

**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 154P (6)
read with Article 138 of the
Constitution of the Democratic
Socialist Republic of Sri Lanka.

Court of Appeal

Revision Application No:

CA (PHC) 0207/2019

The Officer-in-Charge

Special Crimes Investigations unit

Police Station,

Galle.

COMPLAINANT

High Court of Galle No:

HCRA 268/2018

Magistrate Galle

Case No. 78461

Vs

1. Danister Calvin Wijesuriya

No.2/11, Igaladuwa Road,
Ambalangoda.

2. Thirimadura Harischandra de Silva

No.341, Galle Road,
Hikkaduwa.

3. Kochchigoda Kankanamge

Ariyaratna
Dodanduwegoda, Dodanduwa.

4. Loku Sattu Hewage Nilanka

Sampath Premalal
No. 145, Patuwatha, Dodanduwa.

5. Nelason Dias Gunawardena

Leynban Street, Fort,
Galle.

ACCUSED

THEN BETWEEN

Gallage Shirani Susantha De Silva
No. 339/1, Pannamgoda,
Hikkaduwa.

**VIRTUAL COMPLAINANT-
PETITIONER**

Vs

1. The Hon. Attorney General
Attorney General's Department,
Colombo-12.

1st -RESPONDENT

2. The Officer-in-Charge
Special Crimes Investigation Unit,
Police Station,
Galle.

COMPLAINANT-RESPONDENT

3. Danister Calvin Wijesuriya
No. 2/11, Igaladuwa Road,
Amblangoda.
4. Thirimadura Harischandra de Silva
No.341, Galle Road,
Hikkaduwa.

5. Kochchigoda Kankanamge
Ariyarathna
Dodanduwegoda, Dodanduwa.

6. Loku Sattu Hewage Nilanka
Sampath Premalal
No. 145, Patuwatha, Dodanduwa.

7. Nelason Dias Gunawardena
Leynban Street, Fort,
Galle.

**3rd to 7th ACCUSED-
RESPONDENTS**

AND NOW BETWEEN

Gallage Shirani Susantha De Silva
No. 339/1, Pannamgoda,
Hikkaduwa.

**VIRTUAL COMPLAINANT-
PETITIONER-APPELLANT**

Vs

1. The Hon. Attorney General
Attorney General's Department,
Colombo-12.

1st RESPONDENT-RESPONDENT

2. The Officer-in-Charge
Special Crimes Investigation Unit,
Police Station,
Galle.

COMPLAINANT-RESPONDENT-
RESPONDENT

3. Danister Calvin Wijesuriya
No. 2/11, Igaladuwa Road,
Amblangoda.
4. Thirimadura Harischandra de Silva
No.341, Galle Road,
Hikkaduwa.
5. Kochchigoda Kankanamge
Ariyaratna
Dodanduwegoda, Dodanduwa.
6. Loku Sattu Hewage Nilanka
Sampath Premalal
No. 145, Patuwatha, Dodanduwa.
7. Nelason Dias Gunawardena
Leynban Street, Fort,
Galle.

3rd to 7th ACCUSED-
RESPONDENTS-RESPONDENTS

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

P. Kumararatnam, J.

COUNSEL : **Asela Serasinghe for the Appellant.**
Asthika Devendra with Vimukthi
Karunaratne for the 4th to 7th
Respondents.
Jayaluxshi De Silva, SSC for the 1st
and 2nd Respondents.

ARGUED ON : **06/03/2024.**

DECIDED ON : **09/07/2024.**

JUDGMENT

P.Kumararatnam,J.

The Virtual Complainant-Petitioner-Appellant (hereinafter referred to as the Appellant) had filed this Appeal against the judgment of Learned High Court Judge of Galle dated 04.11.2019.

According to the Appellant, the Officer-in-Charge of the Special Crimes Investigation Unit of the Galle Police Station had filed a chargesheet under Case No.78461 before the Magistrate Court of Galle against the 3rd to 7th Accused-Respondents-Respondents (Hereinafter referred to as the Accused) for allegedly committing an offence punishable under

Section 454 of the Penal Code. The Accused were separately charged under Section 454 of the Penal Code in the same chargesheet.

After filing the chargesheet the trial was started and the Appellant had started to give evidence on 16.10.2008. Although several dates had been passed, the prosecution could not complete her evidence. On 20.01.2017, the 3rd Accused had pleaded guilty to the 1st count levelled against him, and was sentenced accordingly.

On 23.06.2017, on behalf of 4th to 7th Accused an application was made to discharge them from the case. Written submissions were filed pertaining to the said application and the Learned Magistrate of Galle citing the Section 186 of the Code of Criminal Procedure Act No.15 of 1979, had acquitted the 4th to 7th Accused on 26.10.2017.

Against the said order of the Learned Magistrate, the Appellant had filed a revision application in the High Court of Galle under case No.HCRA 268/2018 and notices were issued to the 4th to 7th Respondents. All parties had filed their written submissions and the Learned High Court Judge pronouncing his order on 04.11.2019, had dismissed the said revision application filed by the Appellant.

Aggrieved by the said order of Learned High Court Judge, the Appellant had preferred an appeal by filing a petition of appeal on 18/11/2019 in the High Court of Galle requesting it to be sent to the Court of Appeal along with the original case record.

The Appellant had submitted following grounds of appeal:

- A. The Learned Magistrate has failed to examine whether Transfer Deed No. 577 is forged document.
- B. The need for the Learned Magistrate to properly evaluate the material elicited during the criminal investigation, and frame proper fresh charges at a re-trial.

Before commencement of the trial in the Magistrate Court of Galle, on 16.10.2008, as a preliminary objection, Counsel for 04th and 05th Accused made an application under section 186 of the Code of Criminal Procedure Act no. 15 of 1979 to discharge them from the case, as they are merely witnesses to the deed No. 577 which is the subject matter in this case. This application was rejected by the Learned Magistrate on the basis that this question to be decided at the end of the trial. Hence, trial was commenced but could not concluded as the 3rd Accused had pleaded guilty and he was sentenced accordingly. Hence, the Appellant now argue that she was not afforded an opportunity to present her case fully and she submits this is an exceptional circumstance which should have been considered by the Learned High Court Judge.

Section 186 of the Code of Criminal Procedure Act No. 15 of 1979 states:

Anything herein before contained shall not be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case, but he shall record his reasons for doing so: Provided that, if the Magistrate is satisfied, for reasons to be recorded by him, that further proceedings in the case will not result in the conviction of the accused, he shall acquit the accused.

In **Parameshwaran v Officer-in-Charge, Police Station, Norwood** [188] 2 SLR 138 the Court held that:

“The prosecution failed to identify the made, tea produced in the case as Stockholm Estate tea and there was no cogent evidence that the tea in question was' stolen tea` Hence at the end of the prosecution case the accused had no case to meet and he should have been acquitted. Where there is no: evidence at the, close of

the prosecution case that the crime alleged had been committed by the accused the case should be stopped as there is no case for the accused, to answer.”

In this case all the Accused were individually charged under Section 454 of the Penal Code for preparing a forged deed. The 3rd Accused was the person who placed his signature as the seller in the deed No. 577. No signatures of the 4th and 5th Accused found on the said deed. In the evidence recorded from the Appellant nowhere revealed that the 4th and 5th Accused contributed towards preparing the deed No. 577 in furtherance of Common Intention. Only their names are mentioned in the chargesheet. Further, no conspiracy charge was levelled against the Accused. In the attestation of the Notary Public, it is only mentioned that the deed was executed in the presence of the 3rd, 6th and 7th accused. Since the presence of 6th and 7th Accused were not established and cannot be held liable vicariously. Therefore, the finding of the Learned Magistrate is not faulty in respect of 4th and 5th Accused.

In **Ramachandran v The Queen** 64 NLR 512, two accused were jointly indicted in a District Court on certain charges. Before the indictment was read and explained to the accused, Crown Counsel stated that the evidence against the 2nd accused did not justify the prosecution proceeding against him any further. The District Judge thereupon made the following order: -" I acquit and discharge the 2nd accused ". Thereafter the trial proceeded against the 1st accused on amended charges.

The Court held that:

“That knowledge was an essential ingredient of the charges against the accused and that the burden was on the prosecution to establish it.”

In this case, 6th and 7th Accused were the witnesses to the deed No.577.

In **Bongso I.P.Matara v Gunasekera** 60 CLW 64 the Court held that;

“It was not sufficient to convict the Accused who was a mere witness to the deed.”

Although, in the evidence recorded from the Appellant revealed that the 6th and 7th Accused placed their signatures as witnesses to the instrument, neither in the B-Report nor in the Complaint indicates that the 5th and 7th Accused acted in Common intention with the 3rd Accused or aided and abetted the 3rd Accused or conspired along with the 3rd Accused to commit the offence for which the 3rd Accused pleaded. Therefore, the Learned Magistrate had discharged the 4th Accused to 7th Accused after recording his reasons.

It is settled law that revision is a discretionary remedy, and such power shall be invoked only upon demonstration of exceptional circumstances.

In **Marian Beebee v. Seyed Mohamed** 69 CLW 34 the court held that:

“Power of revision is an extraordinary power of the court which is independent and distinct from the appellate jurisdiction. The object of revisionary jurisdiction is to ensure the due administration of justice and the correction of all errors in order to avoid a miscarriage of justice”.

In the case of **Rasheed Ali v. Mohammed Ali and Others [1981] 1 SLR 262**, the court held that:

“ ...the powers of revision vested in the Court of Appeal are very wide and the Court can in a fit case exercise that power whether or not an appeal lies. When, however, the law does not give a right of appeal and makes the order final, the Court of Appeal may nevertheless exercise its powers of revision, but it should do so only in exceptional circumstances. Ordinarily the Court will not interfere by way of review, particularly when the law has expressly given an aggrieved party an alternative remedy such as the right to file a separate action, except when non-interference will cause a denial of justice or irremediable harm”.

In **Commissioner of Police v. Tanes (1957-58) 68 CLR 383**, the court held that:

"It is a deep-rooted principle of the law that before anyone can be punished or prejudiced in his person or his property by any judicial or quasi-judicial procedure, he must be afforded adequate opportunity of being heard ... "

In this case the Learned High Court Judge considering the order of the Magistrate Court of Galle decided to dismiss the revision application stating that that the Petitioner had failed to adduce exceptional circumstances to the satisfaction of the Court and that the order made by the Learned magistrate under Section 186 of the CPC is not in violation of the legal provisions contained therein.

The Learned High Court of Galle also had observed that the Appellant had not invoked Section 318 of CPC which lays down the Appellate jurisdiction/Procedure with regard to an acquittal by the Magistrate. It is very pertinent to observe that right of appeal under Section 318 is a statutory right.

In **Colombo Apothecaries Ltd v Commissioner of Labour** 1998(3) SLR 320 the Court held that:

“The power of revision vested in the court is discretionary. The power will be exercised when there is no other remedy available to a party. It is only in very rare instances where exceptional circumstances are present that courts would exercise powers of revision in cases where an alternative remedy has not been availed of by the applicant. Thus, the general principal is that revision will not lie where an appeal or other statutory remedy is available. It is only if the aggrieved party can show exceptional circumstances, for seeking relief by way of revision, rather than by way of appeal, when such appeal is available to him as of right, that the court will exercise its revisionary jurisdiction in the interests of due administration of justice.”

Further, the Appellant had not mentioned in her revision application as to why she resorted to revisionary jurisdiction instead invoking appellate jurisdiction. Also, no reason adduced as to why she had not acted under Section 318 of the CPC.

Further, the 1st and 2nd grounds of appeal raised by the Appellant in her Petition of Appeal were never raised in the revision application filed before the High Court of Galle. As it correctly pointed out by the Counsel for the 4th to 7th Respondents, it has no standing in the instant

appeal as it ought to have been canvassed in the Provincial High Court of Galle by way of an appeal and not in the instant appeal against the order of the revision application.

As such, I conclude that that the order of the Learned High Court Galle is correct as the Appellant had failed to present exceptional circumstances in her revision application filed before the High Court of Galle.

While affirming the order of the Learned High Court Judge of Galle dated 04.11.2019 and the order of Learned Magistrate of Galle dated 26.10.2017, I dismiss this appeal without any cost.

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

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL