

**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 the
Article 138 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.*

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

Complainant

Vs.

Court of Appeal Application
No: **CA/PHC/APN/CPA/118/2022**

High Court (Colombo) No:
4027/2007

1. Agampodi Gnanasiri de Soysa
Jayathilaka
2. Ananda Wickramasinghe
Ambepitiya
3. Rashid Mohammed Murshid
4. Bakeer Mohammed Rifaz
5. Mohammed Subair Fayuzul
Awami
6. Mohammed Maujul Amir Irshad
alias Mohammed Nazeer Kader
7. Nagur Adumei Mohammed Nazmi
alias Abdul Ibrahim
8. Mohammed Kaamil Kuthubdin
9. Abdul Wadud Mohammed Safi
alias Meera Saibu Liyakath Ali
10. Sinnaiah Subramanium
11. Salaudin Mohammed Ashrof
12. Mohammed Kazim Mohammed
Zafik

13. Mohammed Ismail Mohammed
Rizwin alias Sulaiman Lebbe
Abdul Kareem

Accused

AND NOW

Saludin Mohemmed Akbar,
No. 294/1, Matale Road, Akurana

And/or

No. 1/1, Melwatta Rd., Nawala

Petitioner

Vs.

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

Complainant- Respondent

1. Agampodi Gnanasiri de Soysa
Jayathilaka
2. Ananda Wickramasinghe
Ambepitiya
3. Rashid Mohammed Murshid
4. Bakeer Mohammed Rifaz
5. Mohammed Subair Fayuzul
Awami
6. Mohammed Maujul Amir Irshad
alias Mohammed Nazeer Kader
7. Nagur Adumei Mohammed Nazmi
alias Abdul Ibrahim
8. Mohammed Kaamil Kuthubdin

9. Abdul Wadud Mohammed Safi
alias Meera Saibu Liyakath Ali
10. Sinnaiah Subramanium
11. Salaudin Mohammed Ashrof
12. Mohammed Kazim Mohammed
Zafik
13. Mohammed Ismail Mohammed
Rizwin alias Sulaiman Lebbe
Abdul Kareem

Accused-Respondents

AND NOW BETWEEN

Saludin Moheemmed Akbar,
No. 294/1, Matale Road, Akurana

And/or

No. 1/1, Melwatta Rd., Nawala

Petitioner-Petitioner

Vs.

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

**Complainant- Respondent-
Respondent**

1. Agampodi Gnanasiri de Soysa
Jayathilaka

2. Ananda Wickramasinghe
Ambepitiya
3. Rashid Mohammed Murshid
4. Bakeer Mohammed Rifaz
5. Mohammed Subair Fayuzul
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6. Mohammed Maujul Amir Irshad
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10. Sinnaiah Subramanium
11. Salaudin Mohammed Ashrof
12. Mohammed Kazim Mohammed
Zafik
13. Mohammed Ismail Mohammed
Rizwin alias Sulaiman Lebbe
Abdul Kareem

Accused-Respondent-Respondents

BEFORE

: Menaka Wijesundera J
Neil Iddawala J

COUNSEL

: Thishya Weragoda with Thamali
Rajapaksa instructed by Niluka
Dissanayake for the Petitioner.

Hansa Abeyratne SC for the State.

Supported on

: 19.01.2023

Decided on : 28.02.2023

Iddawala – J

This is a revisionary application filed against an order made by the learned High Court Judge of Colombo in case No. 4027/2007. At this juncture this Court is determining whether to issue notice on the application as the learned State Counsel appearing for the complainant-respondent-respondent (*hereinafter referred to as the respondent*) objected for issuing notices. Thereby, this Court will herein attempt resolve matters pertaining to issuance of notices for the instant application.

This is a matter on misappropriation of State funds of 3.996 billion LKR by the 1st accused while holding the post of Deputy Commissioner General of the Inland Revenue under and in terms of the Offenses Against Public Property Act No. 12 of 1982. Upon 1st accused pleading guilty the learned High Court Judge has imposed imprisonment along with a fine of 11,988,024,454.00 LKR. As the accused failed to duly pay the fine the State has moved to forfeiture of property under section 6 the said Act. Petitioner claims that in the guise of the aforesaid provision, several properties purchased in the name of third parties were purportedly forfeited by an order dated 08.05.2014. One such property as claimed by the petitioner has been purchased by himself several years prior to the said order. The petitioner further depicts details on relevant transfer of property. The petitioner further claims that the instant revisionary application was filed as the order dated 08.05,2014 is irregular as he was not given an opportunity to be heard and citing several judgments, he claims that due to the miscarriage of justice, illegality of the order and irregularity in procedure he is entitled to seek relief by way of a revisionary application from this Court.

Learned Counsel for the petitioner supported this instant application in the presence of learned State Counsel appearing for the respondent and he objected to the issuance of formal notice. This bench has previously analysed in-depth the requirements in entertaining or dismissing a revisionary application at preliminary stages. (See ***Maldeniyage Don Upali Gunaratna Perera and another Vs Commission to Investigate Allegations of Bribery or Corruption*** CA-CPA 77/22 CA Minute dated

12.10.2022) The requirement is to observe a *prima facie* case made out in the application that warrants issuance of notice to the respondents. As decided on ***P.M. Ransasinghe vs - Aselage Sujith Rupasinghe and Others*** SC Appeal No. 59/2021 SC Minute dated 08.04.2022, the burden cast on an applicant at the support stage is only to establish such prima facie case where court becomes satisfied that the application before it warrants a full investigation at a hearing with the participation of all parties.

In ***Horathal Pedige Prishriya Ratna Vilovhani vs Attorney General*** CA/PHC/90/18 CA Minute dated 25.07.2022, ***Sarath Andarahennadi vs Officer in Charge Police Station Sigiriya*** CA/PHC/APN/117/2017 CA Minute date 27.03.2019 and ***Ingiriya Multi-Purpose Co-operative Society Lt vs Kalubalage Dona Laitha Srimathi*** CA/PHC/123/16 CA Minute dated 17.05.2022 this Court has held that in an application invoking revisionary jurisdiction, the Court should decide whether the averred circumstances satisfy the threshold of exceptional circumstances expected by the Court after the issuance of notice to the respondents and when both parties are given an opportunity to make respective submissions.

Therefore the threshold to be satisfied at this stage to issue notice on the respondents is cast on the applicant to establish a *prima facie* case. This Court believes that in the instant matter the petitioner has duly satisfied the Court of existence of a *prima facie* case, therefore I see no reason to entertain the objections of the respondent at this stage.

Accordingly, notice issued.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL