

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.*

The Officer-in-Charge, Unit 5,
Criminal Investigations Department,
Colombo 01.

Court of Appeal

Revision Application No:

CA/PHC/APN/0159/2019

High Court of Colombo

Revision Application No:

HC RA 37/2019

Magistrate's Court

Colombo Fort Case No:

B/8438/2018

COMPLAINANT

Vs.

Shanthi Kanagasingam
No.34, Anula Road, Wellawatte.

1ST SUSPECT

AND BETWEEN

Mercantile Investments and Finance PLC,
No.236, Galle Road, Colombo 03.

ABSOLUTE OWNER-CLAIMANT

Vs.

Shanthi Kanagasingam,
No.34, Anula Road, Wellawatte.

**REGISTERED OWNER-SUSPECT-
CLAIMANT**

David Pradeepan Saundaranayagam,
75/5/5B, Crescat Residencies,
Galle Road, Colombo 03.

1ST COMPLAINANT-CLAIMANT

AND BETWEEN

Mercantile Investments and Finance PLC,
No.236, Galle Road, Colombo 03.

**ABSOLUTE OWNER-CLAIMANT-
PETITIONER**

Vs.

01.The Officer-in-Charge, Unit 5,
Criminal Investigations Department,
Colombo 01.

COMPLAINANT-1ST RESPONDENT

02.Shanthi Kanagasingam,
No.34, Anula Road, Wellawatte.

SUSPECT-CLAIMANT-2ND RESPONDENT

03.David Pradeepan Saundaranayagam,
75/5/5B, Crescat Residencies,
Galle Road, Colombo 03.

**COMPLAINANT-CLAIMANT-3RD
RESPONDENT**

04.The Hon. Attorney General,
Attorney General's Department,
Colombo 12.

4TH RESPONDENT

AND NOW BETWEEN

David Pradeepan Saundaranayagam,
75/5/5B, Crescat Residencies,
Galle Road, Colombo 03.

COMPLAINANT-CLAIMANT-3RD
RESPONDENT-PETITIONER

Vs.

01.The Officer-in-Charge, Unit 5
Criminal Investigations Department,
Colombo 01.

COMPLAINANT-1ST RESPONDENT-
RESPONDENT

02.Shanthi Kanagasingam,
No.34, Anula Road, Wellawatte.

1ST SUSPECT-CLAIMANT-2ND
RESPONDENT- RESPONDENT

03.Mercantile Investments and Finance
PLC, No.236, Galle Road, Colombo 03.

ABSOLUTE OWNER-CLAIMANT-
PETITIONER-RESPONDENT

04.The Hon. Attorney General,
Attorney General's Department,
Colombo 12.

4TH RESPONDENT-RESPONDENT

Before : Sampath B. Abayakoon, J.
: P. Kumararatnam, J.

Counsel : M.M. Zuhair, P.C. with Anjana Ratnasiri and Rizwan
Uwaiz for the Petitioner instructed by Shirin Miskin.
: Harsha Amarasekara, P.C. with Shehan
Gunawardena and Akalanka Ukwatta, Ransith
Gunawardena for the 3rd Respondent.
: Damithri De Silva, S.S.C., for the 1st and 4th
Respondents.

Argued on : 06-02-2024

Written Submissions : 15-02-2024 (By the Absolute owner-Claimant-
Petitioner-Respondent)
: 13-01-2023 (By the Complainant-Claimant-
3rd Respondent-Petitioner)

Decided on : 17-05-2024

Sampath B Abayakoon, J.

This is an application by the complainant-claimant-3rd respondent-petitioner (hereinafter referred to as the petitioner) seeking to invoke the revisionary jurisdiction of this Court granted in terms of Article 138 of the Constitution.

When this matter was supported for notice, after having considered the facts and the circumstances, this Court decided to grant notice to the respondents mentioned in the application. Although there are several respondents named in the application, the relevant necessary party in relation to this revision application is the Mercantile Investments and Finance PLC, the absolute owner-claimant-petitioner-respondent (hereinafter referred to as the respondent).

The petitioner is seeking to challenge and set aside the judgment pronounced by the learned High Court Judge of Colombo in exercising the revisionary jurisdiction granted to the relevant High Court in terms of Article 154P of the Constitution.

From the impugned judgment dated 18-10-2019, the learned High Court Judge has set aside the order dated 20-02-2019, pronounced by the learned Magistrate of Colombo Fort, wherein, the learned Magistrate has ordered that the possession of the three vehicles produced before the Court, as productions in Magistrate's Court of Colombo Fort Case No. B8438/18, should be released to the petitioner on a bond, pending the conclusion of the matter. The relevant vehicles are, vehicle numbers CBA-2325, CBA-5545 and CBC-2325.

After setting aside the above-mentioned order by the impugned judgment, the learned High Court Judge has directed that, said vehicles should be handed over to the respondent who is the absolute owner of the vehicles, without any conditions.

At the hearing of this matter, this Court heard the submissions of the learned President's Counsel on behalf of the petitioner, as well as the submissions of the learned President's Counsel on behalf of the respondent.

Before considering the relevant legal provisions that need to be considered in a matter of this nature, I find it relevant to briefly summarize matters that led to the seizure of the earlier mentioned three vehicles from the possession of the respondent.

The petitioner has made a complaint to the Criminal Investigations Department (CID) on 16-02-2018 on the basis that the person named in the complaint, namely, Shanthi Kanagasingam (1st suspect-claimant-2nd respondent-respondent named in this application) obtained Rs.130 million/- from him and another person with the promise that she would supply 25 kilograms of gold to them, and did not honour the agreement. The complaint had been on the basis that when she failed to honour the agreement to supply gold, she agreed to return the money and gave several cheques in settlement and the said cheques were dishonored by the bank and therefore, she committed cheating on them.

It appears from the copy of the Magistrate's Court proceedings tendered to this Court along with this application, the CID has reported facts to the Court on 28-02-2018 naming the earlier mentioned Shanthi Kanagasingam and one Don Sujeewa Pradeep Nanayakkara as the suspects in the case. In the initial B report, the CID has requested the Court to facilitate the calling of relevant bank statements from several banks in relation to their investigations.

On 11-05-2018, the CID has arrested and produced the earlier mentioned Shanthi Kanagasingam on the basis that she committed the offence of cheating. She has been remanded accordingly, and had been granted bail on 26-06-2018. She has also appeared to have stated to the Court that, she is willing to pay Rs. 130 million/- and she has also given 10 cheques in that regard, which has not been tendered to the bank for payment as yet, and she is willing to pay the amount in two weeks' time.

On a subsequent date, the 2nd suspect mentioned in the B report has surrendered to the Court by himself and he has also been released on bail.

It is interesting to note that the CID at no stage of the inquiry up to that date, has stated about the vehicles that were taken over at a later stage of this case or has mentioned them as vehicles obtained by using the money obtained through this transaction between the petitioner and the 1st suspect named in the case.

However, when the matter was mentioned before the learned Magistrate of Colombo Fort on 7-11-2018, the CID has filed a further report and the learned Magistrate has allowed them to file their final report as to the investigations in terms of section 120(3) of the Code of Criminal Procedure Act. Having made the above order, the learned Magistrate has directed the CID to inquire as to what happened to the amount cheated, and if there are any properties obtained using the cheated amount, to take over the properties to the custody of the police.

This appears to have led to the taking into custody of the earlier mentioned three vehicles from the possession of the respondent company, which is the subject matter of the application before the Court.

Once the said vehicles were produced before the learned Magistrate of Colombo Fort, the petitioner, the respondent company, as well as the 1st suspect in the case has claimed the vehicles.

Accordingly, the learned Magistrate has decided to hold an inquiry in terms of section 431 of the Code of Criminal Procedure Act which stipulates the procedure that should be followed upon seizure of property taken under section 29 of the Code or stolen or alleged or suspected to have been stolen or found under circumstances which create suspicion of the commission of any offence.

After the relevant inquiry, the learned Magistrate of Colombo Fort by his order dated 20-02-2019 has ordered that all three vehicles should be released to the petitioner in terms of section 431(2) of the Code of Criminal Procedure Act,

subjected to a bond as stated in the order and under other mentioned conditions. It has also been ordered that the registered ownership of the vehicle shall also be transferred to the petitioner.

Against the above-mentioned order, the respondent company has filed an application in revision before the Provincial High Court of the Western Province holden in Colombo seeking to challenge the order in terms of Article 154P of the Constitution.

After having considered the said application and the submissions of the parties in that regard, the learned High Court Judge of Colombo of his judgment dated 18-10-2019, has set aside the order of the learned Magistrate and had ordered the release of the vehicles to the respondent company, It has been determined that the respondent company should be the person to whom the vehicles should be handed over. However, the learned High Court Judge has not ordered any security that needs to be furnished by the respondent company.

It is against the said judgment; the petitioner has now come before this Court.

It appears that the learned Magistrate has decided to initiate an inquiry as to the mentioned vehicles on the basis that the vehicles had been acquired by the 1st suspect in the case using the money obtained by her from the petitioner, with the promise of providing 25 kilograms of gold.

Since, this was a situation where the case before the Magistrate's Court has not come to an end, it appears that the purpose of the inquiry had been to determine in whose custody the said three vehicles which have been produced as productions, should be kept until the conclusion of the case before the Magistrate's Court.

There had been no dispute that all three vehicles had been taken into custody by the CID while they were in the possession of the respondent company and also of the fact that the respondent company was the absolute owner of the said vehicles.

The respondent company being a company that engages in providing finance leasing facilities and other related financial services, it was not unusual for the respondent company to have absolute ownership of such vehicles. The learned Magistrate has considered the circumstances under which the respondent company has come to hold the absolute ownership of the vehicles and has concluded that the 1st suspect has used the money obtained from the petitioner and another person to purchase the vehicles from two separate companies. It has been determined that after obtaining the vehicles, she has kept two of the vehicles as security for a loan obtained from the respondent and had used the rest of the money obtained from the petitioner to purchase the 3rd vehicle and to obtain a leasing facility in that regard from the respondent company.

Having drawn his attention to section 425(4) of the Code of Criminal Procedure Act, the learned Magistrate has determined that the said three vehicles are properties in relation to the case pending before the Magistrate's Court.

The relevant section 425 is the provision, where an inquiry or a trial in any criminal Court is concluded, the procedure that can be adopted for the disposal of any document or other property produced before it regarding which any offence appears to have been committed or which has been used for the commission of any offence has been stipulated.

Section 425(4) is the subsection where the term property mentioned in section 425(1) has been defined.

For matters of clarity, I will now reproduce the section 425(4), which read as follows,

425(4) In this section the term 'property' includes in the case of property regarding which an offence appears have to been committed not only such property as has been originally in the possession or under the control of any party but also any property into or for which

the same may have been converted or exchanged and anything acquired by such conversion or exchange whether immediately or otherwise.

Although the learned Magistrate has used the interpretation given to the term property to conclude that the three vehicles produced before the Court falls under the said interpretation, it clearly appears that the learned Magistrate was aware that the section 425 of the Code of Criminal Procedure Act, could only be invoked once the case before the Court is concluded.

After having considered the facts and the circumstances as reported to the Court up to that point, the learned Magistrate has concluded that, the fit person to hold the three vehicles in terms of section 431 of the Code of Criminal Procedure Act until the final determination of the action would be the petitioner. It has been so determined on the basis that the 1st suspect mentioned in the B report has used the money obtained from the petitioner, to purchase these vehicles and therefore, the vehicles deemed to be the property obtained by using the cheated sums of money.

When this matter was argued before the learned High Court Judge of Colombo in the revision application filed by the respondent company challenging the said determination of the learned Magistrate, the learned High Court Judge has determined otherwise. It has been determined that there had been no evidence before the Court to show that the two mentioned vehicles had been purchased using the money obtained from the petitioner, and the third vehicle has been obtained after entering into a finance leasing agreement with Mercantile Investment and Finance PLC, who is the respondent before this Court.

Accordingly, the learned High Court Judge has ordered that, said vehicles should be handed over to the respondent company.

It is clear from the documents tendered to the Magistrate's Court and the relevant High Court in this regard and the B reports filed before the Magistrate's Court, that the 1st suspect named in the B report namely, Shanthi

Kanagasingam has obtained two vehicles from a vehicle trading company called Manapperuma Traders by paying cash for those two vehicles.

The said transaction had been done in January 2018, and thereafter the said vehicles had been registered in the name of the said Shanthi Kanagasingam.

The complaint of cheating has been made to the CID on February 2018, which has resulted in the CID reporting facts to the Court. It is clear from the facts reported to the Court that, the dispute was in relation to issuing of cheques by the 1st suspect in settlement of the relevant transaction between her and the complainant, which has resulted in the relevant banks dishonouring the payment for the cheques. The said Shanthi Kanagasingam has obtained a loan from the respondent company by keeping the said vehicles as security in the month of April 2018.

As I have stated before, the respondent company being a company duly registered to engage in such transactions, there is nothing unusual or sinister of the transactions entered into by the respondent with the said Shanthi Kanagasingam. It appears that at the same time, the respondent company has provided finance leasing facility for the said person to obtain the 3rd vehicle involved in this action which was also within the permitted business activities of the respondent company.

Therefore, it can be safely determined that the respondent company has entered into a legally valid transactions with the 1st suspect in the Magistrate's Court case. It appears that since the said 1st suspect in the Magistrate's Court case has failed to pay the amounts due to the respondent company, it has terminated the agreements they had with the said Shanthi Kanagasingam and had taken over the vehicles to their custody. This was the reason why the vehicles mentioned were in the custody of the respondent company, when the CID informed the said fact to the Court.

It is the view of this Court that, the learned Magistrate should have looked into the above-mentioned aspects as well, when determining as to who should have the possession of the vehicles until the final determination of the case.

I am of the view that, if considered in the correct perspective, the vehicles should have been handed over to the respondent company until the final determination of the action, rather than to the petitioner of this matter, since the initial complaint of the petitioner had been one of cheating by issuing cheques without sufficient funds in the bank.

Accordingly, I find no reason to disagree with the determinations of the learned High Court Judge in that regard, and the decision to set aside the order of the learned Magistrate.

However, I am not in agreement with the learned High Court Judge's decision to hand over the vehicles to the respondent company without any conditions, since the said vehicles should be considered as productions of the Magistrate's Court case until the conclusion of the said case before the Magistrate's Court of Colombo Fort.

Therefore, I hold that, the respondent company shall enter into 3 separate bonds of Rs. 15 million/-, each in relation to the relevant 3 vehicles, agreeing to produce them before the Magistrate's Court when necessary. The respondent company is also prevented from handing over the possession of the vehicles or transfer the ownership without the permission of the learned Magistrate of Colombo Fort.

Subjected to the above variance to the judgment pronounced by the learned High Court Judge of Colombo, the revision application is dismissed.

The Registrar of the Court is directed to communicate this judgment to the High Court of Colombo for information.

The Registrar is also directed to forward a copy of this judgment to the Magistrate's Court of Colombo Fort for necessary compliance in relation to getting the respondent company to enter into the relevant bonds as directed by this Court.

Judge of the Court of Appeal

P Kumararatnam, J.

I agree.

Judge of the Court of Appeal