

**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 of the Constitution of the
Democratic Socialist Republic of Sri Lanka

Court of Appeal case no. CA/PHC/APN/ 52/13

H.C. Panadura case no. 2449/2008

Democratic Socialist Republic of Sri Lanka
Complainant

Vs.

1. Weerasinghe Mihindu Prabath Silvs
 2. Akuragoda Pathiranage Ajith
 3. Muhandiramge Nandana Kumara Perera
- Accused.**

And Now

Akuragoda Pathiranage Ajith
2nd Accused Petitioner

Vs.

Hon. Attorney General
Attorney General Department
Colombo 12
Respondent

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

Counsel : Amila Palliyage for the 2nd Accused Appellant.
: Varunika Hettige DSG for the Respondent.

Argued on : 09.12.2016

Written submissions filed on : 20.01.2017

Decided on : 06.02.2017

L.T.B. Dehideniya J.

This is a revision application from the High Court of Panadura.

The 2nd Accused Petitioner with two others was charged before the High Court for committing offence of robbery on several persons punishable under section 380 of the Penal Code. After being pleaded guilty to all charges, the 2nd Accused Petitioner was convicted and sentenced. The learned High Court Judge ordered 4 years RI and Rs. 5,000.00 fine on each charge and ordered the jail term to run concurrently. In addition to the said punishment, the Accused Petitioner was ordered to pay compensation to the victims of the crime with a default jail term. Being aggrieved by the order of sentencing, the 2nd Accused Petitioner moved in revision.

The 2nd Accused Petitioner's contention is that the order to pay the compensation is excessive. He further submits that the 1st and the 3rd Accused were also being pleaded guilty on previous occasions and they were not being ordered to pay any compensation, ordering the 2nd Accused Petitioner to pay compensation is unreasonable.

The Respondent raised two preliminary objections on the maintainability of the application on the grounds that there is an inordinate delay and no exceptional circumstances to exercise the discretionary remedy of revision.

At the hearing the 2nd Accused Petitioner restricted the revision application to the payment of compensation part of the order.

The order of sentencing was made on 25.05.2012 by the learned High Court Judge. The revision application is dated 22.05.2013 and was filed in this Court on 23.05.2013. There is a delay of 11 months in filing this revision application. The only explanation given is that he was in jail and he could not file the revision application. This explanation is not acceptable since the law provides for a convicted prisoner to submit an appeal while in the prison and if he can file this application after 11 months while serving the jail term, no explanation given why he could not file it as soon as the order was made.

Our courts have held in several occasions that the inordinate and unexplained delay in seeking relief itself disentitles the petitioner to it. Revision being a discretionary remedy, the party seeking relief should act promptly.

It has been held in the case of *Seylan Bank V Thangaveil* [2004] 2 Sri L R 101 at 105 that;

In this application in revision the petitioner seeks to set aside the orders dated 7.3.2002 and 10.01.2002 made by the learned District Judge. The petitioner has filed this application on 17.7.2003. It appears that there is a delay of one year and four months in respect of the order dated 7.3.2002 and a delay of seven months from the order dated 10.01.2003. The petitioner has not explained the delay. Unexplained and unreasonable delay in seeking relief by way of revision, which is a discretionary remedy, is a factor which will disentitle the petitioner to it. An application for judicial review

should be made promptly unless there are good reasons for the delay. The failure on the part of the petitioner to explain the delay satisfactorily is by itself fatal to the application.

The Attorney-General V. Kunchihambu et al. 46 NLR 401

The sentence was passed in February, 1945, and this application was made on May 25, 1945, and now it is the end of July. In view of the delay that has occurred I do not think that I ought to exercise the discretion vested in me by section 357 (1) of the Criminal Procedure Code.

Mr. Curtis asks in tones of rhetorical indignation if this Court is going to be a party to an illegal sentence remaining upon the record of a case. It is a very disturbing question to have to answer but the answer I would venture is that however much it may offend one's aesthetic sense to have an illegal sentence left upon the record, there are cases in which one must put up with that grievance lest one inflicts a great hardship on a man who had had every reason to think that he had been dealt with and punished for the offence with which he had been charged and of which he had been convicted and that his troubles were over. In matters of this kind too interest reipublicae ut finis sit litium.

In the present case the 2nd Accused Petitioner has not pleaded guilty at the very first opportunity but was taking time while the other two Accused persons have pleaded guilty much before him. Therefore it cannot be considered that the 2nd Accused Petitioner is repentant of his crime. The crime that he has committed is also of very serious in nature.

The learned High Court Judge has considered that the victim in charge no.5 has the possession of the property involved in the crime and not ordered any compensation to be paid to him/her. Compensation ordered to be paid only to the victims in relation to the charges 1 to 4. The learned High Court Judge has considered the attended circumstances in ordering the compensation.

Under these circumstances, there is no reason to disregard the inordinate delay in filing the revision application. I do not intend to exercise the revisionary jurisdiction vested upon me under the law, which is a discretionary jurisdiction of this Court, in 2nd Accused Petitioner's favour.

Accordingly, I dismiss this application.

Judge of the Court of Appeal

H.C.J.Madawala J.

I agree.

Judge of the Court of Appeal