

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA

*In the matter of an appeal from the order of
the High Court of Kandy dated 06.09.2017 in
terms of Section 9 of the High Court of
Provinces (Special Provisions) Act No.19 of
1990.*

SC/Appeal/194/2017

Kandy HC Case No.
22/2013

MC Matale Case No.
78493

Officer-in-Charge
Fraud Investigation Unit, Police Station,
Matale.

COMPLAINANT

Vs.

1. Devanayagam Wasanthi U.G. Sunil,
No. 81/1, Dikkiriyawa, Kaludaawala, Matale.
2. Manikkawasagam Sukumar,
No. 81/1, Dikkiriyawa Kaludaawala, Matale.

ACCUSED

AND BETWEEN

Devanayagam Wasanthi U.G. Sunil,
No. 81/1, Dikkiriyawa, Kaludaawala,
Matale.

ACCUSED-APPELLANT

Vs.

1. Officer-in-Charge
Fraud Investigation Unit, Police Station,
Matale.
2. Hon. Attorney General,
Attorney General's Department,
Colombo 12.
3. Prisons Commissioner,
Prison Department,
Colombo.

COMPLAINANT-RESPONDENTS

AND NOW BETWEEN

1. Devanayagam Wasanthi U.G. Sunil,
No. 81/1, Dikkiriyawa, Kaludaawala, Matale.

ACCUSED-APPELLANT-APPELLANT

Vs.

1. Officer-in-Charge
Fraud Investigation Unit, Police Station,
Matale.
2. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

3. Prisons Commissioner,
Prison Department,
Colombo.

COMPLAINANT-RESPONDENT-RESPONDENTS

BEFORE: **S. THURAIRAJA, PC, J.**
A.L SHIRAN GOONERATNE, J. AND
ACHALA WENGAPPULI, J.

COUNSEL: Mohan Weerakoon, PC with Sandmali Peiris for the Accused-
Appellant-Appellant

V. Hettige, SDSG for the Complainant-Respondent-Respondent

WRITTEN Respondent-Appellant-Petitioner on 1st April 2021

SUBMISSIONS: Applicant-Respondent-Respondent on 27th April 2021

ARGUED ON: 25 March 2024

DECIDED ON: 11 October 2024

THURAIRAJA, PC, J.

1. The Suspect-Appellant-Appellant, Devanayagam Wasanthi (hereinafter referred to as the "Appellant"), and the 2nd Suspect, Manikkawasagam Sukumar were charged before the Magistrate's Court of Matale with cheating punishable under Section 403 of the Penal Code. The charges stemmed from three separate incidents in which they presented fake gold jewellery to Weerasighe Mudiyanseelage Nimal Weerasinghe, Deputy Manager of People's Bank, Matale Branch and fraudulently obtained sums totaling Rs. 46,500/ from him. Initially, the charges were framed in 2007, and after several amendments, the case proceeded with the prosecution's evidence, including testimonies from bank officials and experts. The Magistrate's Court of Matale found the Appellant guilty on all counts in November 2012 and sentenced her to one year of rigorous imprisonment for each charge.
2. Aggrieved by the conviction and sentence, the Appellant appealed to the High Court of Kandy, arguing, *inter alia*, procedural irregularities, erroneous evaluation of evidence, and the failure to consider her lack of prior convictions. The High Court dismissed the appeal in September 2017. Aggrieved by the said dismissal, the Appellant submitted documents purporting to be a petition for leave to appeal to the Supreme Court, challenging the conviction, particularly the validity of one charge due to a clerical error regarding the date of the offence.
3. When this matter was taken before the Supreme Court on the 25th March 2024 having been fixed for argument following multiple postponements for various reasons recorded, the counsel for the Appellant submitted that the purported Petition of appeal dated 19th September 2017 was filed in the High Court of Kandy and that leave was granted by the High Court.
4. However, on the 25th March 2024 when this matter was taken up, the Court observed that no judicial order was found granting leave to proceed in the Supreme Court based with specified questions of law or grounds of appeal and that the Petition does not

refer to any leave to proceed having been obtained from the High Court. The journal entry dated 22.09.2017 of the High Court case record merely directs the registry of the High Court of Kandy to file the documents pertaining to the petition of appeal. It notes that the purported petition of appeal was submitted within the prescribed time and orders its prompt referral to the Supreme Court, while retaining a copy of the docket. Notably, the journal entry does not mention any application for leave but simply requests that the petition be forwarded to the Supreme Court. The aforementioned journal entry dated 22.09.2017 of the High Court case record is reproduced below,

“2017.09.22

විත්තිකාර අභියාචකගේ නීතිඥ සුනන්ද, විභාගගේ මහත්මිය විසින් මෙම නඩුවේ 2017.09.06 දින නියෝගයට එරෙහිව ශ්‍රේෂ්ඨාධිකරණය වෙත යොමු කිරීම පිණිස අභියාචනා

පෙත්සමක් ඉදිරිපත් කරන්න ඉල්ලා සිටී.

1. අදාළ ලියවිලි ගොනු කරන්න.
2. නියමිත කාලසීමාව තුළ අභියාචනා පෙත්සම ඉදිරිපත් කර ඇත. එසේ හෙයින් මුල් නඩු වාර්තාවේ උප ගොනුවක් තබාගෙන ශ්‍රේෂ්ඨාධිකරණය වෙත නොපමාව යොමු කිරීමට නියෝග කරමි.

අත්සන් තබා ඇත.

මහාධිකරණ විනිසුරු.

[22.09.2017

Ms. Sunanda Withanage, Attorney-at-Law for the Defendant-Appellant, has sought to file a petition of appeal to be referred to the Supreme Court against the order dated 06.09.2017.

1. *File the Relevant documents*

2. *The Petition of Appeal was submitted within the prescribed period. Accordingly, I order that it be promptly referred to the Supreme Court, while retaining a copy of the docket.*

Sgd. Illegibly

High Court Judge]¹

5. The Court observes that the High Court Judge of Kandy has failed to issue an order explicitly granting leave to proceed in the Supreme Court, along with a clear specification of the questions of law upon which such leave was granted. In the absence of this essential order, the procedural requirements necessary for the proper consideration of the appeal by the Supreme Court have not been met. This omission constitutes a significant procedural irregularity, thereby affecting the admissibility of the appeal. As a consequence, the jurisdiction of this Court has not been properly invoked.
6. The Court further directed both parties to file written submissions only on the question as to whether there was a proper leave to proceed application filed before the High Court, on or before the 30th April 2024. In response to which, both parties have duly assisted the court by filing their written submissions before the specified date.
7. In the Appellant's written submission, she submits that the High Court of the Provinces exercise concurrent criminal appellate jurisdiction together with the Court of Appeal. Hence, Section B of Part 1 of the Supreme Court Rules of 1990 which provides the procedure applicable to the Court of Appeal when granting leave to appeal to the Supreme Court, shall analogously be applicable to the High Court of the Provinces in granting leave to appeal to the Supreme Court. Thereby submitting that the registrar of the High Court of the Central Province holden in Kandy, by transmitting the entire case record of the proceedings to the Supreme Court has acted

¹ Translation added

in due compliance with Rule 24 of the Supreme Court Rules of 1990 and allowed appeal to Supreme Court.

8. The Appellant apart from addressing the above, has made submissions at length on the substantive facts of the case and the flaws in the judgment of the learned Magistrate when deciding on the charges of the main matter, stating, that the High Court has granted leave to appeal as a substantial question of law was raised in the Petition of Appeal.
9. Thereby the appellant submits that the High Court of the Central Province has granted leave to appeal to the Supreme Court upon the substantial question of law as aforesaid, pursuant to the Rule 20(1) and Rule 24 of the Supreme Court Rules of 1990, and that the procedure for Special leave to appeal has no application to the instant matter.
10. However, the Court observes that the aforementioned substantial questions of law submitted by the Appellant in the latest written submission filed pursuant to the direction on 25th March 2024, have neither been raised in the Petition of the Appellant to the Supreme Court nor in the Petition of the Appellant to the High Court of Kandy.
11. Section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 ("The Act") provides for the procedure in filing appeals from the final orders, judgments, or sentences of the High Court. Section 9 of the Act provides that,

"Subject to the provisions of this Act or any other law, any person aggrieved by-

- a) a final order, judgment, decree or sentence of a High Court established by Article 154P of the Constitution in the exercise of the appellate jurisdiction vested in it by paragraph (3) (b) of Article 154P of the Constitution or section 3 of this Act or any other law, in any matter or proceeding whether civil or criminal which **involves a substantial question of law**, may appeal therefrom to the Supreme Court if the High Court grants leave to*

appeal to the Supreme Court ex mero motu or at the instance of any aggrieved party to such matter or proceedings :

Provided that the Supreme Court may, in its discretion, grant special leave to appeal to the Supreme Court from any final or interlocutory order, judgment, decree or sentence made by such High Court, in the exercise of the appellate jurisdiction vested in it by paragraph (3) (b) of Article 154P of the Constitution or section 3 of this Act, or another law where such High Court has refused to grant leave to appeal to the Supreme Court, or where in the opinion of the Supreme Court, the case or matter is fit for review by the Supreme Court :

Provided further that the Supreme Court shall grant leave to appeal in every matter or proceeding in which it is satisfied that the question to be decided is of public or general importance; and

b) a final order, judgment or sentence of a High Court established by Article 154P of the Constitution in the exercise of its jurisdiction conferred on it by paragraph (3)(a), or (4) of Article 154P of the Constitution may appeal therefrom to the Court of Appeal."

12. In the present case, the substantial questions of law now presented were not part of the original petitions before either the Supreme Court or the High Court. As such, these questions were never considered by the High Court in its decision to grant leave, thus failing to satisfy the condition laid out in Section 9(a) of the Act.
13. Therefore, the failure to raise these substantial questions of law at the appropriate stage in the appellate process results in a procedural deficiency. The Court is bound by the provisions of the Act, and without leave granted by the High Court on these specific questions of law, this court lacks the jurisdiction to hear and determine the instant appeal.

14. As held in ***W.M.W.P.K. Amarasekara v. Nagaratnam Ratnakumara***,² by K. Priyantha Fernando, J., once an application to grant a leave to appeal is made, it is incumbent upon the High Court to specify the substantial question of law on which leave is granted. Since no such order is made by the High Court judge in the instant case specifying the questions of law, the appellant has failed to properly invoke the jurisdiction of this court. I am of concurrence with my brother on the above decision held in the aforementioned case.
15. Thus, in view of the procedural deficiencies noted, particularly the failure to properly raise the substantial questions of law at the appropriate stage and the absence of a judicial order from the High Court granting leave to appeal with specific questions of law, the Court finds that the Appellant has not complied with the procedural requirements under Section 9(a) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990. The Appellant has not properly invoked the jurisdiction of this Court. Therefore, the appeal is rejected.

Appeal Dismissed.

JUDGE OF THE SUPREME COURT

A.L SHIRAN GOONERATNE, J.

I agree.

JUDGE OF THE SUPREME COURT

² SC Appeal No. 136/2014, SC Minutes of 30th May 2024

ACHALA WENGAPPULI, J.

I agree.

JUDGE OF THE SUPREME COURT