

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.

The Democratic Socialist Republic of Sri Lanka

Complainant

C.A. Revision Application No:
CA (PHC) APN 173/2017

H.C. Anuradhapura Case No:
HC 437/2005

Vs.

1. Edirisinghe Arachchilage
Sarathchandra Edirisinghe
2. Halalla Arachchige Don Ashoka
Hallala

Accused

AND BETWEEN

Gayani Jayasundara Edirisinghe,
65/2, 2nd Lane, Jayanthipura Road,
Kurunegala.

Petitioner

Vs.

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

Respondent

AND NOW BETWEEN

Edirisinghe Arachchilage
Sarathchandra Edirisinghe

(Presently in Anuradhapura Prison)
1st Accused-Petitioner

Vs.

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

Respondent-Respondent

BEFORE : K. K. Wickremasinghe, J.
Janak De Silva, J

COUNSEL : AAL Asela Serasinghe for the 1st Accused-
Petitioner
Nayomi Wickremasekara, SSC for the
Respondent-Respondent

INQUIRY ON : 03.09.2018

WRITTEN SUBMISSIONS : The 1st Accused-Petitioner – On 24.08.2018
The Respondent-Respondent –
On 09.10.2018

DECIDED ON : 12.10.2018

K. K. WICKREMASINGHE, J.

The petitioner filed this revision application seeking to set aside the bail order of the Learned High Court Judge of Anuradhapura dated 09.08.2017 in Case No. HC 437/2005.

Facts of the case:

The 1st Accused-Petitioner (hereinafter referred to as the 'petitioner') was indicted with another for 22 counts under Section 5 of the offences against the Public Property Act and Sections 388 and 467 of the Penal code. The Learned High Court Judge of Anuradhapura had convicted both the petitioner and the 2nd accused for their respective charges by order dated 30.03.2017.

Thereafter an application for bail pending appeal was made by wife of the petitioner under case No. Bail/27/2017. After considering the submissions, the Learned High Court Judge of Anuradhapura had dismissed the application by order dated 16.05.2017 since there were no exceptional circumstances to release the petitioner on bail.

On 01.08.2017 the Petitioner's wife had filed another bail application before the same High Court stating that the petitioner was suffering from diabetes. .

However the Learned High Court Judge by order dated 09.08.2017 had dismissed the application without issuing notices to the Respondents stating that the Learned Judge cannot revise his own order.

Being aggrieved by said dismissal, the petitioner has preferred a revision application to this court.

The Learned Counsel for the petitioner has contended that said order dated 09.08.2017 was illegal, unfair and unjust. Therefore the Learned Counsel averred

following grounds as exceptional circumstances to invoke the revisionary jurisdiction of this Court.

- a) The Learned High Court Judge had misdirected himself into treating the second bail application under 437/2005 as a revision application challenging the order dated 16.05.2017 of Bail pending application No. 27/2017,
- b) The Learned High Court Judge had prevented the petitioner from furnishing true facts concerning the petitioner's ill health to Court.

In the case of **Rasheed Ali V. Mohamed Ali (1981) 2 SLR 29** it was held that,

"The powers of revision conferred on the Court of Appeal are very wide and the Court has discretion to exercise them whether an appeal lies or not or whether an appeal had been taken or not. However this discretionary remedy can be invoked only where there are exceptional circumstances warranting the intervention of the court..."

The Learned SSC raised an objection that petitioner had not tendered the petition and the affidavit pertaining to the bail application No. Bail 27/17 which is material to this revision application therefore had not tendered all necessary documents according to Rule 3 (1) (a) and (b) of the Court of Appeal [Appellate Procedure] Rules of 1990. However upon perusal of the brief we find that those two documents have been attached.

The Learned Counsel for the petitioner contended that the Learned High Court Judge had prevented the petitioner from furnishing true facts concerning the petitioner's health to Court. However we observe that in the first bail application, the petitioner's wife had averred the medical condition of the petitioner that he was suffering from diabetes. The Learned Counsel for petitioner admitted that

petitioner had failed to tender any medical records pertaining to the illness before High Court.

In the case of **Ramu Thamotharampillai V. Attorney General (2004) 3 Sri. L.R 180**, it was held that,

“...but the illness must be a present illness and that continued incarceration would endanger life or cause permanent impairment of health. Moreover there must be evidence of the nature of the illness and its effect.”

In the case of **Attorney General V. Ediriweera (2006) BLR page 12** it was held that,

“...he must additionally show that the illness was not only a present one but that continued confinement would imperil life or cause permanent impairment of his physical condition...”

Taking a similar view, the Learned High Court Judge had refused said bail application since there was no imminent danger to petitioner's life.

It is trite law that there must be a full and truthful disclosure of facts when seeking for a discretionary remedy. Therefore it is the duty of the petitioner to place all the relevant documents before Court.

In the case of **Shanmugawadivu V. Kulathilake (2003) 1 SLR 216**, it was held that,

“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...”

We observe that the petitioner had not tendered medical reports with the petition of Bail Application No. 27/17 and had not sought permission to tender them later.

Accordingly we are of the view that the Learned High Court Judge had not prevented petitioner from tendering relevant medical records and the petitioner had ample opportunity to submit the said reports with first bail application. Therefore we think that the second bail application was filed to cover up the said failure.

The Learned Counsel for the petitioner argued that the Learned High Court Judge had misdirected himself in treating the second bail application as a revision application. We are of the view that the order dated 16.05.2017 might have been inevitably revised if the Learned High Court Judge allowed another bail application.

The Learned High Court Judge in the order dated 09.08.2017 has held as follows;

“ඒ අනුව මාගේ ඉහත කී නියෝගය සංශෝධනය කිරීමේ නීතිමය හැකියාවක් මා හට නැත. යම් හෙයකින් මාගේ ඉහත කී නියෝගය අභියෝගයට ලක් කිරීමට අදහස් කරන්නේ නම් එය සිදුකළ යුත්තේ අභියාචනාධිකරණය ඉදිරියේ මිස මෙම අධිකරණය ඉදිරියේ නොවේ.” (Order marked as “P10” in the petition dated 20.11.2017)

We observe that in the case of **Hettiarachchi V. Seneviratne, Deputy Bribery Commissioner and others (1994) 3 Sri L.R. 293**, it was held that,

“It is a well-established rule in general a Court cannot re-hear, review, alter or vary its own judgment once delivered. The rationale of that rule is that there must be finality to litigation...”

In the case of **Jeyaraj Fernandopulle V. Premachandra Silva and others [1996] 1 SLR 70**, it was held that,

“As a general rule, no Court has power to rehear, review, alter or vary any judgment or order made by it after it has been entered...”

Accordingly the Learned High Court Judge was correct in refusing to entertain another bail application on the identical grounds for the same petitioner. Further the Learned High Court Judge had directed prison authorities to treat the petitioner from any Government hospital if his illness could not be treated in the Prison hospital.

Considering above, we see no reason to revise the order of the Learned High Court Judge of Anuradhapura dated 09.08.2017.

Therefore the revision application is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

Janak De Silva, J

I agree,

JUDGE OF THE COURT OF APPEAL

Cases referred to:

1. Rasheed Ali V. Mohamed Ali (1981) 2 SLR 29
2. Ramu Thamotheerampillai V. Attorney General (2004) 3 Sri. L.R 180
3. Attorney General V. Ediriweera (2006) BLR page 12
4. Shanmugawadivu V. Kulathilake (2007) 1 SLR 216
5. Hettiarachchi V. Seneviratne, Deputy Bribery Commissioner and others (1994) 3 Sri L.R. 293
6. Jeyaraj Fernandopulle V. Premachandra Silva and others [1996] 1SLR 70