

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

**In the matter of an Appeal under and in  
terms of Section 15 (b) of the Judicature Act  
No. 2 of 1978 read with Section 331 of the  
Code of Criminal Procedure Act No. 15 of  
1979.**

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

**Complainant**

Court of Appeal Case No.:  
**CA HCC 0154/2023**

**Vs.**

High Court of Colombo Case No.:  
**HC 3256 /2021**

Samuvel Canistes,  
No. 165/F,  
Kalalgoda Road,  
Pannipitiya.

**Accused**

**AND NOW BETWEEN**

- i. The Attorney General,  
Attorney General's Department,  
Colombo 12.
- ii. Chief Inspector of Police,  
Admin Branch, Police Station,  
Peliyagoda.

**Complainant-Appellant**

**Vs.**

Samuvel Canistes,  
No. 165/F,  
Kalalgoda Road,  
Pannipitiya.

**Accused-Respondent**

**Before:**     **B. Sasi Mahendran, J.**  
                  **Amal Ranaraja, J.**

**Counsel:**    Anoopa De Silva, D.S.G., for the Appellant.

A.R.I.Athurupane with H.R.K. Caldera and Nayani Dayaratne for  
the Accused-Respondent.

**Argued on:**  03.06.2025

**Decided on:** 27.06.2025

## **JUDGMENT**

**AMAL RANARAJA, J.**

1. The Accused-Respondent (hereinafter referred to as the ‘respondent’) has been indicted in the *High Court of Colombo* in case no. HC 3256/2021. The charge in the indictment is as follows;

That on or about the 1<sup>st</sup> of October 2010 at *Colombo*, the respondent caused a cheque to the value of Rs. 825,000.00 to be dishonoured by dishonestly countermanding i.e. terminating the duty of the bank to pay a cheque drawn on him by the respondent, thereby committing an offence punishable under section 25(1)(b) of the Debt Recovery (Special Provisions) Act No.02 of 1990 as amended by the Debt Recovery (Special Provisions) Act No. 09 of 1994.

2. Upon the indictment being forwarded, the Learned High Court Judge has caused the respondent to appear in Court and thereafter caused the indictment with its annexures to be served on the respondent.
3. When the case was called in Court on 07.09.2022, the Learned High Court Judge has observed that criminal proceedings in respect of a charge referred to in section 25 (1) of the Debt Recovery (Special Provisions) Act No. 02 of 1990 (as amended) should be instituted in the *Magistrates Court* and also directed the appellant to satisfy Court that the trial against the respondent could be proceeded with, in the *High Court*.
4. The appellant has tendered his written submissions on 20.10.2022 and raised a preliminary objection stating that a criminal proceeding in respect of a charge referred to in section 25(1) Debt Recovery (Special Provisions) Act No.02 of 1990 (as amended) should be instituted in the *Magistrates Court* and that

the *High Court* did not have the jurisdiction to try such a matter. The complainant-appellant (hereinafter referred to as the “appellant”) has thereafter tendered his written submission on 01.12.2022.

5. The Learned High Court Judge by the order dated 27.04.2023, has held with the respondent and proceeded to discharge him from the proceedings in the *High Court*.
6. The appellant being aggrieved by the order of the Learned High Court Judge dated 27.04.2023 has preferred the instant appeal to this Court and prayed that the disputed order dated 27.04.2023 be set aside. The Learned Deputy Solicitor general has formulated the following grounds of appeal on behalf of the appellant;
  - i. Does the Learned High Court Judge have jurisdiction to question the validity of an indictment on his own motion?
  - ii. Has the Learned High Court Judge erred in determining that a charge relevant to committing an offence under the Debt Recovery (Special Provisions) Act should be tried in the *Magistrate Court* and that the *Attorney-General* has no jurisdiction to forward an indictment containing a charge under the said act to the *High Court*?

- iii. Has the Learned High Court Judge misinterpreted section 25(1) of the Debt Recovery (Special Provisions) Act?

7. The Learned Deputy Solicitor General appearing on behalf of the appellant has contended as follows;

- i. That Article 140 of the Constitution confer in the *Court of Appeal* the jurisdiction to issue orders in the nature of writs, hence, the proper forum in which the legality of an indictment could be challenged in is the Court of Appeal.
- ii. That section 393(7) of the Code of Criminal Procedure Act No. 15 of 1979 read together with sections 2 and 5 of such Act enabled the *Attorney-General* to forward an indictment in the nature of the one in issue to the *High Court*.
- iii. That a special law will not override a procedural law.

8. The Learned Counsel for the respondent has disagreed with the contention of the Learned Deputy Solicitor General. The Learned Counsel for the respondent has contended that section 25(1) of

the Debt Recovery (Special Provisions) Act No.02 of 1990 is not overridden by section 393 (7) of the Code of Criminal Procedure Act No.15 of 1979 and that the Debt Recovery (Special Provisions) Act is a special law.

9. The Learned High Court Judge on 07.09.2022, has observed that criminal proceedings against the respondent should be instituted in the *Magistrates Court* due to the nature of the charge. Thereafter, has directed the appellant to satisfy Court that the case involving the respondent could be proceeded with, in the *High Court*. Subsequent to such direction, the respondent has tendered written submissions before the appellant did and raised a preliminary objection as referred to earlier. The Learned High Court Judge has delivered the disputed order subsequent to such preliminary objection being raised by the respondent. In those circumstances, it is apparent that the Learned High Court Judge has not on his own motion questioned the sustainability of the indictment.

10. The Debt Recovery (Special Provisions) Act No.02 of 1990 (as Amended) contains five parts; the first to the fourth parts refer to the recovery procedure in respect of monies lent and advanced by lending institutions. Part V which contains sections 25 (1)(a) and (b) constitute criminal responsibility in respect of any person. Such criminal responsibility accrues when a person draws a cheque knowingly that there are no funds, or a cheque is dishonoured by a bank due to such cheque being dishonestly

countermanded or there being no obligation on the banker to make payment.

11. Such a case has been substantiated in *Officer-in-Charge, CID vs. Soris* [2006] 3 SLR page 375 at page 381, N. Jayasinghe, J, has stated,

*“We have considered the submissions of the learned Deputy Solicitor General and Mr. Hussain. We are of the view that section 25 (1)(a) is self-contained and exists devoid of any ambiguity and given effect to, without resorting to any other provision. We are also of the view that “institution of an action” in Part I of the Debt Recovery Act has no relevance whatsoever to a prosecution instituted under Section 25(1) of the Act.”*

12. Hence, criminal responsibility has been established by the creation of offences such as those stated in section 25(1) of the Debt Recovery (Special Provisions) Act.

13. Further, a person accused of committing such an offence shall be tried before a *Magistrates Court* and dealt with appropriately after a summary trial in that Court. Though those offences as a consequence could be categorised as summary offences, the relevant section does not set out a special procedure in instituting proceedings in a *Magistrates Court*. Thus, the procedure laid down in the Code of Criminal Procedure Act will continue to be

applicable, when instituting proceedings for a prosecution of an offence in Part V of the Debt Recovery (Special Provisions) Act.

14. Section 25(1) of the Debt (Recovery) Special Provisions Act No. 2 of 1990 is as follows;

*“Any person who,*

*(a) draws, a cheque knowing that there are no funds or not sufficient funds in the bank to honour such cheque; or*

*(b) makes an order to a banker to pay a sum of money which payment is not made by reason of there being no obligation on such banker to make payment or by reason of the payment having countermanded; or*

*(c) gives an authority to an institution to pay a sum of money to itself, in payment of a debt or loan or any part thereof owed to such institution, from, and out of an account maintained or funds deposited, by such person not placing adequate funds in such account or by reason of the funds deposited having been withdrawn by reason of such person countermanding the authority given or by reason of any one or more of such reasons; or*



*(d) having accepted on inland bill dishonours it by non-payment, shall be guilty of an offence under this Act and shall on conviction by a Magistrate after summary trial be liable to punishment with imprisonment of either description for a term which may extend to one year or with fine of ten thousand rupees or ten per centum of the full value of the cheque, order, authority or inland bill in respect of which the offence is committed, whichever is higher, or with both such fine and imprisonment...”*

15. I now draw my attention to section 393 (7) of the Code of Criminal Procedure Act No. 15 of 1979 (as amended). It enables the *Attorney-General* to forward an indictment directly to the *High Court* in respect of any summary offence notwithstanding the provisions contained in the Code of Criminal Procedure Act with regard to the institution of an action in the *Magistrates Court* in respect of a summary offence.

16. Section 393(7) of the Code of the Criminal Procedure Act No.15 of 1979 provides,

*“Notwithstanding any other provisions contained in this Act, it shall be lawful for the Attorney-General, having regard to the nature of the offence or any other circumstances, in respect of any summary offence –*

*(a) to forward an indictment directly to the High Court,*  
*or,*

(b) *to direct the Magistrate to hold a preliminary inquiry in accordance with the procedure set out in Chapter XV in respect of any offence specified by him where he is of opinion that the evidence recorded at a preliminary inquiry will be necessary for preparing an indictment;*

*and thereupon such offence shall not be triable by a Magistrate's Court."*

17. Further, a summary offence is interpreted to be as an offence triable by a *Magistrate Court* [*vide* section 2 of the Code of Criminal Procedure Code Act No. 15 of 1979].

18. In *Sellaiya Siribalan vs. The Attorney-General* [CA (PHC) APN 09/2012 decided on 29.03.2012], Sisira de Abrew, J, held that,

*"When the above legal provisions are considered, I hold the view that the Attorney General has the power to send an indictment to the High Court in respect of a summary offence (an offence triable by the Magistrate) and when such an indictment is forwarded, the High Court Judge has the power to hear, try and determine the case and that the Magistrate loses jurisdiction to hear such a case."*

19. Due to the aforesaid reasons, I set aside the disputed order dated 27.04.2023 and direct the Learned High Court Judge of Colombo

to restore the case back into the Court's case roll, to cause the respondent to appear before the *High Court* and proceed with the trial to its conclusion.

20. I direct the Registrar of this Court to communicate this judgment to the *High Court of Colombo* for compliance.

**Judge of the Court of Appeal**

**B. SASI MAHENDRAN, J.**

I agree

**Judge of the Court of Appeal**