

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 and Article 154(P)(6) of the Constitution and section 11 of the High Court of the Provinces (Special Provisions) Act No.19 of 1990.

Sri Lanka Foreign Employment Bureau
No.234, Denzil Kobbekaduwa Mawatha,
Koswatta, Battaramulla.

Complainant

Court of Appeal Revisions Application

CA/PHC/APN/62/2021

High Court of the Western Province Holden

at Homagama Case No.Appeal 31/2019

Kaduwela Magistrate's Court

Case No.71129/16

Abdul Rauf Buhardeen Zubairdeen Licensee,
Q.P. Employment International Company (Pvt) Ltd,
No.06, Campbell Terrance, Colombo 10.

Accused

And

Abdul Rauf Bahardeen Zubairdeen Licensee,
Q.P. Employment International Company (Pvt) Ltd.,
No.06, Campbell Terrace, Colombo 10.

Accused-Appellant

Vs.

1. Sri Lanka Foreign Employment Bureau
No.234, Denzil Kobbekaduwa Mawatha,
Koswatta, Battaramulla.

Complainant-Respondent

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

2nd Respondent

AND NOW BETWEEN.

Abdul Rauf Buhardeen Zubairdeen Licensee,
Q.P. Employment International (Pvt) Ltd.,
No.06, Campbell Terrace, Colombo 10.

Accused-Appellant-Petitioner

1. Sri Lanka Foreign Employment Bureau
No.234, Denzil Kobbekaduwa Mawatha,
Koswatta, Battaramulla.

Complainant-Respondent- Respondent

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

2nd Respondent-Respondent

BEFORE:

PRASHANTHA DE SILVA, J.

K.K.A.V. SWARNADHIPATHI, J.

COUNSEL: Prasana Ekanayake
For the Accused Appellant Petitioner.

Shemanthi Denuwila, S.C.
For the Complainant Respondent-Respondent.

Date of argument: 16.03.2022

Date of order: 19.10 2022.

K.K.A.V. SWARNADHIPATHI, J.

ORDER

The case was supported by seeking leave to appeal from the order dated 23.03.2021 in case No. Appeal 31/2019 of the Provincial High Court of the Western Province Holden at Homagama. Case NO.71129/16 was filed by Sri Lanka Foreign Employment Bureau (who will be referred to as the "Respondent" in this application) against the Accused Appellant Petitioner (who will be referred to as the "Petitioner" in this application) for violating Section 44 and Section 65 of the Foreign Employment Bureau Act No.21 of 1985 (as amended) on or around 27.04.2016.

As the accused in that case (Case No.71129 of Kaduwela Magistrate's Court), a trial was held, calling witnesses for the prosecution and the defence.

On 01.07.2019, the learned Magistrate delivered judgment finding the accused (Petitioner) guilty of the charge. Aggrieved by that order, the Petitioner appealed to the High Court of Homagama. On written submissions filed by both parties, the learned High Court Judge pronounced the judgment dated 23.03.2021, affirming the judgment of the Magistrate of Kaduwela.

Aggrieved by the said order, the Petitioner had moved to this court seeking leave to appeal against the judgment of the High Court Judge of Homagama.

In this order, I consider submissions made on behalf of the parties and the High Court Judge's judgment dated 23.03, 2021.

The Petitioner had argued that he had been carrying on business for twenty-five years and had kept a clear record. Sri Lanka Foreign Employment Bureau awarded him the highest grade in 2012 and 2014. His goodwill was not taken into consideration at the trial. Perusing his written submissions dated 17.07.2020 to the High Court, there is no mention of such an issue. Therefore, the High Court Judge cannot consider what was not argued.

When perusing the judgment, the learned Judge had discussed every aspect of the Petitioner's appeal. One argument was that the employment agreement period was only two years. The prosecution can charge only regarding that period and not what happened afterwards.

The learned High Court Judge had accepted the evidence that it was only after five and half years that witness No.2 (aggrieved party) was able to come to Sri Lanka. The reasonings accepted by the learned High Court Judge are sound as the aggrieved party was not free to travel according to evidence.

It was the agency's duty to be responsible regarding the place to which the employees were sent. In this instance, the employee ((P.W.2) was not paid her salary and was kept even after the contractual period. The learned High Court Judge discussed evidence led at the Magistrate court.

Referring to Sections 28 and 44 of the Act, the learned High Court Judge had considered the position the Magistrate had taken. Since no words were used to specify the period limiting the responsibility to two years from the date signed, it is clear that the Petitioner should hold responsibility until P.W.2 terminates her employment and reaches Sri Lanka. If the Petitioner wanted to end his responsibility, he should have informed P.W.2 that her contract period is over and to come back; if not, his liability would end.

The legislature introduced this Act mainly to safeguard employees working abroad and to ensure their safety. Therefore, when the period is not mentioned strictly, the liability runs even beyond the period of two years. The reasonings of the learned High Court Judge are clearly according to the law.

Another aspect argued by the Petitioner before the High Court was regarding the employee (P.W.2) running away from the employer and meeting an embassy official. Rightfully the learned High Court Judge had concluded that the learned Magistrate had properly evaluated this evidence. If the accused (Petitioner) is bringing such a position as a ground of defence, not only his word, he should be able to call witnesses before the court.

Since what he says is not proven, those pieces of evidence become hearsay. Referring to documents marked "V1" and "V2", the learned High Court Judge had observed that if the Petitioner wanted the court to accept those documents, he should have produced them to the witness of the foreign employment Bureau who had given evidence before the Magistrate.

Thereby subjecting those documents to cross-examination. These documents were with the Petitioner, who knew he was relying on those documents for his defence. His duty was to mark the documents when the prosecution witness gave evidence.

The other argument that the prosecution did not call witnesses to corroborate what the official witness testified in court had caught the eye of the learned High Court Judge. The Petitioner had argued that the prosecution needed to call evidence to prove the documents led in evidence.

Unless the Petitioner had challenged those documents, the prosecution need not call for evidence to prove the documents. The learned High Court Judge had discussed this issue very clearly, giving reasons.

The High Court Judge cannot consider any document not produced for evaluation to the Magistrate. Therefore, no new material cannot be considered by this court. This court is called upon to observe the judgment entered by the High Court Judge.

In Exercising power, this court is limited to considering what had transpired at the trial and how the learned High Court Judge had evaluated the judgment and reasoning of the Magistrate. Therefore, it will be unfair to disturb the well-settled judgment of the learned High Court Judge. I refuse to grant leave to proceed with this application.

Judge of the Court of Appeal

PRASANTHA DE SILVA, J.

I agree.

Judge of the Court of Appeal