

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

In the matter of an application for Revision in terms of Article 138 and Article 145 of the Constitution of the Democratic Socialist Republic of Sri Lanka seeking to revise and set aside the order made in High Court Colombo case No. 7882/2015

Democratic Socialist Republic of Sri Lanka.

Complainant

Vs.

**Court of Appeal case no.
CA/PHC/APN/36/2016**

Ranasinghe Arachchige Pradeep Isuranga.

Accused

**H.C. Colombo case no.
HC 7882/2015**

AND NOE BETWEEN

Ranasinghe Arachchige Pradeep Isuranga,
No. 879, Kuda Gammana, Widupola,
Tissamaharamaya.

Accused Petitioner.

Vs.

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

Respondent

Before : H.C.J.Madawala J.
: L.T.B. Dehideniya J.

Counsel : Shanaka Ranasinghe P.C. with Piyasala Padmasiri for the
Accused Petitioner.
: Varunika Hettige SSC (as she was then, now DSG) for the
Respondent.

Argued on : 01.11.2016

Written submissions filed on: 04.11.2016

Decided on : 05.12.2016

L.T.B. Dehideniya J.

The Accused Petitioner (the Petitioner) was indicted in the High Court for offences of trafficking and possession of 01 kg. of cannabis, violating the provisions of sections 54 A (b) and 54 A (d) of the Poisons Opium and Dangerous Drugs Ordinances as amended punishable under Column II Part III of the Third Schedule. On his own plea he was convicted for both offences on 23.12.2015 and on the application of the Counsel for the Petitioner, the case was postponed till 13.01.2016 for mitigation and sentence and the Court has called for a finger print report. On that day the Petitioner was absent and unrepresented, the Court imposed one year RI for each count in absentia. This revision application is against the sentence.

The Petitioner states that he was unable to be present before Court on 13.01.2016 because he has mistakenly taken the date as 26.01.2016. This cannot be considered as an acceptable excuse for not appearing on the date fixed for identification and sentence. If the Petitioner was absent

on the date fixed for sentencing, Court has no option but to consider that the Petitioner has nothing to say in mitigation and proceed to impose the sentence. The learned High Court Judge has correctly done it.

The learned Counsel for the Petitioner pleads this Court to vary the sentence imposed by the High Court by imposing a suspended sentence considering that he is a young person in the age of twenties and without having any previous convictions. He further argues in his written submissions that the maximum sentence that can be imposed on this charge is one year imprisonment but the Court had imposed two years RI.

The learned DSG submitted that she is not filing any written submission in this regard and is willing to abide by the order of the Court.

The Petitioner was in possession of one kilogram of cannabis. It is a commercial quantity. If it was a small quantity, the Court would have presumed that it was for his consumption, but a large quantity such as one kilogram cannot be for his personal consumption. Personal consumption will harm himself and his family. But trafficking dangerous drugs (Cannabis is categorized as a dangerous drug) will harm the society at large and it is an offence committed against the entire society. The Court has to be mindful on this fact when considering the punishment.

On the other hand the Petitioner had pleaded guilty at the first opportunity. It can be considered that the Petitioner himself is repentance of what he has done. A person pleads guilty at the first opportunity deserves a concession.

The petitioner being absent on the day fixed for sentencing, the Court did not have the privilege of hearing the mitigatory factors. The Petitioner, though he is a married person with a child, is a relatively young person in his twenties. This fact is also has to be considered.

The learned Counsel in his written submissions submitted that the Court has exceeded the maximum punishment prescribed by law by imposing two years jail term. This submission is incorrect. The Court has imposed one year jail term for each count aggregating two years. There is no illegality in the sentence. This Court has to consider the mitigatory factors only.

The Petitioner is serving the jail term at present. That fact has also has to be taken in to consideration.

Acting in revision, I vary the sentence as follows.

The Accused Petitioner is sentenced for nine (9) months Rigorous Imprisonment for the 1st charge and nine (9) months Rigorous Imprisonment for the 2nd charge. I further order to run the sentences concurrently. This sentence is to run from the date of imprisonment.

Judge of the Court of Appeal

H.C.J.Madawala. J.

I agree.

Judge of the Court of Appeal