

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

CA/MC-RV /09/2015
SCFR 36 /2015

Muthukuda Hewage Chandradasa
Prisnor No. P 28490,
Weelawathur Godellawela ,Tangalle .

Presently of 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,
Colombo 12.

Respondents

C.A./MC/RV/09/15 SC FR 36/2015

Before : Vijith K Malalgoda PC.(P/CA) 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 in this case was prosecuted before the Magistrate's Court of Tangalle on three counts for trespass, robbery and retention of stolen property. After conviction, the learned Magistrate after considering the provisions of the Prevention of Crimes Ordinance had imposed a total term of 12 years Rigorous Imprisonment on the applicant. However as observed by this Court a charge of retention of stolen property cannot be maintained since it was only an alternative count to a charge of robbery. The maximum sentence imposed on each count of trespass and robbery on the provisions of the Criminal Procedure Code is two years and under Section 6 of the Prevention of Crimes Ordinance the Magistrate can only impose an additional sentence of two years Rigorous imprisonment. In the said circumstances, we make order to quash the conviction and

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sentence imposed on Count 3 of the said charge sheet and affirm the conviction imposed on Counts 1 and 2 but vary the sentence to two years Rigorous Imprisonment on each Count, an additional sentence of two years acting under the provisions of the Prevention of Crimes Ordinance since 18 previous convictions had been proved against the applicant. The total period of sentence imposed on the applicant is 6 years Rigorous Imprisonment and the said sentence of 6 years Rigorous Imprisonment will operate from the date of conviction that is from 22.05.2009.

PRESIDENT OF THE COURT OF APPEAL

S. Thurai Raja, PC. J.

I agree.

JUDGE OF THE COURT OF APPEAL

Jmr/-