

**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 0025/2023**

The Attorney General

Attorney General's Department

Colombo-12

**Complainant**

**High Court of Colombo**

**Vs.**

**Case No. HC 3109/2021**

Thebuwana Achaarige  
Chandrakanthi  
No. 219/04, Pinwaththa  
Suwarapola  
Piliyandala.

**Accused**

**AND NOW BETWEEN**

Thebuwana Achaarige  
Chandrakanthi  
No. 219/04, Pinwaththa  
Suwarapola  
Piliyandala.

**Accused-Petitioner**

**Vs.**

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

**Complainant-Respondent**

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

**COUNSEL** : **S.M.D. Rahul Jayathilake, instructed  
by D.Karasinghe for the Petitioner.  
Dilan Ratnayake, ASG for the  
Complainant-Respondent.**

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

**DECIDED ON** : **30/07/2024.**

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**JUDGMENT**

**P. Kumararatnam, J.**

This is an application in Revision preferred by the Accused-Petitioner (Hereinafter referred to as the Petitioner) challenging the order delivered on 25.01.2023 by the learned High Court Judge of Colombo dismissing the preliminary objections raised at the pre-trial conference commenced on 27.10.2022.

The matter was supported on 20.03.2023 and this Court had decided to issue notice on the Respondent. On the notice returnable day i.e. 17.05.2023 the Counsel for the Petitioner supported for a stay order. After hearing both parties, this Court issued a stay order as per prayer 'C' of the Petition.

The Petitioner was indicted in the High Court of Colombo for criminal offences allegedly to have been committed on or about 10.04.2016. The charges in the indictment are re-produced bellow:

1. On or about 10.04.2016 committing an offence in terms of Section 403 read with Section 398 of the Penal Code by inducing one Wewalage Rose Milton Fernando to give the accused a gem worth about Rs.32,500,000/-.

2. In between 10.04.2016 to 30.04.2016 committing an offence in terms of Section 25(1) of the Debt Recovery (special Provisions) Act No. 02 of 1990 amended by Act No. 09 of 1994 by giving a cheque No. 355551 worth of Rs. 5,000,000/- to Wewalage Rose Milton Fernando.
3. In between 10.04.2016 to 30.04.2016 committing an offence in terms of Section 25(1) of the Debt Recovery (special Provisions) Act No. 02 of 1990 amended by Act No. 09 of 1994 by giving a cheque No. 355553 worth of Rs. 3,000,000/- to Wewalage Rose Milton Fernando.
4. In between 10.04.2016 to 30.04.2016 committing an offence in terms of Section 25(1) of the Debt Recovery (special Provisions) Act No. 02 of 1990 amended by Act No. 09 of 1994 by giving a cheque No. 355555 worth of Rs. 12,500,000/- to Wewalage Rose Milton Fernando.
5. In between 10.04.2016 to 30.04.2016 committing an offence in terms of Section 25(1) of the Debt Recovery (special Provisions) Act No. 02 of 1990 amended by Act No. 09 of 1994 by giving a cheque No. 355556 worth of Rs. 12,500,000/- to Wewalage Rose Milton Fernando.

At the commencement of the pre-trial conference, the Counsel for the Appellant raised the preliminary objection against the maintainability of the 2<sup>nd</sup> to 5<sup>th</sup> charge on the basis that the Debt Recovery (Special Provisions) Act No 02 of 1990 as amended conferred Jurisdiction in the Magistrate Court in respect of offences committed under Section 25(1) of the said Act and as such the Hon Attorney General is not empowered to forwarded an indictment to the High Court including charges in terms of Section 25 (1) of the Debt Recovery (Special Provisions) Act No. 02 of 1990.

After the submissions by the Counsel for the Petitioner and the prosecution, the Learned High Court Judge had overruled the preliminary objection raised by the Petitioner and fixed the matter for pre-trial conference 15.02.2023

Being aggrieved by the order of the Learned High Court Judge of Colombo, the Petitioner had filed this instant Revision Application invoking the revisionary jurisdiction of this Court urging on the following exceptional circumstances.

- a. The learned High Court Judge has misdirected himself in law by holding Sec 393 of the Code of Criminal Procedure act No. 15 of 1979 is applicable to the Debt recovery (Special Provisions) Act No 02 of 1990 amended by Act No 09 of 1994 when the Sec 393 of the Criminal Procedure code very clearly states that it is only applicable to the Criminal Procedure Code.
- b. The Honourable High Court Judge has misdirected himself in law by granting leave to the Hon Attorney General to include charges framed under Sec 25 (1) of the Debt Recovery (Special Provisions) Act No 02 of 1990 amended by the act No 09 of 1994.
- c. The Honourable High Court Judge has misdirected himself by failing to consider the well maxim of interpretation “Generalia Specialibus no Derogant.”
- d. The Honourable High Court Judge has misdirected himself by failing to consider that the Legislature has specifically conferred the jurisdiction over offences which are committed in terms of Sec 25(1) of the Debt Recovery (Special Provisions) Act No 02 of 1990 amended by the act No 09 of 1994 to the Magistrate Courts.

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.”*

The main argument of the Learned Counsel for the Petitioner is that the High Court has no jurisdiction to try offences under Section 25(1) of the Debt Recovery (Special Provisions) Act No. 02 of 1990 as amended by Act No. 04 of 1994 as the Act confers jurisdiction to the Magistrate Court to try the said offences.

In this context, it is very pertinent to discuss Section 393(7) of the Code of Criminal Procedure Act No. 15 of 1979 which reads as follows:

Notwithstanding any other provisions contained in this Act, it shall be lawful for the Attorney-General, having regard to the nature of

the offence or any other circumstances, in respect of any summary offence - (a) to forward an indictment directly to the High Court, or

(b) to direct the Magistrate to hold a preliminary inquiry in accordance with the procedure set out in Chapter XV in respect of any offence specified by him where he is of opinion that the evidence recorded at a preliminary inquiry will be necessary for preparing an indictment;

and thereupon such offence shall not be triable by a Magistrate's Court.

In an identical issue, Sisira De Abrew, J. in **Sellaiya Sribalan v The Attorney General** CA(PHC) APN 09/2012 decided on 29.03.2012 after considering the Section 2 of the Code of Criminal Procedure Act and the Section 9(1) of the Judicature Act, held that:

*“When the above legal provisions are considered, I hold the view that the Attorney General has the power to send an indictment to the High Court in respect of a summary offence (an offence triable by the Magistrate) and when such an indictment is forwarded, The High Court Judge has the power to hear, try and determine the case and that the Magistrate loses jurisdiction to hear such a case.”*

In this case the decision taken to try the charges preferred under the Debt Recovery Act No.02 of 1990 as amended in the indictment is not opened to challenge as it is the decision of the Attorney General under the power vested on him under Section 393(7) of the Code of Criminal Procedure Act No. 15 of 1979.

Hence, the High Court under Section 9(1) of the Judicature Act, has the jurisdiction to hear, try and determine the indictment which include summary offences triable by the Magistrate.

Hence, I affirm the order of Learned High Court Judge dated 25.01.2023 and dismiss this revision application of want of any exceptional circumstances.

The Registrar of this Court is directed to send this Judgment to the High Court of Colombo for information.

**JUDGE OF THE COURT OF APPEAL**

**SAMPATH B. ABAYAKOON, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**