

**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 the  
provisions in chapter XXIX of the Code  
of Criminal Procedure Act No. 15 of  
1979.

C A (PHC) APN / 163 / 2017

Provincial High Court of

Western Province (Colombo)

Case No. H C 3649 / 2007

1. Liyanawaduge Tharaka Sandaruwan,

2. Saundra Hannedige Shiromi,

Both of

No 406/2,

10, Mile Post Road,

Werahera,  
Boralasgamuwa.

**1<sup>ST</sup> AND 2<sup>ND</sup> ACCUSED -**

**PETITIONERS**

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

**COMPLAINANT - RESPONDENT**

**Before: P. Padman Surasena J (P/CA)**

**K K Wickremasinghe J**

Counsel: Anil Silva PC with Upul Dissanayeka for the 1<sup>st</sup> and 2<sup>nd</sup> Accused  
Petitioners.

Warunika Hettige DSG for the Complainant - Respondent -  
Respondent.

Supported on : 2017 - 11 - 14

Decided on : 2018 - 01 - 18

### JUDGMENT

## **P Padman Surasena J (P/CA)**

The 1<sup>st</sup> and 2<sup>nd</sup> Accused Petitioners (hereinafter referred to as Petitioners) are the 1<sup>st</sup> and 2<sup>nd</sup> Accused in the High Court of Colombo case. They have filed this revision application seeking the intervention of this Court to set aside the order of the learned High Court Judge dated 2017-07-26. This order has been made pursuant to an application made on behalf of the Petitioners, to recall two witnesses namely the witness Srimathie Wijerathne and witness Ridma Tharangani for cross-examination for a second time.

It is on the basis that these two witnesses had given contradictory evidence in another case subsequent to the conclusion of their evidence in the instant case, that the learned counsel for the Petitioners had supported that application.

According to the submissions of the learned counsel as well as the material in the brief, it is in the year 2012<sup>1</sup> that the learned counsel who appeared for the Petitioners in the High Court, had initially made this application.

Hon. W Irangani Perera, the then presiding High Court Judge had made an order on 2017-07-31 with regard to this application. It has been held in

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<sup>1</sup> Vide proceedings of 2012-06-27 produced marked **P (1) b** at page 395 of the brief.

that order that the Court would grant an opportunity for the Petitioners to satisfy Court whether it should allow that application. The basis for the said order appears to be the fact that the Petitioners had failed to submit relevant material for the consideration of the Court. The perusal of the said order dated 2013-07-31 clearly shows that the Court had not decided on the said application on that date but had merely afforded another opportunity for the Petitioners to adduce before Court the relevant material to enable the Court to decide on the application made by them.

The same High Court Judge<sup>2</sup> in a subsequent order made on 2014-01-30 had erroneously stated that she had granted permission for the Petitioners to recall the said witnesses for cross-examination by her order dated 2013-07-31. The said order dated 2014-01-30 has been produced marked **P (1) d.** However perusal of her previous order dated 2013-07-31 clearly shows that no such permission has ever been granted to the Petitioners.

It could be seen that the Petitioners seek to challenge the order dated 2017-07-26 made by the incumbent High Court Judge.

This challenge is on the basis that the previous High Court Judge<sup>3</sup> had allowed the application by her order dated 2013-07-31.

For the reasons set out above, this Court is of the opinion that the said order dated 2013-07-31 is clearly an erroneous order. Therefore, that order should not have any force in law. Learned incumbent High Court judge is correct in holding that view.

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<sup>2</sup> Hon. W Irangani Perera.

<sup>3</sup> Hon. W Irangani Perera.

Perusal of indictment relevant to this case shows that the date, the alleged offence is said to have been committed is 2004-05-28. Upon consideration of the material adduced on behalf of the Petitioners, this Court is unable to find any justification as to why the application made on behalf of the Petitioners should have been allowed by the learned High Court Judge.

In these circumstances, this Court is of the view that it has no basis to interfere with the order dated 2017-07-26 pronounced by the learned High Court Judge. Thus, this Court decides to refuse to issue notices on the Respondents. This revision application must therefore stand dismissed.

This Court makes no order for costs.

Application is dismissed.

**PRESIDENT OF THE COURT OF APPEAL**

**K K Wickremasinghe J**

I agree,

**JUDGE OF THE COURT OF APPEAL**