

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST**

**REPUBLIC OF SRI LANKA**

In the matter of an application for Revision under  
and in terms of Article 138 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka

Officer in Charge,  
Police Station,  
Thalangama.

Complainant

V.

**Court of Appeal Case No.**  
**CA (PHC) APN 64/2020**

Meera Saheeb Mahir  
No.1/10, Green Field Housing Scheme,  
Kalmunaikudy II, Kalmunai.

**High Court of Homagama**  
**Appeal Case No. 68/2018**

Accused

**Magistrate's Court of**  
**Kaduwela Case No. 75116**

AND NOW

Meera Saheeb Mahir  
No.1/10, Green Field Housing Scheme,  
Kalmunaikudy II, Kalmunai.

Accused - Appellant

V.

1. Officer in Charge,  
Police Station,  
Thalangama.

Complainant - Respondent

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

Respondent

AND NOW BETWEEN

Meera Saheeb Mahir  
No.1/10, Green Field Housing Scheme,  
Kalmunaikudy II, Kalmunai.

Accused- Appellant- Petitioner

V.

1. Officer in Charge,  
Police Station,  
Thalangama.

Complainant-Respondent-Respondent

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

Respondent-Respondent

BEFORE

: ACHALA WENGAPPULI, J  
K. PRIYANTHA FERNANDO, J

COUNSEL:

Aruna Pathirana Arachchi instructed by Upul  
B. Dissanayake for the Accused-Appellant-  
Petitioner.

Panchali Witharana SC for the Respondents.

**ARGUED ON**

: 21.10.2020

**OBJECTIONS  
FILED ON**

: 30.09.2020 by the Respondents.

**JUDGMENT ON**

: 16.11.2020

**K. PRIYANTHA FERNANDO, J.**

01. This is a revision application preferred by the Accused-Appellant-Petitioner (hereinafter referred to as the Petitioner), seeking to get the order of the learned High Court Judge of *Homagama* dated 23.10.2019 affirming the judgment of the learned Magistrate of *Kaduwela* dated 04.09.2018, revised.

**Background**

02. The petitioner was charged in the Magistrate's Court of *Kaduwela* on one count of cheating punishable in terms of section 403 of the Penal Code. Upon conviction after trial, the petitioner was sentenced to 2 years rigorous imprisonment with a fine of Rs. 1500, with a default sentence of 3 months simple imprisonment. In addition, petitioner was ordered to pay the complainant a sum of Rs. 100000/- as compensation with a default sentence of 6 months simple imprisonment.
03. The petitioner appealed against the said judgment of the Magistrates Court, to the High Court of Homagama. After the hearing, the learned High Court Judge dismissed the appeal. The instant application is to get the above judgment of the High Court revised.
04. According to the complainant, she had got to know one *Muralidharan* over the phone, through her neighbor. *Muralidharan* had undertaken to get her a job as a teacher and asked her to deposit money to a bank account. The complainant had deposited altogether Rs. 350000/- to the bank account number that was given to her by said *Muralidharan*. She neither got the job nor received her money back.

05. The account holder of the bank account that received the money, had also given evidence. She is *Fathima Rismia* (PW2). She had got to know the petitioner *Muralidharan* from a marriage proposal advertisement. The petitioner had told PW2 that his friends' wife will deposit some money to her account for his friend to buy a vehicle. She had agreed. Seven lakhs that was deposited to her account was withdrawn by her and given to Petitioner.
06. In paragraphs 13 and 14 of his petition, the petitioner pleaded circumstances to be considered as exceptional by this Court. The exceptional circumstances pleaded can be summarized as follows;
1. Prosecution has failed to prove the ingredients of the offence beyond reasonable doubt.
  2. Learned Magistrate and the learned High Court Judge failed to consider the fact that PW2 is an accomplice and that her evidence was not corroborated.
  3. The learned Magistrate failed to give reasons to reject the evidence of the petitioner.
  4. Learned Magistrate failed to evaluate evidence.
  5. Sentence imposed on the petitioner is excessive.
07. The learned state Counsel filing objections on behalf of the 3<sup>rd</sup> respondent submitted that the petitioner had not explained the delay in filing the application and that there are no exceptional circumstances to invoke the jurisdiction of this Court.
08. The complainant had given clear evidence as to how she was made to deposit the money in to the PW2's bank account, by one *Muralidharan*, for her to get a job as a teacher. PW2 has clearly testified that it was the petitioner who received the money from her. Petitioner used her bank account to get the money from the complainant. The learned Magistrate has sufficiently analyzed the evidence and rightly concluded that the charge against the petitioner has been proved beyond reasonable doubt. The learned Magistrate in his judgment had given good and sufficient reasons as to why the evidence for the prosecution was accepted and defence was rejected. Not a single contradiction was marked in the evidence of witnesses No. 1 and 2. PW1 and PW2 had been consistent in their evidence. The learned High Court Judge has given careful consideration to the evidence and the judgment of the learned Magistrate, when he dismissed the appeal.
09. The learned Counsel for the petitioner submitted that PW2 was originally taken into custody as a suspect, and therefore her evidence needed to be corroborated as that of an accomplice.

10. In the case of *De Saram V. The Republic of Sri Lanka* [2002] 1 Sri L.R. 288 at page 297, citing a from a passage from 'Wharten on Criminal Evidence' 11<sup>th</sup> edition Vol.2-page 1229, it was stated that;

*"An accomplice is a person who knowingly, voluntarily and with common intent with the principal offender unites in the commission of a crime. The term cannot be used in a loose or popular sense so as to embrace one who has guilty knowledge or is morally delinquent or who was an admitted participant in a related but distinct offence. To constitute one an accomplice, he must perform some act or take some part in commission of the crime, or owe some duty to the person in danger that makes it incumbent on him to prevent its commission."*

11. It was unchallenged evidence that the petitioner had requested to use the bank account of PW2 to get the money deposited by PW1. The petitioner had told PW2 that a wife of a friend would deposit the money as the friend was short of money to buy a vehicle. The evidence shows that PW2 never had any knowledge on the commission of the offence by the petitioner, nor did she have any guilty knowledge. Hence PW2 cannot be considered as an accomplice.
12. The punishment prescribed for an offence in terms of section 403 of the Penal Code is, imprisonment of either description for a term which may extend to seven years, and a fine. The only mitigating factor urged by the petitioner was that he is the sole bread winner of the family. This Court has no reason the interfere with the discretion rightly used by the learned Magistrate in sentencing the petitioner. I see no exceptional circumstances to interfere with the Judgment of the learned High Court Judge or the learned Magistrate.

Hence, application is dismissed.

**JUDGE OF THE COURT OF APPEAL**

**ACHALA WENGAPPULI, J**

I agree.

**JUDGE OF THE COURT OF APPEAL**