

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

CA/MC-RV/ 08/2015

Kotta Hewage Ruwan de Silva
Prisnor No.J 13275,
Mahara Prison, Ragama

Petitioner

Vs.

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

2. The Commissioner General of Prisons
Prison Headquarters,
Baseline Road,
Colombo 9.

3. The Superintendant
Mahara Prison, Ragama

4. Hon. Wijedasa Rajapakse. P.C
Ministry of Justice,
Ministry of Justice, Hultsforf,
Colombo 12.

Respondents

C.A./MC/RV/08/15

SC FR 35/2015

Before : Vijith K Malalgoda PC. J. &
S. Thurairaja PC, J.

Counsel : K. Tiranagama with Ms. Swarnapathi Wanigasekera
for the Petitioner.
Varunika Hettige DSG. for the respondent.

Argued &

Decided on : 29.03.2017

Vijith K Malalgoda PC. J. (P/CA)

The Applicant before this Court is one Kotte Hewage Ruwan de Silva who was prosecuted before the Magistrate's Court of Minuwangoda on several charges. At the conclusion of the evidence of several witnesses, the Accused had elected to plead guilty for five counts in the charge sheet. Based on his plea the learned Magistrate had imposed the following sentence on the applicant.

Count No 1. Three years Rigorous Imprisonment with a fine of Rs:
One Thousand Five hundred, in default two years
Simple imprisonment.

Count No. 2. Three Years simple Imprisonment.

Count No: 3 Three Years simple Imprisonment.

Count No: 4 Two years simple Imprisonment.

Count No: 5 One Year Simple Imprisonment.

As observed by us when imposing the said sentence, the Court was mindful of the fact that he had several previous convictions and the learned Magistrate whilst imposing the said sentence had recorded that he was making the said sentence acting under the provisions of the Prevention of Crimes Ordinance and also he had directed the said sentences to run consecutively. However when considering the charges levelled against the accused, we observe that out of the five charges framed against the applicant, the 1st charge was under Criminal Misappropriation and the other charges were for cheating.

In this regard we are mindful of the fact that a charge under Criminal Misappropriation needed the initial innocent taking whereas a charge of cheating needed the prosecution to establish the mental element or the dishonest intention of the accused. In the said circumstances, this Court is of the view that a charge of criminal misappropriation cannot coupled with a charge of cheating and therefore this Court is of the view that the 1st charge cannot be maintained against the applicant. This Court is further mindful of Section 16 of the Criminal Procedure Act, where a maximum sentence the Magistrate can impose when he orders the sentence to run, consecutive is four years and if he is acting under the Prevention of Crimes Ordinance he can impose a further sentence of two years imprisonment.

Under these circumstances the maximum term a Magistrate can impose on a person is 06 years imprisonment. Under these circumstances, we decide to affirm the sentences imposed on Counts 2-5 after quashing the conviction and the sentence imposed on Count one of the charge sheet and make order to run the sentences imposed on 2nd and 3rd Counts by the learned Magistrate consecutively and the rest of the sentences to run concurrent with the above two sentences.

In the said circumstances, the maximum period the accused will have to serve should be six years and the said sentence will have to be operative from the date of conviction that is from 24th June 2005.

PRESIDENT OF THE COURT OF APPEAL

S. Thuraiaraja,PC. J.

I agree.

JUDGE OF THE COURT OF APPEAL

Jmr/-