

**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 read with Sec. 364 of the
Code of Criminal Procedure Act No: 15 of
1979.

High court Kegalle

Case No: HC 1468/2000

1. Illandarage Wasantha

Detawala.

Karadupana, Kegalle.

Court of Appeal

Revision Application

No: CA (PHC) APN 138/2016

1st Accused – Petitioner

2. Mahanamagam Geeganage Piyadasa

alias Baale

Detawala.

Karadupana, Kegalle

2nd Accused-Petitioner.

3. Panawala Ralalage Sarath Bandara

Panawala,

Thibbatumunuwa

Hettimulla.

Kegalle.

3rd Accused – Petitioner.

Vs.

Hon. Attorney General,

Attorney General's Department,
Colombo 12.

Complainant-Respondent.

CA (PHC) APN 138/2016

PHC Kegalle 1468/2000

Before : K.K.Wickremasinghe J &
P.Padman Surasena, J

Counsel : Varunika Hettige DSG for the Respondent.

Decided on : 14.06.2017.

P.Padman Surasena, J.

This case is fixed for argument today. The Petitioner is absent and unrepresented. No application of any sort is made before this court on behalf of the Petitioner. Nevertheless this court kept this case down to be taken up as the last case to enable the counsel to make some arrangement and appear in this case before this court. However no one turned up. Since this case is fixed for argument this Court decided to take this case for argument. Learned D.S.G made submissions setting out the back ground of the case.

The Petitioner in this application has prayed in his prayers that this court should set aside the order of the Learned High Court Judge dated 13.10.2016 marked P1(C).

The said order is an order made by the learned High Court Judge of Kegalle calling for the accused to place their defence in terms of Section 200 of the Code of Criminal Procedure Act. Learned High Court Judge has explained the rights of the accused also and fixed further trial for another date. It is this order that is being challenged in this application. Learned D.S.G brought to the notice of this court that there are two eye witnesses who have given evidence before the High Court.

Learned D.S.G also brought to the notice of this court that witness Perumbadapedige Lalith Ranasinghe who was called by the prosecution to give evidence before the High Court has identified all three accused.

It appears from the brief that this is a re - trial that is being held after this Court had ordered a re-trial in an appeal filed subsequent to the accused being convicted in the trial held before. Perusing of the indictment shows that the date of offence of this case is 1999.08.06. It is a date approximately 17 years ago from today. Learned D.S.G states to Court that there is a stay order which has been in operation. The said stay order has withheld the progress of the trial.

The Learned D.S.G. further brought to the notice of this Court the Judgment in Attorney -General Vs. Gunawardena reported in 1996 2 SLR page 149 and submitted before this Court that this Court should facilitate the progress of the trial in the High Court.

Indeed the legality, propriety and irrationality (if any) of this order could be challenged in an appeal if the accused elects to appeal in case of a conviction. This court cannot see that the end of this case in the High Court is far away as it is now at the tail end. This court is also of the opinion that it is best to leave all the matters with regard to the sufficiency and credibility of evidence in the hands of the learned High Court Judge who can decide them at the end of the trial.

We see no basis to revise the order dated 13.10.2016 made by the learned High Court Judge. Therefore, we decide to refuse this application and proceed to dismiss this application.

Registrar of this court is directed to communicate this order to the learned High Court Judge without delay.

Application is dismissed.

JUDGE OF THE COURT OF APPEAL

K.K.Wickremasinghe, J.

I agree.

JUDGE OF THE COURT OF APPEAL

Vkg/-