

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

In the matter of an application filed under in terms of Article 138 of the Constitution of the democratic Socialist Republic of Sri Lanka. Read with Section 364 of the Code of Criminal Procedure Act No 15 of 1979.

CA CPA-020/25

HC of Anuradhapura Case No: The Attorney General
HC-98/2021 Attorney General's Department
Colombo 12
Petitioner

Vs.

Lanthuwa Hanadige Suneetha Silva
D.S. Senanayake Mawatha, Katiyawa Road
Eppawala

Accused-Respondent

Before : **B. Sasi Mahendran, J.**
Amal Ranaraja, J

Counsel: Wishwa Wijesooriya, SC for the Petitioner

Argued On : 02.12.2025

Judgment On: 20.01.2026

JUDGMENT

B. Sasi Mahendran, J.

This is a revisionary application filed by the Petitioner, Honourable Attorney General, invoking the revisionary jurisdiction of this court, seeking the following reliefs prayed in the petition dated 26th February 2025,

The Petitioner has inter alia prayed for the following reliefs;

1. Issue Notices to the Accused-Respondent;
2. Allow the Petition of the Petitioner;
3. Revise and set aside the Order dated 14-02-2024 delivered by the learned High Court Judge sitting in Anuradhapura in the matter styled HC 98/21;
4. Grant costs and such further reliefs

The following facts are relevant to the Application

The Accused Respondent (herein after refers as the Accused) was indicted before the High Court of Anuradhapura bearing case No. 98/21 for possession and trafficking of 1.23 g of Heroin punishable under Section 54 (a) (d) and Section 54 (a) (b) of the Poisons, Opium and Dangerous Drugs Ordinance, No. 13 of 1984, as amended.

The Accused initially entered a plea of not guilty to the charges contained in Indictment which was marked as P2. Subsequently, he withdrew that plea and pleaded guilty to both counts in the indictment before the High Court. Following the plea of guilt, the Learned High Court Judge convicted the Accused of the aforesaid offences and, by order dated 14.02.2024, imposed the following punishments to run concurrently upon his conviction on the two charges:

1. 1st Charge - Fine of Rs. 150,000 and, upon nonpayment, 2 years simple imprisonment and 5 years Rigorous Imprisonment suspended for 15 years
2. 2nd Charge - Fine of Rs. 100,000 and, upon nonpayment, 2 years simple imprisonment and 5 years Rigorous Imprisonment suspended for 15 years

The petitioner's principal grievance was that the Learned High Court Judge delivered the impugned order dated 14.02.2024 without considering section 303 (2)(a) and section 303 (2)(d) of the Code of Criminal Procedure Act stating that a judge of an original Court is barred from suspending a sentence where a minimum mandatory sentence is prescribed by law for an offence and aggregate sentence for the offences for which an accused is convicted exceeds two years. The petitioner contends that the punishment imposed for both counts does not along with the law stipulates a minimum mandatory sentence.

Section 303 (2) of the Code of Criminal Procedure Act reads as follows,

"303 (2) A court shall not make an order suspending a sentence of imprisonment if,-

(a) a mandatory minimum sentence of imprisonment has been prescribed by law for the offence in respect of which the sentence is imposed; or

.....

(d) the term of imprisonment imposed, or the aggregate terms of imprisonment where the offender is convicted for more than one offence in the same proceedings, exceeds two years."

We note that it is appropriate to consider the sentence prescribed by law for possession and trafficking of drugs, which provides for a term of imprisonment of not less than seven years and not exceeding twenty years, together with a fine ranging from Rs. 100,000 to Rs. 500,000. Accordingly, we note that the law stipulates a minimum mandatory sentence.

It is evident that a minimum sentence is prescribed by law. However, our courts have recognized that a Trial Judge retains the discretion to determine an appropriate sentence without being bound by the minimum mandatory sentence. Nevertheless, if the Judge decides to impose a sentence below the statutory minimum, such a departure must be supported by adequate and clearly stated reasons.

In the present case, we note that the Learned High Court Judge has failed to give reasons why he has imposed such a sentence below the minimum sentence. It is relevant to reproduce that portion of the order dated 14.02.2014.

“තවද මෙම වේදනාවට අදාළව අනිවාර්ය අවම සිර දුඩුවම නියම කොට ඇතන්, මෙම නඩුවේ දැක්වනය සම්බන්ධයෙන් අධිකරණයේ අහිමතය භාවිතා කිරීමට අදාළව සුදුසු නඩුවක් බව තීරණය කරමි. මෙම වූදිත අනිවාර්ය සිර දුඩුවම සඳහා යොමු කරන ලද නොත් ඔහු විසින් සමාජයේ යහපත් පුරවැසියෙකු වගයෙන් කටයුතු කිරීමට ඇති අපේක්ෂාවන්, ඔහුගේ වියපත් සහ රෝගී මව බලා ගැනීමේ හැකියාව අහිමි විමද සහ ඔහුගේ ජීවිතයේ වටිනා කාලය බන්ධනාගාරගත වීම මගින් ඔහුට වන අගතියද යන සියලු කරුණු සළකා බලමි. ඒ අනුව අනිවාර්ය සිර දුඩුවම නොවන දැක්වනයක් නියම කිරීම යෝගා බව තීරණය කරමි.”

The central question is whether the learned High Court Judge lawfully exercised his discretion in awarding a sentence below the statutory minimum. The objective of criminal justice is to safeguard society from offenders by imposing punishment under the existing penal system. Such punishment is intended to serve as a deterrent to others from committing criminal acts. In determining sentences, courts have taken into account the nature of the offence and its impact on society.

I am mindful of the sentiments expressed by His Lordship Basnayake ACJ in *The Attorney General v. H.N. De Silva* 57 NLR 121 at page 124 in the matter of assessing the sentence to be imposed for an offence.

“In assessing the punishment that should be passed on an offender, a Judge should consider the matter of sentence both from the point of view of the public and the offender. Judges are too often prone to look at the question only from the angle of the offender. A Judge should, in determining the proper sentence, first consider the gravity of the offence as it appears from the nature of the act itself and should have regard to the punishment provided in the Penal Code or other statute under which the offender is charged. He should also regard the effect of the punishment as a deterrent and consider to what extent it will be effective.”

This dictum was followed by His Lordship Gunasekara J in *The Attorney General v. Mendis* 1995 1 SLR 138 and held that;

"In our view once an accused is found guilty and convicted on his own plea, or after trial, the Trial Judge has a difficult function to perform. That is to decide what sentence is to be imposed on the accused who has been convicted. In doing so he has to consider the point of view of the accused on the one hand and the interest of society on the other."

Further held that;

"We are in agreement with the observations of Basnayake, A.C.J. that whilst "the reformation of the criminal though no doubt is an important consideration in assessing the punishment that should be passed on an offender, where the public interest or the welfare of the state outweighs the previous good character, antecedents and age of the offender, that public interest must prevail." Having regard to the manner and the ingenuity with which the crimes that the Accused Respondent has committed to which he has pleaded guilty, we are of the view that the sentence imposed is grossly inadequate. In our view the crimes to which the Accused-Respondent pleaded guilty are of a very serious nature and have been committed with much planning, deliberation and manipulation and called for an immediate custodial sentence."

In the instant case, the Accused was charged for possession and trafficking of 1.23 g of Heroin in 2020. We note that drug offences not only harm the individual offender but also ripple through society, creating widespread social and economic consequences. Most concerning is their impact on school children, who may be exposed to addiction, crime, and disrupted education, threatening the future of the community.

We note that the Learned High Court Judge has not considered this issue when delivering the sentencing order dated 14.02.2024. We are mindful that the

Learned High Court Judge did not properly discharge his judicial mind in imposing the sentence in the above matter.

For the above-mentioned reasons, I am of the view that the Learned High Court Judge has failed to consider the gravity of the offence. I am of the view that the sentence imposed by the trial judge is in feris illegal and not in accordance with the law.

We accordingly revise and set aside the sentence and the order of the Learned High Court Judge dated 14.02.2024, which was marked as P4.

We direct the learned High Court judge to take into consideration the aggravating and mitigating circumstances to be set out at the sentencing inquiry and make an appropriate order.

Application Allowed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL