

IN THE COURSE OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI
LANKA

In the matter of an application in
Revision under and in terms of Article
138 and 154P of the Constitution.

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

Court of Appeal Revision Application No:
CA / PHC / APN / 50 / 21

Complainant

High Court Colombo Case No: **HC 6256 /**
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Assallage Sujith Rupasinghe
No. 30/6, Nadun Uytana,
Katukurundugasyaya,
Mirigama

Accused

AND NOW BETWEEN

Mrs. P.M Ranasinghe,
21 B,
Alfred place,
Colombo 3.

Aggrieved Party – Petitioner

Vs.

Assallage Sujith Rupasinghe

No. 30/6 Nadun Uyana,

Katukurudugasyaya,

Mirigama.

Accused – Respondent

The Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Complainant – Respondent

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: W. Dharmasiri for the

Petitioner.

Argued On: 01 /04/2021

Decided On: 28/04/2021

MENAKA WIJESUNDERA J.

The instant application for revision has been filed to revise the order dated 2.2.21 of the learned High Court Judge of Colombo.

In the above order the learned High Court Judge has averred that his predecessor in his order dated 16.11.16 has not allowed the application from the defense to call prosecution witnesses 2,4,5 who has already concluded their evidence at the High Court trial, and the said order had been affirmed by this court and the Supreme Court.

But the basis for the order dated 2.2.21 had been disallowing the application of the aggrieved party for objecting to the defense witness nu 3 being called who was never a prosecution witness. The learned High Court Judge had averred that even the state-counsel appearing for the prosecution had not objected for witness number 3 of the defense being called.

When a party files a revision application the party filling the same has to satisfy this court that there are exceptional circumstances which shock the conscious of this court. In the case of Dharmaratne and others vs. Palm Paradise Cabanas Ltd and others Sri Lanka Law Reports 2003 3 SLR24 it has been held that “Existence of exceptional circumstances is the process by which the court selects the cases in which the extraordinary method of rectification should be adopted. If such selection process is not there revisionary jurisdiction of this court will become a gateway of every litigant to make a second appeal in the garb of a revisionary application...”

Therefore in the instant application the petitioner had stated that the learned High Court Judge had not considered the orders of this court and the Supreme Court in making the impugned order but the learned High Court Judge had very clearly stated that the basis for his order is the application by the aggrieved party not to allow witness number 3 being called by the defence and the orders of the Supreme Court and the Court of Appeal is not regarding the said witness but regarding witnesses 2,4,5, who have already given evidence at the prosecution trial, which this court sees as being factually and legally correct.

Therefore it is the considered view of this court that there is no exceptional illegality in the order of the learned High Court Judge which shocks the conscious of this court.

Therefore this court dismisses the instant application without issuing notices to the respondents.

Judge of the Court of Appeal.

Neil Iddawala J.

I agree.

Judge of the Court of Appeal.