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

In the matter of a Revisionary Application under Article 138 of the Constitution.

Loki Appukuttige Thilak Kuma,

251/2, Paramulla, Veyangoda,

Suspect

Vs.

Officer in Charge

Police Station

Veyangoda

Plaintiff

And Between

Loki Appukuttige Thilak Kuma

251/2, Paramulla, Veyangoda.

Accused

Vs.

Plaintiff

And Now Between

Lukuappukutige Prabath Prasanna Kumara,

No.245, Paramulla, Veyangoda

Court of Appeal Case No: **CA / PHC / APN / 108 /2019**

High Court of Gampaha Case No: **HC 53/2013**

Magistrate's Court of Attanagalla Case No: **B 2318/ 10**

Substituted Petitioner

Vs.

Loki Appukuttige Thilak Kumara,

251/2, Paramulla,Veyangoda

Convited 1st Respondent

Officer in Charge

Police Station

Veyangoda

Plaintiff 2nd Respondant

Hon. Attorney General,

Attorney General's Department,

Colombo 12.

3rd Respondent

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Shiral D. Wanniarachchi for the petitioner.

Kanishka Rajakaruna, SC for the state.

Argued on: 15.03.2022

Decided on: 06.04.2022

MENAKA WIJESUNDERA J.

The instant matter has been filed to set aside the order dated 15.12.2017 of the High Court of Gampaha. In the instant matter, the first respondent had been indicted in the High Court under Section 365 of the Penal Code. The first responded pleaded guilty and the trial had commenced. Upon the conclusion of the trial, the first respondent had been convicted for the charge in the indictment and he had been sentenced to ten years RI with a fine and compensation. Being agreed by the said sentence the instant application for revision has been filed in 2019.

It is a well-founded principle of law that if a person has a right of appeal and if that is not exercised the failure to do so has to be explained. It has been held in the case of **Ameen vs. rasheed 3CLW 8**, Abrahams CJ observed that, "It has been represented to us on the part the petitioner that even if we find the order to be appealable, we still have discretion to act in revision. It has been said in this court often enough that revision of an appealable order is an exceptional proceeding and in the petition no reason is given why this method of rectification has been sought rather than the ordinary method of appeal. I can see no reason why the petitioner should expect us to exercise our revisionary powers in his favor when he might have appealed and I would allow the preliminary objection and dismiss the application with costs."

In the case of **Rustom v Hapangama (1978 SLR Vol.2 PAGE No.225)** His lordship justice Ismail stated thus, "The trend of authority clearly indicates that where the revisionary powers of the Court of Appeal are invoked the practice has been that these powers will be exercised if there is an alternative remedy available only if the existence of special

circumstances are urged necessitating the indulgence of this court to exercise these powers in revision. If the existence of special circumstances does not exist then this court will not exercise its powers in revision."

In **Rasheed Ali vs. Mohamed Ali (1936 6 CLW)** Soza J. remarked thus: "The powers of revision conferred on the Court of Appeal are very wide and the Court has the discretion to exercise them whether an appeal lies or not or whether an appeal had been taken or not. However, this discretionary remedy can be invoked only where there are exceptional circumstances warranting the intervention of the court."

Therefore, in this matter the first respondent has failed to explain as to why he has not exercised his statutory right but he has had the audacity to state in the prayer to the petition that he wishes this Court to reduce his sentence of ten years to seven years. The first respondent undoubtedly can support his prayer and may be substantiate his claim with law and facts but he cannot usurp the discretion of court and dictate to court as to what sentence should be imposed. Therefore, we hold this prayer to the petition with much disapproval and displeasure.

Furthermore, the impugned conviction has been entered in 2017 and the instant application has been filed in 2019. Therefore, there is a delay of two years. It is a well-founded principle that, if a party files a revision application it has to be filed without delay. The delay has been held to be fatal. The delay has also not been explained. Delay has been considered to be a fatal error if it has not been explained to the satisfaction of the Court, this has been so held by this bench in the case of **CA/PHC/APN**

78/2021. The same has been held in the case of **Ilangakoon v OIC Eppawala Police Station 2007 1SLR Page 398.**

Furthermore the 1st respondent has failed adduce any exceptional illegality in the sentence or conviction entered by the learned High Court Judge.

Therefore, in view of the delay being not explained, and the failure to explain as to why the right of appeal has not been exercised, and the failure to state any exceptional circumstance which shocks the conscious of Court, this Court sees no reason to allow the instant application for revision. As such the instant application is dismissed.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.