

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

CA (PHC) APN 07/17

High Court No HC 5697/11

Mohamed Abbas Uwaiz

Petitioner (surety)

Vs.

Hon Attorney General

Respondent

CA. (PHIC) APN No. 07/2017

H.C. Colombo Case No. 5697/2011

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

Counsel : Suranga Bandara for the Petitioner.
V. Hettige, D.S.G., for A.G.

Argued &
Decided on : 02.05.2017.

H.C.J. Madawala, J.

Heard Counsel in support of the Petition of this revision application dated 01.02.2017. In the said application it is stated that the surety failed to abide by the order dated 13.09.2012 of the learned High Court Judge. The learned High Court Judge implemented the order of his predecessor by confiscating the bail bond and sentencing the Petitioner for a period of 3 ½ years as stated in the order dated 07.01.2016. The facts emerged from the above petition are as follows:

The petitioner stood as a surety for the accused named Mohamed Isaque Mohamed Washeem who was charged for committing the

offence of possession of heroin which punishable under Poison Opium and Drugs Act No. 13 of 1984 in High court Case No. 5697/2011. The Petitioner stood as a surety for the accused and the accused was enlarged on bail by the High Court Judge. Due to the facts that the accused had been evading the Court proceedings and that the petitioner failed to bring the accused though he had been given sufficient time for that purpose the learned High Court Judge called the petitioner to show cause as surety why the bond should not be fortified on 13.09.2012. The learned High Court Judge ordered the bond to be fortified carrying a default sentence of four years Rigorous Imprisonment. The surety paid a sum of Rs. 12,500/= as a part payment and permission was granted for him to make it in installments. The petitioner failed to abide by the order dated 13.09.2012 and the learned High Court Judge implemented the order of his predecessor subject to a minor variation that the rigorous imprisonment of four years to be operated as 3 ½ years of the order dated 07.01.2016. The Petitioner being aggrieved by the order dated 07.01.2016 moved in revision against the sentence due to the following exceptional grounds.

That the order dated 07.01.2016 is totally illegal and in contravention of the procedure laid in Section 422 of the Criminal Procedure Act No. 15 of 1979 where it permits the Court to sentence a surety only for six month simple imprisonment as a final remedy.

The learned D.S.G. Varunika Hettige informs Court that she has no objection for the application made by the Petitioner. Having considered the above circumstances that has occurred in securing the presence of the 1st accused the learned High Court Judge having given an opportunity to show cause has forfeited the bond and sentenced the petitioner to 3 ½ years R.I. thus it is crystal clear that the said impugned order of the learned High Court Judge is patently erroneous and should be set aside forthwith.

Counsel for the Petitioner informs Court that the Petitioner surety had already served the sentence of 1 year and 4 months as such having considered the Petition Affidavit and documents and the oral submissions we set aside the order dated 07.01.2016 forthwith and amend same to read as six months R.I. and direct the learned High Court Judge to release the Petitioner surety forthwith.

The Registrar is directed to communicate this order to the High Court Judge through fax and telephone at the expense of the petitioner surety and we allow the revision application without costs.

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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