

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

In the matter of an Application for Revision in terms of Section 364 of the Code of Criminal Procedure Act. No.15 of 1979 read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal No:
CA//PHC/APN/0021/2017

Subramaniam Ramani
No.36, Kelanitissa Mawatha,
Kandy Road, Pattiya Junction,
Kelaniya.

High Court of Colombo
Case No. HC/6131/2012

PETITIONER

Vs.

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

RESPONDENT

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

COUNSEL : **Neranjana Jayasinghe for the Petitioner.**
Sudharshana De Silva, DSG for the
Respondent.

ARGUED ON : **23/01/2023**

DECIDED ON : **05/04/2024**

JUDGMENT

P. Kumararatnam, J.

The Petitioner is the wife of Welaudan Methiyas Chandrapala alias Mervyn who was the Accused in the following cases filed in the High Court of Colombo.

1. HC Colombo Case No. 6131/2012
2. HC Colombo Case No. 5398/2010

On 13.02.2012 the Accused Welaudan Metiyas Chandrapala alias Mervyn was produced before the High Court of Colombo in the case No. HC 5398/2010 by the Prison Department. After the Court appearance, when he was taken away by the officers of Prison Department, several unknown armed persons who came in a white van had abducted him from prison custody.

When this matter was brought to the notice of the High Court on 24.05.2012, the Learned High Court Judge had ordered an investigation to be conducted by the Prison Department. In the meantime, the Petitioner had filed a Habeas Corpus Application bearing No. CA 02/2012 in the Court of Appeal.

After lapse of one year of the abduction, a death certificate was issued in terms of Registration of Deaths and Missing Persons (Special Provisions) Act, No. 19 of 2010 and the same was tendered to the High Court in case No. HC 5398/2010 on 04.04.2013. Accordingly, the proceeding in case No. HC 5398/2010 was terminated with the consent of the Hon. Attorney General on 04.04.2013 by the Learned High Court Judge of Colombo.

In the High Case No. HC 6131/2012, the Accused Welaudan Methiyas Chandrapala alias Mervyn was indicted under two counts.

1. The Accused bought a land worth of Rs. 55 lakhs from the money he had earned from trafficking of Heroin and thereby committed an offence punishable under Section 3(1) (a) of the Anti-Money Laundering Act, No. 05 of 2006.
2. The Accused bought a land worth of Rs. 235 lakhs from the money he had earned from trafficking of Heroin and thereby committed an offence punishable under Section 3(1) (a) of the Anti-Money Laundering Act, No. 05 of 2006.

When it was brought to the notice of the Learned High Court Judge that the Accused in case No. 6131/2012 was abducted and presumed to be dead, the Learned High Court Judge by his order dated 11.11.2013, ordered to take

steps under Section 241 of the Code of Criminal Procedure Act N. 15 of 1979 to proceed the case in absentia of the Accused.

On a subsequent application, the Learned Counsel for the Accused had brought to the notice of the Court that 241 inquiry cannot be conducted under the CPC, as there is no evidence that the accused is alive and that he was absconding wilfully. At this point it is very pertinent to note that the prosecution had admitted the death certificate of the Accused, which was filed in the case No. HC 5398/2010. Accordingly, the case No. HC 5398/2010 was abated.

A criminal case can be closed on the death of the accused under the provision of "*abatement ab initio*," which means "from the beginning." This provision states that when the accused dies before the completion of the trial, the case is deemed to have never existed, and all charges against the accused are dropped. This is based on the principle that a person cannot be convicted or punished for a crime if they are no longer alive.

The Learned High Court Judge, after satisfying and applying the said principle, abated the case when the death certificate of the Accused in case No. HC 5398/2010 was filed in the High Court. The said death certificate was admitted by the State Counsel before it was formally adopted to the case.

When the second case No. HC 6131/12 of the Accused was taken up for trial, which is the subject matter of this revision application, the Counsel for the Accused made an application to abate the case on the premise that the death certificate of Accused was filed and accepted by the Court in case No. HC 5398/2010.

On 14.10.2013, the prosecution made an application before the High Court to grant permission to lead evidence under Section 241(1) of the Code of Criminal Procedure Act No. 15 of 1979. The Learned Counsel for the prosecution argued that as the disappearance of the Accused does not fall into the circumstances mentioned in the Registration of Deaths and Missing

Persons (Special Provisions) Act, No. 19 of 2010, and the death of the Accused cannot be registered under the Registration of Deaths and Missing Persons (Special Provisions) Act, No. 19 of 2010. The Learned High Court Judge who heard the submission of the prosecution, allowed the said application, and granted permission to lead evidence under Section 241(1) of the CPC.

But the HC 6131/2012 was called on a motion by the Counsel for the Accused and made another submission highlighting the legal requirements under the Registration of Deaths and Missing Persons (Special Provisions) Act, No. 19 of 2010, invited the Court to make the same order made in case No. HC 5398/2010. After listening to the submission of the State, the Learned High Court Judge endorsed the order already pronounced by her predecessor allowing the prosecution to lead evidence under Section 241(1) of the CPC.

Section 2 of the Registration of Deaths and Missing Persons (Special Provisions) Act, No. 19 of 2010 reads:

2.(1) Where any person is reported missing and he has not been heard of for a period exceeding one year by those who would naturally have heard of him, had he been alive and his disappearance is attributable to any terrorist or subversive activity or civil commotion which has taken place within Sri Lanka, a next of kin of such person if he verily believes such person to be dead, may apply in the manner hereinafter provided, to register the death of such person under the provisions of the Births and Deaths Registration Act and to have issued to him, a Certificate of Death in respect of such person.

(2) Every application under this section shall be substantially in the Form specified in the Schedule to this Act and shall be forwarded to the Registrar-General or the District Registrar of Births and Deaths of

the District in which such missing person was last resident or had his permanent residence.

When the Learned Counsel for the Accused in Case No. HC 5398/2010 made the application to obtain the death certificate under the Registration of Deaths and Missing Persons (Special Provisions) Act, No. 19 of 2010 very clearly submitted Section 2 of the Act. The Court after being satisfied with the submissions by both parties, allowed the application made by the Accused's Counsel. Accordingly, the death certificate was issued and was admitted by the prosecution. Once the prosecution admits the death certificate of the Accused, they cannot take a different stand in the second case filed against the Accused. The prosecution is estopped by making such application in this case.

Section 241 (1) of the Code of Criminal Procedure Act No. 15 of 1979 states:

(1) Anything to the contrary in this Code notwithstanding the trial of any person on indictment with or without a jury may commence and proceed or continue in his absence if the court is satisfied –

(a) that the indictment has been served on such person and that –

(i) he is absconding or has left the Island; or

(ii) he is unable to attend or remain in court by reason of illness and has consented to the commencement or continuance of the trial in his absence; or

(iii) he is unable to attend or remain in court by reason of illness and in the opinion of the Judge prejudice will not be caused to him by the commencement or continuance of the trial in his absence; or

(iv) by reason of his conduct in court, he is obstructing or impeding the progress of the trial; or

(b) that such person is absconding or has left the Island and it has not been possible to serve indictment on him.

According to the above-mentioned Section, the Court should be first satisfied that the Accused is absconding or has left the Island. In this case it was already submitted that the Accused was abducted in the Court's premises by unknown persons and nothing was heard about the Accused thereafter. The investigations conducted by the police and prison authorities had failed to trace the Accused to date. Further, the death certificate of the Accused had been produced in Court which had been accepted by the prosecution. Hence, it is presumed that the Accused is dead. Therefore, trial cannot proceed in absentia of the Accused.

The demise of the Accused during a trial is a scenario where legal proceedings conclude abruptly without a final judgment. The primary objective of criminal proceedings is to impose punishment upon the conviction of the Accused for any offense. However, if the Accused passes away before the completion of the trial, the proceedings of the case are required to be terminated.

Continuing trial proceedings following the death of the accused is deemed futile and devoid of purpose. The Criminal Procedure Act No. 15 of 1979 does not contain specific provisions for the abatement of trial proceedings following the death of the accused. However, this principle has been firmly established through numerous judgments of the apex courts.

In **Turk v R [2017] EWCA Crim 391** the Court of Appeal confirmed that:

“Criminal prosecutions should not be pursued against those who have died: when a defendant dies during criminal proceedings, the court should take no further action in the proceedings and declare the indictment of no further effect. The Court observed that critical to criminal justice process is that “trials are neither initiated nor pursued against those who have died.”

While the Code of Criminal Procedure Act No. 15 of 1979 does not include explicit provisions for abating trial proceedings following the death of the accused, it does contain express provisions for the abatement of appeals after the death of the appellant under Section 358.

Taking into account the legal stipulations and the underlying rationale behind trials in absentia, the initiation and continuation of the case after presenting evidence under Section 241 of the Code of Criminal Procedure Act, following the death of the accused, is inconsistent with the law.

This is an exceptional ground which certainly favour the Petitioner.

Therefore, the orders dated 11.11.2013 and 19.02.2014 and the judgment dated 10.06.2016 of the Learned High Court Judge of Colombo are hereby set-aside.

Therefore, this revision application is allowed.

The Registrar of this Court is directed to send this judgment to the High Court of Colombo.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL