

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

In the matter of an application for Revision
and/or Restitutio-in-Integrum in terms of
Article 138 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

Court of Appeal

Case No. CA/RII/0017/2024

High Court of Galle Case No.783/2023 (ඇත්)

Magistrate's Court of Galle Case No. 8194(21)

Officer-in-Charge,
Special Investigation Bureau,
Police Station,
Galle.

Complainant

- Vs. -

1. Thalatha Mervin Wahihena,
“Sisira”,
Narigama, Hikkaduwa.

2. Jayasinghe Arachchige Premalatha,
Thiranagama,
Hikkaduwa,
Galle.

Accused

And between

Regina Maitipe,
No.95 D,
Bokutuduwa Watta,
Andurathwila,
Poddala.

Virtual Complainant-Petitioner

-Vs.-

1. Thalatha Mervin Wahihena,
“Sisira”,
Narigama,
Hikkaduwa.

2. Jayasinghe Arachchige Premalatha,
Thiranagama,
Hikkaduwa,
Galle.

1st and 2nd Accused-Respondents

Officer-in-Charge,
Special Investigation Bureau,
Police Station,
Galle.

Complainant-Respondent

Hon. the Attorney-General,
Attorney General's Department,
Colombo 12.

Respondent

And between

Regina Maitipe,
No.95 D,
Bokutuduwa Watta,
Andurathwila,
Poddala.

Virtual Complainant-Petitioner-Appellant

- Vs. -

1. Thalatha Mervin Wahihena,
“Sisira”,
Narigama,
Hikkaduwa.

2. Jayasinghe Arachchige Premalatha,
Thiranagama,

Hikkaduwa,
Galle.

1st and 2nd Accused-Respondent- Respondents

Officer-in-Charge,
Special Investigation Bureau,
Police Station,
Galle.

Complainant-Respondent-Respondents

Hon. the Attorney-General,
Attorney General's Department,
Colombo 12.

Respondent-Respondent

And now between

Regina Maitipe,
No.95 D,
Bokutuduwa Wattा,
Andurathwila,
Poddala.

Virtual Complainant-Petitioner-Appellant-Petitioner

-Vs.

1. Thalatha Mervin Wahihena,
“Sisira”,
Narigama,
Hikkaduwa.

2. Jayasinghe Arachchige Premalatha,
Thiranagama,
Hikkaduwa,
Galle.

1st and 2nd Accused-Respondent- Respondent-Respondents

Officer-in-Charge,
Special Investigation Bureau,
Police Station,
Galle.

Complainant-Respondent-Respondent-Respondent

Hon. the Attorney-General,
Attorney General’s Department,
Colombo 12.

Respondent-Respondent-Respondent

Before: **R. Gurusinghe J.**

&

Dr. Sumudu Premachandra J.

Counsel: Jagath Wickramanayake, P.C. with Mahinda Nanayakkara with Supun Dissanayake for the Virtual Complainant-Petitioner-Appellant-Petitioner instructed by Niluka Dissanayake.

W. Dayaratne. P.C. with Ranjika Jayawardena for the 1st and 2nd Accused-Respondent-Respondent-Respondents.

Maheshika De Silva, D.S.G. for the Complainant-Respondent and Respondent-Respondent-Respondent.

Written Submissions : Virtual Complainant-Petitioner-Appellant-Petitioner filed on 20th May 2024 & 04th November 2025 1st and 2nd Accused-Respondent-Respondents filed on 20th May 2024.

Argued On : 23.09.2025

Judgment On: 12.11.2025.

Dr. Sumudu Premachandra J.

- 1] This an application for Restitutio-in-Integrum and the Petitioner mainly prays for that staying all further proceedings in Magistrate's Court Case No. 8194 and the operation of the judgments marked "P-1" and "P-3" until the final determination of this application; further to set aside the judgment of the learned High Court of Galle dated 03.01.2024 marked "P-1" and the judgment of the learned Magistrate of Galle dated 21.09.2023 marked "P-3"; to order a re-trial of Magistrate's Court Case No. 8194; to grant the reliefs prayed for in the Revision Application No. 789/23 (Rev) of the Provincial High Court of Galle.
- 2] The Petitioner, being the virtual complainant and Appellant states that she filed a Revision Application bearing No. 789/23 (Rev) in the Provincial High Court of Galle against the judgment of the learned Magistrate in Case No. 8194 dated 21.09.2023. By the said judgment, the 1st and 2nd Accused were acquitted of charges arising from the forged execution of Deed No. 3204 dated 01.07.2007, which directly affected the proprietary rights of the Petitioner. The Petitioner, who is the lawful owner of the subject property by virtue of Deeds No. 88 and 89 of 1997, contends that the learned Magistrate erred in law and fact in failing to appreciate the overwhelming oral and documentary evidence presented before Court, including testimony from the Land Registry, the Government Examiner of Questioned Documents, and attesting witnesses.
- 3] The Petitioner further states that the Revision Application was dismissed by the Provincial High Court on 03.01.2024 without affording her an opportunity of being heard, in violation of the fundamental principle of *audi alteram partem*. The Petitioner has already invoked the appellate jurisdiction of this court by way of a properly constituted appeal, and certified copies of the impugned judgment, appeal petition, and other relevant material have been duly annexed for reference. It is respectfully submitted that the findings of the learned Magistrate,

as well as the order of the learned High Court Judges, are contrary to law and manifestly erroneous, thereby causing grave miscarriage of justice.

4] The Petitioner therefore prays that this court to set aside the order dated 21.09.2023 of the Magistrate's Court of Galle and the order dated 03.01.2024 of the Provincial High Court of Galle, to declare Deed No. 3204 of 01.07.2007 as a forged instrument, and to direct a trial *de novo* before the Magistrate's Court.

5] The Parties have filed written submission in this regard. The Petitioner mostly reiterated the same facts which was mentioned in the petition. The Petitioner, being the virtual complainant and PW-01 in Magistrate's Court Case No. 8194 of Galle, was aggrieved by the Judgment dated 21.09.2023 marked *P-3*, whereby the Learned Magistrate acquitted the 1st and 2nd Accused. Dissatisfied with the outcome, the Petitioner sought sanction to appeal from the Hon. Attorney General by letter dated 17.10.2023 marked *P-9*. However, such sanction was refused. Consequently, the Petitioner invoked the revisionary jurisdiction of the Provincial High Court of Galle by way of Revision Application No. 789/2023 (Rev) filed on 27.12.2023.

6] On 03.01.2024, the Learned High Court Judge dismissed the said Revision Application by Judgment marked *P-1*, doing so without calling the matter in open court and without affording the Petitioner an opportunity of being heard. The Petitioner maintains that such dismissal constitutes a clear violation of the rule of *audi alteram partem* and the principles of natural justice. Thereafter, the Petitioner invoked the revision and/or *restitutio in integrum* jurisdiction of this Court by petition dated 12.02.2024 marked *P-2*, seeking to set aside the High Court Judgment dated 03.01.2024 and the Magistrate's Judgment dated 21.09.2023, and further seeking an order for a re-trial of the Magistrate's Court Case No. 8194.

7] The facts are briefly as follows; the subject matter of the complaint relates to a fraudulent deed of gift bearing No. 3204 dated 01.07.2007 attested by the 1st

Accused, a Notary Public. The Petitioner and her husband were the lawful owners of the property in question by virtue of Deeds Nos. 88 and 89 dated 14.09.1997, marked *P-5* and *P-6*. The 2nd Accused had, in fact, been an attesting witness to both Deeds Nos. 88 and 89, thereby having knowledge of the true ownership of the property. In 2008, when the Petitioner attempted to sell the said property, the 2nd Accused produced the fraudulent Deed No. 3204, thereby obstructing the sale. This prompted the Petitioner to lodge a complaint with the Special Investigation Bureau of Galle, which culminated in the filing of the case before the Magistrate's Court.

8] At trial, several witnesses, including Land Registry officers and the Government Examiner of Questioned Documents (EQD), provided evidence confirming the fraudulent nature of Deed No. 3204. The EQD highlighted discrepancies in the signatures of the purported attesting witnesses, while one such witness, Senadeerage Don Daya Siril Dammika, unequivocally denied having signed the said deed. Despite this cogent evidence, the Learned Magistrate acquitted the Accused without calling official witnesses under section 186 of the Criminal Procedure Code.

9] The Petitioner states that the Learned Magistrate erred in law and fact by failing to consider that the 2nd Accused, as an attesting witness to Deeds Nos. 88 and 89, had clear prior knowledge of the Petitioner's ownership, thus substantiating the fraudulent nature of Deed No. 3204. The Magistrate further ignored the evidence of the EQD and the categorical denial by witness Dammika. In addition, the Magistrate did not permit the Prosecution to call the Investigating Officer (PW-10), despite the Prosecution's request following the EQD testimony, thereby depriving the prosecution of crucial evidence. Moreover, the Magistrate misapplied the burden of proof by placing an unduly high threshold upon the complainant while disregarding the sufficiency of the evidence already adduced.

10] In relation to dismissal of High Court, the Petitioner contends that the Learned High Court Judge erred by dismissing the Revision Application summarily without affording the Petitioner a fair opportunity to be heard, an omission that amounts to a denial of natural justice. Accordingly, the Petitioner seeks from this Court an order setting aside both Judgments marked *P-1* and *P-3*, directing a re-trial of Magistrate's Court Case No. 8194.

11] The 1st and 2nd Accused Respondents say that the Petitioner had earlier sought sanction from the Hon. Attorney General to appeal against the impugned judgment , but sanction was refused on the basis that there were no legal grounds, only factual disputes regarding the Magistrate's evaluation of witness testimony. They say that the Revision Application in the High Court was also based on similar grounds without raising any question of law or exceptional circumstances. They pray for dismissal.

12] I now consider the merits of this application. Article 138 of the Constitution enacts:

"138. (1) The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be [committed by the High Court, in the exercise of its appellate or original jurisdiction or by any Court of First Instance], tribunal or other institution and sole and exclusive cognizance, by way of appeal, revision and restitutio in integrum, of all causes, suits, actions, prosecutions, matters and things [of which such High Court, Court of First Instance], tribunal or other institution may have taken cognizance:

*Provided that no judgement, decree or order of any court shall be reversed or varied on account of any error, defect or irregularity, **which has not prejudiced the substantial rights of the parties or occasioned a failure of justice.**"* [Emphasis is added]

13] The Petitioner has prayed for restitution of High Court Judge's Chamber order. I now consider whether said order is amenable for restitution. In the case of ***Sri Lanka Insurance Corporation Ltd vs Shanmugam and Others*** [1995] 1 Sri LR 55, it was considered when to consider restitution as follows:

*"Superior courts of this country have held that relief by way of Restitutio in Integrum in respect of judgments of original courts may be sought where (a) the judgments have been obtained by fraud, (Abeysekera *supra*), by the production of false evidence. (*Buyzer v. Eckert*) (12) or nondisclosure of material facts, (*Perera v. Ekanaike*) (13), (or where judgment has been obtained by force or fraud, (*Gunaratne v. Dingiri Banda* (14), *Jayasuriya v. Kotelawela*) (15), (b) Where fresh evidence has cropped up since judgment which was unknown earlier to the parties relying on it, (*Sinnethamby-*supra**), and fresh evidence which no reasonable diligence could have helped to disclose earlier, (*Mapalathan-*supra**). (c) Where judgments have been pronounced by mistake and decrees entered thereon, (*Sinnethamby-*supra**), provided of course that it is an error which connotes a reasonable or excusable error, (*Perera v. Don Simon*) (16). The remedy could therefore be availed of where an Attorney-at-Law has by mistake consented to judgment contrary to express instructions of his client, for in such cases it could be said that there was in reality no consent, (*Phipps-*supra**), *Narayan Chetty v. Azeez*) (17), but nowhere the Attorney-at-Law has been given a general authority to settle or compromise a case, (*Silva v. Fonseka* (18))."*

14] The said order cannot be treated as "*Where judgments have been pronounced by mistake*". We are of the view that the impugned order was well considered before it was made. As Learned State Counsel mentioned that there was no well-founded reason to grant sanction to appeal against the Magistrate's acquittals of Accused Respondents.

15] As seen that there was a District Court Case against the forgery which was alleged and it was held against the Petitioner. The Petitioner has appealed

against the said order, which was refused, and the appeal is now before the Supreme Court. In **PERERA et al. v. WIJEWICKREME et al** 15 NLR 411, His Lordship PEREIRA J.- agreeing with His Lordship Ennis J. held that;

“Restitutio in integrum is not granted in Ceylon if the applicant has any other remedy equally effectual open to him”

16] Further, in **Kumudu Samanthi Akmeemana v. Araliya Kankaanamge Somasiri de Silva & Others** CA/RII/1/2018, Decided on 21.02.2019, His Lordship Samayawardhena, J considered the principles and held;

*“It must be stressed that **the power to grant relief by way of restitutio in integrum is a matter of grace and discretion.**” (Usoof v. Nadarajah Chettiar, 58 NLR 436) The petitioner cannot seek restitution as of right. There are several thresholds matters to be sorted out before addressing the core issue..... One such important hurdle to overcome is that “relief by way of restitutio in integrum should be sought for with the utmost promptitude.” Vide Menchinahamy v. Muniweera, Babun Appu v. Simon Appu, Sri Lanka Insurance Corporation Limited v. Shanmugam it is crystal clear that the petitioner has not acted with the utmost promptitude when she decided to come before this Court more than two years after the District Court held against her. The delay is too long by any stretch of imagination particularly because the final order of the District Court against her was not ex parte but inter partes..... The explanation for delay over two years is unacceptable. Hence, on that ground alone, the application of the petitioner is liable to be dismissed.” [Emphasis is added]*

17] We note that the Learned High Court Judge, in refusing the application, carefully considered three issues:

(i) the Attorney General’s refusal to sanction an appeal meant that neither the AG nor the Police could proceed with prosecution;

- (ii) in criminal cases where charges are filed by the AG, a private lawyer cannot conduct the prosecution; and
- (iii) the Magistrate had lawfully exercised discretion under Section 186 of the Criminal Procedure Code, with no error serious enough to shock the conscience of the Court.

18] Mainly, the chamber order made by the Learned High Court Judge on considering that there was no legal or exceptional basis to revise the Magistrate's judgment. We see it is totally within the purview of his jurisdiction and there is no necessity to hear the Petitioner's version as she cannot give evidence from the Bar Table. Thus, allowing, the Petitioner to be heard would not vitiate the impugned order.

19] It is further seen that the Learned Magistrate, in his judgment, had observed the waste of court time, state funds, and parties' resources caused by pursuing baseless evidence. Additionally, in a related District Court case (No. 15764/L, judgment dated 12/09/2022), the 2nd Respondent had succeeded, with the Court declaring Deed No. 2304 valid and the deeds relied on by the Petitioner invalid. In view of these findings and we hold that the lack of merit in the Petitioner's claims.

20] Section 186 of the Criminal Procedure Code provides Magistrate to acquit and discharge an accused for insufficient evidence without wasting court's precious time. It is reproduced below for clarity;

“186. Anything hereinbefore 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” [Emphasis is added]

21] Further, EQD Report cannot be taken as conclusive evidence to prove a fact and the court cannot solely rely on it to convict the accused. It should be remembered under Article 13(5) of the Constitution; the innocence of the accused should be presumed until guilty is proven beyond reasonable doubt in a fair trial.

22] In the above premises, we see no prima facie case before us. We hold that there is no miscarriage of justice or failure of justice. Having considered the facts and law, we are not satisfied to issue notice on the Respondents. The application is dismissed. No Costs.

Judge of the Court of Appeal.

R.Gurusighe J.

I agree.

Judge of the Court of Appeal.