

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

In the matter of an application for  
Appeal against the order and  
judgment of Provincial High Court of  
Western Province situated in  
Negombo.

W.M.W.P.K. Amarasekera,  
Public Health Inspector,  
Nayakakanda,  
Hendala,  
Wattala.

**SC APPEAL No. 136/2014  
HC Negombo Case No. HCA 218/12  
MC Wattala Case No. 61668/11**

**Complainant**

**Vs.**

Nagaratnam Ratnakumara,  
50, Yodayakanatta Road,  
Alwis Town,  
Hendala,  
Wattala.

**Accused**

**AND BETWEEN**

Nagaratnam Ratnakumara,  
50, Yodayakanatta Road,  
Alwis Town,  
Hendala,  
Wattala.

**Accused-Appellant**

**Vs.**

W.M.W.P.K. Amarasekera,

Public Health Inspector,  
Nayakakanda,  
Hendala,  
Wattala.

**Complainant-Respondent**

The Hon. Attorney General,  
Attorney Generals Department,  
Colombo 12.

**Respondent**

**AND NOW BETWEEN**

Nagaratnam Ratnakumara,  
50, Yodayakanatta Road,  
Alwis Town,  
Hendala,  
Wattala.

**Accused-Appellant-  
Appellant**

**Vs.**

W.M.W.P.K. Amarasekera,  
Public Health Inspector,  
Nayakakanda,  
Hendala,  
Wattala.

**Complainant-Respondent-  
Respondent**

The Hon. Attorney General,  
Attorney Generals Department,  
Colombo 12.

**Respondent-Respondent**

**Before** : **Murdu N.B. Fernando, PC, J**  
**Kumudini Wickremasinghe, J**  
**K. Priyantha Fernando, J**

**Counsel** : Accused-Appellant-Appellant  
appears in person

I. Punchihewa, SC for Complainant-  
Respondent-Respondent

**Argued on** : 20.02.2024

**Decided on** : 30.05.2024

**K. PRIYANTHA FERNANDO, J**

1. The Accused-Appellant-Appellant (hereinafter referred to as the appellant) was charged in the Magistrate's Court of *Wattala* for an offence punishable in terms of section 262 of the Penal Code. After trial, by his judgment dated 04.05.2012, the learned Magistrate convicted the appellant for the charge and fixed the date for 18.05.2012 for identification and sentence. Before the date that was fixed for sentencing which was 18.05.2012, the appellant appealed against the judgment of the learned Magistrate to the High Court of *Negombo*.
2. Upon the hearing of the appeal, the learned High Court Judge by his order dated 27.03.2014, ordered a retrial before the learned Magistrate. Being aggrieved by the above order of the learned High Court Judge, the appellant submitted a petition of appeal to the High Court Registry on 09.04.2014. In the said petition of appeal, the appellant has prayed for an acquittal instead of the retrial ordered by the High Court.

3. This petition of appeal that was submitted to the High Court Registry was addressed to the Supreme Court. Upon receiving the petition of appeal, the learned High Court Judge has forwarded it to this Court (vide journal entry dated 24.04.2014). The journal entry directs the registry of the High Court to accept the petition of appeal, to file the same of record and to forward the Court record to the Supreme Court, keeping a sub file.
4. As per the journal entry dated 22.11.2016, this Court has observed that the appellant has not followed the rules and procedures pertaining to the filing of this appeal. This Court granted time for the appellant to get the assistance from the Legal Aid Commission. Thereafter, as per the journal entry dated 06.04.2017, this Court has of consent, fixed the matter for hearing on a later date. The case has been postponed on numerous occasions for various reasons recorded.
5. The journal entry dated 09.05.2019, although no specific order was made as to whether the appellant has properly invoked the jurisdiction of this Court, Court has said that it appears that the Their Lordships have fixed the case for hearing on the basis that leave has been granted by the High Court.
6. When the matter was taken up for hearing on 20.02.2024, the Court observed that the appellant has failed to follow the procedure that is required to be followed with regard to appeals, when submitting the petition of appeal. This Court has not made a specific order in this regard.
7. The appellant who appeared in person at the hearing, submitted to Court that the High Court has decided to grant leave to appeal and that is why the learned High Court Judge forwarded the Court record to the Supreme Court. The learned State Counsel for the respondents submitted that, the appellant has neither sought leave to appeal from the High Court, nor has he applied for special leave to appeal from this Court. Therefore, the appellant has failed to properly invoke the jurisdiction of this Court. Hence, parties were invited to file written submissions on this issue to assist Court. Although time for filing of written submissions was given till 30<sup>th</sup> of April 2024, only the appellant filed written submissions on 30<sup>th</sup> April 2024. The learned State Counsel has failed to assist Court by filing written submissions before the due date.
8. In his written submissions, the appellant apart from addressing the issue, has made submissions at length on the substantive

facts of the case and the flaws of the learned Magistrate and the learned High Court Judge when deciding on the charges of the main matter in the Magistrate's Court and the appeal in the High Court. On what is relevant to the issue at hand, it is his submission that the learned High Court Judge has forwarded the petition of appeal to this Court as he decided to grant leave to appeal. He has further submitted that, this Court was satisfied that the High Court has granted leave to appeal, as per journal entry dated 9<sup>th</sup> May 2019. Further it is submitted that the Supreme Court may act *ex mero motu* in the interest of justice.

9. When analysing the issue at hand, it is noted that this appeal has been preferred against the judgment of the High Court, which exercises the appellate jurisdiction against the judgment of the Magistrate's Court. 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.
10. 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 any other 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.”*

11. As per the above, the appellant is entitled to make an application to obtain leave to appeal against the judgment of the High Court from the High Court itself, in terms of section 9(a) of the Act. The appellant is also entitled to file an application seeking special leave to appeal directly from the Supreme Court. Without adhering to the above provisions, the appellant has filed a direct petition of appeal in the High Court which was addressed to the Supreme Court without seeking for leave to appeal to the Supreme Court from the High Court. The appellant has also failed to seek special leave from this Court.
  
12. The rules and the procedure to be followed when the High Court grants leave to appeal to the Supreme Court, was discussed in case of ***Samanthakumara V. Manohari [2006] 2 Sri L.R. at page 57***. It was a maintenance case filed in the Magistrate's Court. The judgment of the learned Magistrate was appealed to the High Court. Against the judgment of the High Court, the appellant sought leave to appeal to the Supreme Court from the High Court. Leave to appeal to the Supreme Court was granted by the High Court. However, an objection was taken in the Supreme Court that the petition of appeal has been filed in the wrong registry. His Lordship Justice *Raja Fernando*, with their Lordships *S.N. Silva C.J.* and *Amaratunga J.* agreeing, held that the appellant while obtaining leave to appeal from the High Court failed to file the petition of appeal within time in the Supreme Court registry. Court further held that, the filing of the petition

of appeal in the High Court registry was contrary to the Supreme Court Rules. The appeal was rejected.

13. In the instant case, no application for leave to appeal was made to the High Court. Once such application is made, if the High Court decides to grant leave, it is incumbent upon the High Court to specify the substantial question of law on which leave is granted. No such order is made in the instant case by the High Court as no leave to appeal application was made, not even *ex mero motu*, as provided in section 9 (a) of the Act.
14. Thus, the appellant has failed to properly invoke the jurisdiction of this Court. Hence the appeal is rejected.

**JUDGE OF THE SUPREME COURT**

**JUSTICE MURDU N.B. FERNANDO, PC.**

I agree

**JUDGE OF THE SUPREME COURT**

**JUSTICE KUMUDINI WICKREMASINGHE.**

I agree

**JUDGE OF THE SUPREME COURT**