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

In the matter of an application for revisions and restitutio in integrum of the order dated 31.01.2014 made by the learned High Court Judge of Colombo court No 06 in Provincial High Court Case No HCMCA 66/2010 in terms of article 138 and 145 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Officer in Charge,
Police Station,
Pettah.

Complainant

Vs.

Court of Appeal Application No:
CA**/ PHC/APN/112/14**

High Court of Colombo
No: **HCMCA/66/10**

Magistrate's Court of
Maligakianda
No: **20370/10**

Nizar Mohammed Nizarthir
117, Pityegedera, Ridigama
Kurunegala

Defendant

And

Ceylon Tobacco Company PLC
178, Srimath Ramanathan Mawatha,
Colombo 15

Appellant

Vs.

1. Officer in Charge
   Police Station
   Pettah

2. Nizar Mohammed Nizarthir
   117, Pityegedera, Ridigama
   Kurunegala

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

Respondents

And now between

Nizar Mohammed Nizarthir
117, Pityegedera, Ridigama
Kurunegala

2nd Respondent – Petitioner

Vs.

1. Officer in Charge
   Police Station
   Pettah

1st Respondent-Respondent

3.Hon. Attorney General
Attorney General's Department
Colombo 12

3rd Respondent – Respondent

Ceylon Tobacco Company PLC
178, Srimath Ramanathan Mawatha,
Colombo 15

Appellant – Respondent

BEFORE	:	Menaka Wijesundera J Neil Iddawala J
COUNSEL	:	L. M. K. Arulanandane, PC with L. Kulatunge and Meth Perera for 2nd Respondent – Petitioner Chathurangi Mahawaduge, SC for the State Ranjan Mendis with Chinthaka Kulathunga, Shyamantha Bandara and Keshan Gajasinghe instructed by Ahoka C. Kandambi for the Appellant – Respondent.
Argued on	:	24.02.2022
Decided on	:	30.03.2022

Iddawala – J

This is an application for revision and *restitutio in intergrum* filed on 12.09.2014 against the order of the High Court dated 31.10.2014 which enhanced the sentence of the petitioner (on appeal) imposed by the learned Magistrate of Maligakanda in Case No 20370/10 on 04.03.2010. Aggrieved by the said enhancement, the petitioner has preferred the present application impugning the order of the High Court dated 31.10.2014.

The petitioner was the accused in MC case No 20370/10 for committing offences under the Tobacco Tax Act No 8 of 1999 (as amended) – *hereinafter the Act*, for dealing with 3000 packets of counterfeit John Player Gold Leaf cigarettes. Petitioner pleaded guilty and was convicted where the learned Magistrate imposed a fine of Rs. 25,000, the default of which would sentence the petitioner

for 3 months Rigorous Imprisonment. An appeal against the sentence was filed in High Court by the Ceylon Tobacco Company PLC (CTC). CTC claimed that it is the sole person, whether corporate or otherwise, granted a Certificate of Registration for the manufacture of cigarettes under and in terms of the Act within Sri Lanka. In the said appeal, CTC referred to the maximum punishment envisioned by the Act, stating that the learned Magistrate has erred in merely imposing a fine of Rs. 25,000. During oral arguments of the appeal before the High Court, the petitioner was not represented and an order enhancing the sentence was delivered on 31.01.2014. By the said order, the learned High Court Judge sentenced the petitioner for 2 years Rigorous Imprisonment suspended for ten years and imposed the maximum fine of Rs. 1 million with a default sentence of 1-year Rigorous Imprisonment.

As such, the primary contention to be determined by this Court is whether the impugned order dated 31.01.2014 is plagued with any irregularity amounting to an exceptionality that warrants the invocation of the revisionary jurisdiction of the Court of Appeal.

A starting point to such determination is the Penalty Section of the Act as amended by Amendment Act, No. 9 of 2004. Thus, Section 15 (1) of the Act stipulates the following:

> *"Every person guilty of an offence under this Act shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding one million rupees **or** to imprisonment of either description for a term not exceeding five years."* (Emphasis Added)

The intention of the legislature in formulating Section 15(1) of the Act is clear, that is every person guilty of an offence under the Act, upon conviction, will be liable to a fine **or** will be liable for imprisonment. The statute does not envision a situation where both a fine and a term of imprisonment is imposed. This is evident even in the Sinhala text of the Act, where Section 15(1) reads as follows:

15. (1) මේ පනත යටතේ වරදකට වරදකරු වන සෑම තැනැත්තකුම, මහේස්ත්‍රාත්වරයෙකු ඉදිරියේ පැවැත්වෙන ලඝු නඩු විභාගයකින් පසු වරදකරු කරනු ලැබූ විට රුපියල් දශලක්ෂයක් නොඉක්මවන දඩයකට හෝ අවුරුදු පහකට නොවැඩි කාලයකට දෙයාකාරයෙන් එක් ආකාරයක බන්ධනාගාරගත කරනු ලැබීමට හෝ ඒ තැනැත්තා යටත් වන්නේ ය. දණ්ඩනය.

When tracing the legislative history of the Act, Section 15 has but one amendment in 2004. That too deals with Sub Section (2) rather than Sub Section (1) which is applicable to the instant matter.

At this juncture, it is pertinent to refer to the following observations by Her Ladyship Justice Shirani Bandaranayake in **Attorney General and Others v Sumathipala (2006) 2 SLR 126** - *"it is to be taken as a fundamental principle standing as it were on the threshold of the whole subject of interpretation, that the plain intention of the legislature, as expressed by the language employed is invariably to be accepted and carried into effect, whatever may be the opinion of the judicial interpreter of its wisdom or justice. If the language admits of no doubt or secondary meaning, it is to be obeyed"*

Similarly, in **Maxwell on the Interpretation of Statutes** (12th Edition at page28), states *"The first and most elementary rule of construction is that is to be assumed that the word and phrases of technical legislation are used in their technical meaning if they have acquired one, and otherwise in their ordinary meaning, and second is that the phrase and sentences are to be construed according to the rules of grammar".*

Whenever the legislative language is plain and definitive, yielding to one meaning alone without ambiguity, courts are bound to enforce the same, however harsh or inadequate it seems. Section 15 of the Act has entrusted the courts with broad discretion to impose either a term of imprisonment or a fine when a person is found guilty under the Act. After the conclusion of the summary trial, the judge is empowered to determine the most suitable punishment based on the facts and circumstances of each case. The only caveat in such a use of discretion is that

its exercise must not be arbitrary or made in a fanciful manner. It should be sound and guided in law.

When interpreted in its plain meaning, Section 15 of the Act does not give rise to any harshness or inadequacy. It gives two options to the judge: either to impose a fine or a term of imprisonment. The impugned order has been misguided to impose both a fine and a term of imprisonment when the legislature only intended to impose one or the other. Such an interpretation of Section 15 of the Act is an absurdity and contrary to common sense. Therefore, it is the considered view of this Court that the imposition of both a fine and a term of imprisonment is a grave misconstruction of the plain and unambiguous stipulations of law as contained in Section 15 (1) Tobacco Tax Act No 8 of 1999 (as amended).

This Court see no reason to interfere with the sentence of the learned Magistrate dated 04.03.2010. The imposition of a fine of Rs. 25,000 is within the ambit of the discretion of the Magistrate and a party cannot insist on the imposition of the maximum penalty envisioned by a statutory provision unless compelling reasons are provided. An aggrieved party is in no way entitled by way of a right to demand the maximum punishment. Such party can only make a request and the final determination lies with the judge where he uses his discretion depending on the facts of each case. The Law stipulates that upon conviction, an accused will be liable to a fine not exceeding one million rupees or to imprisonment of either description for a term not exceeding five years. The learned Magistrate in the instant matter, after accepting a plea of guilt by the petitioner at the first instant, has opted to impose a fine and has set the quantum of such fine as Rs. 25,000/. There is no irregularity in this sentence. Nothing has been presented to this Court to say that the petitioner was a repeat offender of similar offences or any other offence.

In summation, the instant application deals with the discretion of the learned Magistrate in imposing a fine upon conviction of an offence as per Section 15(1) of the Tobacco Tax Act No 8 of 1999 (as amended), based on the facts and circumstances of the case. This Court see no reason to interfere with the use of discretion by the learned Magistrate.

Judgment of the High Court dated 31.01.2014 is hereby set aside and sentencing by the Magistrate on 04.03.2010 is affirmed.

Application allowed.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL