

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

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

Democratic Socialist Republic of Sri Lanka.

CA (Revision) Application No: **CPA / 19 /2022**

High Court of Colombo Case No: **HC 8041/15**

Magistrate's Court of Aluthkade Case No: **B/ 3590 /2008**

Complainant

Vs.

Ravindra Sumith Hewapatha

Accused

NOW BETWEEN

Ravindra Sumith Hewapatha

(Presently in Mahara Prison)

Accused – Petitioner

Vs.

Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Complainant – Respondent

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Chamara Nanayakkarawasam for the Accused – Petitioner.

Argued on: 24.03.2022

Decided on: 12.05.2022

MENAKA WIJESUNDERA J.

The instant matter has been filed to set aside the judgment dated 17/12/2019 of the learned High Court judge of Colombo. In the instant matter, the accused petitioner has been indicted under Section 354 and 364 of the Penal Code.

The main contention of the accused petitioner is (hereinafter referred to as the petitioner) that the High Court Judge did not take steps under Section 196 of the Criminal Procedure Code. According to Section 196 of the Criminal procedure Code, which reads as; "When the court is ready to commence the trial, the accused shall appear or be brought before it and the indictment shall be read and explained to him and he shall be asked whether he is guilty or not guilty of the offence charged."

In the petition of the petitioner paragraph 7 quotes the proceedings on 13/09/2018 marked as X3 in which the High Court Judge has recorded the reading of the indictment to the petitioner and explaining the same and furthermore the petitioner's plea of not guilty is also recorded and thereafter the trial has commenced against the petitioner. At this point, the petitioner has been represented by a lawyer. But in paragraph 14 and 15 of the petition, the petitioner has stated that the charges were not duly read over to him and it was done midway through the trial.

Now this Court will go through the journal entries of the instant matter.

- On 06/10/2015 , the High Court had received the indictment
- On 03/12/2015, the accused had been re-noticed
- On 17/02/2016, the accused present, counsel assigned for the accused, indictment served on the accused
- On 16/03/2016, accused present represented by counsel and accused furnishes bail
- On 24/08/2016, assigned counsel indicates her displeasure to appear in this case but withdrawal from the case is not indicated but prosecution witness no.2 led and not concluded
- On 20/10/2016, accused absent and accused warranted
- On 01/02/2017, accused present, counsel present , witnesses absent
- On 02/03/2017, matter fixed for trial
- On 02/05/2017, accused present, counsel present PW1 warranted PW2 warned
- On 02/05/2017, PW2's evidence was further led and PW1 also commenced and concluded
- On 07/06/2017, accused present, counsel of his choice present and some witnesses were absent, and trial refixed
- On 13/06/2017, accused present, trial not taken up
- On 30/08/2017, accused absent, it is noted that the accused had been in remand and the remand officers ordered to produce the accused
- On 24/10/2017, accused present , trial postponed
- On 28/11/2017, accused present and warned
- On 22/01/2018 , and 26/03/2018 accused had been absent from court and accused have been warranted
- On 21/06/2018, accused had appeared and he had been represented by a counsel of his choice
- On 03/07/2018, 04/07/2018,10/07/2018 and 20/07/2018 and 04/09/2018, the accused have been absent
- On 13/09/2018 accused had been present represented by a counsel and the charge sheet had been read over prosecution Witness 1 had been led in evidence again, reason not stated. Thereafter the trial had concluded and the accused had been convicted for both offences and sentence to for the first charge five years RI with a fine and for the second charge 10 years RI with a fine.

Therefore, from the material stated above, the proceedings marked as X3 indicates the fact that the High Court Judge has adhered to the provisions under Section 196 of the Criminal Procedure Code. The Counsel for the accused petitioner has stated that, the charge had been read over to him in the middle of the trial. But, this Court notes that although the trial has commenced on 24/08/2016 and PW1 and PW2 have been led the ~~Honorable~~ judges presiding has changed, and in the proceedings marked as X3, the judge who has taken over has adhered to Section 196 of the Criminal Procedure Code and has started the trial a fresh. All this time, the accused petitioner has been represented by a lawyer of his choice except at the very beginning on one or two dates. Therefore, this Court is unable to agree with the contention of the counsel of the accused petitioner that the accused petitioner was prejudiced in the instant matter.

The counsel for the accused petitioner submitted a judgment by his lordship, Aluwihare J. in which the adherence to Section 196 of the Criminal procedure Code being considered very lengthily. His lordship has held that, "the non-compliance with Section 196 of the Criminal Procedure Code by itself would not vitiate the conviction. If the conviction is to be vitiated, the Appellant is required to satisfy the court that such non-compliance has "caused prejudice to the substantial rights of the Accused" or has "occasioned a failure of justice" as stipulated in the proviso to Article 138(1) of the Constitution."

Therefore, in the instant matter the impugned judgment which is being canvassed in the instant application relates to the trial which has started from 13/09/2018 and on that day, the learned high Court judge has followed the provisions in the Criminal procedure Code and has read over the indictment to the accused and has recorded his plea of not guilty. Therefore, this Court sees no violation in any procedural law by the High Court.

As such the instant application is dismissed in limine without notices to the respondents.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.