

**SC.SPL.LA.No. 239/2017**

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

In an application for Special Leave to Appeal in  
terms of Article 128 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka

**SC.SPL.LA.No. 239/2017**

CA.Appeal No.138/2016

HC. Kegalle Case No.1468/2000

1. Illandarage Wasantha Detawala,  
Karadupana, Kegalle.
2. Mahanamagam Geeganage Piyadasa alias  
Baale  
Detawala, Karadupana, Kegalle.
3. Panawala Ralalage Sarath Bandara Panawala,  
Thibbatumunuwa, Hettimulla,  
Kegalle.

**Accused-Petitioners-Petitioners**

-Vs-

Hon. Attorney-General,  
Attorney-General's Department,  
Colombo-12.

**Complainant-Respondent-Respondent**

**Before:**                    **Sisira J. de Abrew, J**  
**Chitrasiri, J &**  
**Vijith K. Malalgoda, PC, J**

Counsel:                R. Arsecularatne PC for the Accused-Petitioner-Petitioners.  
  
Varunika Hettige SSC for the Hon. A.G.

Argued &  
Decided on:            12.01.2018

**Sisira J.de Abrew, J**

Heard both counsel in support of their respective cases.

Having heard both counsel, Court decides to grant leave to appeal on the following questions of law:-

1“ Whether the Court of Appeal in view of the material submitted to the Court of Appeal erred in law when refusing the relisting application by its order dated 28.09.2017

1“ Whether the Court of Appeal erred in law by taking up the inquiry of the revision application in the absence of the counsel for the Petitioners on 14.06.2017 and thereafter dismissing the same after hearing the counsel for the Respondent only.

Learned President's counsel submits that he filed a Revision application against the order of the learned High Court Judge dated 13.10.2016 wherein he decided to call for the defence of the accused. When the High Court Judge decided to call for the defence of the accused, the accused filed a Revision application in the Court of Appeal. This revision application had been fixed for hearing on 14.06.2017. Learned President's Counsel submits that on 14.06.2017 he was absent in the Court of Appeal for the hearing of the Revision application and the Court of appeal has taken up the argument in the Revision application and dismissed the said Revision application.

Learned President's Counsel submits that he was not able to be present on 14.06.2017 as he has taken the next date as 16.06.2017. In support of his contention, he has produced the file cover of the case that he maintained and his diary which indicate that the case in the Court of Appeal had been fixed for 16.06.2017 but not for 14.06.2017. When we peruse the file cover and the diary of the learned President's Counsel that was submitted to the Court of Appeal, we are satisfied that he has taken the date of the hearing of the Court of Appeal case as 16.06.2017. But the actual date of hearing had been on 14.06.2017. After perusing the file cover and the copy of the learned President's Counsel's diary submitted to the Court of Appeal, we are satisfied that the learned President's Counsel had taken the date as 16.06.2017 mistakenly. When the case was dismissed on 14.06.2017, he filed a re-listing application to relist the Revision Application in the Court of Appeal. He had filed a motion to the said effect. When we consider the above material we are satisfied that he has produced sufficient grounds to allow the re-listing application. When we consider the above material, we are of the opinion that the Court of Appeal should have allowed the re-listing application and also should have vacated the order made on 14.06.2017.

Considering the aforementioned matters, we answer the above questions of law in the affirmative.

Considering all these matters we set aside the orders of the Court of Appeal dated 14.06.2017 and 28.09.2017. We direct the Court of Appeal to hear the Revision Application of the Accused-Appellant on its merits.

We direct the Registrar of this Court to send a copy of this order to the Court of Appeal.

**JUDGE OF THE SUPREME COURT**

**Chitrasiri, J**

I agree.

**JUDGE OF THE SUPREME COURT**

**Vijith K. Malalgoda, PC, J**

I agree.

**JUDGE OF THE SUPREME COURT**

kpm/-