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

In the matter of application for Revision in terms of Article 138 (1) of the Constitution.

Case No : CPA 155/2024

HC of Colombo Case No:

HC83676/07

Hon. Attorney General

Attorney General's Department

Colombo 12

Plaintiff

V.

1. Udaya Shantha Dissanayake
   Kodituwakku
   " Udaya Niwasa"
   Araliya Mawatha
   Thihagoda- Matara

2. U.H. Dulanga Shiran
   In front of the Pola
   Mamadala
   Ambalantota

Defendants

AND NOW BETWEEN

Udaya Shantha Dissanayake
Kodituwakku
"Udaya Niwasa"
Araliya Mawatha
Thihagoda- Matara

1st Defendant-Petitioner

Vs.

1. Hon. Attorney General
   Attorney General's Department
   Colombo 12

   Plaintiff-Respondent

2. U.H. Dulanga Shiran
   In front of the Pola
   Mamadala
   Ambalantota

   2nd Defendant- Respondent

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

Counsel: Hemantha Situge with K. Bombuwala for the
1st Defendant-Petitioner

Supported
On: 31.01.2025

Order On: 04.03.2025

ORDER

B. Sasi Mahendran, J.

This is an application to revise the order of the Learned High Court Judge dated 04.04.2024 which was marked as P16 on the basis that the Learned High Court Judge did not allow the application of the Petitioner to make an application under Section 200 (1) of the Code of Criminal Procedure Act.

When we peruse the document marked P16, we observe that the Petitioner (1st Accused) was not represented by a Counsel, he represented himself. Since the Prosecution had closed its case, the Court called the defence and explained the Petitioner's rights relating to giving evidence in Court. Thereafter, the Petitioner informed the Court that he needed the assistance of a lawyer, for which permission was granted. The 2nd Accused opted to give a dock statement. Thereafter, the Court indicated that if the Petitioner wishes to lead evidence, a list of witnesses needs to be filed. According to the Petitioner, this is an illegal order.

In this context, the Petitioner has invoked the revisionary jurisdiction of this Court in terms of Article 138 of the Constitution.
Our Courts have held that, unlike an appeal, revision is a discretionary remedy. The object of revisionary jurisdiction is to ensure the due administration of justice and correction of errors regarding either the law or the facts in order to avoid miscarriage of justice.

In Mariam Beebee, Vs. Seyed Mohamed, 68 NLR page 36 at page 38, His Lordship Sansoni, C.J. 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 Jonita vs. Abeysekara, CA NO. 666/81, Sriskantha's Law Reports, Volume IV, page 20 at page 24, Decided on 14th December 1984, His Lordship Siva Sellaiah, J. held that,

"The scope and object of revisionary powers by the Supreme Court was stated by Bonsar CJ in 2 NLR 104 as follows: "The Supreme Court has the power of revising the proceedings of all inferior courts. The object at which the Supreme Court airs in exercising its powers of Revision is the due administration of justice; and whether any particular person has complained against an order proposed to be revised, or is prejudiced by it, is not to be taken into account in the exercise of such power" There have been a long line of cases thereafter which have discussed whether an application for Revision is available when the law has provided an alternate remedy and have held that it is not an invariable rule and have granted it where exceptional circumstances existed. These principles and cases were reviewed and cited by Atukorala J in CA 48/79 where he held that, "on a consideration of the above case it appears to me that the former Supreme Court has exercised its extra ordinary powers of Revision only in cases where exceptional circumstances which would warrant an exercise of such powers have been proved to exist, irrespective of whether an appeal has been taken or not from the judgment or order sought to be revised."

The above judgment was considered by His Lordship Jayawickrama J in Soysa v. Silva and Others (2000) 2 SLR 235. Accordingly,

"The power given to a Superior Court by way of Revision is wide enough to give it the right to revise any order made by an original court. Its object is the due administration of justice and the correction of errors sometimes committed by the Court itself in order to avoid miscarriage of justice."

Further, our Courts have held that revision will not be available unless the application discloses circumstances that shock the conscience of the Court.

In Wijesinghe V. Tharmaratnam CA 120/80, Decided on 14th October 1986, page 47 at page 49 Srikantha's Law Reports, Volume (IV) His Lordship 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."

This was further established in Bank of Ceylon Vs Kaleel and others [2004] 1 SLR 284, Per His Lordship Wimalachandra J,

> "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."

As stated in Senarathne and Another vs. Wijelatha (2005) 3 Sri LR page 76 at page 81, His Lordship Basnayake J. stated that,

> "Now I shall deal with the revisionary powers of this court. Section 753 of the Civil Procedure is as follows:
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> 753.- The Court of Appeal may of its own motion or on any application made call for and examine the record of any case, whether already tried or pending trial, in any court, for the purpose of satisfying itself as to the legality or propriety of any judgment or order passed thereon or as to the regularity of the proceedings of such court and may upon revision of the case brought before it pass any judgment or make any order thereon, as the interests of justice may require.
>
> The powers of the Appeal Court with regard to revision is well accepted in a large number of cases. These powers are wide enough to give it the right to revise any order made by an original court whether an appeal has been

taken against it or not. Atukorala vs Samynathan (4)However such powers would be exercised only in exceptional circumstances which depend on the facts of each case, Rustom vs. Hapangama (5) Thilagatnam V. Edirisinghe(6) Iynul Kareeza V. Jaysinghe(7) Hotel Galazy Pvt. Ltd. V. Mercantile Hotels Management Ltd.(8) Jonita V.Abeysekera(9) Revision is a discretionary remedy and will not be available unless the application discloses circumstances which shock the conscience of the court. Wljesinghe vs. Thamararatnam The question whether delay is fatal to an application in revision depends on the facts and circumstances of the case and having regard to the very special and exceptional circumstances of the case. Gnanapanditham vs. Balanayagam.(11) These powers should be exercised where a miscarriage of justice has occurred due to a fundamental rule of procedure being violated, but only where a strong case is made out amounting to a positive miscarriage of justice- Vanik Incorporation Ltd. vs. Jayasekera"

Our Courts have further held that the Courts have to consider whether the order is illegal, improper, or irregular, resulting in a miscarriage of justice.

In Nissanka vs. The State (2001) 3 Sri LR page 78 at pages 81 and 82, His Lordship 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."

In Athurupana v. Premasinghe, SC Appeal No. 21/202, Decided on 14.05.2004, (2004 BLR 60 at page 63), His Lordship Sarath N. Silva, C.J held that;

"Section 753 of the Civil Procedure Code which gives the ambit of the revisionary jurisdiction of the Court of Appeal empowers the Court to examine the record "for the purpose of satisfying itself as to the legality or

propriety of any judgment or order……..or as to the regularity of the proceedings" and thereupon "pass any judgment or make any order as the interests of justice may require."

The section has three elements that constitute the basis of the exercise of revisionary jurisdiction. They are:

i. the legality or propriety of the judgment or order called in question;
ii. the regularity of the proceedings;
iii. the need to pass any judgment or make any order in the interests of justice.

An examination of these elements demonstrate that every illegality, impropriety or irregularity does not warrant the exercise of revisionary jurisdiction. Such jurisdiction will be exercised only where the illegality, impropriety or irregularity in the proceedings has resulted in a miscarriage of justice, by the party affected being denied what is lawfully and justly due to that party. In such event the Court will in revision set right the illegality, impropriety or irregularity by passing "any judgment of making any order as interests of justice may require."

In the instant application, the Petitioner failed to establish that the order made by the Learned Judge was illegal, improper, or irregular resulting in a miscarriage of justice or that shocks the conscience of the Court.

This Court is mindful that the order was made on 04.04.2024, and this application was filed on 23.12.2024. We are also mindful that this is a discretionary remedy where the Court expects that there should not be a delay in filing the application. If the Court finds that the delay is not explained, the Court has the discretion to dismiss the application *in limine*.

In Biso Menika v. Cyril de Alwis, (1982) 1 SLR 368 at 377, His Lordship Sharvananda, J held;

> "The proposition that the application for Writ must be sought as soon as injury is caused is merely an application of the equitable doctrine that delay defeats equity and the longer the injured person sleeps over his rights without any reasonable excuse the chances of his success in a Writ application dwindle and the Court may reject a Writ application on the ground of unexplained delay.

His Lordship G. P. S. De Silva, CJ following the above judgment held in Gnanapandithen And Another V. Balanayagam and Another, (1998) 1 SLR 391 that:

> "The question whether delay is fatal to an application in revision depends on the particular facts and circumstances of the case."

When the matter was supported on 31.01.2025, the Counsel for the Petitioner brought to notice of the Court that on 04.04.2024, the Learned High Court Judge disallowed the Petitioner's application to make an application under Section 200(1) of the Criminal Procedure Code. According to the Petitioner, the said order is illegal.

However, when we peruse the order marked P16, the Petitioner has moved further time to get the assistance of a lawyer to defend him. I do not see any illegality in the said order.

Further, we observe that, according to the document marked P20, on 18.06.2024, the Petitioner has called one witness on his behalf. It shows that he has opted to lead evidence in defence. This was not disclosed to the Court.

Considering the above facts, we see no illegality in the said order which does not shock the conscience of the Court.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.
I AGREE

JUDGE OF THE COURT OF APPEAL