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

In the matter of an appeal against the Judgement of the Panadura High Court rejecting the revision application made under the Criminal Procedure Act in terms of the provisions of the Constitution of the Democratic Socialist republic of Sri Lanka and the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990

Officer-in-Charge,
Police Station,
Panadura.

Complainant

Vs.

Court of Appeal Application No : **CA/ PHC/123/16**

High Court of Panadura No: **HCRA/01/2016**

Magistrate's Court of Horana No: **23420**

1. Kalubalage Dona Laitha Srimathi,
   St. Peter's Colony,
   Ingiriya.
2. Haputhanthrige Dayaratne,
   Arunagama,
   Poruwadanda.
3. Thanthrige Ariyadasa Ruberu,
   No. 90, Padukka Road,
   Ingiriya.

Accused

And now between

Ingiriya Multi-Purpose Co-operative Society Ltd.,
Ingiriya.

Petitioner

Vs.

1. Kalubalage Dona Laitha Srimathi,
   St. Peter's Colony,
   Ingiriya.

2. Haputhanthrige Dayaratne,
   Arunagama,
   Poruwadanda.

3. Thanthrige Ariyadasa Ruberu,
   No. 90, Padukka Road,
   Ingiriya.

Accused-Respondent

4. Officer-in-Charge,
   Special Criminal Investigation Unit,
   Panadura

Complainant-Respondent

And now

Ingiriya Multi-Purpose Co-operative Society Ltd.,
Ingiriya.

Petitioner-Appellant

Vs

1. Kalubalage Dona Laitha Srimathi,
   St. Peter's Colony,
   Ingiriya.

2. Haputhanthrige Dayaratne,
   Arunagama,
   Poruwadanda.

3. Thanthrige Ariyadasa Ruberu,
No. 90, Padukka Road,
Ingiriya.

Accused-Respondents-Respondents

4. Officer-in-Charge,
Special Criminal Investigation Unit,
Panadura

Complainant-Respondent-Respondent

BEFORE	:	Menaka Wijesundera J Neil Iddawala J
COUNSEL	:	Shyamal A. Collure with A. P. Jayaweera and P. S. Amarasinghe for the Petitioner Jeffry Zainudeen for the 1st to 3rd Respondents.
Argued on	:	24.03.2022
Written Submissions on	:	22.01.2020 (Petitioner) 25.02.2020 (1-3 Respondents)
Decided on	:	17.05.2022

Iddawala – J

This is an appeal filed on 03.11.2016 by a corporate body named Ingiriya Multi-purpose Co-operative Society (*hereinafter the petitioner*) impugning the order of the High Court of Panadura in Case No HCRA/01/2016 dated 19.10.2016. The impugned order upheld a preliminary objection raised by the respondents,

thereby dismissing the revision application filed by the petitioner before High Court.

The instant appeal centers around a case filed by the Special Criminal Investigation Unit of Panadura in Case No 23420, involving the petitioner's employees in the delivery of a consignment of flour and allegations of criminal breach of trust, cheating, forgery and offence under Public Property Act. In the said case, the Magistrate Court delivered its order dated 18.02.20013, thereby acquitting the accused. Aggrieved by the said acquittal, the petitioner filed a revision application to the High Court on 26.07.2013. the respondent raised several preliminary objections as to the application's maintainability during the support stage, and the High Court decided to deal with the said objections prior to issuing notices to the respondents. The learned High Court judge delivering the impugned order dismissed the application of the petitioner without issuing notices to the respondent. Impugning the said order dated 19.10.2016, the petitioner filed the instant appeal before this Court on 03.11.2016.

At the outset, it is to be highlighted that this appeal pivots on the issue of whether the learned High Court Judge, having dismissed the application of the petitioner without inferring on the merits of the case, has erred in law. And if so, whether that error amounts to succeed this instant appeal

The impugned order refers to **D. S. Jayawardana & another v V. L. Karunaratne & others** (PHC) 38/2012 CA Minute dated 07.03.2014 and **Marimuththu v Sivapakkiyam** 1986 1 CALR 264 to hold the following at Page 44 of the Brief (Page 3 of the order):

"*it is evident from the above Judicial Authorities that the petitioner should explain why he did not prefer an appeal. In the instant revision application, nothing is mentioned why the petitioner did not file an appeal. Hence, the instant revision application could not be maintained"*

When considering the **D. S. Jayawardana** judgment (*supra*), the application involved an instance where the petition suffered an incurable defect (the petition was patently defective as it did not comply with Rule 3 of the Supreme Court, that there was no proper *jurat*) which was based as a ground for dismissal before the High Court. Against such dismissal the petitioner came before the Court of Appeal, and the Court of Appeal upheld the dismissal. Therefore, the application of **D. S. Jayawardana** (*supra*) depends on its facts. His Lordship Justice Salam delivering the judgment held the following: "*I am not inclined to accept this position of the respondent as the dismissal of the revision application by the learned High Court Judge in the first instance due to the defect in the affidavit referred to above, was no obstacle in the way of the petitioners to have filed a subsequent revision application, if they were so interested, to challenge the impugned order/determination of the learned Magistrate. Therefore, even if the learned High Court Judge has not given an opportunity to the petitioners to cure the defect in the affidavit, yet they were not prejudiced by the refusal to issue notice on the revision application as they could have very well filed, a subsequent application. In any event, the petitioners have failed to aver in the revision application filed in this Court, as to why they did not prefer an appeal against the judgment of the learned High Court Judge. Further, they have not pleaded any exceptional circumstances acceptable to this Court against the impugned judgment of the learned High Court Judge to invoke the extraordinary revisionary jurisdiction of this Court.*" Hence, **D. S. Jayawardana** (*supra*) involved a case where there was a patent violation of Supreme Court Rules which formed the basis for the revision application to be dismissed *in limine.* The reference to petitioner's failure to aver reasons for not filing an appeal is only an ancillary matter. **D. S. Jayawardana** (*supra*) deemed that no prejudice was caused for the petitioner by the High Court's judge's determination that the defect was incurable thus concluding that there is no exceptionality warranting the invocation of the revisionary jurisdiction. While **D. S. Jayawardana** (*supra*) refers to the right of appeal in the context of maintainability of a revision application, it cannot be used as an

authority for the contention that failure to exercise right of appeal, disentitles a petitioner from invoking the revisionary jurisdiction.

While the impugned order has referred **Marimuththu** (*supra*), it was delivered in 1986 and a series of authorities have emerged since then to support the contention that the revisionary jurisdiction can be invoked even when an alternate remedy exists and that the integral determinant for an application in revision is the existence of exceptional circumstances. In **Dharmaratne and another v Palm Paradise Cabanas Ltd** (2003) 3 SLR 24 "*the existence of exceptional circumstances is the process by which the court select s the cases of which the extraordinary method of rectification should be adopted. If such a 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 Revision application or to make an appeal in situations where the legislature has not given a right of appeal…*" As held by the Supreme Court in **Union Culling Knit Garments (PVT) LTD and Others v Habib Bank Ltd** (2004) 3 SLR 128, "*revision no doubt is an extra ordinary remedy and has to be exercised only in exceptional circumstances. What such exceptional circumstances are, would have to be decided by the appellate court in exercising its powers of revision, on the facts and circumstances of each case*". It has been held by successive judgments that a petitioner who has failed to exhaust alternate remedies is not barred from relying on the said jurisdiction unless such petitioner fails to establish exceptional circumstances. **Rustom v Hapangama** (CA) (1978 -79) 2 SLR 225 held that "*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 v Mohammed Ali and Others** (1981) 1 SLR 262 it was held "*the powers of revision vested in the Court of Appeal are very wide and the Court can in a fit case exercise that*

power whether or not an appeal lies. Where the law does not give a right of appeal and makes the order final, the Court of Appeal may nevertheless exercise its powers of revision, but it should do so only in exceptional circumstances. Ordinarily the Court will, not interfere by way of review, particularly when the law has expressly given an aggrieved party an alternate remedy such as the right to file a separate action except when non-interference will cause a denial of justice or irremediable harm". In **Thilagaratnam v Edirisinghe** (1982) 1 SLR 56 it was held that though the appellate court's powers to act in revision were wide and would be exercised whether an appeal has been taken against the order of the original court or not, such powers would be exercised only in exceptional circumstances.

Therefore, it is clear that the integral component for an application under the revisionary jurisdiction is the existence of exceptional circumstances. Exhaustion of alternate remedies or rendering an explanation to the failure of resorting to such alternate remedy, is not a necessary precondition for the invocation of the revisionary jurisdiction in each and every case. It would certainly not be a defect amounting to the dismissal of an application *in limine* at the support stage.

In any event, the petitioner has averred reasons as to why an appeal has not been lodged prior to the invocation of the revisionary jurisdiction. Petitioner has submitted that they were not a party to the Magistrate Court case which initiated proceedings concerned. It is the contention of the petitioner that as such, Section 320(1) of the Code of Criminal Procedure Act, No.15 of 1979 (*hereinafter the CPC*) envisaging the right of appeal is limited to 'party to any criminal charge' and that as the petitioner was not a party to the Magistrate Court proceedings, he could not exercise the statutory right of appeal. In recognition of the said submission, the following is observed by the impugned order: "in tendering written submission on behalf of the petitioner, it is stated that an appeal cannot be filed by a private party because it gets delayed in obtaining sanction of the Attorney

General. It is further stated that there is no prohibition to file a revision application in an occasion where an appeal could be preferred. It is correct there is no such prohibition. However, there are limitations on filing revision application when the right of appeal is there" (Page 44 of the Brief – page 3 of the order). The impugned order refers to the application of Section 318 of the CPC in the instant matter to hold the following at Page 47 of the Brief:

"Section 318 is amply clear. The section says that an appeal could not be filed against an acquittal by a Magistrate Court, except at the instance or with the written sanction of the Attorney General. In other words, an acquittal by a Magistrate could not be challenged without the sanction of the Attorney General. Hence, it is apparent when the Attorney General did not grant sanction to appeal against the Judgment of the instant action, the petitioner cannot come to this court by way of revision and ask to set aside the judgment of acquittal without the sanction of the Attorney General. Therefore, this revision application could not be proceeded" (*emphasis added*)

On the said point, there are instances where revision applications against acquittals by Magistrates were entertained even in the absence of sanction of the Attorney General. **Nandanakumarage Sunil Karunarathne v Padmakumara Wickramasinghe & Others** CA/PHC/52/13 CA Minute dated 29.05.2017 delivered by His Lordship Justice L. T. B. Dehideniya involved a case where an aggrieved party impugned an acquittal of the Magistrate. In the said case, the petitioner's contention was that he made an application through the legal aid to the Hon. Attorney General to appeal against the order, but the AG replied only after 10 months indicating that the AG is not appealing against and informing the Appellant to consider a revision. In the said judgment, Section 320 of the CPC is considered, and the following is observed: "*After 28 days, even the AG is debarred from filing an appeal. Therefore, there is no reason for the appellant to wait for 10 months to get a reply. He is ought to know that the appealable time has lapsed. Everybody is presumed know the law and the ignorance of law is not*

an excuse. Once the appealable period is over, the appellant should have considered a revision, without waiting for the AG to give a direction to consider a revision. The delay cannot be considered as reasonable. Revision being a discretionary remedy, the one who is seeking the assistance of Court must act promptly and one who is sleeping over his grievances cannot seek the assistance of Court by way of revision to remedy the injustice complained of Inordinate delay is fatal to a revision application." (at page 4)

Hence, it is clear that the invocation of the revisionary jurisdiction by an aggrieved party against an order of acquittal by a Magistrate is independent to the existence of sanction of the Attorney General. This is in line with the judgment in **Mariam Beebee v Seyed Mohamed** (1965) 68 NLR 36 where it was held that "*the power of revision is an extraordinary power which is quite independent of and distinct from the appellate jurisdiction of this court. Its object is the due administration of justice and the correction of errors, sometimes committed by this court itself, in order to avoid a miscarriage of justice and the correction of errors, sometimes committed by this Court itself, in order to avoid miscarriage of justice. It is exercised in some cases by a Judge of his own motion, when an aggrieved person who may not be a party to the action brings to his notice that fact that, unless the power is exercised, injustice will result."* The law does not envisage a duty on an aggrieved party to request sanction of the Attorney General although he may well do so if he pleases. The contention of the learned High Court Judge in the impugned order that *"In other words, an acquittal by a Magistrate could not be challenged without the sanction of the Attorney General"* necessarily ousts the revisionary jurisdiction vested with the Court of Appeal under the Constitution and cannot be accepted. As expounded earlier, the primary requirement for the invocation of the revisionary jurisdiction is the existence of exceptional circumstances. Recently, Her Ladyship Justice Murudu N.B. Fernando P.C. held in **SC Appeal 210/2015** SC minute dated 18.12.2020 *that ……. the revisionary jurisdiction of a court can be exercised only when there are exceptional grounds that shocks the conscience of court or which merits the*

intervention of the appellate court. ..... Hence, the underlying requirement in a revisionary jurisdiction is exceptional grounds and circumstances.

The impugned order at Page 46 of the Brief (page 5 of the order) the learned High Court Judge makes the following determination: *"in the petition filed by the petitioner, not only the special circumstances have not been pleaded, but also no special circumstances is mentioned in the petitioner. therefore, on that ground alone, this revision application has to be dismissed"*

Page 45 of the Appeal brief (Page 4 of the order) *"in the instant application, it is apparent that no special circumstances have been pleaded. In perusing the evidence of the case and the finding of the learned Magistrate, it is apparent that there is no such miscarriage of justice occurred"*

The petition filed before the High Court avers exceptional circumstances vide Paragraph 28 as follows:

28. (අ) ගරු මහේස්ත්‍රාත්තුමාගේ එම තීන්දුව නීතියට පටහැනිය.

(ආ) ගරු මහේස්ත්‍රාත්තුමා නෛතික ප්‍රතිපාදන විශේෂයෙන් සාක්ෂි ආඥා පනතේ 47 වන වගන්තිය සැලකිල්ලට ගෙන නොමැත.

(ඇ) එම තීන්දුව සාක්ෂිවලට පටහැනිය.

(ඈ) පරපස්පර විරෝධතාවයන්ගෙන් තොරව හරස් ප්‍රශ්නවලදී බිඳ වැටී නැති චූදිතයින් පවා ස්ථාවරයක් නොගත් කරුණු ගැන ගරු උගත් මහේස්ත්‍රාත්තුමා සැලකිල්ලට ගෙන නැත.

(ඉ) සාපරාධී විශ්වාසය කඩකිරීමේ වරද සිදුකිරීමේ දී සිදුකර ඇත්තේ මුදල් ගෙවීමේදී සිදු වූ අඩුවක් නොව පිටි මිටි 125 ක් 1 වන චූදිත වගඋත්තරකාරියට නොලැබුණ බවට කූය ලෙස ලියවිලි සකස් කර මෙම පිටිමිටි 125 හේ මුදල වංචා කිරීමටය. මේ මුදල් පෙත්සම්කාර සමිතියට ගෙවූ බවට ඔවුන් කිසිම සටහනක් යොදා නැත. චූදිත වගඋත්තරකරුවන්ට එම පිටි ලැබුනේ නැති බවට ස්ථාවරයක් ගන්නා ලද බැවින් එයින් මුදල් ගෙවූ බවට කිසිම ලේඛනයක් නොමැත.

නමුත් පැමිණිලිකාර පක්ෂයේ සාක්ෂිකාර සාමාන්‍යාධිකාරී කේ.ඒ. විජේසිංහ හා අභ්‍යන්තර විගණක ස්වර්ණලතා පීරිස් මෙම පිටි සඳහා සමිතියට මුදල් ගෙවා නැති බවට පැහැදිලි වාචික සාක්ෂි මෙම ප්‍රධාන නිලධාරීන් විසින් ඉදිරිපත් කර ඇත.

මෙම මුදල් ගෙවූ බවට හෝ ඔවුන්ගේ සාක්ෂි අසත්‍ය බවට හෝ චූදිත වගඋත්තරකරුවන් විසින් හරස් ප්‍රශ්න අසා නැත. මෙම පිටිමිටි 125 හ 1 වන චූදිත වගඋත්තරකාරිය විසින් ලබාගෙන නැති බව කී නිසාද මුදල් ගෙවන විට හැර නොගෙවන විට ලේඛනවල සටහන් නොවන නිසාද මෙම පිටිවල මුදල් සමිතියට නොගුවූ බවට ලියවිල්ලක් ඉදිරිපත් කිරීමට නුපුළුවන් බව ගෞරවයෙන් ප්‍රකාශ කර සිටී.

(ඊ) පෙත්සම්කාර සමිතිය වැනි පොදු ජනතාවගේ ආයතනයකට මෙවනි වංචාවන් සිදු කර අහිංසක සේවකයින් චෝදනාවලට හසු කර දීමට ප්‍රයත්න දරන මෙම චූදිතයින් වැනි අපරාධකරුවන්ට නිසි දඬුවම් දිය යුතු බව ගෞරවයෙන් සැලකර සිටී.

(එ) මෙම නඩුවේ ඉහතින් දක්වන ලද නෛතික ප්‍රතිපාදන සැලකිල්ලට නොගැනීම, නෛතික තත්ත්වයන් කෙරෙහි අවධානය යොමු නොකිරීම හරියාකාරව සාක්ෂි තුලනය නොකිරීම හා සාක්ෂි කෙරෙහි අවධානය යොමු නොකිරීම ආදී මෙම ප්‍රතිශෝධන ඉල්ලීම කිරීමට සුවිශේෂී වූ කරුණු තිබෙන බව ගෞරවයෙන් සැලකර සිටී.

Therefore, the contention within the impugned order that no exceptional circumstances have been averred is erroneous. When the matter is at the support stage, the court is not required to assess in depth, whether the purported exceptional circumstances do in fact amount to an exceptionality of a nature that warrants the invocation of the revisionary jurisdiction, unless they are apparently baseless, unfounded or unsubstantiated. That matter must be decided on the merits of the case. In the instant matter, the petitioner has not patently omitted to aver exceptional circumstances. Paragraph 28 sets out the exceptional circumstances averred by the petitioner in the petition. Nevertheless, the impugned order states that there are exceptional circumstances are not apparent. However, the learned High Court Judge does not refer to the averments of Paragraph 28 of the petition, nor a determination has been made or reasons given whether they are in fact exceptional circumstances warranting the invocation of the revisionary jurisdiction or mere substantial questions of law outside the revisionary ambit (*see* **Elangakoon v Officer in Charge, Police**

Station, Eppawala (2007) 1 SLR 398). The impugned order merely says that exceptional circumstances are not apparent.

Based on the above exposition, it is clear that the impugned order has erred on several issues in holding that the petitioner's failure to file an appeal/ give reason disentitles him from maintaining the application, an acquittal by a Magistrate cannot be challenged - even in way of revision, without the sanction of the Attorney General and that the petitioner has failed to aver exceptional circumstances in the petition.

Therefore, this Court sets aside the order dated 19.10.2016

It is the considered view of this Court that the case be sent back to the High Court to be considered on the merits of the case after issuing formal notices on respondents.

Accordingly, the appeal is allowed.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL