

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

*In the matter of an
application for revision in
terms of Article 138 of the
Constitution of the
Democratic Socialist
Republic of Sri Lanka.*

OIC – SCIB
Mirihana

Complainant

W.M. Sudharshana
Sandakalum
Madampe, Walawkade
Atakalampanna

Accused

**Court of Appeal
Revision No
CPA/16/2021
High Court
Homagama
Appeal 28/
2019**

**Magistrate's
Court
Kaduwela
75123/18**

Vs.

AND NOW

W.M. Sudharshana
Sandakalum
Madampe, Walawkade
Atakalampanna

Accused-Appellant

Vs.

OIC – SCIB
Mirihana

Hon. Attorney General
Attorney General's
Department
Colombo 12

Complainant-
Respondent

AND NOW
BETWEEN

W.M. Sudharshana
Sandakalum
Madampe, Walawkade
Atakalampanna

Accused-Appellant-
Petitioner

Vs.

1. OIC –SCIB
Mirihana

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

Complainant
Respondent
Respondent

BEFORE : Menaka Wijesundera J.

Neil Iddawala J.

Counsel :

N. A. Chandana Sri
Nissanka with Mahesh
Dharmarathnam for the
Accused Appellant –
Petitioner.

Supported on : 24.02.2021

Decided on : 03.03.2021

Iddawala - J:

The Counsel for the accused-appellant petitioner (hereinafter referred to as the petitioner) supported this instant application to invoke the revisionary jurisdiction of this Court conferred under Article 138 of the Constitution seeking to set aside an order of the High Court of Homagama dated 29.10.2020 and set aside the Orders of Magistrate Court of Kaduwela dated 02.05.2019 and 06.06.2019.

A case (Case No 75123) against the petitioner was filed in the Magistrate's Courts of Kaduwela on the following charges.

1. Cheating by personation under Section 402 of the Penal Code

2. Cheating under Section 400 of the Penal Code,
3. Criminal misappropriation under section 386 of the Penal Code
4. For committing an offence punishable under Section 396 of the Penal Code

The Magistrate of Kaduwela, by the Order dated 02.05.2019 had convicted the petitioner on the 1st and the 2nd charges and he was not found guilty for the 3rd and 4th charges. The petitioner was ordered to pay a compensation of Rupees 100,000 to the Prosecution Witness by the same Order.

The petitioner appealed to the High Court of Homagama to set aside the Orders of the Magistrate Court and by the Order dated 19.10.2020 the learned High Court Judge of Homagama has dismissed the appeal.

On the above context petitioner has filed this application to invoke the revisionary powers of this Court.

It is well settled law that the exercise of the revisionary powers is confined to cases in which exceptional circumstances exist warranting the intervention of Court. And also, it is well established principle that a party who has an alternative remedy can invoke revisionary jurisdiction of Court of Appeal only upon establishment of exceptional circumstances. In order to maintain a revision application exceptional circumstances should be precisely averred in the petition.

In **Ameen v Rasheed** (1936) 38 NLR 288 @ p 289 **Abrahams C.J.** has explained the rationale for insisting on the existence of exceptional circumstances for the exercise of revisionary jurisdiction. According to Abrahams C.J.

“It has been represented to us on the part of the petitioner that even if we find the order to be appealable, we still have a discretion to act in revision. It has been said in this Court often enough that revision of an appealable order is an exceptional proceedings and in the petition no reason is given why this method of rectification has been sought rather than the ordinary method of appeal”.

It has been held in **Rustom v. Hapangama** [1978-1979] 2 SLR 225 p that

“..... the revision is available whether an appeal is taken or not but the power is available only on exceptional circumstances. The powers by way of revision conferred on the Appellate Court are very wide and can be exercised whether an appeal has been taken against an order of the original Court or not. However, such powers would be exercised only in exceptional circumstances where an appeal lay and as to what such exceptional circumstances are is dependent on the facts of each case”.

In **Dharmarathne and Another vs. Palm Paradise Cabanas Ltd.**

2003 (3) SLR 24, **Gamini Amaratunga J.** stated that

” the practice of Court to insist on the existence of exceptional circumstances for the exercise of revisionary powers has taken deep root in our law and has got hardened into a rule which should not be lightly disturbed”.

In **K.W. Ranjith Samarasinghe vs K.W. Wilbert** C.A (PHC) 127/99 and PHC Galle No. 59198, whereby the appellant made an appeal to the Court of Appeal from the H.C. Galle against the order under Section 66 of the Primary Court Procedure Act, **Sisira de Abrew J** held

”It is a well-established principle that a party who has an alternative remedy can invoke revisionary jurisdiction of a Superior Court only upon establishment of exceptional circumstances. As I observed that the respondent who sought the revisionary jurisdiction of Court of Appeal has an alternative remedy in this case. petitioner aggrieved by the judgment of the learned High Court Judge in the exercise of his revisionary jurisdiction against the order made by the learned Magistrate has not appealed against the said order, but he has filed the present application in revision. I have gone through the petitioner's petition and note that the Petitioner has not established any exceptional circumstances in his petition. In order to maintain a revision application an exceptional circumstance should be averred in the petition”.

On examination of the present application of the petitioner, either in the Petition or in the Affidavit does not aver a specific request as to the existence of exceptional circumstances and as to why he preferred a revision. Even at the time of supporting this instant application Counsel for the petitioner conceded the fact that certain material facts are not disclosed in the petition filed in courts to maintain as to why he preferred this revision application. The existence of exceptional circumstances by itself would not be sufficient there should be express pleadings to that effect in the Petition whenever an application is made invoking the revisionary jurisdiction of this Court. The revisionary power of this Court is a discretionary power and its application cannot be claimed as of right.

In Perera vs. Silva, (1908) 4 ACR 79, Hutchinson C.J. has stated that

“.....if such selection process is not available, then revisionary jurisdiction of the Court will become a gateway for every litigant to make a second appeal in the garb of a revision application to make the appeal in situations where the legislature has not given the right of appeal”.

Having referred to the authorities above and to the facts and circumstances of this case, it is the considered view of this Court that the petitioner had failed to aver exceptional circumstances in which he had to file this revision application without using other avenues available, in his petition, in order to invoke the revisionary jurisdiction of this Court.

Hence, this is not a fit and proper case to invoke the discretionary revisionary powers of this Court. Taking into consideration all of the above, I see no reason to issue notice of this application on the Respondents. This application is accordingly dismissed, without costs.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I Agree.

JUDGE OF THE COURT OF APPEAL