

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

*In the matter of an appeal in term of the
High court of the Provinces Act No 19 of
1990 read with the Constitution and the
Criminal Procedure Code and the law.*

Police OIC, Thalangama Police

Complainant

Vs.

Court of Appeal Application
No: **CA/PHC/201/15**

High Court of Colombo
No: **HCRA 229/15**

Magistrate's Court of
Kaduwela
No: **56681**

Wanniarachchilage Desmon Marks
Wanigasekera of Polgasowita.

(Now in Mahara Prison / No. K22226)

Accused

And thereafter in the High Court,
Colombo.

W. D. Marks Wanigasekera of
Polgasowita

Accused - Petitioner

Vs.

1. Hon. Attorney General, Colombo 12.
2. Police OIC, Thalangama Police.
3. Commissioner General of Prison,
Prison Head Quarters, Colombo 9.

Respondents

Now in the Court of Appeal

W. D. Marks Wanigasekera 193,
Bandaranayakepura, Maththegoda,
Polgasowita

(Now in Mahara Prison / No. K22226)

Accused - Petitioner - Appellant

Vs.

1. Hon. Attorney General, Colombo 12.
2. Police OIC, Thalangama Police.
3. Commissioner General of Prison,
Prison Head Quarters, Colombo 9.

Respondent - Respondents

BEFORE : Menaka Wijesundera J
Neil Iddawala J

COUNSEL : Nayantha Wijesundera for the Petitioner
Priyani Abeygunawardena SC for the
Respondents.

Argued on : 22.02.2022

Decided on : 29.03.2022

Iddawala – J

The petitioner has filed four applications in appeal namely PHC 194/15, PHC 197/15, PHC 201/15 and PHC 202/15 impugning four different orders delivered by the High Court of Colombo. Petitioner has agreed to be bound by a single judgment for all four applications.

All four impugned orders were delivered on 18.11.2015 by the High Court of Colombo wherein the learned High Court Judge dismissed the revision applications filed by the petitioner without issuing notices to the respondent. Three out of the four dismissals were occasioned by undue delay of 9 years and the fourth dismissal was due to a delay of 5 years. The four revisions thus filed pertains to the sentencing orders delivered by the Magistrate Court of Gangodawila and Kaduwela on different dates:

1. Magistrate Court of Gangodawila Case No 65158: sentenced on 01.08.2007 (PHC 194/2015)
2. Magistrate Court of Gangodawila Case No 65559, sentenced on 10.06.2010 (PHC 225/2015)
3. Magistrate Court of Gangodawila Case No 65557, sentence 31.10.2007 (PHC 202/2015)
4. Magistrate Court of Kaduwela Case No 56681, sentenced on 12.07.2007 (PHC 201/2015)

In each of the impugned orders, the learned High Court Judge states that sentences in different cases cannot be combined and that law requires that sentences in different cases should run separately.

The facts of each of the four applications are similar. The petitioner has pleaded guilty for charges under Section 443 and Section 369 of the Penal Code. The petitioner is a 62-year-old who has been sentenced for a string of house breaking at night and theft. He has been incarcerated since 2006

and will continue to serve his sentence till 2041. The counsel for the petitioner submitted that considering the totality of the circumstances the operation of the four impugned sentences be suspended. The counsel for the petitioner did not present any mitigatory facts other than the age of the petitioner and the prospect of continued incarceration for the next two decades. The counsel for the respondent submitted that the petitioner is a habitual offender. It was the respondent's contention that the Court of Appeal sitting in appellate jurisdiction is not a court of mercy and that in the absence of valid legal reasoning; all four applications filed by the petitioner should be dismissed.

The general principle regarding sentences is that the sentence takes effect from the time it is pronounced. However, Section 300 of the Code of Criminal Procedure Act, No. 15 of 1979 (*hereinafter the CPC*) is an exception to this general principle. Section 300 of the CPC states that when a person undergoing imprisonment is sentenced to imprisonment such imprisonment shall commence at the expiration of the imprisonment to which he has been previously sentenced. Section 300 of the CPC was discussed in length in **Weerawarnakula v The Republic of Sri Lanka (2002) 3 SLR 213**. The relevant portions of the judgment are reproduced below:

"It [section 300] applies to a situation where a person actually undergoing imprisonment is in some other case again sentenced to imprisonment. According to the section the latter imprisonment shall commence to operate at the expiration of the imprisonment to which he has been previously sentenced. This is an exception to the general rule that a sentence begins to operate from the time it is pronounced. Section 300 is couched in imperative terms and in view of the wording of the section no court has the power or discretion to order that a sentence of imprisonment ordered by it shall run concurrently with a sentence of imprisonment ordered in a previous case which the accused is serving when he is sentenced in the 2nd case.

In Godagama v Mathea (1908) 4 ACR VII Wood Renton, J. stressing the imperative nature of section 321 of the Criminal Procedure Code of 1898 (which was identical with present section 300 of the Code of Criminal Procedure Act) said that "it is not competent for a Magistrate to order that a sentence passed on an offender who is already sentenced for another offence shall run concurrently with the previous sentence." (@ page 217)

It is clear from the facts of the instant applications that the petitioner has landed himself in very unfortunate circumstances. Due to the operation of Section 300 of the CPC, the combined effect of all the convictions and sentencing of the petitioner is that he will be incarcerated till 2041. The main legal issue to be dealt with by this Court pertains to whether or not the Court of Appeal sitting in revision, is empowered to grant any relief to the petitioner based on the circumstances he has placed himself in. In **Weerawarnakula v The Republic of Sri Lanka** (supra) the Court of Appeal thought it a fit case to exercise its powers under Section 336 of the CPC to substitute lesser sentences in place of the sentences imposed by the learned High Court Judge in several independent cases, where heavy emphasis was laid on the peculiar circumstances of that case. It was an instance where three separate indictments were forwarded against the accused-appellant where the subject matter of all three indictments was a single transaction which continued over two years (emphasis added) where Section 165 (2) of the CPC was in operation. The Court of Appeal held:

"The accused-appellant was sentenced in May 2000, nearly fifteen years after the 1st offence. If not for the provisions of section 165 (2) the accused-appellant could have been charged in one case for all offences committed by him in one transaction and in the event of a conviction the accused-appellant would have been entitled to concurrent sentences under section 16 of the Criminal Procedure Code. At the time of the investigation the accused-appellant had been in remand from April 1987 to September 1988, nearly 18 months.

In 1987 the accused-appellant was 47 years old and presently he is well over 60. The maximum periods of imprisonment prescribed under sections 392 and 467 are 10 and 7 years, respectively.... In the result the total period of imprisonment in respect of case Nos. 997/93 and 998/93 is reduced from 13 years to 6 years rigorous imprisonment. In view of this the appeal against sentence is partly allowed.” (Pages 221- 222)

However, the facts emanating from the instant applications are vastly different. Petitioner is a habitual offender. He has close to 29 convictions. There is no discretion available to this Court to provide relief based on the combined effect of a multiplicity of convictions. Especially given that the offences were not committed in the course of a single transaction and that the convictions and sentences were given by different Courts on different occasions.

Appeals dismissed.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL