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.

Court of Appeal No:

CA/PHC/APN 0011/20

The Officer-In-Charge

Police Station,

Mullaitivu.

COMPLAINANT

HC Vavuniya

Case No. 305/2018

Vs.

1. Sambasivam Rajeswary,
2. Sambasivam Niranjan

Both of Division No. 3,

Mullaitivu.

MC Mullaitivu

Case No. 25707

ACCUSED

AND BETWEEN

1. Sambasivam Rajeswary,
2. Sambasivam Niranjan

   Both of Division No. 3,

   Mullaitivu.

ACCUSED-PETITIONERS

Vs.

1. The Hon. Attorney General,
   Attorney General's Department,
   Colombo 12.
2. The Officer-In-Charge

   Police Station,

   Mullaitivu.

RESPONDENTS

AND NOW BETWEEN

1. Sambasivam Rajeswary,
2. Sambasivam Niranjan

ACCUSED-PETITIONERS-PETITIONERS

Vs.

The Hon. Attorney General,

Attorney General's Department,

Colombo 12.

RESPONDENT- RESPONDENT

Before : Sampath B. Abayakoon, J.

: P. Kumararatnam, J.

Counsel : K. S. Ratnavel with Lakshan Abeywardane for the Petitioner

: Nishanth Nagaratnam, SC. For the respondent

Supported on : 16-05-2023

Order on : 26-06-2023

Sampath B. Abayakoon, J.

This is an application by the accused-petitioner-petitioners (hereinafter referred to as the petitioners) seeking to invoke the revisionary jurisdiction of this Court in terms of Article 138 of The Constitution.

The petitioners were charged before the Magistrate of Mullaitivu for the offence of criminal misappropriation for a sum of Rs. 950,000/= from the virtual complainant in the case on the promise of sending him abroad, and thereby committing an offence punishable in terms of section 386 read with section 32 of the Penal Code.

The petitioners have been arrested and produced before the learned Magistrate, and on the following day, a charge sheet has been filed against them. When the charge was read out to them, the petitioners as well as the aggrieved party had been represented by their respective Attorneys-at-Law. The petitioners allege in their petition before this Court that they were compelled to plead guilty to the charge and was sentenced to a fine of Rs. 1500/= each, and was ordered to pay Rs. 950,000/= as compensation, and in default, two-year rigorous imprisonment was imposed.

It has been stated that being aggrieved by this sentence and the compensation order, they filed an application in revision before the High Court of Vavuniya

challenging the impugned order dated 28th November 2017 by the learned Magistrate of Mullaitivu.

After considering their application before the High Court, the learned High Court Judge of Vavuniya pronouncing his judgement on 22nd October 2019 has determined that the compensation amount ordered was in accordance with the law, however, the default sentence of 2 years has been varied to a sentence of 3 months.

The petitioners have come before this Court invoking the revisionary jurisdiction vested with this Court seeking to challenge the judgement of the learned High Court Judge as well as the order of the learned Magistrate of Mullaitivu.

However, at the outset of the hearing of this case, the learned Counsel for the petitioners informed that he is not challenging the conviction and the fine imposed against the petitioners, but only the compensation amount ordered on the basis that it was contrary to the law. He also informed the Court that since the amount ordered as compensation has now been fully paid by the petitioners to the complainant, this exercise would only be of academic interest, but he would like to obtain a judgement from this Court as to the legality of the compensation ordered by the learned Magistrate.

It was the position of the learned Counsel that a Magistrate can only order a maximum of Rs. 100,000/= in terms of section 17 of the Code of Criminal Procedure Act, and he had no basis to order any compensation in excess of the powers vested in him in terms of the Act.

It was his position that when this order was challenged by way of a revision application before the High Court of Vavuniya, the Hon. Attorney General as well as the respondent failed to justify the order of the learned Magistrate, but took up the position that the Magistrate is empowered to order compensation in terms of Assistance to and Protection of Victims of Crime and Witnesses Act No.4 of 2015 only in the written submissions tendered.

It was the position of the learned Counsel that the purpose of the above Act was not to provide compensation in this type of instances, and if one to consider that the learned Magistrate has acted in terms of section 28 of the Act, it was imperative on learned Magistrate to follow the procedure laid out in section 28 (2) of the Act. It was his contention that the proceedings before the learned Magistrate clearly establishes the fact that the order for compensation was not based on the Act contemplated by the Hon. Attorney General, therefore, the order was palpably wrong and illegal.

The learned Counsel cited the case **Nirosh Amantha Amadoru Vs. Attorney General CA (PHC) APN 128/15** decided on **23-11-2016** and the case of **W. H. Thulyananda Senananda Vs. Attorney General CA (PHC) APN 28/2014** decided on **07-07-2014** in support of his contention.

It was the position of the learned State Counsel that when the petitioners were charged before the Magistrate on 28-11-2017, the petitioners as well as the aggrieved party had been represented by their respective Attorneys-at-Law and since the count preferred against them was a count that can be settled, the petitioners wanted to pay the amount mentioned in the charge sheet and the complainant was willing to accept the same by way of a settlement.

It was the view of the learned State Counsel that the petitioners happened to plead guilty under those circumstances, and the sentence imposed on them being a mere fine of Rs. 1500/= each would also reflect that fact.

It was the position of the learned State Counsel that although the learned Magistrate had not mentioned under what provision of law, he is ordering Rs. 950,000/= as compensation, since the law provides for that in terms of the Assistance to and Protection of Victims of Crime and Witnesses Act No.4 of 2015, it was not an illegal order. The learned State Counsel contended that since the learned High Court Judge has well considered the relevant legal provisions and had reduced the default sentence to fall it in line with the law, there is no basis

for this Court to interfere with the judgement of the learned High Court Judge as well as the order of the learned Magistrate of Mullaitivu.

At the very outset, it needs to be noted that the cited two decisions of the Court of Appeal have no relevance to the application before this Court. Both those cases have been decided before the Assistance to and Protection of Victims of Crime and Witnesses Act No.4 of 2015 became operational.

In the case of **CA (PHC) APN 128/15**, as the law stood then, the maximum amount of compensation that could be ordered by a Magistrate was Rs. 100,000/= to a victim of a crime in terms of section 17 (4) of the Code of Criminal Procedure Act. The said case had been determined on that basis.

The next case cited, namely **CA (PHC) APN 28/2014** was a case where the learned Magistrate has ordered the payment of the sum mentioned in the B-report as a condition of bail had been considered illegal.

It is quite apparent from the documents tendered before this Court that the facts relating to this application are very much different. The petitioners had been arrested and produced before the learned Magistrate and on the following day, they had been charged for committing an offence punishable in terms of section 386 of the Penal Code. When they were charged, both the petitioners as well as the complainant had been represented by their respective Attorneys-at-Law, and they have tendered an unconditional plea of guilty to the charge. However, the learned Counsel for the petitioners had informed the Court that they are willing to pay the amount mentioned in the charge namely Rs. 950,000/= on an installment basis and come to a settlement with the complainant. The learned Counsel for the complainant has accepted that offer which has led to the learned Magistrate's decision to impose a lenient punishment of fining each of them Rs.1500/=. He has ordered them to collectively or individually pay a compensation of Rs. 950,000/= at the rate of Rs.100,000/= per month. He has ordered a default sentence of 2 years simple imprisonment.

Accordingly, the petitioners had paid Rs.100,000/= on that day itself and the petitioners have been released on surety bail and a travel ban has also been imposed on them.

When this matter was challenged before the High Court of Vavuniya, the learned High Court Judge of Vavuniya had pronounced his judgement as earlier mentioned. The learned High Court Judge has considered section 28 (1) and (2) of the Assistance to and Protection of Victims of Crime and Witnesses Act No.4 of 2015 as relevant for the purposes of the revision application filed before him. The relevant section reads as follows,

> **28. (1) Notwithstanding anything to the contrary in the Judicature Act and the Code of Criminal Procedure Act, every High Court and every Magistrate's Court may upon conviction of a person by such Court, in addition to any penal sanction that may be imposed on such person in respect of the offence for which he is convicted, order the convicted person to pay to Court—**
>
> > **(a) (i) an amount not exceeding one million rupees to be paid as compensation to the victim of crime or witness concerned; or**
> >
> > > **(ii) a sum of money not exceeding twenty per centum of the maximum fine payable for that offence; or**
> >
> > **(b)both the compensation and the sum of money referred to in paragraph (a).**
>
> **(2) Prior to arriving at a determination on the quantum of compensation to be imposed under sub paragraph (i) of paragraph (a) of subsection (1), the High Court or the Magistrate's Court shall call for, examine and consider: -**
>
> > **(a) all relevant information relating to the victim of crime, including the report of the Government Medical Officer who has examined the victim, that may enable the Court to determine**

the nature and the extent of the damage, loss or harm that the victim of crime may have suffered as a result of being subjected to the offence the person convicted of had been charged with;

(b) representations or submissions made by the victim of crime or his legal representative, relating to the impact of the crime on such victim; and

(c) information pertaining to any compensation that may have already been paid to such victim of crime by any Court, by the Authority or otherwise received by him from any other source.

The said section 28 (1) clearly provides that a Magistrate can impose compensation up to Rs. 1,000,000/=.

As correctly viewed by the learned High Court Judge, section 46 of the Act provides that the provisions of the Act include a person who has suffered an economic loss as a result of a crime, as a victim of crime.

I have no basis to agree with the contention of the learned Counsel for the petitioners that the purpose of the Assistance to and Protection of Victims of Crime and Witnesses Act No.4 of 2015 is not to provide redress for situations that led to the filing of charges against the petitioners before the learned Magistrate.

The Preamble of the Act clearly provides for payment of compensation to victims of crime.

I am in agreement with the submissions of the learned State Counsel that section 28 (2) has no bearing on the matter. It is clear that the learned Magistrate has made this order for compensation because of the offer made by the petitioners to pay the amount mentioned in the charge and the agreement of the complainant to accept the same.

Section 28 (2) of the Act provides for a situation where the Court orders a sum as compensation in its own motion and as to the methodology of recovery in such a situation, and not for a situation that has occurred in this matter.

The learned High Court Judge has well-considered the default sentence imposed by the learned Magistrate and had to come to a right conclusion that it was not according to the law. The learned High Court Judge has reduced the default sentence in order to make the order of the learned Magistrate fall in line with the applicable law.

For the reasons as considered above, I find no reasons to interfere with the judgement of the learned High Court Judge of Vavuniya as well as the Order of the learned Magistrate of Mullaitivu.

Accordingly, the application for revision is dismissed as it is devoid of merit.

The Registrar of the Court is directed to communicate this judgement to the High Court of Vavuniya and to the Magistrate Court of Mullaitivu for information purposes.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal