

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

The Democratic Socialist Republic of Sri Lanka

Complainant

V.

Court of Appeal Case No.
14/15

Edirippulige Chaminda Pushpa Kumara
(Presently in remand custody)

High Court of Gampaha Case
No. HC 300/06

Accused

AND NOW BETWEEN

Edirippulige Chaminda Pushpa Kumara
(Presently in remand custody)

Accused - Appellant

V.

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

Complainant -Respondent

BEFORE

: **ACHALA WENGAPPULI, J**
K. PRIYANTHA FERNANDO, J

COUNSEL

: Kamal Perera for the Accused - Appellant.
Haripriya Jayasundera, SDSG for the
Complainant - Respondent.

ARGUED ON : 07.10.2020

WRITTEN SUBMISSIONS

FILED ON : 05.03.2018 by the Accused - Appellant.

28.02.2018 by the Complainant - Respondent.

ORDER ON : 17.11.2020

K. PRIYANTHA FERNANDO, J.

01. The accused appellant (hereinafter referred to as appellant) was convicted in the High Court of Gampaha and was sentenced to 15 years rigorous imprisonment. The appeal preferred by the appellant was dismissed *in-limine* on 08.03.2018 by this Court as it was filed out of time. The appellant by way of a motion dated 07.09.2020 moved this Court to make order to back date his sentence to run from the date of the sentence imposed by the High Court namely 21.01.2015.
02. The contention of the learned Counsel for the appellant is that the appellant had been incarcerated since the date of his sentence in January 2015, and therefore, his 15-year sentence should be counted from 21.01.2015. Learned Counsel further contended that, as the appeal was dismissed *in limine*, it should be taken as there was no valid appeal and therefore, the sentence should be effective from the date of sentence, not from the date the appeal was dismissed. It is the argument of the learned Counsel that the remanding of the appellant as a convicted appellant when the appeal was preferred, was not the decision by the appellant but an administrative action.
03. Objecting to the application by the appellant, the learned Senior Deputy Solicitor General submitted that it was the appellant that who filed the untimely appeal and he should have expected the administrative consequences. It was further submitted that the appellant has no status to make this application at this stage as there no appeal in existence.
04. The learned Counsel for the appellant relied upon the case of *Mariyanayagam Nobertsingham V. The Attorney General CA 16 A-B/2010 [22.07.2015]*, where the

Court of Appeal allowed the application by the appellant in that case to back date the sentence to run from the date of sentence by the High Court, after the appeal was dismissed confirming the sentence imposed by the High Court.

05. In *Mariyanayagam*, it was a timely appeal where the Court of Appeal considered the merits and the sentence was affirmed. Hence, the Court of Appeal had the power to make such order in terms Sections 323(4) and 333(5) of the Code of Criminal Procedure Act, where the Court of Appeal is empowered to direct or order to back date the sentence to run from the date of sentence. In the instant case there was no valid appeal, therefore, the *Mariyanayagam* case has no application to this case.
06. As rightly submitted by the learned Senior Deputy Solicitor General, it was the appellants own choice to file the appeal out of time. Once the appeal is filed, it is consequential to administratively keep the appellant in custody in terms of section 323(4) or 333(3) as applicable. However, in the instant case the appeal had been dismissed *in-limine* on 08.03.2018. There had been no valid appeal. The appellant is making this application on 07.09.2020, almost two years after such dismissal. He has no status to make this application at this stage.

Application is dismissed.

JUDGE OF THE COURT OF APPEAL

ACHALA WENGAPPULI, J

I agree.

JUDGE OF THE COURT OF APPEAL