

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

CA (PHC) APN No. **59/2011**
HC Kandy No. 201/2008

Devenigoda Gamage Premalal Lakshman
No:D 03/635,
New Town,
Embilipitiya.

Petitioner

Vs

Director General
Mahaweli Authority of Sri Lanka
No:500,
T.B. Jaya Mawatha,
Colombo 10

Respondent

C.A. (PHC) APN No. 59/2011 - **HC. Kandy No. 201/2008**

Before: **Sisira de Abrew, J &
Anil Gooneratne, J.**

Counsel: Jacob Joseph with Ms. Sandamali Somarathna for the
Accused-Petitioners.

Ms. Haripriya Jayasundera SSC for the A.G.

**Argued &
Decided on:** **13.09.2012**

Sisira de Abrew, J

Heard both counsel in support of their respective cases. The 1st accused-petitioner was charged under section 5(1) of the Offences Against the Public Property Act read with section 391 of the Penal Code for committing criminal breach of trust in respect of Fertilizer worth Rs. 2,58,000/-. The 2nd accused-petitioner was charged for aiding and abetting the said offence.. The 4th accused-petitioner pleaded not guilty at the commencement of the trial.

The prosecution called witness No. 01 on the indictment. After the conclusion of the evidence of the said witness both accused-petitioners withdrew their earlier plea of not guilty and pleaded guilty to the charges. The 1st accused-petitioner on his own plea was convicted on the 1st count and was sentenced to a term of 07 years Rigorous Imprisonment and to pay a fine of Rs. 7,55,000/- carrying a default sentence of 02 years Rigorous Imprisonment. The 2nd accused-petitioner was, on his own plea, convicted on count No. 2 and was sentenced to a term of 07 years Rigorous Imprisonment and to pay a fine of Rs. 7,55,000/- carrying a default sentence of 02 years Rigorous Imprisonment.

Being aggrieved by the said sentence imposed by the learned High Court Judge the accused-petitioners have filed this application to revise the punishment imposed by the learned High Court Judge.

Learned counsel for the accused-petitioners contends that the charge was defective. He contends that the accused-petitioners were charged under the offences against the Public Property Act and that the indictment alleges that the property belongs to “ ලංකා පොහොර සමාගම ” which is not a Government Corporation.

In the course of the evidence given by the witness No. 01, (Swarnaseeli Nivungalle) has stated that the fertilizer which is the subject mater of this charge is imported on behalf of

the Government and one bag of fertilizer is sold at Rs. 350/- which is a subsidized price. She has further stated that the value of 01 bag of fertilizer is Rs. 1250/- the balance amount (Rs. 900/-) is borne by the Government.

Further at page 17 stated that the expenditure of fertilizer is borne by the Government. Thus it is clear that the fertilizer which is the subject matter of this charge belongs to the Government.

Further we note that the accused did not raise any objection to the indictment, although he now complains that the indictment is defective. An objection to the indictment should be taken at the earliest opportunity. This view is supported by the judicial decision reported in 45 NLR page 82.

When we consider all these matters, we hold that the accused-petitioners were not misled by the indictment.

For the above reasons we are unable to accept the submissions made by the learned counsel for the accused-petitioners.

We therefore do not interfere with the punishment imposed by the learned High Court Judge.

Petition dismissed.

Judge of the Court of Appeal

Anil Gooneratne, J

I agree.

Judge of the Court of Appeal

Kpm/-