

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

Sellaiya Sribalan

Accused-Petitioner

Vs

CA (PHC) APN 09/2012
HC Colombo 9887/99

The Attorney General
Respondent

Before : Sisira de Abrew J &
Deepali Wijesundara J

Counsel : Dr. Ranjith Fernando with S. Rajapakshe for the Petitioner.
SSC Gihan Kulatunga for the Attorney General.

Argued on : 16.03.2012
Decided on : 29.03.2012

Sisira de Abrew J.

When this matter was taken up on 14.2.2012 Court directed Counsel for the accused petitioner to support petition with notice to the Attorney General.

The Attorney General forwarded an indictment against the accused petitioner to the High Court of Colombo under Section 386 of the Penal Code. Later the prosecuting State Counsel moved the High Court to amend the indictment by adding five charges under Section 25 of the Debt Recovery (Special Provisions) Act 2 of 1990 as amended by Act No.4 of 1994. Learned defence counsel objected to the said application on the

ground that the High Court had no jurisdiction to try offences under the Debt Recovery (Special Provisions) Act as the Magistrate's Court (MC) is vested with jurisdiction to try the said offences in terms of the said Act. Learned High Court Judge (HCJ) by his order dated 4.11.2011 overruled the objection. Being aggrieved by the said order, the accused petitioner has filed the present petition moving to set aside the said order.

Learned counsel for the accused petitioner contended that the High Court had no jurisdiction to try offences under Section 25 of the Debt Recovery (Special Provisions) Act 2 of 1990 as amended by Act No.4 of 1994 as the Act specifically confers jurisdiction to the MC to try the said offences. I now advert to this contention. When considering the said contention it is relevant to consider section 11 of the Code of Criminal Procedure Act No 15 of 1979 (CCP) which reads as follows:

“Any offence under any law other than the Penal Code whether committed before or after the appointed date shall be tried save as otherwise specially provided for in any other law-

(a) where a court is mentioned in that behalf in that law-

(i) by the High Court where the court mentioned is the High Court or in relation to an offence punishable with imprisonment for a term exceeding two years or with a fine exceeding one thousand five hundred rupees, the court mentioned is the District Court.

(ii) by a Magistrate's Court where the court mentioned is the Magistrate's Court or in relation to an offence punishable with imprisonment for a term not exceeding two years or with a fine not exceeding one thousand five hundred rupees, the court

mentioned is the District Court.

(b) omitted.”

This section can be considered in favour of the contention of learned counsel for the accused petitioner. But before arriving at such a conclusion I must consider Section 393 (7) of the CCP which reads as follows:

“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 summery 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.”

When one considers this section it is clear that the Attorney General has the power to forward an indictment to the High Court in respect of a summery offence and when such an indictment is forwarded, the Magistrate has no power to try such an offence. What is a summery offence? Summery offence is defined in Section 2 of the CCP. ‘Summery offence’ means an offence triable by a Magistrate’s Court (vide section 2 of the CCP). In this connection it is relevant to consider Section 9(1) of the Judicature Act which reads as follows.

“The High Court shall ordinarily have the power and authority and is hereby required to hear, try and determine in the manner provided for by written law all prosecutions on indictment instituted therein against any person in respect of-

- (a) any offence wholly or partly committed in Sri Lanka,
- (b) omitted
- (c) Omitted
- (d) Omitted
- (e) Omitted
- (f) Omitted”

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 summery 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. In the instant case the learned prosecuting State Counsel moved to add charges by amending the indictment. These charges, according to the Debt Recovery (Special Provisions) Act, are summery offences. But according to the above conclusion reached by me the Attorney General has the power to forward an indictment to the High Court in respect of summery offences and thereafter it becomes the duty of the HCJ to hear, try and determine the case. For these reasons, I hold that when an indictment is forwarded by the Attorney General to the High Court in respect of offences triable by the Magistrate, the HCJ has jurisdiction to hear, try and determine such cases. For the above reasons I reject the contention of learned counsel for the accused petitioner and affirm the order

of the learned HCJ dated 14.11.2011. I therefore refused to issue notice on the respondents and dismiss the petition.

~~Judge of the Court of Appeal~~

Wijesundara J

I agree.

Judge of the Court of Appeal.