

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

In the matter of an Application for
relisting.

C A (PHC) APN / 138 / 2016

High Court of Kegalle

Case No. H C 1468 / 2000

Illandarage Wasantha Detawala,
Karadupana,
Kegalle.

1ST ACCUSED PETIONER

And two others.

-Vs-

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

COMPLAINANT - RESPONDENT

Before: K K Wickremasinghe J

P. Padman Surasena J

Counsel : R A F Arasacularathna PC for the Accused Petitioner.

Varunika Hettige DSG for the Attorney General.

Decided on : 2017 - 09 - 28

ORDER

P Padman Surasena J

This Court has already decided this case and pronounced its judgment on 2017-06-14.

However a motion was filed thereafter on behalf of the Accused Petitioner to support an application for relisting on the basis that he was not heard as there had been no appearance for him on the date this Court had decided this case.

It is to be observed that the instant case is a revision application filed to invoke the jurisdiction vested in this Court by virtue of Article 138 of the Constitution read with provisions in chapter XXIX of the Code of Criminal procedure Act No. 15 of 1979. Section 366, a section in that chapter governs the rights of audience of parties in a revision application. It has provided that a party has no right to be heard either personally or by pleader before the Court of Appeal when exercising its powers of revision. Thus, it is not open for the Petitioner to claim an entitlement of such a right. In any case, the cause as to why the Accused Petitioner did not make submissions before this Court is not attributable to this Court.

This Court in the judgment it pronounced on 2017-06-14 has considered the merits of this application and therefore, it is not open for this Court to re-consider its own judgment.

The judgment of the Supreme Court in Jinadasa and another V Sam Silva and others¹ submitted by the learned President's Counsel for the Accused Petitioner does not support his application. In any case, that was not an instance where the Court had considered the merits before the order of

¹ 1994 (1) Sri. L R 232.

dismissal. It is an appeal from an order of the Court of Appeal re-listing an application it had dismissed when the said application was not supported on the date appointed for it. Despite this, the Supreme Court for the reasons set out in that judgment had held in that case that the Court of Appeal was in error in setting aside the order of dismissal and ordering reinstatement of the said case in its list.

In these circumstances, we decide to refuse the application for relisting. The judgment dated 2017-06-14 pronounced by this Court must remain valid.

JUDGE OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL