

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an Application for revision under and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Article 154 (P) 3 (b) and Section 11 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990.

Court of Appeal Revision Application

No: **CA (PHC) APN 09 / 22**

High Court of Colombo Bail Application

No: **HC BA 1158 /21**

Magistrate's Court of Colombo Case

No: **B 3200 / 4 / 2018**

Officer in Charge,

Public Complaints Unit,

Criminal Investigations Department,

Colombo 01.

Complainant

Vs.

Ali Asgar Shabbir Gulamhusein,

980/4, Wickramasinghe Place,

Ethul Kotte.

Suspect

AND BETWEEN

Ali Asgar Shabbir Gulamhusein,

980/4, Wickramasinghe Place,

Ethul Kotte.

Suspect – Petitioner

Vs.

1. Officer in Charge,
Public Complaints Unit,
Criminal Investigations Department,
Colombo 01.

Complainant – Respondent

2. Hon. Attorney General,
Attorney General's Department
Colombo 12.

Respondent

AND BETWEEN

Ali Asgar Shabbir Gulamhusein,
980/4, Wickramasinghe Place,
Ethul Kotte.

Suspect – Petitioner – Petitioner

Vs.

1. Officer in Charge,
Public Complaints Unit,
Criminal Investigations Department,
Colombo 01.

**Complainant – Respondent –
Respondent**

2. Hon. Attorney General,
Attorney General's Department
Colombo 12.

Respondent – Respondent

AND NOW BETWEEN

**In the matter of an application for
intervention**

Idris Shabbir Gulamhusein,
No. 11 /1 Havelock Road,
Colombo 05.

Intervient – Petitioner

Vs.

1. Ali Asgar Shabbir Gulamhusein,
980/4, Wickramasinghe Place,
Ethul Kotte.

**Suspect – Petitioner – Petitioner –
Respondent**

2. Officer in Charge,
Public Complaints Unit,
Criminal Investigations Department,
Colombo 01.

**Complainant – Respondent –
Respondent – Respondent**

2. Hon. Attorney General,
Attorney General's Department
Colombo 12.

**Respondents – Respondents –
Respondent**

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Dappula D. Livera PC with Ravindranath Dilsara and Dimithra Abeysekara

Instructed by Sanjay Edirisinghe for the Suspect – Petitioner – Petitioner.

Yohan Abeywickrama DSG for the state

Rianzie Arsecularatne PC with Chamindri Arsecularatne, Udara

Muhamdiramge for the Intervenant – Respondents

Argued on: 23.05.2022

Decided on: 16.06.2022

MENAKA WIJESUNDERA J.

The instant application has been filed to aside the order dated 10.01.2022 of High Court of Colombo.

The Suspect petitioner (hereinafter referred to as the petitioner) has been taken in to custody for the death of his own father on a complaint lodged by his own elder brother on 11.9.2021.

According to the material submitted by both parties the death of the deceased had taken place on 9.6,2017 in the office of the deceased. The deceased has had a business by the name of Adam Expo in which the deceased the petitioner and the complainant had been partners.

On 9.6.2017 the deceased had gone to his office in the morning and the petitioner had gone to see the father and thereafter around 12 noon the petitioner had informed the people outside that the his father had collapsed and he had been rushed to hospital by the two sons of the deceased, and the deceased had been in an unconscious state and he had been pronounced dead by the hospital authorities.

The Coroner had certified that the deceased death was due to natural causes and he had been cremated as per his religious believes.

But the intervenient petitioner suspected foul play with regard to the death of his father by the petitioner and had lodged a complaint with the Director Criminal Investigations Department on 26.9.2018.

The intervenient petitioner brings in to light of a probable motive for the petitioner to have killed his own father by submitting a forged board paper in which the signatures of the deceased, the complainant and the brother of the deceased is supposed to have been forged, in order to obtain a loan of Rs 20 million from a financial institute.

As the loan had needed to be restructured due to arrears of installments, the financial institute had contacted the deceased just prior to the death, witnessed by

his daughter in law, and the deceased on a subsequent date is supposed to have had a heated argument over the incident with the petitioner, again overheard by the same daughter in law.

Thereafter on the day of the incident the bank officials had been waiting to meet the deceased when the petitioner had gone to meet the deceased after which the collapsing in office had taken place.

As such facts were reported to the Magistrates Court and the body had been exhumed and a post mortem had been held by a panel of judicial medical officers.

The office assistant of the deceased had made a statement to the police stating that on the day of the incident the deceased had come to office as usual and the petitioner had come to see him and the above named Chaminda had been standing near the door not allowing anybody to go inside and later the petitioner had come out shouting that the deceased had collapsed and all had run inside to see the deceased fallen and Chaminda trying to recuperate him. The deceased had been bleeding from the mouth and the nose.

The same had been said by the private secretary to the deceased.

As such the Attorney General has submitted that the CID is currently investigating the complaint and the financial institutes are yet to produce the necessary documents and the CCTV footages of the office of the deceased are yet to be analyzed by the Government Analyst and certain telephone records are yet to be submitted to Court.

The Attorney General has further alleged that the report of the Coroner is questionable because it has been issued without the Coroner seeing the body.

The said Chaminda and his mother had been threatened over the phone and the said calls are being investigated.

Hence the Attorney General objected for bail being granted to the petitioner and averred that there is no illegality in the order of the learned High Court Judge.

The petitioner alleged that there is an inordinate delay in the proceedings against the petitioner and the petitioner had been falsely implicated by the complainant.

In the order of the High Court the learned High Court Judge he had considered the fact that since the investigations are yet to be concluded, granting bail to the petitioner might not do justice to all parties and he had referred to section 14(a) (ii) of the Bail Act nu 30 1997 which says as "interfere with the witnesses or the evidence against him or otherwise obstruct the course of justice".

Upon perusal of submissions of all parties it is quite clear that the complaint of the intervenient complaint is belated but the facts pertaining to the complaint needs to be investigated and the facts so far revealed upon the latest investigations are very clear that further investigation is very much needed. As such belatedness of the complaint can be gone in to at trial stage.

Therefore it is the opinion of this Court that upon the material so far revealed the instant matter is not yet fully investigated and the learned High Court Judge in concluding that in order for justice to be dispensed to all parties that granting of bail can hamper the investigations is not illegal nor shocks the conscious of this Court in order to invoke the revisionary powers of this Court.

It is a well-established principle of law that when a party files a revision application the party filling the same must that demonstrate that there are illegalities in the impugned order which shocks the conscious of this Court.

But in the instant matter we do not see such instances and as such the instant application to set aside the order of the learned High Court Judge is hereby dismissed.

Judge of the Court of Appeal.

Neil Iddawala J.

I agree.

Judge of the Court of Appeal.