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

Officer-in-Charge,
Special Crimes Investigation Unit,
Kalutara.

Complainant

CA/PHC/APN 0024/2025

Vs.

Provincial High Court of Kalutara
Case No. 827/ 20/Appeal

Magistrate Court of Kalutara
Case No. 57149/08

1. Kathri Arachchige Don Rahula Siriwardhena.

2. Senanayaka Mudiyanselage Arunasiri Amarasinghe.

Accused

AND BETWEEN

Kathri Arachchige Don Rahula Siriwardhena

1st Accused- Appellant

Vs.

Officer-in-Charge
Special Crimes Investigation Unit,
Kalutara.

Complainant-Respondent

AND NOW BETWEEN

Senanayaka Mudiyanselage Arunasiri
Amarasinghe,
No. 21/6, Old Airport Road,
Katukurunda,
Kalutara.

2nd Accused-Petitioner

Vs.

Officer-in-Charge,
Special Crimes Investigation Unit,
Kalutara.

Complainant-Respondent-Respondent

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

Respondent

Kathri Arachchige Don Rahula
Siriwardhena,
Gal-assa Junction,
Matugama Road,
Kalutara.

1st Accused- Appellant- Respondent

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

Counsel: Shanaka Ranasinghe, P.C. with Anushika Ranasinghe instructed by Sandamali Peiris for the 2nd Accused-Petitioner.

Jehan Gunasekara, S.C. for the Respondents.

Supported on: 28.05.2025

Order on: 23.06.2025

ORDER

AMAL RANARAJA, J.

1. The Petitioner along with another individual i.e. the 1st accused-appellant-respondent, has been named as an accused in the case before the *Kaluthara Magistrate Court* in case no. 57149/08.

2. The Petitioner has been charged with committing an offence punishable under section 464 of the Penal Code in conjunction with section 32 of the same legislation. The 1st accused-appellant-respondent has also been charged with committing offences punishable under sections 457 and 461 of the Penal Code.

3. Upon pleading not guilty, the case has proceeded to trial. At the conclusion of the trial, the petitioner has been acquitted of the third charge listed in the charge sheet while the 1st accused-appellant-respondent has been found guilty of all three charges listed in the charge sheet and thereafter sentenced.

4. The 1st accused-appellant-respondent being aggrieved by the judgment and the sentencing order has preferred an appeal to the *High Court in Kaluthara*. The appeal has been taken up for argument after which the Learned High Court Judge has proceeded to deliver the disputed judgment on June 14, 2024. In his judgment, the Learned High Court Judge has dismissed the appeal preferred by the 1st accused-appellant-respondent, and also convicted the petitioner of the third charge listed in the charge sheet.

5. Discontented by the judgment of the Learned High Court Judge, the petitioner has forwarded this application in revision to this Court praying that the conviction and the accompanying sentence imposed on him by the Learned High Court Judge be set aside.

6. The Petitioner has been acquitted of the charge brought against him by the Learned Magistrate. Under these circumstances, no appeal has been filed to contest the judgment of acquittal. Instead, it is the 1st accused-appellant-respondent that has preferred an appeal to the *High Court of Kaluthara*. Through such appeal, he has sought to have his conviction along with the corresponding sentencing order set aside. Importantly, the first accused-appellant-respondent has not moved for the acquittal of the petitioner to be set aside.

7. Consequently, a notice of appeal has been issued to the respondent named in the petition of appeal preferred to the *High Court* but not to the petitioner of the instant application. As a result, the petitioner of the instant application has not been given an opportunity to present his case during the hearing of the appeal.

8. Moreover, it is worth noting that if a party is dissatisfied with an acquittal such parties are required to file an appeal challenging the acquittal, but only after obtaining the written sanction of the Attorney-General [*vide* section 318 of the Code of Criminal Procedure Act No.15 of 1979]. In this instance no such appeal has been lodged subsequent to obtaining such a sanction.

9. In the light of these circumstances, the conviction of the petitioner along with the sentencing order is deemed illegal and should not be upheld.

10. The instant application being one invoking the revisionary jurisdiction of the Court of Appeal, which is a discretionary remedy, it is necessary to consider the conditions upon which such remedy can be granted.

11. In the case of ***Hotel Galaxy (Pvt) Ltd vs. Mercantile Hotels Management Ltd (1987)*** **1 SLR 5,** it was held,

> "*It is settled law that the exercise of revisionary powers of the appellate Court is confined to cases in which exceptional circumstances exist warranting its intervention.*"

12. In the case of ***Wijesinghe vs. Thamaratnam, (*****Srikantha Law Reports Vol-IV page 47)**, it was held,

> "*Revision is a discretionary remedy and will not be available unless the application discloses circumstances which shocks the conscience of the Court.*"

13. In the case of ***Vanik Incorporation Ltd vs. Jayasekare*** **(1997) 2 SLR 365**, it was held,

> "*Revisionary powers should be exercised where a miscarriage of justice has occurred due to a fundamental rule of procedure being violated, but only when a strong case is made out amounting to a positive miscarriage of justice."*

14. In the case of ***Dharmaratne vs. Palm Paradise Cabanas*** **(2003) 3 SLR 24**, Gamini Amarathunga, J, has observed thus;

> "*Existence of exceptional circumstances in the process by which the Court select the cases in respect of which the extraordinary method of rectification should be adopted. If such a selection process is not there, revisionary jurisdiction of this Court will become a getaway of every litigant to make a second appeal in the grab of a revision application or to make an appeal in situations where the legislature has not given a right of appeal.*
>
> *The practice of Court in insisting the existence of exceptional circumstances for the exercise of revisionary powers has taken deep root in our law and has got hardened into a rule which should not be lightly disturbed."*

15. I find that the petitioner has established sufficient exceptional grounds before this Court. I am of the view that this is a fit and proper case where this Court should intervene by exercising the discretionary remedy of revision vested in this Court to interfere in part with the disputed judgment of the Learned High Court Judge for the reasons as considered.

16. Accordingly, the judgment dated June 14, 2024 of the Learned High Court Judge of Kaluthara, is partially set aside concerning the conviction of the petitioner. Consequently, the petitioner is hereby acquitted of the third charge listed in the charge sheet submitted in the *Kaluthara Magistrate Court* case no. 57149/08.

Application allowed.

17. The Registrar of this Court is directed to send this order to the *Magistrate Court of Kaluthara* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree,

Judge of the Court of Appeal