

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

In the matter of an application under article
138 of the constitution.

C.A./MC./RE Application No. 07/2017

Sheik Mohideen Shaheeb Sheik Naseer,
Prisoner No. S 18334
Welikada Prison,
Baseline Road, Colombo.

Petitioner.

Vs.

1. The Hon. Attorney General,
Attorney General's Department,
Hultsdorf, Colombo 12.
2. The Commissioner General of Prisons
Prisons Headquarters,
Baseline Road,
Colombo 9
3. The Superintendent
Welikada Prison,
Baseline Road,
Colombo 9.

Respondents.

Before: A.H.M.D. Nawaz, J.

E.A.G.R. Amarasekara, J.

Counsel: K. Tiranagama with s. Ekanayaka for the Petitioner.

Nayomi Wickeramasekara SSC for the Respondent.

Decided on: 08.06.2018

E.A.G.R. Amarasekara, J.

On 17.01.2018 parties were allowed to file written submission with regard to this application and accordingly both the counsel for the petitioner and the Respondents have filed their written submission on 20.02.2018 and 26.03.2018 respectively.

Though the Petitioner has referred to a direction of the Supreme Court in SC (FR) App. No. 34/ 15 – 41/15 in paragraph 1e of his petition and marked the decision of SC (FR) Appln. No 34/2015 as P1, this court observes that these proceedings were commenced with the filing of an application dated 28.04.2017 and not by forwarding of the papers of the Supreme Court case to this court by the registrar of the Supreme Court as directed by the said order. The petitioner in P1 is one Loku Vithanage Rathnapala who is not the petitioner in this case. Hence this court cannot find any direct link with the order and directions given in P1 with this application. There is no material placed before this court to show that other Supreme Court cases referred to in paragraph 1e of the petition has any direct link to this case. Thus, it is the duty of the petitioner to place the material documents before this court to substantiate his case.

In his petition, the petitioner starts to state his case from paragraph 4 onwards and up to paragraph 4 he has stated certain matters in general but as per the paragraph 4, the petitioner is a prisoner serving a 7 1/2 years' jail term but a patient taking continues treatment for tuberculosis. Other than the 2years' jail term imposed by the Colombo Magistrate Court a 5 years' jail sentence has been imposed by a Prison Tribunal.

The petitioner states that due to his poor health condition he was directly taken from the courts to Welikada Prison Hospital and thereafter was transferred to Welisara Chest hospital. He further states that his wife was not allowed to visit him as she did not have a pass to visit him and was turned away by the prison officers. Being upset by this, he says, he had walked out of the hospital at 2.00 a.m. on the same night and later has surrendered to the prison authorities through police. No document has tendered to show that he is a tuberculosis patient or he surrendered to the police. Though he says that some prison officers informed him that there would be no penalties if he surrendered, other than his mere statement there is no material to substantiate that statement.

Thereafter he has been convicted by a Prison Tribunal consisting of the District Judge of Gampaha and was sentenced to 5 years' Rigorous Imprisonment, the maximum penalty that can be imposed for escaping from prison custody.

The petitioner states that generally a prison Tribunal consists of 3 persons but this occasion it was constituted by one person. Unless a Prison Tribunal consisting of one person is illegal this court cannot treat mere assertion of one person Tribunal as a ground to revise the jail term imposed by the Prison Tribunal. The petitioner does not bring to the notice of this court any provision of law that shows that a Prison Tribunal consisting of a single district judge is illegal. He does not provide the copies of the proceedings of the Prison Tribunal to see what made the Learned District Judge sit alone. As per section 81 of the Prisons Ordinance on certain occasions a Prison Tribunal can be constituted by a single judge. Therefore, the burden is on the petitioner to show that the Tribunal was constituted improperly but he has not placed anything to substantiate that the constitution of the Tribunal was unlawful.

The Petitioner alleges that the 5 years' R.I imposed by the Prison Tribunal is excessive, unjust, unfair and improper in the circumstances of the petitioner's case. As said before he has not placed any material to substantiate his story relating to walking out of the hospital other than mere statements. The Petitioner has not placed any Proceedings of the Prison Tribunal before this court to see the materials or facts placed before the learned District Judge prior to the imposition of the punishment so that this court could evaluate the decision of the learned District judge. On the face of it the decision of the learned District Judge is within

the parameters of the law. Hence this court decides to dismiss the application of the Petitioner.

Application is dismissed.

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E.A.G.A. Amarasekera, J

I agree.

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A.H.M.D. Nawaz, J