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

In the matte of an Application for Revision under and in terms of section 11 (1) of the High Court of the Provinces (Special Provisions) act No. 19 of 1990 read with section 20 (2) of the Bail Act No. 30 of 1997 and Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No:
CPA / 32/ 2021

High Court Colombo Case No:
HC 6474 /2013

Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Complainant

Vs.

Saruwa Liyanage Sunil,

Polosmiriya,

Maraba,

Akuressa.

(Presently at Welikada Prison)

Accused

AND NOW

Saruwa Liyanage Sunil,

Polosmiriya,

Maraba,

Akuressa

(Presently at Welikada Prison)

Accused – Petitioner

Vs.

Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Complainant Respondent

AND NOW BETWEEN

Saruwa Liyanage Sunil,

Polosmiriya,

Maraba

Akurassa

(Presently at Welikada Prison)

Accused – Petitioner – Petitioner

Vs.

Hon. Attorney General,

Attorney General's Department,

Colombo12.

Complainant – Respondent – Respondent

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Sarath Jayamanne, PC with Darshana Kuruppu, Vineshka Mendis and Prashan Wickramaratne for the petitioner.

M. Tennakoon, DSG for the state.

Argued on: 08.03.2022

Decided on: 05.04.2022

MENAKA WIJESUNDERA J.

The instant application for revision has been filed to set aside the order dated 06/01/2021 of the High Court of Colombo. At the very outset, the complainant-respondent (hereinafter referred to as the respondent) took up the preliminary objection that the petitioner has not explained as to why the right of appeal has not been exercised, and secondly the petitioner has not stated as to how he was aggrieved by the exceptional grounds which is necessary to support a revision application.

This application stems from a bail pending appeal filled by the petitioner in the High Court. The High Court Judge has refused the same. Instead of filing an appeal, the petitioner had invoked the revisionary jurisdiction of this court. Upon perusal of the petition, the petitioner has failed to explain as to why his right of appeal has not been exercised.

Article 138(1) of the Constitution sets out the appellate and the revisionary jurisdiction of the Court of Appeal which reads as;

"The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be (committed by the high Court, in the exercise of its appellate or original jurisdiction or by any Court of First Instance), tribunal, or other institution and sole and exclusive cognizance, by way of appeal, revision and prosecutions, matters and things. (of which such High Court , Court of First Instance tribunal or other institution may have taken cognizance:

Provided that no judgment, decree or order of any court shall be reversed or varied on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice.

It has been held in the case of ***Martin v Wijewardana 1989 2SLR 409*** that the above mentioned Article is an enabling provision which created and granted jurisdiction to the Court of Appeal to hear appeals from the High Court, Courts of First Instance, Tribunals and other institutions.

The Counsel for the petitioner stated that, as there was an illegality in the order of the High Court which violated the provisions of the Evidence Ordinance creates an exceptional situation which shocks the conscious of this Court.

If one may go through the decided cases it has been decided that where there was a right of appeal and when it has not been exercised and not explained also revisionary jurisdiction has been invoked.

It has been held that the object of revisionary jurisdiction is to ensure due administration of justice and the correction of errors in regard either to the

law or the facts in order to avoid a miscarriage of justice, this was said in ***Meeriyam Beebee v Seyed Mohammad 68 NLR 36***.

It has also been said that relief by way of revision may be granted even in a case where there is no right of appeal and also in the absence of a separate revision application, decided in the case of ***Ranasighe v Henry 1 NLR 303.*** It has also been held "where an appeal preferred by a party in the exercise of a right of appeal is pending, revisionary powers can be exercised if it appears that the result of the appeal would be rendered nugatory, if relief by revision is not granted." Said in the case of ***Athukorala v Samynadan 41 NLR 165***. It has also being held in the case of ***Abdul Kadar v Suthy Nisar 52 NLR 536*** that "relief by way of revision may be granted, even where an appeal has been rejected on technical grounds". Same has been held in the case of ***Appuhamy v Weerathunga 23 NLR 467***. It has also been held that, in the case of ***Soomawathie v Madawala 1983 2SLR 15*** that, "even where the law says that a judgment of a court is final and conclusive, a court may interfere with such judgment by way of revision".

It has been held very clearly in the case of ***Ameen v Rasheed 6 CLW 8*** by Abraham CJ that, "revision of an appealable order is an exceptional proceeding, a person seeking this method of rectification must show why this extraordinary method is sought rather than the ordinary method of appeal".

Therefore, it is very obvious from the above that when there is a right of appeal, if a party has not exercised the same and has filed a revision application must explain as to why he has not done so. Amarathunga J in the case of ***Dharmarathne and Another v Palm Paradise Cabanas ltd and others 2003 SLR 24*** had very clearly said that existence of exceptional

circumstances is the process by which the courts selects the cases in respect of which the extraordinary method of rectification should be adopted. If such selection process is not there, revisionary procedure will become a gateway of every litigant to make a second appeal in the garb of revision application or to make an appeal in situations where the legislature has not given a right of appeal.

But in the instant matter, the counsel for the petitioner urged that there is a serious question of law which this court has to address. Therefore, even if he has not exercised his right of appeal he could come by way of revision in view of the illegality in the impugned order.

Therefore, although the petitioner has failed to exercise his right of appeal and has not explained as to why he has not, in view of the so called illegality quoted by the petitioner, this court overrules the preliminary objection taken up by the respondents.

Therefore, the instant application is fixed for due process of court.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.