

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

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

**Court of Appeal Case No.**

**CA/CPA/0080/2019**

**HC Colombo Case No.**

**HC/RA/76/2018**

**Nandani Malkanthi Rajapuruge,**  
No. 363/21, Biyagama Road,  
Petiyagoda, Kelaniya.

**Complainant**

**Vs.**

**Don Jayathilakalage Mahinda  
Jayathilaka,**  
No. 534, Gangeyaya,  
Embilipitiya.

**Accused**

**And Now**

**Don Jayathilakalage Mahinda  
Jayathilaka,**  
No. 534, Gangeyaya,  
Embilipitiya.

**Accused-Petitioner-Petitioner**

**Vs.**

1. **Nandani Malkanthi Rajapuruge**,  
No. 363/21, Biyagama Road,  
Petiyagoda, Kelaniya.

**Complainant-Respondent-Respondent**

2. **The Hon. Attorney General**,  
Attorney General's Department,  
Colombo-12.

**Respondent-Respondent**

Before: **M. T. MOHAMMED LAFFAR, J.**  
**K. K. A. V. SWARNADHIPATHI, J.**

Counsel: Rushdie Habeeb with Rizwan Uwais for the Petitioner.  
M. Azeeze S.C. for the Respondents.

Supported on: 04.12.2023

Decided on: 16.02.2024

**MOHAMMED LAFFAR, J.**

The Accused-Petitioner-Petitioner (hereinafter referred to as the Petitioner) is seeking to revise and set aside the Order of the learned Magistrate of Colombo dated 11-10-2017 and the Order of the learned High Court Judge of Colombo dated 18-10-2018. The learned State Counsel appearing for the Respondents raised preliminary objections as to the maintainability of this revision Application which reads thus;

1. The Petitioner failed to plead and/or establish an exceptional circumstance to invoke the revisionary jurisdiction of this Court.

2. An unexplained delay and/or laches on the part of the Petitioner in invoking the revisionary jurisdiction of this Court.
3. The Petitioner failed to invoke the appellate jurisdiction of this Court (right to appeal).

The learned Magistrate of Colombo in case No. 2827/9/16 on 11-10-2017 imposed a jail term for the Petitioner as he failed to pay maintenance to his wife and the child. Being aggrieved by the said Order, the Petitioner invoked the revisionary jurisdiction of the High Court of Colombo. The learned High Court Judge of Colombo on 18-10-2018 affirmed the Order of the learned Magistrate and dismissed the Application. Being aggrieved by the said Order, the Petitioner has invoked the revisionary jurisdiction of this Court. I shall now deal with the foregoing preliminary legal objections raised by the State.

It is settled law that apex Courts exercise the powers of revision only in exceptional circumstances. Revisionary jurisdiction is an extraordinary jurisdiction of this Court and it is exercised only upon the discretion of Court.

In **Thilagaratnam Vs. E.A.P. Edirisingha**<sup>1</sup>, it was observed that

*“though the Appellate Courts' powers to act in revision were wide and would be exercised whether an appeal has been taken against the order of the original court or not, such powers would be exercised only in exceptional circumstances. There were no exceptional circumstances in this case to justify the exercise of the Court's powers of revision.”*

In **Cadaman Pulle Vs. Ceylon Paper Sacks Ltd.**<sup>2</sup>, it was held that

*“no exceptional circumstances are disclosed why his application for revisionary relief should be entertained after the lapse of nearly two years. The existence of exceptional circumstances is a pre-condition for the exercise of the powers of revision.”*

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<sup>1</sup> [1982] 1 SLR, P56-CA.

<sup>2</sup> [2001] 3 SLR, P112.

Amaratunga, J., in the case of **Dharmaratne Vs. Palmparadise cabanas Ltd.**<sup>3</sup> observed that the

*"existence of exceptional circumstances is the process by which the court selects the cases in respect of which the extraordinary method of rectification should be adopted if such a selection process is not there revisionary jurisdiction of this court will become a gateway of every litigant to make a second appeal in the garb of a Revision Application or to make an appeal in situations where the legislature has not given a right of appeal."*

The Supreme Court, in the case of **Rasheed Ali Vs. Mohamed Ali**<sup>4</sup>, held that,

*"the powers of revision vested in the Court of Appeal are very wide and the Court can in a fit case exercise that power whether or not an appeal lies. Where the law does not give a right of appeal and makes the order final, the Court of Appeal may nevertheless exercise its powers of revision, but it should do so only in exceptional circumstances. Ordinarily, the Court will not interfere by way of review, particularly when the law has expressly given an aggrieved party an alternate remedy such as the right to file a separate action except when non-interference will cause a denial of justice or irremediable harm..... The fact that a Judge's order is merely wrong is not a sufficient ground for exercising the powers of revision."*

The Supreme Court in **AG. Vs. Najimudeen (SC. Appeal No. 62/2016. SC Minute of 13-03-2020, Buwaneka Aluvihare PC, J, Vijith Malalgoda PCJ and Padman Surasena J)** observed that,

*"the Defendant has had an alternative remedy available. In the instant case, what the Provincial High Court was called upon to exercise was its revisionary jurisdiction. The Defendant has not been successful in convincing Court that the grounds he had urged have any exceptional character which is sufficient to move Court to exercise its discretionary revisionary power. Thus, this Court has no reason to disagree with the conclusion of the Provincial High Court that there are*

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<sup>3</sup> [2003]3 SLR, P24-CA.

<sup>4</sup> [1981]1 SLR, P262-SC.

*no exceptional circumstances to invoke the revisionary jurisdiction of the Court. In these circumstances and for the foregoing reasons, the appeal is dismissed without costs.”*

In the light of the foregoing determinations, it is settled law that the existence of exceptional circumstances is a pre-condition for the exercise of the powers of revision. The practice of Court to insist upon the existence of exceptional circumstances for the exercise of revisionary powers has taken deep root in our law and has crystalized into a rule which should not be disturbed. The Petitioner in the instant Application has not established exceptional circumstances warranting the exercise of revisionary powers of this Court, and therefore, the Application is liable to be dismissed on this ground alone.

Moreover, when a right to appeal is provided in law against a Judgment or an Order, a party invoking the revisionary jurisdiction of this Court instead of exercising his right to appeal, is bound to explain in the Petition why he did not exercise his right of appeal.

In **Geethani Nilushika Vs. Waruni Harshika (SC Appeal No. 93/2017. SC Minute of 18-06-2021)**. Samayawardhedna J observed that;

*“Revision is a discretionary remedy. A party cannot invoke this extraordinary jurisdiction of the Appellate Court as of right. When a right of appeal is available against a Judgment or an Order, a party seeking to come before Court by way of revision shall explain in the petition why he did not exercise his right of appeal. In the revision application filed before the High Court there was no such explanation at all.”*

It is pertinent to note that the Petitioner in this Application failed to exercise his right to appeal against the impugned Order of the High Court and the reasons that have been averred in paragraph 11 of the Petition for not exercising his right of appeal can not be accepted by this Court as valid reasons. The paragraph 11 of the Petition is reproduced as follows;

*“The Petitioner states that he could not exercise his right of appeal within the given time as he was badly stressed mentally and he is not aware of the right of appeal and the Petitioner further states that his family also could not attend to it due to the financial difficulties and no one to assist him in this matter.”*

Besides, the Petitioner has invoked the revisionary jurisdiction of this Court after 9 months from the date of the impugned Order of the High Court. The delay is not explained to the satisfaction of this Court.

It is settled law that the Petitioner should invoke the revisionary jurisdiction of this Court within a reasonable time from the date of the impugned Judgment. What constitutes a reasonable time is a question of fact to be determined on the facts and circumstances of each individual case. In essence, the party seeking revision shall come to Court without undue delay. If there is a delay, it has to be explained in the Petition. In the instant Application, the delay is not explained.

In the case of **Seylan bank Vs. Thangaveil**<sup>5</sup> the Court of Appeal enunciated that,

*“no revision lies. The petitioner has not resorted to his statutory right of appeal with leave of court. He has not set out in his petition for revision any exceptional circumstances. There is a delay of one year and four months in respect of the order dated 07.03.2002 and a delay of 7 months from the order dated 10.01.2003. The petitioner has not explained the delay.”*

The Court of Appeal in **Rajapakse Vs. The State**<sup>6</sup> held that,

*“an application in Revision should not be entertained save in exceptional circumstances. When considering this issue court must necessarily have regard to the contumacious conduct of the accused in jumping bail and thereafter his conduct in a manner to circumvent and subvert the process of the law and judicial institutions. In addition, the party should come before Court without unreasonable delay.”*

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<sup>5</sup> [2004] 2 SLR, p101.

<sup>6</sup> [2001] 2 SLR, p161.

For the above reasons, the preliminary objections raised by the learned State Counsel are upheld. The Application is dismissed with costs fixed at Rs. 20,000/-.

*Application dismissed with costs.*

***JUDGE OF THE COURT OF APPEAL***

**K. K. A. V. SWARNADHIPATHI, J.**

I agree

***JUDGE OF THE COURT OF APPEAL***