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

In the matter of an Application for Revision under and in terms of Articles 138 and 154 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with the provisions of the High Court of the Provinces (Special Provisions) Act No.19 of 1990.

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

Complainant

Court of Appeal
Case No. **CA (PHC) APN No. CPA/153/2024**

Vs.

High Court of Colombo
Case No. **HC/3702/2022**

Magistrate Court of Colombo
Case No. **B/66798/01/17**

Jeyakumar Saranniya *alias* Saranya *alias* Meera

Accused

AND NOW BETWEEN

Jeyakumar Saranniya *alias* Saranya *alias* Meera

Accused-Petitioner

Vs.

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

Complainant-Respondent

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

Counsel: Feris Saly with A. Subai instructed by Feris and Associates for the Accused-Petitioner.

Oswald Perera for the Complainant-Respondent.

Supported on: 30.01.2025

Decided on: 17.02.2025

ORDER

AMAL RANARAJA, J.

1. The accused-petitioner (hereinafter referred to as the "Petitioner") has been indicted in the *High Court* of *Colombo* in case no. HC 3702/22 on the following charges;

Charge 1

That between 01.01.2016 and 20.02.2016, the petitioner deceived one *Jeewanantham Wellangiri alias Wellangiri*

Jeewanantham, by promising the latter to obtain a five-year work permit in *Italy* for him, thereby dishonestly inducing the said *Jeewanantham Wellangiri alias Wellangiri Jeewanantham* to deliver a sum of Rs. 2,000,000/- which is an offense punishable under section 403 of the Penal Code.

Charge 2

That between 01.01.2016 and 20.02.2016, the petitioner deceived one *Jegadees Sagadeevan*, by promising the latter to obtain a five-year work permit in *Italy* for him, thereby dishonestly inducing the said to deliver a sum of Rs. 2,000,000/- which is an offense punishable under section 403 of the Penal Code.

Charge 3

That between 01.01.2016 and 20.02.2016, the petitioner deceived one *Balabishegam Bala Saraswathi*, by promising the latter to obtain a visa for foreign employment in *Italy* for her, thereby dishonestly inducing the said *Balabishegam Bala Saraswathi* to deliver a sum of Rs. 2,000,000/-, which is an offense punishable under section 403 of the Penal Code.

2. Though the petitioner had not done so initially, he has at the tail end of the trial pleaded guilty to the charges in the indictment. Upon the acceptance of the subsequent plea, the petitioner has been convicted thereon and sentenced as follows;

a. A fine of Rs.10,000/- for each charge, amounting to a total of Rs. 30,000/- has been imposed with a sentence of six months' rigorous imprisonment for each charge in default of payment of the fines imposed, cumulatively to a period of eighteen months' rigorous imprisonment.

b. A term of eight month's rigorous imprisonment has been imposed for each charge, suspended for a period of fifteen years.

c. To pay to Court as compensation a sum of Rs.2,000,000/- each in respect of the first, second and the third charges amounting to a total of Rs.6,000,000/- with a sentence of eight months rigorous imprisonment for each charge imposed in default of the payment of the compensation ordered, cumulatively to a period of twenty four months simple imprisonment.

3. The petitioner being aggrieved by the order to pay to Court such an amount as compensation and the term imposed in default of the payment of the same, he has preferred to this Court the instant application in revision in terms of Article 138 of the Constitution. The Learned Counsel for the petitioner making submissions in

support of the application has requested from Court to consider the following;

i. Notice of the instant application be issued on the complainant-respondent.

ii. Direct the sentence of 8 months' simple imprisonment imposed in default of the payment of compensation to run concurrently.

4. The application was supported by the Learned Counsel for the petitioner accordingly and this order is pronounced after considering whether there are sufficient grounds before this Court to issue formal notice on the complainant-respondent in the first instance.

5. **Article 138** of the **Constitution** identifies the general jurisdiction of the Court of Appeal 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 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 restitution in integrum, of all causes,*

suits, actions, prosecutions, matters and things of which such High Court, Court of First Instance, tribunal or other institution may have taken cognizance:

Provided that no judgment, 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.*

6. Accordingly, Article 138 vested within the Court of Appeal appellate and revisionary jurisdiction in respect of orders made by Courts of first instance.

7. In ***Mariam Beebee vs. Seyed Mohamed and Others*** [69 CLW page 34 at page 35], Sansoni, C.J. has held,

"*Power of revision is an extra-ordinary power of the Court which is independent and distinct from the appellate jurisdiction. The object of revisionary jurisdiction is to ensure the due administration of justice and the correction of all errors in order to avoid a miscarriage of justice.*"

8. Hence in an application by way of revision, the Court will only be concerned of the legality and the procedural correctness of an order. If the order of the original Court is legal and if the correct procedure has been followed, the Court of Appeal would not interfere with such an order. In an application for revision, the Court will not be interested in the merits of the case, whereas, its focus would be on the legality and the correctness of the order.

9. The **Assistance to and Protection of Victims of Crimes and Witnesses Act No. 10 of 2023** provides for that upon conviction of a person to order the person so convicted to pay to Court such an amount of compensation as may be determined by such Court in addition to any penal sanctions that may be imposed on the person so convicted. The Statute also enable a Court to impose an additional prison term on the particular person ordered to pay compensation in default of the payment of the same. The Court which recovers an amount as compensation from a person so convicted is required to remit 20% of the money recovered to the protection fund and pay the balance amount to the victim of crime or his next of kin.

10. For purposes of clarity I reproduce the relevant sections in the **Assistance to and Protection of Victims of Crimes and Witnesses Act No.10 of 2023** beneath as follows;

Section 61

(1) Notwithstanding anything to the contrary in any other written law, a court may, on conviction of an accused, in addition to any penal sanction that may be imposed on the convicted person in respect of the offence for which he is convicted, order the convicted person to pay to the Court such amount of compensation as may be determined by such Court, under this Act.

(2) Where a Court makes an order under subsection (1), the Court may-

(a) specify the time within which such compensation shall be paid; or

(b) order the compensation to be paid on instalment basis, depending on the circumstances.

(3) Any sum ordered to be paid the Court under this section shall be recoverable as if it were a fine imposed by such Court, and the provisions relating to recovery of compensation contained in the Code of Criminal Procedure Act shall apply to the recovery of compensation under this section.

(4) Where the convicted person is impecunious or he has no assets to be forfeited to recover compensation, the Court may order the Authority to pay, subject to the availability of resources and in accordance with the succeeding provisions of this Act, a sum of money as compensation that is commensurate to the

victimization, not exceeding rupees one million to the victim of crime."

Section 62

Where a convicted person fails to pay the compensation ordered to be paid under section 61, he shall be liable-

(a) if such order was made by the Magistrate's Court, to imprisonment of either description for a period not exceeding two years; or

(b) if such order was made by the High Court, to imprisonment of either description for a period not exceeding five years:

Provided however, if the Court is satisfied upon inquiry that the convicted person does not have the necessary financial resources to pay the compensation, the Court may enter a community based correction order, and where such order is entered, the provisions relating to community based correction orders contained in the Community Based Corrections Act, No.46 of 1999 shall, mutatis mutandis, apply in relation to that order.

11. When the petitioner informed the Court that he wanted to withdraw the previous plea to the charges and plead guilty to the same, the Learned High Court Judge has read and explained to the petitioner again the charges in the indictment. The petitioner has thereafter pleaded guilty to the charges. Upon the petitioner pleading guilty to the charges the Learned High Court Judge has convicted the petitioner thereof.

12. The Learned High Court Judge has convicted the petitioner of the charges framed in respect of three different offences committed by the petitioner and imposed penal sanctions in respect of each charge the petitioner was convicted of. In addition, the Learned High Court Judge has ordered the petitioner so convicted to pay to Court a sum of Rs. 2,000,000/- each as compensation in respect of the offences specified in the charges set out in the indictment. The Learned High Court Judge has thereafter also imposed terms of eight months' simple imprisonment each in the event the petitioner default on the payment of the compensation ordered to be paid to Court. Hence, the impugned order has been made in conformity with the provisions of the law referred to above.

13. Further, the provisions in section 300 of the Code of Criminal Procedure Act No. 15 of 1979 clearly express or specifies that subsequent imprisonment commences at the expiration of an imprisonment to which a person has been previously sentenced.

14. This Court has also drawn his attention to the undertaken given by the petitioner in the *High Court of Colombo* to reimburse a sum of Rs. 6,000,0000/- to the complainant-respondent when submissions were made on behalf of the former in mitigation of the sentence.

> *"...එසේම ගරු උතුමාණනි මෙම නැනැත්තියට එල්ල වී ඇති චෝදනාවට අදාලව නිබෙන ලක්ෂ 60 ක මුදල් ගෙවීම සදහා මාස*

06ක කාලයක් අවසාන වීමට පෙර ගෙවීම සඳහා එකඟත්වය පළ කරන බවට ගරු අධිකරණයට ගෞරවයෙන් සැලකර සිටිනවා."

[Vide proceedings dated 04.03.2024 at page 7]

15. Consequently, the disputed conviction and the order directing the petitioner to pay to Court compensation together with the prison term imposed in default of the payment of the same does not shock the conscience of this Court.

16. In those circumstances, I see no reason to interfere with the disputed conviction or the disputed order.

Accordingly, I am not inclined to issue formal notice on the complainant-respondent and dismiss the instant application.

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

Notice refused.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree.

Judge of the Court of Appeal