

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.

Democratic Socialist Republic of Sri Lanka.

Complainant

Vs.

Court of Appeal Case No: **CPA /43/22**

High Court of Kuliypitiya Case No:
HC/4/18

Magistrate's Court of Kuliypitiya Case
No: **B 2398 /10**

Jayasinhe Mudiyansele Sarath
Kumara.

Accused

AND NOW BETWEEN

Jayasinghe Mudiyansele Sarath
Kumara

Accused – Petitioner

Vs.

Democratic Socialist Republic of Sri Lanka.

Complainant – Respondent

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Petitioner is represented by Counsel.

Deshan Aluwihare SC for the Respondent.

Argued on: 06.06.2022

Decided on: 07.06.2022

MENAKA WIJESUNDERA J.

The instant application for revision has been filed by the accused petitioner (hereinafter referred to as the petitioner) to set aside the order dated 17.12 2021 of the High Court of Kuliypitiya.

The Counsel for the petitioner stated that the petitioner had been indicted in the High Court under the provisions of the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment Act nu 22 of 1994.

The prosecution nu 1 who could not be present in Court to give evidence due to the fact of him being employed in Japan, the state Counsel appearing for the Attorney General had made an application to produce his evidence through Audio Visual linkage **under section 31 of the Assistance to and Protection of Victims of Crime and Witnesses Act nu 4 of 2015.**

The Counsel for the petitioner had objected on the basis that the trial judge would be deprived of having the opportunity to observe the demeanor and the deportment of the witness ,and the trial judge had overruled the said objection, and being aggrieved by the said order the instant application for revision has been filed.

The said section of the above act reads as follows,

“(1) Notwithstanding anything to the contrary in any law a Court conducting an identification parade ,a non-summary inquiry or any other inquiry or trialmay if it be in the best interest of justice and is found necessary ,

(a) As a measure of protection to be afforded to a victim of crime or witness or,

(b) On grounds of expediency,

Record any evidence or statement of such witness or victimWithout his personal attendance.....through a technical means by... audio visual linkage between the Courts....”

Therefore it is very clear from the above section that the law has provided a method where in occasions when the witness is unable to be present in Court for a valid reason the necessary party may produce the evidence in the method stipulated by the above section. This is certainly a development in the law in order to avoid unnecessary postponement of cases and to avoid expenditure unnecessarily in getting down witnesses to Court.

Therefore the law has developed this type of methods and mechanisms in order to ensure due administration of justice without delay in dispensing justice to all parties.

This Court also notes that the main objective of the above mentioned act is to safeguard the rights of the victims and the witnesses which is enshrined in the Constitution as well, therefore section 31 of the act is an example of the same and all parties who are interested in speedy justice must encourage this type of legislature instead of bringing forth ancient outdated frivolous objections of the instant nature.

As such this Court is of the view that the petitioner has not made out a prima facie case of exceptional circumstances which is needed in a case of revision to issue, hence the instant application is dismissed in limine.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.