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

In the matter of an Appeal made under Section 331(1) of the Code of Criminal Procedure Act No.15 of 1979 read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal No:
CA/HCC/0096/2024
High Court of Colombo
Case No: HC/115/2018

Piliduwa Bogahawattage Chandima Dilhani

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT-RESPONDENT

BEFORE : **P. Kumararatnam, J.**
R. P. Hettiarachchi, J.

COUNSEL : **Tilak Marapana, PC, with R.Y.D. Jayasekara, Asela Muthumudali and Chamith Marapana for the Appellant.**
Sudharshana De Silva, ASG for the Respondent.

ARGUED ON : **19/09/2025**

DECIDED ON : **31/10/2025**

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JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted by the Attorney General in the High Court of Colombo under Sections 3(1) of the Prevention of Money Laundering Act No. 05 of 2006 as amended by Act No. 40 of 2011 for executing a transaction, that is, depositing Rs.13,968,802.66, such being the proceeds of the crime of Heroin Trafficking, into a savings account bearing the Number: 100353783510 at the Sampath Bank, Thalawathugoda Branch.

Upon pleading guilty on the date of the trial, the Appellant was found guilty as charged and was sentenced to 5 years rigorous imprisonment.

The Appellant is on bail and present in Court.

The only ground raised by the learned President's Counsel is, that the sentence is excessive given the circumstances of the case. As such, the learned President's Counsel submits that this is an appropriate case to be considered as per the judgment given in **SC Reference 03/2008** dated 15.10.2008 and **SC Appeal 17/2012** dated 12.03.2015 by the Supreme Court of Sri Lanka.

The Appellant was indicted under Section 3(1) of the Money Laundering Act for depositing Rs. 13,968,802.66, which she was unable to explain how she came into possession of.

On 27.11.2023 the Appellant had pleaded guilty to the charge and was convicted accordingly. The State, in their submission, brought to the Court's notice, the gravity of the charge.

In the mitigation, the defence submitted that the Appellant is a mother of two children and acted only on the instructions of her husband. As she was not in a position to pay the high fine, as per the Money Laundering Act, the learned High Court Judge had imposed the minimum sentence of five years rigorous imprisonment against the Appellant.

The learned President's Counsel for the Appellant contends that the imposition of a minimum mandatory sentence or a mandatory sentence is unconstitutional and hence despite the Statutes, the judiciary has the discretion to impose an appropriate punishment. He heavily relied on the Supreme Court Judgment given in the **SC Reference 03/2008** (HC Anuradhapura Case No.333/04) decided on 15/10/2008.

In the aforementioned SC Reference, the High Court of Anuradhapura by its communication dated 14/05/2008, made a reference to the Supreme Court in terms of Article 125(1) of the Constitution of Sri Lanka. In that reference, the Learned High Court Judge of Anuradhapura had queried whether Section 364(2) of the Penal Code as amended by the Penal Code (Amendment)

Act No.22 of 1995, had removed judicial discretion when sentencing an accused convicted of an offence in terms of that section.

In the said reference, Justice P. A. Ratnayake held that:

"the minimum mandatory sentence in Section 364(2)(e) is in conflict with Article 4(c),11, and 12(1) of the Constitution."

"Article 80(3) (of the Constitution) only applies where the validity of an Act is called into question. However, Article 80(3) does not prevent a court from exercising its most traditional function of interpreting laws. Interpretation of laws will often require a court to determine the applicable law in the event of a conflict between two laws. This is a function that has been exercised by this court from time immemorial."

In the event of a conflict between an ordinary law and the Constitution, the provisions must prevail over an ordinary law."

"The minimum mandatory sentence in Section 364(2)(e) of the Penal Code is in conflict with Article 4(e),11 and 12 of the Constitution and the High Court is not inhibited from imposing a sentence that it deems appropriate in the exercise of its judicial discretion notwithstanding the minimum mandatory sentence."

In the **Attorney General v. Ambagala Mudiyanselage Samantha Sampath** S.C.Appeal No.17/2013 Eva Wanasundera, P.C.J, held that:

> "*I find that the issue in the present case is a conflict between the provisions in an ordinary law, i.e., the Penal Code and the provisions in the Constitution. The Constitution is accepted as the Supreme Law of the country and the ordinary laws derive their validity from the Constitution. The provisions in the ordinary law should be interpreted in the light of the Constitutional provisions. The Constitution should be used as a flashlight on the provisions of the ordinary law. Any mandatory minimum sentence imposed*

> *by the provisions of any ordinary law, in my view is in conflict with Article 4(c), 11 and 12(1) of the Constitution in that it curtails the judicial discretion of the judge hearing the case……..When a minimum mandatory sentence is written in the law, the Court loses its judicial discretion. That part of the law with the minimum mandatory sentence, acts as a bar to judicial powers in sentencing or punishing the wrong doer."*

In **M.L.Rohana v. AG** (SC. Appeal No.89A/2009) Amaratunga, J. too held that the judicial discretion remained intact and reduced the custodial sentence to that of a suspended sentence.

In countering the argument advanced by the Learned President's Counsel for the Appellant, the Learned Additional Solicitor General who appeared for the Respondent contends that the judicial pronouncement of **SC Reference 03/2008** which was in respect of a specific provision in another statute, cannot be applied to the instant case.

It is very pertinent to mention the following Articles of the Constitution which speak about the power of the Parliament.

As per the Article 4(a) of the Constitution of Sri Lanka, the Legislative power is granted to the Parliament. The Article reads as follows:

> "the legislative power of the People shall be exercised by Parliament, consisting of elected representatives of the People and by the People at a Referendum."

Article 75 of the Constitution read as follows:

> "Parliament shall have power to make laws, including laws having retrospective effect and repealing or amending any provision of the Constitution, or adding any provision to the Constitution:
>
> Provided that Parliament shall not make any law,

a. Suspending the operation of the Constitution or any part thereof; or
b. Repealing the Constitution as a whole unless such law enacts a new Constitution to replace it."

Hence the law-making power is granted to the Parliament.

Article 76 (1) of the Constitution read as follows:

> "Parliament shall not abdicate or in any manner alienate its legislative power and shall not set up any authority with any legislative power."

Hence, Parliament shall not abdicate or in any manner alienate its legislative power.

Further, the validity of a legislation passed by Parliament cannot be called into question after the stage set out in Article 80(3) of the Constitution. The said Article reads as follows:

> "Where a Bill becomes law upon the certificate of the President or the Speaker, as the case may be being endorsed thereon, no court or tribunal shall inquire into, pronounce upon or in any manner call in question, the validity of such Act on any ground whatsoever."

Hence it is very clear that the Parliament has the exclusive legislative power to enact law, which cannot be abdicated or alienated at any stage. Once a law is passed and certified by the President or the Speaker as the case may be, the said law cannot be questioned in any manner by the Court.

In **Swasthika Textile Industries Ltd v Thantrige Dayaratne** [1993] 2 SLR 348 where questions were raised, inter alia, as to the validity of the High Court of the Provinces (Special Provisions) Act No.19 of 1990, Fernando, J. declined to go into those issues noting that:

> *"In so far as the validity of those provisions is concerned, Article 80(3) precludes this Court from inquiring into, pronouncing upon, or in any manner calling in question, the validity of those provisions."*

In **B. Sirisena Cooray v. Tissa Dias Bandaranayake and Two Others** [1999] 1 SLR 1 where Act No.4 of 1978 which amended the Special Presidential Commission of Inquiries law was being considered, Dheeraratne.J, stated that:

> *"We are here certainly not inquiring into, pronouncing upon, or in any manner calling in question, the validity of the Special Presidential Commission of Inquiries Amendment Act No.4 of 1978 as contemplated by Article 80(3). The Constitutional provision must prevail over normal law."*

An important bench of five Justices of Supreme Court in **Attorney General and Others v. Sumathipala** [2006] 2 SLR 126 held that:

> *"A judge cannot **under a thin guise of interpretation** usurp the function of the legislature to achieve a result that the Judge thinks is desirable in the interests of justice. Therefore, the role of the judge is to give effect to the expressed intention of Parliament as it is the bounden duty of any Court and the function of every Judge to do justice within the stipulated parameters."*

Justice Dr. A. R. B. Amerasinghe in his book titled **'Judicial Conduct, Ethics and Responsibilities'** at page 284, expressed the view that:

> "The function of a judge is to give effect to the expressed intention of the Parliament. If legislation needs amendment, because it results in injustice, the democratic process must be used to bring about the change. This has been the unchallenged view expressed by the Court of Sri Lanka for almost a hundred years."

In the case of **Kodithuwakkulage Pradeep Samantha alias Fredie** SC Appeal No.139/2014, SC (SPL) LA Application No.105/2014 decided on 21/11/2018 His Lordship Aluwihare, J. held that:

> *"As referred to earlier, this court however, is required to give effect to the legislative provision and I quote with approval Henry Cecil (The English Judge, Hamlyn Lectures,1970, pg.125), who expressed the view that,*
>
> *"The object of every court must be to do justice within the law. Admittedly the law sometimes forces an unjust decision. If there is no way about it, it is for Parliament to alter the law if the injustice merits an alteration."*

In the case of **Attorney-General and others v. Sumathipala** (Supra) Her Ladyship Justice Dr. Shirani Bandaranayake (as she then was), in considering the impact of Section 47 (1) of the Immigration and Emigration Act on the liberty and freedom of an individual held that;

> *"However, it is to be noted that although the liberty and freedom of an individual is thus restricted in terms of the provisions of Section 47(1) of the Immigrants and Emigrants Act, that injustice cannot be cured by this Court as it is for the legislature, viz., the Parliament to make necessary amendments if there is a conflict between the specific provisions and individual liberty."*

In **Harrikissioon v. Attorney General of Trinidad and Tobago** [1981] AC 265, Hyatali CJ stated that:

> *"He was firmly of the opinion that a Court would be acting improperly if a perfectly clear ouster provision in the constitution of a country, which is its supreme law is treated with little sympathy or scant respect, or is ignored without strong and compelling reasons."*

The judicial decisions cited above and the given writings amply demonstrate that the Parliament is the only place, which can enact laws and its

subsequent amendment by exercising the legislative power of the people and the Court cannot, under the guise of interpretation, usurp the legislative power.

The contention of the Learned President's Counsel is that although, under the provisions of the Prevention of Money Loundering Act, the minimum sentence is five years rigorous imprisonment, it does not negate the Court's inherent powers to impose a suitable sentence.

In the **SC Reference No.03 of 2008**, the Supreme Court has considered a specific provision in the Penal Code which is a separate enactment. In the said reference, the Supreme Court mainly considered the imposition of a minimum mandatory sentence under Section 364(2) of the Penal Code as amended.

Therefore, I conclude that as the **SC Reference No. 03 of 2008** was in respect of a specific provision in another law, it cannot be applied to provisions in the Prevention of Money Laundering Act. There is a difference between the two laws, i.e., the Penal Code and the Money Laundering Act.

Hence, the sentence prescribed by the law under the Money Laundering Act is not less than five years and not exceeding 20 years. Therefore, the court is not empowered to deliver a sentence contrary to the stipulated punishment under the guise of judicial discretion. Unless the nature of the offence is altered, the judiciary cannot go against the express intentions of the legislature declared through statutory provisions. Otherwise, by extension, the court can impose any other sentence than death, for a person found guilty of murder under Section 296 of the Penal Code.

Imposing any other sentence would amount to an opening of flood gates and in turn, the judges would be indirectly enabled to decide the nature of the offence not as provided by the legislature but according to their own personal opinions. Nature of the offence cannot be indirectly altered by the tool of judicial discretion.

Once the punishment is prescribed by law, then the judiciary cannot interfere with it under the guise of discretion. Discretion can be exercised if there is room left for that purpose by the legislature.

In the United Kingdom, life imprisonment has been classified into two categories. The first category is lifelong imprisonment without parole and under the second category the accused is entitled for parole after serving a particular period in prison decided by the judge who sentenced the accused.

In Sri Lanka there is no such categorized provision pertaining to the imposition of life imprisonment available in our regime of criminal laws. As such, our courts can only impose one category of life imprisonment.

In **Kodithuwakkulage Pradeep Samantha alias Fredie** [Supra] Aluwihare J correctly held:

> "*On the other hand, in the absence of any ambiguity, this court cannot go beyond the literal construction of the statutory provision, which is the primary rule of interpretation. If there is nothing to modify, alter or qualify the language which the statute contains, it must be construed in the ordinary and on natural meaning of the words and sentences. (Per Lord Fitzgerald in the case of* ***Bradlaugh v. Clerk*** *[1883] 8 App. Cases 354.) The rule of construction is "to intend, the legislature to have meant what they have actually expressed."* **R v. Banbury (Inhabitants)** [1834] 1A and E 136 per Park J.

Next, the learned President's Counsel made submissions in favour of the imposition of a non-custodial sentence highlighting the below mentioned documents.

1. United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules).
2. The Bangkok Rules.
3. Information notes for Criminal Justice Practitioners on Non-custodial Measures for Women Offenders (UNODC).

4. A Smarter Approach to Sentencing- England and Wales.
5. Reducing female admissions to custody: Exploring the options at Sentencing.

Although the learned President's Counsel made submissions in support of such a Non-custodial Sentence, it is my considered view that the imposition of any other sentence other than stipulated in the relevant Act, will amount to usurping of the legislative power of the Parliament.

As the learned High Court Judge had carefully considered the grounds of mitigation raised by the Appellant, this court is not inclined to accept the contentions raised by the learned President's Counsel, on behalf of the Appellant.

Therefore, I affirm the conviction and the sentence imposed by the High Court Judge. The Appeal is dismissed.

The Registrar of this Court is directed to send this judgment to the High Court of Colombo along with the original case record.

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL