

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

In the matter of an application in
Revision under Article 138 of the
Constitution read with section 11 of
the High Court of the Provinces
(Special Provisions) Act No. 19 of
1990.

The Officer in Charge,
The Police Station,
Kochchikade.

Complainant

C.A. Revision Application No:
CA (PHC) APN 07/2019

Vs.

P.H.C. Negombo Case No: HCRA 553/2017

Arosha Milroy Fernandopulle

M.C. Negombo Case No: L/24280

Accused

Anthony Nishantha Kumara Girigoris
Pulle,
No. 46, Udangawa, Kochchikade.

Respondent

AND BETWEEN

Anthony Nishantha Kumara Girigoris
Pulle,
No. 46, Udangawa, Kochchikade.

Respondent-Petitioner

Vs.

1. The Officer in Charge,

The Police Station,
Kochchikade.

Complainant-Respondent

2. The Attorney General,
Attorney General's
Department,
Colombo 12.

Respondent

AND NOW BETWEEN

Anthony Nishantha Kumara Girigoris
Pulle,

No. 46, Udangawa, Kochchikade.

Respondent-Petitioner-
Petitioner

Vs.

1. The Officer in Charge,
The Police Station,
Kochchikade.

Complainant-Respondent-
Respondent

2. The Attorney General,
Attorney General's
Department,
Colombo 12.

Respondent-Respondent

BEFORE : K. K. Wickremasinghe, J.
K. Priyantha Fernando, J.

COUNSEL : AAL G.B.M. Chandrika with AAL Amali
Ranasinghe with AAL N.M. Riyaz for the
Respondent-Petitioner-Petitioner
Nayomi Wickremasekara, SSC for the
Complainant-Respondents-Respondents

WRITTEN SUBMISSIONS : The Respondent-Petitioner- Petitioner
– On 30.05.2019
The Complainant-Respondents-Respondents
– On 12.06.2019

DECIDED ON : 19.07.2019

K.K.WICKREMASINGHE, J.

The Respondent-Petitioner-Petitioner filed this revision application seeking to set aside the order of the Learned High Court Judge of the Provincial High Court of Western Province holden in Negombo dated 14.06.2018 in Case No. HCRA 553/2017 and seeking to set aside the confiscation order made by the Learned Magistrate of Negombo dated 23.10.2017 in Case No. L/24280. At the stage of argument, both parties agreed to dispose this case by way of written submissions and to abide by the same.

Facts of the case:

The accused-driver was arrested on or about 27.11.2010 with vehicle bearing No. 42 Shri 1683 for illegally transporting timber. The driver was charged before the Learned Magistrate of Negombo and the driver pleaded guilty to the charge.

Accordingly, the Learned Magistrate convicted him and imposed a fine of Rs.10,000/= and thereafter held a vehicle inquiry with regard to the vehicle in question. The respondent-petitioner-petitioner (hereinafter referred to as the 'petitioner') testified in the said inquiry. The Learned Magistrate confiscated the lorry by the order dated 23.10.2017 since the petitioner failed to prove that he took all precautions to prevent an offence being committed utilizing his vehicle.

Being aggrieved by the said order, the petitioner preferred an application for revision to the Provincial High Court of Negombo and the Learned High Court Judge dismissed the revision application due to defective prayer in the petition and affirmed the order of the Learned Magistrate.

Being aggrieved by the said order, the petitioner filed this revision application.

The following grounds of revision were averred on behalf of the petitioner;

1. The lorry is the sole source of income of the petitioner and he is the sole breadwinner of the family
2. Since the appellate Court was satisfied that the petitioner had taken all precautions to prevent the commission of an offence, the only matter for consideration is the correction of the error in his prayer.

It is submitted by the Learned Counsel for the petitioner that the Learned High Court Judge was also satisfied that the petitioner had taken sufficient precautions to prevent the commission of an offence but stopped short of granting relief because of the lorry number in the prayer of petition. I observe that in the prayer of the petition submitted to the High Court, the lorry number was mentioned as '226-5618' instead of '42 Shri 1683' which was the subject matter of this application. Further the date of the order was mentioned as '02.05.2013' instead of 23.10.2017. The Learned High Court Judge in his order held that even though there were

sufficient evidence to prove that the petitioner took all precautions to prevent an offence being committed utilizing the vehicle bearing No. 42 Shri 1683, there was no such evidence available with regard to the vehicle mentioned in the prayer. Therefore the Learned High Court Judge dismissed the revision application. Subsequent to the dismissal, the Attorney at Law of the petitioner submitted a petition dated 12.09.2018, to the High Court, praying for the correction of error in the prayer. The Learned High Court Judge refused the said application.

The Learned Counsel for the petitioner contended that the Learned High Court Judge failed to address the submission that lorry No. 226-5618 was inadvertently typed in the prayer. It was submitted that lorry no. 226-5618 did not feature at any time during the proceedings in both the Magistrate's Court and the Provincial High Court except in the prayer and it added to the credence that the wrong lorry number was inserted by an inadvertence. It was further submitted by the Counsel that the source of the inadvertence was due to the practice of 'cutting and pasting' in Microsoft Word when drafting of pleadings are done.

I find this submission to be quite unreasonable and inappropriate. In the case of **Illangakoon Mudiyanseelage Gnanathilaka Illangakoon V. Anula Kumarihami** (S.C .H.C.C.A.LA 277/2011) (SC minutes of 05.04.2013) [*as followed in C.A. Case No.III8/1999 (F)*], it was observed that,

"I must emphasize that when accepting any professional matter from a client, it shall be the duty of any attorney at law to exercise his skill with due diligence in drafting the necessary papers with due regard to its duty to Court and to the client."

In the case of **Surangi V. Rodrigo (2003) 3 Sri L.R 35**, it was held that,

“No court is entitled to or has jurisdiction to grant reliefs to a party which are not prayed for in the prayer to the plaint...”

In the case of **Fernando V. Sybil Fernando (1997) 3 Sri L.R 01**, it was held that,

“There is the substantive law and there is the procedural law. Procedural law is not secondary: The two branches are complementary. The maxim ubi ius, ibi remedium reflects the complementary character of civil procedure law. The two branches are also interdependent. Halsbury (ibid.) points out that the interplay between the two branches often conceals what is substantive and what is procedural. It is by procedure that the law is put into motion, and it is procedural law which puts life into substantive law, gives its remedy and effectiveness and brings it into being...”

An Attorney at Law who holds a twofold duty towards his client and the Court, should not in any instance act in a reckless manner that would inevitably jeopardize his client. I am of the view that an Attorney at Law must be very cautious in the process of drafting a petition which involves procedural law. Even a slightest mistake on such petition would cost a client his whole case and of course an Attorney cannot be excused for the same. I observe that a defective prayer was submitted due to pure recklessness on the part of the person who drafted the petition and it cannot be simplified by any excuse. I wish to express my disapproval on this position. The Counsel and the Attorneys at Law should not be encouraged to expect that the Judges are always expected to rectify errors committed by them. I am of the view that at least the Counsel who appeared for the petitioner in the High Court would have realized these defects in the prayer if he was cautious enough to peruse the petition and such error could have been easily

rectified during the argument stage by amending the petition. However none of them failed to realize the mistake until the Learned High Court Judge came across the defective prayer and dismissed the petition due to the same. The Learned Counsel for the petitioner submitted the case of **Abeypala V. Abeyakirthi (1981) 1 Sri L.R 86**, in which Ismail, J granted relief upon being satisfied that there was a typographical error in the prayer. I am well aware that a court should not be fettered by technical objections based on matters of procedure and/or a defect in a petition of appeal will not fetter the jurisdiction of Court. [*vide Colgan and Others V. Udeshi and Others (1996) 2 Sri LR. 220; Podihamy V. Seimon Appu 47 NLR 503*]. However in the instant case, I observe that even though the body of the petition refers to the lorry bearing No. 42 Shri 1683, the whole prayer refers to an order dated 02.05.2013 and a vehicle bearing No. 226-5618 which do not exist in the instant case.

At this juncture, I observe that the Learned High Court Judge in his order mentioned that there were enough reasons to interfere with the order of the Learned Magistrate if not for the defective prayer. However I observe that the petitioner has failed to prove the existence of exceptional circumstances in order to revise the order of the Learned Magistrate. It is trite law that revisionary powers of this Court shall be exercised only upon demonstration of exceptional circumstances.

In the case of **Dharmaratne and another V. Palm Paradise Cabanas Ltd. and others (2003) 3 Sri L.R 24**, it was held that,

“Existence of exceptional circumstances is the process by which the court selects the cases in respect of which the extraordinary method of rectification should be adopted. If such a selection process is not there

revisionary jurisdiction of this court will become a gateway of every litigant to make a second appeal in the garb of a Revision application or to make an appeal in situations where the legislature has not given a right of appeal... ”

In the case of **W.M.F.G. Fernando V. Rev Sr. Marie Bernard and others [C.A.1108/99 (F)]**, it was held that,

“It is trite law that the purpose of revisionary jurisdiction is supervisory in nature, and that the object is the proper administration of justice. In Attorney General v Gunawardena (1996) 2 SLR 149 it was held that: “Revision, like an appeal, is directed towards the correction of errors, but it is supervisory in nature and its object is the due administration of justice and not, primarily or solely, the relieving of grievances of a party. An appeal is a remedy, which a party who is entitled to it, may claim to have as of right, and its object is the grant of relief to a party aggrieved by an order of court which is tainted by error. .. ”

In light of above, it is understood that the purpose of revisionary powers is to correct any errors, irregularities or illegalities in lower court orders. I observe that the Learned Magistrate had evaluated all the evidence placed before her and made an order well within law. Therefore, I am of the view that the Learned High Court Judge erred in stating that there were enough reasons to interfere with the order of the Learned Magistrate if not for the defective prayer. I am of the view that the petition should not have been dismissed only on the ground of defective prayer but for the non-existence of exceptional circumstances as well. Since the final outcome was the dismissal of the petition, I do not wish to interfere with the order of the Learned High Court Judge other than expressing my view on the matter of

exceptional circumstances. Therefore this application should stand dismissed due to non-existence of exceptional circumstances. I affirm the order of the Learned Magistrate of Negombo dated 23.10.2017 in Case No. L/24280.

Accordingly the revision application is hereby dismissed without costs.

JUDGE OF THE COURT OF APPEAL

K. Priyantha Fernando, J.

I agree,

JUDGE OF THE COURT OF APPEAL

Cases referred to:

1. A.P. De Soyza and others V. Meera Maar Beach Hotel Co. Ltd and others [C.A. Case No.1118/1999 (F)]
2. Surangi V. Rodrigo (2003) 3 Sri L.R 35
3. Fernando V. Sybil Fernando (1997) 3 Sri L.R 01
4. Abeypala V. Abeyakirithi (1981) 1 Sri L.R 86
5. Dharmaratne and another V. Palm Paradise Cabanas Ltd. and others (2003) 3 Sri L.R 24
6. W.M.F.G. Fernando V. Rev Sr. Marie Bernard and others [C.A.1108/99 (F)]
7. Colgan and Others V. Udeshi and Others (1996) 2 Sri LR. 220
8. Podihamy V. Seimon Appu [47 NLR 503]

