

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, read with section
364 of the Code of Criminal Procedure
Act No. 15 of 1979.

C A (PHC) APN / 74 / 2016

High Court of Kandy

Case No. H C 72 / 15

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

COMPLAINANT PETIONER

-Vs-

Ranjith Weera Wickrema Charles

Jayasinghe,

149,

"Ajantha Niwasa"

Hedeniya,

Werallgama.

ACCUSED RESPONDENT

Before: K K Wickremasinghe J

P. Padman Surasena J

Counsel : Shanaka Wijesinghe DSG for the Complainant Petitioner.

Ranil Samarasuriya for the Accused Respondent.

Argued on: 2017-07-25.

Decided on : 2017 - 10 - 09

JUDGMENT**P Padman Surasena J**

The Accused Respondent in this case was indicted by the Hon. Attorney General in the High Court of Kandy on two counts. Both counts have alleged that he, on or about 2014-03-13, at Bogambara, had committed grave sexual abuse of a boy below the age of 16 years, an offence punishable under section 365 B (2) (b) of the Penal Code as amended by Acts No. 22 of 1995, No. 29 of 1998 and No. 16 of 2006.

The Accused Petitioner, upon the charge in the indictment being read over and explained to him, had pleaded guilty to both the charges. Learned High Court Judge had accordingly convicted the Accused Respondent on both counts and had passed sentence on him.

Hon. Attorney General being aggrieved by the said sentence has filed this revision application seeking a revision of the sentence from this Court.

Learned counsel for the Accused Respondent raised several preliminary objections against the maintainability of this application in this Court. One of the said objections is that the Complainant Petitioner has failed to

submit with the petition, a certified copy of the relevant proceedings before the High Court. As the learned DSG has conceded that he has not filed such certified copy, this Court is of the view that it can dispose this matter only by addressing that issue. It would be in order to commence examining this issue with the re-production of Rule 3 (1) (a)¹ which states as follows:

"... Every application made to the Court of Appeal for the exercise of the powers vested in the Court of Appeal by Articles 140 or 141 of the Constitution shall be by way of petition, together with an affidavit in support of the averments therein, and shall be accompanied by the originals of documents material to such application (or duly certified copies thereof) in the form of exhibits. Where a petitioner is unable to tender any such document, he shall state the reason for such inability and seek the leave of the Court to furnish such documents later. Where a petitioner fails to comply with the provisions of this rule the Court may, ex mere mortu or at the instance of any party, dismiss such application.

(b) Every application by way of revision or restitutio in intergrum under Article 138 of the constitution shall be made in like manner together with

¹ Court of Appeal (Appellate Procedure) Rules 1990.

copies of the relevant proceedings (including pleadings and documents produced), in the Court of First Instance, tribunal or other institution to which such application relates."

....."

It is to be observed that the Complainant Petitioner is praying that this Court should set aside the sentence imposed on the Accused Respondent by the learned High Court Judge and substitute therefore an adequate sentence according to law and the circumstances of this case.

In order to clearly ascertain the nature of the complaint made to this court by the Complainant Petitioner, this Court must be provided with a duly certified copy of the proceedings material to the application. What has been submitted by the Complainant Petitioner before this Court remains to be a set of papers without any authoritative signature or certification. The signature of an unidentified person in the stamp containing words

" TRUE COPY

Attorney at Law for Petitioner "

does not establish that the said set of papers is a duly certified copy. It is not possible to ascertain as to who has signed or on what authority or basis the said signatory could have stated that it is a true copy. The question that cries out for an answer, would be "what is meant by 'True Copy'?" However, this Court cannot see the existence of any acceptable answer to the above question.

According to Rule 3 (1) (a) cited above, it is a duly certified copy of the proceedings material to the application and not a 'true copy' that the Petitioner is required to submit with his application. It is not the Attorney at Law for the Petitioner² who has the authority to duly certify an extract taken from a case record.

This rule underlines the importance of the presence of an authoritative and responsible signatory certifying such copies taking the responsibility for the authenticity of such documents. Insisting on tendering to Court, such duly certified copies of relevant proceedings is not without any valid and logical reasons. Courts make orders relying on such documents. They may sometimes have serious effects on people. The persons who may be so

² Who is generally expected to make out a case for himself relying on the document he says is a 'true copy'.

affected might sometimes be not limited to parties of the case only. Drastic repercussions may ensue in case the Court makes such orders on some set of papers, authenticity of which would subsequently become questionable. That is one of the reasons as to why tendering of duly certified copies of the relevant documents to Court has been made mandatory by the Rules.

It is to be noted that the Court is empowered to exercise in a revision application³, any of the powers it could exercise in an appeal. Unlike in a revision application, the original case record is before the appellate Court, when it exercises its appellate jurisdiction. Therefore, no such problem would crop up when Courts exercise its appellate jurisdiction⁴.

The Complainant Petitioner has requested this Court to impose a custodial jail sentence (instead of the suspended sentence) on the Accused Respondent. Therefore, it stands to reason that this Court should see for itself at least a duly certified copy of the proceedings before it could reverse an order made by a Court of Law which in this case is High Court. However, no such document has been submitted by the Petitioner for the perusal of this Court.

³ Section 365 of the Code of Criminal Procedure Act No. 15 of 1979.

⁴ As opposed to revisionary jurisdiction.

Thus, this Court has no alternative but to conclude that there is no material before this Court to consider the application filed by the Complainant Petitioner.

Rule 3 (13)⁵ states that it shall be the duty of the petitioner to take such steps as may be necessary to prosecute his application with due diligence.

Although Rule 3 (1) (a)⁶ provides that Where a petitioner is unable to tender any such document, he shall state the reason for such inability and seek the leave of the Court to furnish such documents later, the Complainant Petitioner has not been interested in that too. Instead, the Petition shows that the Complainant Petitioner has identified what he has produced as **P 2** to be a certified copy.⁷ This is erroneous on the learned DSG's own admission.

Rule 3 (1) (a)⁸ further provides that where a petitioner fails to comply with the provisions of this rule the Court may, ex mere mortu or at the instance of any party, dismiss such application.

⁵ Court of Appeal (Appellate Procedure) Rules 1990.

⁶ Court of Appeal (Appellate Procedure) Rules 1990.

⁷ Paragraph 3 of the Petition.

⁸ Court of Appeal (Appellate Procedure) Rules 1990.

In the case of Shanmugawadivu Vs Kulathilake⁹ the Supreme court has held as follows "..... the new Rules permit an applicant to file documents later, if he has stated his inability in filing the relevant documents along with his application, and had taken steps to seek the leave of the Court to furnish such documents. In such circumstances, the only kind of discretion that could be exercised by Court is to see whether and how much time could be permitted for the filing of papers in due course.

The Complainant Petitioner had made no such statement in his petition. Therefore, this Court has to conclude that he was not interested in making duly certified copies of relevant proceedings available for the perusal of this Court. Thus, in the absence of the relevant documents, this Court is unable to exercise its revisionary powers in respect of the order sought to be revised.

As has been decided in the case of Brown & Co. Ltd. and another Vs. Ratnayake, Arbitrator and others¹⁰ (which is a case where the dismissal by the Court of Appeal of an application for a Writ on the basis of a failure on

⁹ 2003 (1) S L R 216.

¹⁰ 1994 (3) SLR 91.

the part of the petitioner in that case to annex to the petition, certified copies of relevant proceedings with regard to the particular dispute), the Complainant Petitioner in the instant case too is not entitled to proceed to the next step without compliance with a valid invocation of jurisdiction in the first place.¹¹

In these circumstances, the only option for this Court is to decide to refuse this application. This application should therefore stand dismissed.

We make no order for costs.

Application is dismissed.

JUDGE OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL

¹¹ (Ibid) at page 100.