

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

Jawahirsha Mohamed Hanish alias Anish

ACCUSED-APPELLANT

C.A. 228/2011

H.C. Colombo 634/2001

Vs.

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

COMPLAINANT-RESPONDENT

BEFORE: Anil Gooneratne J. &
Malinie Gunaratne J.

COUNSEL: R. W. Ranaheva with Rasadari Jayarathne
for the Accused-Appellant

Chethiya Goonesekera D.S.G. for the Complainant-Respondent

ARGUED ON: 03.06.2014

DECIDED ON: 07.08.2014

GOONERATNE J.

The Accused-Appellant was indicted in the High Court of Colombo, in terms of the Poisons, Opium & Dangerous Drugs Ordinance for possession of 3.7 grams of Heroin on or about 09.01.1999. The Accused-Appellant was absconding after indictment was served and on being released on bail. Trial against the Accused was held in absentia according to Section 241 of the Code of Criminal Procedure Act. He was convicted on 5.6.2006. Perusal of the High Court brief, I find that an application was made by the Accused-Appellant after conviction to re-hear the case afresh to grant him an opportunity to have an inter partes trial. However the learned High Court Judge by the order of 27.9.2011 refused the above application. The prosecution case very briefly is as follows.

On or about 09.01.1999 sub-Inspector of Police Liyanage of the Narcotics Bureau received information from a private informant about trafficking of heroin. A note had been made about the information received from the private informant in his pocket note book. Thereafter he organized the police party and took all necessary items/instrument required for the raid

and proceeded with the informant towards Panchikawatte and as shown by the informant a person called 'Kamaldeen' was taken into custody, and he had in his possession a certain quantity of heroin. The Narcotics Team having questioned suspect Kamaldeen, was able to get information about another person who was the Accused-Appellant dealing with heroin, in the Dehiwela area. Thereafter the entire team proceeded to Dehiwela and in the Attidiya area as described and stated by the above named suspect. Having come to Attidiya the police party proceeded on foot and came near a house surrounded by a parapet wall. The police party entered the premises and in the rear side of the house detected a person with an aluminium plate, mixing some powder seated on a top of a drain. Police party accosted the person and found that it was heroin on the plate and took him into custody. Thereafter usual official steps had been taken to seal the production and send it to the Government Analyst. Evidence of Sub-Inspector, Liyanage had been corroborated by others in the police team. We cannot find the chain of evidence broken, from the time of arrest to sending the heroin parcel to the Government Analyst. Accordingly Judgment was entered by the learned High Court Judge.

The Accused-Appellant was convicted and sentenced in absentia. An attempt had been made earlier in the High court itself to get the Judgment set aside, but the learned High Court Judge after inquiry refused such application, not being satisfied of the bona fides of the Accused-Appellant and the learned High Court Judge being satisfied that the Accused-Appellant is absconding made order on 27.9.2011 refusing such application. When a trial is held in absentia court has to resort to the provisions contained in Section 241 or party concerned should move by way of revision. Appellant has not succeeded in any attempt to resort to the available provisions of law. It was the position of learned counsel for the Accused-Appellant that his client was not in a position to be in Sri Lanka since he was tried for another offence in a court in Bombay, India. (Journal Entry of 23.8.2004). In the Petition of Appeal filed in this court some grounds are urged in para 5 of same. It is also doubtful whether the Appellant has a right of appeal when the High Court has made Order in terms of Section 241 and a Judgment entered accordingly. Learned counsel for Appellant has not satisfied this court in any respect to get the Judgment of the learned High Court Judge vacated. Learned Deputy Solicitor General drew the

attention of this court of the provisions contained in Section 241(3) of the Code. Further the Accused-Appellant failed to inform the High Court when he left the Island.

This court does not wish to interfere with the conviction and sentence of the learned High Court Judge. We affirm the conviction and sentence and proceed to dismiss the appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

W.M.M. Malinie Gunaratne J.

I agree.

JUDGE OF THE COURT OF APPEAL