

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

**CA/MC-RV /10/2015**  
SCFR 37 /2015

J.M . Sumith Karunaratne  
Prisnor No. D 19322,  
Dalugaswatta,  
Sri Medhananda Mawatha,  
Mailgastenna, Badulla.

Presently at 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/10/15      SC FR 37/2015

Before                                :      Vijith K Malalgoda PC. J. (P/CA) &  
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

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

The Applicant J. M. Sumith Karunaratne in the present application had been charged before the Magistrate's Court of Panadura on four separate Charge Sheets namely 92544, 92548, 92549, 92769, but the case records referred to the said charge cases are not before this Court. However according to the documents maintained at the Prison's Department. The said applicant was charged in all four cases for house breaking, theft and disposal of Stolen property.

Learned Magistrate who convicted the applicant on all an four cases had imposing two years Rigorous Imprisonment on each count and the total sentence imposed in each charge sheet was six years Rigorous

Imprisonment. However when considering the said charges we observe that the third charge framed against him under Section 396 of the Penal Code was an alternative count which cannot be maintained along with the Count of theft.

In the said circumstance we make order quashing the conviction and sentence imposed on Count 3 in each charge sheet making the total sentence imposed on the applicant in each charge sheet to four Years Rigorous Imprisonment. The sentence impose in each case will have to be operative consecutively from the date of conviction.

PRESIDENT OF THE COURT OF APPEAL

S. Thurai Raja, PC. J.

I agree.

JUDGE OF THE COURT OF APPEAL

Jmr/-