

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

**In the matter of an application for
under Article 138 of the
Constitution of the Republic of Sri
Lanka.**

The Attorney General of the Democratic
Socialist Republic of Sri Lanka.

Complainant

Hettiarachchige Kaushali Perera

**Court of Appeal
Case No. CA (PHC) APN 18/2017. Vs,**

Accused

And Now Between

Hettiarachchige Kaushali Perera

Petitioner

**High Court of Colombo
Case No. 615/2001.**

Vs,

The Attorney General of the Democratic
Socialist Republic of Sri Lanka

Respondent

**Before : S. Thurairaja PC, J &
A.L. Shiran Gooneratne J**

**Counsel : Tenny Fernando Attorney-at-Law for the Appellant.
N.T. Wickramasekera SSC for the Respondent.**

Written Submissions : Petitioner – not filed.

Respondent- 01st November 2018.

Argument on : 19th October 2018.

Judgment on : 14th November 2018.

ORDER

S. Thurairaja, PC. J

The Accused – petitioner, Hettiarachchige Susantha Kaushali Perera alias singi (Hereinafter sometimes referred to as the Petitioner) was indicted in the High Court of Colombo by the honourable Attorney General for possession of 13.7 grams of heroin (dicetyl morphine) which is punishable under Section 54 A (d) of the Poison, Opium and Dangerous Drugs Act. After the trial the Appellant was found guilty and sentenced to life imprisonment.

Initially she was remanded and granted bail. Indictment was served on the 2nd April 2002. Initially, she was appearing before the Court and subsequently absconded from the Court appearance. The Police Narcotic Bureau (PNB), according to the evidence made attempts to apprehend her but it was not successful because she had gone abroad. It appears that she had travelled to Sri Lanka on few occasions for her marriages and on the last occasion she was arrested at the airport. In the meantime the inquiry was held under Section 241 of the Code of Criminal Procedure Act and the trial held *in absentia*. Anyhow she was represented by her Attorney-at-Law. After a fully contested trial she was found guilty and sentenced to life imprisonment.

After she was apprehended at the airport she was produced before the High Court and an inquiry was held under Section 241(3) of the Code of Criminal Procedure Act. After the inquiry the Learned High Court Judge ordered by his order dated 25th January 2016 refusing to re-open the case. Petitioner had filed a revision application on the 27th February 2017 seeking to revise the order made under Case

No.1928/2004 dated 25th January 2016. Further she had sought an order to send this case for a re-trial.

The Senior State Counsel who is appearing for the Respondent takes up following preliminary objections.

- 1) The Accused is guilty of contumacious conduct and as such is not entitled to invoke revisionary jurisdiction of the Court of Appeal.
- 2) The delay of one year and one month in filing a revision.
- 3) No Exceptional circumstances averred in the petition.

It is observed by us in the caption the Counsel has cited Case No. HC Colombo: 615/2001. But in the prayer under 'b)' states as follows.

"Revise and set aside the order dated 25/01/2016 of the Learned High Court Judge of Colombo, in the HC Colombo Case No. 1928/2004."

It appears either the Counsel is confused with the Case in which he submitting the revision application or attempting to confuse the Court.

Considering the preliminary objections taken by the Counsel for the Respondent, the Accused is guilty of contumacious conduct and as such is not entitled to invoke revisionary jurisdiction of the Court of Appeal.

The Counsel submits that the revision is discretion and it cannot be claimed as a right. In this case the Petitioner was properly represented by an Attorney-at-Law of her choice. She was found guilty on the 19/03/2008 and sentenced to Life Imprisonment and there is no appeal or revision filed. When she was arrested in 2015 she moved to re-open the case. The order was made 25th January 2016. She filed a revision application on 27/02/2017. Considering the time since the original judgment, she had filed a revision application after 8 years 11 months and 8 days. Considering the Section 241(3) order, the order was delivered on the 25th January 2016. It has filed after 1 year 1 month and 2 days. We carefully perused the petition and affidavit of the Petitioner.

She had not submitted any reasonable reason for this long delay.

In **Sudarman De Silva vs. Attorney General 1986 (1) SLR 2009**, it was held that,

"contumacious conduct on the part of the applicant is a relevant consideration when the exercise of discretion in his favour is involved. Our Courts have proceeded on the principle that a person who by his contumacious conduct placed himself beyond the reach of the law treating the original Courts and their authority with contempt should not be allowed to invoke the revisionary jurisdiction of the appellate courts, particularly the Court of Appeal. "

In the **Case of Rajapakse vs. The State (2001) 2 SLR 161** it was held that,

"the Accused did not give any reasons for his absence from the Court and it was only then that the Trial Judge had proceeded to enforce the sentence imposed on him on 22.07.1998 to be operative from 2.9.1999. in terms of Section 241(3) the accused person if he appears before court and satisfies court that his absence at the trial was bona fide, the Court shall set aside the conviction/sentence/order and the trial then would be fixed de-novo. An application in revision should not be entertained save in exceptional circumstances. When considering this issue court must necessarily have regard to the contumacious conduct of the accused in violating the bail conditions and thereafter his conduct in a manner to circumvent and subvert the process of the law and judicial instructions. In addition, the party should come before court without unreasonable delay."

In the **Case of CA PHC APN 52/2013**, it was held that,

"there is a delay of 11 months in filing the revision application. The inordinate and unexplained delay in seeking relief itself disentitles the Petitioner to it. Application Dismissed."

In the case of **Seylan Bank vs. Thangaveli (2004) 2 SLR 101 at 105**, it was held that,

"in this application in revision the petitioner seeks to set aside the orders dated 7.3.2002 and 10.01.2002 made by the Learned District Judge. The petitioner has filed this application on 17.7.2003. it appears that there is a delay of one year and four months in respect of the order dated 7.3.2002 and a delay of seven months from the order dated 10.01.2003. The petitioner has not explained the delay. Unexplained and unreasonable delay in seeking relief by way of revision, which is a discretionary remedy, is a factor which will disentitle the petitioner to it. An application for judicial review should be made promptly unless there are good reasons for the delay. The failure on the part of the petitioner to explain the delay satisfactorily is by itself fatal to the application."

Camillus Ignatious vs. OIC Uhana Police Station (Rev) CA 907/89, M.C. Ampara 2587. It was held

"that a mere delay of 4 months in filing a revision application was fatal to the prosecution of the Revision application"

In the case of **Opatha Mudiyansele Nimal Perera vs AG [CA (Rev) 532/97-Kandy HC 1239/92]**,

"these matters must be considered in limine before the court decides to hear petitioner on the merit of his application before he could pass the gateway to relief his aforesaid contumacious conduct and his unreasonable and undue delay in filing application must be considered and determination made upon these matters before he is heard on the merit of the application."

In the case of **Attorney General vs. Kunchihambu [46 NLR 401]** it was held that,

"the sentence was passed in February, 1945 and this application was made on May 25, 1945 and now it is the end of July. In view of the delay that has occurred I do not think I ought to exercise the discretion vested in me by Section 357(1) of the Criminal Procedure Code."

Revisionary Jurisdiction is a discretionary remedy vest with the Court, if anyone invoking the said jurisdiction should come with clean hands and give reasons why he is doing so. Time and again this Court had held that, discretionary jurisdiction is jealously guarded and used only in deserving cases. Considering the facts of this case especially conduct of the petitioner, we do not see that the Petitioner is entitled to invoke the revisionary jurisdiction. Therefore we uphold the objections taken by the Senior State Counsel.

In the case of **Attorney General v Gunawardena (1996) 2 SLR 149** it was held that, the

"Revision, like an appeal, is directed towards the correction of errors. But it is supervisory in nature and its object is the due administration of justice and not, primarily or solely, the relieving of grievances of a party."

In the case of **Caderamanpulle vs. Ceylon paper sacks Ltd (2001) 3 SLR 112**, It was held that,

"the existence of exceptional circumstances is a precondition for the exercise of the powers of the revision"

In the case of **Dharmaratne and another vs. Palm paradise Cabanas Ltd and others (2003) 3 SLR 25**, it was held that by Amaratunga J,

"thus the existence of exceptional circumstances is the process of by which the Court selects the case in respect of which this extra ordinary method of rectification should be adopted."

In case of **Soysa vs Silva and others (2000) 2 SLR 235**, it was held that,

"the power given to Superior Court by way of revision wide enough to give it the right to revise any order made by an original Court its object is the due administration of justice and the correction of errors sometimes committed by the Court itself in order to avoid miscarriage of justice."

In **Mariam Beebee vs. Seyad Mohamed (1965) 68 NLR 36**, it was held that,

"the power of revision is an extraordinary power which is quite independent of and distinct from the appellate jurisdiction of this Court. Its object is the due administration of justice and the correction of errors, sometimes committed by this Court itself, in order to avoid miscarriage of justice. It is exercised in some cases by a judge of his own motion when an aggrieved person who may not be a party to the action brings to his notice the fact that that unless the power is exercised injustice will result."

In **Bank of Ceylon vs. Kaleel and others (2004) 1 SLR 284**, it was held that,

"to exercise revisionary jurisdiction the order challenged must have occasioned a failure of justice and be manifestly erroneous which is beyond an error or defect or irregularity that an ordinary person would instantly react to it... the order complained of is of such a nature which would have shocked the conscience of the Court."

It is well established requirement that the Petitioner should aware about exceptional circumstances, in her petition. If not, that alone will be sufficient to reject, an application for revision. Considering the circumstances of this case, that the Petitioner had not averred exceptional circumstances adequately. Therefore the revision application fails.

Eventhough, the preliminary objections taken by the Senior State Counsel were accepted. We perused the trial proceedings and the judgment; we find that there was a proper trial held against the Petitioner. Considering the quantity of Heroin, in the

light of the relevant law, Petitioner was given the minimum punishment. Therefore we do not find any reason to interfere with the conviction and the sentence.

Preliminary objections are upheld and the Petition is rejected. No order for costs.

Petition Refused.

JUDGE OF THE COURT OF APPEAL

A.L. Shiran Gooneratne, J

I agree,

JUDGE OF THE COURT OF APPEAL