IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Appeal

Lansage Basil

Petitioner-Petitioner-Petitioner-Appellant

SC Appeal 20/2017
SC (SPL) LA No.192/2016
Court of Appeal Application
No.CA/PHC/APN 20/2016
HC Panadura No. BA 39/2015

Vs-

Hon. Attorney General

Respondent-Respondent-Respondent-Respondent

Before: Sisira. J. de Abrew, J
Vijith. K. Malalgoda PC, J
P. Padman. Surasena J

Counsel: J.P. Gamage for the Petitioner-Petitioner-Petitioner-Appellant
Suharshi Herath SSC for the Attorney General

Argued on : 3.3.2020

Decided on: 3.7.2020

Sisira. J. de Abrew, J

This is an appeal against the judgment of the Court of Appeal dated 8.8.2016.

The Petitioner-Petitioner-Petitioner-Appellant (hereinafter referred to as the Petitioner-Appellant) filed an application for bail in the High Court of Panadura seeking to enlarge his son (the suspect) on bail. The suspect was remanded by the learned Magistrate. The allegation levelled against the suspect was that he was in possession of 42 grams of heroin. But according to the Government Analyst's report pure quantity of heroin was 3.89 grams of heroin. I must state here that the Government Analyst's report is not available in the brief. But their Lordships of the Court of Appeal in their judgment dated 8.8.2016 have observed that the pure quantity of heroin, according to the Government Analyst's report, was 3.89 grams.

The learned High Court Judge by his order dated 13.1.2016 refused the application of the Petitioner-Appellant for bail. Being aggrieved by the said order of the learned High Court Judge, the Petitioner-Appellant who is the father of the suspect filed a revision application in the Court of Appeal seeking to revise and set aside the said order of the learned High Court Judge. The Court of Appeal, by its judgment dated 8.8.2016 dismissed the said revision application. Being aggrieved by the said judgment of the Court of Appeal, the Petitioner-Appellant has appealed to this court. This court by its order dated 27.1.2017, granted leave to appeal on questions of law set out in paragraphs 10(a) and 10(b) of the Petition of Appeal dated 15.9.2016 which are reproduced below.

1. Did the Court of Appeal err in law in deciding that the Petitioner has no locus standi to maintain the Application for Revision?

2. Did the Court of Appeal err in law in not considering the fact since the Petitioner is the Petitioner in the Application for bail in the High Court, the Petitioner has locus standi to maintain the Revision Application in the Court of Appeal against the order of the High Court.

The Petitioner-Appellant is the father of the suspect in this case. When the matter was taken up for argument in the Court of Appeal, the learned Senior State Counsel who appeared for the Attorney General raised an objection to the effect that the Petitioner-Appellant had no locus standi to maintain the application for revision. Their Lordships of the Court of Appeal have relied on the judgment of the Court of Appeal (judgment of Justice Jayasuriya) in the case of Senathilaka Vs Attorney General [1998] 3 SLR 290. The head note of the said judgment states as follows. "The father of the accused has no locus standi to maintain the revision application."

In Senathilaka's case (supra) the accused who was convicted and sentenced did not appeal against the conviction and the sentence. The father of the accused filed a revision application against the conviction and the sentence. His Lordship Justice Jayasuriya observed that it was a belated application. The accused in Senathilaka's case (supra) who was granted bail did not face the trial and after an inquiry under Section 241 of the Criminal Procedure Code, the learned trial Judge proceeded with the trial and convicted the accused. His Lordship Justice Jayasuriya at page 293 observed as follows.

> *"The present application is an application in revision. This is an extraordinary jurisdiction which is exercised by the Court of Appeal and the grant of relief is entirely dependent on the discretion of the court. Here the accused's father is seeking discretionary relief from the Court of Appeal and*

> *in considering the grant of discretionary relief, the court will closely examine the conduct of the accused person. In the exercise of a discretion the court scrupulously looks into the conduct of the ultimate party who is deriving benefit from the orders to be made by the court in revision. Besides this application has been preferred with undue and unreasonable delay. The application is refused."*

Therefore, it is seen that in the above case, the Court of Appeal, after considering the conduct of the accused and belatedness of the revision application, refused to exercise the extraordinary jurisdiction and discretion of the Court of Appeal. His Lordship Justice Jayasuriya in the above case has not expressed a general view that the father of an accused in each and every case has no locus standi to maintain a revision application.

In the present case, the suspect has not been convicted and it was an application to revise the order of the leaned High Court Judge who refused to enlarge the suspect on bail. Thus, it is seen that the facts of the present case are quite different from the facts of Senathilaka's case (supra). After considering all the aforementioned matters, I feel that it was wrong for the Court of Appeal to act on the judicial decision in Senathilaka's case (supra) and dismiss the revision application.

The Court of Appeal has also based its judgment on Section 16 of the Judicature Act which reads as follows.

> *(1) A person aggrieved by a judgment, order or sentence of the High Court in criminal cases may appeal to the Court of Appeal with the leave of such court first had and obtained in all cases in which the Attorney-General has a right of appeal under this Chapter.*

(2) In this section "a person aggrieved" shall mean any person whose person or property has been the subject of the alleged offence in respect of which the Attorney-General might have appealed under this Chapter and shall, if such person be dead, include his next of kin namely his surviving spouse, children, parents or further descendants or brothers or sisters.

(3) Nothing in this section shall in any way affect the power of the Court of Appeal to act by way of revision in an appropriate case.

It must be noted that Section 16(1) of the Judicature Act contemplates the right of appeal given to an aggrieved person and Section 16(2) discusses about 'a person aggrieved'. These two subsections do not discuss about the revisionary power of the Court of Appeal. When Section 16(3) of the Judicature Act states that 'nothing in this section shall in any way affect the power of the Court of Appeal to act by way of revision in an appropriate case', it has to be understood that revisionary power of the Court of Appeal has not been taken away by the above two sub sections [16(1) and 16(2)]. Section 16(3) of the Judicature Act in fact retains the revisionary power of the Court of Appeal notwithstanding what is stated in sub sections 16(1) and 16(2) of the Judicature Act. Thus, it was the duty of the Court of Appeal to have considered the revision application of the Petitioner-Appellant. In this connection I would like to consider a passage of the judgment of Sharvananda CJ in the case of Sudharman de Silva Vs Attorney General [1986]1 SLR 9 at page 15 wherein His Lordship observed as follows.

"It is the court's duty to ensure that the statutory right of a person is not lost to him except in strict accordance with the statute. The first duty of a judge is to administer justice according to law, the law which is established for us

by an Act of Parliament. The judges in their anxiety to uphold the dignity of courts should not fail to do justice according to enacted law. Dislike of the effect of a statutory provision does not justify departing from its plain language."

In Rasheed Ali Vs Mohamed Ali [1981] 1SLR 262 this court held as follows.

"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."

The revision application of the Petitioner-Appellant was dismissed on the ground that the Petitioner-Appellant had no locus standi. It must be noted that revisionary power of the Court of Appeal is exercised in order to correct the errors or mistakes of judgments or orders of the courts of first instance. When an illegality or error of a judgment/order of the court of first instance is brought to the notice of the Court of Appeal, the Court of Appeal can, on its own motion, call for the record of the court of first instance and give directions to correct such errors or set aside such illegal judgments/orders. This view is supported by the judicial decision of this court in the case of Attorney General Vs Gunawardena [1996] 2 SLR 149 wherein five judges of this court held as follows.

"Revision like an appeal is directed towards the correction of errors but it is supervisory in nature and its object is the due administration of justice and not primarily or solely the relieving of grievances of a party.

The provision that the Court may upon Revision make such order, as it might have made had the matter been brought up in due course of appeal may have been enacted because of the recurring discussion in Courts, whether powers of revision can or should be exercised where the matter might have

been brought up in appeal, had S.354 stood alone the argument that, by reason of the Provision relating to the orders which a Court may make in revision, the remedy by way of revision may be exercised only in a case where an appeal lay may have been valid. S.354 being an enabling provision it does not have the effect of impliedly excluding the exercise of the wide powers of Revision given by other provisions in cases where no appeal lies. In exercising the powers of Revision this Court is not trammelled by technical rules of pleading and procedure. In doing so this Court has power to act whether it is set in motion by a party or not and even ex mero motu".

The expression 'ex mero motu' according to 'Wharton's Law Lexicon' 14th edition page 393 means 'of his own accord'.

For the above reasons, I hold that in the present case, dismissing the revision application of the Petitioner-Appellant on the basis that he had no locus standi is wrong and the judgment of the Court of Appeal dated 8.8.2016 should be set aside. For the above reasons, I answer the above-mentioned 1st question of law in affirmative. In view of the answer given to the 1st question of law, it is not necessary to answer the 2nd question of law.

At the hearing of this appeal when court sought clarification whether the suspect in this case has been released on bail, learned counsel for the Petitioner-Appellant submitted that he had no knowledge on the matter.

For all the aforementioned reasons, I set aside the judgment of the Court of Appeal dated 8.8.2016 and direct the Court of Appeal to hear the revision application of the Petitioner-Appellant on its merit.

Judge of the Supreme Court.

Vijith. K. Malalgoda PC, J

I agree.

Judge of the Supreme Court.

P. Padman. Surasena J

I agree.

Judge of the Supreme Court.