



PRE-TRIAL CONFERENCES

IN HIGH COURTS

- Gorge Floyd –
- incident May 2020- Trial Concluded in April 2021
- Anuradhapura High Court –Case of Child Abuse
- Bribery case –Case No. B 1554/05 High Court ; Investigating officer commenced his evidence on 12/07/2013 and concluded 19/08/2020. [exactly 7 years for a single witness]
- Justice after 18 years

Court of Appeal Case No: CA (PHC) APN 149 /19

◦ Per; Wijesundera J

In the instant matter the main grievance of the petitioner is that he has been in **remand for 10 years without the trial being concluded**. If one may go through the proceedings against the petitioner in the relevant High Court it is noted that,

- 1) **Indictment** has been received by the High Court on **18. 11. 2013**
- 2) It had been served on the petitioner on **4. 06. 2014**, and trial had been fixed,
- 3) But since then **15 trial dates had gone and only prosecution witness no1** had been partly concluded up to date.

CH/PHC/APN/36/2016

Hon. Justice Sisira De Abrew J;

- “....,it is therefore seen that the learned High Court judge has postponed the case by a period of 1 year and 4 months,.. If the accused is on remand it becomes the duty of the trial judge to expedite and conclude the matter without delaythis itself can be considered as an exceptional ground to release the accused on bail”



Kashmir Files

Of course you weren't spreading rumours - the charge is you were spreading facts!

The Right to fair Trial

The aim of the right is to ensure the proper administration of justice. As a minimum the right to fair trial includes the following fair trial rights in civil and criminal proceedings:

- the right to be heard by a competent, independent and impartial tribunal
- the right to a public hearing
- the right to be heard within a reasonable time
- the right to counsel
- the right to interpretation

Judicature [Amendment] Act No.16 of 1989

Section 5C :

(1) There shall be appointed to every such court as may be specified by the Minister by Order published in the Gazette, in consultation with the Chief Justice, an officer to be called the **Recorder**.

(2) The Recorder **shall sit separately** and exercise all the powers or jurisdiction vested in him by subsection (3).

(3) The Recorder **shall attend to and deal with all pre-trial and post-trial matters** not including sentencing as arise in the course of a criminal proceeding arise in the course of a civil proceeding instituted in the court to which he is appointed, including the recording of admissions and confessions.

Judicature (Amendment) Act, No. 4 of 2022

- 5C. (1)
- The **Judicial Service Commission shall appoint** a judicial officer from among the District Judges and Magistrates, to be called the **Recorder Judge**, to any High Court exercising criminal jurisdiction, where such Commission is of the opinion that such appointment is required.

Code of Criminal Procedure (Amendment) Act, No. 2 of 2022

Insertion of **Section 195A** in the principal enactment.

“A-1- PRE-TRIAL CONFERENCES”

(1) A pre-trial conference shall be held-

(a) upon indictment being served on the accused in terms of section 195, in the presence of the accused; or

(b) where the accused is not present due to any reason specified in paragraph (a) of subsection (1) of section 241, or where it is not possible to serve the indictment on the accused due to the reasons specified in paragraph (b) of subsection (1) of section 241, in the absence of the accused.

(2) A pre-trial conference shall be held with **the participation of-**

(a) the Attorney-General [State Counsel]

(b) Director-General for the Prevention of Bribery and Corruption
or an **officer of the Commission**

(a) any other Attorney-at-Law specially authorized by such Commission

(b) **counsel**, if any, appearing on behalf of **the accused**;

(c) the aggrieved party or the counsel, appearing on behalf of **the aggrieved party**,

(d) the **OIC/representative** for the time being of the **police station**
which conducted the investigation.

(e) An Attorney-at-Law or any other officer permitted by the Presiding Judge, with the consent of the parties to the case, to participate.

The objectives and purposes

- (3) (a) To ascertain whether the prosecution has handed over to the accused, all material, and for the purpose of making appropriate orders, by Court in that regard;
- (b)) ascertain whether the accused intends to plead guilty.
- (c) providing an opportunity to the accused to give advance notice of his mitigatory or exculpatory defence and that of an alibi.
- (d) whether or not the accused elects to be tried by a jury.
- (e) ascertain whether reports of expert witnesses have been received by court and served on the accused,

- (f) recording admissions of the accused, if any, including the admissions relating to the reports of expert witnesses [Sections 420& 414 of the CPC]
- (g) ascertaining whether **pre-conditions have been fulfilled** to make certain items of **evidence admissible** and for making orders in that regard;
- (h) ascertaining from prosecuting and defence counsel, the **approximate duration of time** that the respective parties may require for presentation of their respective cases
- (i) ascertaining whether the presentation of the cases of the prosecution and the defence, may **require additional facilities**
- (j) ascertaining the **availability of productions, exhibits**, any other real evidence, reports, books, records, or any other material, which may be required by the prosecution and the defence at the trial

- (k) ascertaining whether the evidence of one or more witnesses is to be led through contemporaneous audiovisual linkage,
- (l) fixing a date as expeditiously as possible for the commencement of a trial as specified in [section 263](#);
- (m) considering and making orders relating to any other matter that may be required to be attended to, prior to the commencement of the trial and that may facilitate the conduct of the trial; and
- (n) taking any other decisions or steps as may be necessary to ensure the conduct of a lawful, fair and expeditious trial.

(4) A pre-trial conference shall be **presided over** by the **High Court Judge** or the **Recorder Judge** as specified in section 5C of the Judicature Act, No. 2 of 1978.

(5) **Every endeavor shall be made to conclude a pre-trial conference as expeditiously as possible:**

Provided however, a pre-trial conference shall be concluded within a period **not exceeding three months** from the date on which the accused appeared before the court or was required to appear before the court.

(6) A pre-trial conference relating to a **trial at bar** shall be held, only before the three judges appointed to hear the relevant case.

- (7) At the conclusion of a pre-trial conference the Presiding judge shall-
- (a) **read out and explain the decisions** taken at the pre-trial conference and record the fact that the parties do understand the contents of such decisions which decisions shall be signed by the Judge; and
 - (b) require the officer referred to in paragraph (d) of subsection (2) to submit a report on the **availability of the witnesses.**

Code of Criminal Procedure Act, No. 15 of 1979

Section 263 (1) – *Power to postpone or adjourn proceedings*

Proviso-

Provided however that every trial in the High Court, with a jury or without a jury, shall as far as practicable, be held day to day.

Case management program; pilot project

- Under the Core Justice

Establishing courts for Recorder Judges

2 pilot courts are to be established in Colombo.

Expected to commence functioning shortly .

BRAINSTORM





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◦ Developing Template?

◦ *****

Pre-Trial Steps [sub-sec (3)]	Date	Date	Date	Date	Date
(a) Handing over material					
(b) Manner of pleading					
(c) Notice of alibi or other defence					
(d) Jury/non-Jury					