

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

In the matter of an application for
Revision under Article 138 of the
Constitution.

C.A.(PHC) APN No. 112/2007

P. H.C. Negombo No. 336/2004

M.C. Negombo No.F/ 95471

Officer-in-Charge,
Special Crime Investigation Branch
Negombo

Complainant

Vs.

1. Saul Hameed Sithya Fareeza
No.141/T, Sea Street, Negombo
2. Saul Hameed Mohamed Farook,
No.182, Main Street, Negombo.
3. Mohamed Thaha Mohamed Maheer,
No.14/1, Cross Road, Negombo.
4. B.A. Fernando No.775/6,
Colombo Road, Kurana.

he died and charge was amended on
28.8.2000

Accused

And

Saul Hameed Sithya Fareeza
No.141/T, Sea Street, Negombo

Accused-Appellant

Vs.

1. Officer-in-Charge,
Special Crime Investigation Branch
Negombo
2. Hon. Attorney General,
Attorney General's Department,
Clombo 12.

Respondents

And

Saul Hameed Sithya Fareeza
No.141/T, Sea Street, Negombo

Accused-Appellant-Petitioner

Vs.

1. Officer-in-Charge,
Special Crime Investigation Branch
Negombo
2. Hon. Attorney General,
Attorney General's Department,
Clombo 12.

Respondents-Respondents

And

Saul Hameed Sithya Fareeza
No.141/T, Sea Street, Negombo

Accused-Appellant-Petitioner-
Petitioner

Vs.

1. Officer-in-Charge,
Special Crime Investigation Branch
Negombo
2. Hon. Attorney General,
Attorney General's Department,
Clombo 12.

Respondents-Respondents

BEFORE : SISIRA DE ABREW, J. &
K.T. CHITRASIRI, J.

COUNSEL : Jacob Joseph for the Petitioner.
Shanil Kularatne SSC for the respondents.

ARGUED AND
DECIDED ON : 21st March 2011

SISIRA DE ABREW, J.

Heard both Counsel in support of their respective cases.

In this case the accused was convicted by the Magistrate for an offence under Section 454 of the Penal Code. He was sentenced to a term of 1 year Rigorous Imprisonment suspended for a period of 10 years. In addition to the said punishment, he was also ordered to pay a fine of Rs. 1500/= . The learned Magistrate has failed to impose a default sentence in respect of the fine. Thereafter the accused

appealed to the High Court and the learned High Court Judge by her order dated 06.02.2007 dismissed the appeal. One of the grounds considered by the learned High Court Judge to dismiss the appeal was that the accused had failed to comply with Section 322(2) of the Criminal Procedure Code. Both Counsel admit that the learned High Court Judge has failed to consider the facts of the case in the appeal.

In this connection I would like to consider a judgment of Justice Eric Basnayake. His Lordship in **T.G. Nimal Wasantha Vs. A.G.** in case No. C.A. (PHC)APN Revision 148/2005- decided on 21.9.2006 considering section 322(2) observed thus: "Where a party makes an appeal on a matter of law, a certificate is required in terms of Section 322(2) certifying that such a matter of law is a fit question for adjudication. This certificate has to be issued by an Attorney-at-Law. **Wijewardena J. in Weerasekera Vs. Subramainam 44 NLR 545** said that "I think section 340(2) of the Criminal Procedure Code (same as section 322(2) of the Code of Criminal Procedure Act) is applicable only to case in which a party has no right of appeal except on a point of law. Pereira J. in **Solicitor General vs. Perera 17 NLR 413** expressed a similar opinion. It is clear therefore that a certificate is needed only in a situation where an appeal could be made only on a point of law. Any party is entitled to appeal against any judgment on any error of fact as well. In such a situation no certificate need be filed"

Petition of appeal indicates that the appellant is challenging the facts of this case. Applying the principles laid down ⁱⁿ the above legal literature, I hold that the learned High Court Judge was in error when he decided to dismiss the appeal for non compliance under Section 322(2) of the Criminal Procedure Code.

Learned Senior State Counsel concedes that the learned High Court has failed to consider the facts of this case and that it be sent back for rehearing by the learned High Court Judge. We have gone through the order of the Learned High Court Judge and note that the learned High Court Judge has failed to consider the facts of the case. In these circumstances we set aside the judgment of the learned High Court Judge dated 06.02.2007 and direct the learned High Court Judge to rehear the appeal on the facts of the case.

Petition allowed.

JUDGE OF THE COURT OF APPEAL

K.T. CHITRASIRI, J.

I agree.

JUDGE OF THE COURT OF APPEAL

Kwk/=