

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

In the matter of an application for
Revision under Article 138 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

CA (PHC)APN 55/2016
HC Chilaw Case No- HC 15/2015
MC Chilaw 40402

OIC Crimes Investigation Unit
Chilaw Police Station

Complainant

Vs.

Kosgama Liyanage Lasantha Udaya
Kumara.
Pahala Thabbowa, Nattandiya.

Accused

And Then

Kosgama Liyanage Lasantha Udaya
Kumara.
Pahala Thabbowa, Nattandiya.

Accused- Petitioner

Vs.

1. OIC Crimes Investigation Unit
Chilaw Police Station

Complainant-Respondent

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

Respondent

And Now Between

Kosgama Liyanage Lasantha Udaya
Kumara.

Pahala Thabbowa, Nattandiya.

Accused- Petitioner- Petitioner

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

Respondent-Respondent

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

**Counsel : Tenny Fernando for the Petitioner
Varunika Hettige DSG for AG**

Written Submissions On : 24 /01 /2017

Decided on : 06 / 03 /2017

H. C. J. Madawala , J

The Accused-Petitioner Kosgama Liyanage Lasantha Udaya Kumara filed this Revision Application to set aside the Learned Magistrate's Order dated 22 /09/2015 and to Revise the order dated 17/12/2013 and impose a reasonable sentence accordance with the law, and for further relief as prayed for in the prayer of the petition.

On 31/05/2016 this matter was supported by the Counsel for the Petitioner and accordingly, notice was issued on the Respondent returnable for 29/06/2016. On 29/09/2016 statement of objections were filed of record by the Respondent and the case was fixed for inquiry. On 24/01/2014 parties tendered their written submissions as there was no settlement.

Thereafter the case was fixed for order on the 24/01/2014. In the morning when this court called the case the Petitioner and his counsel was not present in court therefore this court dismissed the said application for want of appearance. Thereafter the counsel for the Petitioner appeared in court and moved that court be pleased to accept his written submissions.

This court there after having regard to the application set aside the order and permitted the application of the Petitioner which has in advertently not been recorded.

On a perusal of the record we find that the Petitioner was charged under section 440, 369 and 395 of the Penal Code in the Magistrate Court of Chilaw. The Petitioner in the first instance on 05/07/2011 pleaded not guilty. The Petitioner later on 14/05/2013 has pleaded guilty. The Petitioner was to pay

Rs.90,000/- to the aggrieved party in installments of Rs.10,000/-each the Petitioner had ten previous convictions. The Petitioner did not pay the amount aforesaid as agreed. The sentencing took place on 17/12/2013 it was as follows,

- (i) 1st-3rd counts 2 years rigorous imprisonment
- (ii) 1st -3rd counts fine of Rs.1500 for each count in default of 3 months imprisonment for each counts.
- (iii) According to section 17(7) of the Criminal Procedure Act, a compensation of Rs.89,000/- shall be paid to the virtual complainant in default 6 months imprisonment.
- (iv) If compensation is paid, all sentences shall be suspended for 10 years.
- (v) If compensation is not paid, the suspended terms given in Magistrate Court Marawila cases No. bearing 12250, 12449,12454,13708,12450,12454 shall be started to operate.

Accordingly, it was contended by the Accused-Petitioner that the gold goods which was the subject matter of this case was found to be not, so when it was tested and examined by the bank. However proof of same has not been produced to this court. However parties has come to a settlement that the compensation to be Rs. 80,000/-. Accordingly, we revise and vary the Learned High Court judge's order the compensation to read as Rs.80,000/- instead of Rs.89,000/- and in default 4 years rigorous imprisonment further we direct the registrar of the Magistrate Court of chilaw to accept the deposit of the

Petitioner and release the Petitioner once the payment is deposited in the Magistrate Court of Chilaw. The rest of the order remains the same subject to the variation. We affirm the order of the High Court Judge dated 19-11-2015 and order of the Magistrate's Court dated 17/12/2013 subject to the aforesaid variation. We disallow the application of the Petitioner with costs of Rs. 10,000/-.

Judge of the Court of Appeal

L.T.B.Dehideniya, J

I agree.

Judge of the Court of Appeal