

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

In the matter of an appeal under  
Section 15(b) of the Judicature Act  
No. 2 of 1978 read with Section 331 of  
the Code of Criminal Procedure Act  
No. 15 of 1979.

The Attorney General  
Attorney General's Department  
Colombo 12.

**APPELLANT**

**CA Case No. 45/12**

**HC Kandy 75/09**

**Vs**

Balawickrema Kankanamage  
Upul Chandana Balawickrema  
Dambarawewa  
Mahiyanganaya.

**ACCUSED – RESPONDENT**

**BEFORE** : Deepali Wijesundera J.  
: L.U. Jayasuriya J.

**COUNSEL** : Shanaka Wijesinghe DSG for the  
Appellant.  
Nayantha Wijesundera for the  
Accused – Respondent.

**ARGUED ON** : 23<sup>rd</sup> November, 2016

**DECIDED ON** : 09<sup>th</sup> December, 2016

**L.U. Jayasuriya J.**

The accused respondent was indicted in the High Court of Kandy under Section 336 of the Penal Code read with Section 3 of the Offences against the Public Property Act No. 12 of 1982 as amended.

The accused respondent was convicted by the learned High Court Judge after recording a plea of guilt. It appears from the brief that the main witness has testified before the High Court prior to the accused respondent pleading guilty.

The learned High Court Judge has considered this fact when convicting that accused respondent. The learned Deputy Solicitor

General argued that the sentence as well as the fine was inadequate and sought to enhance the sentence and the fine.

Mentioning section 3 of the said Act he submitted that the fine has to be three times the value of the stolen goods. In the instant case the value of the stolen article was Rs. 300,000/=. The fine imposed by the High Court Judge was Rs. 50,000/=.

On a perusal of the evidence we find that the stolen article had been recovered by the police and therefore no loss caused to the state. Though section 3 of the said Act states that the fine has to be three times of the value of the stolen goods, it doesn't say as to how fine should be imposed when the stolen goods are recovered without causing damage to them.

In the instant case no damage has been caused to the "*chips spreader machine*" and it has been recovered unharmed. Therefore we decide that the High Court Judge has the discretion to decide on the quantum of the fine.

For the forgoing reasons we see no reason to act under Section 328 (b) (ii) of the Code of Criminal Procedure Act. Therefore we dismiss the appeal to enhance the fine and the sentence. We affirm the judgment and dismiss the appeal.

Appeal dismissed.

**JUDGE OF THE COURT OF APPEAL**

**Deepali Wijesunder J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**