

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

In the matter of an application for Special Leave to Appeal from the Judgement made by the Court of Appeal on the 25<sup>th</sup> day of March 2015 in the case No. CA(PHC) 37/2005 and under and in terms of Article 128(2) of the Constitution read together with Article 127 of the Constitution.

Muththusamy Balaganeshan  
Of 65/138, Crow Island  
Mattakkuliya  
Colombo 15

**Accused-Appellant-Petitioner**

SC. SPL/LA No. 79/2015  
CA (PHC) 37/2005  
H.C.(Negombo) case No. 300/2003  
MC (Negombo) case No. H 36051

Vs.

1. The Officer-in-Charge  
Police Station  
Seeduwa.
2. The Attorney General  
Colombo

**Respondents-Respondents**

Before : Dep PC, J  
Wanasundera PC,J  
Jayawardane, PC J

Counsel : S. Kumarasingham for the Accused-Appellant-Petitioner  
Madhawa Tennakoon, SSC for the Respondent-Respondent

Argued on : 12.08.2015

Decided on : 01.04.2016

**Priyasath Dep, PC. J**

The Accused –Appellant- Petitioner-(hereinafter referred to as ‘Petitioner’) was convicted in the Magistrate’s Court of Negombo under Motor Traffic Act and was sentenced to one year’s imprisonment with a fine of Rs. 3500/- and in the event of a default in payment of the fine a default sentence of six months imprisonment will be imposed.

The Petitioner being aggrieved by the said judgment appealed to the High Court of Negombo. The High Court of Negombo on 17.01.2005 having heard the submissions made on behalf of the Petitioner and the Respondents upheld, the conviction and sentence imposed by the Magistrate Court.

Aggrieved by the said judgment, the Petitioner appealed against the judgment to the Court of Appeal in terms of article 138(1) of the Constitution.

At the commencement of the hearing in the Court of this Appeal, a preliminary objection was raised by the learned Counsel for the Respondents stating that the Court of Appeal has no jurisdiction to entertain the appeal as the jurisdiction to hear such appeals is vested in the Supreme Court by virtue of section 9 of the High Court of the Provinces (Special Provisions Act) No. 19 of 1990.

The Court of Appeal having considered the oral and written submissions of both parties upheld the preliminary objection raised on behalf of the Respondents and dismissed the Appeal entering judgment accordingly on 25.03.2015.

The Petitioner filed a Special Leave to Appeal Application dated 06.05.2015 to this Court seeking to obtain leave to appeal from the said judgment of the Court of Appeal, on the following two questions of law referred to in (a) and (b) of paragraph 9 of the Petition dated 06.05.2015.

- (a) Does the Court of Appeal have the jurisdiction, by virtue of article 138(1) of the Constitution and as provided for under article 154(P) 6 of the Constitution to hear an appeal against a decision of the High Court whether given by way of an Appeal or on Revision in the exercise of its jurisdiction under article 154 P (3) (b) of the Constitution.
- (b) Could an ordinary law namely, the High Court of Provinces (Special Provisions) Act No. 19 of 1990 override a constitutional provision namely Article 138(1) and consequently deprive the Court of Appeal of its jurisdiction to hear an Appeal against a decision of the High Court whether given by way of an Appeal or on revision in the exercise of its jurisdiction under article 154 P (3)(b) of the Constitution.

As these two questions of law are the threshold issues pertaining to jurisdiction, this Court decided to consider these questions as preliminary issues and heard the oral submissions of the parties and directed the parties to file written submissions.

The learned Counsel for the Petitioner submitted that in terms of Article 138(1) read along with the provisions under article 154 P(6) of the Constitution, the Court of Appeal has jurisdiction to hear an appeal against a decision of a High Court whether given by way of an Appeal or on Revision in the exercise of its jurisdiction in terms of article 154P(3)(b) of the Constitution.

Article 154 P(6) – reads as follows:-

‘Subject to the provisions to the Constitution and **any law**, any person aggrieved by a final order, judgment or sentence of any such Court, in the exercise of its jurisdiction under paragraphs (3) (b) or (3) (c) or (4) may appeal there from to the Court of Appeal in accordance with Article 138.’

It is appropriate at this stage to refer to Article 138(1) which refer to the appellate jurisdiction of the Court of Appeal. Article 138(1) reads thus:

‘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’

The Thirteenth Amendment to the Constitution under Article 154P. (1) established High Court of Provinces. The Jurisdiction is given under Article 154P. (3) which reads as follows.

154(P) (3) Every such High Court shall-

- (a) exercise according to law, the original criminal jurisdiction of the High Court of Sri Lanka in respect of offences committed within the Province;
- (b) Notwithstanding anything in Article 138 and subject to **any law**, exercise appellate and revisionary jurisdiction in respect of convictions sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province ;
- (c) exercise such other jurisdiction and powers as Parliament may, by law provide,

Under Article 154(P) (6) the appeal lay to the Court of Appeal when the High Court exercises its jurisdiction under 3 (b), 3 (c) and 4 of Article 154 (P) in accordance with Article 138 of the Constitution. Article 154(P) (6) reads thus:

‘Subject to the provisions of the Constitution and **any Law**, any person aggrieved by a final order, judgment or sentence of any such court in the exercise of its jurisdiction under paragraphs (3) (b) or (3) (c) or 4 may appeal there from to the Court of Appeal in accordance with Article 138’.

When Articles 138, 154 (3) and 154(6) considered without reference to High Court (Special Provisions) Act No. 19 of 1990 an appeal shall be filed in the Court of Appeal from the judgments of the High Court when it exercises appellate, revisionary and original jurisdiction. This situation has changed with the introduction of High Court (Special Provisions) Act no 19 of 1990.

It should be noted that the jurisdiction conferred on the Court of Appeal under Article 138 and 154(P) (6) are subject to the provisions of the Constitution and **any Law**. It was held in a series of cases that Article 138 and 154(P) (6) are enabling articles subject to the provisions of the Constitution and **any Law**.

Therefore it is imperative to consider the provisions of High Court (Special Provisions) Act No 19 of 1990. This act lays down the procedure in relation to exercising of power and jurisdiction conferred on High Court of Provinces under Article 154(P) of the Constitution. Section 9 of the High Court of Provinces(Special Provisions) Act 19 of 1990 reads thus:

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

(a) a final order, judgement, 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:

It is abundantly clear that the appeal against the judgment of the High Court when exercising the appellate jurisdiction should be filed in the Supreme Court.

The Learned Counsel for the Petitioner relied on the decision of the Supreme Court *in Abeygunasekera vs. Setunga and others* ([1997] Sri.L.R pp 61-69). It was held that:-

‘ The Appellate jurisdiction of the Court of Appeal under Article 138(1) read with Article 154P(6 ) of the Constitution is not limited to correcting errors committed

by the High Court only in respect of Orders given by way of an appeal. The Court of Appeal has jurisdiction to hear an appeal against a decision of the High Court whether given by way of an Appeal or Revision’.

However in *Abeygunasekera vs. Ajith De Silva* [1998] 1 Sri.L.R p134 at p139) a bench consisting of five judges of the Supreme Court did not follow the judgment in *Abeygunasekera vs. Setunga* (supra) when it held that :-

‘The cumulative effect of the provisions of Articles 154 P (3) (b), 154 P (6) and section 9 of Act No. 19 of 1990 is that, while there is a right of appeal to the Supreme Court from the orders etc. of the High Court established under Article 154 (P) of the Constitution in the exercise of the appellate jurisdiction vested in it by article 154 (P) (3) (b) or section 3 of Act No. 19 of 1990 or any other Law, there is no right of appeal to the Supreme Court from the orders in the exercise of the revisionary jurisdiction. An Appeal from an order of the High Court in the exercise of its revisionary jurisdiction should be made to the Court of Appeal. An Appeal to the Supreme Court from the decision of the Court of Appeal would lie with leave.

In *Wickremasekera v. Officer in Charge Police Station Ampara*, ([2004] 1 Sri.L.R 258, Shirani Bandaranayake, J ( as she was then) held that:

“ The Court of Appeal does not have appellate jurisdiction in terms of Article 138(1) of the Constitution read with Article 154(6) in respect of decisions of the Provincial High Court made in the exercise of its appellate jurisdiction and it is the Supreme Court that has the jurisdiction in respect of appeals from the Provincial High Court as set out in section 9 of the High Court of the Provinces (Special Provisions) Act , No. 19 of 1990”.

Therefore it is abundantly clear that when High Court exercises appellate jurisdiction an appeal lies to the Supreme Court after first having obtained leave.

When the Provincial High Court exercises appellate jurisdiction, it exercises appellate jurisdiction hitherto exclusively vested in the Court of Appeal. It exercises a parallel or concurrent jurisdiction with the Court of Appeal. The High Court when it exercises appellate jurisdiction it is not subordinate to the Court of Appeal. That is the basis for conferring jurisdiction on the Supreme Court under section 9 of the High Court of Provinces (Special Provisions) Act No. 19 of 1990 to hear appeals from the judgments of the High Court when it exercises appellate jurisdiction.

I hold that the Accused Appellant –Petitioner should have filed a Special Leave to Appeal application against the judgment of the High Court exercising Appellate Jurisdiction to the Supreme Court in the first instance instead to the Court of Appeal. The Court of Appeal correctly upheld the preliminary objection and rejected the Appeal.

We see no reasons to interfere with the Judgment of the Court of Appeal Therefore we dismiss the Special Leave to Appeal application filed in this court.

No Costs.

Judge of the Supreme Court

Eva Wanasundara P.C.,J.

I agree.

Judge of Supreme Court

Priyantha Jayawardena P.C., J.

I agree.

Judge of the Supreme Court