

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

Sihu Sulaiman Mohamed Sana,  
No. 49, Thakiya Road,  
Poruthota,  
Kochchikade.  
Complainant-Petitioner

**CASE NO: CA/MC/RV/04/2015**

**MC COLOMBO CASE NO: 91344/6/11**

Vs.

M.J.M. Ihsanullah,  
No. 1074,  
Wedikanda Road,  
Hunupitiya,  
Wattala.  
Accused-Respondent  
Hon. Attorney-General,  
Attorney General's Department,  
Hulftsdrop,  
Colombo 12.  
Respondent

Before: Mahinda Samayawardhena, J.

Counsel: S.H. Mohamed for the Petitioner.

Respondent has been represented by several State Counsel, but no objections or written submissions have been filed.

Accused-Respondent is absent and unrepresented.

Decided on: 06.06.2019

Mahinda Samayawardhena, J.

The complainant-petitioner (petitioner) filed this application seeking to revise the Judgment of the Magistrate's Court dated 05.12.2014.

The petitioner instituted this action against the accused-respondent (respondent) in the Magistrate's Court under section 25(1)(a) of the Debt Recovery (Special Provisions) Act, No.2 of 1990 and sections 386 and 403 of the Penal Code upon three dishonoured cheques marked at the trial P1-P3.

At the trial the petitioner and the respondent gave evidence. A Bank officer was also called by the petitioner.

After trial the learned Magistrate has acquitted the respondent on the basis that charges have not been proved beyond reasonable doubt.

The respondent in his evidence has categorically admitted that he put the dates and signed all three cheques and gave them to the petitioner. But his position was that the rest of the handwriting regarding the amounts is not his. When he was

asked why he gave three such cheques admittedly with date and signature he has stated that he owed the petitioner a sum of Rs. 370,000/=. In his evidence he has stated that he was prepared to pay Rs. 370,000/=. He does not say that he was forced or lured to give such cheques. The value of the three cheques is Rs. 4,900,000/=. When he was asked why he did not write Rs. 370,000/= in one cheque and give it to the petitioner instead of giving three different cheques, he had been prevaricating. The respondent is not an uneducated man. He claims to be a software engineer. A man of that caliber would not have behaved in that manner.

It is rare to admit date and signature and deny the amount in a cheque. Whilst admitting the date and signature in all three cheques, when the respondent denied his handwriting about the amount, the Attorney-at-Law for the petitioner has moved to call for an EQD Report. This has been objected to by the Attorney-at-Law of the respondent and the learned Magistrate has upheld that objection. However the learned Magistrate has in the Judgment found fault with the petitioner for not calling an EQD Report against denial of the handwriting in the cheques by the respondent!

The Bank officer has confirmed that by the time the cheques had been issued, the petitioner's Account was closed. The respondent did not dispute that fact. The Magistrate has in the Judgment accepted that position.

Against this strong evidence, nay admissions, it is distressing to note that the Magistrate has acquitted the respondent from all the charges.

In my view, with that evidence, the Magistrate could at least have easily convicted the respondent under section 25(1)(a) of the Debt Recovery (Special Provisions) Act, which reads as follows:

*“Any person who knowingly draws a cheque which is dishonoured by a bank for want of funds shall be guilty of an offence under this Act and shall on conviction by a Magistrate after summary trial be liable to punishment with imprisonment of either description for a term which may extend to one year or with fine of ten thousand rupees or ten per centum of the full value of the cheque, order, authority or inland bill in respect of which the offence is committed, whichever is higher, or with both such fine and imprisonment.”*

In connection with instituting criminal proceedings under section 25 of the Debt Recovery (Special Provisions) Act, the Supreme Court in the case of *OIC, CID v. Soris [2006] 3 Sri LR 375 at 381* stated that: *“We, accordingly, are mindful of the fact that the Debt Recovery Act as amended, was necessitated by the expansion of commercial transactions and that a prosecution under the normal law was highly time consuming and protracted.”*

The Judgment of the Magistrate’s Court is set aside and a conviction under section 25(1)(a) of the Debt Recovery (Special Provisions) Act is entered in respect of count Nos. 1, 4 and 7 of the Charge Sheet.

Although the accused-respondent was present and represented by an Attorney-at-Law at the beginning before this Court<sup>1</sup>, he never filed objections to the present application or participated in the argument.

The respondent (Attorney-General) has been represented by several State Counsel, but no objections or written submissions have been filed.

Appeal is allowed.

Let the Magistrate decide the sentence.

Judge of the Court of Appeal

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<sup>1</sup> Vide the journal entries dated 26.11.2015 and 25.01.2016.