

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

CA/MC-RV /12/2015
SCFR 39/2015

Mohamed Thaus Mohamed Uvais
Prisnor No. N 30830
No 159/24 C,
Appelwatta, Maligawatta

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/12/15

SCFR 39/2015

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

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

The Applicant to the Present application, M. T M Uvais was charged before the Magistrate's Court of Avissawella in two cases namely case No: 20078 and 20075 on counts of cheating Criminal misappropriation and Criminal breach of trust. After convicting the applicant on all three counts in each charge sheet, the learned Magistrate had imposed 18 months Rigorous Imprisonment with a fine of Rs: 1500 on each count and a default term of six months. The total term imposed on the applicant in each case was 6 ½ years Rigorous Imprisonment. When considering the total period of default term as well. However when going through the said charges we observe that the said charges cannot be maintained in one and the same charge sheet since the necessary mental element required in a charge of cheating and a charge of misappropriation are different to each other. At the

same time a charge of misappropriation and criminal breach of trust cannot be maintained together.

In the said circumstances we decide to quash the conviction and sentence imposed on the 1st and the 2nd charges framed against the Accused-Appellant, namely cheating and misappropriation and affirm the conviction and sentence imposed on the 3rd count under Criminal breach of trust.

The sentences imposed on the applicant will have to be operated from the date of sentence namely from 01.07.2010. He will have to serve the sentence of 18 months Rigorous Imprisonment in each case if he had already paid the fine imposed on him.

PRESIDENT OF THE COURT OF APPEAL

S. Thurairaja,PC. J.

I agree.

JUDGE OF THE COURT OF APPEAL

Jmr/-