

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 Article 154 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with section 11 High Court of the Province Act No. 19 of 1990 and in terms of section 138(1) of the Constitution and section 404 of the Criminal Procedure Code Act No.15 of 1979.

CA (PHC) APN 15/2016
HC Negambo Case No-39/2015
MC Negambo –B156/15

Officer- In-Charge
Police Narcotic Bureau,
Colombo 01.

Complainant

Vs.

Sundara Raj Khrishna Mogan
No. 150/C, Kotarupa,
Raddolugama.

4th Suspect

And

Kandasamy Meenambal
No. 150/C, Kotarupa,
Raddolugama.

Petitioner

Vs.

1. Officer-In-Charge
Police Narcotic Bureau
Colombo 01.

2. Director,
Narcotic Bureau,
Colombo 01.
3. The Hon. Attorney General,
The Attorney General's
Department,
Colombo 12.

Respondents

Now (By and Between)

Kandasamy Meenambal
No. 150/C, Kotarupa,
Raddolugama.

Petitioner-Petitioner

Vs.

1. Officer-In-Charge
Police Narcotic Bureau
Colombo 01.
2. Director,
Narcotic Bureau,
Colombo 01.
3. The Hon. Attorney General,
The Attorney General's
Department,
Colombo 12.

Respondents-Respondents

Sundara Raj Khrishna Mogan

4th Suspect
**(Currently incarcerated in
the Negombo Prison)**

Before : **H.C.J. Madawala , J**
&
L.T.B. Dehideniya, J

Counsel : S.A.S. Samarathunga with M. Ekanayake for the Substituted-
Appellant
Varunika Hettige DSG for the Respondent

Written Submissions On : 18 /01 /2017

Decided on : 27 / 02 /2017

H. C. J. Madawala , J

This Petition has been preferred by the Petitioner to this Court to revise the order of the Learned High Court Judge of Negambo on 03/12/2015. The Petitioner states that she is the wife of the 4th suspect named Sundara Raj Khrishna Mogan who was arrested on 05/02/2015 for an offence under section 54(a) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984 in the Magistrate Court of Negambo in case No 156/15.

The position of the 4th Suspect above name was that the 1st Suspect was arrested at the departure gate of Bandaranayke International Airport when the baggage of said Suspect who was to fly of Abu

Dhabi was detected with several parcels containing a substance which was suspected to be Heroin. Upon interrogating the 1st Suspect it was revealed that he was acting on the instructions of a friend by the name of Ramesh, who was based in Abu Dhabi. The 4th Suspect was arrested when the 2nd and 3rd Suspects who were allegedly acting on the instruction of said Ramesh, met the 4th Suspect in the guise of handing over the parcel which was alleged to have been given to the 1st Suspect. The Petitioner submitted that the 4th Suspect has been incarcerated since 6th of Feb 2015. It was also submitted that the Petitioner made her 1st application for bail in May 2015 to the High Court of Negambo in terms of Section 83 (1) of the Poisons, Opium and Dangerous Drugs Ordinance Act No 17 of 1929 as amended by Act No 13 of 1984. This application for bail was subsequently refused by the Learned High Court Judge. Further the Petitioner made her 2nd application for bail in the High Court of Negambo in terms of section 83(1) of the aforesaid Act which was subsequently withdrawn by her on 30/09/2015.

The Petitioner further submitted that she filed a revision application against the refusal of a 1st application for bail to the High Court of Negambo to the Court of Appeal which was subsequently withdrawn

by the Petitioner. Again she made a 3rd application for bail in October 2015 to the High Court of Negambo and draw the attention of the Learned High Court Judge, that,

- a) No Heroin was found in the possession or control of the said suspect.
- b) The only evidence against the suspect is a mere claim made by bother suspects that the 4th suspect who was seeking bail was the end receiver of the parcel containing the heroin.
- c) The 4th Suspect was merely an innocent victim of circumstances and did not have any intention or knowledge on the alleged acts of other suspects.
- d) The 4th suspect has no precious convictions or any criminal record to cast any reasonable suspicion on him.
- e) The Petitioner also submitted many documents to court pertaining to the said suspect to prove the existence of exceptional circumstances to justify the application for bail.

However the said bail application was also refuse by the Learned High Court Judge by his order dated 03/12/2015 on the basis inter alia that there are no sufficient grounds provided by the Petitioner which warrant granting of bail to the Suspect. Being aggrieved by the aforesaid order of the Learned High Court Judge dated 03/12/20015 the Petitioner filed this application on the basis that the aforesaid order

is illegal, wrongful and contrary to the law and/or unreasonable for any one or more of the stated in para 13 (a) to (i) of the petition and also had submitted that the Learned High Court Judge has seriously erred and misdirected herself by dismissing the application of the Petitioner without considering the grounds that were urged by the Petitioner as exceptional which warrant granting of bail to the suspect. The Petitioner had stated the grounds in para 14 as exceptional circumstances which warrant the exercise of revisionary jurisdiction of this court. The main grounds on which is order sought to be revised are as follows:

The long period of remand that the suspect has spent,

- a) The suspect has been in custody for almost 2 years,
- b) The long incarceration is totally contrary to the well excepted principle of 'presumption of innocence' that operates in favour of the suspect.

During the arguments the Counsels of the Respondents took up many preliminary objections. 1st and foremost the preliminary objections of lack of Locus Standi has been made by the Respondent that the Petitioner has no Locus Standi to make the instant revision application. It was contended that a person who calls a said wife of

the suspect as make these application and that there is no document or other material to prove that the Petitioner is the wife of the suspect. It was held that revision application can be maintain only by the aggrieved party in the case of **Alwis V. Wedamulla 1997 3 SLR 417** and in **Senathilake Vs. Attorney General 98 (3) SLR 290 290** that the Petitioner who is the father of the Accused, has no Locus Standi to maintain a revision application. **M.M. Sonali Fernando V. AG CA(PHC) APN 144/2007** it has been clearly laid down that no one else other than the Accused himself can maintain application to vary a sentence imposed in respect of him.

In the case of **Savarimuttu Tavamani v. Attorney General CA (PHC) APN 37/2014** it was held that the mother of the Accused has no Locus Standi to institute this revision application. In the vary recent Divisional Bench Judgement of CA 101/13 it was decided that the suspect himself should file the revision application. Under the Poisons, Opium and Dangerous Drugs Ordinance at Section 83(1) bail will be granted only under exceptional circumstances.

It was further stated by way of objections by the Respondent that the Petitioner has failed to appeal against the order when he had right of appeal and why court should exercise revisional powers in his favour.

It was submitted that court should dismiss the Petitioners application in limine for want of exceptional circumstances. Further it was submitted that the Petitioners status has changed. The indictment has been dispatched to the Negombo High Court and the status of the Petitioner has changed from the suspect to the Accused.

Therefore the provisions of Section 195 (d) of the Criminal Procedure Code has come in to play. The Petitioner should first seek bail from The High Court which step the Petitioner has to take.

Accordingly, the Respondent moved that the Petition of the Petitioner be dismiss with cost.

When considering a Locus Standi of the Petitioner we find that a person who calls herself as the wife of the suspect has made this application no document or other material has been tendered to court to prove that she is the legal wife. As such we are of the view as the

Petitioner has not proved that she is the wife of the 4th Suspect. Therefore as the Petitioners has failed to prove her Locus Standi we do not consider that we should go in to the merits of this application. Hence we dismiss this application without cost.

Judge of the Court of Appeal

L.T.B.Dehiddeniya, J

I agree.

Judge of the Court of Appeal