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

CA PHC 120/2013
Case No. HC Gampaha 84/2005

Hon. The Attorney General
Attorney General's Dept.,
Colombo - 12.

The Prosecutor

Vs.

Salpitikoralalage Premarathna alias Podi Aiya
No. 10/1, Palupelpita,
Radawana.

Accused

Salpitikoralalage Premarathna alias Podi Aiya
No. 10/1, Palupelpita,
Radawana.

Accused-Petitioner

Vs.

Hon. The Attorney General
Attorney General's Dept.,
Colombo - 12.

The Prosecutor-Respondent

C.A. (PHC) No. 120/2013 HC Gampaha Case No.84/2005

Before : A.W.A. Salam, J. &
Sunil Rajapakshe, J.

Counsel : M.W. Padmaraji Jayasundera for Accused-Petitioner.

S. Dharmasandhu for the 1st and 3rd party Respondent-Respondent.

Argued & Decided on : 21.10.2013.

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A.W.A. Salam, J.

This is an application filed in revision to have certain orders made by the learned High Court Judge who tried the accused-petitioner on certain criminal charges set aside and the defence be granted permission to support an application for the discharge of the accused presumably under Section 200 of the Criminal Procedure Code. The progress made in the High Court subsequent to the filing of the indictment need to be set out in the brief. The accused-petitioner having pleaded not guilty to the charge in the indictment the prosecution led the evidence available against the accused and closed its case. Subsequently the learned High Court Judge decided to call

for the defence. The time period that had lapsed between the day on which the prosecution closed its case and the defence filed its affidavit inviting the High Court Judge to discharge the accused was extends to four years. Be that as it may, the main question that comes up for consideration in this application is to ascertain whether the revision application should initially be entertained by this court. In other words whether whether the defence is entitled to make an application under Section 200 once the learned High Court Judge makes up his mind to call for the defence without acting under Section 200 in favour of the accused. Several factors may have influenced the High Court Judge when she called upon for the defence. It involves the question of credibility of the witnesses. The failure on the part of the defence to make an application under Section 200 because certain items were not listed at the clause of the prosecution case, in our opinion is not tenable. If the case for the prosecution was so weak which calls for the discharge of the accused under Section 200, the prosecution should have made the application prior to the learned High Court Judge decided to call for the defence. Once he decides on that course of action, to direct the learned High Court Judge to hear the defence on an application made under Section 200 would require this Court to set

aside the order of the learned High Court Judge calling for the defence which inter alia is based on the credibility of the witnesses.

In any event the allegation that the accused is greatly prejudiced by the order of the learned High Court Judge not allowing the application under Section 200 to be supported, after the prosecution case is closed and the defence is called is not established. Even if this revision application is not entertained the accused is not without any relief. Quite unfortunately the accused has entertained the wrong impression that the learned High court Judge is all out to convict the accused which is not borne out by the record. Even if the accused is convicted he has a statutory right to challenge the conviction. In the circumstances we are of the opinion that this application is mis-construed in law and be notice on the said application is refused.

JUDGE OF THE COURT OF APPEAL

Sunil Rajapakshe, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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