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

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

PLAINTIFF

COURT OF APPEAL CASE
CASE No. CA 235/2011

HIGH COURT COLOMBO
CASE NO. HC 4574/2009

Vs.

Athputharaja Wijayarajan,
No. 21,
Maitland Crescent,
Colombo 07

ACCUSED

AND NOW

Athputharaja Wijayarajan,
No. 21, Maitland Crescent,
Colombo 07

ACCUSED-APPELLANT

Vs.

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

PLAINTIFF-RESPONDENT

Before: **N. Bandula Karunarathna J.**

&

R. Gurusinghe J.

Counsel: Faiz Musthapha PC with Neville Abeyratne PC, K. Thilakarathna and Kaushalya Abeyratne Dias for the accused-appellant

Sudharshana de Silva DSG for the complainant-Respondent

Nalin Dissanayake PC with Vishwa Rajapaksha for the Aggrieved Party

Written Submissions: By the accused-appellant on 30.01.2017

By the complainant-Respondent on 23.03.2017

By on behalf of the Aggrieved Party on 16.03.2017

Argued on : 26.07.2021

Decided on : 22.11.2021

N. Bandula Karunarathna J.

The accused-appellant (hereinafter referred to as the appellant) Athputharaja Wijayarajan was indicted before the High Court of Colombo along with two others namely Rupasinghe Arachchige Naveen Aruna Perera and Daluwatta Patabendige Siripala for the offence of cheating punishable in terms of section 403 of the Penal Code. The accused-appellant was the 1st accused before the High Court, Rupasinghe Arachchige Naveen Aruna Perera was the 2nd accused and Daluwatta Patabendige Siripala was the 3rd accused.

They were indicted in the high court of Colombo on 11.12.2008. According to the indictment, the 1st accused-appellant was indicted on counts 1, 4 and 7.

Count nos. 2, 3, 5, 6, 8 and 9 were preferred against the 2nd and 3rd accused persons and both of them were acquitted by the learned High Court Judge after the conclusion of the trial.

At the trial, 6 witnesses gave evidence on behalf of the prosecution namely; Sunil Suriyaarachchi (PW 01), Nimal Kanthi Vithana (PW 03), Noel Dunken Ranasinghe Gunasekara (PW 04), Sarathchandra Kumara Vithana (PW 05), Manager, Commercial Bank, Kotahena (PW 07) and S.I. Piyathilaka from CID (PW 08).

The accused-appellant was convicted of counts number 1,4 and 7 and sentences imposed by the court were as follows:

Sentence for count number 1 - 3 years' rigorous imprisonment and a fine of Rs 25,000/ in default, 1 year' simple imprisonment.

Sentence for count number 4 - 3 years' rigorous imprisonment and a fine of Rs 25,000/ in default, 1 year' simple imprisonment.

Sentence for count number 7 - 3 years' rigorous imprisonment and a fine of Rs 25,000/ in default, 1 year' simple imprisonment.

Being dissatisfied with the said conviction and sentence, the appellant had preferred this appeal to the Court of Appeal seeking to set aside the conviction and sentence imposed upon him.

The charges in the indictment on count Number. 1, 4 and 7 refer to the commission of an offence of cheating punishable in terms of section 403 of the Penal Code. It is the main argument of the accused-appellant that the learned Trial Judge has failed to analyse, assess and evaluate the evidence of the prosecution witnesses and thereby failed to address his mind to the most important main ingredient of the offence of cheating. The relevant facts relating to the proof of deceiving of Sunil Suriyaarchchi (PW 01) by the accused-appellant before the delivery of money to the accused-appellant.

According to the complainant Sunil Suriyaarachchi, he has a vehicle sale centre at Nawala. He imports vehicles from Japan and also buys vehicles from Sri Lanka to sell. Sunil Suriyaarachchi had got to know the 1st accused-appellant and handed over money on eight occasions to the 1st accused-appellant to import vehicles. For three years they had been doing business and the 1st accused-appellant had promised to import vehicles from Singapore. Whenever he gave money, the 1st accused used to hand over a cheque for the same amount to the complainant. In the beginning, the 1st accused had imported and handed over the vehicles to the complainant.

Section 398; the offence of cheating as described in the Penal Code is as follows;

> 398: Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation, or property, or damage or loss to the Government is said to "cheat".

In the aforesaid count numbers 1, 4 and 7, it is very important to note that count no. 1 refers to date 21.02.2005. Count number 4 refers to the date 28.07.2005 and count number 7 refers to the date 03.10.2005. In all the said charges according to the indictment it was stated that the accused-appellant had deceived the complainant, Sunil Suriyaarachchi by promising him to return a sum of money of Rs.1.35 million, Rs.700,000 and Rs.1 million respectively, which amount, the accused-appellant had received from the complainant to return with a profit.

About the charges in the indictment, although money had been paid no vehicles had been handed over by the accused-appellant. When the complainant informed the accused that he was going to deposit the cheques, the accused had informed him that he would bring the money. But as no money was handed over to him, the complainant had deposited the money.

All the cheques were dishonoured owing to the lack of funds in the accused-appellants account. According to the complainant the cheque had been obtained as security for his money. When the vehicle was handed over to him by the accused, he returned the cheque. When the complainant handed over Rs. 1,350,000/- to the accused he had received a cheque for the same amount. On several occasions, the complainant had requested for the vehicles, accused had promised the same but he had not given a vehicle nor had he returned the money.

The money had been handed over by the complainant on 2005.02.21 in the bank. Even after the 1st instance, the complainant had handed over money owing to the trust he had in the 1st accused-appellant. On all the occasions money had been handed over to the 1st accused-appellant by the complainant. Since the accused was a known person identifying the accused-appellant in court was no issue. The complainant while giving evidence specifically says, as he was promised by the accused that he would bring the vehicles or hand over the money that the complainant paid to the accused on several occasions.

It is evident that the complainant personally known the accused-appellant for a period over 1 1/2 years and had done several financial transactions during that period. The complainant is a businessman who sells vehicles imported from Japan and did trade in Sri Lanka. The accused-appellant is also a person who imports vehicles from Singapore and the complainant had given money on several occasions to the accused-appellant as loans, expecting a profit or a higher amount than what is given to the accused-appellant. When the accused-appellant obtains money on such promise he has given a cheque to the loaned amount as a guarantee to be kept with the complainant until such time the face value plus the additional amount as profit or interest are repaid to the complainant.

Witness number 1 clearly states in his evidence that he was requested not to bank the aforesaid cheques and only to retain them as a guarantee for the return of the money. According to him during the past period, several such transactions have taken place and after the payment of money as expected by him, the amount loaned plus additional amount, all cheques issued and kept as guarantees had been handed over to the accused-appellant without banking.

Learned counsel for the accused-appellant argued that from the beginning of the trial, it was contended that the said transaction of giving money was purely a civil transaction. The accused-appellant did not deceive the complainant. Therefore, there is no false pretence and there exists no inducement to deliver the money to the accused-appellant as both of them had prior consent, prior approval, agreed terms and agreed on an amount before the stipulated transactions in all the aforesaid counts in the indictment. Such transactions had also taken place between the same parties on many earlier occasions as testified by the complainant.

appellant says that it is not possible to deceive the same person namely, witness number 1 on 21.02.2005, on 28.07.2005 and on 03.10.2005, three occasions repeatedly on the same basis or pretext.

ප්‍ර : පැ 1 පෙන්වා සිටී.
පැ 1 චෙක්පත තමාට දීල තිබෙන්නේ 2005.02.21 දින?

උ : ඔව්.

ප්‍ර : ඒ කියන්නේ තමාගේ සාක්ෂිය පරිදි මේ චෙක්පත්වලට අදාල රුපියල් දහතුන් ලක්ෂ පනස් දහසක මුදල තමා විසින් දීලා තිබෙන්නේ මේ දිනයේ?

උ : එසේය

ප්‍ර : 2005.02.21 දින ?

උ : ඔව්.

ප්‍ර : පැ 3 පෙන්වා සිටී
පැ 3 චෙක්පතට අදාල මුදල තමා දීලා තිබෙන්නේ කවදාදා?

උ : දුන්නේ ස් වාමීනි, මේ චෙක් එකට පසුව දීපු එකක්

ප්‍ර : මේ චෙක් එක තමා දීල තිබෙන්නේ කවදාද?

උ : 25 දින

ප්‍ර : මාසය?

උ : අප්‍රියෙල්

ප : කොයි අවුරුද්දේද?
උ : 2006
ප : පැ 2 පෙන්වා සිටී
පැ 2 දුන්නේ කවදාද?
උ : 28.08.2005
ප : පැ 1 කියන චෙක්පතට අදාල මුදල මේ විත්තිකරුට දීල මාස 5 කට පසු නේද?
උ : එහෙමයි.
ප : පැ 1 චෙක්පතට අදාල මුදල දහතුන් ලක්ෂ පනස්දහසක මුදල ලැබුණේ නැහැ?
උ : නැහැ
ප : තමාගේ සාක්ෂිය පරිදි තමා මාස 5 කට පසු නැවත වරක් ලක්ෂ 7ක් දුන්නා?
උ : දුන්නා ස්වාමීනි
ප : මේ පෙබරවාරි මාසයේ සිට ජූලි මාසය වන කල් වෙන ගනුදෙනු කිසිවක් සිදු උනේ නැද්ද?
උ : සිදු උනා
ප : කීයක් විතරද?
උ : ගනුදෙණු 8ක් 9ක්
ප : සාක්ෂිකරු, තමා මේ විත්තිකරුට පැ. 1 චෙක්පත මගින් 2005.02.21 දින දහතුන් ලක්ෂ පනස් දහසක් දුන්නාට පසු පැ 2 චෙක්පතට අදාල ලක්ෂ 7, මාස 7ක් අතර කාලය තුළ දුන්නා.
උ : ගනුදෙනු කලේ නැහැ
ප : පෙබරවාරි මාසේ මේ මුදල දුන්නාට පසු මාස 7කින් ඊළඟ මුදල දුන්නා?
උ : එච්චර කාලයක් නැහැ
ප : සාමාන්‍යයෙන් කොපමන කාලයක් බලා සිටියාද දෙනවා කියලා?
උ : මාස 5ක් 6ක් පමණ?
ප : ජූලි මාසේ වන කොට මාස 5ක් පසු වෙලා තිබෙනවා තමා නැවතත් විත්තිකරුට දුන්නා ලක්ෂ 7ක්?
උ : මීට කලින් විශ්වාසයට දීලා තිබෙනවා. ඒ මුදල් ගෙවා තිබෙනවා.

While under cross-examination, the complainant categorically stated that accused was given money by him as he promised to bring vehicles for sale and hand over his share. When a vehicle was sold, the complainant was paid more than the amount that he had given to the accused. Several other witnesses were called on behalf of the prosecution to corroborate the prosecution case. All witnesses corroborated the complainant's version.

In this case, the accused-appellant by deceiving the complainant had induced the complainant, to part with his money. The accused at the beginning bought vehicles from the money handed over by the complainant. By doing this he had induced the complainant to part with his money. When the complainant handed over more money the accused had not imported any vehicle. By doing so, the accused had cheated the complainant. The definition of cheating in section 398, clearly fits into the facts of the case.

The component elements of the offence are as follows;

- the deception of any person by the accused;
- the carrying out of the deception fraudulently or dishonestly;
- through the deception, inducing the person deceived;

(i) to deliver any property to any person, or
(ii) to consent that any person shall retain any property, or
(iii) to do or omit to do anything which he would not otherwise do or omit;

the causing of loss or damage, or the likelihood of causing loss or damage, of the end envisaged, to the person deceived or to the Government because of the act or omission contemplated by element;

- the distinguishing characteristic of the offence of cheating resides in the element of depriving a person of his property using deception. The essence of deception, in this context, can be explained as follows:

  To deceive is to cause to believe whether is it an indispensable element of the offence that the complainant should have been deceived.

It is quite clear that on a charge of obtaining goods or money by false pretences, no conviction is possible unless it is shown that the mind of the prosecutor was misled by the false pretence and that he was thereby induced to part with this money or good.

A conviction of cheating is necessarily vitiated if the complainant is shown to have had an independent opportunity of verifying the truth of the accused's representation. The issue is whether, in a situation of this kind, the complainant should be treated as having accepted the risk that the accused's representation turns out to be false. By what means must the accused induce a mistaken belief or impression in the complainant's mind? Our law contains no restriction in this regard. Any form of visible representation is sufficient. The deception may have been practised by spoken or written words or even by conduct. Thus, the tender of the cheque may be construed prima facie as a representation that funds are available out of which the cheque could be honoured.

Deception may be established not only by a positive act of commission but even by an omission on the part of the accused. Non-disclosure may be tantamount to deception in some circumstances. Our law contains an explicit provision that "A dishonest concealment of facts is a deception within the meaning of this section."

I think it was the duty of the accused under the circumstances to disclose the fact of the seizure. If he does not disclose it and he must have known he was not entitled to charge the property, the fair inference is that he fraudulently and dishonestly suppressed the fact of the seizure. I am not prepared to assent to the proposition that any person who, in the course of a transaction with another, fails to disclose any circumstances which might if known, have an effect on the conduct of the other party to the transaction, is guilty of cheating.

This concept is explained in P. S. A Pillai's Criminal Law (12th Edition at pages 814 to 819.) It is as follows:

'It is important to note that dishonest intention should be present at the time of making the promise. It is necessary to consider that for the offence of cheating to be made out, the inducement by the accused to the complainant must have been made in the initial or early part of the transaction itself. What is important is to prove that, at the time that the person

induced was made to part with money, the accused person ought to have known that their representation was false and that the representation was made to deceive the other person. If this is not shown, then the dispute is only civil. The fact that after the transaction, the accused person did not honour their promises would only create civil liability, and criminal liability cannot be fastened on the accused.'

A very succinct elaboration of the scope of the definition of cheating is to be found in the judgment of the Supreme Court in Hari Sao v State of Bihar 1970 AIR 843, 1970 SCR (2) 823. In this case, the essential ingredients of cheating were explained very well. The appellants were alleged to have dishonestly induced the station master of Sheonarayanpur Railway Station to make an endorsement in the railway receipt of false particulars. The accused had obtained allotment of an entire rail wagon for the proposed consignment of 251 bags of chillies to Calcutta.

The accused themselves had loaded the wagon. A day after the wagon had been sealed and made ready for dispatch, some seals were found broken. The railway authorities checked the wagon and found only 197 bags, filled with chaff and not chillies, as mentioned in the railway receipt, which was countersigned by the station master. The prosecution's case was that this was part of a conspiracy to, later on, convert the rail receipt as valuable security, thereby committing the offence punishable under section 420 of the Indian Penal Code.

The Supreme Court, while considering the case, elaborated on the essence of s 415 as follows:
...

"a person is said to cheat when he by deceiving another person fraudulently or dishonestly induces the person so deceived to deliver any property to him or to consent that he shall retain any property or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he was not so deceived and which act or omission causes or is, likely to cause damage or harm to that person in body, mind, reputation or property."

In Ram Jas v State of Uttar Pradesh 1974 AIR 1811, 1971 SCR (2) 178, the Supreme Court enumerated the essential ingredients required to constitute the offence of cheating as follows:

(1) There should be fraudulent or dishonest inducement of a person by deceiving him;

(2) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or

(b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

(3) in cases covered by (2) (b), the act or omission should cause or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

"Cheating" is defined in section 415 of the Indian Penal code, which can be put in its analytical form thus:

Whoever, by deceiving any person:

(1) fraudulently or dishonestly induces the person so deceived;

(a) to deliver any property; or

(b) to consent that any person shall retain any property; or

(2) (a) intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(b) which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property is said to "cheat".

In cheating, there should first of all be deception. Through this deception, a man is deceived or cheated in two ways as indicated in (1) and (2) at the outset. In (1), the victim is induced to deliver property. This delivery is indeed brought about as the result of fraudulent and dishonest means used by the accused.

In (2), there is no delivery of property, but the victim is intentionally induced to do or omit to do anything which he would not do or omit, if, he was not induced, in short, he is induced to do something to his prejudice. Here, the inducement need not be fraudulent or dishonest; it is enough if it is intentional.

Thus, section 415 of the Indian Penal code has two alternate parts, while in the first part the person must `dishonestly' or 'fraudulently' induce the complainant to deliver any property, in the second part, the person should intentionally induce the complainant (the person so deceived) to do or omit to do a thing. To put in other words, in the first part, inducement must be dishonest or fraudulent. And in the second part, inducement should be intentional. 'deception' is a common element in both parts.

It is, however, not necessary that deception should be by express words but it may be by conduct or implied like transaction itself. The main ingredients of section 415 of the Indian Penal code which have to be proved to obtain a conviction for cheating are;

(1) for the First Part:

(a) the accused deceived some person;

(b) by deception he induced that person;

(c) the above inducement was fraudulent and dishonest, and

(d) the person so induced delivered some property to or consented to the retention of some property by any person, and

(2) for the Second Part:

(a) the accused deceived some person;

(b) the accused thereby induced him;

(c) such inducement was intentional;

(d) the person so induced did or omitted to do something;

(e) such act.

The evidence of PW 01 indicated that money lending transactions have not been restricted to the dates mentioned in counts number 1, 4 and 7. There had been a series of transactions of similar nature prior to the dates specified in the aforesaid charges.

It proves very well considering the following evidence;

(Page 57 of the brief)

ප්‍ර : ඒ අනුව ඒ තැනැත්තාට වාහන ගෙන්වීමට මුදල් දුන්නාම තමාට චෙක්පත් ලබා දුන්නා කිව්වා?

උ : මම දෙන මුදල්වලට ඇපකරයක් වශයෙන් චෙක්පත් දෙනවා.

ප්‍ර : ඒ අනුව වාහනය ගෙනාවට පසු සාමාන්‍යයෙන් ඒ චෙක්පත් මොකද කරන්නේ?

උ : සමහර වෙලාවට කාර් එක විකුණලා දුන්නම එම චෙක්පත් ලබා දෙනවා.

ප්‍ර : තමාට මොකද්ද තිබෙන ලාබය?

උ : සාමාන්‍යයෙන් ඒ ගිය වියදමට වැඩිය රු. 25,000/- වගේ ලැබෙනවා මට වාහනයකට.

ප්‍ර : තමා කිවුවා, එවැනි ගනුදෙණු 15ක් පමණ වුනා කියලා?

උ : ඔව්.

ප්‍ර : ඒ සියලු අවස්ථා වලදී තමා ලබාදුන්න මුදලට සමාන චෙක්පත් තමාට ලබා දුන්නාද ඇපකරයක් විදියට?

උ : ඔව්. මට සල්ලි ලැබුණට පසු අදාල චෙක්පත් එයාට දුන්නා.

(Page 58 of the brief)

ප්‍ර : කොයි අවස්ථාවකවත් චෙක්පත් බැංකු ගත කරන්න කියල කිවුවාද?

උ : නැහැ. එසේ කිව්වෙ නැහැ

ප්‍ර : මේ චෙක්පත් දුන්නෙ ඇපයක් විදියට නේද?

උ : ඔව්.

ප්‍ර : ඒ චෙක්පත් කාගේ නමින්ද නිකුත් කර තිබෙන්නේ?

උ : කෑෂ් කියල දුන්නේ

ප්‍ර : ඒ දිනය සඳහන් කර තිබේද?

උ : මාස එකක් දෙකක් විතර සඳහන් කර තිබෙනවා

The witness (PW 01) admitted that he had not kept business documents, in respect of these transactions. In my view that it is very suspicious why he so carelessly handled the said transactions in that way.

(Page 56 of the brief)

ප්‍ර : අවස්ථා 8 කදී ලක්ෂ 81ක් දුන්නාද? කොපමණ මුදලක් දුන්නාද කියල කියන්න මතකයේ තිබෙද?

උ : සාමාන්‍යයෙන් ලක්ෂ 20 ක් වගේ. හරියට මතක නෑ.

ප්‍ර : තමා මේ ගණුදෙනුව තමාගේ ව්‍යාපාර ගනුදෙනුවල ලේඛණගත කර තිබෙනවාද?

උ : නැත

ප්‍ර : ගිණුම්ගතකර තිබෙනවාද?

උ : ඔව්.

ප්‍ර : තමා සාක්ෂි දෙන්න නිශ්චිත ගනුදෙණු ලේඛණ තිබෙද?

උ : ලේඛණ තබාගෙන නැහැ.

ප්‍ර : එසේනම් තමාට කෙසේද මතක තිබෙන්නේ?

උ : සල්ලි මම දෙනකොට මට චෙක්පත් දුන්නා. එම චෙක්පත් අනුව මට මුදල මතකයි

It is very important to note that the witness (PW 01) admitted in the cross-examination that the money was given according to an oral contract as agreed and that the money was given as a loan to earn a profit.

(Pages 91, 92, 93, 94 of the brief)

ප්‍ර : තමන් විජේරාජන්ට මුදල් දීමේ පරමාර්ථය වුනේ බැංකුව විසින් ඔබට දෙන මුදල්වලට වඩා වැඩි පොලියක් එම මුදලට ලබා ගැනීමට ද?

උ : එහෙමයි.

ප්‍ර : අනුන්ගේ සල්ලි තමන් අරගෙන, විජේරාජන්ට දුන්නේ වැඩි පොලියක් ලබා ගැනීමටද?

උ : වැඩි මුදලක් ලබා ගැනීම.

ප්‍ර : බැංකුවට මුදල් දැම්මහම බැංකුවෙන් දෙනවට වැඩිය අමතර මුදලක් දෙනවාද?

උ : බැංකුව අඩු ගණනක් දෙන්නේ

<u>අධිකරණයෙන්</u>

ප්‍ර : බැංකුව අඩු පොලියක්ද දෙන්නේ?

උ : ඔව්.

ප්‍ර : එතකොට විජයරාජන් වැඩි මුදලක් දෙනවාද?

උ : ඔව්.

ප්‍ර : තමන්ට වැඩි පොළියක් ගන්න තමා විජයරාජන්ට දුන්නේ?

උ : මම පොළියට දෙන්නේ නැහැ.

ප්‍ර : තමන්ට විජයරාජන්ගේ කම්පැණි එකේ ෂෙයාර්ස් තියෙනවද?

උ : මට නැහැ.

ප්‍ර : තමන් විජයරාජන් එක්ක එකතු වෙලා වාහන ගෙනාවද?

උ : මම ගෙනාවෙ නෑ.

ප්‍ර : තමන්ට කිවුවොත් තමන් විජේරාජන්ට මුදල් දුන්නේ ණයට කියල ඒක හරිද?

උ : ණයට තමයි මුදල් දෙන්නේ, ලාභයක් ගන්න.

The learned counsel for the accused-appellant argued that the witness (PW 01) in answering to number of questions by the prosecution, avoided purposely to use the word "interest" and instead preferred to use the words "additional amount". But in the cross-examination his hidden intention was clearly shown that he gave money to obtain a higher interest from the accused-appellant.

On evidence led in this case, it is abundantly clear that the main ingredient of the offence of cheating "deception" has not been practised by the accused-appellant towards the complainant. When the accused-appellant made a dock statement he had stated that he paid all monies due to the complainant and the complainant failed to return the cheques.

learned counsel for the accused-appellant further argued that in the hope of obtaining a higher amount of money as commission, PW 01 had made the false complaint to the police and gave false evidence in court. The cheque marked "P I" to the value of Rs. 1.35 million according to the evidence of the complainant has not been presented to the bank for encashment; vide page 81 of the brief. It was suggested to the witness by the defence that the reason for the non-banking of the cheque was since the amount mentioned in the cheque was paid to the complainant by the accused-appellant. That evidence corroborated the evidence of the accused-appellant made in the dock statement that he paid all monies due to the complainant.

The complainant (PW 01) in his evidence testified that he did not make any payment to the other witnesses, from whom he borrowed the money. But the prosecution witness number 3 Nimalakantha Withana (PW 03) in his evidence on pages 128, 129 and 130 of the brief testified that he has received part of the money and further said that he had received it on several occasions in instalments of Rs. 25,000/-.

When questioned by the court, the witness said that he is not asking for the repayment of the money. This indicates that the complainant (PW 01) has purposely lied in court. The complainant had not kept any books of accounts nor produced documentary evidence concerning financial transactions the complainant has had with the accused-appellant as admitted in his evidence. If the accused-appellant did not honour the payment secured by his cheques given as a guarantee to the complainant he could make use of them to file civil litigation in civil court to recover if any amount of money was due. This transaction could be

considered a civil transaction and therefore criminal liability cannot be imposed on the accused-appellant as the prosecution failed to prove the intention to cheat and thereby dishonestly induces the person deceived to deliver any property to the complainant.

Thus, I decided that the prosecution fails to prove beyond reasonable doubt that the accused-appellant did deceive the complainant.

In the circumstances, it is my view that the accused-appellant had not committed the offence of cheating as stated in counts 1,4 and 7 of the indictment.

Owing to the above circumstances, this Court is of the view that the learned trial Judge has lamentably failed in evaluating the entirety of the evidence that was before him and therefore, the convictions of the appellant is quashed.

Accused-appellant is acquitted.

Appeal allowed.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree.

Judge of the Court of Appeal