

**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 Section
364 of the Code of Criminal Procedure Act
No. 15 of 1979.*

The Attorney General,
The Attorney General's Department,
Colombo - 12.

Complainant

Vs.

Court of Appeal Application
No:
CA/PHC/APN/CPA/83/19

Angoda Bandarage Palitha Kumarasiri,
No. 11/5, Sri Anandarama Road,
Kolonnawa, Wellampitiya.

High Court of Colombo
No: **HC 683/18**

Accused

Now between

The Attorney General
The Attorney General's Department
Colombo 12

Complainant-Petitioner

Vs.

Angoda Bandarage Palitha Kumarasiiri
No. 11/5, Sri Anandarama Road,
Kolonnawa, Wellampitiya.

Accused-Respondent

BEFORE : Menaka Wijesundera J
Neil Iddawala J

COUNSEL : Ridma Kuruwita SC for the Petitioner
Niranjan Jayasinghe for the Respondent.

Argued on : 19.05.2022

Decided on : 19.07.2022

Iddawala – J

This is a revision filed by the Attorney General against a sentencing order delivered by the High Court of Colombo dated 02.04.2019 on the basis that the sentence imposed on the respondent is manifestly erroneous.

The respondent was indicted under two Counts in the High Court of Colombo for having had in his possession and for trafficking of 0.805 grams of heroin and thereby committing an offence under Section 54 A (d) of the amended Poisons, Opium and Dangerous Drugs (Amendment) Act, No. 13 of 1984 (*hereinafter the Act*). In the event the quantity of heroin recovered does not exceed 1g, the Act stipulates a penalty of a fine not less than fifteen thousand rupees and not exceeding fifty thousand rupees and or imprisonment of either description for a period not less than three years and not exceeding seven years. The respondent pleaded guilty, and the High

Court convicted the respondent and proceeded to impose the following sentence on 02.04.2019:

1. Two years Rigorous Imprisonment suspended for fifteen years.
2. A Fine of Rs. 25,000/- with a term of three years Rigorous Imprisonment, in default of payment of the fine.

The main submission of the petitioner is that the order of the High Court is manifestly illegal as the sentence imposed on the respondent contravenes the minimum mandatory sentence stipulated under the Act.

The counsel for the respondent stipulated that the High Court has correctly discharged the petitioner on the charge of trafficking as the heroin found in his possession was a user quantity as opposed to a commercial quantity. It was further contended that the High Court has rightly extracted the principles enunciated on judicial discretion in sentencing in the Supreme Court cases **SC 3/2008** SC Minute dated 15.10.2008 reported in 2008 BLR in Part II – The Bar Association Law Journal (2008) Vol. XIV and **S. C. Appeal No. 89 A/2009** SC Minute dated 12.05.2011 and has rightly applied the same to the instant facts to impose an appropriate sentence despite the minimum mandatory sentence envisioned by the legislature.

This Court accepts judicial discretion ought to be used sparingly in the appropriate instance and that whenever such discretion is utilised, a judge must record reasons for such an intervention. In the impugned order, the learned High Court judge has carefully analysed the circumstances of the quantity of heroin, and the fact that the quantity did not amount to commercial use. Moreover, the High Court has observed that he accused ought to be given an

opportunity for rehabilitation and reintegration to society. This thinking is in line with certain legislative interventions which especially targeting drug dependent persons /addicted persons. (Drug Dependent Persons (Treatment and Rehabilitation) Act, No. 54 of 2007).

Therefore, this Court determines that the order of the High Court dated 02.04.2019 is a well-considered judgment, detailing a careful analysis of facts and due reasons for its determination. Hence, we see no reason to interfere with the judgment of the learned High Court Judge.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL