

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

In the matter of an application in terms of Article 138 of the Constitution to exercise the Revisionary Jurisdiction of the Court of Appeal in respect of the Judgment dated 13.08.2015 Delivered by the High Court of the Province sitting at Gampaha in its exercise of revisionary jurisdiction against an Order of Magistrate Court of Gampaha.

M.C.Gampaha No.49353/09/PC

PHC Gampaha No.Rev.19/2014

C.A.(PHC)APN No. 123/2015 &

C.A.(PHC) No. 94/2015

R.K.W. Pavan Damsiri,
No.153/1, Thewatta Raod,
Ragama.

1st Accused-Petitioner-Petitioner

Vs.

01. Officer-in-Charge
Police Station,
Ragama.

**Complainant-Respondent-
Respondent**

02. R.K.W. Viraj
No.153/1, Thewatta Road,
Ragama

**2nd Accused-Respondent-
Respondent**

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

3rd Respondent-Respondent

04. Devika Damayanthi Rupasinghe,
No.43, Katagewatta Road,
Ragama,

**Intervenient-Petitioner-
Respondent-
Respondent.**

BEFORE : K. K. WICKREMASINGHE, J. &
P. PADMAN SURASENA, J.

COUNSEL : Sanath Singhage instructed by Gayani
Kasthuriarachchi for the petitioner.
Varunika Hettige DSG for the
respondents.

ARGUED AND

DECIDED ON : 15th June, 2017.

P. PADMAN SURASENA, J.

Learned Counsel for both parties agreed that both cases namely, C.A.(PHC) APN No.123/2015 and C.A.PHC No. 94/2015 be taken up for hearing together as it relates to the same issue. They also concur that it would suffice for this Court to pronounce one order in respect of both the above cases. Hence this order must apply to both the above cases.

The order originally impugned by the 1st accused-petitioner-petitioner (hereinafter referred to as the accused-petitioner) is an order made by the learned Magistrate refusing to permit the accused-petitioner to bring in evidence pertaining to a production of a CD on his behalf. The learned Magistrate has refused the said application on the basis that expected evidence coming from that CD would not be relevant

to the case before him as the event that was expected to be proved by the accused-petitioner is an event that had taken place in the year 2011. This assumes an importance because the date of offence mentioned in the charge against the accused-petitioner is a date in the year 2009.

Learned Magistrate had made this order on 2014.08. 01.

Being aggrieved by that order the accused-petitioner had moved the High Court through a revision application filed by him. The High Court in its order dated 2015.08.13 had refused the application for revision inter alia on the basis that there were no exceptional circumstances.

During the course of argument learned Deputy Solicitor General agreed that it would be better to allow the learned Magistrate to record the evidence of the accused-petitioner and then let the learned Magistrate to decide at that stage, if need arises, whether this application should be allowed.

This Court is also of the view that it would be the best time to decide the relevancy or otherwise of the contents of the CD, i.e. after the evidence of the accused-petitioner is recorded. This is particularly so in view of the submissions of the learned Counsel for the accused-petitioner that what he seeks by the production of CD would be to corroborate the testimony of the accused-petitioner in Court. This fact in our view depend on the nature of the evidence in chief of the accused-petitioner and subsequent line of cross-examination that would be adopted by the prosecution at the trial. It may well be that the need to produce this CD might not arise at all. But if indeed such a need arises, at that stage, learned Magistrate would be in a better position to decide on this issue.

In view of this submission we proceed to set aside the learned High Court Judge's order dated 2015.08.13 as well as the order made by the learned Magistrate dated 2014.01. 08.

Learned Counsel for both parties agreed to permit the accused-petitioner's evidence to be recorded if the accused-petitioner desires to give evidence. Learned Counsel for both parties also agreed that the learned Magistrate should decide on the question of relevancy of the contents of the CD, after permitting the accused-petitioner to produce the contents of the CD.

This Court directs the learned Magistrate to facilitate the above process.

JUDGE OF THE COURT OF APPEAL

K. K. WICKREMASINGHE, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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