was the submission of the learned SDSG that the orders made by the learned High Court Judge in relation to the extension of the freezing order, and appointing a receiver, were within the relevant provisions of the law that should not be interfered by this Court.

In this process, the learned SDSG also admitted the seizure of the property by the police, which was an act done before the issuing of the purported freezing orders marked P-02 and P-03.

The learned SDSG moved for the dismissal of the revision application on the basis that no exceptional circumstances had arisen for the petitioner to challenge the order made by the learned High Court Judge of Gampaha.

It is well-settled law that the remedy of revision, being an extraordinary discretionary remedy, can only be granted under exceptional circumstances.

Under paragraph 24 of the petition, the petitioner has listed several grounds, which he has termed as exceptional grounds that exist for him to file this application before the Court.

In the case of **Wijesinghe Vs. Tharmaratnam (Sri Skantha Law Report Vol-IV 47)**, it was observed;

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

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.”

The matter under consideration revolves around an application made to the High Court and actions done purportedly in terms of the Prevention of Money Laundering Act.

It needs to be emphasized the ever-increasing necessity to clamp down money laundering activities happening in our society and the crimes of similar nature. However, it is the view of this Court that the law enforcement authorities should be aware that conducting investigations and bringing the culprits before the Court should be done by acting within the relevant parameters of the law as permitted in the relevant statutes available in that regard. No one should be permitted to act beyond the law, using methods that are not in accordance with the law, and to justify such activities subsequently through the process of the Court. The Court shall not allow any attempt to obtain the sanction of the Court by misrepresenting facts, to justify illegal procedures followed.

It is also the view of this Court that the law enforcement authorities as well as the law officers of the State have a responsibility to act and assist the Court

whenever such irregular procedures and other illegal actions are brought to the notice of the Court with the view of correcting the same, so that such unwarranted actions can be prevented in future.

In that context, I am in no position to agree with the submissions of the learned SDSG, which was done on a highly technical basis, rather than going into the core issue of the application before the Court as to the applicability of the provisions of the Prevention of Money Laundering Act.

As I have previously stated in this judgment, the Senior Superintendent of Police of Gampaha Division has made the initial application before the High Court of Gampaha on the basis that he issued a freezing order in terms of section 7 of the Act, and now he is in need of getting the said freezing order extended and follow the necessary other legal requirements in that regard. It is on that basis, the learned High Court Judge of Gampaha has considered this application and had made his order dated 11-01-2024.

However, the documents submitted to this Court, as well as to the High Court when the petitioner made an application in terms of section 10 of the Act shows that the submissions made before the High Court when the initial application by the Senior Superintendent of Police was made, was not only incorrect, but in fact, misleading.

The document marked X-1 (at page 86 of the brief), which is a true copy of the B-reports filed before the Magistrate's Court of Gampaha in Case Number B4371/23 reveals that the Officer-in-Charge (OIC) of Bemmulla police station has filed an initial B-report on 21-12-2023 before the learned Magistrate of Gampaha, informing that he is conducting an investigation against the petitioner in terms of the Act. He has sought several orders from the learned Magistrate for the purposes of his investigation.

On 28-12-2023, the OIC of Gampaha Divisional Crime Investigation Unit has filed a further report before the Magistrate's Court informing the learned Magistrate that, as a result of the investigations conducted in terms of the Act,

28 items of property were seized by the police from the premises of the petitioner and taken into police custody. The said items had been entered in the production record book of the police station. This includes the two buses and the motor bike mentioned in the application filed before the High Court by the Senior Superintendent of Police. The OIC has informed that these items are properties allegedly obtained by money laundering, and therefore, constitutes an offence punishable in terms of section 3 of the Act.

This clearly shows that the police have taken into custody the relevant two buses and several other properties from the house of the petitioner well before the purported freezing order submitted to the High Court of Gampaha by the Senior Superintendent of Police was issued. The said freezing order has been issued on 05-01-2024 after the goods were seized by the police on a date prior to 28-12-2023, whereas, the police had no right to do so under the provisions of the Act. What they should have done was to issue a Freezing Order as per the provisions of the Act, and not to seize the property as they have done.

The relevant section 7 under which the Senior Superintendent of Police has issued this purported belated freezing order reads as follows.

07. A Police Officer not below the rank of an Assistant Superintendent of Police of police may, where there are reasonable grounds to believe that any such person is involved in any activity relating to the offence of money laundering and it is necessary for preventing further acts being committed in relation to such offence, issue an order (hereinafter referred to as a “Freezing Order”) prohibiting any transaction relating to any account, property or investment which may have been used or which may be intended to be used in connection with such offence.

The provisions of section 7 clearly shows that it is a freezing order that should be issued, to the person who is believed to be involved in such activity referred

to in section 7(1) of the Act or any other person or institution who or which may be required to give effect to such an order.

Section 7(3) stipulates that such an order shall be in force for a period of 7 days.

It is the duty of the police officer who issues the freezing order to act in terms of section 8 of the Act within the effective period of his initial freezing order.

The relevant section 8(1) of the Act reads as follows.

8(1). The Police Officer issuing the Freezing Order under the provisions of section 7 shall, within the seven days during which such Order shall be in force, make an ex parte application to the High Court seeking confirmation of such Freezing Order and also if the circumstances so necessitate, request an extension of the original period of seven days.

The section also stipulates that the learned High Court Judge before whom the relevant application is made, if satisfied that there are sufficient reasons for making such a freezing order, can confirm the freezing order, and also grant the extension of the freezing order which shall not exceed 3 months at a time, and in any event, the aggregate extension shall not exceed a period of 2 years from the date of issuing of the freezing order by such police officer.

The proviso to section 8 also provides that if an indictment is filed for an offence under section 3 of the Act in relation to the subject of the freezing order, such a freezing order shall remain in force until the conclusion of the trial in respect of such an offence or in case of an appeal, until the determination of the appeal.

It needs to be emphasized that the relevant provisions of the Act do not give any power to the police to seize property from a person's possession. In other words, to take away property from the person under investigation and take them under police custody or to produce such property before the Magistrate's Court or the High Court for that matter.

The power vested in the police is to freeze the property under the possession of the person who has the custody of such property in terms of section 7 of the Act, which amounts to prohibiting any transaction in relation to the property, while allowing the custody of the property with the person who had it, and to continue with the investigations under the Act. Thereafter, the police should seek for relevant Directives from the relevant High Court as stipulated in the Act.

I find nothing wrong in the police reporting facts to the Magistrate's Court to inform that an investigation is being conducted and applying for necessary orders to facilitate effective investigations as provided in the Code of Criminal Procedure Act, other than matters relating to a freezing order, where the relevant High Court has been conferred with jurisdiction in that regard.

However, police have no power in the guise of conducting investigations, to seize property and take any property under their custody. In my view, this is what had exactly happened in this matter, which was an act done contrary to the provisions of the Act, which amounts to an illegal act.

Besides the illegality of the seizure of property, it appears that since the Senior Superintendent of Police has made an application before the High Court of Gampaha and has obtained the extension of the alleged order, the petitioner has made an application as he is legally entitled to make, in terms of section 10 of the Act.

The relevant section 10 of the Act as amended by the Amendment Act No. 40 of 2011 reads as follows.

10. In confirming a Freezing Order made under section 7, the High Court may on an application made in that behalf, if it is of opinion that such an Order could damage legitimate business or other interests of any person affected thereby, and that essential transactions relating to such account, property or investment as may have been prohibited by such Freezing Order may be legitimately carried out, make order sanctioning the carrying on of such

transactions subject to supervision by and under the direction of a person appointed in that behalf by Court or of a receiver appointed in that behalf under section 11.

Although the prosecuting State Counsel before the High Court of Gampaha has objected the learned Counsel for the petitioner making an application in terms of section 10 of the Act, I find that he was misguided as to the relevant provisions of section 10 when he raised an objection in that manner.

Section 10 of the Act permits the petitioner, being the registered owner of the two vehicles, or any other person mentioned under the provisions of section 10, to make an application for him to carry out transactions relating to the subject matter of the freezing order that can be legitimately carried out under supervision and the direction of a person appointed on that behalf by the Court or of a receiver (ප්‍රතිග්‍රාහකයෙක්) appointed on that behalf under section 11.

It appears that when this application was made before the High Court, the learned High Court Judge has been misdirected in interpreting the provisions of section 10 of the Act in relation to section 11, where provisions have been made for the appointment of a receiver (ප්‍රතිග්‍රාහකයෙක්).

The relevant section 11 of the Act reads as follows.

11. Upon an application made in that behalf by a police officer not below the rank of an Assistant Superintendent of Police, the High Court may appoint a Receiver to take possession of and otherwise deal with the account, property or investment which has been subjected to the Freezing Order, in accordance with such directions as may be given by Court in that behalf.

The provisions of section 11 are clear that the purpose of appointing a receiver is to take possession of or and otherwise deal with the accounts, property or investments which has been subjected to a freezing order.

The application made to the Court by the petitioner had been to seek sanction to carry out legitimate transactions relating to the two buses he had obtained on lease through a leasing company. The application has been on the basis that if he is prevented from using the buses for the purposes of transporting passengers, for which he has already obtained necessary permits from the relevant authorities and for the use of the same for transporting garment factory workers as he has been doing until the buses were seized, would prevent him from paying the leasing rentals, and the two buses will become useless to anyone if kept parked without being used over a prolonged period of time.

It appears from the proceedings before the High Court that when this application was made, a counter-proposal has been made by the police to appoint a receiver in terms of section 11 of the Act. It has been proposed that, the Manager of the Gampaha Depot of Ceylon Transport Board should be appointed as the receiver and he should be allowed to make use of the buses under the conditions proposed by the applicant. It appears that this has been the basis for the learned High Court Judge to order that the buses seized by the police should be handed over to the said Depot Manager under the conditions stipulated.

It was the submission of the learned Counsel for the petitioner that if such an order is carried out, the buses belonging to the petitioner would be handed over to an institution which bears no responsibility for proper maintenance and payment of the leasing rentals to the leasing company, which would result in the destruction of the buses and nothing else.

It is my considered view that although the learned High Court Judge has apparently acted in terms of section 11 of the Act, this is a situation where appointing of a receiver had not arisen. In my view, section 11 should become applicable, especially, in situations where there is no one to claim ownership or possession of a property which is a subject matter of an inquiry in terms of the Act. However, in the instant matter, there is no dispute that the petitioner is the registered owner of the two buses as well as the person who had possession of

the buses, as well as other properties taken over by the police contrary to the provisions of the Act.

I am strongly of the view that no Court should allow the police or anyone else to abuse the process of the Court and obtain orders to cover up things done without following the due process.

I am of the view that the police had acted illegally when they took charge of the things mentioned in the B-report filed before the Magistrate's Court. It has misled the High Court by pretending that it was under a freezing order issued by the Senior Superintendent of Police in relation to the two buses and the motorbike referred to in the application filed before the High Court that they come before the Court. No mention had been made of the fact that the vehicles are already under police custody after the police seized them.

I am of the view that this is a matter, which shocks the conscience of the Court, and a matter, which needs to be corrected by invoking the revisionary jurisdiction of the Court.

Although the police may have knowingly or unknowingly, misinterpreted the word "Freezing Order" mentioned in section 7 of the Act, and also has misrepresented facts to the learned High Court Judge as I have considered before, it appears from the documents submitted to this Court by the parties that the Senior Superintendent of Police who made this application before the High Court has reported facts to the Hon. Attorney General with the relevant documents and had sought the Hon. Attorney General's intervention in order to obtain the relevant orders from the High Court.

There would have been no difficulty for the relevant officers of the Hon. Attorney General to understand that the police have followed illegal procedures from the very outset of this matter. Rather than issuing a freezing order, it is apparent from the documents submitted to the Hon. Attorney General that the police have illegally seized the goods mentioned under the pretext of acting under the Act.

The documents tendered clearly shows that the purported freezing order has been issued subsequent to the seizure of the property, which should not be the case.

It is my considered view, if the facts reported to the Hon. Attorney General were considered in its correct perspective, rather than attempting to justify illegal actions of the police, this action would have not come this far. I firmly believe that it was the duty of the Hon. Attorney General to bring these matters to the attention of the learned High Court Judge and also to give directions to the police in order to rectify the actions taken by them, and to proceed with the relevant inquiry in accordance with the law.

Another matter that needs serious attention of the Court is the procedure that appears to have been adopted by the police after the seizure of the property mentioned in the B-report filed before the Magistrate's Court of Gampaha.

As I have stated before, there is no provision in the Act to seize property from anybody's custody other than issuing a freezing order in terms of section 7 of the Act and to proceed therefrom. If the police seize any property on the basis that the said property relates or is suspected to be used in the commission of any offence, the police should have acted in terms of section 431 of the Code of Criminal Procedure Act No.15 of 1979.

The relevant section 431(1) reads as follows.

431. (1) The seizure by any police officer of property taken under section 29 or alleged or suspected to have been stolen or found under circumstances which create suspicion of the commission of any offence shall be immediately reported to a Magistrate who shall forthwith make such order as he thinks fit respecting of the delivery of such property to the person entitled to the possession thereof or if such person cannot be ascertained respecting the custody and production of such property.

This is not a situation where the police have recovered any dangerous drug in terms of the Poisons, Opium and Dangerous Drugs Ordinance where they themselves can send the dangerous drug found to the Government Analyst to obtain a report, but other properties taken from the household of the petitioner. Although I find that the fact of taking into custody 28 items of property including the two buses relating to this application has been reported to the Magistrate's Court on 28-12-2023, I am unable to find anything in the B-report to the effect that the police have produced the said property before the learned Magistrate of Gampaha. It is not clear whether the said properties had been subsequently produced before the learned Magistrate or is still under the police custody, which is also in my view against the law.

I find no basis to the argument by the learned SDSG that this Court can only give reliefs in relation to what have been asked for and nothing else.

It needs to be noted that this is an application invoking the discretionary remedy of revision, which is a special jurisdiction exclusively vested with this Court. I am of the view that it is the duty of this Court to intervene in a matter of this nature and correct the misdeeds that had occurred to ensure that the ends of justice have been met.

In the case of **Attorney General Vs. Gunawardene (1996) 2 SLR 149**, it was held;

*“In terms of section 11, 13 and 54 of the Administration of Justice Law the Supreme Court appears to have the widest powers of revision in respect of proceedings of a High Court. By its nature revision involves the supervision by a Superior Court of the proceedings of subordinate Court to ensure that due and orderly administration of justice, and **prima facie** its exercise is peculiarly called for in cases in which no remedy such as an appeal is available.*

Revision like an appeal is directed towards the correction of errors, but it is supervisory in nature, and its object is the due administration of justice and not primarily or solely the relieving of grievances of a party.

*In exercising powers of revision, the appellate Court is not trimmed by technical rules of pleadings and procedure. In doing so, this Court has power to act whether it is set in motion by a party or not, and even **ex mero motu**.”*

For the reasons as considered above, I am of the view that not only the order dated 25-04-2024 of the learned High Court Judge cannot be allowed to stand, it is the duty of the Court to see to it the restoration of the *status quo* of the two buses, which is the subject matter of this application in relation to the day where the two vehicles were illegally taken into custody under the pretext of the provisions of the Prevention of Money Laundering Act.

Accordingly, I set aside the impugned order dated 25-04-2024 by the learned High Court Judge of Gampaha in High Court of Gampaha Case Number SPL/1/2024.

I order that the two buses taken into custody of the police, namely the vehicles bearing number WP-NG-4666 and WP-NG-3666, shall be released to the petitioner forthwith by the Senior Superintendent of Police-I of Gampaha District, who is the person who made the application to the High Court claiming that he issued a freezing order in relation to the two vehicles.

It is also directed that if the relevant Officer has gone on transfer, this order shall be carried out by the successor of that Office.

As I find that the said two buses and all other things taken into custody by the police have been entered in the police production record book and the learned Magistrate of Gampaha has been informed of the said taking over of the properties, if the said two buses had been handed over to the Magistrate Court of Gampaha by the applicant of this case or by any one of his authorized officers,

this order shall be construed as an order made to the learned Magistrate of Gampaha that the said two vehicles shall be forthwith released to the petitioner.

However, this order shall not prevent the applicant in High Court of Gampaha Case Number SPL/1/2024 or any other officer who is authorized to conduct an investigation under the Prevention of Money Laundering Act and to issue a freezing order acting in terms of section 7 of the Act and doing things in a legal manner, if such officer finds reasons to issue relevant freezing orders against the petitioner or others in relation to an inquiry under the provisions of the Act.

The learned High Court Judge of Gampaha is directed to give necessary orders in compliance of this judgment, if necessary.

The Registrar of the Court is directed to communicate this judgment to the High Court of Gampaha and to the Magistrate's Court of Gampaha for necessary action.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal