

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

In the matter of an application for revision
in terms of the Article 138 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

CA/CPA/71/2025

HC of Negombo Case No.:HC/202/98

Democratic Socialist Republic of Sri
Lanka.

Complainant

Vs

Hapuwalanage Dona Jesika

Indranie

No. 11, Kopiyawatta

Chillaw

Accused

AND NOW

Hapuwalanage Dona Jesika

Indranie

No. 11, Kopiyawatta

Chillaw

(Presently in Welikada Prison)

Accused –Petitioner

Vs.

Attorney General,
Attorney General's Department, Colombo
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Complainant-Respondent

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

Counsel: Dr. Wijedasa Rajapakshe, PC, with Dasun Nagashena and K.P.
 Ravinthika Sathsarani for the Petitioner
 Maheshika Silva , DSG for the Complainant- Respondent

Supported

On: 12.09.2025

Order On: 22.10.2025

ORDER

B. Sasi Mahendran, J.

This is a revision application filed by the Accused -Petitioner (hereinafter referred to as the Accused), seeking to set aside the judgment delivered by the Learned High Court Judge on 10.01.2008 in case No. HC-Negombo 202/98.

According to the Petitioner, the Accused was indicted in the High Court of Negombo under the Emergency Regulation No. 29 (1), as published in the Extraordinary Gazette No. 843/12 dated 04.11.1994, on the charge of being in possession of T56 firearm.

As outlined in the brief, the trial commenced on 13 February 2002. Witness No. 01 provided testimony on that date, and the proceedings continued until 15 July 2002 with the accused present in remand custody. However, when the trial resumed on 3 July 2002, it was reported that the accused had absconded. Notably, the case records indicate that the Court of Appeal had granted bail to the accused on 20 June 2002.

Therefore, steps were taken in terms of section 241 of the Criminal Procedure Code, and she was tried in *absentia*. After the conclusion of the trial, judgment was delivered on 30.01.2008, and the learned High Court judge convicted the accused and imposed a sentence of 10 years rigorous imprisonment and issued an open warrant.

Thereafter, the accused was arrested by the police on 26.08.2024 and produced before the learned high court judge on the same date. An application was made on behalf of the accused under section 241 (3) (b) of the Code of Criminal Procedure Act to have the said conviction and sentence vacated and the case fixed for trial. The learned High Court Judge refused to set aside the conviction and sentence passed on the accused on 30.01.2008.

According to the proceeding dated 29.10.2024 accused has filed an appeal on 09.09.2024 against the order made on 30.01.2008.

This revision application was filed on 20.08.2025. According to the petition, the petitioner has prayed the following prayers.

- a. Issue notice on the Respondents,

- b. Revise and set aside the conviction and the sentence imposed on the Accused-Petitioner on 30th January 2008 by the High Court of Negombo.
- c. Acquit the Accused-Petitioner from the said charge in the indictment, or alternatively to make an order for a trial de novo.
- d. Grant a stay order in the first instance, staying and/or suspending the conviction and/or the sentence imposed on the Accused-Petitioner by the High Court of the Negombo by orders dated 30th January 2008 and 26th August 2024,
- e. Grant costs and,
- f. Such other and further reliefs that your Lordships' Court shall seem meet.

We are mindful that the Petitioner have invoked the discretionary remedy of revision as conferred upon this Court in terms of Article 138 of the Constitution.

The power to exercise the Revisionary Jurisdiction is vested in the Court of Appeal, Article 138 of the present Constitution, 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 128[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 129[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.”

In ***Nissanka v The State*** (2001) 3 Sri LR page 78 at page 81 and 82, 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.”

It is noteworthy that while the Petitioner seeks to challenge the judgment delivered on 30 January 2008, the present revision application was filed only on 20 August 2025, nearly 17 years after the said judgment.

Our Courts have consistently held that where a Petitioner fails to provide a satisfactory explanation for the delay, the Court is generally disinclined to exercise its revisionary jurisdiction. In the present case, no explanation has been offered by the Petitioner regarding the cause of the delay.

The following cases explain the impact of delay.

***Gunasekera and another v Abdul Latiff*, 1995 - Volume 1, Page No – 225; Dr. Ranaraja, J. held that;**

“The word "laches" is a derivative of the French verb Lacher, which means to loosen. Laches itself means slackness or negligence or neglect to do something which by law a man is obliged to do. (Stroud's Judicial Dictionary 5th Ed Pg 1403.) It also means unreasonable delay in pursuing a legal remedy whereby a party forfeits the benefit upon the principle *vigilantibus non dormientibus jura subveniunt*. The neglect to assert one's rights or the acquiescence in the assertion 'or adverse' rights will have the effect of barring a person from the 'remedy which he' might have had if he

resorted to it in proper time. (Mozley & Whiteley's Law Dictionary 10th Ed pg 260). When it would be practically unjust to give a remedy either because the party has by his conduct done that which might fairly be regarded as equal to waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were to be afterwards asserted, in either of these cases lapse of time and delay are most material. (*Lindsay Petroleum Co v Hurd*)⁽³⁾. What is reasonable time and what will constitute delay will depend upon the facts of each particular case. However the time lag that can be explained does not spell laches or delay. If the delay can, be reasonably explained the court will not decline to interfere. (*Per Sharvananda J in Bisso Menika v Cyril de Alwis*)

The principle that emerges from the above citations is,

(1) Delay alone will not bar a person from obtaining relief which he may be entitled to.

(2) Court will grant relief only if the delay can be reasonably explained.”

The above judgment was considered by Justice Sobhitha Rajakaruna in *Ratnayake Mudiyanseelage Heen Banda and Others v Pathiranage Dona Perlil Jayawardena*, CA-RI-04/2018, decided on 25.11.2020; held that;

“The 5th Defendant had died on 04.10.2015 and this application was filed only on 26th date of February, 2018. There is an inordinate delay in presenting this application, regarding which no explanation is available.”

Justice Kulathilaka, J. in Rajapakse v. The State, 2001 (2) SLR 170 held that;

“In addition, if this Court were to act in revision, the party must come before the Court without unreasonable delay. In the instant case, there is a delay of 13 months. In this regard, vide Justice Ismail's judgment in *Camillus Ignatious vs. OIC of Uhana Police Stations* (Application in revision), where His Lordship was

of the view that a mere delay of 4 months in filing a revision application was fatal to the prosecution of the revision application before the Court of Appeal.”

In the present application, the accused has failed to offer any justification for the delay. This omission constitutes sufficient grounds for dismissing the action.

It is worth noting that, following the grant of bail by the Court of Appeal, the accused absconded from attending the trial. Her decision to jump bail demonstrates a flagrant disregard for the authority of the law. This breach of the undertaking she provided undermines her credibility and cannot be expected to attract any leniency when invoking the revisionary jurisdiction, where the exercise of judicial discretion is at stake.

This proposition was considered by **Sharvananda, CJ in Sudharman De Silva v. Attorney General, 1986 (1) SLR 09 at page 14, held that;**

“In my view this quotation was appropriate in the context in which it was uttered, namely where an application to court was made for the exercise of a discretion i.e. extension of time within which to apply for leave to appeal, in favour of the applicant. Contumacious conduct on the part of the applicant is a relevant consideration when the exercise of a discretion in his favour is involved.”

The above said proposition was considered in *Rajapakse v. State (Supra)* held that;

In *Sudarman de Silva & Another vs. Attorney General* at 14 and 15 Sharvananda, J observed that the contumacious conduct on the part of an applicant is a relevant consideration in an application in revision. In this regard vide the judgment of FN.D. Jayasuriya, J in *Opatha Mudiyanseelage Nimal Perera vs. Attorney-General*. In that case too the trial against the accused was held in absentia and he had filed an application in revision 2 3/4 years since the pronouncement of the

judgment and the sentence. His Lordship remarked:

"These matters must be considered in limine before the Court decides to hear the accused-petitioner on the merits of his application. Before he could pass the gateway to relief his aforesaid contumacious conduct and his unreasonable and undue delay in filing the application must be considered and determination made upon those matters before he is heard on the merits of the application."

For the above-mentioned reasons, we are not inclined to issue notices to the respondents. Hence, this revision application is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.
I AGREE.

JUDGE OF THE COURT OF APPEAL