

**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 of the Democratic
Socialist Republic of Sri Lanka.**

Democratic Socialist Republic of Sri
Lanka

Complainant

Court of Appeal

Revision Application No:

CPA/0037/2024

Vs.

High Court of Monaragala

Case No. HC 233/2008

Lidigedara Nandasiri *alias* Bandu

Accused

AND NOW BETWEEN

Lidigedara Nandasiri *alias* Bandu
(Presently incarcerated in Bogambara
Prison)

Accused-Appellant

Vs.

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

Respondent

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

Counsel: Sandeepani Wijesooriya for the Accused-Petitioner.

Anoopa De Silva, D.S.G., for the Respondent.

Argued on: 29.04.2026

Order on: 14.05.2026

Order

Amal Ranaraja, J.

1. This is an application by the Accused-Petitioner (hereinafter referred to as the petitioner) seeking to invoke the revisionary jurisdiction of this Court granted to it in terms of Article 138 of the Constitution.
2. The petitioner has been indicted in the High Court of *Monaragala* in High Court Case No. HC 233/2008 for committing murder, an offence punishable under Section 296 of the Penal Code.
3. However, the petitioner has absconded from Court, making it impossible to serve the indictment upon him. Consequently, the trial has commenced and proceeded in his absence.
4. At the conclusion of the trial, the petitioner has been found guilty of the offence and sentenced to death. The date of the particular judgement is September 15th, 2011.

5. Eleven years later in March 2023, the petitioner has been brought before the High Court, following his arrest. Upon his appearance, the counsel for the petitioner has filed an application under section 241(3) of the Code of Criminal Procedure Act No.15 of 1979.
6. By Order dated April 4th, 2023, the High Court has dismissed the application and directed that the previously imposed sentence be enforced.
7. The petitioner aggrieved by the Order dated April 04th, 2023 has filed the present application before this Court
8. In paragraph 09 of the Petition the petitioner has stated as follows;
 - a) *The learned High Court Judge has erred in law by not considering the relevant facts when delivering the order of the inquiry in terms of Section 241(3) of the Code of Criminal Procedure Act No. 15 of 1979,*
 - b) *The learned High Court Judge has failed to consider the fact that trial in absentia was ordered without having a proper inquiry under Section 241 of the Code of Criminal Procedure Act No. 15 of 1979,*
 - c) *In any event the Accused-Petitioner was not awarded a fair trial.*
9. In paragraph 10 of the petition, the petitioner has contended that the judgement dated September 15th, 2011, was not in compliance with Section 283 of the Code of Criminal Procedure Act No. 15 1979.
10. The Counsel for the petitioner has further submitted that the inquiry conducted before the decision to proceed with the trial in the petitioner's

absence was inadequate. According to the counsel, this shortcoming has escaped the attention of the learned High Court Judge when considering the application under Section 241(3) Code of Criminal Procedure Act No. 15 of 1979.

11. The Counsel has also contended that the evidence adduced at the trial, even taken at its highest, warrants a conviction for culpable homicide not amounting to murder, rather than murder itself.

12. The learned Deputy Solicitor General appearing for the respondent has contended that the petitioner was not entitled to pursue the present application because he has failed to explain his contumacious conduct and has not demonstrated any exceptional circumstances.

13. Courts have long affirmed that revisionary jurisdiction is a discretionary remedy to be invoked only in exceptional circumstances. The term 'exceptional circumstances' has been interpreted to include the following;

- I. An obvious/clear miscarriage of justice
- II. A plain error of law apparent on the face of the record or
- III. A jurisdictional defect that renders the disputed order void

14. In the case of *Sadi Banda vs. Officer-In-Charge of Norton Bridge Police Station (2014) 1 SLR 33*, Malinie Gunaratne, J. has held,

"The revisionary power of Court is a discretionary power. This is an extraordinary jurisdiction which is exercised by the Court and the grant of relief is entirely dependent on the discretion of the Court. The grant of such relief is of course a matter entirely in the discretion of the Court and always be dependent on the circumstances of each case. Existence of exceptional circumstances is the process by which the Court should select the cases in respect of which the extraordinary power of revision

should be adopted. The exceptional circumstances would vary from case to case, and their degree of exceptionality must be correctly assessed and gauged by Court taking into consideration all antecedent circumstances using the yardstick whether a failure of justice would occur unless revisionary powers are invoked.”

15. Further, in the case of *Wijesinghe vs. Tharmaratnam* (*Srikantha Law Reports Vol. IV Page 47*), it has been held that,

“Revision is a discretionary remedy and will not be available unless the application discloses circumstances which shocks the conscience of the Court.”

16. In *Vanik Incorporation Ltd. Vs. Jayasekara* (1997) 2 SLR 365, Edussuriya J, has held that,

“Revisionary powers should be exercised where a miscarriage of justice has occurred due to a fundamental rule of procedure being violated, but only when a strong case is made out amounting to a positive miscarriage of justice.”

17. In the case of *Dharmaratne and Another vs. Palm Paradise Cabanas Ltd and Others* (2003) 3 SLR 24, Gamini Amaratunga J, has held,

“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. The practice of Court is to insist in the existence of exceptional circumstances for the exercise of revisionary powers has

taken deep root in our law and has got hardened into a rule which should not be lightly disturbed.”

18. Since it has been contended that the application submitted under Section 241(3) of the Code of Criminal Procedure Act No. 15 of 1979 has not been given due consideration it is prudent to examine the provision in detail;

241.

(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 (A) 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.

19. The operative part of the Section quoted above places the burden on the accused, in this case the petitioner, to convince the Court that his absence from the trial was bona fide.

20. ‘*Bona fide*’ is a latin phrase meaning ‘*in good faith*’. It is used as an adjective to describe something genuine, real, sincere or without fraud which signifies that a person or item is honest authentic and not counterfeit.

21. In practical terms the statute makes clear that once an accused person fails to attend a scheduled hearing, the default presumption is that the absence is unjustified. The onus, therefore, shifts to the accused to supply credible evidence demonstrating that the absence was genuine, involuntary and made in good faith.
22. The petitioner has demonstrably failed to comply with conditions imposed upon him. First, he has ceased residing at the address he provided during the non-summary proceedings and has never furnished to Court with any updated particulars. Second, notwithstanding a clear direction from the learned Magistrate to report to the local police station, after being enlarged on bail, he has not done so. The petitioner, being aware that his case had already been committed to the High Court, yet he has made no effort to appraise Court of his whereabouts. For 12 years following his conviction he has not taken constructive steps at all, re-emerging only when he was apprehended. Such conduct cannot be characterised as an innocent oversight, rather it reveals a calculated attempt to evade judicial process and is wholly inconsistent with bona fide intentions.
23. In the circumstances the learned High Court Judge has properly dismissed the petitioner's application brought under Section 241(3) of the Code of Criminal Procedure Act and has done so on well-founded grounds.
24. Therefore, I am in agreement with the contention of the learned Deputy Solicitor General, that no exceptional circumstances exist which warrants this Court's intervention in the disputed order.
25. Accordingly, I am not inclined to issue notice on the respondents and proceed to dismiss the application in the first instance.

26. I make no order regarding costs

Application dismissed

27. The Registrar of this Court is directed to communicate this order to the high court in *Monaragala* for information.

Judge of the Court of Appeal

B. Sasi Mahendran, J.

I agree

Judge of the Court of Appeal