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.

CA Case No : CA/CPA/147/24

HC of Colombo Case No: 2706/21

The Attorney General
The Attorney General's Department
Colombo 12

COMPLAINANT

Vs.

Dalugoda Arachchige Rajitha Asantha
329, II Stage, Badowita,
Mount Lavinia

ACCUSED

AND NOW BETWEEN

1. Kariyapperuma Athukoralage Thushara Indrajith
   298/ A, II Stage, Abeysekara Road,
   Mount Lavinia.

2. Horanage Amila Prasanna Fernando
   150, I stage,
   Abeysekara Road, Mount Lavinia.

3. Abdul Majeed Sanoon Mohamed Ikram
   158, II stage,
   Abeysekara Road, Mount Lavinia.

PETITIONERS

Vs.

The Attorney General
The Attorney General's Department
Colombo 12

COMPLAINANT

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

Counsel : Naveen Maha Arachchige with Shannon Tilekeratne for the Petitioners
Hiranjan Peiris, ASG for the State

Argument On: 18.12.2025

Written Submissions: 13.01.2026 (by the 1st-3rd Petitioners)
On 02.01.2026 (by the Complainant Respondent)

Order On: 30.01.2026

ORDER

B. Sasi Mahendran, J.

This revision application has been filed by the Petitioners challenging the two orders of the Learned High Court Judge bearing Case No HC 2706/21 marked as X3 and X4 dated 21st October 2024 in terms of Article 138 of the Constitution.

The facts and circumstances of this case are as follows,

In Case No. B 47/2014 before the Magistrate's Court of Mount Lavinia, the petitioners stood as sureties for the accused, who was charged under the Prevention of Money

Laundering Act. On 20th February 2014, the accused were granted bail, and while the matter was still pending before the Magistrate's Court, the accused absconded and left Sri Lanka. The learned Magistrate thereafter issued notices to the petitioners. Subsequently, upon the Attorney General filing an indictment against the accused in the High Court of Colombo, the Magistrate recalled the notices and transmitted the original case record to the High Court.

When the case was taken before the High Court of Colombo, the accused failed to appear. Notices were accordingly issued on the sureties, who informed the Court that they were unable to produce the accused. Following an inquiry, the Learned High Court Judge ordered that the surety of bonds be forfeited.

The principal argument advanced by learned counsel for the Petitioners was directed towards the question of jurisdiction. It was contended that the High Court of Colombo lacked authority to issue orders, including orders of forfeiture, against persons who had originally stood as sureties before the Magistrate's Court of Mount Lavinia. The Learned Counsel submitted that this amounted to a patent lack of jurisdiction. Without prejudice to that contention, it was further argued that even assuming jurisdiction was properly vested in the High Court, the penalty imposed, namely, the forfeiture of Rs. 3 million from each of the Petitioners, was excessive and not according to law.

It should be noted that, in terms of Section 3(2) of the Prevention of Money Laundering Act, the matter is required to be heard before the High Court. With full knowledge of this statutory requirement, the petitioners voluntarily consented to stand as sureties for the accused, who was charged under the Prevention of Money Laundering Act. We note that while the case was pending before the Magistrate Court accused, without informing the court, has left Sri Lanka, but the Petitioners have failed to inform the Learned Magistrate. It should be noted that where any person is released on bond, the sureties undertake the responsibility of producing the suspect before the courts whenever required, until otherwise directed.

This bond was indeed executed in the Magistrate Court. However, the wording used is "අදිකරණයෙන්," which signifies that the surety undertook to produce the accused before the courts in general, whether it be the Magistrate Court or the High Court. With the knowledge that the accused would eventually be indicted in the High Court, the surety entered into an agreement with the court to ensure the accused's presence whenever

required. By failing to produce the accused before the court as undertaken, the surety has breached this obligation.

However, when a surety fails to produce the accused, the Court must act in accordance with Section 422 of the Criminal Procedure Code (CPC). Section 422(2) specifically requires that if the surety cannot give a valid reason and does not pay the penalty, the Court must first attempt to recover the money by attaching and selling the Accused's property. Section 422(2) of the Criminal Procedure Code, reads as follows: -

> *" If sufficient cause is not shown, and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the moveable or immovable property belonging to such person".*

Only thereafter, under Section 422(4) CPC, can the Court impose imprisonment, and that also only if recovery cannot be affected. This concept was considered by Sisira De Abrew J in the case of ***Manohar Aranraj and another v. Attorney General,*** SC Appeal No. 82/2016, Decided on 21.09.2017,

> *"The Magistrate is empowered to act under section 422(4) of the CPC, only after he complied with section 422(2) of the CPC. Section 422(4) reads as follows:- " If such penalty be not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable by order of the Court which issued the warrant to simple imprisonment for a term which may extend to 06 months ". As I observed earlier the learned Magistrate has failed to comply with section 422(2) of the Criminal Procedure Code. He has failed to give reason for not complying with section 422(2) of the Criminal Procedure Code. In my view if a Court intends to make an order under section 422(4) of the CPC, the said Court should first act under section 422(1),(2) of the CPC. A Court cannot act under section 422(4) of the CPC without acting under section 422(1),(2) of the CPC. This view is supported by the Judicial decision in De Silva Vs S.I. Police- Kandy 63 C.L.W. Page 109 wherein Supreme Court held as follows:- " The order of forfeiture should be set aside as the learned Magistrate had failed to comply with the provisions of section 411(1) and (4) of the Criminal Procedure Code. He should have recorded the grounds of proof that the bond had been forfeited and it is only if the penalty cannot be recovered by attachment and sale that he could have imposed the sentence on him for imprisonment." Section 411(4) of the old Criminal Procedure has been reproduced as section 422(4) of the CPC. As I observed earlier, the learned Magistrate had*

failed to comply with section 422(1),(2) of the Criminal Procedure Code. Therefore he could not have acted under section 422(4) of the CPC. It appears that the learned Magistrate was too quick in sentencing the appellants."

Therefore, the second objection raised by the petitioners fails.

Furthermore, learned counsel for the respondent, as set out in the written submissions, has correctly pointed out that the petitioners have failed to demonstrate any exceptional circumstances that would warrant the exercise of this Court's revisionary jurisdiction.

Sadi Banda v. Officer-in-Charge, Police Station, Norton Bridge, 2014 (1) SLR 33 at page 37, Malinie Gunaratne, J held that;

"The revisionary power of Court is a discretionary power. This is an extraordinary jurisdiction which is exercised by the Court and the grant of relief is entirely dependent on the discretion of the Court. The grant of such relief is of course a matter entirely in the discretion of the Court, and always be dependent on the circumstances of each case. Existence of exceptional circumstances is the process by which the Court should select the cases in respect of which the extraordinary power of revision should be adopted. The exceptional circumstances would vary from case to case and their degree of exceptionality must be correctly assessed and gauged by Court taking into consideration all antecedent circumstances using the yardstick whether a failure of justice would occur unless revisionary powers are invoked."

We hold that the petitioners have failed to demonstrate any exceptional circumstances warranting the grant of relief in this application. We further note that the conduct of petitioners is a material consideration. The exercise of the Court's revisional jurisdiction is a discretionary power, and in assessing whether such discretion should be exercised, the conduct of the petitioners must be considered.

The petitioners had entered into an agreement with the Court to ensure the presence of the accused. However, until notices were issued to them, they did not inform the Court that the accused had absconded and left the country. This conduct of failure to inform the courts reflects *mala fide* intention. The petitioners were not truthful to the Court, and their conduct disqualifies them from the discretionary relief they seek.

For the above-mentioned reasons, the application is dismissed with a cost of Rs. 100,000.00 for each Petitioner.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja J,

I AGREE

JUDGE OF THE COURT OF APPEAL