

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

**CA TR/04/2016**

Kanagaratnam Jeevaratnam  
Alvai West,  
Pointpedro

**Accused-Petitioner**

**Vs.**

Attorney General  
Attorney Generals Department,  
Colombo 12.

**Respondent**

C.A. No. 04/2016(Transfer)

BEFORE : VIJITH K. MALALGODA, PCJ (P/CA) &  
P.PADMAN SURASENA, J.

COUNSEL : K.S.Ratnavel for the petitioner  
P.Kumararatnam D.S.G.for the respondents.

ARGUED AND  
DECIDED ON : 02<sup>nd</sup> May, 2016

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VIJITH K. MALALGODA, PCJ (P/CA)

The accused-petitioner in this application has come before Court seeking an order from this Court under Section 47 of the Judicature Act against an order made by the Hon. Attorney General to transfer the High Court case No. HCT/490/2012 from the High Court of Trincomalee to High Court of Colombo. Learned Counsel for the accused-petitioner along with his petition and affidavit had filed a set of proceedings he had obtained from the High Court and according to the journal entry dated 19<sup>th</sup> November 2015, the learned High Court Judge of Trincomalee had made several orders. In the said orders we observe that the learned High Court Judge had referred to the credibility of the Government Analyst, had made a remark stating that he could not believe the Government Analyst in the given context. He has rejected an application made by the learned State Counsel in that context. When looking at the indictment in this case we observe that the entire prosecution case refers to a recovery

of a large quantity of explosives concealed in a lorry said to have transported by the accused-petitioner. In a case of this nature the main item of evidence as observed by this Court could be the evidence of the Government Analyst. In such a situation if for an issue which is not related to the Government Analyst's report which is purely an issue with regard to an administrative matter, if the High Court had made such a remark we are of the view that the action taken by the Attorney General can only be considered as justifiable at this stage. It is also observed by this Court that prior to the order dated 19<sup>th</sup> November 2015 the said High Court Judge of Trincomalee had made another order on 17<sup>th</sup> November 2015. We observe that the said order made by the learned High Court Judge is not attached to the brief provided before us by the petitioner. According to the brief provided by the petitioner in page 259 there is an order made by the High Court Judge on 28<sup>th</sup> October 2015 postponing the case to 17<sup>th</sup> November 2015. The next page before us is page 260 refers to the proceedings on 19<sup>th</sup> November 2015. The learned Deputy Solicitor General has placed before us the said proceedings of 17<sup>th</sup> November 2015 and when going through the order made by the learned High Court Judge on 17<sup>th</sup>, this Court observes that the learned High Court Judge had pre decided this case already. When considering the material before us we see no reason to interfere with the decision taken by the learned Attorney General to transfer this case from the High Court of Trincomalee to the High Court of Colombo. Therefore, we see no

merit in the application made by the petitioner and therefore we dismiss this application.

It is brought to our notice by the learned Counsel for the petitioner that the certified copy he has produced was issued to him by the High Court of Colombo Court No.8 and he was totally unaware of the missing pages from the brief since it is recorded in the certificate made by the Registrar that pages up to 264 is issued to the accused- petitioner. Therefore at this stage we make order to the learned High Court Judge Colombo to look into this aspect and make sure that the proceedings of 17<sup>th</sup> November 2015 is filed of record in the main case record.

Registrar is directed to send a copy of this proceedings to the Hon. High Court Judge of Court No.8, Colombo for necessary action.

PRESIDENT OF THE COURT OF APPEAL

P.PADMAN SURASENA, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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