

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

In the matter of an Appeal against
judgment of Provincial High Court
exercising its revisionary jurisdiction.

C A (PHC) / 38 / 2008

Provincial High Court of the Western

Province holden at Colombo

Case No. HCRA / 49 / 06

Magistrate's Court Maligakanda

Case No. 7231/C

Sheik Ahamad Mohommed Rasul,
No. 48,
Nawagampura,
Stace Road,
Colombo 14.

ACCUSED – PETITIONER -

APPELLANT

-Vs-

1. Hon. Attorney General

Attorney General's Department,
Colombo 12.

RESPONDENT - RESPONDENT

2. Officer in Charge,

Unit 04,

Fraud Investigation Bureau,
Colombo.

COMPLAINANT - RESPONDENT -
RESPONDENT

Before: K K Wickremasinghe J
P. Padman Surasena J

Counsel; Accused - petitioner - Appellant is absent and unrepresented.

Varunika Hettige DSG for the Respondents.

Argued on: 2017-07-10.

Decided on : 2017 - 08 – 30

JUDGMENT**P Padman Surasena J**

The Accused Petitioner Appellant (hereinafter sometimes called and referred to as the Appellant) was charged in the Magistrate's Court of Maligakanda under three counts containing offences punishable under section 461 of the Penal Code. Learned Magistrate at the conclusion of the trial, had convicted him on the 1st and the 2nd counts, and had acquitted him from the 3rd count in the charge sheet.

Being aggrieved by the said order made by the learned Magistrate, the Petitioner had appealed to the Provincial High Court of the Western Province holden at Colombo. This appeal was assigned the No. HCMCA 619/2004

The Provincial High Court, by its judgment dated 2005-11-23 had affirmed the conviction and reduced the sentence of the Petitioner before dismissing the said appeal.

Thereafter, the Petitioner had submitted a revision application to the same Provincial High Court canvassing the same matter as he did in the previous

appeal. This revision application was assigned the No. HCRA 49/2006.

Learned Provincial High Court Judge has refused and dismissed the said revision application.

It is against that judgment that the Petitioner has filed this appeal in this Court.

As has been rightly held by the learned Provincial High Court Judge it is not open for the Petitioner to invoke the revisionary jurisdiction of the Provincial High Court when he had exhausted his right of appeal before the same Court. Further this Court has to agree without any hesitation with the conclusion of the learned Provincial High Court Judge that the sole reason as to why the Petitioner had filed this revision application is to delay the enforcement of the sentence imposed on him. Thus, it is the view of this Court also that there is no merit in this appeal.

Learned Provincial High Court Judge who delivered the judgment in the appeal (HCMCA 619/2004) has not adduced any basis as to why the sentences imposed by the learned Magistrate on two counts should not run consecutively. The fact that the Petitioner does not repent on what he had done would be manifest from his subsequent conduct of filing this frivolous

application in the Provincial High Court and the appeal thereafter to this Court by further delaying the enforcement of the sentence. Thus this Court is of the view that the reduction of the sentence imposed on such a person by way of making two sentences to run concurrently would be inappropriate. In any case, no reasons had been adduced to justify such an action.

In terms of Article 138 of the Constitution, this Court shall exercise revisionary jurisdiction for the correction of all errors in fact or in law which shall be committed by the High Court in the exercise of its appellate or original jurisdiction. Further, section 11 of the High Courts of the Provinces (Special Provisions) Act No. 19 of 1990 has provided that the Court of Appeal may in the exercise of its jurisdiction, affirm, reverse, correct, or modify any order, judgment, decree or sentence according to law or it may give directions to any High Court established by Article 154 P of the Constitution upon such terms as the Court of Appeal shall think fit. In these circumstances, and for the foregoing reasons, this Court, acting in revision, decides to set aside the direction made by the learned Provincial High Court Judge (in the appeal bearing No. HCMCA 619/2004) to make the said

two sentences imposed on the Petitioner by the learned Magistrate to run concurrently.

The learned Magistrate is hereby directed to enforce the original sentences imposed on the Accused Petitioner Appellant by his order dated 2004-06-07 on the basis that they should run consecutively.

This appeal shall, subject to the above, stand dismissed.

Learned Magistrate must take immediate steps to enforce the sentences.

JUDGE OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL