

**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 0044/23

The Officer-In-Charge

Special Investigation Unit III,

Criminal Investigation Department,

Colombo 01.

COMPLAINANT

PHC Colombo

Case No. 130/2020

Vs.

Shane Antony Maloney,

132/1/1, Ehelape Road,

MC Colombo

Case No. 6287/01/11

Katuwawala,

Boralessgamuwa.

ACCUSED

AND BETWEEN

Shane Antony Maloney,
132/1/1, Ehelape Road,
Katuwawala,
Boralessgamuwa.

ACCUSED-APPELLANT

Vs.

1. The Hon. Attorney General,
Attorney General's Department,
Colombo 12.
2. The Officer-In-Charge
Special Investigation Unit III,
Criminal Investigation Department,
Colombo 01.

RESPONDENTS

AND NOW BETWEEN

Shane Antony Maloney,
132/1/1, Ehelape Road,
Katuwawala,
Boralessgamuwa.

ACCUSED-APPELLANT-PETITIONER

Vs.

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

2. The Officer-In-Charge
Special Investigation Unit III,
Criminal Investigation Department,
Colombo 01.

RESPONDENT- RESPONDENTS

Before : Sampath B. Abayakoon, J.

: P. Kumararatnam, J.

Counsel : Chandana Sri Nissanka with Hansi Athukorala and
Nalin De Silva for the Petitioner

Supported on : 17-05-2023

Order on : 20-06-2023

Sampath B. Abayakoon, J.

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

The matter was supported by the learned Counsel for the petitioner for notice, as well as for a stay order as sought in the petition.

This is a matter where the petitioner was charged on two counts in terms of section 403 of the Penal Code before the Magistrate Court of Colombo in case number 6287/01/11. After trial, the learned Magistrate of Colombo found the petitioner guilty on both the counts by the judgement dated 19th December 2019, and sentenced the petitioner accordingly.

The petitioner has preferred an appeal to the Provincial High Court of Colombo challenging the said judgement. The learned High Court Judge of the Provincial High Court of Colombo has dismissed the said petition of appeal by his Order dated 26-10-2021 on the basis that the petitioner is not showing due diligence in maintaining his appeal.

The reason for that determination being the petitioner's failure to appear before the High Court despite several notices sent through registered post and due to the fact that the said registered post letters being returned on the basis that no such person at the address provided. It is clear from the High Court case record that the notices have been dispatched to the address provided by the petitioner as the accused-appellant in his petition of appeal.

It appears from the High Court case record that the petitioner has filed an affidavit to the High Court to purge default and seeking to restore the case back to the role of the Court. This application also has been rejected by the learned High Court Judge.

The petitioner has come before this Court challenging the said dismissal. The learned Counsel for the petitioner making submissions in support of this application for notice as well as a stay order, contended that the learned High Court Judge has decided to dismiss his appeal disregarding the Judicial Service Commission Directives in relation to the matters taken up before respective Courts during the covid pandemic. It was his view that because of the covid pandemic situation that existed during the period where the petitioner was noticed by the Court, the learned High Court Judge should not have dismissed the petition summarily. In other words, the learned Counsel's position was that the petitioner's absence from the Court was due to the covid pandemic situation that existed in the country during the relevant period.

It is the view of this Court that if this Court has a basis to consider the covid pandemic situation has contributed to the failure of the petitioner to appear before the High Court for the hearing of his appeal, it would be a good reason for him to challenge the dismissal.

However, in perusing the copy of the High Court case brief, this Court notes that when seeking to restore the case back, the petitioner has tendered an affidavit to the Court. In the affidavit, he has stated that he could not pursue his appeal because he did not receive the notices sent by the Court in that regard and he was not living at the address that has been provided in his petition of appeal.

It is the view of this Court that when a person is filing an appeal before an appellate forum, it is his or her duty to provide correct information to the Court so that the Court can communicate with such a person. After providing a wrong address to the Court as his residential address, the petitioner cannot claim later that he was not living at the address provided in his petition of appeal when his appeal was tendered to the Court. If it was so done, the petitioner has to live with its consequences. The High Court case record bears testimony that the Court has issued notices to the address provided by the petitioner. There is no reason to believe that the petitioner was not in possession of a copy of the petition of appeal preferred by him. If he was acting with due diligence, there cannot be any reason for him not to see his address given in the petition of appeal filed by him, and to provide his new address to the Court.

Under the circumstances, I find nothing wrong in rejecting the petition to appeal of the petitioner by the learned High Court Judge of Colombo. Hence, I find no reason to interfere with the Order of the learned High Court Judge.

Accordingly, the application for a stay order as well as the application for notice is refused.

The Registrar of the Court is directed to communicate this order to the High Court of Colombo as well as to the Magistrate Court of Colombo for information purposes.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal