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 and Section 364 and 356 of the Code of Criminal Procedure Act, No.15 of 1979 as amended.

CA Case No: CPA 132/2024

HC of Colombo Case No:

HC5186/2010

The Democratic Socialist Republic of Sri Lanka

Complainant

1. Velupillai Sivanadiyar
2. Murugesu Shanmugaraja
3. Kanthilingam Prem Reji
4. Kathirakesu Ganeshalingam
5. Sinnaiah Shanthalingam (dead)
6. Valiyathambi Nadarajah (dead)
7. Balasubramaniam Sri Skandarasa
8. Komalias Prabhakaran
9. Sebamalai Jojanas
10. Thanuskodi Premani (dead)
11. Kurukulasingham Thevarasa
12. Kinsley Ariyaratnam Rasanayagam (dead)
13. Thurairajaj Priyadarshani (dead)
14. Eliyathambi Thresakumaran

Accused

AND NOW BETWEEN

Attorney General
Attorney General's Department
Colomo 12

Complainant-Petitioner

1. Velupillai Sivanadiyar
2. Murugesu Shanmugarasa
3. Kanthilingam Prem Reji
4. Kathirakesu Ganeshalingam
5. Sinnaiah Shanthalingam (dead)
6. Valiyathambi Nadarajah (dead)
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12. Kinsley Ariyaratnam Rasanayagam (dead)
13. Thurairajaj Priyadarshani (dead)
14. Eliyathambi Thresakumaran

Accused-Respondents

Before: **B. Sasi Mahendran, J.**

Amal Ranaraja, J.

Counsels: Udara Karunathilake, SC for the Petitioner

Supported On: 14.05.2025

Order On: 13.06.2025

B. Sasi Mahendran, J

This is a revision application filed by the Complainant-Petitioner, the Honorable Attorney General (hereinafter referred to as the Petitioner), seeking to set aside the judgment delivered by the Learned High Court Judge on 22.01.2024 in case No. HC 5186/2010.

According to the Petitioner, the 14 Accused-Respondents were indicted for committing a series of offenses in terms of the Act No. 25 of 2005, namely, the Convention on the Suppression of Terrorist Financing Act.

It should be noted that when the indictment was presented before the High Court, only the 1st, 9th, 11th and 14th respondents were present. It was reported to the Court that 5th,6th,10th,12th and 13th had passed away. Moreover, the 2nd,3rd,4th, 7th and 8th respondents were absent. Therefore, steps were taken in terms of section 241 of the Criminal Procedure Code, and they were tried in *absentia.*

During the trial prosecution presented witnesses No.01,04,05,06,07,11,12,13,14,15,18, and 19, marked documents and subsequently closed their case. Thereafter, defence was called and the said respondents provided dock statements. Thereafter, by delivering the judgment dated 22.01.2024, all the respondents were acquitted of all the charges, on the

premise that the prosecution had failed to prove the case beyond a reasonable doubt.

The Petitioner, being aggrieved by this Judgment, filed this revision application in this Court, seeking to set aside the said Judgment of the Learned High Court Judge.

According to the Petition dated 27.09.2024, in paragraph 23, the Petitioner has averred that they encountered the difficulties of obtaining the judgment, the certified copy of the proceedings and the marked documents as exhibits, which resulted in their inability in filing an application for leave to appeal in terms of Section 15 of the Judicature Act.

Furthermore, we are mindful that the Petitioner have invoked the discretionary remedy of revision as conferred upon this Court in terms of Article 138 of the Constitution

The power to exercise the Revisionary Jurisdiction is vested in The Court of Appeal, the Article 138 of the present Constitution as follows;

> *"(1) The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be 128[committed by the High Court, in the exercise of its appellate or original jurisdiction or by any Court of First Instance], tribunal or other institution and sole and exclusive cognizance, by way of appeal, revision and restitutio in integrum, of all causes, suits, actions, prosecutions, matters and things 129[of which such High Court, Court of First Instance], tribunal or other institution may have taken cognizance:*
>
> *Provided that no judgement, decree or order of any court shall be reversed or varied on account of any error, defect or irregularity, which has*

not prejudiced the substantial rights of the parties or occasioned a failure of justice.

(2) The Court of Appeal shall also have and exercise all such powers and jurisdiction, appellate and original, as Parliament may by law vest or ordain."

In ***Nissanka v The State*** (2001) 3 Sri LR page 78 at page 81 and 82, Kulathilaka, J, held that,

"*Hence the revisionary jurisdiction of this Court is wide and specially directed at vesting the jurisdiction in this Court to satisfy itself as to the legality or propriety of any sentence or order made by the High Court or Magistrate Court. It gives this Court wide powers of review in revision. This jurisdiction is not fettered by the fact that the accused - appellant has not availed of the right of appeal within the specified time."*

It should be noted that although the Petitioner is seeking to challenge the judgment pronounced on 22.01.2024, the instant revision application has been filed on 13.09.2024, some 08 months after the said verdict.

Our Courts have held that if the Petitioner has failed to explain the delay, the Court is reluctant to exercise its revisionary powers. In the instant application, there is no indication of when the Petitioner applied for the relevant documents for the purpose of this application.

We are mindful that paragraph 23 of the Petition, a petitioner has blamed the High Court for failing to provide certified copies of the proceedings, which purportedly prevented the Petitioner from filing a leave to appeal. This revision application, however, was filed after 8 months. Thus, although the Petitioner was well aware that the application for leave to appeal was out of time, they took no prompt steps to file an application for revision until the 27th September 2024.

The Petitioner has failed to provide any justification for the delay in filing this application. The order sought to be revised is dated 22nd January 2024, and in view of the inordinate delay of eight months to file this application, it must be dismissed.

The following cases explain the impact of delay.

Gunasekera and another v Abdul Latiff; 1995 - Volume 1, Page No – 225; Dr. Ranaraja,J. held that;

> "The word "laches" is a derivative of the French verb Lacher, which means to loosen. Laches itself means slackness or negligence or neglect to do something which by law a man is obliged to do. (Stroud's Judicial Dictionary 5th Ed Pg 1403.) It also means unreasonable delay in pursuing a legal remedy whereby a party forfeits the benefit upon the principle vigilantibus non dormientibus jura subveniunt. The neglect to assert one's rights or the acquiescence in the assertion 'or adverse' rights will have the effect of barring a person from the 'remedy which he' might have had if he resorted to it in proper time. (Mozley & Whiteley's Law Dictionary 10th Ed pg 260). When it would be practically unjust to give a remedy either because the party has by his conduct done that which might fairly be regarded as equal to waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were to be afterwards asserted, in either of these cases lapse of time and delay are most material. (*Lindsay Petroleum Co v Hurd*) [(3)]. What is reasonable time and what will constitute delay will depend upon the facts of each particular case. However the time lag that can be explained does not spell laches or delay. If the delay can, be reasonably explained the court will not decline to interfere. (*Per Sharvananda J in Biso Menika v Cyril de Alwis*)

The principle that emerges from the above citations is,

(1) Delay alone will not bar a person from obtaining relief which he may be entitled to.

(2) Court will grant relief only if the delay can be reasonably explained."

The above judgment was considered by Justice Sobhitha Rajakaruna in ***Ratnayake Muidiyanselage Heen Banda and Others v Pathiranage Dona Perlil Jayawardena,*** CA-RI-04/2018, decided on 25.11.2020; held that;

> *"The 5th Defendant had died on 04.10.2015 and this application was filed only on 26th date of February, 2018. There is an inordinate delay in presenting this application, regarding which no explanation is available."*

In this application petitioner has failed to provide a justification for the delay. This ground is sufficient enough one to dismiss this action.

Furthermore, we are mindful that generally, our Courts have allowed the revision application when the applicant has no other available remedy. However, it is also now settled law that revisionary powers would be exercised even though there is an alternative remedy exists. However, this could be exercised only in exceptional circumstances.

The object of revisionary jurisdiction is to ensure the due administration of justice and correction of errors regarding either the law or the facts, thereby avoiding miscarriage of justice.

In ***Mariam Beebee, v Seyed Mohamed,*** **68 NLR page 36 at page 38, His Lordship Sansoni, CJ.** stated that:

> "The power of revision is an extraordinary power which is quite independent of and distinct from the appellate jurisdiction of this Court. Its object is the due administration of justice and the correction of errors, sometimes committed by this Court itself, in order to avoid miscarriages of justice. It is exercised in some cases by a Judge of his own motion, when an aggrieved person who may not be a party to the action brings to his notice the fact that, unless the power is exercised, injustice will result."

In ***Wijesinghe v Tharmaratnam*** **CA 120/80, Decided on 14th October 1986, page 47 at page 49, Srikantha's Law Reports, Vol (IV) Jameel J.** held that, *"Revision is a discretionary remedy and will not be available unless the application discloses circumstances which shocks the conscience of court."*

Bank of Ceylon v Kaleel and others [2004] 1 SLR 284, **Wimalachandra J.** held that, *"In any event to exercise revisionary jurisdiction the order challenged must have occasioned a failure of justice and be manifestly erroneous which go beyond an error or defect or irregularity that an ordinary person would instantly react to it; the order complained of is of such a nature which would have shocked the conscience of court."*

The fundamental question before us is whether the said order, which was made on 22.01.2024, is illegal or irregular, which should it be revised?

When we peruse the said order, the Learned High Court judge has given reasoned justifications for the acquittal of the accused.

For easy reference I have reproduced some parts of the said judgment below.
At page 1311

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කෙසේ වෙතත් ඉදිරිපත් වී ඇති සාක්ෂි සලකා බැලීමේදී විශේෂයෙන්ම මා ඉහතින් සඳහන් කරන ලද පැ.සා.1, පැ.සා.4, පැ.සා.5, පැ.සා.6 පැ.සා.7, පැ.සා. 11 යන සාක්ෂිකරුවන්ගේ සාක්ෂි වලින් හෝ විමර්ශන නිලධාරීන්ගේ සාක්ෂි වලින් හෝ විමර්ශන නිලධාරීන්ගේ සාක්ෂි වලින් 14 වන චුදිත මෙම මුදල් භාරගෙන ඇත්තේ එල්.ටී.ටී.ඊ . සංවිධානය වෙනුවෙන් බවට කිසිදු සාක්ෂියක් ඉදිරිපත් වී නැත.

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අනෙක් අතට 14 වන චුදිත කළමනාකාරිත්වය දැරූ SEDB බැංකුවෙන් විවිධ පුද්ගලයන් විසින් ඉදිරිපත් කරන ලද ලැයිස්තුවලට මුදල් ගෙවන ලද බව පැමිණිල්ලේ සාක්ෂි අංක 1 සාක්ෂියෙන් පෙනී යයි. කේසේ වෙතත් එම සාක්ෂියෙන් හෝ එම මුදල් ලබා ගත්තේ සන්නද්ධ ගැටුම් පවතින තත්වයකදී එහි ක්‍රියාකාරිත්වයක් හෝ සහභාගිත්වයක් නොදරන යම් තැනැත්තෙකු මරණයට පත් කිරීම හෝ

තුවාල සිදු කිරීම අරමුණු කරන ලද ක්‍රියාවක් කරනු පිණිස හෝ ජනතාවට, ආණ්ඩුවට හෝ ජාත්‍යන්තර ආයතනයට හෝ බලපෑම් කිරීම සඳහා බවට අනුමිතියකට එළඹීමට හෝ සාක්ෂි පැමිණිල්ලෙන් ඉදිරිපත් වී නැත.

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මෙම සාක්ෂිය අධි චෝදනා පත්‍රයේ සඳහන් සියලුම චෝදනාවල හරයන්ට පටහැනි වේ. සම චෝදනාවකම පදනම වන්නේ දෙමල පුනරුත්ථාපන සංවිධානයේ මුදල් එල්.ටී .ටී .ඊ . ක්‍රියාකාරිකයෙකු වන 14 වන චුදිත මගින් එල්. ටී .ටී .ඊ . සංවිධානයට හා එහි ක්‍රියාකාරිත්වය සඳහා නිකුත් කළේය යන්නයි.

කෙසේ වෙතත් මෙම ස්ථාවරය පැමිණිල්ලෙන්ම කැඳවන ලද පැමිණිල්ලේ සාක්ෂි අංක 18 එලියතම්බි සෙල්වචන්ද්‍ර නමැති සාක්ෂිකරුගේ සාක්ෂියෙන් බිඳ වැටේ.

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මෙම නඩුවේ සාක්ෂිකරුවන්ගේ සාක්ෂි සලකා බැලීමේදී 14 වන චුදිත අධිචෝදනා පත්‍රයේ 1 වන චෝදනාවේ සඳහන් කර ඇති ආකාරයට එලියතම්බි ත්‍රේසකුමාරන් එල්.ටී .ටී .ඊ . සංවිධානයේ සාමාජිකයෙකු බව තහවුරු කිරීම සඳහා කිසිදු සාක්ෂියක් ඉදිරිපත් වී නැත. අනෙක් අතට එලිය තම්බි ත්‍රේසකුමාරන් සහ පැමිණිල්ලේ සාක්ෂි අංක 1 ස්වෙතනාගේ නමින් ඇති බද්ධ ගිණුමට ලද මුදල් එල්.ටී .ටි.ඊ . සංවිධානයට මුදාහල බව හෝ එල්.ටී .ටි.ඊ . සංවිධානය වෙනුවෙන් එකතු කල බවට කිසිදු සාක්ෂියක් ඉදිරිපත් වි නැත.

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කෙසේ වෙතත් මා ඉහතින් විස්තර කල පරිදි මෙම නඩුවේ 14 වන චුදිත එල්.ටී .ටී .ඊ . සංවිධානයේ සාමාජිකයෙකු බව හෝ කලවන්චිකුඩි SEDB බැංකුවේ 14 වන චුදිත සහ පැමිණිල්ලේ සාක්ෂි අංක නමින් පවත්වාගෙන ගිය බද්ධ ගිණුමට ලද මුදල් එල්. ටී .ටී . ඊ . සංවිධානය වෙනුවෙන් ලද මුදල් බවට හෝ එල්.ටී .ටී .ඊ . සංවිධානය වෙනුවෙන් වියදම් කල බවට හෝ පැමිණිල්ලේ සාක්ෂිකරුවන්ගේ සාක්ෂි වලින් අනාවරණය වි නැත. එබැවින් ඉදිරිපත් කර ඇති 2 චෝදනාවෙන් 2 වන චුදිත නිදොස් කිරීමට මම තීරණය කරමි.

ඉදිරිපත් කර ඇති අධිචෝදනා පත්‍රය සමස්ථයක් ලෙස සලකා බලන විට එහි ඇති සෑම චෝදනාවක්ම ගොඩනගා ඇත්තේ 2005 අංක: 25 දරන ත්‍රස්තවාදීන්ට මුදල් සැපයීම මැඩපැවැත්වීමේ සම්මුති පනතේ 3 (1) (ආ) වගන්තිය යටතේ ප්‍රධාන කර්තව්‍යය සිදු කරන ලද ප්‍රධාන චුදිතයා වශයෙන් 14 වන චුදිත කටයුතු කිරීමත්, සෙසු චුදිතයින් ඊට ආධාර හා අනුබල දීමත් වශයෙනි.

For easy reference I reproduce the relevant section (Section 3(1) of the Convention

3 (1) Any person who, by any means, directly or indirectly, unlawfully and wilfully provides or collects funds, with the intention that such funds should be used, or in the knowledge that they are to be used or having reason to believe that they are likely to be used, in full or in part, in order to commit,-

(a) an act which constitutes an offence within the scope of, or within the definition of any one of the Treaties specified in Schedule I hereto ;

(b) any other act, intended to cause death or serious bodily injury, to civilians or to any other person not taking an active part in the hostilities, in a situation of armed conflict, and the purpose of such act, by its nature or context is to intimidate a population or to compel a government or aninternational organization, to do or to abstain from doing any act,

of the Suppression of Terrorist Financing Act No.25 of 2005.

shall be guilty of the offence of financing of terrorists or terrorist organizations :

Provided that, for an act to constitute the offence set out above, it shall not be necessary to show that the funds collected were actually used in the commission of an offence.

(2) Any person who-

(a) attempts to commit;

(b) aids or abets the commission of ; or

(c) acting with a common purpose with another person

the offence of financing of terrorists or terrorist organizations, shall be guilty of an offence under this Act.

In this subsection "abet" has the same meaning as in sections 100 and 101 of the Penal Code.

The learned High Court Judge has rightly determined that the prosecution failed to establish the alleged offence. Furthermore, at the time the indictment was filed, the 1st to 5th Accused-Respondents, who served as directors of the Tamil Rehabilitation Organization (TRO), were not prohibited from operating in Sri Lanka. Additionally, Witness No. 01, originally a suspect in this case, provided testimony that remains unverified by independent evidence.

Our Courts have consistently held that to exercise revisionary jurisdiction, the order challenged must have occasioned a failure of justice and be manifestly erroneous, which goes beyond an error.

We are of the view that the Learned High Court Judge has correctly analyzed the evidence presented before him. Consequently, there is no reason for us to intervene in the said judgment. For the said reason, I find no basis to issue notice on the Accused-Respondents. Accordingly, the revision application is dismissed without the notice being issued.

The Registrar of the Court is directed to communicate this order to the High Court of Colombo for necessary information purposes.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.
I AGREE

JUDGE OF THE COURT OF APPEAL