

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

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

**Court of Appeal case no.  
CA/PHC/APN/101/2013  
H.C. Panadura case no.  
2075/2005**

Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**Complainant**

**Vs.**

Ederawasam Gmage Dilruk Rohitha  
Fernando,

**2<sup>nd</sup> Accused**

**AND**

Ederawasam Gmage Roshan Fernando,  
83/3, Edward Lane,  
Ihalaindhibedda, Moratuwa.

**Petitioner.**

**Vs.**

Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**Complainant Respondent**

**AND NOW**

Ederawasam Gmage Roshan Fernando,  
83/3, Edward Lane,  
Ihalaindhibedda, Moratuwa.

**Petitioner Petitioner.**

**Vs.**

Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**Complainant Respondent Respondent**

**Before** : Deepali Wijesundara J.

: M.M.A. Gaffoor J.

: L.T.B. Dehideniya J.

**Counsel** : Amila Palliyage with Nihara Randeniya and Upali  
Dissanayake for the Petitioner Petitioner.

: Yasantha Kodagoda PC ASG for the Complainant  
Respondent Respondent.

**Argued on** : 28.07.2016 and 01.11.2016

**Decided on** : 14.12.2016

**L.T.B. Dehideniya J.**

This is a revision application stemming from an order of the learned High Court Judge of Panadura refusing bail pending appeal.

The Accused was convicted after trial for the offence of culpable homicide not amounting to murder and imposed a sentence of 7 years RI and a fine of Rs. 15,000.00 with a default term of 6 months by the Panadura High Court. Being aggrieved by the said conviction and sentence, the accused preferred an appeal to this Court. While the appeal is pending, the Petitioner, claiming to be the brother of the accused, presented an application for bail to the High Court of Panadura on behalf of the accused. The learned High Court Judge, after an inquiry, dismissed the application on the basis that the Petitioner has failed to establish the exceptional circumstances. The Petitioner made this revision application to this Court to revise the said order of the High Court.

The learned DSG raised a preliminary objection that the Petitioner has no *locus standi* to present a bail application and has no locus standi to maintain this revision application and moved to dismiss the application in limine. He further contended that there are no exceptional circumstances for this Court to act in revision. Counsel for the Petitioner submitted that the Respondent has refrained from taking any objection to the maintainability of the bail application in the High Court and it is an admission that the Petitioner has locus standi and he cannot raise that objection at the appeal stage. He further argue that the power of revision of this Court is very wide and even without an application, Court can act on its own to revise any order or judgment of a lower Court. He further submitted that a person aggrieved by the order can move in revision.

When an accused is convicted of a criminal offence, as of a right, he can appeal against the conviction. Under section 320 of the Criminal Procedure Code, a party to a criminal proceeding in a Magistrate Court can make the appeal, subject to sections 317, 318 and 319. None other than “a party” can make the appeal. Under section 331 of the Code, an

appeal against an order or sentence of a High Court may be lodged by presenting a petition of appeal or application for leave to appeal to the Registrar of the High Court within fourteen days from the date when the conviction, sentence or order sought to be appealed against was pronounced. The proviso to the section provides how to file the petition of appeal if the person is serving a jail term. The proviso reads;

*Provided that a person in prison may lodge an appeal by stating within the time aforesaid to the jailer of the prison in which he is for the time being confined his desire to appeal and the grounds therefore and it shall thereupon be the duty of such jailer to prepare a petition of appeal and lodge it with the High Court where the conviction, sentence or order sought to be appealed against was pronounced.*

The words “*person in prison*” means the convicted person. The law does not provide any other person to file the appeal against a conviction even if the person is serving a jail term. It is the convicted person that has to be satisfied or dissatisfied with the order of the High Court and if dissatisfied, file an appeal. Before the enactment of the Bail Act No. 30 of 1997, the law relating to the release of a convict by the High Court was subsection (3) of section 333 of the Criminal Procedure Code. The section reads thus;

*(3) When an appeal against a conviction is lodged, the High Court may subject to subsection (4) admit the appellant to bail pending the determination of his appeal. An appellant who is not admitted to bail shall pending the determination of the appeal be treated in such manner as may be prescribed by rules made under the Prisons Ordinance.*

This section is silent on the procedure of making the bail application. The Bail Act No. 30 of 1997 is the current law governing the bail. Section 20 of the Bail Act provides for the release of a person convicted by the High Court. The section reads;

20.(1) .....

*(2) When an appeal against a conviction by a High Court is preferred, the High Court may subject to subsection (3) release the appellant on bail pending the determination of his appeal. An appellant who is not released on bail shall, pending the determination of the appeal be treated in such manner as may be prescribed by rules made under the Prisons Ordinance*

The subsection 2 of the section 20 of the Bail Act is word to word the same law as it was in the Criminal Procedure Code. This law is also silent on the procedure of making the application for bail. Who has to make the application and how the application has to be presented are matters that the Act has not provided for. It is being an application based on evidence, it has to be presented by way of a petition and the facts have to be established by an affidavit. Who can make the application is the issue in the present case.

Learned Counsel for the Respondent cited the cases of Senathilake v. A.G. [1998] 2 Sri L.R 290, Muthunayake Pediga Piyasili v. A.G. CA (PHC) APN 18/09 (unreported case but has failed to tender a copy of the judgment) and Sonali Fernando v. A.G. CA (PHC) APN 144/07 in support of his argument that it is the accused that has to make the application. The Counsel for the Petitioner distinguishes these cases on the basis that they were the cases that the accused was absconding. Whether the accused was regularly present in Court or absconded is a

material point when considering the issue of granting bail, but on the issue of right of making the application, it is not material.

The three case cited by the learned Counsel refers to the issue of *locus standi* in revision applications. I will consider them later in this judgment.

An application to admit a convict to bail pending appeal is an application for relief from Court. To present an application to Court he must have *locus standi*. His Lordship A.W.A.Salam J. held in the case of *Sonali Fernando v. A.G. CA (PHC) APN 144/07* that;

*In law, locus standi is generally understood to be right to bring an action, to be heard in Court, or to address the Court on a matter before it.*

The Oxford Dictionary of Law defines the English meaning of the Latin term "*locus standi*" as "*a place to stand*". Its legal definition is "*The right to bring an action or challenge a decision*". The Wharton's Concise Law Dictionary revised and updated by Dr. Justice AR Lakshmanan, former Judge of the Supreme Court of India defines the term as "*The right of a party to appear and be heard on the question before any tribunal*". The Black's Law Dictionary defines as "*The right to bring an action or to be heard in a given forum*".

Who has this right to bring an action or who has the right to address the Court? The answer is the person who was harmed or aggrieved by the decision of the Court. In the case of *Premadasa V. Wijeyewardena and others* [1991] 1 Sri L R 333 at 343 considering the right to bring an application for writ of certiorari the Court held that;

*The law as to locus standi to apply for certiorari may be stated as follows: The writ can be applied for by an aggrieved party who has*

*a grievance or by a member of the public. If the applicant is a member of the public, he must have sufficient interest to make the application.*

In the case of *A. R. Perera and others vs Central Freight Bureau of Sri Lanka and another* [2006] 1 Sri L R 83, the dictum of Lord Denning, in *R v Paddington Valuation Office* (1996) 1 QB 380 at 401 on locus standi that “*The Court would not listen, of course to a mere busybody who was interfering in things which did not concern him. But it will listen to anyone whose interests are affected by what has been done*” was cited.

In the present case, the bail application was filed by the brother of the convict. The brother was not harmed by the conviction of the accused; at least he doesn't say that he was harmed. His interests were not affected. The only concern is that he is the brother of the accused. His Lordship Salam j. in the *Sonali Fernando* (supra) case observed that;

*In our society parental affection flows naturally excels all others. When such affection finds no place to invoke the revisionary powers, to recognize the conjugal love as a key to access such jurisdiction would appear ridiculous.*

A relationship, whatever the relationship is, is not a key to institute an application in Court on behalf of any other person. The Criminal Procedure Code does not provide for instituting action in representative capacity other than for Attorney at Law to submit the application on behalf of his client. The petition of appeal can be filed by an Attorney at Law. Section 322(1) of the Code refers to appeals from Magistrate Courts. The section reads;

*322. (1) Every petition of appeal shall state shortly the grounds of appeal and shall be signed by the appellant or his attorney-at-law.*

The section 331 (4) is on appeals from High Court. It reads;

*331. (4) The petition of appeal shall be distinctly written on good and suitable paper, signed by the appellant or his attorney-at-law and dated and shall contain the following particulars: -*

If the appeal can be signed by an Attorney At Law, there is no reason why application for bail cannot be signed by an Attorney at Law. The law has provided the right to be represented by an Attorney at Law. Section 41 (1) of the Judicature Act, No. 2 of 1978, lends support to this interpretation. It states:

*"Every attorney-at-law shall be entitled to assist and advice clients and to appear, plead or act in every Court or other institution established by law for the administration of justice and every person who is a party to or has or claims to have the right to be heard in any proceeding in any such court or other such institution shall be entitled to be represented by an attorney-at-law."*

If the person "*claims to have the right to be heard*" the Court has to decide whether he has a right to make an application on behalf of another person. The Court has to consider the fact that if the appellant can instruct the Attorney at Law to file the appeal whiles he is in the prison, why cannot he instruct on the bail application. No reason given in the application.

The learned Counsel for the Respondent submitted a hypothetical situation where the application filed by a person other than the appellant is refused and if the appellant comes forward and says that he has not instructed to file a bail application to that person and present another



application, can the Court give a hearing to the appellant? This is also a matter that has to be taken in to consideration.

My considered view is that it is only the appellant or on his behalf an Attorney at Law can file the bail application. No other person has *locus standi* to institute an application for bail.

Chapter XXIX of the Criminal Procedure Code provides for Reference and Revision of the orders of the Magistrate Court and High Court. Section 364 of the Code provides that the Court can call for and examine any record. The section reads;

*364. The Court of Appeal may call for and examine the record of any case, whether already tried or pending trial in the High Court or any Magistrate's Court, for the purpose of satisfying itself as to the legality or propriety of any sentence or order passed therein or as to the regularity of the proceedings of such court.*

Sec 365 and 366 provides for the Court exercise the powers conferred on Court under chapter XXVIII of the code, that is the chapter on appeals.

The purpose of giving this power to the Appellate Courts is to maintain the due administration of justice. The section 364 while giving the power to call and examine the records of lower courts, it defines the purpose as *“for the purpose of satisfying itself as to the legality or propriety of any sentence or order passed therein or as to the regularity of the proceedings of such court.”* The parties were not given a right to be heard when the Court exercising the power under this chapter.

A revision application presented by an aggrieved party is different from Court acting on its own motion. If a person says that he is aggrieved by any decision of a lower Court, he must establish that how he was

aggrieved. It is a personal application presenting to Court praying for relief saying that "I am aggrieved by what has been done by the Court". He cannot rely on the power of the Court to act on its own. It was held in the case of Sunil Chandra Kumara v. Veloo [2001] 3 Sri L R 91 at 103 that;

*"Section 753 of the Civil Procedure Code and Section 364 of the Criminal Procedure Code confer power on the Court of Appeal to call for the records of the District Courts and Magistrate's Courts. Those Sections cannot be construed as provisions which confer rights on parties to make revision application."*

Article 138(1) of the Constitution confer jurisdiction to act in revision. The Court of Appeal Appellate Procedure Rules specify the procedure of tendering a revision application. The learned Counsel for the Petitioner submits that the rules do not specify the person who is entitle to institute a revision application. Therefore, he argues that any person can institute a revision application. That cannot be so, because the relief can be granted only to a person entitle to it. The person who is entitled to bring a revision application is a "person aggrieved" only.

The cases cited by the learned Counsel for the Respondent, Senathilake v. A.G. [1998] 2 Sri L.R 290, Muthunayake Pediga Piyasili v. A.G CA (PHC) APN 18/09 and Sonali Fernando v. A.G. CA (PHC) APN 144/07 are on the *locus standi* of the petitioner in a revision application. In Senathilake (supra) Court held that the father of the accused has no *locus standi* to maintain a revision application to challenge a conviction. Sonali Fernando (supra) is a revision application filed by the wife of the convict to quash and reverse the conviction. The Court held that the wife has no *locus standi* to prosecute the application. Salam J. referred to Piyasili (supra) in the judgment of Sonali Frenando

(supra) case where it was held that the mother of the convict had no *locus standi*. In Senathilake (supra) Court cited Albert v. Wedamulla [1997] 3 Sri L R 417 at 418 and Ceylon Mercantile Union v. The Insurance Corporation of Sri Lanka 80 NLR 309 where the *locus standi* was discussed. In the Mercantile Union case Court held that the union has no *locus standi* to institute action on behalf of its member.

There is no doubt that the Court of Appeal will grant relief when there is a miscarriage of justice or the order of the lower Court is palpably wrong. There are series of cases decided by the superior courts on this line. But who can ask for the relief is the matter that has to be looked into in the present case.

The Counsel for the Petitioner cited the case of Bandaranayake v. Jagathsena [1984] 2 Sri L R 397 and submitted that it is not necessary to be a party in the original case as long as the matter is fit for review on facts or law. In that case the accused were charged for insulting Mrs. Bandaranayake and were convicted by the lower Court. In appeal Mrs. Bandaranayake moved to address court as a party aggrieved. The Court held that "*Mrs. Bandaranaike was an "aggrieved party" and that this status did not cease with the conviction of the respondents in the Magistrate's Court. It was a status which continues until the final disposal of the appeal. She was therefore, entitled to be represented in the Court of Appeal and her attorney-at-law was entitled to be heard in that Court.*" the Court allowed the application of Mrs. Bandaranayake on the basis that she is an aggrieved party.

In the case of Sunil Chandra Kumara (supra) it was held that *conceptually the expression Appellate jurisdiction included powers in appeal and Revision, yet such power is subject to the provisions of the Constitution or of any law.* It was further held that the "*Revision is a*

*discretionary remedy, it is not available as of right. This power that flows from Art.138 is exercised by the Court of Appeal, on application made by a party aggrieved or ex mero motu, this power is available even where there is no right of appeal.*

A revision application can be presented to Court for redress only by a party aggrieved by what has been done by the lower Court. The Petitioner in the present case cannot be considered as a party aggrieved by not granting bail to the convicted appellant. It was his application that was dismissed by the High Court but the purpose of presenting the application was to obtain bail to the appellant.

In the present case the Petitioner filed the original application too. One can argue that he has locus standi to present this revision application to revise the order given in his original application, but since he has no *locus standi* to make the original application, this revision application fails.

Accordingly I dismiss this application. I order no costs.

Judge of the Court of Appeal

**Deepali Wijesundara J.**

I agree.

Judge of the Court of Appeal

**M.M.A. Gaffoor J.**

I agree.

Judge of the Court of Appeal