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

In the matter of an Appeal made under Section 331 of the Code of Criminal Procedure Act No. 15 of 1979.

CA/HCC/0016/2025

HC Balapitiya Case No: HCB-1870/16

Patty Arambage Lakshman

Accused-Appellant

V.

The Attorney General
Attorney General's Department
Colombo 12.

Respondent

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

Counsel: Ershan Ariaratnam for the Accused-Appellant
Anoopa de Silva, DSG for the Respondent

Written Submission On: 10.09.2025 (by the Accused- Appellant)

Argued On : 18.09.2025

Order On: 03.11.2025

ORDER

B. Sasi Mahendran, J.

The Accused Appellant (herein after referred to as the Accused) was indicted before the High Court of Balapitiya for the alleged murder of one Gurusingha Arachchige Disani Priyanwada, on or about 15 May 2012 at Meetiaygoda, an offence punishable under Section 296 of the Penal Code.

The accused appeared before the High Court of Balapitiya on 26th October 2016, at which point the indictment was formally served. The trial commenced on 17th May 2017 with the leading of evidence from PW 01. The matter was thereafter fixed for further trial on 28th November 2017. On that date, the accused failed to appear and has not presented himself before the High Court to face trial since.

Thereafter, the Learned Trial Judge decided to act under Section 241(1) of the Code of Criminal Procedure Act, after recording the evidence, being satisfied that the accused is absconding from the court, and decided to proceed with the trial in his absence.

Upon conclusion of the trial, the accused was found guilty and sentenced to death on 1st August 2019. Consequent to the pronouncement of sentence, the Learned High Court Judge issued an open warrant for his arrest. The accused was subsequently apprehended by the police and produced before the Learned High Court Judge on 07 May 2024.

In view of the fact that the accused had not been represented by an Attorney-at-Law, the Learned High Court Judge granted a date to enable the accused to obtain legal assistance. On 8th May 2024, counsel appearing for the accused informed the Court that the accused was mentally unstable and moved for an appropriate order.

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> ‘කෙසේ වෙතත් මොහු ගරු අධිකරණයට පැමිණ නැහැ. පන්සලේ සිටින අවස්ථාවේදී තමයි පොලිස් නිලධාරින් විසින් අත් අඩංගුවට අරගෙන තිබෙන්නේ. . ඒ අනුව මොහු ප්‍රකාශ කර සිටින්නේ පෙර කී දැඩි මානසික පීඩනයන් මත මොහුට යම් අමතක වීමක් සිහි මද ගතියක් ඇති වී තිබෙනවා. ඒ අනුව තමයි ඔහු ප්‍රකාශ කරන්නේ ගරු අධිකරණයට නොපැමිණීමට හේතුව.
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> ඒ අනුව උතුමාණෙනි, එකී කරුණු ගරු අධිකරණයේ අවධානයට යොමු කරනවා සුදුසු නියෝගයක් ලබා දෙන මෙන් ඉල්ලා සිටිනවා. මොහු දැන් පොලිසිය විසින් රැගෙනවිත් තිබෙන්නේ. නමුත් ගැටළුවක් තිබෙනවා උතුමාණෙනි ඔහුගේ මානසික තත්ත්වය මත ඔහුට ස්වේච්චාවෙන් ගරු අධිකරණයේ පෙනී සිටීමේ හැකියාවක් ඒ අවස්ථාවේ තිබී නැහැ. ඒ අනුව ඔබතුමා මේ සම්බන්ධයෙන් සලකා බලා සුදුසු නියෝගයක් කරන මෙන් අයද සිටිනවා.’

However, the Learned High Court Judge declined to proceed under Section 241(3), citing that the accused had been produced by the police and not voluntarily. Instead, the Court proceeded under Sections 299(2) and 286(e), holding that Section 241(3) was inapplicable in the circumstances.

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> ‘මෙම චුදිතට එරෙහිව නඩු විභාගය ඇත්තේ අපරාධ නඩු විධාන සංග්‍රහයේ 241 වන වගන්තිය ප්‍රකාරව චුදිත නොමැතිව වේ. ඇත්ත වශයෙන්ම චුදිතට අධිචෝදන පත්‍ර භාරදීමෙන් පසුව චුදිත අධිකරණය මග හැර ඇත. ඒ අනුව චුදිත නොමැතිව නඩු විභාගය පවත්වා තීන්දුවක් ලබා දුන් අවස්ථාවේදී චුදිතයෙකුට අපරාධ නඩු විධාන සංග්‍රහයේ 241 (3) වගන්තිය ප්‍රකාරව ස්වේච්චාවෙන් ඉදිරිපත් වී තමාට එරෙහිව පවත්වන ලද නඩු විභාගය සම්බන්ධයෙන් ඉල්ලීමක් කිරීමේ හැකියාව ඇත.
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> නමුත් මෙම චුදිත එසේ ස්වේච්චාවෙන් අධිකරණයට ඉදිරිපත් වී නොමැති අතර, චුදිතට එරෙහිව නිකුත් කර තිබූ වරෙන්තුව සම්බන්ධයෙන් චුදිත අත් අඩංගුවට ගෙන මාතර මහේස්ත්‍රාත් අධිකරණයට ඉදිරිපත් කිරීමෙන් පසුව ඊයේ දින මෙම අධිකරණයට ඉදිරිපත් කරන ලදී. ඒ අනුව මෙම චුදිත සම්බන්ධයෙන් අපරාධ නඩු විධාන සංග්‍රහයේ 241 (3) වගන්තිය අදාළ නොවන බවට තීරණය කරමි. චුදිත සම්බන්ධයෙන් අදාල වන්නේ අපරාධ නඩු විධාන සංග්‍රහයේ 299 (2) වගන්තිය සහ 286 (ඊ) වගන්තිය වේ.’

It is pertinent to reproduce Section 241 (3) of the Code of Criminal Procedure Act,

> *(3) Where in the course of or after the conclusion of the trial of an accused person under sub-paragraph (i) of paragraph (a) ot subsection (1) or under paragraph (b) of that subsection he appears before court and satisfies the court that his absence from the whole or part of the trial was bona fide then-*
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> > *(a) where the trial has not been concluded, the evidence led against the accused up to the time of his appearance before court shall be read to him and an opportunity afforded to him to cross-examine the witnesses who gave such evidence; and*
> > *(b) where the trial has been concluded, the court shall set aside the conviction and sentence, if any, and order that the accused be tried de novo.*

The Learned High Court Judge declined to act under Section 241(3) on the ground that the accused had not appeared voluntarily but was produced by the police. However, it is our considered view that the applicability of Section 241(3) does not hinge on the mode of appearance. If the Court is satisfied that the accused was absent from the whole or part of the trial bona fide, it is incumbent upon the Learned High Court Judge to proceed under subsection (a) or (b) of the said provision.

Consider a scenario in which the accused had no prior knowledge of the proceedings and was unexpectedly apprehended and brought before the court. If the Learned High Court Judge were to make an order on the basis that the accused failed to appear voluntarily, the fairness of such a decision would be open to question.

We are mindful judgment delivered by **Justice D.P.S. Gunasekera, (P/CA), in CA Appeal No. 69/95, decided on 10.07.1997 where he held that:**

> *"On a consideration of this section, there is no doubt that two conditions must be satisfied for the section to be applicable (a) that upon a conviction in absentia the accused must appear before Court voluntarily and (2) he must satisfy the Court that his absence was due to a bona fide reason.'*

Subsequently, the Justice evaluated the evidence presented by the Accused before the Learned High Court Judge under Section 241(3) of the Code of Criminal Procedure and concluded that the evidence failed to establish that the absence was due to bona fide reasons.

> *"In the instant case there is no voluntary appearance by the accused before the Court, but the accused had been arrested in consequence of a warrant issued by the learned High Court after conviction and produced before him. From the answers given the accused-appellant had failed to satisfy the Court that his absence at the trial was bona fide. His position that he did not appear at the trial because he was threatened by members who were associated with the JP is contradicted by his own wife whose evidence was that about eight years prior to that date the accused had a dispute with her and left the village and not come back. That position is supported by the fact that the accused had been employed in Hingurakgoda at the time of his arrest, and he had absented himself right from the stage of the pendency of the non-summary proceeding held in the Magistrate's Court. Having regard to these matters we are of the view that this submission made by learned Counsel that the learned trial Judge*

should have ordered a fresh trial must fail. We have considered the evidence led and the judgment of the learned trial Judge and see no reason to interfere with the conviction or the sentence imposed. Accordingly we affirm the conviction and the sentence and dismiss the appeal."

In my considered opinion, regardless of whether the accused appeared voluntarily or was brought before the court pursuant to a warrant, it is incumbent upon the learned High Court Judge to determine whether the accused has presented satisfactory evidence demonstrating that their absence from all or part of the trial was bona fide.

It is pertinent to refer to Section 4 (1) of the International Covenant on Civil and Political Rights.

"Section 4(1) provides as follows;

(1) A person charged of a criminal offence under any written law, shall be entitled-

(a) to be afforded an opportunity of being tried in his presence;

(b) to defend himself in person or through legal assistance of his own choosing and where he does not have any such assistance, to be informed of that right;"

I am of the view that when a person is brought before the court, they should be heard.

In the instant case, counsel for the accused informed the Court that the accused was unable to attend due to mental instability and the recent death of his mother. These circumstances, on their face, indicate that the accused had bona fide reasons for his absence. However, this aspect was not taken into account by the Learned High Court Judge. Section 241(3) mandates that the Court must assess whether

the reasons advanced for the accused's absence are bona fide. In other words, the conduct of the accused in absconding is a matter requiring judicial determination. In this instance, the Learned High Court Judge failed to consider the explanation provided by the accused.

We are mindful that during the argument stage, the deputy Solicitor General raised the preliminary objection that the order conversed by the accused, which falls under section 241 (3), does not confer a right of appeal.

For this point, she relied on the judgment of ***Padmasiri v Attorney General*** 2012 Vol 1 page 24. Where J. Silva held that,

> *There is no right to appeal against the order made on the 06.01.2002 under section 241 (3) because section 331 gives only the forum jurisdiction. We have pursued Chapter XVIII (F) under the heading of "the Trial in the High Court In the absence of the accused and we find that there is no provision made for appeals against the orders made under section 241(3)". (Vide Martin Vs Wijewardane)*

It is true that there is no right to appeal against the said order, whether we have the right to convert this appeal to excise revisionary jurisdiction in terms 364 of the Code of Criminal Procedure Act 15 of 1979. There is no question that the revisionary powers of this court are very wide and may be exercised for the correction of all errors or fact and law committed by all inferior courts. The main object is the due administration of justice and the avoidance of *miscarriages of justice*. Already, we held that the order made by the Learned High Court Judge is irregular. We are mindful sentiment expressed in ***Mariam Beebee v. Seyed Mohamed*** 68 NLR page at page 38, Sansoni C.J. stated that;

> *"The power of revision is an extraordinary power which is quite independent of and distinct from the appellate jurisdiction of this Court. Its object is the due administration of justice and the correction of errors, sometimes committed by this Court itself, in order to avoid miscarriages of justice. It is exercised in some cases*

by a Judge of his own motion, when an aggrieved person who may not be a party to the action brings to his notice the fact that, unless the power is exercised, injustice will result."

A similar situation arose in ***Nissanka v. The State*** [2001] 3 Sri L.R., 78 wherein the State raised a preliminary objection on the ground that the appeal was time-barred. Nevertheless, the Court, exercising its discretion, converted the appeal into a revision application and proceeded to grant relief.

In ***Nissanka V. The State*** 2001 (3) SLR, Page No – 78, Kulatilaka, J Held That;

"The fact that the accused -appellant has not exercised his right of appeal within the specified time by itself does not preclude him from inviting the Court to exercise its revisionary jurisdiction in terms of Section 364 of the Code of Criminal Procedure Act No. 15 of 1979. Under that Section the Court of Appeal is vested with the power to call for and examine the record of any case whether already tried or pending in the High Court or the Magistrate Court. This power can be exercised for any of the following purposes; namely

(1) to satisfy this Court as to the legality of any sentence or order passed by the High Court or Magistrate Court.

(2) to satisfy this Court as to the propriety of any sentence or order passed by such Court.

(3) to satisfy this Court as to the regularity of the proceedings of such Court.

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. This jurisdiction is not fettered by the fact that the accused - appellant has not availed of the right of appeal within the specified time. (Vide the judgment of S. N. Silva, J (as he was then) in Attorney-General v. Ranasinghe and others(1). In that case a delay of 6 months was not considered unreasonable. Hence we have decided to convert this appeal to one of revision."

In the instant case, the accused has explained his failure to appear at trial. Jurisprudence has established that where an accused demonstrates a bona fide reason for his absence, the Court is obliged to reopen proceedings under Section 241 of the Code of Criminal Procedure. Notably, in ***Padmasiri v. Attorney General,*** *(supra)Silva J.* affirmed this principle.

'Assuming without conceding that there is a right of appeal against the order made on 06.01.2003, we find on the naked facts that the appeal would never succeed because the accused, right from the beginning was well aware of the case. In fact the accused-appellant appeared once in Court on 01.09.98 and thereafter he absented himself. This shows that the accused was well aware that there was a case against him. For nearly three years, till he was arrested, he had absconded.'

But in the instant case, the accused has indicated that his inability to participate in the trial was due to mental illness. This explanation negates any inference of willful disregard or contemptuous intent. However, the Learned High Court Judge failed to consider the bona fide nature of the reasons advanced by the accused.

Therefore, this court would excise its revisionary powers and interfere with the findings of the said order on the basis that the accused's absence from the court was due to bona fide reasons.

For the reasons considered above, I am inclined to interfere with the order of the Learned High Court judge on 12.09.2024.

Therefore, we set aside the order made by the Learned High Court judge, and we direct the Learned High Court judge to hold an inquiry under 241 (3) of the Code of Criminal Procedure Act.

The registrar of this court is directed to forward this judgment to the High Court of Balapaitiya for necessary actions.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.
I AGREE

JUDGE OF THE COURT OF APPEAL