IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC

OF SRI LANKA

In the matter of an application for Revision 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.

CA Revision Application No:

(PHC) APN NO. 0116-2020

HC Chillaw Case No:

HC 12/2018

Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Complainant.

Vs.

1. Manori Prasangika Wickramaarachchi,

No.55, Little Rome, Madukatuwa,

Marawila.

Accused.

AND NOW

Manori Prasangika
Wickramaarachchi,

No.55, Little Rome, Madukatuwa,

Marawila.

Accused Petitioner

Vs.

Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Complainant Respondent.

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Anil Silva P.C with Isuru

Jayawardana for the petitioner.

Chathurangi Mahawaduge

SC for the Respondent.

Argued On: 15.09.2022

Decided On: 28.09.2022

MENAKA WIJESUDERA J.

The instant application has been filed to set aside the order of the learned High Court Judge of Chillaw on the refusal to allow the defense to send the document marked P1 by the prosecution for examination by the Examiner of Questioned Documents.

The position of the petitioner is that the prosecution has charged the petitioner under section 389 of the Penal Code and the prosecution has marked a document marked as P1 which is supposed to have been drafted by the petitioner. The position of the prosecution is that the said document contains 13 paragraphs whereas the position of the petitioner is that the document the petitioner prepared contains only 11 paragraphs and the 12th and the 13th paragraphs have been introduced by the complainant to implicate the petitioner.

As such the petitioner has made an application to send the alleged document to the Examiner of Questioned Documents (hereinafter referred to as the EQD) in order to ascertain the truth. But the learned High Court Judge has refused on the basis that the application should have been made at the time the complainant was being cross examined. The petitioner concedes that there was a delay on the part of the petitioner; nevertheless the instant application is made in the interest of justice.

The sate counsel appearing for the respondents stated that the petitioner being a lawyer and her husband being in the police force should have had the foresight to make the application at the very beginning and accused the petitioner of being high handed in submitting a photocopy of a marked document in Court without the permission of Court to be examined by the EQD.

The Counsel for the petitioner conceded the delay but justified the delay in citing the case of **Gadakanda vs. Attorney General 2005 3 Sri L R 293,** where it had been held that,

"(1) our law recognizes two direct methods of proving the handwriting of a person:

- **(i) By an admission of the person who wrote it;**
- **(ii) By the evidence of some witness who saw it written.**

(2) There are also three other modes of proof by opinion namely-

- **(i) By the evidence of a handwriting expert (section 45)**
- **(ii) By the evidence of a witness acquainted with the handwriting of the person who is said to have written the writing in question (Section 47)**
- **(iii) Opinions formed by Court on Comparison made by itself (Section 73)**

(3) The High Court Judge was right in referring the disputed writing to the EQD for examination and report. Whatever opinion the EQD may express, it is for the Judge to decide the author of the disputed writings."

In the instant matter it is the petitioner who has made the application to send the document marked as P1 to the EQD in order to ascertain whether paragraph 12 and 13 has been interpolated.

The position of the prosecution is that the complainant signed empty papers and alleges that the interpolation was done by the police when the documents were handed over to the police.

Therefore both parties admit that paragraph 12 and 13 looks different to the other paragraphs in the document, hence the importance of the EQD"s evidence would be to ascertain as to when the interpolation has taken place. The evidence of the lay witnesses does not reveal it, the petitioner had cross examined the prosecution witnesses to establish the difference in the paragraphs in the document marked P1.

In the above quoted case of **Gadakanda vs. AG** the Justices of the said case had referred to section 73 of the Evidence Ordinance which according to their Lordships "**entitles the Court to use expert evidence to assist itself for a proper conclusion in the interest of justice".**

Hence in the interest of justice this Court is of the opinion that the said document should have been sent to the EQD and an expert opinion should have been sought. The delay it may have caused will be compensated in the due administration of justice to the accused, because an accused person until proven guilty is presumed to be innocent and every citizen is entitled for a fair trial, therefore it is the duty of the trial judge to ensure the same, and it is said that**"** ***justice hurried is justice denied".***

Hence in view of the material stated above the instant application for revision is allowed and the impugned order of the trial judge is hereby set aside.

Judge of the Court of Appeal

Neil Iddawala J.

I agree.

Judge of the Court of Appeal