

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRI LANKA**

*In the matter of an Application under section
46 of the Judicature Act No. 02 of 1978.*

Court of Appeal No:

Democratic Socialist Republic of Sri Lanka

CA/TRF/0007/22

COMPLAINANT

Vs.

High Court of Gampaha

Jayasooriya Karanage Jude Perera *alias*

Case No: HC/316/2004

Mahathun *alias* Dinesh *alias* Jayasooriya

Kuranage Sebastian Perera

ACCUSED

AND NOW BETWEEN

Jayasooriya Karanage Jude Perera *alias*

Mahathun *alias* Dinesh *alias* Jayasooriya

Kuranage Sebastian Perera

ACCUSED-PETITIONER

Vs.

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

RESPONDENT

Before : Sampath B. Abayakoon, J.

: P. Kumararatnam, J.

Counsel : Sumith Senanayake, P.C. with Madushani De Soyza
instructed by Jeevika C. Vithanage for the Accused-
Petitioner

: Kanishka Rajakaruna, S.C. for the Respondent

Supported on : 03-02-2023

Order on : 21-02-2023

Sampath B. Abayakoon, J.

This is an application by way of a petition and affidavit by the accused-petitioner (hereinafter referred to as the petitioner) in terms of section 46 of the Judicature Act No. 02 of 1978 seeking the transfer of the case where he is the accused, from the High Court No. 02 of Gampaha to another High Court.

When this matter was supported before this Court, having considered the submissions and the fact that the concerned High Court case was a case initiated in the year 2005, and since this matter can be heard before the High Court No. 01 of Gampaha, the learned State Counsel who represented the Honourable Attorney General, informed this Court that he is raising no objections to the application.

Since this is an application in terms of section 46 of the Judicature Act, I think it is worthwhile to reproduce the relevant part of the section 46 (1) of the Act for better understanding of this Order.

46.(1) Whenever it appears to the Court of Appeal-

(a) that a fair and impartial trial cannot be had in any particular Court or place; or

(b) that some questions of law of unusual difficulties are likely to arise; or

(c) that a view of the place in or near which any offence is alleged to have been committed may be required for the satisfactory inquiry into or trial of the same; or

(d) that it is so expedient on any other ground,

The Court may order upon such terms as to the payment of costs or otherwise as to the said Court thinks fit, for the transfer of any action, prosecution, proceeding or matter pending before any Court to any other Court ...

It is the view of this Court that although a provision exists in the Judicature Act for the transfer of cases, the provision needs to be exercised only in situations where this Court has compelling reasons to transfer a case to another Court, and that is also after careful scrutiny of the alleged facts and the circumstances urged by a petitioner.

In the application under consideration, the petitioner has been indicted before the High Court of Gampaha for committing an offence under the Offensive Weapons Act No. 18 of 1997 on the basis that he had a hand bomb in his possession on 13th August 2002.

In the indictment, his name has been mentioned as Jayasooriya Karanage Jude Perera *alias* Mahathun *alias* Dinesh.

After he was arrested and produced before the relevant Magistrate Court, he has been granted bail by the Court of Appeal on 9th September 2003 and the indictment against the petitioner has been filed on 10th February 2005.

It is clear that the action is still pending before the Court No-02 of the High Court of Gampaha and the prosecution has still not closed its case. When this matter was mentioned before the learned High Court Judge of High Court No-02 of Gampaha on 04-08-2022, a journal entry has been made to the effect that the petitioner's identity has not been established. This has led to him producing his National Identity Card to the Court, which has resulted in the prosecuting State Counsel making an application before the Court to amend the indictment, which is a common occurrence in High Court trials. Clearly, there had been a difference in the name of the petitioner as appeared in the National Identity Card and the indictment.

Accordingly, the indictment has been amended by naming the petitioner with another *alias* namely, Jayasooriya Kuranage Sebastian Perera, in addition to the names already mentioned in the indictment. It shows that what appears in the National Identity Card as his name was Jayasooriya Kuranage Sebastian Perera, instead of the name Jayasooriya Karanage Jude Perera as mentioned in the Indictment.

However, it is clear that the petitioner has never taken up the position that he is not the person mentioned in the indictment or denied that he is the person relating to the charge. He has continued to appear initially before the Magistrate Court, and later before the High Court for almost 20 years by that time.

When this amendment was made, the learned High Court Judge has ordered that a fresh fingerprint report should be called given the amended name of the petitioner, and has ordered that since this is an old matter, the case should be concluded expeditiously. It has also been ordered that the petitioner should not

leave the country and his passport should be surrendered to Court within two weeks, and the Registrar of the Court has been ordered to inform the travel ban to the Controller of Immigration and Emigration. The petitioner has been ordered to produce a certificate from the Grama Niladari proving his residence and has been prevented from changing his residential address without informing the Court.

As each learned High Court Judge has his or her own procedure for ensuring the continued presence of an accused person, I do not find any material prejudice in such an order, although until then, there had been no issue as to whether the petitioner has attempted to abscond the Court or to deny his identity.

While the prosecution was making attempts to lead the evidence of the remaining witnesses of the case, it appears that the perceived question of the identity of the petitioner has taken a center stage and the Officer-in-Charge of the police station at Weyangoda also had been ordered to produce a report as to the name of the petitioner.

It appears that the learned prosecuting State Counsel has made submissions before the Court to the effect that although the correct name of the petitioner is Jayasuriya Kuranage Sebastian Perera, when he was arrested initially by the police, by giving his name as Jude, he has attempted to impersonate.

In the meantime, the petitioner has produced his passport to Court and a letter from the Grama Niladhari proving his residence, where the Counsel for the petitioner has informed the Court that his residential address and the address on his voter registration are two different addresses.

On that day, namely 6th October 2022, the petitioner has been remanded by the learned High Court Judge.

The learned Counsel who represented the petitioner had subsequently filed a motion and an affidavit signed by the petitioner to inform that Jude Perera has been his commonly used name, but his name which appears on the National

Identity Card is Sebastian, and it refers to one and the same person, namely, the petitioner. The affidavit has been supported by several documents in support of his contention.

It appears from the proceedings that despite that, the learned State Counsel has continued to insist that the petitioner has attempted to mislead the Court and present himself as a different person. The State Counsel has referred to different names that appear in the documents tendered by him, namely in his marriage certificate, birth certificates of his children and even in the business registration certificates tendered by him.

Although the learned Counsel for the petitioner has pleaded that the petitioner is one and the same person mentioned in the indictment and that there is no issue as to his identity, it appears that his identity has been the main focus of the action rather than attempting to conclude the prosecution evidence.

On the basis that his marriage certificate carries both Sebastian and Jude as his name, a further order has been made to initiate another inquiry as to how a wrong name has been entered in his marriage certificate.

It appears that a B-report has been filed before the Magistrate Court also in this regard, as to the submissions made before the High Court Court by the State Counsel on 2nd November 2022.

On that day, on the basis that the State is not objecting to bail, the petitioner has been released on the same bail conditions imposed on him when he was initially released on bail by the Court of Appeal on 09-09-2003.

According to the petition of the petitioner, although he was released on bail by the High Court, on the same day he has been produced before the Magistrate Court on a B-report filed by the Weyangoda police Special Crimes Investigation Bureau on the basis that the High Court has directed the police to investigate and report whether the petitioner has impersonated another person and committed a crime. After he was produced before the Magistrate Court, he had

been remanded until the following day, and had been granted bail by the learned Magistrate of Gampaha. It was the position of the petitioner that despite a date being granted for further trial of the matter for 24th March 2023, this case is being mentioned in the High Court for the review of the progress of the investigations as mentioned above.

The petitioner has come before this Court on the basis of the above-mentioned sequence of events, claiming that he cannot expect a fair and impartial trial, if the matter was to be taken for further trial before the High Court No-02 of the High Court of Gampaha.

Upon having considered the facts and the relevant circumstances, this Court is of the view that there was no reason at all for the learned High Court Judge to remand the petitioner on the day the indictment was amended to include the name as appeared in the identity card of the petitioner. There is no indication in the case record that he has attempted to abscond from the High Court proceedings for the last 17 years although he has not appeared before the Court on some days of the matter, however, for acceptable reasons. The petitioner has tendered an affidavit with supporting documents to establish that although his real name is Sebastian, he uses the name Jude commonly, which was the reason why he has given his name as Jude in his police statement.

If one takes these matters in the correct perspective, it becomes very much clear that there existed no need to remand the petitioner or to direct the police to initiate another criminal proceeding in the Magistrate Court and also to direct the Registrar General to commence yet another inquiry into his marriage certificate.

If one interprets a name of a person giving a strict interpretation, it needs to be noted that the name appearing in the column reserved for the name of the person in his certificate of birth, should be the name of that person. In the birth certificate number 1592 marked X-1, it clearly appears that the petitioner's name

has only been mentioned as Sebastian in the relevant space. His father's name has been Jayasooriya Kuranage Kingsley Perera.

As so commonly happen in this country, it is clear that he has adopted his father's Ge name (clan name) and the surname as part of his name.

In addition, it is clear from the documents tendered, that he has been using the name Jude as well. In his marriage certificate as well as children's birth certificates, he has given his name as Jayasuriya Kuranage Jude Sebastian Perera. In his business registration certificate marked X-6, he has indicated the name Jude as one of his other names.

I find that the petitioner is justified in believing that he would not be afforded a fair trial, given the difficulties he had to face and still continue to endure in relation to his name.

Under the circumstances, it is the view of this Court that it is nothing but fair in order to ensure a fair trial for the petitioner to transfer this case to another Court in terms of section 46(1) (a) of the Judicature Act.

Accordingly, it is ordered that the High Court of Gampaha Court No-02 case number 316/2004 where the petitioner is the accused, shall be transferred to be heard before the learned High Court Judge of High Court No-01 of Gampaha with immediate effect.

The learned High Court Judge of Court No-01 of Gampaha High Court is directed to conclude this matter as expeditiously as possible, given the time period that has been taken in this matter.

The Registrar of the High Court of Gampaha Court No-02 is directed to forward the original case record along with productions if any, to the High Court No-01 of the High Court of Gampaha, and report back to this Court in writing that he carried out this order.

The petitioner is directed to be present before the High Court No-01 of Gampaha on the next date given for the further trial of this case, namely, 24th March 2023, unless the learned High Court Judge of the High Court No-01 of Gampaha has ordered otherwise.

The Registrar of the Court of Appeal is directed to communicate this order to the Registrar of the High Court of Gampaha Court No-02 as well as the Registrar of the High Court of Gampaha Court No-01, forthwith.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal