

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

In the matter of an application of
Revision in term of Article 138 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

Hettiarachchige Amila Rangani,

197/3/01.

Mahabuthgamuwa Road,

Angoda.

CA Revision Application No:

CA (PHC) APN 47/ 2021

Petitioner.

High Court Bail Application No:

HCBAL 294/2020

Vs.

1. Officer in Charge,
Police Station
Grandpass.

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

Respondents

And

Mohhomed Raheem
Mohammed Roshan

Suspect

AND NOW BETWEEN

1. Officer in Charge,
Police Station
Grandpass.

1st Respondent – Petitioner

2. Hon. Attorney General,
Attorney General’s Department.
Colombo 12.

2nd Respondent – Petitioner

Vs.

Mohhomed Raheem Mohmmed
Roshan

197 / 3 / 01

Mahabuthgamuwa Road,

Angoda.

Suspect - Respondent

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel – Janaka Bandara, SSC for the

Respondents – Petitioner

Asthika Devendra with

Sajeewa Ruwan Pathirana

For the Suspect –

Respondents.

Argued On – 29.06.2021

Decided On – 20.07.2021

MENAKA WIJESUNDERA J.

The instant application for revision has been filed by the Attorney General to set aside the order of the learned High Court Judge of Colombo dated 16.3.21.

The application was supported by the Attorney General on 31.3.21 and this Court decided to issue notices on the respondents and a stay order.

A motion was filed on 10.5.21 by the respondents seeking a date to object to the stay order. Matter was mentioned on 11.5.21 and the inquiry was fixed for the 8.6.21.

At the inquiry the counsel appearing for the respondents took up the following objections,

- 1) The petitioner has failed to add the petitioner in the High Court application which is under review,
- 2) The petitioner has not pleaded exceptional circumstances in the petition,
- 3) The stay order has been issued for more than 14 days.

The counsel appearing for the petitioner conceded that the wife of the accused has not been added as a party and that he is willing to amend and add if Court permits.

The petitioner further stated that the accused has been added and he has received notices and therefore there is no serious prejudice caused to the respondents.

But the position of the respondents are that it is an incurable mistake because an application for amendment was not made until inquiry stage, and has gone to cite many cases where it has been held that if necessary parties are not added it is an incurable defect in the petition.

In view of the submission with regard to the first objection of the respondents, this Court takes in to account the legal principles layed down in the cases cited by the respondents and even in the cases cited by the petitioner in their written submissions to this Court, notes that all parties whose rights are affected should be added in any application especially in view of rule 12(1) of 1990 of Court of Appeal rules.

The second objection raised by the respondent is that the petitioner has not expressly pleaded exceptional circumstances.

The position of the petitioner is that exceptional circumstances needs to be demonstrated and explained and need not be expressly stated.

But it is the view of this Court that revision is a discretionary remedy available to any party and it is not a right given by a statute, therefore a party canvassing the same must convince Court that there are exceptional circumstances which shock the conscious of Court.

The third objection raised by the respondent is that this Court by issuing interim relief for more than fourteen days Court has violated the appellate court rules.

This Court will not go in to the merits of the third objection because the very first objection of the respondent appears to be fundamental and although it can be amended as pointed out by the petitioner, this Court is of the opinion that it should have been done at an earlier stage and not at the inquiry stage. Therefore taking in to consideration the case law cited above with regard to this objection and the case law cited by the respondents this Court uphold the first objection of the respondent and

Moves to uphold the objection of the respondents and dismiss the application of the petitioner.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.