

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

*In the matter of a Revision Application
under Article 138 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.*

Court of Appeal Case No:
CPA/0078/23

Democratic Socialist Republic of Sri Lanka
COMPLAINANT

Vs.

High Court of Colombo
Case No. HC 3937/2022

Halgama Arachchilage Piyushani Iresha
ACCUSED

AND NOW BETWEEN

Halgama Arachchilage Piyushani Iresha
ACCUSED-PETITIONER

Vs.

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

RESPONDENT

Before : Sampath B. Abayakoon, J.
: P. Kumararatnam, J.
Counsel : Sandeepani Wijesooriya with Randeepa Wijesooriya
for the Petitioner
: Sudharshana De Silva, S.D.S.G for the Respondent
Argued on : 09-01-2024
Decided on : 19-03-2024

Sampath B. Abayakoon, J.

This is an application by the accused-petitioner (hereinafter referred to as the petitioner) seeking to invoke the revisionary jurisdiction granted to this Court by Article 138 of The Constitution.

After hearing the learned Counsel who supported this application for notice, and having satisfied as to the relevant circumstances and the law in that regard, this Court decided to issue notice on the complainant-respondent, namely, the Hon. Attorney General. Accordingly, the complainant-respondent was allowed to file objections in this regard, and the petitioner was also allowed to file counter objections.

At the hearing of this application, this Court heard the submissions of the learned Counsel for the petitioner in support of the application and the submissions of the learned Senior Deputy Solicitor General (SDSG) on behalf of the Hon. Attorney General.

This is a matter where the petitioner has been indicted before the High Court of Colombo in Case Number HC/3937/2022 for knowingly engaging in the offence of money laundering through the use of her bank account for a sum of Rs. 20,700,200/- between the period of 18-03-2010 and 24-11-2010, and thereby committing an offence punishable in terms of Section 3(1) of the Prevention of

Money Laundering Act No. 5 of 2006 as amended by Amendment Act No.40 of 2011.

After the indictment was served on the petitioner, the learned Counsel who represented the petitioner before the High Court has raised a preliminary objection as to the maintainability of the action against the petitioner, urging the Court to reject the indictment and discharge the petitioner from the proceedings.

The essence of the objection had been that the charge was based on the amendment brought to the Prevention of Money Laundering Act by Amendment Act No. 40 of 2011, where any other person than an accused had also been brought under the purview of section 3 of the Prevention of Money Laundering Act No. 5 of 2006.

It had been the position of the learned Counsel that the relevant amendment has not provided for any retrospective effect, and since the charges relating to a period before the Amendment Act came into effect, the charges against the petitioner cannot be maintained. It had been contended further that the petitioner has been charged for an offence that was not in existence during the time relevant for the charge.

After hearing the oral submissions in this connection, the learned High Court Judge has allowed the learned Counsel for the petitioner as well as the prosecuting State Counsel to file written submissions, and has pronounced his order on 24-05-2023 overruling the objection taken and fixing the matter for the pre-trial conference.

It is against this order the petitioner has sought to invoke the revisionary jurisdiction of this Court.

It is trite law that the remedy of revision, which is an extraordinary discretionary remedy can only be granted under exceptional circumstances.

In the case of **Hotel Galaxy (Pvt) Ltd Vs. Mercantile Hotels managements Limited (1987) 1 SLR 5**, it was held:

“It is settled law that the exercise of revisionary powers of the appellate Court is confined to cases in which exceptional circumstances exist warranting its intervention.”

It was held in the case of **Mariam BeeBee Vs. Seyed Mohamed 68 NLR 36** it was determined that;

“The power of revision is an extraordinary power which is quite independent 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 a miscarriage of justice.

In the case of **Bank of Ceylon Vs. Kaleel, and others (2004) 1 SLR 284** it was observed:

“In any event to exercise revisionary jurisdiction the order challenged must have occasioned a failure of justice and be manifestly erroneous which go beyond an error or defect or irregularity that an ordinary person would instantly react to it; the order complained of is of such a nature which would have shocked the conscience of Court.”

In the case **Sarath Wimalaweera Vs. The Attorney General (2015) 1 SLR 379** it was stated that;

“The Court will exercise its revisionary powers if there are exceptional circumstances such as something illegal about the order made or when the application discloses circumstances which shock the conscience of the Court. Revisionary jurisdiction is to remedy a miscarriage of justice. It means that the Court will exercise revisionary powers if there are exceptional circumstances, such as illegality in the order made.”

With the above legal requirements that should be established in order to exercise the revisionary jurisdiction of this Court in mind, I will now proceed to consider the impugned order by the learned High Court Judge to consider whether this Court has a basis to intervene into the said order.

Making her submissions before the Court, the learned Counsel for the petitioner contended that the learned High Court Judge has failed to consider that the amendment to the Prevention of Money Laundering Act, under which the charge against the petitioner has been formulated, has no retrospective effect as per the amendment.

Submitting that she is not questioning the validity of the Amendment Act as well as the main Act and she is agreeing with the sentiments expressed by the learned High Court Judge in his order in that regard, it was her position that since there was no mention either directly or impliedly that the amendment has retrospective effect, the learned High Court Judge should have considered the preliminary objection in that context, rather than the way the learned High Court Judge has chosen to interpret the same.

She was of the view that the two judgments cited by the learned High Court Judge, namely **Mrs. Dorothy Silva Vs. Inspector Of Police, City Vise Squad Pettah 78 NLR 553** and **Maharaja Organization Limited Vs. Viacom International Inc. and Another SC Appeal No: SC/CHC/Appeal/4/2002 decided on 20-06-2021** has no application to the matter at hand, and contended that the other case cited by the learned High Court Judge, namely **Leechman and Company Ltd Vs. Rangalla Consolidated Limited (1981) 2 SLR 373** was in fact in favor of the petitioner's preliminary objection, although the learned High Court Judge has considered it against the preliminary objection taken.

Submitting that by the amendment under which the charge has been preferred against the petitioner, it was the substantive law that has been amended and if there was no specific provision as to the retrospective effect, the said amendment

should take effect from the date of the amendment. It was the position of the learned Counsel that the indictment against the petitioner has been wrongly presented and has no validity before the law.

It was the complaint of the learned Counsel for the petitioner that the learned High Court Judge has, in fact, correctly determined that it was the substantive law that has been amended and not the procedural law, but has failed to appreciate the relevant legal provisions in that regard in its correct perspective.

The learned Counsel moved for the reliefs as sought in the prayer of the petition.

It was the view of the learned Senior Deputy Solicitor General (SDSD) that by amending the Prevention of Money Laundering Act No. 5 of 2006 by the Amendment Act No. 40 of 2011, the section 3(1) and (3) of the original Act has been amended among other amendments made to the Act. It was his position that in amending section 3(3) by excluding the word “accused,” the legislature by its wisdom has thought it fit to include any person who engages in the offence described in section 3(1) to be brought under the purview of the said sub-section.

It was his view that the purpose of section 3(3) was for the avoidance of doubts, and no miscarriage of justice or prejudice has been caused to the petitioner and therefore, the learned High Court Judge has correctly overruled the preliminary objection. He was of the view that the amendment has not changed the substantive law in relation to the relevant section and this is a matter that cannot be decided at this stage of the case, and it is matter that has to be decided after hearing evidence.

There is no dispute that the petitioner has been indicted before the High Court in terms of the Amendment Act No. 40 of 2011 made to the Prevention of Money Laundering Act No. 5 of 2006, on the basis that the petitioner falls under the provisions of section 3(3) of the Act, as amended.

The relevant Prevention of Money Laundering (Amendment) Act No. 40 of 2011 has been certified by the Speaker of Parliament on 06-10-2011, and had come

into effect from that day onwards. There is also no dispute that the indictment relates to an alleged offence committed between the period of 18-03-2010 and 24-11-2010, which is a period before the relevant amendment to the Act came into effect.

I am unable to find any specific or implied provision in the amendment Act to the effect that the amendment should have retrospective effect.

Therefore, it becomes necessary to consider the rules of interpretation in order to come to a finding whether the preliminary objection raised by the learned Counsel for the petitioner before the learned High Court Judge of Colombo was legally correct, or whether the order where the said preliminary objection was overruled can be justified.

N.S. Bindra on *Interpretation of Statutes*, 12th Edition at 238 discusses the presumption against retrospectivity in the following manner;

“As a general rule every statute is deemed to be prospective, unless by express provision or necessary implication it is to have a retrospective effect. Whether a statute is to have retrospective effect depends upon its interpretation regard to well settled rules of construction. Retrospection is not be presumed; but many statutes have been regarded as retrospective without declaring so. Remedial statutes are always regarded as prospective but declaratory statutes are retrospective in nature. The statute would operate when the intent that it should so operate clearly appears from a consideration of the act as a whole, or from the terms thereof, which unqualifiedly give the statute a retrospective operation or imperatively require such a construction, or negate the idea that it is to apply only to future cases. If the Court is in doubt whether the statute was intended to operate it should resolve the doubt against such operation.”

The Supreme Court of India in the case of **Punjab Tin Supply Co. Vs. Central Government AIR 1984 SC 87** observed as follows;

“All laws which effect substantive rights generally operate prospectively and there is a presumption against their retrospectivity if they affect vested rights and obligations unless the legislative intent is clear and compulsive. Such retrospective effect may be given where there are express words giving retrospective effect or where the language used necessarily implies that such retrospective effect is intended. Hence, the question whether a statutory provision has retrospective effect or not depend primarily on the language in which it is couched. If the language is clear and unambiguous effect will have to be given to the provision in question in accordance with its tenor. If the language is not clear, then the Court has to decide whether in the light of the surrounding circumstances retrospective effect should be given to it not.”

Black, on **Construction and Interpretation on Law, 2nd Edition page 385** sums up the rule in the following words;

“Except in the case of remedial statutes and those which relate to procedure in the Courts, it is a general rule that acts of legislature will not be so construed as to make them operate retrospectively, unless the legislature has explicitly declared its intention that they should so operate, or unless such intention appears by necessary implication from the nature and the words of the Act so clearly as to leave no room for a reasonable doubt on the subject.”

In the Prevention of Money Laundering (Amendment) Act No. 40 of 2011, there is no reference that the relevant amendment shall have retrospective effect. Therefore, it is necessary to consider whether by implication it becomes so when considering the words used in the amendment Act. I do not find any basis to consider that such an implication is reflected in the words used in the Act to suggest that the amended provisions should have retrospective effect.

Therefore, it becomes necessary to consider whether the amendment had been to the substantive law in that regard or to the procedural law. If it was in relation to the substantive law as I have considered before, the amendment will not have retrospective effect since the construction of the relevant amendments does not by implication suggest that it has retrospective effect.

It is settled law that if an amendment was to the procedural law, such law will have retrospective effect unless that procedural statute results in creation of new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

Commenting on the retrospective effect of a statute made in relation to matters of procedure, **Maxwell** on ***Interpretation of Statutes, 12th Edition*** states as follows;

“Perhaps no rule of construction is more firmly established than thus – that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matters of procedures, unless that effect cannot be avoided without doing violence to the language of the enactment.”

The Indian Supreme Court in the case of **Hitendra Vishnu Thakur Vs. State of Maharashtra 1994 AIR 2623** held;

“1. A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment. Whereas, a statute which merely affects procedure unless such a construction is textually impossible is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

2. Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

3. Every litigant has a vested right in substantive law but no such right exists in procedural law. “

Needless to say, by enacting the Amendment Act No. 40 of 2011, a new group of persons had been added to the provisions of section 3 that existed until then, and thereby making them, which includes the petitioner of this matter, subjected to be indicted before the High Court, which in my view is an amendment to the substantive law in that regard.

I find that as pointed out correctly by the learned Counsel for the petitioner that the two judgments cited by the learned High Court Judge in the order have no relevance to the preliminary objection raised before the High Court.

In the case of **Mrs. Dorothy Silva Vs. Inspector of Police, City Vise Squad Pettah (supra)**, the matter considered was the construction given to the word “brothel” in the Brothel’s Ordinance and not whether it has retrospective effect or not. The matter considered in the case of **Maharaja Organization Limited Vs. Viacom International Inc. (supra)** was in relation to the question whether an appeal or leave to appeal that lie against an order of the District Court or the Commercial High Court. The quotation cited from the said judgment by the learned High Court Judge was in relation to that question, and not in relation to a question whether a statute has retrospective effect or not.

I find that even the learned High Court Judge has come to a finding in his order that the amendment in relation to the section under which the petitioner was indicted has been to the substantive law in that regard.

For matters of clarity, I would like to reproduce the relevant portion of the order, that appears on page 9, which reads thus;

“එකී සංශෝධනය මගින් කාර්යපටිපටිය නීතියේ කිසිදු වෙනසක් ඇති කල බවක්, ඉහත කී කරුණු දැක්වීම අනුව තහවුරු නොවේ. එකී පනතට අදාල හරයාත්මක නීතියට අනුව එය බල පැ යුතු පුද්ගලයන් පිළිබඳව වූ පුළුල් කිරීමක් එමගින් කර ඇති බවත් එම සංශෝධනය එම

නීතියේ රැහැනෙන් මිදීමට එම වරදේ යෙදෙන ඇතැම් පුද්ගලයින් වළක්වාලීමට එයින් පියවර ගැනීම පමණක් කර ඇති බවත් එම සංශෝධනය සලකා බැලීමෙන් හොඳින් තහවුරු වේ.”

Having stated as above, the learned High Court Judge has determined that the amendment to the Act has been made retrospectively without any legally tenable basis to reach such a finding.

As pointed out correctly by the learned Counsel for the petitioner, the judgment cited by the learned High Court Judge, namely **Leechman and Company Ltd Vs. Rangalla Consolidated Limited (supra)** was not a matter that supports the views expressed by the learned High Court Judge to dismiss the preliminary objection but in fact, a judgment that supports the contention of the petitioner.

It was held that when the substantive law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights.

I am of the view that the learned High Court Judge was completely misdirected as to the relevant law when it was held that any amendment to the substantive law should be operative retrospectively unless the legislature has ordered otherwise. I find that this is completely against the rules of interpretation that needs to be considered in interpreting a statute which has no express or implied provisions as to the retrospective effect of it.

For the reasons considered as above, I am of the view that the petitioner has been indicted before the High Court of Colombo in terms of the Amendment Act No. 40 of 2011 made to the Prevention of Money Laundering Act No. 5 of 2006 without it having retrospective effect for an offence alleged to have been committed before the Amendment Act came into effect.

I find that this is an order which had been reached without a valid basis and it has occasioned a miscarriage of justice due to fundamental rules of interpretation being disregarded. I am of the view that the order complained of

is of such a nature which shocks the conscience of the Court. Therefore, I hold that the petitioner has established sufficient exceptional circumstances which necessitate the intervention of this Court by exercising the extraordinary discretionary remedy of revision granted to this Court by the Constitution.

Hence, I set aside the order dated 24-05-2023 by the learned High Court Judge of Colombo, as it cannot be allowed to stand.

I hold that the preliminary objection raised by the learned Counsel before the High Court had been correctly raised and the indictment cannot be maintained against the petitioner.

Accordingly, I allow the preliminary objection and dismiss the action filed against the petitioner and discharge her from the proceedings against her before the High Court of Colombo.

The Registrar of the Court is directed to communicate this judgment to the High Court of Colombo for necessary compliance.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal