

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

In the matter of an Appeal made in terms of Article 138 of the Constitution read with Article 154P (3) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal

Application No:

CA (PHC) 0037/2021

Lanka Caneries (PVT) LTD

No.25/75, Narahenpita Road,

Colombo-05.

COMPLAINANT

High Court of Colombo

HCR 40/2021

Vs

T.D.Seneviratne

T.D. Distributors

MC Colombo

No. 28578/06

No.16, Upper Dikson Road,

Galle.

ACCUSED

AND

Lanka Caneries (PVT) LTD

No.25/75, Narahenpita Road,

Colombo-05.

COMPLAINANT-PETITIONER

Vs

T.D.Seneviratne
T.D. Distributors
No.16, Upper Dikson Road,
Galle.

ACCUSED-RESPONDENT

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

RESPONDENT

AND NOW BETWEEN

Lanka Caneries (PVT) LTD
No.25/75, Narahenpita Road,
Colombo-05.

COMPLAINANT-PETITIONER

-APPELLANT

Vs

T.D.Seneviratne
T.D. Distributors
No.16, Upper Dikson Road,
Galle.

ACCUSED-RESPONDENT

-RESPONDENT

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

RESPONDENT-RESPONDENT

BEFORE : **Sampath B. Abayakoon, J.**

P. Kumararatnam, J.

COUNSEL : **Asthika Devendra with Aruna
Madhusanka for the Appellant.**

**Shamal A. Collure with A.P.Jayaweera
and P.S. Amarasinghe for the Accused-
Respondent-Respondent**

**Kanishka Rajakaruna, SC for the
Respondent.**

SUPPORTED ON : **31/07/2023.**

DECIDED ON : **09/11/2023.**

JUDGMENT

P. Kumararatnam, J.

This matter evolved with a private plaint filed by the Complainant-Petitioner-Appellant (Hereinafter referred to as the Appellant). The Appellant filed a charge sheet and amended it before the trial being commenced under Section 25(1) (b) of the Debt Recovery (Special Provisions) Act No.02 of 1990 for issuing a cheque Bearing No. 051684 by the Accused-Respondent-Respondent (Hereinafter referred to the Accused) from Account No.0010022270 of the DFCC Vardana Bank, Galle branch for purchases done from the Appellant's Company. When the cheque was deposited in Appellant's account maintained in the Commercial Bank, the said cheque was dishonoured on 23.11.2012 with an endorsement "Cheque not drawn in accordance with mandate (60)". Hence, the Appellant filed this private plaint in the Magistrate Court of Colombo.

The prosecution led two witnesses and marked documents P1-14 and closed the case. The Accused was arrested and produced before the Court as he was evading the Court for a long time. At this juncture, the Accused without calling witnesses and without even making a dock statement, proposed a settlement on 18.11. 2018. According to the settlement, the Accused agreed to pay the Appellant a sum of one million (Rs.1000,000/-) in Rs.75000/- implements. When the first instalment was due, the Accused again absconded the Court. As such, the matter was fixed for judgment by the Learned Magistrate of Colombo.

By the judgment dated 05.03.2021, the Learned Magistrate acquitted the Accused on the basis that the prosecution had not proved that the cheque written by the Accused had fraudulent intention.

Being aggrieved by the judgment of the Magistrate, the Appellant sought permission to appeal against the said judgment from the Hon. Attorney General which had no response within the appealable time. As such, the Appellant was compelled to file a revision application in the Provincial High Court of Western Province Holden at Colombo to revise the judgment of the Magistrate of Colombo. After support, the Learned High Court Judge had dismissed the said application without issuing notice to the Accused.

Now the Appellant filed this appeal to set aside the order of the Learned High Court Judge of Western Province Holden at Colombo dated 12/07/2021.

The Appellant submitted following grounds of appeal:

1. The Learned High Court Judge and the Learned Magistrate had failed to consider that the Act committed by the Accused (i.e. issuing a cheque without placing the seal) is an offence falling under the Section 25(1) (b) of the Debt Recovery Act.
2. The Learned High Court Judge and the Learned Magistrate had failed to consider that issuing a cheque not drawn accordance to the mandate is sufficient for the guilt of the offence as it a strict liability offence.
3. The Learned High Court Judge and the Learned Magistrate erred in law and fact in holding that the prosecution has failed to establish that the cheque in issue was not a cheque obtained at the time the parties started their business.

4. The Learned High Court Judge and the Learned Magistrate had failed to consider that the suggestions made by the Accused should not have any validity or only has trivial validity when there was no evidence presented on the part of the Accused.
5. The Learned High Court Judge of Colombo had failed to issue notice to the Accused at the first instance in the revision application bearing No.HCRA 40/20 despite their being sufficient law and factual circumstances to issue notice on the Accused.
6. The Learned High Court Judge had misdirected himself when failing to issue notice on the Accused despite having identified that there was an error in law in the judgment of the Learned Magistrate of Colombo.

Among the appeal grounds raised, the Appellant strenuously argued that the decision of the Learned High Court Judge to not to issue notice violates the maxim *audi alteram partem*. It is fundamental legal principle in which each party is entitled to a fair hearing and given the opportunity to respond to evidence against them.

In **Commissioner of Police v. Tanes (1957-58) 68 CLR 383**, the court held that:

"It is a deep-rooted principle of the law that before anyone can be punished or prejudiced in his person or his property by any judicial or quasi-judicial procedure, he must be afforded adequate opportunity of being heard ... "

In this case the Learned High Court Judge only considering the judgment of the Magistrate Court of Colombo decided to dismiss the revision application stating that that the Appellant had failed shock the conscious of the Court.

Although the Learned High Court Judge had admitted that there is a legal error in the judgment of Learned Magistrate of Colombo, he totally disregarded the same in considering the revision application filed by the Appellant. The relevant portion of the judgment of the Learned Magistrate is re-produced below:

Page 23-24 of the brief.

“ඒ අනුව මෙම චෙක්පත නෛතික ක්‍රියා පටිපාටිය අනුව ලියා තිබුණ් කර නොමැති චෙක්පතක් බව තහවුරු වේ. මෙම නඩුවේ විත්තිකරුට එරෙහි ව පැමිණිල්ල විසින් චෝදනා නගා ඇත්තේ, 1994 අංක 09 දරණ පනතින් සංශෝධිත 1990 අංක 02 දරණ ණය ආපසු අය කර ගැනීමේ (විශේෂ විධි විධාන) පනතේ , 25 (1) (ආ) වගන්තිය යටතේ වරදක් සිදු කර ඇති බවට දක්වමිනි. එකී පනතේ 25 (1) වගන්තිය යටතේ යමෙකුට එරෙහි ව චෙක්පත් අගරුවීම පිළිබඳ චෝදනා ගොනු කළ හැක්කේ, “අණකරු විසින් ගෙවීම් නවතා ඇත” යන වැරදි සම්බන්ධයෙන් වන අතර චෙක්පතක් විධිමත් ව ලියා තිබුණ් කර නොමැති අවස්ථාවක ණය ආපසු අයකර ගැනීමේ පනතේ, 25 (1) (අ) වගන්තිය යටතේ යමෙකු ට එරෙහි ව නඩු පවරා එය පවත්වාගෙන යාමේ හැකියාවක් නොමැත.”

Considering the above, the Learned High Court Judge had come to following conclusion in his order.

Page 24 of the brief.

සිද්ධිමය කරුණු හා නීතිමය කරුණු සංසන්දනය කිරීමේ දී මුල් අවස්ථා අධිකරණය යම් දෝෂයකට ලක් වී ඇති බව මේ අනුව පැහැදිලි ය. එකී කරුණු අනුව ප්‍රශ්නගත නියෝගයේ නීතිමය දෝෂයක් ඇත.

Hence, the Learned Counsel for the Appellant contended that although the Learned High Court Judge had not come to a direct finding regarding the legal error in the judgment of the Learned Magistrate, by refusing notice it had to construe that the Learned High Court Judge had agreed with the finding of the Learned Magistrate of Colombo.

Considering the argument advanced by the Appellant that he was not afforded a fair inquiry, I conclude that the Learned High Court Judge should have inquired this matter by affording an opportunity to all necessary parties to present their submissions before he could come to a conclusion. As this caused great prejudice to the Appellant, I decide to send this case back to the High Court of Colombo for re-hearing by affording an opportunity to all necessary parties to present their submissions.

Accordingly, I set aside the order of the Learned High Court Judge of Colombo dated 12.07.2021 and send the case back to the High Court for a fresh hearing on merits.

Therefore, this appeal is allowed.

The Registrar of this Court is directed to send a copy of this order to the High Court of Colombo.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL