

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 read with the High Court of the Provinces (Special Provisions) Act No. 19 of 1990.

CA Appeal No;
CA(PHC) 02/2016

High Court of
Kurunegala
Rev No. HCR 41/2015

Officer-In-Charge,
Police Station,
Alawuwa.

Complainant

Vs

Haloluwalage Samantha Pradeep Kumara
Karunarathne,
No: 83, Meedeniya, Marawela,
Kettimulla, Kegalle.

Accused

And

Haloluwalage Samantha Pradeep Kumara
Karunarathne,
No: 83, Meedeniya, Marawela,
Kettimulla, Kegalle.

Accused-Petitioner

Vs

Officer-In-Charge,
Police station,
Alawuwa.

Complainant-Respondents

The Hon. Attorney General.
Attorney General's department,
Colombo 12.

Respondent

And Now Between

Haloluwalage Samantha Pradeep Kumara
Karunarathne,
No: 83, Meedeniya, Marawela,
Kettimulla, Kegalle.

Accused-Petitioner-Appellant

Vs

Officer-In-Charge,
Police Station,
Alawuwa.

Complainant-Respondent-Respondent

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

Respondent-Respondent

Before : Achala Wengappuli,J
Devika Abeyratne,J

Counsel : C.J. Mahawaduge for the State

Decided on : 24.08.2020

The accused petitioner *H.S.P Kumara Karunarathne* has preferred this Appeal seeking to set aside the orders dated 7.1.2016 and 15.09.2014 of the High Court of *Kurunegala* and the Magistrate's Court of *Polgahawela* respectively.

Despite the several notices issued by this Court on the appellant and his registered Attorney, neither the appellant nor his Attorney has been present in court on several dates and on 2.3.2020 when the matter was listed for argument, it was decided to deliver Judgment on the available material. Only the counsel for the respondent has submitted the written submissions although both parties were invited to file same.

Briefly, the facts relevant to this application are as follows;

The appellant was charged in the Magistrate's Court of *Polagahawela* for having committed an offence under the Motor Traffic Act No 14 of 1951 as amended by Act No 31 of 1979 , for driving a three wheeler and transporting passengers for a fee or reward after consuming liquor, an offence punishable under section 214 (1) A read with section 151 (1)A and section 216 (A) of the Motor Traffic Act as amended and the Enhancement of Fines Act No 12 of 2005.

The appellant has pleaded guilty to the charge and the learned Magistrate has convicted him for the offence and imposed a sentence of 6 months rigorous imprisonment suspended for 5 years, a fine of Rs

7500/- and if defaulted, 3 months simple imprisonment, and the cancellation of the driver's license bearing No 2542639.

In the petition of appeal, among several reasons pleaded, the following are submitted to establish why he is aggrieved by the sentence imposed on him. Firstly, that he was not served with a Charge Sheet; that he was not explained the consequences of pleading guilty to a charge of this nature by his attorney nor by Court; that he was informed by his Attorney that only a fine of Rs 5000/= approximately will be imposed and a suspension of the driving license for a maximum period of 6 months, therefore, he never expected the driving license to be cancelled, as his livelihood depended on it.

It is admitted that he did not lodge an appeal, the reason being him not realizing the consequences of the judgment until his driving license was cancelled, at which point he has preferred a Revision Application to the High Court of *Kurunegala*. The Revision application, has been confined only to the order of cancellation of the driving license.

At the High Court of *Kurunegala*, after hearing both parties the learned judge has dismissed the application on the failure of the appellant to establish exceptional Circumstances to invoke the revisionary jurisdiction of Court, and also on the basis that the application cannot be considered under section 13 of the Criminal Procedure Code.

Aggrieved by that order, the appellant has preferred this Appeal.

Some of the grounds of appeal urged In paragraph 12 of the petition, can be summarized as follows; that the sentence imposed is excessive; failure of the learned magistrate to consider that the appellant was not convicted after a summary trial and therefore, the imposition of the maximum sentence is unfair and unreasonable; the learned judges' have erred in law when deciding that they are bound by statute and thus there is no judicial discretion to impose a lesser sentence provided by statute; the learned judges' have failed to consider the mitigatory circumstances of the appellant prior to the cancellation of the drivers license, which is a grave miscarriage of justice.

It is observed that the appellant being represented by an Attorney at law in the Magistrate's Court of *Polgahawela* has unconditionally pleaded guilty to the charges against him and on that plea, convicted for the offence he was charged with. The sentence imposed by the learned Magistrate is in accordance with the penalty set out in section 216 A of the Motor Traffic Act as amended.

Section 216 A provides

"Any person who is guilty of the offence of contravening the provisions of sub section (1a) of section 151 shall, on conviction after summary trial before a Magistrate, be liable to a fine not less than four thousand rupees and not exceeding seven thousand five hundred rupees and to

imprisonment of either description for a term not exceeding six months and to the cancellation of his driving license”.

In terms of the above section the maximum term of imprisonment is a term of 6 months. In the instant matter the 6 month imprisonment that has been imposed has been suspended for 5 years by the learned Magistrate. Therefore, although the maximum sentence was imposed on him it has been suspended. The reason may have been that the appellant pleading guilty in the first instance and the fact that he was not found guilty after a summary trial.

In the petition of the Revision application the petitioner has admitted to have consumed liquor at a wedding ceremony on the day of the incident. He has also admitted transporting his relatives in his three-wheeler but denied it was on a hire. Admittedly he has pleaded to the charges unconditionally. In such circumstances, there is no discretion for the Magistrate to impose a lesser sentence than what is provided for by statute.

It is also noted that the appellant, after lodging the appeal has not submitted the written submissions and has not shown any diligence in proceeding with the appeal.

In the circumstances, we see no exceptional circumstances pleaded before the High Court of *Kurunegala* which shocks the conscience of Court and as the sentence imposed is in accordance with the law, we see no reason to interfere with the order of the High

Court of *Kurunegala* and the Magistrate's Court of *Polgahawela*.
Accordingly, the appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

ACHALA WENGAPPULI ,J

I Agree

JUDGE OF THE COURT OF APPEAL