

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

CA/PHC/46 /2014

HCT/REV No 302/2013
MC No BR 12/13

Andrahennadige Leelawathie
No 272, 4th Mile Post
Kandy Road, China bay,
Trincomalee

Suspect Petitioner

Vs.

01) Officer in Charge
Special Crime Investigation Branch
Police Station
Trincomalee

02) Diwangu Hewage Ashoka Jayanthi
No 1008, Kandy Road, Palautthu
Trincomalee

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

Complainant-Respondent

C.A. (PHC) APN46/2014(Rev.) HC Trincomalee Case No: 302/2013

M.C. Trincomalee Case no: BR/12/13

Before : K.T. Chitrasiri, J. &

W.M.M. Malinie Gunaratne, J.

Counsel : Harishke Samaranayake for the suspect-Petitioner-Petitioner.

Piyatissa Abeykoon for the 3rd Respondent-Respondent.

H. Jayanetti SC. for the A.G.

Decided on : 29.10.2014

K.T. Chitrasiri,J.

Heard all three counsel in support of their respective cases. This is an application to revise the order dated 26.02.2014 of the learned High Court Judge and the order dated 21.02.2013 of the learned Magistrate in Trincomalee. By the aforesaid order of the learned Magistrate, he has directed the suspect who is the petitioner in this application, to pay Rs: 1.8 million to the virtual complainant who is the 3rd respondent in this application. Out of the aforesaid Rs: 1.8 million, the petitioner has paid Rs: 100,000/- (Hundred Thousand) to the 3rd respondent on the day, that he made the order to pay a sum of Rs: 1.8 million. Thereafter, the matter was adjourned for 21.02.2013. On that date another Rs: 500,000/- (Five Hundred Thousand) had been paid by the petitioner to the 3rd respondent-respondent. Thereafter, the learned Magistrate has made order to pay the

balance Rs: 1.3 million within a period of 6 months from 21.02.2013 and then he also imposed a term of two years Rigorous Imprisonment, in the event the aforesaid balance money was not paid within that period of 6 months.

At the time, the aforesaid sentence was imposed, no plaint and/or charge sheet have been filed before the Magistrate. Indeed the petitioner has not become an accused at that point of time since no charge sheet had been filed then. Therefore, it is clear that punishment had been imposed by the learned Magistrate, without a charge sheet being filed against the person on whom the said punishment was imposed.

It is trite law that no punishment can be imposed, unless a person is convicted by a competent Court after having followed the procedure stipulated in law. In this instance, the procedure referred to in the Code of Criminal Procedure has not been followed by the time the punishment was imposed on the petitioner. Therefore, it is clear that the learned Magistrate is in error when he directed the petitioner to pay Rs: 1.8 million without a charge sheet being filed. The learned State Counsel too concedes this position.

The law referred to above is supported by the decision in the case of Thulyananda Senananda vs. O.I.C. Special Crimes Investigation Unit (C.A. (PHC) APN 28/2014). In the light of the above, we decide that the learned Magistrate has not followed the law when he imposed the punishment on the petitioner. The learned High Court Judge also has not looked at the law relevant thereto when he decided to dismiss the revision

application filed in the High Court. Hence, the order of the learned High Court Judge also is erroneous.

For the aforesaid reasons we set aside the order dated 21.02.2013 and the order dated 26.02.2014 of the learned Magistrate and of the learned High Court Judge respectively.

Learned Magistrate is directed to proceed with the action filed in the Magistrate's Court of Trincomalee in accordance with the law.

Application allowed.

JUDGE OF THE COURT OF APPEAL

W.M.M. Malinie Gunaratne, J.

I agree.

JUDGE OF THE COURT OF APPEAL

Jmr/-