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, read with Article 145 of the Constitution of the Democratic Socialist Republic of Sri Lanka, of the Judgement dated 6th of October 2024 of the High Court of the Western Province Holden in Colombo.

Court of Appeal
Revision Application No:
CA (PHC) APN 0040/2025

The Director General
Commission to Investigate Allegations of Bribery or Corruption,
No. 36, Malalasekera Mawatha,
Colombo-07.

COMPLAINANT

High Court of Colombo No:
HCB 115/2021

Vs.

1. Maldeniyage Don Upali Gunarathne Perera
   No.372, Upper Karagahamuna,
   Kadawatha.
2. Hewa Rajage Wasantha Wimalaweera
   No.59, Wilabada Road,
   Gampaha.
3. Upali Senarath Wickramasinghe

No.300 G, Godagama Road,
Athurugiriya.

4. Sudheera Parakkrama Jinadasa
No.65, Model Town,
Rathmalana.

ACCUSED

AND NOW BETWEEN

Sudheera Parakkrama Jinadasa
No.65, Model Town,
Rathmalana.

4TH ACCUSED-PETITIONER

Vs.

1. The Director General
Commission to Investigate Allegations of Bribery or Corruption,
No. 36, Malalasekera Mawatha,
Colombo-07

COMPLAINANT-RESPONDENT

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

RESPONDENT

3. Maldeniyage Don Upali Gunarathne Perera
   No.372, Upper Karagahamuna,
   Kadawatha.
4. Hewa Rajage Wasantha Wimalaweera
   No.59, Wilabada Road,
   Gampaha.
5. Upali Senarath Wickramasinghe
   No.300 G, Godagama Road,
   Athurugiriya.

ACCUSED-RESPONDENTS

BEFORE : **P. Kumararatnam, J.**

R. P. Hettiarachchi,J.

COUNSEL : **Maithri Gunaratne, PC with G.G.C. Godacumbura, K. Senanayake instructed by C. Ranatunga for the Petitioner.**

Janaka Bandara, DSG with Anusha Sambandapperuma, A.D.L. for the Complainant-Respondent.

WRITTEN SUBMISSION OF THE PETITIONER : **10/10/2025**

WRITTEN SUBMISSION OF THE COMPLAINANT-RESPONDENT : **21.10.2025**

DECIDED ON : 02/12/2025

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JUDGMENT

P. Kumararatnam, J.

The 4th Accused-Petitioner (hereinafter referred to as the Petitioner) had filed this Revision Application against the judgment of the Learned High Court Judge of Colombo dated 06.10.2024.

According to the Petitioner, the Complainant-Respondent (Hereinafter referred to as the Respondent) filed an indictment against the Petitioner and three others under the Bribery Act in the High Court of Colombo. After a full-blown trial, the learned High Court Judge of Colombo had found the Petitioner and the three others guilty and had imposed a jail sentence and fine.

Against the said judgment of the learned High Court Judge, the Petitioner had filed an appeal in the Court of Appeal. The Appeal Court case number and the next date of the case had not been mentioned in the Petition by the Petitioner. While the said appeal remained pending, the Petitioner preferred this application and invoked the revisionary jurisdiction of this Court on the same judgment.

The Petitioner had submitted the following exceptional circumstances for the consideration of this court. The same is re-produced below, as per the written submission filed by the Petitioner:

a. The Conduct of the learned High Court Judge.
   i. Overstepping of judicial boundaries and jurisdiction: (As per Paragraphs 32 of the Petition).
   ii. Grave procedural impropriety- Denial of a Fair Hearing: (As per Paragraphs 26,27, and 41 of the Petition).
   iii. Arbitrary disregard of material and exculpatory evidence: (As per Paragraphs 41, 43, 44 and 45 of the Petition)
   iv. Procedural impropriety and violation of the presumption of innocence: (As per Paragraphs 42, 43 and 45 of the Petition).

b. The conduct of the prosecution and chief investigator.
   i. Defective indictment: (As per Paragraphs 39 and 47 of the Petition).
   ii. Shifting goalposts by the prosecution being disregarded by the learned High Court Judge: (As per Paragraphs 40 and 42 of the Petition)
   iii. Tainted the investigation and arrested the chief investigative officer: (As per Paragraphs 42,44 and 57 of the Petition).

c. Misapplication of legal principles.
   i. Judgment rendered *Per Incuriam:* (As per Paragraph 38 of the Petition).
   ii. Disregard for the burden of proof: (As per Paragraph 49 of the Petition).
   iii. Misapplication of the Ellenborough Dictum: (As per Paragraph 48 of the Petitioner).

At the very outset, the learned Deputy Solicitor General who appeared for the Respondent has raised the following preliminary objections:

A. A party cannot invoke this extraordinary jurisdiction of the Appellate Court as of right.
B. Six months and 9 days delay on the part of the Petitioner amounting to laches barring the grant of revisionary relief.
C. The Petitioner's failure to file a copy of the petition of appeal submitted is fatal.
D. The delay in deciding the appeal would not amount to an exceptional ground to invoke the revisionary jurisdiction of the Court of Appeal.
E. The Petitioner had not averred any exceptional circumstances to invoke the revisionary jurisdiction of this court, and no separate averment is found in the petition referring to any special reasons for filing this application by way of revision while an Appeal is pending.

It is settled law that revision is a discretionary remedy, and such power shall be invoked only upon the demonstration of exceptional circumstances.

In **Marian Beebee v. Seyed Mohamed 69 CLW 34** the court held that:

> *"The power of revision is an extraordinary power of the court which is quite independent and distinct from the appellate jurisdiction of the Supreme Court. 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".*

In the case of **Rasheed Ali v. Mohamed Ali and Others [1981] 1 SLR 262,** the court held that:

> *" …the powers of revision vested in the Court of Appeal are very wide and the Court can in a fit case exercise that power whether or not an appeal lies. Where the law does not give a right of appeal and makes the order final, the Court of Appeal may nevertheless exercise its powers of revision, but it should do so only in exceptional circumstances. Ordinarily the Court will not interfere by way of review, particularly when the law has expressly given an aggrieved party an alternative remedy such as the right to file a separate action, except when non-interference will cause a denial of justice or irremediable harm".*

At paragraph 65 of the Petition, the Petitioner just mentioned that he had filed an appeal against the judgment of the learned High Court Judge delivered on 06.11.2024. No further detail was averred regarding the pendency of the said appeal. Although, filing a copy of the Petition of Appeal is mandatory as per Rule 3(1) of the Court of Appeal (Appellate Procedure) Rules, 1990, the Petitioner has not expressly mentioned in the Petition that a copy of the Petition of Appeal is annexed along with the Petition.

In **Elangakoon v Officer-in-Charge, Police Station, Eppawala and another** [2007] 1 SLR 398 the Court held that;

> *"For the following two-fold reasons this Court is inclined to decide the issue in favour of the Respondents in that the petitioner has failed to satisfy Court that he had pursued an alternative remedy of a legally tenable Appeal before filing this Revision Application.*

(A) Firstly, the petitioner had failed to file to file a copy of this Petition of Appeal filed in the High Court of Anuradhapura along with the Petition and Affidavit at the time of filing this revision application, though he had filed same marked X1 very much later along with his written submissions filed on 11.07.2007. Rule 3(1) (a) and (b) of the Court of Appeal (Appellate Procedure) Rules of 1990 is clear as crystal on this matter.

All copies of documents material to the application have to be filed along with the petition and affidavit. Where a person is unable to tender any such document, he shall state the reason for such inability and seek leave of Court to furnish such document later. This Petition of Appeal filed against the impugned order is a vital document material to the application to bolster the Petitioner's position that he has pursued the alternative remedy of appeal.

However, the petitioner has neither produced same at the time of filing of the application nor sought permission to furnish it later. This is a violation of Rule 3(1) (a) and (b) and therefore, the petitioner is precluded from producing the document later and using it to support his written submissions".

On perusal of the annexed document marked 'X', I found a copy of the Petition of Appeal tendered to the High Court of Colombo on 13.11.2024 by the Petitioner. The availability of the Petition of Appeal in the revision brief is completely suppressed by the Petitioner. As such, the Respondent submits that the Petitioner had not come before this Court with clean hands and therefore, cannot invoke the Revisionary Jurisdiction of this Court.

The suppression of material facts to the court means intentionally withholding or concealing important information that is relevant to a legal proceeding. Such actions can significantly impact the fairness of a trial/inquiry, as they may prevent one party from having all the facts necessary to present their case or defend themselves against allegations.

In short, the suppression of material facts is a serious violation of legal principles that can undermine the integrity of the justice system. Courts take such actions seriously, as they would directly affect the ability to reach fair and just outcomes in legal cases.

In **Alphonso Appuhamy v Hettiarachchi** 77 NLR 131 the Court held that:

> *"When an application for a prerogative writ or an injunction is made, it is the duty of the petitioner to place before the Court, before it issues notice in the first instance, a full and truthful disclosure of all the material facts; the petitioner must act with uberrima fides".*

In **Walkers Sons & Company Ltd. v Wijesena** [1997] 1 SLR 293 the Court held that;

> *"It is now settled that a person who makes an ex parte application is under an obligation to make the fullest possible disclosure of all the material facts and that if he does not make the fullest possible disclosure, then he cannot obtain any advantage which may have already have been obtained by him.*
>
> *"A party cannot plead that the misrepresentation was due to inadvertence or misinformation or that the Applicants was not aware of the importance of certain facts which he omitted to place before court."*

In the case of **Collettes Ltd. v. Commissioner of Labour and Others** [1989] 2 SLR 6 it was held that:

> *"It is essential, that when a party invokes the writ jurisdiction- or applies for an injunction, all facts must be clearly, fairly and fully*

pleaded before the court so that the court would be made aware of all the relevant matters."

Further, in the case of **Laub v. Attorney-General** (1995) 2 SLR 88 it was held that:

"The Petitioner has not acted with uberrima fides, he has suppressed material facts - this application could be dismissed in limine."

Since the Courts rely on the information provided by the parties, the duty of full disclosure is of great importance in legal proceedings. Here the Courts rely heavily on the information provided in order to arrive at a fair and informed decision. Therefore, if a party withholds or misrepresents material or relevant facts, it can lead to an incomplete or inaccurate understanding of the case which will in turn will result in an unjust or unfair judgment.

Courts discourage the suppression of material facts which not only misleads the court but also undermines the integrity of the judicial process and compromises their ability to arrive at just and equitable decisions. It will also inevitably lead to serious consequences including a dismissal of the petition, adverse inferences, and even potential legal penalties.

In the instant Revision Application, the Petitioner has not disclosed the existence of an appeal pending before the Court of Appeal and its current status with its Court of Appeal number.

This particular jurisdiction, in respect of Revisions, is not something that is invoked as per a statutory right. Rather, such an Application for Revisions would be an extraordinary remedy which can be sought only in situations where there is no alternative remedy or other exceptional

circumstances, and where the interest of justice requires such remedy. The Court has continuously stressed on the fact that revisionary jurisdiction is not to be invoked as a substitute of the general and ordinary appellate procedure established and brought about by law. The Court's discretion must, accordingly, be exercised rarely, when proper explanations on why the Petitioner seeks such revisionary jurisdiction during a pending appeal is provided.

His Lordship, Samayawardena, J. in **Geethani Nilushika v Waruni Harshika** SC Appeal 93/2017 dated 18.06.2021 it was held that:

> *"Revision is a discretionary remedy. A party cannot invoke this extraordinary jurisdiction of the Appellate Court as of right. When the right of appeal is available against a judgment or an order, a party seeking to come before Court by way of revision shall explain in the petition why he did not exercise his right of appeal".*

In **Ellangakoon v Officer-in-Charge, Police Station, Eppawala and another** [Supra] the Court held that;

> *"The revisionary powers of this Court is a discretionary power and its exercise cannot be demanded as of right unlike the statutory remedy of appeal. Certain pre-requisites have to be fulfilled by a petitioner to the satisfaction of this Court in order to successfully catalyse the exercise of such discretionary power".*

In this case the Petitioner has not only failed to explain the existence of an appeal filed, but has also wilfully suppressed the details of existence of an appeal with its appeal number in his petition.

Next, on perusal of the exceptional circumstances mentioned in the written submission, I am unable to consider that those grounds come

within the purview of exceptional circumstances. Those are more applicable to be grounds of appeal as stipulated in the Petition of Appeal filed in the High Court of Colombo. As the Petitioner has filed an appeal which is pending in the Court of Appeal, I conclude that the Petitioner could take up those grounds for argument at the appeal argument.

In **CA(PHC) APN 170/2017** dated 07.06.2018 the Court held that:

> *"Since there is an appeal, pending before this Court it is open for the parties to have their rights adjudicated by this Court in that appeal. When there is a right of appeal provided for by law, an applicant in a revision application must show the existence of exceptional circumstances or any intervention by a revisionary Court. This Court cannot accept the grounds urged in the petition as exceptional circumstances as they are mere grounds of appeal upon which the petition of appeal may have been lodged".*

The Petitioner in his written submission states, "The power of a Revisionary application is not automatic. The procedural requirement to first support the application for notices serves as a critical preliminary filter. At this stage, the onus is entirely on the Petitioner to demonstrate, prima facie, the existence of circumstances so exceptional that they warrant Your Lordship's intervention. Applications that fail to cross this high threshold are dismissed in *limine,* thereby ensuring that only alleging a grave illegality or a palpable miscarriage of justice proceed further. [**Dharmaratna v Palm Paradise Cabanas Ltd** (2003) 3 SLR 24]".

I too agree, that it is the profound duty of the Petitioner to demonstrate the existence of exceptional circumstances which, the court needs to have examined and considered in a revision application.

Article 138 (1) of the Constitution of the Democratic Republic of Sri Lanka states:

> 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 restitutio 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 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.

The phrase "by way of appeal, revision and *restitutio in integrum*" very clearly indicates that separate, distinct, independent and mutually exclusive powers and jurisdictions have been granted to the Court of Appeal. As such, this would mean that each form of appeal, revision or *restitutio in integrum* would function as a separate and alternative remedy, each of which must be applied according to the nature and procedural stance of the matter in question. It must be noted that such remedies must not be applied cumulatively or concurrently in respect of the same cause.

In **Colombo Apothecaries Ltd. & Others v. Commissioner of Labour, [1998] 3 Sri L.R. 320** the Court held that:

> *"The power of revision vested in the court is discretionary. The power will be exercised when there is no other remedy available to a party. It is only in very rare instances where exceptional circumstances are*

> *present that courts would exercise powers of revision in cases where an alternative remedy has not been availed of by the appellant. Thus, the general principle is that revision will not lie where an appeal or other statutory remedy is available. It is only if the aggrieved party can show exceptional circumstances, for seeking relief by way of revision, rather than by way of appeal, when such appeal is available to him as of right, that the court will exercise its revisionary jurisdiction in the interests of due administration of justice".*

In this case, the Petitioner has already invoked his statutory right of appeal in the Court of Appeal and the case registered under No. HCB 115/2021. No further detail about this case was given in the revision petition.

I agree with the learned Deputy Solicitor General that allowing this revision application would open floodgates for similar applications filed in the future.

In **Dharmaratne and Another v. Palm Paradise Cabanas Ltd.** [Supra] the court further held that:

> *"Existence of exceptional circumstances in the process by which the court selects the case in respect of which the extraordinary method of rectification should be adopted. If such a selection process is not th ere revisionary jurisdiction of this court will become a gateway 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".*

In this case, the Petitioner had simultaneously resorted to both appellate and revisionary remedies. But the Petitioner had supressed the date of argument of the appeal. This suppression has shown a *mala fide* intention of the Petitioner. Further, the grounds raised as exceptional

circumstances are appeal grounds which can be addressed at the hearing of the appeal.

Considering all these factors, I do not see any exceptional circumstances adduced to the satisfaction of this court. Further, the Petitioner had already invoked his statutory right of appeal which is pending before the Court of Appeal.

Under these circumstances, this Court is not inclined to issue notices on the Respondent. As such, I dismiss this revision application without ordering cost.

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL