

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

In the matter of an application for Revision
under Article 138 of the Constitution.

C.A. Application No:
CA(PHC) APN 46/2011

High Court Gampaha
Case No. HC 132/2006

Democratic Socialist Republic of Sri Lanka

Complainant

Vs.

Munasinghe Arachchige Muditha Dinesh
Gunaratne

Accused

And Between

Munasinghe Arachchige Dharmasena
Gunaratne
47 A 1, Polhena,
Yakkala.

Petitioner

Vs.

Hon: Attorney General,
Attorney General's Department,
Colombo 12.

Respondent

CA (PHC) APN No. 46/2011 (Revision) - H.C. Gampaha No. 132/2006

Before : Sisira de Abrew, J. &
K.T. Chitrasiri, J.

Counsel : Amila Palliyage for Petitioner.
V. Hettige SSC. for Respondent.

Argued &

Decided on : 03.08.2011.

Sisira de Abrew, J.

Heard both Counsel in support of their respective cases. State Counsel appearing for the Attorney General does not object to the relief claimed by the Petitioner. We thank the State Counsel for making correct submission. In this case the accused who is charged with an offence of murder was released on bail by the learned High Court Judge of Gampaha on 16.03.2006 and fixed the case on 17.01.2007. However, when the case was taken up on 13.08.2008, the accused was absent. Mr. Ranjan Silva, Attorney-at-Law made an application to the High Court to represent the accused under Section 241(2) of the Criminal Procedure Code. The Attorney-at-Law submitted to the learned High Court Judge that the accused

had gone abroad. The learned High Court Judge did not permit Attorney-at-Law, Ranjan Silva to represent the accused at the trial as he had not obtained an affidavit from the accused giving him authority to appear for the accused. On this day, the learned High Court Judge directed Ranjan Silva, Attorney-at-Law to submit an affidavit from the accused. We note that the learned High Court Judge made this order on the submission made by the learned State Counsel. This submission made by the learned State Counsel is totally incorrect. In this connection, it is necessary to consider Section 241(2) of the Criminal Procedure Code which read as follows “commencement or continuance of a trial under this section shall not be deemed or construed to affect or prejudice the right of such person to be defended by an Attorney-at-Law at such trial.”

When we consider the said Section, we hold the view that there is no necessity to file an affidavit from the accused.

Ranjan Silva Attorney-at-Law however on 13.08.2008 has submitted a letter from the accused requesting him to appear for the accused. But the learned High Court Judge did not permit him to appear for the accused. In our view, an oral application by an Attorney-at-Law is sufficient

to satisfy the requirements of Section 241 (2) of the Criminal Procedure Code. Under Section 41 of the Judicature Act No. 2 of 1978 an Attorney-at-Law has a right to appear for an accused person at the trial. The learned High Court Judge has failed to consider this provision. When we consider all these matters, we hold that the order made by the learned High Court Judge on 13.08.2008 not permitting the Attorney-at-Law, Ranjan Silva to appear for the accused is totally incorrect. We therefore set aside the said order. The case was taken up for trial on 24.11.2009. On 24.11.2009, an application was made on behalf of Ranjan Silva Attorney-at-Law to postpone the case. The learned High Court Judge refused the said application on the basis that the Attorney-at-Law has not complied with the order made on 13.08.2008. The learned High Court Judge on this day recorded the evidence of 03 witnesses. Since the application by the Attorney-at-Law who appeared for the accused was refused there was no opportunity for the lawyer who appeared for the accused to cross examine the witnesses. On 06.05.2010, Ranjan Silva Attorney-at-Law made an application to appear for the accused and to cross examine the witnesses. The learned High Court Judge however, allowed the application to appear for the accused, but disallowed the application to cross examine the witnesses who had already given evidence. We have earlier held that the

order made by the learned High Court Judge on 13.08.2008 whereby he refused the application of the Attorney-at-Law to appear for the accused was incorrect. Therefore the refusal of the application to cross examine the witnesses who had already given evidence is also wrong. Considering all these matters we set aside the order of the learned High Court Judge dated 13.08.2008, order dated 24.11.2009 refusing to grant a postponement and the part of the order made on 06.05.2010 whereby he disallowed the application of Ranjan Silva Attorney-at-Law to cross examine the witnesses. We direct the learned High Court Judge of Gampaha to permit the Attorney-at-Law of the accused to cross examine the witnesses who had already given evidence. Petition is allowed.

Petition allowed

JUDGE OF THE COURT OF APPEAL

K.T. Chitrasiri, J.

I agree

JUDGE OF THE COURT OF APPEAL

DG.