

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

In the matter of an Appeal in terms  
Article 154(P) of the Constitution of  
the Democratic Socialist Republic of  
Sri Lanka read with Section 19 of  
the High Court of the Provinces  
(Special Provisions) Act No. 19 of  
1990 and Section 331 of the Criminal  
Procedure Act No.15 of 1979.

**C.A.(PHC)Appeal No. 20/2016**  
**P.H.C. Kandy Case No. 109/2014**  
**M.C. Gampola Case No. 86036/14**

Udatthawa Dewanarayana Gedera  
Menuka Dilukshana Premaratne,  
No. 582, Uthuwankanda,  
Mawanella.

**1<sup>st</sup> Accused-Petitioner-Appellant**

**Vs.**

1. Officer-in-Charge (Crime Division)  
Police Station, Gampola.  
**Complainant-Respondent-  
Respondent**
2. Hon. Attorney General,  
The Attorney General's Department,  
Colombo 12.  
**Respondent-Respondent**

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

**COUNSEL** : 1<sup>st</sup> Accused-Petitioner-Appellant is absent  
and unrepresented.  
Panchali Witharana SC for the  
Complainant -Respondent-Respondent &  
Respondent-Respondent

**WRITTEN SUBMISSIONS**

**TENDERED ON** : 29.10.2019 (by the Respondents)

**DECIDED ON** : 18.09.2020

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**ACHALA WENGAPPULI, J.**

This is an appeal by the 1<sup>st</sup> Accused-Petitioner-Appellant (hereinafter referred to as the Appellant) seeking to set aside the order of the Provincial High Court of the Central Province in case No. HCRA 109/2014, by which the said Court had dismissed his application to revise the sentence imposed on him by the Magistrate's Court of *Gampola* in case No. 86036/14.

It is evident from the record that the Appellant was attached to the *Gampola* Magistrate's Court as an assistant to the Productions Clerk. The Appellant was charged before that Court along with one *Sakiriya Abdul Rahuman* for committing theft and retention of stolen property, offences

that are punishable under Sections 370 and 394 of the Penal Code respectively. It was alleged that these offences were committed in respect of gold jewellery that were kept in Court custody as productions. The Appellant had pleaded guilty to the two counts on 23.04.2014 and was sentenced to a 11-month term of imprisonment in respect of the 1<sup>st</sup> count, in addition to a fine of Rs.1500.00 with 2-month default term. In respect of the 2<sup>nd</sup> count, the Appellant was punished with a 6-month term of imprisonment suspended for 10 years coupled with a fine of Rs.1500.00 and 2-month default term.

In seeking to revise the 11-month term of imprisonment imposed by the Magistrate's Court, the Appellant stated that the said sentence is contrary to the provisions contained in Section 303 of the Code of Criminal Procedure Act No. 15 of 1979 and the principles of sentencing. It was submitted by the Appellant in his written submissions to the Provincial High Court that the sentence imposed by the Magistrate's Court is contrary to the principles of sentencing as set out in the judgment of *Kumara v Attorney General* (2003) 1 Sri L.R. 139.

The Provincial High Court, in its order of dismissal stated that the sentence imposed by the Magistrate's Court is not an illegal sentence as nowhere in the relevant statutory provisions it is stated that a suspended sentence must be imposed in relation to an offence committed under Section 370 of the Penal Code and the Appellant failed to satisfy that Court of the existence of exceptional circumstances.

In the appeal lodged by the Appellant against the order of the Provincial High Court, it is stated that the Provincial High Court failed to

take cognizance of the fact that provisions in the Code of Criminal Procedure (Amendment) Act No. 47 of 1997 has made provision for imposing suspended sentences.

Section 303(1) of the Code of Criminal Procedure Act No. 15 of 1979 as amended had conferred a discretion on the sentencing Court as it states that "*... a court may make an order suspending the whole or part of the sentence if it is satisfied, for reasons to be stated in writing, that it is appropriate to do so in the circumstances.*"

It is clear that there is no automatic suspension of a prison term imposed on an accused as there is a duty imposed for the sentencing Court to satisfy itself "*that it is appropriate to do so in the circumstances*". If such a Court is inclined to suspend the sentence and in doing so, it must state reasons in writing. In determining whether to suspend a term of imprisonment or not, sub paragraphs (a) to (l) of Section 303(1) lays down some of the applicable considerations.

The Magistrate's Court, in imposing the 11-month sentence on the Appellant, obviously have intended to emphasise "*the need to manifest the denunciation by the court of the type of conduct in which the offender was engaged in*" since he was an employee of the Court who was dealing with the production items of the cases that are pending before that Court and had committed theft on some of the gold jewellery items in that capacity. This act of the Appellant demands a strong condemnation by the sentencing Court as the incident would undoubtedly have dented the public confidence of the Courts system.

This Court is of the view that the sentencing Court should have considered a more severe punishment on the Appellant. However, the Magistrate's Court must have decided to grant a generous concession when the Appellant pleaded guilty in the first available opportunity and had no previous record of any wrong doing, as per the provisions of Section 303(1)(k) of the said Code.

In view of the above reasoning, this Court holds that the appeal of the Appellant is devoid of any merit and is accordingly dismissed.

**JUDGE OF THE COURT OF APPEAL**

**K. PRIYANTHA FERNANDO, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**