

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

In the matter of an application for
Revision in terms of Section 365
of the code of Criminal Procedure
Act No. 15 of 1979.

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

CA/Revision Application No:

Complainant

CA (PHC) APN 152/2014

Vs.

1. Lingara Ravindra
2. Manchanayake Arachchilage
Janaka Priyadarshana
3. Ramaiah Jeyaraj

Negombo High Court Case

Accused

No: 386/2006

And Now Between

Warnakulasuriya Paul Peter
Fernando,
55/8, Pallansena North,
Malayandaluwa, Kochchikade.
(currently serving the Sentence
in Negombo Prison)

Petitioner

Vs.

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

**Complainant –
Respondent**

1. Lingara Ravindra
2. Manchanayake Arachchilage
Janaka Priyadarshana
3. Ramaiah Jeyaraj

Accused – Respondent

**Before : P.R.Walgama, J
: L.T.B. Dehideniya, J**

Counsel : Amila Palliyage for the Petitioner.

Argued on : 25.05.2016

Decided on : 13.07.2016

CASE-NO- CA (PHC) APN 152 /2014- ORDER- 13.07. 2016

P.R.Walgama, J

The instant application of the Petitioner stems from the impugned order of the Learned High Court Judge dated 31.10.2013, for confiscating the bail bond and for sentencing the Petitioner for a period of twelve months.

The facts emerged from the above petition are as follows;

The Petitioner stood as the surety for the 1st Accused who was charged for committing a murder of three along with another two.

On 13th of February 2007, the 1st and the 3rd Accused were enlarged on bail.

On a perusal of the case record pertaining to this case in the High Court Negombo, it is apparent that the 1st Accused had been absconding on many occasions, and had been released on bail on producing the sureties and satisfying other bail conditions thereto.

But nevertheless the Accused was in remand in respect of another two offences which had been committed in different jurisdictions.

In the said back drop the petitioner made an application on the 27th of May 2009 for the release him from the case as a surety.

However the 1st Accused was enlarged on bail on 16th of November 2011, but on a strict bail conditions. In the said conditions one was, to produce one surety who is possessed of property worth of 10,000,000/-. As the Petitioner could not find a surety who possess a property, he stood as a surety and tendered his property for the above purpose, the property which he held with nis wife in common, as co owners.

It is noted that the 1st Accused absconded on 6th February 2014 and notice was issued to the sureties to appear before court.

In pursuant to the afore said notice the Petitioner appeared in court and had informed court that his wife is suffering from a terminal decease and he was enlarged on bail.

On the 6th of August 2014 the Learned High Court has confiscated the bail bond of the Petitioner, and ordered a default sentence of twelve months.

Being aggrieved by the said order the Petitioner came by way of revision to have the said order set aside or vacate.

It is to be noted that the counsel for the Respondent did not object to the said application of the Petitioner.

The relevant section pertaining to the matter in issue is stated below;

422(1)

“ whenever it is proved to the satisfaction of the court by which a bond under this Code has been taken, or when the bond is for appearance before a court, to satisfaction of such court that such bond has been forfeited, the court shall record the grounds of such proof and may call upon any such person bound by

such bond, to pay the penalty thereof or to show cause why it should not be paid.

(2) If sufficient cause is not shown and the penalty is not paid the court may proceed to recover the same by issuing a warrant for the attachment and sale of movable or immovable property belonging to such person.

(3).....

(4) If such penalty be not paid and cannot be recovered by such attachment and the sale the person so bound shall be liable by order of court which issued the warrant to simple imprisonment for a term which may extend to six months.

Therefore it is abundantly clear that in default of the payment of the bond the court could sentence the surety only for six months simple imprisonment, that is only after affording him an opportunity to show cause as to why the bond should not be forfeited.

A schematic analysis of the circumstances that has occurred in securing the presence of the 1st accused it is obvious that without giving an opportunity to show cause the Learned High Court Judge has forfeited the bond and sentenced the petitioner to one year imprisonment.

Thus it is crystal clear that the said impugned order of the Learned High Court Judge is blatantly erroneous and should be set aside forthwith.

Besides it here by ordered that the High Court Judge shall hold an inquiry in terms of Section 422 (1) Registrar is here by directed to send a copy of this order to the High Court of Negombo.

Application is allowed accordingly.

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya, J

I agree.

JUDGE OF THE COURT OF APPEAL