

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

Officer in Charge,
Police Station,
Kandy.

Complainant

V.

Court of Appeal Case No.
CA PHC 166/2016

Sangakkara Mudiyanse Lage Salinda Sangakkara,
No.54, Pilapitiya,
Kiribathkumbura.

High Court of Kandy HC
Case No. Rev. 123/16

Accused

Magistrate Court of Kandy
Case No. 14240/16

AND BETWEEN

Sangakkara Mudiyanse Lage Salinda Sangakkara,
No.54, Pilapitiya,
Kiribathkumbura.

Accused- Petitioner

V.

1. Officer in Charge,
Police Station,
Kandy.

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

Complainant- Respondents

AND NOW BETWEEN

Sangakkara Mudiyanse Lage Salinda Sangakkara,
No.54, Pilapitiya,
Kiribathkumbura.

Accused- Petitioner- Appellant

V.

1. Officer in Charge,
Police Station,
Kandy.
2. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondent-Respondents

BEFORE : **ACHALA WENGAPPULI, J**
K. PRIYANTHA FERNANDO, J

COUNSEL : Panchali Witharana SC for the Respondents.

ARGUED ON : 09.06.2020

WRITTEN SUBMISSIONS
FILED ON : 20.05.2020 by the Respondents.

JUDGMENT ON : 30.06.2020

K. PRIYANTHA FERNANDO, J.

01. The Accused-Petitioner-Appellant (hereinafter referred to as Appellant) has preferred this appeal against the order of the learned High Court Judge of Kandy dated 01.12.2016 dismissing the revision application filed against the order of cancellation of his driving licence by the learned Magistrate of Kandy dated 07.11.2016.
02. After paying the relevant brief fees for the appeal, upon receiving notice by this Court, on 21.01.2020 the Appellant appeared, and learned counsel for the Appellant moved for time to collect the brief. However, thereafter, the Appellant failed to appear or to take steps to pursue the appeal. Thus, as the Appellant opted not to attend the Court, nor retain counsel,

Court decided to proceed to consider the merits of the appeal, in terms of section 349(3) of the Code of Criminal Procedure Act.

03. I have carefully considered the proceedings in the Magistrate's Court, the order of the learned Magistrate, the proceedings in the High Court including the judgment of the learned High Court Judge, petition of appeal by the Appellant and the written submissions filed by the learned State Counsel for the Respondent.

Facts in brief

04. The Appellant was charged in the Magistrate's Court of Kandy for an offence punishable under section 216 to be read with sections 214(1)a and 151(1)A of the Motor Traffic Act. After conviction upon pleading guilty to the charge, the learned Magistrate imposed a fine of Rs. 7,500/- and ordered cancellation of the Appellant's driving licence. Being aggrieved by the above order of cancellation of the driving licence by the learned Magistrate, the Appellant moved in revision before the High Court of Kandy. The learned High Court Judge dismissed the revision application upon hearing the parties. The instant appeal is against the said order of the learned High Court Judge.
05. In his petition of appeal, the Appellant had submitted that the learned High Court Judge has failed to appreciate the necessity of applying legal principles of sentencing. It is further submitted that the learned Magistrate has failed to take into consideration the fact that the Appellant did not use the three-wheeler for carriage of persons for a fee, and the other mitigatory circumstances. However, according to the prayer in the petition of appeal, the only relief prayed for is to set aside the order of cancellation of the driving licence.
06. The applicable sections in the Motor Traffic Act as amended are as follows;

151(1). *No person shall drive a motor vehicle on a highway after he has consumed alcohol or any drug.*

(1A). *No person shall drive any omnibus or any other motor vehicle intended for the carriage of persons for fee or reward on a highway after he has consumed alcohol or any drug.*

216(A). *Any person who is guilty of the offence of contravening the provisions of subsection (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 licence.*

07. Hence, it is clear that the sentence imposed on the Appellant by the learned Magistrate is well within the powers of a Magistrate.
08. Appellate Court will not interfere into a sentence passed by a lower Court unless it is illegal or wrong in principle. It is mandatory for the Magistrate to cancel the driving licence when an Accused is convicted for an offence in terms of section 151(1A) as submitted above.
09. The Appellant urged that there was no document to prove that the Appellant used the three-wheeler to convey passengers for a fee. However, the Appellant has already pleaded guilty to the charge under section 151(1A). Particulars of the offence as mentioned in the charge also covers the same, so that the Appellant could have understood the charge.
10. Drunken driving has become prevalent and it further aggravates when the vehicle is used to transport passengers. Such driver who is drunk risks the lives of the passengers as well. The legislature has considered the seriousness of the offence, therefore, made it mandatory for the Court to cancel the driving licence for the offence of drunken driving when the vehicle is used for carriage of passengers for a fee.
11. Hence, the grounds urged by the Appellant are without merit and the appeal should be dismissed.
12. It is pertinent to note that upon conviction of an Accused for an offence under section 151(1A), it is also mandatory for the Magistrate to impose a sentence of imprisonment of either description for a term not exceeding six months, apart from the prescribed fine and the cancellation of the driving licence. It has escaped the mind of the learned Magistrate as well as the learned High Court Judge who heard the revision application. Therefore, acting in terms the powers vested in this Court by section 328 of the Code of Criminal Procedure

Act, in addition to the fine imposed and the cancellation of the driving licence by the learned Magistrate, I sentence the Appellant to 6 months simple imprisonment. Taking into consideration that there is no record of previous convictions reported, and the early guilty plea, I order the sentence of 6 months imprisonment to be suspended for 5 years.

Subject to the above increase of the sentence, appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

ACHALA WENGAPPULI, J

I agree.

JUDGE OF THE COURT OF APPEAL