

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an application for
Revision under the provisions of section
364 and 365 of the Code of Criminal
procedure act no. 15 of 1979.

Officer in charge,

Police Station,

Marawila.

CA Case No: **CA/ PHC / APN 74 / 2021**

Complainant.

H.C. Chilaw No: **HC BAL 76/20**

Vs.

M.C Marawila Case No: **B 2460 /18**

Adhikari Heeraluge Thusitha Pathum,

No. 4/35

St. Annes's Town,

Lunuwila.

Suspect.

AND BETWEEN

Geekiyanage Malani Chandralatha
Perera

No. 689, Xavier Lane,

Ulhitiyawa North,

Wennappuwa.

Petitioner.

Vs.

1. Officer in charge
Police Station
Marawila

Complainant – Respondent.

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

Respondent.

3. Adhikari Heeraluge Thusitha
Pathum,
No. 4/35,
St. Anne's Town,
Lunuwila.
(Presently at Remand Prison
Negombo)

Suspect – Respondent.

AND NOW BETWEEN

Adhikari Heeraluge Thusitha Pathum,

No. 4/35,

St. Anne's Town,

Lunuwila.

(Presently at Remand Prison Negombo)

Suspect – Respondent – Petitioner

Vs.

1. Officer in Charge,
Police Station,
Maarawila.

Complainant – Respondent – Respondent.

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

Respondent -Respondent

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel – Janajith De Silva with Eranga Rathnayake for the petitioner.

Argued On – 10.08.2021

Decided On – 21.09.2021

Menaka Wijesundera J.

The instant application for revision has been filed to set aside the order dated 17.3.2021 of the learned High Court Judge of Chi law.

The accused petitioner (hereinafter referred to as the petitioner) has been taken in to custody initially for being in possession of nearly 1kg of heroin on 26.12.2016.

The Government Analyst has identified it to be 771 grams of heroin.

When a party files an application of this nature the party filling the same has to establish before this Court that there are exceptional circumstances which shock the

conscious of this Court. This principle has been very carefully set out in the following two cases,

Dharmaratne and Another Vs Palm Paradise Cabanas Limited and others [2003] 3 Sri LR 24 at page 30.

“Thus the existence of exceptional circumstances is the process by which the Court selects the cases in respect of which this extraordinary method of rectification should be adopted.

The practice of Court to insist on 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”

Bank of Ceylon vs. Kaleel and Others. [2004] 1 Sri LR 284 at Page 287

“In any event, for this Court 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. In other words, the order complained of is of such a nature which would have shocked the conscience of Court.”

In the instant application the Counsel for the Petitioner stated that he being a single parent of a small child and the child suffering from a disease in blood the attention of the Petitioner is very important and his incarceration is hampering the said situation and he urged this Court to consider it as exceptional.

In the impugned order of the learned High Court Judge it has been said very correctly that to substantiate the medical grounds of the child the Petitioner had not submitted

any medical certificates. The position taken up by the Petitioner in this Court is that he has annexed the same to the petition filed in this Court.

But we very strongly make a note that the said medical certificates have not been submitted to the learned High Court Judge therefore the petitioner is submitting the same to this Court for the first time.

But in an application for revision what the Court exercising the revisionary jurisdiction must consider are the illegalities in the impugned order based on the material submitted at the original court.

Therefore the position taken up by the Petitioner regarding the medical reports of the child has not been put to the learned High Court Judge at the time of making the impugned order. Therefore the said medical certificates are in fact new material which has not been given the chance for the learned High Court Judge to consider.

Therefore upon the material submitted to the learned High Court Judge the impugned order has been made in which we do not see any illegality, procedural irregularity, or impropriety in the said order.

Therefore we do not see any exceptional circumstances to issue notices on the respondents. Hence the instant application is dismissed.

Judge of the Court Of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.