

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

CA (PHC) APN 06/2013

Revision HC Kandy HCRA 127/2012
MC Kandy No. 65086

D.N. Silva
No 11,
Ehelepola Kumarihami Mawatha,
Kandy.

Accused - Petitioner-Petitioner

Vs.

T.K.S.U.K. Dunuweera,
Public Health Inspector,
Municipal Council,
Kandy.

Complainant-Respondent-Respondent

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

Respondent-Respondent

BEFORE : K.T. Chitrasiri, J. &
W.M.M. Malinie Gunaratne, J.

COUNSEL : Saliya Pieris with Thanuka Nandasiri & Gayan
Maduwage for the accused-petitioner-petitioner.
Anoop De Silva SSC for the respondent
respondent.

ARGUED &
DECIDED ON : 12.11.2014

K.T. CHITRASIRI, J.

Heard both counsel in support of their respective cases.

This is an application seeking to set aside the decision dated 14.11.2012 of the learned High Court in Kandy. By that decision, an order had been made dismissing the amended revision application dated 20.09.2012 filed in the High Court. When the case was called in the High Court on 24.09.2012, learned State Counsel has informed Court that he has no objection to the said amended petition being accepted. However, the case was then postponed for 14.11.2012 enabling the State to file objections.

When the matter was mentioned on that date namely on 14.11.2012, parties had been represented by Counsel. Despite the fact that the petitioner was represented by a Counsel, the learned High Court Judge has dismissed the revision application of the petitioner merely because the petitioner was absent in Court on that date. Presence of the petitioner in person should not have been considered as a mandatory requirement when the matter was mentioned on that date for the State

to file objections particularly when he was represented by a Counsel. Learned Senior State Counsel concedes that the said date namely 14.11.2012 being a calling date, the presence of the petitioner should not have been considered as essential.

In the circumstances, it is our view that the learned High Court Judge is in error when he dismissed the main revision application on a calling date when it was called to file objections by the State without even considering the fact that the petitioner was represented by the Counsel on that date.

For the aforesaid reasons, we set aside the decision dated 14.11.2012 of the learned High Court Judge and direct him to allow the respondent to file objections to the amended revision application, if the State so wishes and to proceed with the matter thereafter according to law. Application made in this revision application is allowed.

Application allowed.

JUDGE OF THE COURT OF APPEAL

W.M.M. MALINIE GUNARATNE, J.

I agree.

JUDGE OF THE COURT OF APPEAL

KRL/-