

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST**

**REPUBLIC OF SRI LANKA**

In the matter of an Appeal under Article 154 P (6) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Public Health Officer,  
Thalawa.

**Complainant**

Court of Appeal Case No: **CA / PHC/  
198/2016**

High Court Anuradhapura Case No:  
**19/2015**

Magistrate Court Thabutthegama  
Case No: **27265**

Vs.

R.M.K Mahindaratna,  
No.16, Kalundagama,

**Accused**

**AND**

R.M.K Mahindaratna,  
No.16, Kalundagama,

**Accused – Appellant**

Vs.

3. Public Health Officer,  
Thalawa.

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

**Complainant – Respondent**

**AND NOW**

R.M.K Mahindarathna,

No.16, Kalundagama,

**Accused – Appellant – Appellant**

3. Public Health Officer,

Thalawa.

4. Hon. Attorney General,

Attorney General's Department,

Colombo 12.

**Complainant – Respondent –  
Respondent**

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel – Dr. Thashira Gunathilake

Instructed by Buddika

Alagiyawanna for the

Respondent – Appellant

- Appellant

Priyani Abeygunawardana

SSC for the Attorney General.

Argued On – 20.01.2022

Decided On – 22.02.2022

**MENAKA WIJESUNDERA J.**

The instant application has been filed to set aside the order of the learned High Court Judge of Anuradhapura dated 30 of November 2016.

The accused petitioner (hereinafter referred to as the petitioner) has been charged in the Magistrates Court under 18 (1) of the Food act for allegedly storing a stock of tamarind which was not suitable for human consumption.

Upon the conclusion of the trial the learned Magistrate had convicted the petitioner and the High Court also had affirmed the said order of the Magistrate.

The Counsel for the petitioner submitted to Court that the alleged substance retained by the petitioner,

- 1) Does not fall within the definition of the Food act,
- 2) That there is no authorized person in the area in which the petitioner is supposed to have committed the offences,
- 3) The alleged tamarind taken in to custody does not fall within the meaning of the regulations made in the gazette notification no 637/18.

The main offence committed by the petitioner is that he had contravened section 2 of the act and thereby committed an offence under section 18 of the Act, section 2 of the act prohibits manufacture importation, sale and distribution of food which are not suitable for human consumption.

Therefore the **term food** had been defined in **section 33 of the act**.

But according to the provisions of the act the relevant minister also can make regulations and have to be gazette for implementation. According to the offences

defined in the said act a person who contravenes a regulation also commits an offence.

Hence the main contention of the petitioner is that the regulations made by way of gazette notification 637/18, tamarind is defined to be without seed, but the tamarind retained by the petitioner had been with seed.

But according to the provisions of the act the term food had been very clearly defined and tamarind clearly falls within that meaning with or without seed. The act had been enacted for the purpose of regulating, controlling, manufacturing, sale and distribution of food, and regulations are made to facilitate the said matter.

Hence section 33 of the act defines what a food item is and what the regulation has done is to define the term tamarind, but the broader perspective of section 33 of the principle act does not exonerate the petitioner merely for the reason that the tamarind he had stored does not fall within the meaning of the regulation 637 because the act has been enacted by parliament, and none other.

Hence if the petitioner had stored tamarind with seeds or without in unsuitable conditions for human consumption he had committed an offence under the provisions of the act.

Therefore this Court sees no merit in the submission that the tamarind retained by the petitioner was not a food item as per the regulations hence the learned High Court Judge has misinterpreted the Food Act.

The other contention is that there was no person in authority to obtain a license for storing is also unfounded for the reason that if a person in authority has not been appointed as per the act, the medical officer of the area becomes an authorized person according to the provisions of the act.

Hence this Court sees no merit in the application of the petitioner as such the application is hereby dismissed.

**Judge of the Court of Appeal.**

**I agree.**

**Neil Iddawala J.**

**Judge of the Court of Appeal.**