

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

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

COMPLAINANT-APPELLANT

C.A. 176/2012
(H.C. Kurunegala 64/2003)

Vs.

Wanninayake Mudiyansele Punchibanda

ACCUSED-RESPONDENT

BEFORE: Anil Gooneratne J. &
Malinie Gunaratne J.

COUNSEL: Tenny Fernando for the Accused-Respondent
Rohantha Abeysuriya D.S.G. for the Complainant-Appellant

ARGUED ON: 27.06.2014

DECIDED ON: 04.07.2014

GOONERATNE J.

This is an appeal by the Hon. Attorney General against the judgment of the learned High Court Judge of Kurunegala who acquitted the Accused on the charges leveled against him in the indictment (Sections 296, 300 & 383) but proceeded to convict on a charge of retention of stolen property (Section 394 of the Penal Code) based on evidence that transpired in the High Court, and sentenced the Accused to 3 years rigorous imprisonment. It has now resulted in this court to make an order prior to hearing of the appeal as regards keeping the Accused in prison custody since the Prison Authorities informed this court that the period of 3 years would lapse by 13.6.2014, and sought advice by letter of 11.6.2014 as to whether the prisoner could be kept in custody until the disposal of the appeal. The prisoner having served the sentence would under normal circumstances be entitled to be released at the expiry of the term of imprisonment. On this aspect we have heard learned counsel on either side.

Section 333(1) of the Criminal Procedure enacts that when an appeal is being lodged further proceedings of the court shall be stayed and suspended

the progression of court proceedings. When an appeal against an acquittal is lodged the court may direct that the Accused be arrested and brought before it and may commit him to prison. (Section 333(2)). Section 20(1) of the bail Act No. 3 of 1997 enacts almost identical provision as in Section 333(2) of the Criminal Procedure Code. The circumstances and situation in the case in hand is different, to the provisions contained in the above said sections.

In all the above circumstances, we direct the Prison Authorities to release the prisoner immediately from the prisons custody. The prisoner is noticed to appear in this court on 01.08.2014 on which date the appeal is listed for hearing.


JUDGE OF THE COURT OF APPEAL

W.M.M. Malinie Gunaratne J.

I agree.


JUDGE OF THE COURT OF APPEAL