

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

In the matter of a revision under
article 138 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.

OIC, SCIB, Police Station,

Complainant Respondent

Vs

Abeygunawardens Widanagamage
Bandula

Accused Respondent

CA (PHC) APN: 121/2004

HC Matara : HC Rev 63/2003

MC Matara Case No:69825 and 72780

And

Gamage Dhanapala

**Intervient Complainant Petitioner
Respondent**

Vs

Abeygunawardens Widanagamage
Bandula

Accused Respondent

OIC, SCIB, Police Station,

Complainant Respondent

The Hon. Attorney General

The Attorney General's Department

Colombo 12.

Respondent

And

Abeygunawardens Widanagamage
Bandula

Accused Respondent Appellant

Vs

(1) Gamage Dhanapala

**Intervenient Complainant
Petitioner Respondent**

(2) OIC, SCIB, Police Station, Matara.

**Complainant Respondent
Respondent**

(3) The Hon. Attorney General
The Attorney General's Department
Colombo 12.

Respondent Respondent

Before: K.K.Wickremasinghe J.

P.Padman Surasena J.

COUNSEL: AAL Upul Darshana Mudalige for the Appellant

DSG Varunika Hettige for the Respondent

WRITTEN SUBMISSIONS ON: 30/10/2017, 28/11/2017

DECIDED ON: 05/12/2017

JUDGEMENT

K.K.Wickremasinghe J.

This is an appeal against the order of the of the learned High Court Judge of Matara. The Appellant in this case was alleged to have committed an offence of cheating. He was charged in the Magistrate Court of Matara under case No.

69825 and 72780 for cheating of Rs. 900,000 and Rs.650, 000 which is punishable under section 403 of the Penal Code.

Evidence was amalgamated and one order was delivered by the learned Magistrate acquitting the appellant.

Upon acquittal, the aggrieved party filed a revision application in the High Court of Matara(as the sanction to appeal was not given).At the hearing of the revision application, it was held by the Learned High Court Judge that a retrial be held.

Being aggrieved by the said order, the accused appellant has preferred this appeal to this court.

The intervenient complainant petitioner respondent and the appellant were business persons. The appellant was given RS. 900,000 by the 1st Respondent and a cheque for such amount was given where the cheque was not postdated. The cheque was returned due to lack of funds. Subsequently the account was closed by the appellant.

The basis for the order of the Learned Magistrate amalgamating the two cases was that the charge sheet was irregular and upon that the case was dismissed. The Learned Magistrate was of the view that the charge should have been framed under section 398 to be read with section 403 of the Penal Code. The Learned Magistrate has gone into evidence and considered same and yet one reason for acquitting the Appellant is the fault in the charge sheet.

The Learned High Court Judge in revising the order of the Learned Magistrate held that the duty to frame charge is upon the Learned Magistrate in terms of section 182 and by section 167 such charge sheet could be amended. As it was not done so the case was sent for retrial. Before arriving the decision, the Learned HCJ has gone into all aspects of the case. He has held that, since the charge sheet is illegal, the pronouncement upon it is void.

In the case of AG Vs Piyasena 63 NLR 489, it was held that the Learned Magistrate holds that a charge was illegally framed, and then the accused could be retried.

Considering above, it is apparent that the order of the LHCJ is not irregular, illegal, arbitrary or malicious and it is sound in Law.

Thus, there is no ground to reverse the order of the Learned High Court Judge.

Appeal is hereby dismissed without costs.

JUDGE OF THE COURT OF APPEAL

P.Padman Surasena J.

I agree,

JUDGE OF THE COURT OF APPEAL