

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

In the matter of an appeal against
judgment of Provincial High Court
exercising its revisionary jurisdiction.

C A (PHC) 61 / 2005

High Court of Negombo

Case No. HCRA 114 / 1998

Kingsley Valentine Mazonod Fernando,
No 252,
Chilaw Road,
Negombo.

3RD ADDED ACCUSED - APPELLANT
- PETITIONER - APPELLANT

1. S Wanniarachchi,
Assistant Commissioner of Labour,
Termination of Employment Unit,
7th Floor,
Labour Secretariat,
Narahenpita,
Colombo 05.

COMPLAINANT -

RESPONDENT - RESPONDENT

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

RESPONDENT – RESPONDENT

Before: P. Padman Surasena J (P/CA)

K K Wickremasinghe J

Counsel: Manoli Jinadasa for the 3rd Added Accused - Petitioner - Appellant.

Uresha Perera ASA for the Complainant-Respondent-
Respondent and Respondent-Respondent.

Decided on : 2018 - 07 - 17

JUDGMENT

P Padman Surasena J (P/CA)

Learned counsel for all the Parties, when this case came up on 2017-07-11 before us, agreed to have this case disposed of, by way of written submissions. Therefore, this judgment would be based on the material that the parties have so adduced before this Court.

The Commissioner of labour had instituted proceedings against Rubberite Limited in the Magistrate's Court of Negombo in terms of section 7 of the Termination of Employment of Workmen (Special Provisions) Act No 45 of 1971 (hereinafter referred to as the Act) as the said company had failed to pay the compensation awarded to the employees for the unlawful termination of their services following the closure of the said company on 12th June 1989.

Learned Magistrate by his order dated 1998-05-22 had sentenced the 3rd Accused Petitioner Appellant (hereinafter referred to as the Appellant) to a term of 06 months RI suspended for a period of 10 years and also to a fine of Rs. 6,736610.00 to be paid jointly and severally with the other accused. A default sentence of 02 years RI was also imposed.

Being aggrieved by the said order of the learned Magistrate the Appellant had filed a revision application in the Provincial High Court seeking a revision of the said order pronounced by the Magistrate. Learned Provincial High Court Judge by his judgement dated 2004-12-01 had dismissed the said application. The Appellant has lodged the instant appeal against that judgment.

Section 9 (a) of the act provides "if the body of persons is a body corporate, every director and officer of that body corporate shall be deemed to be guilty of that offence."

It is clear that the Appellant had been charged in this case in his capacity as a director of the accused company in terms of section 9 of the Act.

It is the position of the Appellant that he had ceased to be a director of the relevant company from 1985-05-12. He had relied on the documents produced marked **3V 6** and **3V 7**.

However, the learned Magistrate had taken the view that the Appellant had not satisfied Court that the Petitioner had duly resigned from the Board of Directors at the relevant time.

It is to be noted that the learned Magistrate had gone on the basis that the Appellant had not called any evidence to establish that his letter of resignation produced marked **3V 6** had indeed sent or handed over to the relevant company. It is on that basis that the learned Magistrate had convicted the Appellant.

According to the charge sheet, it is the following charge that has been framed against the accused in the instant case.

" ... You, the Rubberite Limited, being an employer of workmen employed in a scheduled employment under the name and style of Rubberite Limited situated at Kotugeda, Jaela within the jurisdiction of this Court, had failed to comply with the order of the Commissioner of Labour, bearing No. TEUC/41/89 dated 10th day of September, 1990 issued to you by the said Commissioner of Labour under the powers vested in him under section 6 (A) (1) of the Termination of Employment of workmen (Special Provisions) Act No. 45 of 1971 as amended by the Acts No. 4 of 1976 and 51 of 1988 directing you to pay on or about 01st day of October, 1990 to the workers named in the schedule annexed hereto the amounts indicated against each of the workers totaling a sum of Rs. 6,736,610/= and thus you have committed an offence punishable under section 7 read with section 8 of the aforesaid Act (as amended) No. 45 of 1971. ... "

Thus, the alleged offence according to the charge shall be taken as having been committed during the time period from 1990-09-10 to 1990-10-01.

Question to be decided in this case is whether the 3rd accused in the case has remained as a director during that period.

It is the position of the 3rd accused that he had resigned with effect from 1989-05-12 by virtue of the letter marked **3 V 7**, which is a letter of resignation. The 3rd accused states that the said letter was duly communicated to the office of Rubberite Limited and also to the Registrar of Companies.

It is the position of the Respondents that the 3rd accused had failed to prove this fact to the satisfaction of the learned Magistrate. Thus, it would be necessary to look at the evidence pertaining to the said issue.

Perusal of the evidence of the witness Duwanage Nihal Ranjith Siriwardhana called to give evidence on behalf of the 2nd and 3rd accused had produced relevant documents pertaining to the details of directors. The documents produced marked **3 V 1** , **3 V 2** , **3 V 3** , **3 V 4** , **3 V 6** , and **3 V 7** clearly establish that the 3rd accused had resigned from the post of Director of this company with effect from 1989-05-12.

It must be borne in mind that the Appellant had been appointed to the board of directors of Rubberite Limited by the DFCC Bank as per its right to appoint a nominee director to the board of Rubberite Limited as per a clause in the loan agreement. (DFCC Bank had given a loan to Rubberite Limited). It is amply clear from the document marked **3 V 6** that the DFCC Bank had withdrawn its nominee Director (Appellant was the nominee Director at that time) from the Board of Directors of Rubberite Limited with effect from 1989-05-12. It is with that letter sent by the DFCC Bank, the letter of resignation of the Appellant marked **3 V 7** had been forwarded to the Rubberite Limited.

The above evidence clearly establish that the Appellant had not functioned as a director of Rubberite Limited between the time period from 1990-09-10 to 1990-10-01. Thus, the Appellant cannot be held liable for the above offence. Learned Magistrate has failed to appreciate the above facts in his judgment. That appears to have led to the conviction of the Appellant.

The learned Provincial High Court Judge also has missed the said points and hence has erred when it decided to uphold the conviction of the Appellant.

In these circumstances, this Court decides to set aside the judgment dated 1998-05-22 of the learned Magistrate and the judgment dated 2004-12-01 of the learned Provincial High Court Judge. This Court directs that the Appellant be acquitted and discharged from the charge framed against him.

Appeal is allowed.

PRESIDENT OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL

