

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

**CA 240/2010**

HC-KALMUNAI-114/2009

Mohamed Buhary Mohamed Asmin

**Accused-Appellant**

**Vs.**

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

**Respondent**

CA 240/2010

HC-KALMUNAI-114/2009

Before : **Anil Gooneratne, J. &**  
**P.R. Walgama, J.**

Counsel : Saliya Pieris for the Accused  
Appellant  
H. I. Pieris, SSC for AG

Argued &

Decided on : 09.10.2014

**Anil Gooneratne, J.**

The accused-appellant has been indicted on two counts. Count No. 1 relates to an offence under Section 22(i) of the Firearms Ordinance as amended, i.e. without a legally valid permit possession of a Firearm. Count No. 2 relates to an offence punishable under Section 9(ii) of the Explosives Ordinance as amended i.e. possession of live cartridges as described in Count No.2 of the said indictment.

At the hearing of this appeal, learned Counsel on either side submitted to Court that the accused-appellant was tried in absentia in the High Court of Kalmunai.

The attention of this Court was drawn to the journal entry dated 19.05.2010. On perusal of the journal entry, it appears that the accused was absent on the said date. However, an application had been made by the Attorney-at-law, namely A. Samsudeen who appeared on behalf of the accused-appellant. But, the learned High Court Judge has rejected such application.

What is recorded by the learned High Court Judge appears as follows;

"But Court rejects this application due to improper application". Perusal of the entirety of the journal entry, this court is unable to ascertain as to what the improper application was. There is no reference to any kind of an improper application as described by the learned High Court Judge. As per Section 241 (2) of the Code, it is very clear that the commencement or continuance of the trial under this Section shall not be deemed or constitute to affect or prejudice the right of

such person to be defended by an attorney at law, at the trial.

This court observes that, to be defended by an Attorney-at-law is a fundamental right which cannot be denied to a accused party.

In all above circumstances, we set aside the conviction and sentence and send the case back for re-trial to the relevant High Court and this Court directs that the learned High Court Judge should expedite the trial and conclude this case within a reasonable period.

Trial De-Novo ordered.

**JUDGE OF THE COURT OF APPEAL**

**P.R. WALGAMA, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**

LA/-