

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

**CA 126/2012**

HC Negombo Case No.HC 125/1993

Cader Pitthei Mohomadu

**Accused - Appellant**

**Vs.**

Hon. Attorney General

**Respondent**

**C.A. Case No. 126/2012      H.C.Negombo Case No.HC 125/1993**

Before           :     H.N.J. Perera, J &  
                          K.K.Wickramasinghe, J

Counsel        :     Shyamal A. Collure for the Accused Appellant.  
                          Yasantha Kodagoda, ASG for the AG.

Argued &  
decided on    :     01.03.2016.

**H.N.J. Perera, J**

Accused Appellant is present in Court produced by the Prison Authorities.

In this case the main contention of the counsel for the Accused Appellant was with regard to the fact that the original indictment in this case has been amended on 24.04.2008 and that the said amended or new indictment which had been filed, has not been read over and explained to the Accused. On perusal of the said proceedings of 24.04.2008 it is clearly seen that the State Counsel had moved to file an amended indictment and accordingly a new indictment had been filed in Court.

It is also clearly seen that although the said indictment had been filed, the said charges under the new indictment had not been read over and explained to the Accused. Instead the Counsel who appeared for the Accused Appellant had moved time to consider the said amended indictment and to cross examine the witness thereafter. Thereafter the Court had proceeded to trial on the said amended indictment without acting under Section 167 of the Criminal Procedure Code. Therefore, on perusal of all the journal entries and the relevant proceedings, it is clear that the High Court Judge had failed to comply with the said Section 167 of the Criminal Procedure Code and read over the charges to the Accused Appellant in this case.

Learned Counsel for the Respondent concedes this fact and moves that the conviction and the sentence of the Accused Appellant be set aside and the matter be referred back to the High Court for re-trial.

After considering the submissions made by the parties, this Court is satisfied that the learned Trial Judge had failed to comply with Section 167 of the Criminal Procedure Code and therefore the said conviction and sentence of the accused be set aside. Therefore we set aside the conviction and the sentence of the learned High Court Judge of Negombo dated 20.03.2012 and direct the present High Court Judge in Negombo

to hear and dispose this case on day today basis as expeditiously as possible. Accordingly appeal is allowed. Re-trial ordered.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

**K.K. Wickramasinghe,J**

I agree.

JUDGE OF THE COURT OF APPEAL

Lwm/-