

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

In the matter of petition of appeal in terms
of Section 331 (1) of the code of Criminal
Procedure Act No. 15 of 1979.

P.W.D. Edwin Wasantha Kumara

ACCUSED - APPELLANT

Colombo HC 7702/06

CA 12/2004

Vs

The Hon. Attorney General

Attorney General's Department

Colombo 12.

COMPLAINT – ATTORNEY GENERAL

BEFORE

: Deepali Wijesundera J.

: L.U. Jayasuriya J.

COUNSEL

: Sumith Senanayake for the

Appellant

Dilan Ratnayake DSG for AG

ARGUED ON

: 18th November, 2016

DECIDED ON

: 15th December, 2016

Deepali Wijesundera J.

The accused appellant was indicted in the High Court under sec. 403 of the Penal Code and was convicted and sentence to a term of 5 years RI and a fine of Rs. 2,500/= was imposed for both counts. This appeal has been filed against the said convictions and sentence.

Heard both counsels in respect of their cases. The case of the prosecution is that the appellant used to purchase glass wear from the complainant and used to issue post dated cheques. The appellant has issued two cheques to the value of Rs. 261,346/= and Rs. 425,649/= and when these cheques were presented to the bank the complainant was informed that the account holder has stopped payment. The two letters sent to the bank by the accused appellant were marked as **P1a and P3a** and the cheques were marked as **P1 and P3**.

The learned counsel for the accused appellant argued that the appellant used to buy glass wear from the complainant and used to issue postdated cheques and that there had been a practice to return the damaged items and to get a refund from the money given. We find that there is no evidence to show that there had been damaged items which

were returned by the appellant and the dues have been settled. The complainant in the course of his evidence has admitted that there has been a practice in the trade to return damaged items but has not admitted specifically that the accused appellant has returned damaged items.

The learned Deputy Solicitor General referred to *sec. 73 of the Bills of Exchange Act* and said that a cheque is an instrument payable on demand. He further stated that on presentation of the cheque to the bank there has to be money in the account to pay. The learned Deputy Solicitor General further stated that the dishonest intention of the accused appellant is proved by his subsequent conduct after giving the cheques which was shown by **P1a and P3a**, the two letters issued to the bank to stop payment without informing the complaint.

Sec. 73 of the Bills of Exchange Act states;

"A cheque is a bill of exchange drawn on a banker payable on demand.

Except as otherwise provided in this Part, the provisions of this Ordinance applicable to a bill of exchange payable on demand apply to a cheque".

The accused appellant has issued the cheques knowing very well that there weren't enough funds to honour them. This is proved by the accused appellant writing to the bank to stop payment. He has not informed the complainant to whom the cheques were given for the goods taken. This clearly shows his dishonest intention.

When the complainant was testifying in the High Court his position had been that the two cheques were given as security (vide page 92 of the brief). In the dock statement the accused appellant has failed to state that the cheques were given as security. We find that the learned High Court Judge has dealt with the above position in detail in his judgment. As stated by the learned High Court Judge the dishonest intention of the accused appellant has been proved beyond reasonable doubt in the High Court.

For the afore stated reasons we decide to affirm the judgment of the High Court dated 18/03/2004 and dismiss the appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

L.U. Jayasuriya J.

I agree.

JUDGE OF THE COURT OF APPEAL