

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

**In the matter of an application for
Revision in terms of Article 138 of the
Constitution read with Section 364 of
the Code of Criminal Procedure Act No.
15 of 1979.**

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

Court of Appeal
Revision Application
No. CPA 144/2023

Complainant

Vs.

High Court of Colombo
Case No. 7285/94

Halpita Aacharige Rathnasiri

Accused

AND NOW BETWEEN

Halpita Aacharige Rathnasiri
(Presently at Welikada Prison, Colombo)

Accused-Petitioner

Vs.

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

Complainant-Respondent

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

Counsel: Reinzie Arsecularathe, P.C., with Chandrasiri Arsecularatne
 for the Accused-Petitioner.

Dishna Warnakula, D.S.G. for the Complainant-Respondent.

Supported on: 24.10.2025

Decided on: 02.12.2025

ORDER

AMAL RANARAJA, J.

1. This is an application filed by the Accused-Petitioner (hereinafter referred to as the “Petitioner”), seeking to invoke the discretionary remedy of revision granted to this Court by Article 138 of the Constitution.
2. The petitioner has been indicted in the *High Court of Colombo* in High Court case number HC 7285/1994. The charges in the indictment are as follows:

Charge 01

That on or about February 05, 1993, the petitioner possessed 31.7 grams of heroin and thereby committed an offence punishable under section 54A(c) of the Poisons, Opium and Dangerous Drugs Ordinance (as amended).

3. The petitioner having appeared before Court initially has escaped from custody, when he was taken for fingerprinting. Following which, the learned High Court Judge by order dated June 16, 1995, has directed the prosecution to commence and proceed with the trial in the absence of the petitioner.
4. At the conclusion of the trial, the learned High Court Judge has by judgments dated July 13, 1995, and November 22, 1996, convicted the petitioner of the charge in the indictment. The petitioner has also been sentenced to death upon being convicted of the charge for the second time on November 22, 1996.
5. Subsequently, the petitioner has been arrested and produced before the successor High Court Judge on January 07, 2016. The learned Counsel for the petitioner has thereafter filed an application purportedly in accordance with the terms in section 241(3) of the Code of Criminal Procedure Act No. 15 of 1979 and moved that the conviction together with the sentencing order dated November 22, 1996, be set aside and the petitioner be tried *de novo*.
6. By order dated September 21, 2016, the successor High Court Judge has refused the said application and affirmed the judgment and the sentencing order of the predecessor High Court Judge dated November 22, 1996.
7. The petitioner being aggrieved by the order dated September 21, 2016, has preferred an appeal to the Court of Appeal by case number CA 301/2016 against such order and also prayed that the conviction, the judgment together with the sentencing order dated November 22, 1996, be set aside.

8. The Court of Appeal by judgment in case number CA 301/2016, has concluded that an accused, who has been once tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remain in force, not be liable to be tried again for the same offence and proceeded to vary the judgment dated November 22, 1996, by substituting the date of judgment as July 13, 1995.
9. The petitioner aggrieved by the conviction, and the judgment dated July 13, 1995, has preferred an appeal to this Court. However, by order dated November 17, 2022, the learned High Court Judge has refused to forward such petition of appeal together with the original case record to this Court.
10. The counsel for the petitioner has argued that the refusal by the learned High Court Judge to accept or reject the petition of appeal was contrary to sections 332 and 333 of the Code of Criminal Procedure Act No. 15 of 1979.
11. In such circumstances, the petitioner has forwarded the revision application bearing number CA/CPA/42-23 to this Court, praying that the order dated November 17, 2022 by the learned High Court Judge be set aside, and directs the High Court to forward the said petition of appeal together with the original case record to this Court.
12. When the matter was taken up for support, the learned President's Counsel for the petitioner has withdrawn the revision application bearing number CA/CPA/42-23 and sought to forward the instant revision application to this Court.

13. In forwarding the instant revision application, the petitioner has prayed that this Court be pleased to:
- i. Issue notice on the respondents.
 - ii. Set aside the judgment of the learned High Court Judge dated July 13, 1995, and acquit the petitioner.
 - iii. Grant such further and other relief that this Court may seem just.
14. The application has been thereafter supported and formal notice issued on the complainant respondent.
15. The learned Counsel for the petitioner has argued that the prosecution's narrative in the High Court case lacks credibility and the chain of custody of the production has not been established through sufficient evidence.
16. In support of this argument, the learned Counsel has drawn the court's attention to the testimony of PW01, particularly concerning the weighing, sealing and transfer of the production to the reserve of the *Narcotics Bureau*. Furthermore, the counsel has highlighted discrepancies in the testimony presented to establish the chain of custody of the production.
17. Upon taking possession of the parcel containing the narcotic substance i.e. heroin, (hereinafter referred to as the "production") from the appellant, PW01 has returned to the *Narcotics Bureau* at 22.30 hours on February 05, 1993, with both the seized production and the appellant. Afterward, he has proceeded to weigh and seal the production at the *Bureau*. PW01 has made detailed notes during this process and subsequently handed over the production along with the appellant to the designated reserve officer. The testimony of PW01 also indicates that the

entire procedure too had been completed at 22.30 hours upon return to the *Bureau*.

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උ: පැය 22.30ට.

18. The designated reserve officer has testified that he retained custody of the production until the following morning when he handed it over to *PC 7983 Sarath Kumara*, who took charge of the reserve at 6.10 hours the next day. However, testimony indicates that *PC 7983 Sarath Kumara* has reported for duty only at 18.30 hours on February 06, 1993. Furthermore, the production officer, *PS 15514 Warnakula* from the Bureau has testified that he took possession of the production at 22.20 hours on February 06, 1993 from *PC 7983 Sarath Kumara*, the designated reserve officer at that time.

19. In the case of *Witharana Doli Nona vs. The Republic of Sri Lanka*, CA 19/199, Sisira De Abrew, J, stated:

“It is a recognized principle that in drug related cases the prosecution must prove the chain relating to the inward journey. The purpose of this principle is to establish that the productions have [not] been tampered with. Prosecution must prove that the productions taken from the accused appellant was examined by the Government Analyst. To prove this, the prosecution must prove all the links of the chain from the time it was taken from the possession of the accused appellant to the Government Analyst's Department”.

20. The learned High Court Judge has not adequately addressed the discrepancies stated above; when she concluded that the prosecution has established the chain of production beyond a reasonable doubt. Furthermore, this confusion raises concerns for this Court, as the inconsistencies in the evidence presented by the prosecution regarding the chain of production during the trial are significant.
21. In light of the circumstances presented, the conclusions drawn by the learned High Court Judge in the disputed judgment are shocking to the conscience of this Court. Given these serious concerns, I am inclined to interfere with the conviction, disputed judgment together with the sentencing order dated November 22, 1996, and proceed to set aside the same.
22. The conviction, disputed judgment and the sentencing order dated November 22, 1996, are hereby set aside and the accused-petitioner acquitted of the charge.
23. The Registrar of this Court is directed to send this order to the *High Court of Colombo* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree

Judge of the Court of Appeal