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

In the matter of an Application for Revision in terms of Articles 138 and 154P of the Constitution of the Democratic Socialist Republic of Sri Lanka read with sections 364 and 365 of the Code of Criminal Procedure Act No. 15 of 1979 and the provisions of the High Court of the Provinces (Special Provinces) Act No. 19 of 1990 (as amended).

Court of Appeal Case No.

CA CPA 93/2023

High Court Chilaw

Case No. HC 36/2017

The Attorney General,

Attorney General's Department,

Colombo 12.

COMPLAINANT

Vs.

1. Kurugamage Sanath Nishantha Perera
2. Kurugamage Jagath Samantha Perera

ACCUSED

AND NOW BETWEEN

Kurugamage Sanath Nishantha Perera

"Deepa Sevana",

Arachchikattuwa.

1ST ACCUSED-PETITIONER

Vs.

The Attorney General,

Attorney General's Department,

Colombo 12.

COMPLAINANT-RESPONDENT

Before : Sampath B. Abayakoon, J.

: P. Kumararatnam, J.

Counsel : Anil Silva, P.C. with Amaan Bandara for the Petitioner

: Jayalakshi de Silva, SSC for the State

Supported on : 30-10-2023

Order on : 06-12-2023

Sampath B. Abayakoon, J.

This is an application by the 1st accused-petitioner invoking the revisionary jurisdiction of this Court granted in terms of Article 138 of The Constitution to this Court.

The matter was supported by the learned President's Counsel seeking notice to the complainant, it was decided to issue notice. The complainant-respondent filed objections regarding the application.

This order is pronounced after having considered whether the 1st accused-petitioner (hereinafter referred to as the petitioner) has adduced sufficient exceptional grounds before this Court to get the order dated 31-07-2013 oft her learned High Court Judge of Chilaw set aside.

The petitioner is the 1st accused in the High Court of Chilaw Case Number 36/2017 where he has been indicted on 6 counts punishable in terms of section 140, section 323 read with section 146, section 344 read with section 146, section 323 read with section 32, section 344 read with section 32 and section 314 of the Penal Code.

The petitioner being the 1st accused has pleaded not guilty to the charge, and according to the contents of the order dated 31-07-2023 of the learned High Court Judge of Chilaw, the prosecution case has been concluded. When the defence was called upon, the petitioner and the 2nd accused in the indictment has given their evidence and an additional witness on behalf of the petitioner has also been called and concluded.

On behalf of the petitioner, an application has been made on 11-07-2023 before the High Court requesting that the travel ban imposed on him as a condition of bail lifted from 23-07-2023 to 07-08-2023.

The learned President's Counsel who represented the petitioner has informed the Court that the accused has the right to travel on a private trip. The fact that he has always been present in Court previously, and has travelled several times previously with permission of the Court has been brought to the notice of the Court in support of the application.

However, the learned State Counsel who represented the prosecution has objected to this application stating that since the case has come to its last stages, this was not an essential travel requirement for the petitioner.

Pronouncing her order on 31-07-2023 in relation to the application of the petitioner to travel abroad, the learned High Court Judge has observed that this is a case that has come to a virtual end, and a case where an indictment filed in relation to an incident happened in 2008. Determining that the objections raised by the prosecution to the application are justifiable, the learned High Court Judge has decided not to allow the application.

Supporting the revision application, it was the position of the learned President's Counsel that there was no justification for the refusal of the learned High Court Judge for the petitioner to travel overseas. He pointed out that on several previous occasions, the petitioner has travelled overseas with the permission of the Court and had always returned. It was his view that being a leading politician of the area, he has no reason to evade Court or being absent from further hearings of the case. He urged the Court to set aside the order and allow the petitioner to travel overseas.

It also came to light during the submissions that subsequent to the order of the learned High Court Judge, the case was postponed on 10-08-2023 since the petitioner was absent from the Court on the basis that it was a day where the sittings of the Parliament were to be held. The matter has been now fixed for trial on 23rd November.

The learned President's Counsel conceded that the original date where the petitioner intended to travel overseas has now passed, but informed the Court that the petitioner is planning to undertake the same tour somewhere in January and requested the Court's intervention in that regard and allow his application.

It is clear from the documents tendered on behalf of the petitioner that he has been invited by several overseas organizations to be present in relation to the organizational efforts of his political party.

It is, therefore, clear that he is not seeking to go overseas for any essential medical treatment or on a matter strictly personal to him. It is also clear from the application that although the intended date to travel overseas has now passed, the same travel requirement can be rescheduled for a future date as the petitioner is now seeking to travel overseas in January 2024.

Under the circumstances, it is the view of this Court that since the case against him before the High Court has come to a virtual end, if the petitioner himself makes an application for early conclusion of his case, the case can be concluded before his new intended date of travel.

This Court is in no position to disagree with the reasons considered by the learned High Court Judge who is hearing the trial, as it was the learned High Court Judge who has the knowledge about the facts and the circumstances of the matter.

The revisionary jurisdiction being a discretionary remedy available only on exceptional circumstances and in situations where positive miscarriage of justice has occasioned to a party.

It was held in the case of **hotel Galaxy (Pvt) Ltd. Vs. Mercantile Hotels Management Ltd (1987) 1 SLR 5** that,

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

In the case of **Wijesinghe Vs. Thamararatnam (Sriskantha Law Report Vol. IV page 47)** that,

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

In the case of **Vanik Incorporation Ltd. Vs. Jayasekare (1997) 2 SLR 365** it was observed,

> *"Revisionary powers should be exercised where a miscarriage of justice has occasioned 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."*

I do not find any basis to consider that any exceptional circumstances exist for the petitioner to succeed in this application for the reasons considered as above.

Accordingly, application in revision is refused for want of merit.

The Registrar of the Court is directed to communicate this order to the High Court of Chilaw for information.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal