

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 seeking to revise and set aside the Judgment made High Court Colombo case No : HC 47/17 dated 23rd August 2019.

CA/PHC/APN/ 124/2019

H.C. Colombo Case No : HC 47/17

Pragasini Manju Tharmasuthan
37, Mary's Road,
Bambalapitiya,

Presently residing at

No 23,7/3 hampton Residency,
Hampton Lane, Colombo 6

Respondent - Petitioner

VS

The Attorney General
Attorney General's Department
Colombo 12

Applicant - Respondent

CA/PHC/APN/124/2019

High Court of Colombo

HC 47/17

Before : Hon. Justice K. K. Wickremasinghe
Hon. Justice K. Priyantha Fernando

Counsel : Shanaka Ranasinghe, PC with Niroshan
Mihindukulasuriya for the Petitioner.

Thusith Mudalige, DSG for the AG

Supported on : 16/12/2019.

Hon. Justice K. K. Wickremasinghe.

This is an appeal filed by the Petitioner arising out of a judgment of the High Court on Extradition Law. Being aggrieved by the order of the learned High Court Judge the Respondent – Petitioner has filed this appeal before this Court. Though they called this as an appeal, this has to be a Revision Application. Accordingly, since this is an order of the High Court under Extradition Law, Counsel for the Petitioner has to

establish a prima facie case in order to issue notice to the Respondent (Hon. Attorney General).

The applicant – respondent in this case has made an application under the Extradition Law to extradite the above named Respondent – Petitioner to Australia, on the alleged complains concerning defrauding public authority namely, the Australian postal co operating and causing loss.

Learned President's Counsel appearing for the Petitioner informs Court that this is an application under Extradition Law and the learned High Court Judge of Colombo has not acted legally and therefore he makes an application to issue notice to the respondent of this case. He further states that the warrant issued by the Australian Magistrate's Court is not bearing a date and the warrant is undated (as at page 28 of document marked "P") and also there was no evidence led under oath to be produced before the issuance of warrant, according to the Section 61 of the Magistrate's Court Act (marked document 'C').

The Learned High Court Judge had not considered the above mentioned Legal requirements when making the order. Also the Sri Lankan Authorities had not been provided with the relevant documents;

thereby the Learned High Court Judge was unable to look in to the relevant documents. Pecuniary penalty finally concluded, under proceedings of Crimes Act 2002 Section 334. He further states that there is double jeopardy caused to the Petitioner and that aspect had not been considered by the Learned High Court Judge when delivering the order.

Learned President Counsel further states that,

1. The Attorney General had failed to furnish a duly issued warrant for the arrest of the Respondent. The document purported to be the warrant for the arrest does not contain all material particulars as required in terms of Section. 8 (2) (a) of the Extradition Law No. 8 of 1977 as amended by Act No. 48 of 1999.
2. Pecuniary penalty imposed of the Respondent – Petitioner.

The learned President's Counsel submits that the order of the Learned High Court Judge of the Colombo is not a legal order, and it cannot be maintained.

Learned Deputy Solicitor General appearing for the Respondent informs Court that the Learned High Court Judge had very clearly considered all aspects before delivering the order in accordance with

the Sri Lankan Law considering the Provisions of the Extradition Law of Act No. 8 of 1977 amended by Act No: 48 of 1999.

Learned High Court Judge was not called upon to check the validity of the procedure in Australia, of a date (at page 61), when considering the affidavit as at page 14 by investigating officers, date of warrant is stated as 24/12/2009 (as at page 15)

The Learned High Court Judge has thereafter, acted under Provisions of Sections 10(4) of the Extradition Law No. of 8/1977 and followed the correct procedure.

Considering the above facts this Court is of the view that the date of warrant is given as 24/12/2009 as at page 15 according to the affidavit of the investigating officer.

Australian Government has taken action under civil procedure and recovered the damage caused to this complainant. Since the Petitioner has not been charged twice by the Australian Government and had only recovered sum of money after following the correct procedure, no double jeopardy caused to the petitioner. Therefore, Learned High Court Judge has very correctly followed the Provisions of Sections 8 and 10 of the Extradition Law No. of 8/1977 amended by Act

No: 48/1999. Therefore, the Learned President's Counsel has not established a prima facie case in order to serve notice to Respondents to re - visit the above mentioned order and, there is no basis to issue notice to the respondent. Accordingly, this Revision Application is hereby dismissed without costs.



JUDGE OF THE COURT OF APPEAL.

Hon. Justice K. Priyantha Fernando.

I agree.



JUDGE OF THE COURT OF APPEAL

LSD/-