

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

In the matter of an application for Revision under and in terms of Article 138 read with Article 154 P (3) (b) of the Constitution read with Section 5 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990.

Court of Appeal
Application No:
CA (PHC)APN 0103/2024

The Officer-in-Charge
Police Station
Weeraketiya.

Complainant

High Court of Tangalle
Case No. HCRA 11/2024

Vs.

Mohottige Chaminda Lalith
Kumara
No. 143/B/01, Bogamuwa,
Hakuruwela.

Accused

AND BETWEEN

Mohottige Chaminda Lalith
Kumara
No.143/B/01, Bogamuwa,
Hakuruwela.

Accused-Petitioner

Vs.

1. The Officer-in-Charge

Police Station

Weeraketiya

2. The Attorney General

Attorney General's Department

Colombo-12.

Complainant-Respondent

AND NOW BETWEEN

Mohottige Chaminda Lalith

Kumara

No.143/B/01, Bogamuwa,

Hakuruwela.

Accused-Petitioner-Petitioner

Vs.

1. The Officer-in-Charge

Police Station

Weeraketiya

2. The Attorney General

Attorney General's Department

Colombo-12.

Complainant-Respondent

BEFORE : **Sampath B. Abayakoon, J.**

P. Kumararatnam, J.

COUNSEL : **Asthika Devendra with Aruna
Madushanka for the Petitioner.**

SUPPORTED ON : **08/08/2024.**

DECIDED ON : **03/10/2024.**

JUDGMENT

P. Kumararatnam, J.

This is an application in Revision preferred by the Accused-Petitioner (Hereinafter referred to as the Petitioner) seeking to revise/set aside the judgment/order dated 08.04.2024 and order dated 16.04.2024 of the Learned Magistrate of Walasmulla in the case bearing No. 84237 and the order dated 27.06.2024 of the learned High Court Judge of Tangalle in the case bearing No. HCRA 11/2024.

The Petitioner was arrested by the officers of the Weeraketiya Police Station on 07.04.2024 and produced before the learned Magistrate of Walasmulla on 08.04.2024 on the allegation of possessing 10 grams of Cannabis Sativa L under the Poisons, Opium and Dangerous Drugs

Act. Charge was filed under Section 78(5) of the Poisons, Opium and Dangerous Drugs Act in case No. 84237 in the Magistrate Court of Walasmulla.

The Petitioner, without wasting the time of the court, pleaded guilty to the charge and the learned Magistrate of Walasmulla had imposed a fine of Rs.8000/- with a default sentence of 02 months.

As the Petitioner is serving in the Sri Lanka Army for nearly 22 years and he is due to retire in the end of year 2024, a motion was filed through his Counsel made an application seeking the said fine Rs.8000/- be converted as state cost. However, the said application was refused by the learned Magistrate of Walasmulla on 16.04.2024. In the order of the learned Magistrate did not entertain the application and refused the same on the ground that the case had been concluded already.

Aggrieved by the said order of the learned Magistrate of Walasmulla, the Petitioner had invoked the jurisdiction of the Provincial High of Southern Province holden at the Tangalle High Court to revise the said order. The Petitioner had submitted several exceptional circumstances for the consideration of the High Court. After considering the submissions made on behalf of the Petitioner, the Leaned High Court Judge of Tangalle refusing notice to the Respondents, had dismissed the same on 27.06.2024.

Aggrieved by the above order of the Learned High Court Judge of Tangalle dated 27.06.2024, the Petitioner had filed this revision application to revise the orders of the learned Magistrate of Walasmulla and the order of the learned High Court Judge of Tangalle.

Following exceptional circumstances are urged before this court by the Petitioner:

- a) The Learned High Court Judge and the learned Magistrate has failed to consider the Judgements in cases bearing No. SC /SPL/ LA 176/2026 dated 27.10.2016 and judgement bearing No. CA 86/2009 dated 15.11.2011 where it was held that a state cost can be imposed instead of the fine and/ or the same can be done even when there is a finding of guilt;
- b) The Learned High Court Judge had failed to consider that he is bound by the Judgments of SC/SPL/LA 176/2026 dated 27.10.2016 and judgment bearing No. CA 86/2009 dated 15.11.2011 wherein he has not even considered the same which in itself is illegal;
- c) The Learned High Court Judge and the Learned Magistrate failed to consider the repercussions or grave prejudice caused to the Petitioner where he would lose his employment and the benefits he has earned after serving in the Army inclusive of time of battle;
- d) The Learned High Court Judge and the Learned Magistrate failed to consider the following the above authorities justice would be met by converting fine of Rs. 8,000/- to a state cost as sought by the Petitioner considering all the circumstances of the case which would not have caused any prejudice to any party;
- e) The Learned High Court Judge has erred when not even issuing formal notices as considering the circumstances the application made on both legal and sympathetic grounds could have been considered by the state as well;
- f) The Learned High Court Judge has erred in law and fact by not considering that the Leaned Magistrate of Walasmulla has failed to take into considering that not converting the fine imposed on the Petitioner as a state cost would end the 22 years of career of the Petitioner as an Army Soldier.

It is well settled law that the revision is a discretionary remedy that can be granted only upon exceptional circumstances. In the petition filed by the Petitioner does not disclose any specific exceptional circumstances, which he relies upon. The Petitioner's main application to consider the triviality of the offence and in all circumstances of the case that if orders stated above are allowed to stand, he would lose his job and other benefits accrued him.

In **Wijesinghe v Tharmaratnam** (Sri kantha Law Report Vol-IV 47), the court held that:

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

In **Hotel Galaxy (Pvt) Ltd. V Mercantile Hotels Management Ltd.** 1987 1 SLR 5 the Court held that:

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

The Petitioner states that he served for the Sri Lanka Army for about 22 years with an unblemished service record. As a result of the fine imposed on him by the learned Magistrate of Walasmulla, he would be deprived of all benefits and entitlements accrued to him over 22 years of service in the Military.

Hence, considering the offence and the punishment imposed on the Petitioner by the Learned Magistrate of Walasmulla, I consider this is an appropriate case to issue notice to the Respondent.

Considering all the factors mentioned above, I conclude this is an appropriate case to issue notice to the Hon. Attorney General (Respondent.)

Hence, we allow notice in this case.

The Registrar of this Court is directed to send this Order to the High Court of Tangalle and the Learned Magistrate of Wasalmulla for information.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL