

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

In the matter of an Appeal in terms of article 138 and 154P (3) (b) of the Constitution and section 9 and 10 of the High Court of Provinces (Special Provisions) Act No. 19 of 1990.

Ranasinghe Arachchige Thilangani Chandrasena Herath nee Perera

No. 400 /60 / 9, Londern Avenue,

Bullers' Road,

Colombo 07.

Court of Appeal Case No:

CA (PHC) 183 / 2014

High Court of Colombo Case No:

HC RA 85 /2012

Magistrates of Mt – Lavinia Case

No: **45660**

Plaintiff

Vs.

1. Golden Key Credit Card Co. Ltd,

No.2, R.A. De Mel Mawatha,

Colombo 04.

2. Lalith Kothalawala,

No. 13, De Fonseka Avenue,

Colombo 04.

3. Kavan Perera,
No. 516/A, Pannipitiya Road,
Pallawatta, Battaramulla.

4. Sisilia Kothalawala,
No.13, De Fonseka Avenue,
Colombo 04.

5. Suramya Karunarithna,
Victory Gardens,
Hokandara North,
Hokandara.

6. Niranjan Fernando,
No.42, 1st Lane,
New Town 2,
Batakaththura
Piliyandala.

7. Sarada Sumanasekara,
927/15/A,
Udawaththa Road,
Malambe.

8. Daniel Jegosothy,
No. 2, R. A. De Mel Mawatha,
Colombo 04.

9. Padmini Karunanayaka,
The Finance Co. Ltd,
55, R.A. De Mel Mawatha,
Colombo 04.

10. Bandula Ranaweera,
Asian Finance Co. Ltd,
R.A. De Mel Mawatha,
Colombo 04.

Accused

AND BETWEEN

Ranasinghe Arachchige Thilangani
Chandrasena Herath nee Perera
No. 400 /60 / 9, Londern Avenue,
Bullers' Road,
Colombo 07.

Plaintiff – Petitioner

Vs.

1. Golden Key Credit Card Co. Ltd,
No.2, R.A. De Mel Mawatha,

Colombo 04.

2. Lalith Kothalawala,
No. 13, De Fonseka Avenue,
Colombo 04.

3. Kavan Perera,
No. 516/A, Pannipitiya Road,
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No.13, De Fonseka Avenue,
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Victory Gardens,
Hokandara North,
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6. Niranjan Fernando,
No.42, 1st Lane,
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Batakaththura
Piliyandala.

7. Sarada Sumanasekara,
927/15/A,
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8. Daniel Jegosothy,
No. 2, R. A. De Mel Mawatha,
Colombo 04.

9. Padmini Karunanayaka,
The Finance Co. Ltd,
55, R.A. De Mel Mawatha,
Colombo 04.

10. Bandula Ranaweera,
Asian Finance Co. Ltd,
R.A. De Mel Mawatha,
Colombo 04.

Accused – Respondent

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

Respondent

AND NOW BETWEEN

1. Daniel Jegosothy,
No. 2, R. A. De Mel Mawatha,
Colombo 04.

2. Padmini Karunanayaka,
The Finance Co. Ltd,
55, R.A. De Mel Mawatha,
Colombo 04.

3. Bandula Ranaweera,
Asian Finance Co. Ltd,
R.A. De Mel Mawatha,
Colombo 04.

**Accused – Respondent –
Appellants**

Vs.

1. Ranasinghe Arachchige
Thilangani Chandrasena Herath
nee Perera

No. 400 /60 / 9, Londern Avenue,
Bullers' Road,
Colombo 07.

Plaintiff – Petitioner – Respondent

2. Golden Key Credit Card Co.
Ltd, No. 2, R.A. De Mel Mawatha,

Colombo 04.

3. LalithKothalawala,
No. 13, De Fonseka Avenue,
Colombo 04.

4. KavanPerera,
No. 516/A, Pannipitiya Road,
Pallawatta, Battaramulla.

5. Sisilia Kothalawala,
No.13, De Fonseka Avenue,
Colombo 04.

6. Suramyakarunaratna,
Victory Gardens,
Hokandara North,
Hokandara.

7. Niranjan Fernando,
No.42, 1st Lane,
New Town 2,
Batakaththura, Piliyandala.

8. Sarada Sumanasekara,
927/15/A,
Udawaththa Road,
Malambe.

**Accused – Respondent –
Respondent**

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

Respondent – Respondent

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: F. Musthapha, PC with T. Machado for the Appellants.

Dulindra Weerasuriya, PC with Malindu Pasan for the Complainant
Petitioner – Respondents.

B. Kumarasinghe for the 2nd Accused – Respondent – Respondent.

Saman Liyanage with Krishantha Elpitiya for the 3rd Accused –
Respondent – Respondent.

Asitha Vipulanayake with Hemantha Mohottiarachchi for the 8th
Accused – Respondent – Respondent.

Dilan Ratnayake, SDSG for the state.

Argued on: 28.03.2022

Decided on: 24.05.2022

MENAKA WIJESUNDERA J.

The accused-respondent-appellant (hereinafter referred to as the appellant), have filed this revision application to set aside the judgment dated 07/11/2014 of the High Court.

In the instant case, the complainant by the name of R.A.T Chandrasena Herath had filed a private plaint in the Magistrate Court of Mount Lavinia under Section 136 (1) (a) of the Code of Criminal Procedure Code (hereinafter referred to as CCP). On 30/006/2009, the complainant has informed the Magistrate that she would be proceeding only against the first to the tenth respondents who are parties to the present application. Therefore, the MC proceedings have been instituted by a depositor against the directors of the Golden Key Company under Sections 103, 389, 386 and 392 of the Penal Code.

Thereafter, the Attorney General had proceeded to file an indictment in the High Court against the directors under Section 391 of the Penal Code and the Golden Key Company has been named as the aggrieved party that is on the basis that the accused on the indictment committed criminal breach of trust, with the Company's money entrusted to them as servants.

But the Magistrate Court action deals with the grievance of a one particular depositor. The said depositor's money is also embedded in the aggregate money of the Golden Key Credit Card Company; her complaint is limited only to her deposit.

Thereafter, the first to the third accused have taken up an objection before the Magistrate that a private plaint cannot proceed when an indictment has been filed regarding the same transaction. The Magistrate had overruled the objection and had fixed the matter for trial, being aggrieved by the said order, the said appellant had appealed to the High Court and the High Court had dismissed the appeal and then directed the Magistrate to proceed in the

trial. The Magistrate had been informed of the order and he had laid by the case until the conclusion of the indictment against the directors of the company is concluded, being aggrieved by the said order, a revision application had been filed on the basis that:

- (1) The Criminal Procedure Code has not provided for a criminal case to be laid by.
- (2) The charges in the plaint are not included in the indictment.
- (3) The learned High Court Judge had delivered his order on 07/11/2014, which the instant impugned order is directing the Magistrate to take up the trial. Therefore; the instant appeal is against the said order.

The President's Counsel for the appellant have taken up an objection quoting Section 393(7) of the CCPA that when an indictment has been filed the charge in the indictment seizes to be triable by the Magistrate.

Section 393(7) of the CCPA amended by Act No 52 of 1980 empowers the Attorney General to directly forward an indictment to the High Court or to direct the Magistrate to hold a preliminary inquiry to obtain evidence for any offence specified by him in order to file indictment. **But this does not preclude the Magistrate from continuing with a summary trial in the Magistrate's Court as long as the charges are not identical.**

In the instant case, the private plaint has been filed by a depositor based on her complaint alleging that the directors of the Golden Key Company misappropriated her deposit. Therefore, it is limited only for that purpose. But in the High Court, it is the Company which has complained against the Directors. **Hence, the charges are filed in the two forums from two different perspectives.** Therefore, we are unable to agree with the above-mentioned contention of the President's Counsel for the appellant.

The next objection taken up by the President's Counsel for the appellants, is that, the Magistrate cannot comply with Section 139 of the CCPA because the act complained of in the plaint is on the same subject matter as in the indictment. **But, as this Court has not agreed with the previous contention of the appellants, the instant objection does not arise.**

The third submission made on behalf of the appellants is that, in the Supreme Court in SCFR 191 of 2009, there was a repayment plan submitted by the Attorney General for the Golden Key to repay the depositors in a fundamental rights application. Therefore, the said repayment formula is binding on parties involved in the private plaint because the complainant in the private plaint is also a beneficiary in the FR matter.

But this Court notes that, **the Attorney General has not given any undertaking that criminal charges against any party in the instant matter would be terminated in view of the repayment plan in the FR matter.** Furthermore, it is also noted that what has taken place in the FR matter is the **formulation of a repayment plan and not the adjudication of facts pertaining to a criminal procedure. As such, we are unable to agree with the said submission of the learned president counsel.**

As such, for the reasons stated above, **we are unable to uphold any of the objections raised by the learned President's Counsel.** Therefore, we see **no exceptional reason to set aside the order dated 07/11/2014 of the learned High Court Judge.** As such the instant revision application is dismissed.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.

