

**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.

CA Case No: CA-CPA/0017/26

HC of Colombo Case No: HC 3747/22

The Democratic Socialist Republic of Sri
Lanka.

Complainant

Vs

1. H.D. Buddi Nuwan Karunaratne
2. Kathiresu Mayura Kumara
3. Mohamed Althaf Hassim

Accused

And Now in Between

Mohamed Althaf Hassim

3rd Accused -Appellant

Vs

The Attorney General

Attorney General's Department

Colombo 12.

Complainant- Respondent

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

Counsel : Vajira Daluwatta with Chrishan de Alwis for the 3rd Accused-
Petitioner
Tharaka Kodagoda, SC, for the Respondent

Supported On: 11.03.2026

Order On: 31.03.2026

ORDER

B. Sasi Mahendran, J.

This is a revisionary application filed by the 3rd Accused - Petitioner (hereinafter referred to as "the Petitioner"), invoking the revisionary jurisdiction of this court, seeking the following reliefs prayed in the petition dated 27th February 2026.

- a. Issue Notice on the Respondents;
- b. Call for and examine the record in High Court of Colombo Case No. HC 3747/2022, for the purpose of satisfying as to the legality, propriety, and correctness of the impugned Order dated 7th October 2025 of the learned High Court Judge;

- c. To call for and examine the Passport of the Petitioner from the High Court of Colombo in Case No. 3747/2022, for the purpose of ascertaining and satisfying as to the dates of departure of the Petitioner from Sri Lanka and arrival of the Petitioner in Sri Lanka;
- d. Set aside the impugned Order dated 7th October 2025 of the High Court of Colombo refusing the Petitioner's application under Section 241(3) of the Code of Criminal Procedure Act No. 15 of 1979;
- e. Permit the 3rd Accused - Petitioner to enter into the proceedings under Section 241(3) of the Code of Criminal Procedure Act No. 15 of 1979;
- f. Direct that PW1 be recalled for purposes of cross-examination by or on behalf of the 3rd Accused - Petitioner;
- g. Grant cost; and
- h. Grant such other and further reliefs

This order pertains to the question of whether notice should be issued or not.

The following facts are relevant to this Application

The Petitioner, together with two other accused, has been indicted before the Colombo High Court in Case No. 3747/2022. As stated in the petition, he departed Sri Lanka on 26th February 2020. At the time of his departure, no summons, warrant, indictment, or notice of any court proceedings had been served upon him, nor had any proceedings of either the Magistrate's Court or the High Court been communicated to him.

The Petitioner states that he first became aware of the existence of the present High Court case only through his counsel in a separate District Court action instituted by him against the Virtual Complainant in the present case, while he was abroad.

The Petitioner states that immediately upon learning of the indictment being filed in the High Court, on 23rd June 2022, on his advice, his counsel got a complete set of the High Court case record to be formally requested. He further avers that counsel thereafter appeared on his behalf during the pre-trial stage of the proceedings.

The Petitioner states that, subsequently, an inquiry was conducted under Section 241 of the Code of Criminal Procedure to determine whether the trial could proceed in his absence, and the learned High Court Judge ordered that the trial proceed in the Petitioner's absence. The question is whether the Petitioner has absconded and left Sri Lanka in order to avoid the trial.

According to the Petitioner, immediately upon learning of the indictment, he returned to Sri Lanka, and on 23rd July 2025, he was arrested and produced before the High Court. According to the Petitioner, by the time of his arrest, the evidence of PW1, the Virtual Complainant, who the Petitioner had filed a case in the District Court and the sole witness providing direct testimony against him, had already been led in his absence. It should be noted that there was no appearance on behalf of the Petitioner.

The Petitioner further states that on 7th October 2025, he made a formal application under Section 241(3) of the Code of Criminal Procedure Act, seeking permission to enter into the proceedings and an order to recall PW1 for the purpose of cross-examination.

The Petitioner submits that he placed before the learned Judge of the High Court cogent reasons in support of his position, namely his absence from the jurisdiction, his lack of knowledge of the case prior to his departure from Sri Lanka, and his voluntary return to Sri Lanka to submit himself to the jurisdiction of the Court.

The Petitioner states that the learned State Counsel appearing for the State did not object to his application and left the matter to the discretion of the learned High Court Judge. By Order dated 7th October 2025, the learned High Court Judge refused the application, holding that the Petitioner's failure to return for nearly three years demonstrated a lack of bona fides and also that he had been "defended at trial" within the meaning of Section 241(4) of the Code of Criminal Procedure Act, therefore relief under Section 241(3) was unavailable.

Section 241 (4) of the Code of Criminal Procedure Act reads as follows,

(4) The provisions of subsection (3) shall not apply if the accused person had been defended by an attorney-at-law at the trial during his absence.

It is pertinent to refer to the impugned order of the learned High Court Judge.

Page 211 of the brief,

“මෙහිදී නඩු වාර්තාව පරීක්ෂා කිරීමේදී පෙනී යන්නේ මෙම අධිචෝදනාවට අදාළ නඩු කටයුතු ප්‍රථම වරට අධිකරණයේ කැඳවන අවස්ථාවේදී පවා තුන්වන වුදිකට මෙම අධිකරණයේ ඔහුට එරෙහිව අධිචෝදනා පත්‍රයක් පවතින බවට ප්‍රමාණවත් දැනුමක් තිබුණු බවය. ඔහු වෙනුවෙන් උගත් ජනාධිපති නීතිඥවරයෙකු අධිකරණයේ පෙනී සිට කරුණු දැක්වීම තුළින් ඒ බව සනාථ වේ. මා ඉහතින් සඳහන් කරන ලද මෙම අධිචෝදනා පත්‍රය මෙම අධිකරණයේ කැඳවන ලද දිනයන්ට අදාළ නිරීක්ෂණ අනුව ඔහු වෙනුවෙන් අවස්ථා ගණනාවකදී මෙම අධිකරණයේ නීතිඥ නියෝජනයක් පැවත ඇත.

ඒ අනුව ඔහු මෙම අධිචෝදනා පත්‍රය පිළිබඳව දැනුවත්ව ඒ සඳහා විත්ති වාචක ඉදිරිපත් කිරීම සඳහා කටයුතු කර ඇති බව නිරීක්ෂණය කරමි. එසේ වුවද යම් අවස්ථාවක ඔහු එම නඩු කටයුතු වලට නීතිඥවරයෙකු සහභාගි කරවා ගැනීම අතහැර දමා ඇති බවත්, නඩු කටයුතු සම්බන්ධයෙන් පෙනී සිටීම හෝ විත්ති වාචක ඉදිරිපත් කිරීම අතහැර දමා ඇති බවත් නිරීක්ෂණය කරමි.

ඒ අනුව මෙම අධිකරණයේ තමාට එරෙහිව අධිචෝදනා පත්‍රයක් පවතින බවත්, එය විභාගයට නියම කර ඇති බවත් දනිමින්ම අධිකරණයට පැමිණීම මහතර ඇති අතර, තමා වෙනුවෙන් විත්තිවාචක ඉදිරිපත් කිරීම සඳහා බලය ලබා දුන් උගත් නීතිඥ මහතාටද තමාගේ ස්ථාවරය අධිකරණය ඉදිරියේ දැන්වීම සඳහා නැවත උපදෙස් ලබා දී නොමැති බව නිරීක්ෂණය කරමි. ඒ අනුව වූදිනගේ හැසිරීම අපරාධ නඩු විධාන සංග්‍රහය පනතේ 241 (3) වගන්තියෙහි දක්වන නිර්ව්‍යාජ හේතු යන අර්ථ දැක්වීමට නොවැටෙන බව මෙම අධිකරණයේ මතය වේ.

Section 241 (3) of the Code of Criminal Procedure Act reads as follows,

(3) Where in the course of or after the conclusion of the trial of an accused person under sub-paragraph (i) of paragraph (a) of 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-

(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 Petitioner defended under Section 241(4). According to the said section, where an accused is represented by an Attorney-at-Law at the trial during his absence, the provisions of Section 241(3) shall not apply.

It is true that the Petitioner was represented by an Attorney-at-Law prior to the commencement of the trial. According to the proceedings submitted by the Petitioner, the trial commenced on 24th October 2024. On that very day, the prosecution led the evidence of PW1, the Virtual Complainant. The evidence of PW1 continued thereafter and was concluded on 7th July 2025. On 7th October 2025, the Petitioner was brought before the Court, and an application was made in respect of the *ex parte* order.

The central question that arises is whether, during the progress of the trial, the Petitioner was in fact defended by an Attorney-at-Law. It is acknowledged that at the pre-trial stage, the Petitioner was represented by counsel. The Attorney-at-Law appearing for the Petitioner indicated to the Court that the Petitioner had consented to his representation and defense, and accordingly sought leave to appear on his behalf. This application was duly allowed under Section 241(2) of the Code of Criminal Procedure Act, thereby permitting counsel to represent the Petitioner in his absence.

The Petitioner submits that no summons, warrant, or indictment was ever issued or served upon him prior to his departure from Sri Lanka, and he had no knowledge of any pending proceedings at that time. Then the question arises as to how the Learned High Court Judge has formed the opinion that the Petitioner left the island in order to avoid facing the trial.

Absconding means leaving suddenly and secretly, typically to avoid detection, arrest, legal obligations, or to escape from a place of confinement. In the present case, the Petitioner has established that at the time of his departure from the country, no police investigation or inquiry was pending against him, nor had any steps been initiated to effect his arrest.

It is true that, while abroad, he was informed of the existence of the case by his counsel, and through counsel he obtained copies of the relevant documents. However, the indictment was never formally served upon him, and when the trial commenced, he was not defended in person.

This is a revisionary application filed by the petitioner to revise the order made on 07.10.2025. There is no doubt that the revisionary powers of this Court are extensive and may be exercised to correct all errors of fact and law committed by inferior courts. The primary purpose of such powers is to ensure the proper administration of justice and to prevent miscarriages of justice.

I am 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."

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

"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."

It is well settled that the primary inquiry under Section 241(3) is whether the accused has satisfied the Court that his absence was bona fide. Upon such satisfaction only, the Court is obliged to grant the relief contemplated by the provision.

In the instant case, the issue to be determined is whether the Petitioner was represented by counsel at the trial. According to the proceedings, when the trial commenced on 24th October 2024, he was unrepresented. On that day, only PW1 gave evidence. The testimony of PW1 continued thereafter and was concluded on 7th July 2025, during which no legal representation was provided to the Petitioner.

But the learned High Court Judge has failed to consider this fact. There is no question that the Petitioner was neither absconding nor had left Sri Lanka with knowledge of the case pending against him. This fact was not taken into consideration by the learned High Court Judge in assessing the bona fides of the Petitioner.

For these reasons, I am of the view that it is necessary to consider whether the learned High Court Judge correctly formed his opinion under Section 241(3) read with subsection (4) of the Criminal Procedure Code.

For the above-mentioned reasons, I issue notice to the Respondents.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL