

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

In the matter of an Application of
Revision in terms of Article 138 of
the Constitution of the Democratic
Socialist Republic of Sri Lanka,
Section 364 and 365 of the Code of
Criminal Procedure Act No.15 of
1979 and section 11 of the High Court
of the Provinces (Special Provisions)
Act No. 19 of 1990 as Amended.

The Officer in Charge,
Marine Unit,
Crime Investigation Department,
Colombo-1

Complainant

Vs

1. L.B Jayaratne and 33 others

Suspects

CA (PHC) APN 64/2013

H. C. Trincomalee Case No.: HCT BA 519/12

And

Ginthota-Hewawitharanalage
Priyanka,

No.263/20, Dhammananda Gama,
Trincomalee.

Petitioner

Vs

1. The Officer in Charge,
Marine Unit,
Crime Investigation Department,
Colombo-1.
2. The Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

And Now Between

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

2nd Respondent Petitioner

Vs

1. Ginthota-Hewawitharanalage
Priyanka,

No.263/20, Dhammananda Gama,
Trincomalee.

Petitioner-1st Respondent

2. LokuBaduge Jayaratne,

No.263/20, Dhammananda Gama,
Trincomalee.

1st Suspect- 2nd Respondent

3. The Officer in Charge,
Marine Unit,
Crime Investigation Department.
Colombo-1.

1st Respondent-3rd Respondent

BEFORE : P.Padman Surasena, J.

K. K. Wickramasinghe, J.

COUNSEL : DSG Varunika Hettige for the Petitioner,

AAL Sandamali Rajapakshe for the 1st and 2nd Respondents.

ARGUED ON : 05th July 2017

WRITTEN SUBMISSIONS ON: 17th July 2017 and 04th September 2017

DECIDED ON : 24th October 2017

K. K. WICKRAMASINGHE, J.

The Complainant Petitioner (herein after referred to as the Petitioner) filed this revision application seeking to set aside the order of the Learned High Court Judge dated 19.03.2013 releasing the 2nd Respondent on bail. At all material time to this revision application, the 1st Respondent- 3rd Respondent (herein after referred to as 3rd Respondent) was the Officer in Charge of the Marine Unit of the Criminal Investigation Department.

Facts of the case:-

On the 31st July the 3rd Respondent produced the 1st Suspect the 2nd Respondent (herein after referred to as 2nd Respondent) before the Magistrate Court of Trincomalee on a B report in terms of section 115 of the Criminal Procedure Code Act, alleging that the 2nd Respondent has committed an offence punishable under section 45C of the Immigration and Emigration Act as Amended by Acts No 16 of 1993, 42 of 1998 and 31 of 2006 (herein after referred to as the Immigrants and Emigrants Act)

On 23.08.2012 the learned counsel for the Petitioner the 1st Respondent (hereinafter referred to as the 1st Respondent) made an application for bail for the 2nd Respondent on the following grounds inter alia;

1. The 1st Respondent has submitted that the 3rd Respondent has failed to comply with section 45(3) of the Immigration and Emigration Act when he produced the 2nd Respondent before the Learned Magistrate.
2. She has also moved court to consider such failure as an exceptional circumstance to grant bail for the 2nd Respondent.
3. The 1st Respondent has further submitted that the Magistrate Court has no Jurisdiction.

The bail application was taken up for inquiry on 24.01.2013, the counsel for the 1st Respondent and Petitioner made submissions in support of their respective cases. The Learned High Court Judge had pronounced the order dated 19.03.2013 granting bail on the 2nd Respondent. It was further held inter alia that;

1. A criminal case under the said act could only be commenced by controller or by a police officer of a rank not below that of Assistant Superintendent or with the written sanction of the Controller or such police officer as provided in section 45(3) of the said act.
2. The learned Magistrate does not have the jurisdiction to take cognizance of the case against the 2nd Respondent since the B report in the Magistrate Court has been filed without adhering to the provisions of section 45(3) of the Emigrants and Emigrants Act.
3. Section 135 of the Code of Criminal Procedure Act provides the mandatory prerequisites that should be fulfilled before commencing a case and in the event these prerequisites are not followed, Magistrate does not need to consider such a case.
4. The institution of proceedings in the Magistrate Court Case No. B 915/2012 was irregular, therefore the learned Magistrate does not have the jurisdiction to make any determination in respect of this case.

Being aggrieved by the said order made by the Learned High Court Judge, the Complainant Petitioner has filed this application for revision in this court on the following grounds;

1. The order dated 19.03.2013 is contrary to Law.
2. The Learned High Court Judge has misdirected himself on the law when he held that provisions of section 45(3) should be followed at the time a suspect is produced before the Magistrate Court under section 115 of the code of Criminal Procedure Act.
3. The Learned High Court Judge erred in law when he held that the learned Magistrate does not have the jurisdiction to take cognizance or make any determination in the case against the 2nd Respondent.

The Learned counsel for the Petitioner states that the matters mentioned above constitute exceptional circumstances, which warrant exercising revisionary jurisdiction of this court.

Though the learned counsel for the respondent submitted that the offence under the above mentioned act shall be instituted by a police officer of a rank not below of Assistant Superintendent as stated above, **the action has not been instituted yet**, it is only reporting

of facts (B report) to the Magistrate Court, under section 115 of the Criminal Procedure Code. Therefor it is not the institution of the case.

When considering the above facts, it is abundantly clear that the above-mentioned circumstances constitute exceptional circumstances to invoke the revisionary jurisdiction of this court.

Thus, this court set aside the order dated 19.03.2013 of the Learned High Court Judge and order that the respondent to be remanded.

Revision Application is allowed.

JUDGE OF THE COURT OF APPEAL

P.Padman Surasena J

I agree,

JUDGE OF THE COURT OF APPEAL