

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

CA (PHC) APN No. 116/2010

High Court (Colombo) Case No. HC 527/2001
(High Court Welikada Case No. 247/2006)

Mohomed Mansoor Mohamad Asmin,
No. 391/2,
Madampitiya road,
Colombo 14.
(Presently at the Colombo Magazine Prison)

Accused-petitioner

Vs.

Hon. Attorney General,
Department of the Attorney General,
Colombo 12.

Respondent

C.A. (PHC) APN No. 116/2010

H.C. Colombo Rev. Appln. No. HC
527/2001.

H.C. Welikada Case No. 247/2006.

BEFORE : VIJITH K. MALALGODA, PCJ (P/CA) &
A.H,M.D.NAWAZ J.

COUNSEL : Saliya Peiris with R. Nanayakkara for the
Accused- Petitioner.
Anoopa de Silva S.S.C for the respondents.

ARGUED AND

DECIDED ON : 24th February, 2015

VIJITH K. MALALGODA, PCJ (P/CA)

Counsel for the accused-petitioner contends that this is a matter which should go back to the High Court for further trial as the High Court Judge by his order dated 11.05.2010 had not permitted the defence to adduce evidence of the fact that the accused was arrested in a manner different to the way spoken of by the prosecution. After this evidence was disallowed, it appears that the learned High Court Judge had also not permitted another witness who was sought to be called by the defence thereafter on the same basis.

Learned Senior State Counsel who appears for the Attorney General contends that due process and ends of justice would be best served if this matter goes back to the High Court for the evidence that had been excluded, to be led afresh and the trial concluded to a finish, for the reason that the same evidence had been permitted at the previous trial in 2004 and that can be considered as a notice given to the prosecution of the case that the accused was seeking to present at his trial.

Learned Counsel for the accused-petitioner also submits that he has no objection to the adoption of the entire prosecution evidence that had been led up to the point of the conclusion of the prosecution case. He further submits that the defence evidence at the further trial would focus mostly on items of evidence that were excluded by the trial Judge.

In the circumstances, this Court is of the view that the order made by the learned High Court Judge dated 11.05.2010(P2) should be set aside and the matter is sent back for further trial. Counsel for the accused-petitioner makes an application that this case be heard by a

judge other than the judge who made the order dated 11.05.2010. We allow his application. Subject to the above conditions, we allow the revision application.

PRESIDENT OF THE COURT OF APPEAL

A.H.M.D.NAWAZ J.

I agree.

JUDGE OF THE COURT OF APPEAL

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