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 of the Democratic Socialist Republic of Sri Lanka from the Judgement of the High Court of Colombo dated 18.01.2019

Court of Appeal Revision Application No:
CPA 0011/2019

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

Complainant

HC Colombo
Case No: HC 4273/2008

Vs.

1. Pattiyage Nandani Shyamali Pieris
2. Asela Kumaraguptha Sumanasuriya
3. Hettiarachchige Mary Margret Perera
4. Koswaththage Chandrasa Perera

Accused

And Now Between

Chitra Malini Peiris

Petitioner

Vs.

Hon. Attorney General
Attorney General's Department
Colombo 12

Complainant-Respondent

1. Pattiyage Nandani Shyamali Pieris
2. Asela Kumaraguptha Sumanasuriya
3. Hettiarachchige Mary Margret Perera
4. Koswaththage Chandrasa Perera

Accused - Respondents

Before : R. Gurusinghe J
&
M.C.B.S. Morais J

Counsel : Shavindra Fernando, P.C. with Thivendra Attygalle

for the Petitioner

Palitha Fernando, P.C. with Neranjan Jayasinghe and

J. Wijegunawardena

for the Accused-Respondents

Dilan Rathnayake, ASG, P.C.

for Complainant –Respondent – Attorney General

Supported on : 14-05-2024

Decided on : 19-06-2024

ORDER

R. Gurusinghe

The petitioner filed this revision application on 01-09-2019, seeking the reliefs set out in the prayer of the petition. An amended petition was filed on 08-11-2023. As the petitioner had filed an appeal seeking similar reliefs, this application has not been supported for a long time. The application was supported for notice on 14-05-2024.

The reliefs sought by the petitioner in the prayer of the amended petition are as follows:

a) Grant leave to the Petitioner;

b) Set aside the Judgment of the Learned High Court Judge of Colombo dated 18 January 2019 acquitting the Accused – Respondents;

c) Convict the Accused – Respondents;

d) Award the Petitioner costs; and

e) Grant the Petitioner such other and further reliefs that the Court shall seem meet.

The petitioner has pleaded the following:

1) Since this is an application made on behalf of the aggrieved party, the appeal lodged concurrently was dismissed on the fact that there is no right of appeal for an aggrieved party.

2) The Learned High Court Judge erred in not accepting the evidence of the Government Analyst that it is not, in fact, the signature of the deceased.

3) The Learned High Court Judge erred by taking into external factors when rejecting the position of the Government Analyst.

4) The Learned High Court Judge erred and misguided himself on unnecessary factors taken up by the defence.

5) The Learned High Court Judge erred in not evaluating the position of the Last Will, deed of gift and deed of mortgage.

The petitioner placed much reliance on the report of the Examiner of Questioned Documents submitted by Senior Assistant Government Analyst J.M.R. Jayasundara. The petitioner has not tendered a copy of that report or Mr Jayasundara's evidence to the court. The only document filed along with the petitioner's affidavit is a photocopy of the judgment of the High Court dated 18-01-2019. Certain portions of that photocopy of the judgment are underlined and contain cross marks and handwritten remarks. The petitioner has failed to produce certified copies of the last will, deed of gift and deed of mortgage.

The petitioner has failed to comply with Rule 3(1) of the Court of Appeal (Appellate Procedure) Rules 1990. Rule 3 (1) (a) and (b) are as follows:

3. (1) (a) Every application made to the Court of Appeal for the exercise of the powers vested in the Court of Appeal by Articles 140 or 141 of the Constitution shall be by way of petition, together with an affidavit in support of the averments therein, and shall be accompanied by the originals of documents material to such application (or duly certified-copies thereof) in the form of exhibits. Where a petitioner is unable to tender any such document, he shall state the reason for such inability and seek the leave of the Court to furnish such document later. Where a petitioner fails to comply with the provisions of this rule, the Court may, ex mero motu or, at the instance of any party, dismiss such application.

(b) Every application by way of revision or restitutio in integrum under Article 138 of the constitution shall be made in like manner together with copies of the relevant proceedings (including pleadings and documents produced), in the Court of First Instance, Tribunal or other institution to which such application relates.

In the case of *Nawaratnesingham vs Arumugam and another 1980 2 SLR 1*, Justice Soza stated the following in regard to necessary proceedings.

> *In relation to an application for revision, the term "Proceedings", as used in Rule 46, means so much of the record as would be necessary to understand the order sought to be revised and to place it in its proper context. The expression can, and often will, include the pleadings, statements, evidence and judgment. In the instant case, the petitioner has come into this Court only with a certified copy of the proceedings of 10.2.1980 and the order delivered on 19.2.1980. The orders canvassed before us cannot be reviewed in the absence of the earlier proceedings, evidence and original complaint. These were procured only subsequently. This petition, therefore, should have been rejected for non-compliance with Rule 46 of the Supreme Court Rules of 1978.*

In the case of *Rodrigo vs The Finance Co. Ltd. and another* (Wimalachandra J.) stated, "*In an unreported case, S. M. P. Mohideen vs Sigiri Weaving Mills Ltd. it was held that Rule 3(1)(a) of the Court of Appeal (Appellate Procedure) Rules, which is analogous to Rule 46 of the Supreme Court Rules of 1978, applies to every application to the Court of Appeal, and as stated earlier, non-compliance is fatal to the application.*"

In the case of *Shanmugavadivu vs Kulathilake* [2003]1SriLR 215, the Supreme Court stated that;

> *According to Rule 3(1) (a), it is necessary for an application to be made by way of petition together with an affidavit in support of the averments, and these should be accompanied by the originals of documents material to such application. Rule 3(1)(b) specifically refers to the application made by way of revision or restitutio in integrum and states that those too should be made in like manner referred to in Rule 3(1) (a) with copies of the relevant proceedings, including pleadings and documents produced in the Court of First Instance, tribunal or other institution to which such application relates.*

It was held that "*The requirements of Rules 3 (1)(a) and 3 (1) (b) are imperative. In the circumstances of the case, the Court of Appeal had no discretion to excuse the failure of the plaintiff to comply with the Rules."*

The Learned President's Counsel for the accused respondents submitted that the grounds urged in the petition are not exceptional and, therefore, the application should be dismissed. He also submitted that in revision, the Court will have to look at whether there is illegality or procedural impropriety and not whether the decision is right or wrong.

The Learned Additional Solicitor General for the State submitted that there was no procedural irregularity or illegality that could affect the validity of the Judgment of the High Court and that there was no miscarriage of justice. Counsel for the respondents moved for the dismissal of the application without issuing notice.

In the case of *Vanik Incorporation Ltd. v. Jayasekara* [1997] 2 Sri LR. 365 it was held that "*Revisionary powers should be exercised where a miscarriage of justice has occurred due to a fundamental rule of procedure being violated, but only when a strong case is made out, amounting to a positive miscarriage of justice."*

It is clear that this revision application was not based on alleged illegality, procedural impropriety, or any irregularity in the judgment.

The contention of the petitioner is that the Judge erred in not accepting the evidence of the Government Analyst that it was not, in fact, the signature of the deceased. Another argument is that the Judge had taken into external factors to reject the position of the Government Analyst and misguided

himself on unnecessary factors taken by the defence. However, these grounds cannot be considered by this court without perusing the evidence.

The findings of the Learned High Court Judge cannot be considered unreasonable on the face of the judgment. He has given sufficient reasons for every finding.

In the case of Alwis vs Piyasena Fernando 1993 1 Sri LR 119 G.P.S. de Silva CJ. stated, "It *is well established that findings of primary facts by a trial judge who hears and sees witnesses are not to be lightly disturbed on appeal."*

The petitioner's application should be rejected *in limine* for non-compliance with Rule 3(1)(a) of the Court of Appeal (Appellate Procedure) Rules 1990. Furthermore, the petitioner has failed to show sufficient grounds for the revision application. Hence, we refuse to issue notice on the respondents. The petitioner's application is dismissed.

Judge of the Court of Appeal.

M.C.B.S. Morais J.
I agree.

Judge of the Court of Appeal.