

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

In the matter of an application for Revision in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Application No. Democratic Socialist Republic of
CA (PHC) APN/0073/23 Sri Lanka

High Court of Colombo

Case Nos. HC/102/17	Complainant
HC/103/17	Vs.
HC/104/17	
HC/105/17	Mohomad Nilam Mohomad Sameer
HC/106/17	Accused
HC/107/17	
HC/109/17	AND NOW BETWEEN
HC/124/17	

Mohomad Nilam Mohomad Sameer
(Presently in Welikada Prison)

Accused-Petitioner

Vs.

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

Complainant-Respondent

BEFORE : **P. Kumararatnam, J.**

R. P. Hettiarachchi, J.

COUNSEL : **Faisze Mustapha, PC with Keerthi Thilakaratne and Zaid Ali for the Petitioner.**

Nishanth Nagaratnam, SC for the Respondent.

ARGUED ON : **31/10/2025.**

DECIDED ON : **30/01/2025.**

JUDGMENT

P. Kumararatnam,J.

The Accused-Petitioner (Hereinafter referred to as the Petitioner) is the Accused named in the High Court cases mentioned in the Caption of the Application. In all the cases mentioned above, the Hon. Attorney General filed three charges under the Public Property Act No. 12 of 1982 as amended. The Petitioner had pleaded guilty to the charges at very outset. Hence, he was sentenced as follows:

HC/102/2017

18 months concurrent rigorous imprisonment on each count with a fine of Rs.237,000/- on 1st count, 195,000/- for the 2nd count and 180,000/- for the 3rd count. In default, two years rigorous imprisonment was imposed on each count.

HC/103/2017

2 years concurrent rigorous imprisonment on each count with a fine of Rs.164,000/- on 1st count, a fine of Rs. 186,000/- for the 2nd count and a fine of Rs. 119,700/- for the 3rd count. In default, 01-year rigorous imprisonment was imposed on each count.

HC/104/2017

07 years concurrent rigorous imprisonment on each count with a fine of Rs.93,000/- on the 1st count, a fine of Rs. 180,000/- for the 2nd count and a fine of Rs. 121,000/- for the 3rd count.

HC/105/2017

02 years concurrent rigorous imprisonment on each count with a fine of Rs.127,700/- on 1st count, a fine of Rs. 185,000/- for the 2nd count and a fine of Rs. 129,000/- for the 3rd count. In default, two years rigorous imprisonment was imposed on each count.

HC/106/2017

10 years concurrent rigorous imprisonment on each count with a fine of Rs.92,700/- on 1st count, a fine of Rs. 94,800/- for the 2nd count and a fine of Rs. 96,000/- for the 3rd count. In default, 01-year rigorous imprisonment was imposed on each count.

HC/107/2017

10 years concurrent rigorous imprisonment on each count with a fine of Rs.120,000/- on 1st count, a fine of Rs. 147,000/- for the 2nd count and

a fine of Rs. 128,000/- for the 3rd count. In default, two years rigorous imprisonment was imposed on each count.

HC/109/2017

18 months concurrent rigorous imprisonment on each count with a fine of Rs.28,500/- on 1st count, a fine of Rs. 60,000/- for the 2nd count and a fine of Rs. 93,000/- for the 3rd count.

HC/124/2017

03 years rigorous imprisonment imposed on count one with a fine of Rs.195,000/-. In default, two years rigorous imprisonment was imposed.

In three more cases too, the Petitioner had pleaded guilty and was sentenced accordingly. Against the said three cases, three Revision Applications made under case Nos. CPA/89/2021, CPA/90/2021 and CPA/281/2018 had been filed earlier and matters had been already adjudicated by this court.

Now the learned President's Counsel, appearing on behalf of the Petitioner makes an application that, as the aggregated sentence imposed on all the cases mentioned above is 37 years, he moves this court to consider ordering that the sentences imposed on all the cases run concurrently, where each would be operative from the date of the respective conviction. In which event, the Petitioner would serve a term of 10 years of rigorous imprisonment in all.

The learned President's Counsel submitted that the Petitioner is presently 60 years old and has a wife and five children. The Petitioner's wife is infirmed and is 56 years of age whilst his children are aged 37,36,32,30 and 24 respectively. Hence, the learned President's Counsel moves this court to consider the above-mentioned family issue as an exceptional circumstance which warrants the exercise of the revisionary jurisdiction.

In the High Court cases mentioned above, the learned High Court Judge, applying Section 16 of the Code of Criminal Procedure Act No.15 of 1979 (Hereinafter referred to as the CPC), very correctly sentenced the Petitioner considering the existing circumstances of each case. Therefore, the learned High Court Judge cannot be faulted.

In consideration of the application made in this revision application, it is important to discuss Section 300 of CPC. The section sates:

When a person actually undergoing imprisonment is sentenced to imprisonment such imprisonment shall commence at the expiration of the imprisonment to which he has been previously sentenced.

In **Weerawarnakula v The Republic of Sri Lanka** [2002] 3 SLR 2013 His Lordship Amaratunga, J. considering the Sri Lankan law and Indian pertaining to this issue held that:

Section 300 is applicable to a different situation than that contemplated by section 16 of the Code. It applies to a situation where a person actually undergoing imprisonment is in some other case again sentenced to imprisonment. According to the section the latter imprisonment shall commence to operate at the expiration of the imprisonment to which he has been previously sentenced. This is an exception to the general rule that a sentence begins to operate from the time it is pronounced. Section 300 is couched in imperative terms and in view of the wording of the section no court has the power or discretion to order that a sentence of imprisonment ordered by it shall run concurrently with a sentence of imprisonment ordered in a previous case which the accused is serving when he is sentenced in the 2nd case. In Godagama v. Mathes² Wood Renton, J. stressing the imperative nature of section 321 of the Criminal Procedure Code of 1898 (which was identical with present section 300 of the Code of Criminal Procedure Act) said that "[I] t is not competent for a Magistrate to

order that a sentence passed on an offender who is already sentenced for another offence shall run concurrently with the previous sentence."

The Indian counterpart of section 300 was section 397 of the Indian Criminal Procedure Code of 1898 and presently it is section 427 of the Code of Criminal Procedure Act, No. 2 of 1974. The present Indian section is similar to section 397 of the earlier Code. Under section 397 no discretion was available to court to make the later sentence of imprisonment concurrent with a previous sentence of imprisonment ordered in an earlier case. Emperor v. Bhikki and Others³. By an amendment to the Indian Criminal Procedure Code in 1923 the words "unless the court directs that the subsequent sentence shall run concurrently with the previous sentence" were added to section 397 and in view of this the courts now have a discretion to order that a subsequent sentence of imprisonment shall run concurrently with a previous sentence of imprisonment. But there are no similar words in section 300 of our law.

Even if there is no discretion available to court, if the phrase "actually undergoing imprisonment" is interpreted in the way suggested by the learned counsel for the accused-appellant it is possible to argue that the learned High Court Judge had the power to order the sentences of imprisonment ordered in case No. 998/93 to run concurrently with the sentence of imprisonment ordered in case No. 997/93. According to the learned counsel's argument a person can be said to be actually undergoing imprisonment only when he is taken to prison and accepted and admitted as an inmate of the prison. This argument is contrary to the general principle that a sentence takes effect from the time it is pronounced. In criminal courts we every day see this general principle given effect to.

In the case of **Bandage Sumindra Jayanthi Vs. Attorney General** (2015) 1 SLR 20, it was held that:

“As Section 16 (1) of the Code of Criminal Procedure Act stands, it enacts both a rule and an exception. The rule is that if there are more than one count in one indictment, the separate sentences ordered on each count shall run consecutively. But the exception to the rule as found in the said section is that if the High Court judge chooses to do so, she/he is empowered to order the separate sentences to run concurrently, in fact Section 16 (1) is a neutral provision which applies to both trials in the High Court and the Magistrate’s Court.

Thus Section 16 of the Code is limited in scope to multiple counts in one trial and the power of ordering concurrent sentences does not extend to other indictments against the same accused as they would constitute separate and distinct trials.

Therefore, Section 300 of the Code would not permit the imposition of concurrent sentences for the different indictments.”

Furthermore, it is desirable to emphasise that this being an application for revision, it is the duty of the Petitioner to establish the existence of exceptional circumstances which shock the conscience of Court.

In **Caderamanpulle v Ceylon Paper Sacks Ltd** (2001) 3 SLR 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.”

However, in the present application, the Petitioner has failed to plead any such exceptional circumstances.

Considering the circumstances of the cases referred to above and where the law stands as at today; this Court is not inclined to entertain the request made by the learned President's Counsel directing the sentences imposed in case numbers referred in the revision application to run concurrently with each other. Hence, this application is dismissed. No cost ordered.

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

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL