

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

In the matter of an application for revision under and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka read along High Court of the Provinces (Special Provisions) Act No. 19 of 1990.

**CA (PHC)APN 20/2016**  
**H.C. Panadura Case No-39/2015**  
**MC Kesbewa B294/15**

Officer in Charge  
Police Station Piliyandala

**Complainant**

Vs.

Lansage Nirmal  
163 Church Road,  
Angulana

Presently at Colombo Remand Prison  
Colombo 08

**Suspect**

**And**

Lansage Basil  
No 206 Costal Road,  
Angulana

**Petitioner**

Vs.

Officer in Charge  
Police Station Piliyandala

**Complainant-Respondent**

The Hon. Attorney general,  
Attorney General's Department,  
Colombo 12.

**Respondent**

Lansage Nirmal  
163 Church Road,  
Angulana

**Suspect Respondent**

**And now Between**

Lansage Basil  
No 206 Costal Road,  
Angulana

Presently at 163 Church Road,  
Angulana, Moratuwa

**Petitioner-Petitioner**

Vs.

Office in Charge  
Police Station Piliyandala

**Complainant-Respondent-  
Respondent**

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

**Respondent-Respondent**

Lansage Nirmal  
163 Church Road,  
Angulana, Moratuwa

**Suspect Respondent-**  
**Respondent**

**Before : H.C.J. Madawala , J**  
**&**  
**L.T.B. Dehideniya, J**

**Counsel : Madusanka Hewawithana for the Petitioner**  
**Varunika Hettige SSC for the Respondent**

**Written Submissions on : 08/07/2016**

**Order On : 08 / 08 /2016**

**Order**

**H. C. J. Madawala , J**

This is an application for revision to set aside and or revise the order of the Learned High Court Judge dated 13/01/2016 and to enlarge the suspect accused Lansage Nirmal on bail on suitable terms and conditions that seem meet and for further relief as prayed for in the prayer of the petition.

When this matter came up for inquiry on 5/7/2016 the Senior State Counsel appearing for the respondent raised preliminary objection with regard to the maintainability of this application namely that the petitioner the father of the accused has no Locus Standi to institute this proceedings. It was pointed out that the suspect respondent is one Lansage Nirmal and the petitioner one Lansage Basil and that the person seeking bail from this court

is not the suspect. Both parties agreed to file written submissions on the Locus Standi of the petitioner. However written submissions has been filed by the Complainant–respondent and the respondent–respondent has failed to do so. According to the petition of petitioner the Complainant–respondent has instituted action against the suspect respondent–respondent in the Magistrate Court in Kesbewa alleging that on or about 17/2/2015 the petitioner has committed an offence of trafficking and possession of 42 grams of Heroin and punishable under Section 54 A (c) of the Poisons Opium and Dangerous Drugs Ordinance No 17 of 1929 as amended. The suspect respondent who was produced before the Magistrate Court of Kesbewa under bearing No B294/15 has been remanded by the Learned Magistrate. After investigation has been concluded that Government Analyst had submitted by his examination report that the pure quantity of Heroin indicated was 3.89 grams.

The petitioner the father of the suspect stated that the suspect was the sole bread winner in the family and he maintained the petitioner and 1 1/2 year old child. The suspect respondent–respondent was indicted in the High Court of Panadura for possession and trafficking of 3.89 grams of Heroin. The petitioner on or about 18/5/2016 in terms of Sec 83(1) of the Poisons Opium and Dangerous Drugs Ordinance No 17 of 1929 as amended the petitioner preferred the bail application to High Court of Panadura under bearing No. BA 39/2015.

However after the inquiry the Learned High Court Judge has refused to grant bail and has rejected the bail application on the basis that the petitioner had failed to adduce any exceptional Circumstances. Thereafter the father of the suspect had filed this revision application in this court to set aside the Learned High Court Judge’s order.

Senior State Counsel in her written submissions submitted the following authorities. Namely,

“As his Lordship Justice F.N.D. Jayasuriya with his Lordship Justice Kulatilake agreeing has having relied on the cases *Alwis v Wedamulla* 1997 3 SLR 417. *AG of Gambia v N’Jie* 1961 AC 617 Vide S.M. Thio’s monograph on locus standi and Judicial review on the question of Locus standi and the problem of discretion, relying especially on De Smith *Judicial Review of Administrative Act* 1987 impression of the 4<sup>th</sup> edition – at pages 409 to 421 went on to hold in *Senatilake v s Attorney General* 98(3) SLR 290 that the petitioner who is the father of the accused, has no locus standi to maintain a revision application. Further in CA(PHC) APN No. 09/2013 HC Gampaha No 145/2006 a similar view was taken, having relied upon the judgment in *Senathilake v Attorney General*. The respondent states that in the cases of *M. P. Piyaseeli v AG CA(PHC) 18/2009*, *M.M. Sonali Fernando v AG CA (PHC) APN 144/2007* on the basis that it had been clearly laid down in the said cases that no one else other than the accused himself can maintain an application to vary a sentence imposed in respect of him.’

Accordingly it was submitted that the father of the suspect respondent-respondent have no locus standi to have and maintain this revision application. Attention was drawn to the Supreme Court of India, in the case of **Adi Pherooshah Gandhi vs H. M. Seervai, Advocate General** 1971 AIR 385, 1971 SCR(2) 863 held that,

“It is apparent that any person who feels disappointed with the result of the case is not a ‘person aggrieved’. He must be disappointed of a benefit which he would have received if the order had gone the other way. The order must cause him a legal grievance by wrongfully depriving him of something. It is no doubt a legal grievance and not a grievance about material matters but his legal grievance must be a tendency to injure him.”

Further we find that in the recent case of **Savarimutthu Taavmani v Attorney General CA( PHC)APN 37/2014** his Lordship Justice Dehideniya held that the mother of the accused has no locus standi to institute a revision application.

I now draw my attention to Section 16 subsection 2 of the Judicature Act which states as follows,

16. (1) A person aggrieved by a judgment, order or sentence of the High Court in Criminal cases may appeal to the Court of Appeal with the leave of such court first had and obtained in all cases in which the Attorney-General has a right of appeal under this chapter.

(2) In this section "a person aggrieved" shall mean any person whose person or property has been the subject of the alleged offence in respect of which the Attorney-General might have appealed under this chapter and shall, if such person be dead, include his next of kin namely his surviving spouse, children, parents or father descendants or brothers or sisters.

(3) Nothing in this section shall in any way affect the power of the Court of Appeal to act by way of revision in an appropriate case.

The Bail Act No 13 of 1997 and the Poisons Opium and Dangerous Drugs Ordinance No 17 of 1929 as amended are silent and does not provide any provision as to who should make a bail application or revision application. The Criminal Procedure Code is also silent in this matter. However as aforesaid Section 16 subsection 2 of the Judicature Act provides that aggrieved person can file an appeal and has indicated as to who is a person aggrieved. Accordingly it is my view that in a revision application too, that the said provisions are applicable. Accordingly I hold it is the suspect himself who is the aggrieved person who should file the revision application.

This is a case where the extraordinary Jurisdiction which is exercised by the Court of Appeal and the grant of relief is entirely dependent on the discretion of the court. The accused's father is seeking discretionary relief from the Court of Appeal and in considering the grant of discretionary relief, the court will closely examine the conduct of the accused. I find that the accused has not moved this court in revision of the said order. In the exercise

of a discretion the court scrupulously looks into the conduct of the ultimate part who is deriving benefit from the orders to be made by the court in revision. Accordingly considering the above authorities I uphold the objection made by the SSC that the petitioner the father of the accused has no locus standi to institute this revision application.

Further in this case we find that the father of the accused Lansage Basil has not been given any Authority in writing to make this application. In the light of the above cases and according to law. We uphold the order dated 13/1/2016 of the Learned High Court Judge of Panadura and dismiss this revision application with State cost.

The Registrars of the Court of Appeal is directed to send a copy of this order to the Learned High Court Judge of Panadura.

**Judge of the Court of Appeal**

**L.T.D.Dehideniya, J**

**I agree.**

**Judge of the Court of Appeal**