

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

CA (PHC) APN 02/2013

HC-Negombo-HCRA 614/2012

Selladurai Vijayakumaran
No. 36A,
Vandervert Place,
Dehiwala

3rd Accused-Petitioner-Petitioner

Vs.

The Officer in Charge
Anti-Human Trafficking Unit
Criminal Investigations Department
Colombo 01

The Attorney General
Attorney General's Department
Colombo 12

Respondent-Respondents

Before : K.T. Chitrasiri, J. &
W.M.M. Malinie Gunarathna, J.

Counsel : M. A. Kumarasinghe for the 3rd Accused
Petitioner
Kapila Waidyarathna, PC ASG for the
Respondent

Decided on : 15.10.2014

K.T. Chitrasiri, J.

Heard both counsel in support of their respective cases. This is an application in revision, seeking to revise and set aside the order dated 21.11.2011 of the learned High Court Judge and also to have a stay order staying all the proceedings filed in the case bearing No J67656 in the Magistrate's Court, Negombo.

When this matter was taken up before the learned Magistrate on the 02.02.2012, learned counsel who appeared for the accused objected to the 1st witness being called to give evidence.

Therefore, it has resulted preventing the prosecution to call even a single witness. The objection was on the basis that the witness who was to give evidence had not made a statement to the

Police. Accordingly, the counsel who appeared for the accused has contended that the witness, that the prosecution intended to call is not a competent witness in terms of Section 109 and 110 of the Code of Criminal Procedure Code Act.

Learned Magistrate having related the background upon which the witness was to call, has overruled the objection and has allowed the prosecution to call him as a witness. Being aggrieved by the said decision, the petitioner filed a revision application in the High Court. High Court Judge too has upheld the decision of the learned Magistrate.

Accordingly, we will now turn to consider the law relevant to the issue. Section 109 of the Code of Criminal Procedure Act requires a police officer or an inquirer to reduce to writing, information relating to the commission of an offence that had been given orally or in writing. In this instance, the witness who was to give evidence on behalf of the prosecution has informed the police as to a commission of an offence after having apprehended the petitioner in this case at the Airport in Katunayake.

Learned Additional Solicitor General, at this stage submits that the petitioner in this application is one of the persons who had been deported from Dubai.

In this instance, an objection had been taken on behalf of the petitioner before the said witness was called to give evidence. At that stage, nothing was elicited to ascertain whether the information given by the witness was reduced to writing or not. Hence, the learned Magistrate had no opportunity to ascertain whether the information referred to in Section 109 (1) was reduced to writing or not. Therefore, the objection that had been raised on behalf of the accused is clearly premature.

Learned Additional Solicitor General submits that the information received by the police had been reduced to writing. Therefore, we do not see any violation of the matters referred to in Section 109 of the Code of Criminal Procedure Act.

Learned Counsel for the petitioner, referring to the case of Wijesiri VS The Attorney General, submitted that the provisions contained in Chapter 11 of the Code of Criminal Procedure Act are to be considered as important and those will have to be strictly followed. The law referred to in that decision is not being disputed. In this instance, we do not see any act by which the provisions contained in the said chapter II had been undermined.

Therefore, the aforesaid decision in wijesiri Vs The Attorney General (Supra) referred to by the learned counsel for the petitioner is not relevant to the issue at hand.

Moreover, we do not see any prejudice caused to the accused by calling the witness from the Department of Immigration and Emigration who has performed official duties. The accused even has the right to cross-examine the witness, once he is called to the witness box. Indeed, it is apparent that this is an attempt to delay the witnesses being called to give evidence.

For the aforesaid reasons, we dismiss this revision application.

The learned Magistrate is directed to expedite the trial in this case and conclude the same within a period of 3 months from the date of the receipt of the decision of this appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

W.M.M. Malinie Gunarathne, J.

I agree.

JUDGE OF THE COURT OF APPEAL

LA/-