

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 of the Constitution read with Article 154 P (3) (b) of the Constitution reads with Section 5 of the High Court of the Provincial Special Provisions Act No. 19 of 1990.

Officer in Charge.
Police Station,
Weeraketiya

Complainant

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. Officer in Charge.
Police Station,
Weeraketiya
2. Hon. Attorney General,
Attorney General Department,
Colombo 12.

Complainant – Respondent

Court of Appeal Case No:
CPA/0103/2024

High Court of Tangalle Case No:
RA 11/2024

Magistrate Court Case No:
84237

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

Accused – Petitioner - Petitioner

Vs

1. Officer in Charge.
Police Station,
Weeraketiya
2. Hon. Attorney General,
Attorney General Department,
Colombo 12.

Complainant-Respondent-Respondent

Before : **P. Kumararatnam, J.**
Pradeep Hettiarachchi, J.

Counsel : Asthika Devendra with Aruna Madushanka for the Accused –
Petitioner – Petitioner.
Oswald Perera, S.C. for the State.

Argued on : 29.07.2025

Decided on : 19.09.2025

Pradeep Hettiarachchi, J

Judgment

- 1) The Accused-Petitioner-Petitioner (hereinafter referred to as “the Petitioner”) instituted the instant Revision Application seeking to have the order dated 08.04.2024

and 16.04.2024 of the learned Magistrate of Walasmulla in the case No 84237, and the order No HCRA 11/2024, dated 27.06.2024 of the learned Judge of the High Court of Tangalle to set aside or revised.

- 2) The Petitioner was charged before the Magistrate Court of Walasmulla for possessing 10 grams of Cannabis Sativa, which is an offence punishable under Section 78(5) of the Poisons, Opium and Dangerous Drugs Ordinance.
- 3) When the charge was read out to the Petitioner on 08.04.2024, he tendered an unconditional plea of guilty to the charge at the very first instance. Accordingly, the learned Magistrate convicted him and imposed a fine of Rs 8000.00 with a default sentence of two-month imprisonment.
- 4) Subsequently, on 16.04.2024, an application was made on behalf of the Petitioner, seeking to convert the fine to a State cost as the Petitioner is an army corporal attached to Sri Lanka Army. But the learned Magistrate was not inclined to allow the application as she had already imposed the fine and the matter was concluded.
- 5) Thereafter, the Petitioner made an application in revision to the High Court of Tangalle seeking to have the learned Magistrate's Order set aside and a State cost ordered in lieu of the fine, which application was also dismissed by the learned High Court Judge.
- 6) Being aggrieved by the said Order of the learned High Court Judge of Tangalle, the Petitioner has filed the instant revision application seeking to have the orders of the High Court of Tangalle and Magistrate court of Walasmulla revised.
- 7) The law relating to revision applications is well established. Revision being a discretionary remedy is available only on proving the existence of exceptional circumstances which shocks the conscience of the court.
- 8) In **Wijesingha v. Tharmarathnam** Sri Skantha Law Rep. Vol IV page 47 it was held:
'Revision is a discretionary remedy and will not be available unless the application discloses exceptional circumstances which shock the conscience of the court.'

9) As stated in **Vanik Incorporation Ltd vs. Jayasekare** [1997] 2 Sri LR 365, revisionary powers should be exercised where a miscarriage of justice has occurred due to fundamental rule of procedure being violated, but only when a strong case is made out amounting to a positive miscarriage of justice.

10) In **Cadermenpulle vs. Ceylon Paper Sacks Ltd** [2001] 3Sri LR 112, it was held that:

The existence of exceptional circumstances is a pre condition for the exercise of the powers of revision; and absence of exceptional circumstances in any given situation results in refusal of remedies.

11) In **Dharmarathne & Another vs. Palm Paradise Cabanas Ltd. & Others** [2003] 3 Sri LR 34, Gamini Amaratunga J. emphasised the importance of establishing the existence of exceptional circumstances as follows:

- a. 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 the court will become a gateway of every litigant to make a second appeal in the garb of revision application or to make an appeal in situations where the legislature has not given a right of appeal.*
- b. The practice of court is 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*

12) It is with these legal principles in mind, I shall now consider the present application.

13) The exceptional circumstances urged by the Petitioner are as follows:

- (a) The learned High Court Judge and the learned Magistrate has failed to consider the Judgments in cases bearing No. SC/SPL/LA 176/2016 dated 27.10.2016 and the Judgment 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 176/2016 dated 27.10.2016 and the Judgment bearing No. 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 (by the fine imposed, and not by the conviction) where he would lose his employment and the benefits he has earned after serving in the army inclusive of time of the battle;
- (d) The learned High Court Judge and the learned Magistrate failed to consider that following the above authorities justice would be met by converting the fine of Rs. 8000/- 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 as well;
- (f) The learned High Court Judge has erred in law and fact by not considering that the learned Magistrate of Walasmulla has failed to take into consideration that not converting the fine imposed on the Petitioner to a State cost would end the 22 years of career of the Petitioner as an army soldier.

14) Therefore, the main ground advanced by the Petitioner in support of the present application is that both the learned High Court Judge and the learned Magistrate have failed to consider the relevancy of the Judgments in cases bearing No. SC/SPL/LA 176/2016 dated 27.10.2016 and the Judgment bearing No, CA/86/2009 dated 15.11.2011 wherein 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.

15) The Respondents, on the other hand, have submitted that applications made in those cases to convert the fine to a State cost have been made prior to the conclusion of the

case and they did not concern the offences under the Poisons, Opium and Dangerous Drugs Ordinance.

- 16) It is important to note that the learned High Court Judge in his Order dated 27.06.2024, has mentioned that, for the Magistrate to impose a State cost under section 306 of the Code of Criminal Procedure Act (hereinafter referred to as the “CCPA”), the Accused should not have been found guilty for the offence he was charged.
- 17) However, in the present case, the Petitioner has pleaded guilty on 08.04.2024, subsequent to which he has been imposed a fine of Rs. 8000/- and a default sentence of two months’ imprisonment by the learned Magistrate of Walasmulla. The application to convert the aforesaid fine to a State cost was made by the learned Counsel for the Accused, subsequent to the conviction (eight days after the date of the Judgment) , i.e. on 16.04.2024. Therefore, the learned High Court Judge had stated that the learned Magistrate was correct in holding that such application to convert the fine to a State cost cannot be allowed as the matter was already concluded and the Accused was found guilty.
- 18) In *Illayathmaby Naguleskaran v Attorney General SC* SPL/LA/176/2016 (SC Minutes dated 27.10.2016), the Supreme Court granted leave on the questions of law raised by the learned Counsel for the Accused-Appellant and further reduced the fine of Rs. 65,000/- imposed by the learned Magistrate to 50,000/-.
- 19) However, even after the appeal was allowed, the matter was once again mentioned to make an application on behalf of the Appellant to vary the aforesaid order given by the Supreme Court. Accordingly, the Supreme Court by its Order dated 21.03.2017, allowed the said application made by the Counsel for the Appellant to vary the word ‘fine’ to read as ‘State costs’, thereby treating the fifty thousand Rupee fine imposed on the Accused-Appellant by its previous order as State costs.
- 20) Furthermore, in *Mohamed Mustapha Faisz v Attorney General* CA 86/2009 dated 15.11.2011, the Accused-Appellant was a government teacher who has been indicted before the High Court of Ampara under section 308 A (2) of the Penal Code for causing cruelty to children. After the trial, the learned High Court Judge has convicted the Accused-Appellant for the said offence and imposed a two and half

years of rigorous imprisonment and a fine of Rs. 1000/- and a default sentence of six months' imprisonment. Additionally, the Court also ordered the Accused-Appellant to pay a sum of Rs. 10,000/- as compensation and to serve two years of imprisonment in the event of default. The Accused-Appellant did not contest the conviction, but sought some relief regarding the sentence imposed on him. Exercising the discretion of the Court in favor of the Accused-Appellant, Lecomwasam J reduced the term of imprisonment from two and half years to two years and suspend the term for a period of five years. Most importantly, he ordered the fine of Rs. 1000/- to be treated as State costs.

- 21) Therefore, it is important to note that in both these cases, the Court have made the order to treat the fines imposed on the appellants as State costs after those cases were concluded and the appellants were found guilty by the trial court. Especially, in *Illayathmaby Naguleskaran v Attorney General SC* SPL/LA/176/2016, the application made to vary 'fines' as 'State costs' by the Counsel was entertained by a different bench at a subsequent stage, even after the appeal was allowed by the Supreme Court.
- 22) Furthermore, in the Revision Application dated 27.05.2024, preferred to the High Court of Tangalle, one of the grounds adduced by the Petitioner to invoke the revisionary jurisdiction of the Court was the failure of the learned Magistrate to consider the Judgments in cases bearing No. SC/ SPL /LA/176/2016 dated 27.10.2016 and the Judgment bearing No, CA/86/2009 dated 15.11.2011 which affirm the position that the Court has the discretion to impose a State cost instead of a fine even when there is a finding of guilt against the accused. However, despite his attention being drawn to the above case law precedents, the learned High Court Judge has not discussed the applicability of these two precedents or even considered them in his Order dated 27.06.2024.
- 23) Instead, he has acted on the misguided notion that, in order to impose State costs under section 306 of the CCPA, the accused should not have been convicted for the offence he was charged, which in my view is a serious omission amounting to a miscarriage of justice that warrants the intervention of this Court.
- 24) Another ground advanced by the Petitioner is that the learned High Court Judge and the learned Magistrate failed to consider the repercussions or grave prejudice caused

to the Petitioner (by the fine imposed, and not by the conviction) where he would lose his employment and the benefits he has earned after serving in the army inclusive of time of the battle.

25) In the present application, the Petitioner has been in army for last 22 years with an unblemished record. No previous conviction for any kind of offence has been reported against the Petitioner. In the affidavit, it is stated that consequent to the fine imposed on the Petitioner, he would lose his job and other employment benefits accrued to him during his career with the Sri Lanka Army. It is also stated that it would adversely affect his financial stability after the retirement, and also directly affects his family and children financially.

26) In the aforesaid circumstances, imposing a State cost, may be a way to mitigate harsh consequences of a monetary fine, such as a loss of pension entitlement, by substituting it with a different punitive measure like State costs, as noted by this Court previously in ***Geegana Gamage Chamara Nilanga v Attorney General*** CA HCC/112/2020 (CA Minutes 18. 07.2022):

The appellant is an army soldier, and if a fine is imposed, it would affect his employment as a government servant which may result him been deprived of his livelihood. Such a situation would affect his family members and may change his life altogether.

27) Also, in ***Mohamed Mustapha Faisz v Attorney General*** it was held by Lecamwasam J as follows:

After all, the justice cannot be for one side alone, but must be for both as espoused by Eleanor Roosevelt. The Accused-Appellant is a public servant and should not be deprived of his employment due to a solitary incident that had taken place without any premeditation and moreover, because there is an absence of evidence of prior similar behavior.

28) Considering the triviality of the offence committed by the Petitioner and the disproportionate consequences that he will have to face due to imposition of a fine, I allow the fine of Rs. 8000/- imposed on the Petitioner to be treated as State costs. This Revision Application is allowed to that extent.

29) The Registrar of this Court is directed to send a copy of this Order to the High Court of Tangalle and the Magistrate Court of Walasmulla forthwith.

Judge of the Court of Appeal

P. Kumararatnam, J

I agree,

Judge of the Court of Appeal