

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST**

**REPUBLIC OF SRI LANKA.**

In the matter of an Application in the nature of Revision in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**Mohomed Imad Ibthisam Fakhir**

No.26/2A, Sumanarathne Mawatha,  
Off Kalubowila Road,  
Dehiwala.

Court of Appeal Case No:  
**CPA /60/2022**

High Court of Gampaha Case No:  
**HC 251 /20**

(Currently being held at the Mahara  
Prison, Ragama.)

Magistrates Court of Colombo Case  
No: **B 15761/08/19**

**Petitioner**

Vs.

1. Hon.Attorney General,  
Attorney General's Department,  
Hulftsdorp, Colombo 12.

2. The Director  
Terrorism Investigation Division,  
2<sup>nd</sup> Floor, New Secretariat Building,  
Colombo 01.

3. Officer in Charge

Unit 2,

Terrorism Investigation Division,

2<sup>nd</sup> Floor, New Secretariat Building,

Colombo 01.

**Respondent**

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Ghazali Hussain with Thusara Warapitiya and Shammass Ghouse for the  
Petitioner.

Sudharshana De Silva, DSG for the Respondent.

Argued on: 05.09.2022

Decided on: 04.10.2022

**MENAKA WIJESUNDERA J.**

The instant application has been filed to set aside the Order of the Learned High Court judge of Gampaha dated 01/04/2022.

The petitioner had been arrested along with his wife on 27.04.2019 for an alleged suspicion that they aided and abetted in the Easter Sunday bomb attack.

Both had been detained at the Terrorist Investigation Division (T.I.D) and produced before a Magistrate on 02.08.2019 on a B Report which had stated that there was no material against both of them as with regard to the incident.

Petitioner had filed two fundamental rights applications in the Supreme Court and the petitioner has also filed two writ applications before the Court of Appeal.

The petitioner's wife had been enlarged on bail with the consent of the Attorney General on 24.08.2020.

In the meantime the petitioner pleads that he had been indicted in the High Court of Gampaha on 30.09.2020 for an offence under the Prevention of Terrorism Act No.48 of 1979.

The petitioner had stated that in **the two fundamental rights applications the Supreme Court had directed the High Court to conclude the trial expeditiously.** Nevertheless, the **petitioner had taken up a preliminary objection to the indictment on the basis that the offence stated in the indictment is unknown to the law because the extra ordinary gazette notification bearing number 2223/3 dated 13.04.2021 published in terms of Section 37 of the Prevention of Terrorism Act with the provisions of the Constitution does not cover the time period stated in the indictment.** The petitioner further alleges that under **Section 27 of the PTA any law passed as per the provisions of the PTA should be applied prospectively and not retrospectively.**

The petitioner alleges that the same objection had been taken up in the writ application bearing number 74/2020 but according to the President's Counsel of the Petitioner the bench hearing the same had not given a ruling on the said preliminary objection.

Therefore, the President's Counsel alleged that the Learned High Court Judge also based his Order on the ruling in the writ application bearing number 74/2020 hence it should be reviewed by this Court.

Therefore, the crux of the submission of the petitioner is **that he has been indicted for an offence of supporting a proscribed agency under the law in the indictment when in fact during the time period stated in the indictment, the said organization is not proscribed under the law as per the extraordinary gazette bearing number 2223/3 dated 13.04.2021.**

The Senior Counsel appearing for the respondent stated **that the subject matter in the instant case has been gone into in the writ application of 74/2020 by another division of this Court as such if the instant matter is concluded it would be another ruling on the subject matter which has already been decided.**

According to **SC Appeal 59/21 Justice Arjuna Obesekara** has held that ***"Appellant must establish a prima facie case of an illegality which warrants full investigation with the participation of all parties..."*** ***The same judgement has further said that "the power of revision is an extraordinary power. A person invoking the revisionary jurisdiction of the Court of Appeal must inter alia (a) demonstrate the error or illegality on the face of the record which would occasion a failure of justice and (b) plead and establish exceptional circumstances warranting the exercise of revisionary powers in order to succeed with his or her application. The presence of exceptional circumstance is the process by which the Court selects the cases where extra ordinary power of revision should be exercised". Therefore what this Court must decide at this juncture is whether there is a prima facie error or irregularity established in order in review to issue notice on the respondents.***

In the decision in writ application mentioned above, their Lordships have gone into the discretion of the Attorney General in filling indictment and the reluctance of the Courts to interfere with the same. Furthermore, they had concluded that the said indictment has been mainly based on the confession made by the petitioner and as alleged by the counsel before their Lordships that the said confession is not a cut and paste of the B Report. But we note that, the Counsel has failed to appeal against the said order in the writ application bearing number 74/2020. But we accept the fact that he has pleaded in the written submissions filed in the writ application bearing number 74/2020, the objection pertaining to the indictment.

As such we conclude that there is a matter to be reviewed as pleaded by the Counsel for the petitioner, hence the notices on the respondents issued.

**Judge of the Court of Appeal.**

**I agree.**

**Neil Iddawala J.**

**Judge of the Court of Appeal.**