

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

In the matter of a Revision Application under an in terms of Article 138 (1) of the Constitution of Democratic Socialist Republic of Sri Lanka.

Democratic Socialist Republic of Sri Lanka.

**Complainant**

Court of appeal revision application case No:

**CA / CPA / 125 / 2021**

High Court Kuliyaipitiya Case No: **HC 15 / 2014**

Hettipola Magistrate's Case No: **98785**

Vs.

1. Rathnayake Mudiyanseelage  
Susantha Sanjeewa  
(absconding – under 241 proceedings)

2. Wedalage Gedara Anura.

3. Ganitha Wedalage Hemantha Kumara.

4. Gunavathiege Priyantha

Gunarathne alias Sebasthage Priyantha Gnanarathne

(Absconding – under 241 proceedings)

5. Rathnayake Mudiyanseelage Asoka Sampath Rathanyake.

6. Sarath Prema kumara Yatawara.

7. Wickramasinghe  
Arachchilage Priyantha  
Wickramasinghe. (Deceased)

8. Rathnayake Arachchilage  
Amila Priyankara.

**Accused**

**AND NOW BETWEEN**

Rathnayake Arachchilage Amila  
Priyankara  
No 363/9, Mulleagama road,  
Habarakada, Homagama

**8<sup>th</sup> Accused-Petitioner**

**Vs**

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

**Complainant-Respondent**

Before – Menaka Wijesundera J.  
Neil Iddawala J.

Counsel – Moditha T.B. Ekanayake for the 8<sup>th</sup> Accused-Petitioner  
Erandi Dassanaik SC on the instruction of Riyaz Barry  
SC for the State.

Supported on – 02.02.2022

Decided on – 02.03.2022

**MENAKA WIJESUNDERA J.**

The instant application has been filed to revise the order dated 16.1.2020 of the learned High Court Judge of Kuliyaipitiya.

The accused petitioner (hereinafter referred to as the petitioner) was indicted in the High Court of Kuliyaipitiya along with seven others for robbery and unlawful assembly.

The Counsel appearing for the petitioner had made an application to recall witness nu 3, 4, and 5 under section 48 of the Judicature Act. The learned High Court Judge hearing the submissions of both parties had refused the application.

Being aggrieved by the said order the instant application has been filed.

It is the contention of the Counsel for the Petitioner that prior to him making the application before the incumbent High Court Judge he had made it before the High Court Judge who had presided before on 14.12 2017 and the order had not been pronounced., and trial had proceeded but when the said High Court Judge had gone on transfer the instant application has been made in the year 2020, that is after 2 years.

The respondents objected and stated that the Counsel appearing for the Petitioner had waited for two years after making the initial application without obtaining an order and now he is making the application in order to delay the conclusion of the trial. The Counsel further averred that the petitioner had always been represented by a

counsel and cross examination had taken place and the Counsel appearing now had come late to the case.

If one may go through section 48 of the Judicature Act pertaining to this matter it says that the accused can *“demand that the witnesses be resumoned and reheard.”*

*But in the section above it says that the judge may resummon witnesses “if he thinks fit”. Therefore it clearly gives the judge the discretion to see whether justice demands that the witnesses should be resummoned.*

*At this juncture this Court notes that the prime duty of the judiciary is to safe guard the rights of the people as enshrined by the Constitution chapter xv therefore the legislature cannot impose a fetter on the discretion of Court , as such section 48 of the judicature act gives a discretion to the judge to decide whether recalling of witnesses are needed.*

*In the instant matter the petitioner had been represented by a counsel right through out and the Counsel appearing for the petitioner had come late to the case but nevertheless he had made an application as way back as in 2017 but he had failed to obtain an order, and thus had waited for two long years to make another application. He claims that the judge had given him an undertaking but the said undertaking is not recorded anywhere in the brief.*

*As such this Court sees no exceptional reason which shocks the conscious of this Court to invoke the revisionary powers of this Court.*

*As such the instant application for revision is hereby dismissed.*

**Judge of the Court of Appeal.**

**I agree.**

**Neil Iddawala J.**

**Judge of the Court of Appeal.**