SENATILEKE
v.
ATTORNEY-GENERAL AND ANOTHER

COURT OF APPEAL
JAYASURIYA, J.,
KULATILAKE, J.
C.A. NO. 480/97 (REV)
H.C. BALAPITIYA NO. 160/93
OCTOBER 13TH, 1998

Revision of Orders made by the High Court – Application by the father of the accused – Locus Standi – Accused granted bail – trial in absentia – No appeal lodged.

Held:

The father of the accused has no locus standi to maintain the Revision Application.

APPLICATION in Revision from the judgment of the High Court of Balapitiya.

Cases referred to:

1. *Albert v. Wedamulla* – 1997 3 SLR 417 at 418.
2. *AG of Gambia v. N' Jie* – 1961 AC 617 at 634.
3. *Ceylon Mercantile Union v. The Insurance Corporation of Sri Lanka* – 80 NLR 309.
4. *Sudharman de Silva v. AG* – 1986 1 SLLR 11 at 14 and at 15 (SC).
5. *Sudharman de Silva v. AG* – 1985 2 SLLR 12 (CA).

Cur. adv. vult.

October 13, 1998.

JAYASURIYA, J.

Upon this application filed seeking a revision of the orders, judgment, findings, conviction and sentence imposed by the High Court Judge of Balapitiya, *the accused's father* has preferred this application and the accused who was convicted and sentenced has neither appealed against the aforesaid judgment nor moved this court in revision of the said orders and sentence. The first issue that arises is whether

the *father of the accused* has a *locus standi* to maintain the said revision application. In the recent decision in *Albert v. Wedamulla*[1] at 418, the issue of *locus standi* was considered by me and I held that the petitioner in that case did not have a *locus standi* to maintain that particular application before the Magistrate's Court. My judgment in regard to the concept of *locus standi* has been affirmed in the Supreme Court. Could a father of a convicted accused allege that he is aggrieved by the judgment and sentence imposed on his son by the High Court Judge of Balapitiya. Can the father legitimately in such circumstances assert that he has a genuine grievance because a judgment and sentence has been pronounced which prejudicially affects *his own interests* – A.G. of *Gambia v. N' Jie*[2] at 634. Vide S. M. THIO'S monograph on *locus standi* and Judicial Review. On the question of *locus standi* and the problem of discretion, see De Smith "Judicial Review of Administrative Act" 1987 impression of the 4th edition - at pages 409 to 421. We hold that the petitioner, who is the father of the accused, has no *locus standi* to maintain the *said revision* application and we are fortified in that view by the judgments pronounced by Justice Sharvananda in the *Ceylon Mercantile Union v. The Insurance Corporation of Sri Lanka*[3] and in *Sudharman de Silva v. The Attorney-General*[4] at 14 and at 15. In the Ceylon Mercantile Union case, Justice Sharvananda held that the plaintiff a registered trade union, has no *locus standi* or standing to institute a civil action on behalf of its members against the defendant corporation for a declaration that according to contracts entered into between its members and the defendant certain revised rates of allowances were payable to them.

This third accused - first respondent against whom findings, convictions and sentences have been pronounced by the learned High Court Judge of Balapitiya was on remand during the non-summary proceedings conducted in the Magistrate's Court of Balapitiya. On an application for bail made in the course of that proceedings, the learned Magistrate granted bail to the accused and enlarged him on bail on his signing certain bonds and recognizances in the Magistrate's Court promising and assuring to the learned Magistrate that he would appear before the High Court on receipt of notice or summons. Having thus obtained his liberty, and release on bail, the accused, without obtaining the permission either of the Magistrate or the High Court Judge of Balapitiya, has left the Island and thereby violated the provisions of the recognizances and bail bond which he has solemnly signed and

entered into before the Magistrate's Court. He has clearly violated the assurances undertakings and the promises which are contained in that bail bond. Thereafter, he has flouted the legal and judicial process and refrained from appearing before the High Court of Balapitiya. He has jumped bail clearly conducted himself to circumvent and subvert the law and judicial institutions. After an inquiry held under section 241 of the Criminal Procedure Code, the learned High Court Judge decided to proceed to trial against this third accused in absentia. At the trial he has been convicted of the charges contained in the indictment presented against him. The accused failed to file a petition of appeal against the findings, conviction and sentence imposed by the High Court Judge. Now, *belatedly,* his father has decided to file this revision application seeking to impugn the judgment orders and sentence pronounced by the High Court Judge of Balapitiya.

The conduct of this third accused certainly merits the re-echoing of the remarks and observations made by Justice Siva Selliah at the hearing of the appeal before the Court of Appeal in the case of *Sudharman de Silva v. The Attorney-General*[5] where he stated:

> "To grant this application at this stage would, in the view of this court, be to put a premium on prisoners jumping bail; it may even have the effect of encouraging others to do so. It might also have as a side effect, increasing the reluctance of a court in a very long trial to grant bail lest the applicant's conduct be repeated by others. To put a premium on jumping bail is something which this court is not for one moment prepared to countenance . . ." The applicant has brought this entirely on his own head and he must now take the consequences. The application therefore is refused" . . .
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> "The conduct of the appellant in jumping bail and absconding up to date was clearly designed to circumvent and subvert the law and the institutions of justice and therefore he cannot invoke the right of appeal 'as a matter of right "as contended by his counsel.

However, the Supreme Court has set aside that order and held that the accused notwithstanding his deliberate absconding cannot be deprived of his right to appeal against an order which is a right which could be exercised by the accused as of right. Justice Sharvananda held:

"In my view the considerations which weighed with the Court of Appeal in rejecting the appeal of the appellant were not relevant and out of place when he was appealing *"as of right"* and not *with leave of* the Court of Appeal. A fugitive from justice is also entitled to his rights and however repellant be the idea that he could invoke the law for which he has scant regard, yet his legal rights will have to be respected and recognised . . ."

"In my view this quotation was appropriate in the context in which it was uttered, namely, where an application to court was made for *the exercise of a discretion,* ie extension of time within which to apply for leave to appeal, in favour of the applicant. *Contumacious conduct* on the part of the applicant is a relevant consideration *when the exercise of a discretion in his favour is involved,* but not when he asserts his statutory right to appeal and is not asking for the *favour of any permission.* This meaningful distinction has been lost sight of by the Court of Appeal."

The present application is an application in revision. This is an extraordinary jurisdiction which is exercised by the Court of Appeal and the grant of relief is entirely dependent on the discretion of the court. Here the accused's father is seeking discretionary relief from the Court of Appeal and in considering the grant of discretionary relief, the court will closely examine the conduct of the accused person. In the exercise of a discretion the court scrupulously looks into the conduct of the ultimate party who is deriving benefit from the orders to be made by the court in revision.

Besides this application has been preferred with undue and unreasonable delay. The application is refused.

KULATILAKE, J. – I agree.

Application refused.