

**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.

CA. (PHC)Apn. No. 40/2004

HC. Ratnapura No. HCRA 56/2002

MC. Balangoda No. 73896.

1. Ramachandradewage Premasiri
Weerasekera, "Pethumvilla",
Warawatte, Damahana, Ihalagama,
Balangoda.
2. Salpage Leslie Herman de Silva,
Haldolawatte, Damahana,
Balangoda.
3. Ramachandradewage Dharmaratne
Weerasekera, Warawatte, Ihalagama
Damahana, Balangoda.
4. Gamage Deeptha Weerakoon,
91/1, Haldolawatte,
Damahana, Balangoda.
5. Damahana Baddalage Ananda Lionel
Wijetunga, Ihalagama, Damahana,
Balangoda.

Complainants

-Vs-

Keangnam Enterprises Limited,
Wikiliya, Damahana, Balangoda.

Respondent



AND

Keangnam Enterprises Limited,
Wikiliya, Damahana, Balangoda.

Respondent-Petitioner

-Vs-

1. Ramachandradewage Premasiri
Weerasekera, " Pethumvilla",
Warawatte, Damahana, Ihalagama,
Balangoda.
2. Salpage Leslie Herman de Silva,
Haldolawatte, Damahana,
Balangoda.
3. Ramachandradewage Dharmaratne
Weerasekera, Warawatte, Ihalagama
Damahana, Balangoda.
4. Gamage Deeptha Weerakoon,
91/1, Haldolawatte,
Damahana, Balangoda.
5. Damahana Baddalage Ananda Lionel
Wijetunga, Ihalagama, Damahana,
Balangoda.

Complainant-Respondents

And Presently Between

1. Ramachandradewage Premasiri
Weerasekera, " Pethumvilla",
Warawatte, Damahana, Ihalagama,
Balangoda.



2. Salpage Leslie Herman de Silva,
Haldolawatte, Damahana,
Balangoda.
3. Ramachandradewage Dharmaratne
Weerasekera, Warawatte, Ihalagama
Damahana, Balangoda.
4. Gamage Deeptha Weerakoon,
91/1, Haldolawatte,
Damahana, Balangoda.
5. Damahana Baddalage Ananda Lionel
Wijetunga, Ihalagama, Damahana,
Balangoda.

Complainant-Respondent-Petitioners

-Vs-

Keangnam Enterprises Limited,
Wikiliya, Damahana, Balangoda.

Respondent-Petitioner-Respondent

Central Environmental Authority,
“Parisara Piyasa”,
No.104, Robert Gunawardena
Mawatha, Battaramulla.

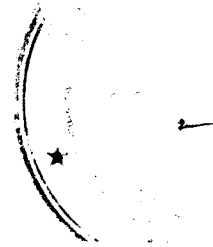
Added Respondent.

Before:

**Sathya Hettige,PC,J (P,C/A) &
Anil Gooneratne,J.**

Counsel

: Anandalal Nanayakkara with Wardani Karunaratne for the
Complainant-Respondent-Petitioners.



Saliya Peiris with Asthika Devendra for the Respondent-Petitioner-Respondent.

Ms. M.N.B.Fernando DSG for the Added Respondent.

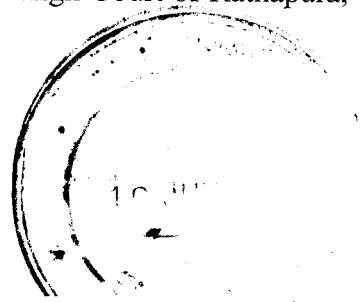
Argued on: 20.01.2009 and 02.03.2009

Written Submissions on

Judgment on: 26.05.2009

Anil Gooneratne, J

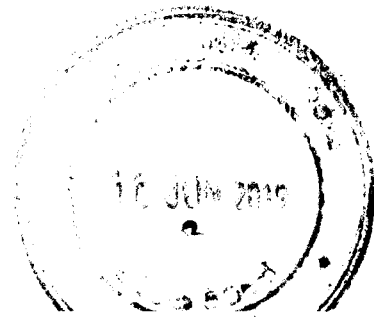
This is an application for revision to set aside the order dated 11.12.2003 made by the learned High Court Judge of Ratnapura in a case of abatement of a Public nuisance. Information was filed in the Magistrate's Court of Balangoda that a public nuisance had been caused by the Respondent, Keangnam Enterprises Limited, in terms of Section 98 of the Criminal Procedure Code. Learned Magistrate issued a conditional order on 10.01.2002 requesting the Respondent to deposit Rs. 500,000/- and not to proceed with quarrying activities until the said sum was deposited. The Respondent complied with same and thereafter raised a preliminary objection before the Magistrate that the Magistrate Court does not have jurisdiction as an Environmental Protection License (EPL) had been obtained in terms of the National Environmental Act. Learned Magistrate over-ruled the preliminary objection and ruled that a license obtained as above does not deny the Magistrate's Court jurisdiction in respect of a public nuisance. Thereafter Respondent moved by way of revision in the High Court of Ratnapura, where



a stay order was issued staying the operation of the learned Magistrate's order and subsequently High court quashed the order of the learned Magistrate, by order of 11.12.2003.

The Petitioner complains about the above order of the High Court in para 12 of the Petition as follows.

- a) The learned Judge of the High Court has failed to appreciate that the case of Keangnam Enterprises Ltd V V.E.A.Abeysinghe and others referred to in his Order in fact recognizes the jurisdiction of the Magistrate's Court in similar instances.
- b) The Order of the High Court is bad in law in that it fails to appreciate that it is a well accepted principle in law that in the interpretation of statutes, a statute should not be construed as taking away the jurisdiction of the Courts in the absence of clear and unambiguous language to that effect.
- c) In particular the learned Judge of the High Court has failed to appreciate that even if a person has a license for a certain activity, if such person " does not comply with the conditions of a license", then such person" acts as if he had no license" and would therefore be subject to the public nuisance jurisdiction of the Magistrate's Court.
- d) The learned Judge of the High Court has failed to appreciate that a license in terms of the National Environmental Act is not a license to commit a public nuisance and that it is well established law that even if a person has a license if his



actions cause a public nuisance then the Magistrate's Court has jurisdiction in that regard.

- e) The Order of the High Court is bad in law in that it fails to take into account the fact that the Petitioners have also complained of a nuisance being caused by the activities of the crusher situated on the land and that the said crusher is not the subject of the licenses filed by the Respondent before Court.

The learned Magistrate in his brief order on the above preliminary objection having considered submissions of both parties and also having given his mind to the case of *Keangnam Vs Abeyasinghe in 1994(2) SLR pg. 271* held that the Magistrate would not be deprived of jurisdiction vested in him under section 98 of the Criminal Procedure Code merely because the party concerned has obtained a license under the Environment Protection Act. On this basis Magistrate fixed the matter for inquiry. However the High Court revised and quashed the order of the Magistrate. Before I consider the High Court order it would be necessary to very briefly consider each parties case before Court.

The Complainant-Respondent-Petitioners are residing at Balangoda, allege that Respondent, Keangnam Enterprises Ltd is carrying out blasting of rocks with explosives, crushing these rocks and operates an asphalt plant on the land called Mahagala- Balangoda. The above acts according to the Complainant-Respondent-

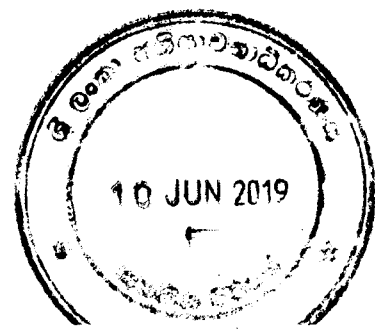


Petitioners cause a public nuisance due to excessive noise and vibration, and emit dust. Several matters are pleaded to demonstrate a public nuisance and information had been filed under section 98 of the Criminal Procedure Act in the Magistrate's Court. It is pleaded inter alia that provisions of the Code of Criminal Procedure Act cannot be taken away unless by clear and unambiguous words to that effect by statute and that section 29 of the National Environmental Act does not contain such words to oust the jurisdiction of the Magistrate. In support of above, petitioners rely in Keangnam Vs Abeysinghe Case. Perusing the written submissions of either party, I find that several positions supported with authorities are stated, but all of which cannot be included in this judgment, as it would be prolix

Respondents submits that the Magistrate's Court has no jurisdiction to grant relief to the Petitioner since the Respondent is acting under a valid license issued by the Central Environmental Authority in terms of the National Environmental Act. Remedy of the Petitioner if any is under the said statute and not the provisions of the Code of Criminal Procedure Act. Respondents refer to Sec. 29 of the said Act which reads thus:-

“ The provisions of the Act shall have effect notwithstanding any- thing to the contrary in the provisions of any other written law, and accordingly in the event of the any conflict or inconsistency between the provisions of the Act and provisions of such other written law, the provisions of this act shall prevail over the provisions of such other written law.”

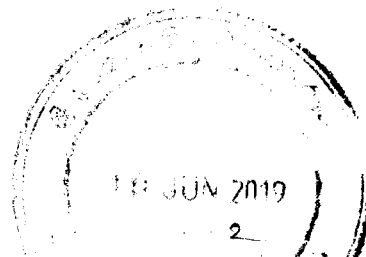
Respondents submits that the intention of the legislature is to isolate other laws, in view of Sec. 29 above. There is specific provision in the said Act where persons act in contravention of the Provisions of the Act. In such a situation any aggrieved party will



have to seek redress from the CEA and not from the Magistrate under the provision of the Code of Criminal Procedure Act. It is the position of the Respondents that the Magistrate has no jurisdiction to act in terms of Sec. 98 of the Code of Criminal Procedure Act.

The position in the case in hand where a public nuisance is alleged is to consider whether the Magistrate has jurisdiction to proceed to inquiry in terms of the Code of Criminal Procedure Act,(Sec. 98) when the party concerned produce a license under the Provisions of the National Environment Act. In the instant case the learned Magistrate of Balangoda decided that he had jurisdiction to proceed with the inquiry. Learned High court Judge however had no hesitation to set aside the order of the Magistrate.

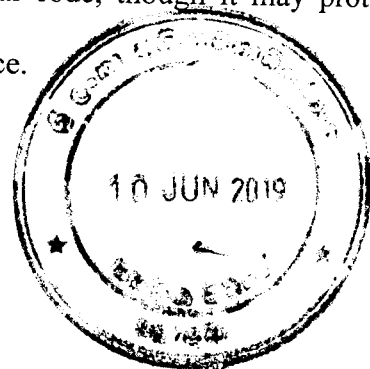
The provisions relating to public nuisance are embodied in the Penal Code and the Code of Criminal Procedure Act. The law relating to public nuisance like in earlier times is an important legal remedy available to litigants to safe guard their basic rights for a peaceful living. In modern times and in countries taking steps to develop their own country needs to take progressive steps and in the process would have to enter into contracts with both local and foreign organizations to achieve such purpose and projects pursued in this regard would no doubt as alleged by the Petitioner cause noise pollution and various hardships to the public and may be injuries to health. No doubt various statutes are now in operation to minimize such hardship like the National Environmental Act. There is an inbuilt procedure in such statutes to be followed to obtain a license. All this had been enacted by the legislature to minimize possible damages or danger to the public. On the



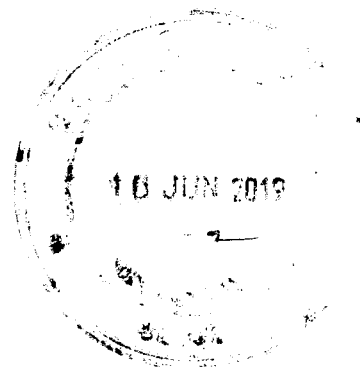
other hand one could argue that there is no absolute protection and as such provision relating to public nuisance in the Penal Code and the Code of Criminal Procedure Act cannot be whittled down, merely because a license had been obtained. As such Court no doubt has to balance public interest and duty to society in the best possible way with legislation introduced to issue a license on environmental aspects. On the other hand as in Sec. 29 above I wonder, what the conflict and inconsistency between the said Act and the Code of Criminal Procedure Act ? How could the said Act oust the magistrate's jurisdiction ? Can one really draw a pararell between the said laws?

I would also turn to case law (local and abroad) and the case of Keangnam Vs Abeysinghe to look at the issue from different perspectives .

- (1) *Nagarjuna Paper Mills Ltd Vs Sub-Divisional Magistrate and Divisional Officer, Sangareddy. 1987 Cri L.J. 2071* – Andhra Pradesh High Court rejected the argument that the State Pollution Control Board has exclusive power to control air and water pollution. Court held that the water (Prevention & Control of Pollution) Act 1974 had not taken away the rights of Sub-Divisional Magistrate under the Criminal Procedure Code.
- (2) *Marshall V Gunaratne Unnanse et al- 1 NLR 179* - No religious body, whether Buddhist, or Protestant, or Catholic, is entitled to commit a public nuisance, and no license under section 90 of the Police Ordinance, 1865, will be a protection against proceedings under the Penal code, though it may protect them from proceedings under the Police Ordinance.



- (3) *Arils Appuhamy V Kahavidane- (1983) 2 Sri L.R. 493-* This is an action brought in the District Court on the basis of a private nuisance. One defence taken upon by the defendant was that the licenses issued by the Colombo Municipal Council, for the construction of a building and for the bakery made the said bakery lawful and denied the plaintiff remedies in nuisance. The Court of Appeal accepted the counter argument that the nuisance action was not intended to challenge the licenses and that the real question was whether the licenses afforded the defendant a valid defence or not. On this question Court held that that the issue of a license in respect of the bakery, does not authorize the defendant to interfere with the use and enjoyment of the adjoining land owned and occupied by the plaintiff in such a way as to constitute a nuisance. It was further held that the licenses issued by the local authority to construct the building and to carry on the business of a bakery, do not per se afford a defence to the plaintiff's action.
- (4) *Abeyratna Ratwatte V Pethan Cangany- Vol. VII, No.21 SCC 81* Held that to punish a person for committing a nuisance because he attempted to defend what he considered his property rights, is certainly a step which the Legislature in the interests of the community could not have had in contemplation when passing the criminal Procedure Code.



- (5) *Vaughan V Taff Vale Ry. Co. (1860) 29 L.J.Ex 247* states that “ it is a good defence to show that the act complained of was expressly authorized by law.”
- (6) In the *Colombo Eclectic Tramway Co. Ltd v The Colombo Gas & Water Co. Ltd (1915) 18 NLR 385* -case statutory authority was inter alia one of the defences that had been taken up. This was an action for damages caused by an explosion of gas which had leaked through a crack in one of the defendant Company’s service pipes. It appeared that the crack in question was caused by the passing over of a steamroller belonging to the Municipal Council of Colombo. It is important to note that here the statutory authority , which was pleaded as a defence was on the basis that the statute itself authorized the act in question. It was held here that statutory authority to commit a nuisance must be strictly construed.
- (7) *P.C.Cherian V State of Kerale 1981 Ker. L.T 113* -it was then agued that when there are statutes like the Panchayat Act, and the Factories Act, prescribing for the issue of licenses on satisfying conditions which include absence of hazard to health, it is not within the province of the Magistrate to see whether those conditions are satisfied. The contention however, is not available in this case since it is not made out that licenses have been issued to the Petitioners in the two cases for carrying on the work of carbon mixing. x x x x (The application for the license for the year 1977-78 presented by the Padinjarekkara Rubber manufacturers confines the prayer to the running of a rubber factory. Even assuming that the license authorizes the factory to carry on the work of carbon

mixing, it is open to the magistrate to invoke the powers under S. 133 of the Code if the exigencies warrant such an extreme course.

(8) *Keangnam Enterprises Ltd vs Abeyasinghe And Others (1994) 2 Sri L.R*

Held: The Magistrate had jurisdiction to make the orders complained of under Chapter IX of the Code of Criminal Procedure Act, No. 15 of 1979 because at the time the quarrying was commenced and the matter was heard the Petitioner-Company had not obtained an Environmental Protection license from the Central Environmental Authority as required by section 23A of the national Environmental Act No. 47 of 1980 as amended by Act No. 56 of 1988. The Pradeshiya Sabhas permission to have and maintain a metal quarry and a metal crusher is not enough.

By the time the application for revision was taken up the Petitioner-Company had obtained the requisite license but this will not legalize the earlier illegality of quarrying without the license.

If the Petitioner-Company had the Environmental Protection License at the time when the Informant-Respondents complained to the Magistrate's Court, then the magistrate would have had no jurisdiction to entertain and determine the application (section 29 of the National Environmental Act). As the Petitioner-Company has the license now it can make the appropriate application to the Magistrate.

Under Rule 46 of the Supreme Court Rules only material documents need be filed along with an application for revision.

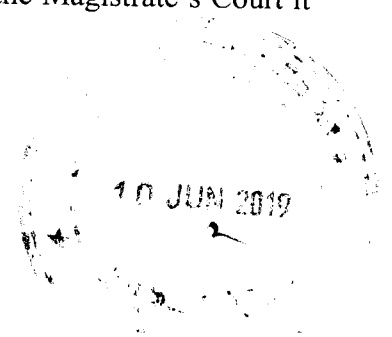


At page 281:- Even under P6, the Petitioner Company had been allowed to have and maintain a quarry and a metal crusher and to carry out operations, strictly according to the conditions stated therein. If a condition is violated or conditions are violated and such violation becomes a nuisance to the people living in the neighborhood, would it then not be possible for such people to make an application under the provisions of Chapter IX of the Code to abate such nuisance ? This Court is of the view that they can.

At page 282:- The petitioner-Company is now in possession of the license granted by the Authority as contemplated in Section 23(A) and 23(B) of the Act. It could now go before the learned Magistrate and place it before him, and make submissions based on the provisions of the Act, and would be able to ask him to annul the orders, made by him, For that, the opportunity is already afforded by the learned Magistrate by fixing the matter for inquiry under section 101 of the Code of Criminal Procedure Act.

In the aforesaid circumstances, I do not think that this Court should exercise its revisionary powers to revise the orders made by the learned magistrate, and therefore the application of the Petitioner-Company for revision is hereby dismissed with costs.

The learned High Court Judge having narrated the facts relevant to this case observes that having considered the information filed in the Magistrate's Court it



is evident that the Petitioner complains about the metal quarry and the nuisance caused is due to same and not any other factor. Further a license had been obtained for the purpose of a metal quarry. The judgment makes reference to the above Keangnam case and refer to Act No. 53 of 2000 (Amendment Act) and sec. 23 A (2) of same and describes the procedure available and matters dealt with prior to such amendment and subsequent to such amendment are follows:-

ඒ අනුව 2000 අංක 53 දරණ පාරිසරික (:සංශෝධන) පනතින් සංශෝධිත 23 අ (2) යටතේ යම්කිසි තැනැත්තෙකු විසින් අධිකාරිය විසින් නිතර කරන ලද බලපත්‍රයක අධිකාරිය යටතේ සහ මේ පනත යටතේ නියම කරනු ලැබියහැකි යම් ප්‍රමිත හා වෙනත් උපමානවලට අනුකූලව හැර , යම් නියමිත කටයුත්තක් කරනු ලැබූ අවස්ථාවකදී ඒ සම්බන්ධයෙන් එම පනත යටතේ ගතහැකි පියවරවල් පැහැදිලි ලෙස සඳහන් කර ඇතුළත් කරන්නට යෙදී ඇති බව පෙනේ . ඒ අනුව හුදෙක් මෙම සංශෝධනයට ප්‍රථම යමෙක් එම පනත යටතේ යම් වරදක් සිදුකරන්නේ නම් ඒ සම්බන්ධයෙන් මහේස්ත්‍රාත් අධිකරණයේ නඩු පැවරීම සීමා ව තිබුණද සංශෝධන පනතින් එම කාර්යය නිසි පරිදි බලය ලබාගෙන සිදුකරන තෙක් එම කාර්යාත්මක ගාලාව හෝ ඒ නියමිත කටයුත්ත කරගෙන යනු ලබන ස්ථානය වසා දැමීම සඳහා අධිකරණයෙන් අඤ්චක් ලබාගැනීමට භාහික පාරිසරික අධිකාරියේ අධ්‍යක්ෂ ජනරාල් හට හෝ අධ්‍යක්ෂ ජනරාල් විසින් බලය දෙන ලද යම් නිලධාරියෙකුට ඉල්ලීමක් කර සිටීමට හැකියාව ඇති බව මෙම අධිකරණයට පෙනීයයි . ඒ අනුව දිගින් දිගටම යම් පාර්ශ්වයක් බලපත්‍රයක් නොමැතිව මෙම පනත යටතේ බලපුයක් ලබාගත යුතු යම් නියමිත කටයුත්තක් කරගෙන යනු ලැබුවා හෝ එහි පනත යටතේ නියම කරනු ලැබියහැකි යම් ප්‍රමිත හා වෙනත් උපමානවලට අනුකූලව හැර , යම් නියමිත කටයුත්තක් කරගෙන යන අවස්ථාවකදී ගතහැකි පියවරවල් මෙම සංශෝධනයෙන් පසු ගත් පියවරවල් බව මෙම අධිකරණයට පෙනීයයි . ඒ අනුව එම සංශෝධනය මගින් නිශ්චිත කාලය තුළ බලපත්‍රයක් ලබාගෙන කටයුතු නොකරන අවස්ථාවකදී එය වසා දැමීම සඳහා මහේස්ත්‍රාත් අධිකරණයේ



ඉල්ලමක් කර සිටීමේ හැකියාව මෙම සංශෝධනයෙන් ජාතික පාරිසරික අධිකාරිය වෙත ලබාදී ඇත . ඒ අනුව අධිකරණයට ජාතික පාරිසරික අධිකාරිය වෙතින් බලපත්‍රයක් ලබා ගන්නා තෙක් ඒ අන්දමට කටයුතු කරන ආයතනයක් වසා දැමීම සම්බන්ධයෙන් ආඥාවක් කිරීමට ඉඩ ප්‍රස්ථා ලැබී ඇති බව මෙම අධිකරණයට පෙනීයයි .

The learned High Court Judge also refer to gazette No. 1159/22 of 22.11.2000 which deals with the license and the type of license which covers blasting of rocks, crushing and mixing. There is also reference to a license obtained by the Respondent company and that such license would permit the following

ගල් පිපිරවීම සම්බන්ධයෙන් ඒ සඳහා පෙත්සමකාර පමාගම විසින් ලබාගත යුතු බලපත්‍රය ලබාගෙන ඇති බවත් , එම බලපත්‍රය අනුව ඒ සම්බන්ධයෙන් සිදුවන එම ගල් වැඩපොල පවත්වාගෙන යාමේදී එයින් නිකුත් වන ශබ්දය කම්පනය , එයින් අපද්‍රව්‍ය පිටමත් කිරීමත් , අපද්‍රව්‍ය තැන්පත් කිරීමත් යනාදී කාර්යයන් පිළිබඳව පෙත්සමකාර පාර්ශවයට එකී බලපත්‍රයෙන් අවසර ලබාදී ඇති බව පෙනේ .

High Court Judge takes the view that if there is non compliance with the conditions of the license the procedure laid down in the above statute need to be followed and if the relevant Authority does not comply with such provision a proper writ application should be filed in a Court against the authority.

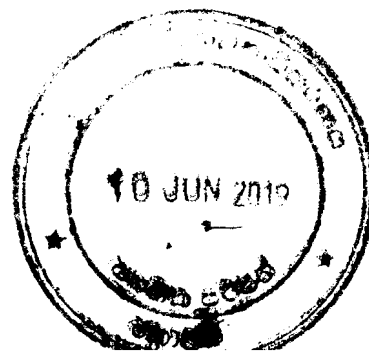
The learned High Court Judge in his Judgment proceed to observe that the conditional order issued by the Magistrate is not in compliance with sec. 98(1)(e). On the deposit of Rs. 500,000/- by the Company would result in a continuation of the nuisance as further



carrying on with the work is conditional of the said deposit. I would only agree on this aspect of the judgment of the learned High court Judge. Conditional order should require the party concerned to stop the noise or disturbance as the case may be until same is vacated on an application by the opposing party.

Chapter IX of the Code of Criminal Procedure (Sections 98-106) Act contains provisions relating to public nuisance and the Magistrate has power to make conditional orders for removal of nuisance, absolute orders, consequences for not complying with orders etc and several other matters to abate a public nuisance. Though the learned High Court Judge gives reasons to oust the jurisdiction of the Magistrate; in accordance with the Environmental Act, I am unable to conclude that the provisions of the National Environmental Act with its amendments has taken away by clear and unambiguous words the above provisions of the Code of Criminal Procedure Act. There are no contrary, inconsistent or conflicting provisions between the Code of Criminal Procedure Act and the National Environmental Act. The only way in which the jurisdiction of the Magistrate could be ousted is to include clear, specific provisions to oust such jurisdiction and one cannot by reading Sec. 29 of the Environmental Act conclude that Magistrate's jurisdiction has been ousted. Sec. 23Q(1) and Sec. 23 R(1) of the National Environmental Amendment Act No. 56 of 1988 refer to discharge of certain noise and makes Excessive noise an offence. The said sections read thus:-

- (1) No person shall make or emit or cause or permit to be made or emitted noise greater in volume, intensity or quality than the levels prescribed for tolerable



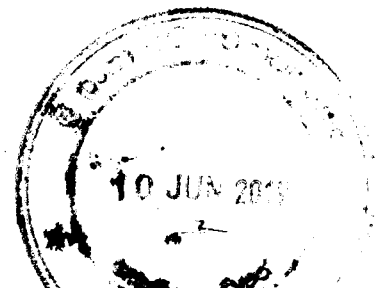
noise except under the authority if a license issued by the Authority under this Act.

- (2) The Provisions of sections 23B, 23C, 23D and 23E shall, *mutatis mutandis*, apply to and in relation to the issue of a license under subsection (1)
- (3) Any authority, or institution empowered by any other written law to issue licenses relating to any of the matters referred to in this Act, shall, conform to the standards specified under this Act.

23 (R) -(1) Any person who without a licenses or contrary to any condition, limitation or restriction to which a license under this Act or any other written law is subject, makes or causes or emits to be made or emitted noise that is greater in volume, intensity or quality than the standard as may be prescribed for the emission of noise which is tolerable noise in the circumstances, shall be guilty of an offence under this Act.

(2) Any person who is guilty of an offence under subsection (1) shall on conviction be liable to a fine not less than rupees ten thousand and not exceeding rupees one hundred thousand and in the case of a continuing offence to a fine of rupees five hundred for every day in which the offence continues after conviction.

It may be possible for one to argue that noise is an integral part of nuisance or public nuisance. But I cannot agree that the above provisions in the Code of Criminal Procedure Act and the above provisions or any other provision in the National Environmental Act are inconsistent or repugnant. There is no incontinency or



repugnancy between to above two laws. There is no overlapping between the said laws. Each of these laws are different in it's approach. The Code is geared to remove or abatement of Nuisance. The Amendment Act no. 56 of 1988 seeks to control pollution and noise and lays down certain prescribed standards which need to be followed in case of noise and an issue of a license which is conditional. A breach of such conditions in a license would amount to an offence.

In the above circumstances Magistrate needs to be satisfied under section 98 of the Code after receiving a report/information and taking evidence that a conditional order need to be issued. Such order could be set aside as in sections 98(2) and 101 of the Code of Criminal Procedure Act after hearing evidence in an all inclusive inquiry. In this process it may be a valid defense to show that the act complained of was expressly authorized by law. *Vanghan V Taff Railway Co.* (1860) 29 L.J. Ex. 247. Mere production of a license would not suffice. Magistrate needs to examine , hear evidence and decide whether there is due compliance with the conditions laid down in the license and whether on this account the party concerned could be exonerated. The procedure stipulated should be followed in the relevant provision in the Code of Criminal Procedure Act, notwithstanding the provisions referred to by learned High Court Judge in his judgment and part of which is referred to in this judgment. Further the magistrate should decide whether a statute may authorize and legalize acts which would otherwise amount to a nuisance *A.G Vs Nottingham Corporation* (1904) 1 CH. 673; *London and Brighton Railway Co Vs Truman* (1885)

11 App. Case 45; Withington Local Board of Health Vs Corporation of Manchester
(1893) 2 CH. 19.

This Court has wide revisionary powers. The revisionary jurisdiction vested in this Court cannot be fettered by the fact that right of appeal has not been exercised. In a given situation and in the interest of justice, this Court could exercise its revisionary jurisdiction to satisfy itself of the legality of the High Court order, though it should be used sparingly in exceptional circumstances. We are of the view that this is a fit instance to exercise the wide powers vested in this Court in terms of article 138 of the Constitution, since the issue relates to a jurisdictional matter.

In conclusion we reject the learned High Court Judge's order of dated 11.12.2003 and allow sub Para (c) of the prayer to the petition and set aside/quash the said order. However we see no basis at this point of time to grant relief in terms of sub Para 'd' of the prayer to the petition. Revision application allowed as above with costs fixed at Rs. 30,000/-.

Sgd/-

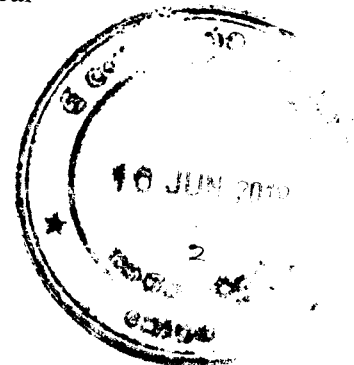
Judge of the Court of Appeal

Sathya Hettige J (P,C/A)

I agree.

Sgd/-

President of the Court of Appeal



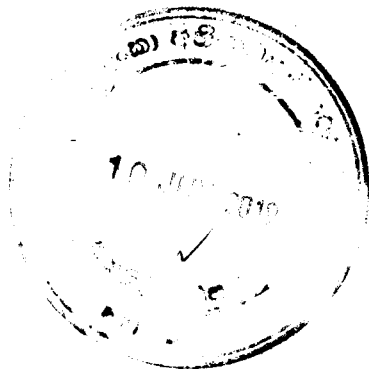
I do hereby certify that the foregoing is a true copy of the Court of Appeal Judgment dated 26/5/2009 filed of record in C.A.No. 40/2004 (PHC) APN.

[Handwritten Signature]
Chief Clerk, C/A.

Chief Clerk of the Court of Appeal

Typed By: *[Handwritten Signature]*

Compd with: *[Handwritten Signature]*



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