

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

In the matter of an application in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Ruwan Prabath Abeyweera
Gunawardana,

Court of Appeal Case No:
CA (PHC) 164 /2018

No. 302/6, Gonamaditha Road,
Piliyandala.

Accused

High Court of Colombo Case No:
HC MCA 38/2017

Vs.

Magistrates' Court of Nugegoda
Case No: **78690**

Financial Crimes Investigation Unit
4,

Criminal Investigations Department,
Colombo 01.

Complainant

AND BETWEEN

Ruwan Prabath Abeyweera
Gunawardana,

No.302/6, Gonamaditha Road,
Piliyandala.

Accused – Appellant

Vs.

1. Financial Crimes Investigation Unit
4,

Criminal Investigations Department,

Colombo 01.

2. Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Complainant – Respondents

AND NOW BETWEEN

Ruwan Prabath Abeyweera
Gunawardana,

No.302/6, Gonamaditha Road,
Piliyandala.

Accused – Appellant – Petitioner

Vs.

1. Financial Crimes Investigation
Unit 4,

Criminal Investigations Department,

Colombo 01.

2. Hon. Attorney General,

Attorney General's Department,

Colombo 12.

**Complainant – Respondents –
Respondents**

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Varuna Nanayakkara for the Appellant – Petitioner.

Chathurangi Mahawaduge, SC for the Respondents.

Argued on: 09.02.2023

Decided on: 28.03.2023

MENAKA WIJESUNDERA J.

The instant revision application has been filed to set aside the order dated 5.6.2018 of the learned High Court Judge Colombo.

In the instant matter the accused appellant petitioner (hereinafter referred to as the petitioner) has been charged in the Magistrate Court under the provisions of the Debt recovery act for handing over 3 cheques to the complainant when his bank account has had no money in the account.

The contention of the petitioner is that he and the petitioner had been engaged in business for a long time as such he was in the habit of handing over blank cheques placing only his signature as security. Hence his position is that merely placing the signature on a blank cheque is not an offence.

The learned High Court Judge had stated that the three cheques which had been handed over to the complainant by the petitioner is an admission that the cheques were handed over to the complainant which amounts to an offence with which the petitioner had been charged with.

According to the evidence led at the trial the petitioner had admitted that he had handed over the cheques but he had paid all the monies due to the complainant and the cheques were issued as a form of security.

Hence the petitioner had stated that the amount in the cheques were put by the complaint and that he never expected the complainant to do so.

But the learned High Court Judge had observed that if the cheques were given as security and had the petitioner paid the full amount to the petitioner the most prudent thing the petitioner should have done was to get the cheques back from the complainant.

Hence upon considering the submissions of both parties it is the considered view of this Court that the section upon which the petitioner had been charged with reads as follows,

“If a person who draws a cheque knowing that there are no funds or not sufficient funds in the bank to honor such cheque.....is guilty of an offence....”

Hence in the instant matter the petitioner and the complainant had admitted the fact that the alleged cheques issued by the petitioner were issued at the time when the petitioners’ bank had no money, and there is no dispute that they were issued by the petitioner. But the position of the petitioner is that he had issued the cheques as a form of security and the petitioner had settled all the monies due to the complainant. The petitioner had led evidence before the Magistrate that the petitioner had paid all monies due to the complainant. But the learned Magistrate and the High Court Judge had failed to consider the same and had held that issuing cheques at the time

when the bank account had no funds constitutes an offence under the instant act.

But according to many a cases so far decided it has been held that merely because a cheque bounces it does not constitute a criminal offence if it is proven the purpose of issuance and the intention of the person who had issued it. This we observe had been placed before Court in evidence which the learned judges had overlooked.

Hence we are unable to agree with the findings of the learned High Court Judge and the Magistrate and as such the instant application for revision is allowed and the orders of the Magistrate and the learned High Court Judge are hereby set aside.

Judge of the Court of Appeal.

Neil Iddawala J.

I agree.

Judge of the Court of Appeal.