

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

In the matter of an Application under Article 138 of  
the Constitution.

Madduma Dodangodage Nilantha Premakumara

Prisoner No. Q 13138

Welikada Prison,

Baseline Road,

Colombo 09.

PETITIONER

CA/MC/Rv. No.22/2016

-Vs-

1. The Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.
2. The Commissioner General of Prisons,  
Prisons Headquarters,  
Baseline Road,  
Colombo 09.
3. The Superintendent,  
Welikada Prison,  
Baseline Roads,  
Colombo 09.

RESPONDENTS

BEFORE

:

A.H.M.D. Nawaz, J.

COUNSEL : Kalyananda Tiranagama for the Petitioner  
Nayomi Wickremasekara, SSC for the Respondent

Written Submissions on: 13.11.2018 (for the Petitioner)  
11.02.2019 (for the Respondent)

Decided on : 30.05.2019

A.H.M.D. Nawaz, J.

In this revisionary application the Petitioner seeks the revision of an order of a sentence made by the Magistrate's Court, *Moratuwa* in Case No.17883 on 14.12.2012. By way of this order the learned Magistrate brought into operation suspended sentences and re-enforced some other sentences which had not been suspended.

**Magistrate's Court, Kesbewa**

The Petitioner was convicted and sentenced by the Magistrate of *Kesbawa* in the following cases:-

Case No.	Offence/Count	Date of Conviction/Sentence
1. M.C. Kesbewa 45517		11.01.2012 / 25.01.2012
	Count (1) Cheating	- 8 months R.I - Suspended for 12 years
	Count (2) Criminal misappropriation	- 6 months R.I - Suspended for 12 years
		Rs. 100,000 compensation - 6 months in default
2. M.C. Kesbewa 45813		11.01.2012 / 25.01.2012
	Count (1) Cheating	- 9 months R.I - Suspended for 12 years
	Count (2) Criminal misappropriation	- 9 months R.I - Suspended for 12 years
		- Rs. 100,000 compensation - 8 months in default

3. M.C. Kesbewa 46617

19.07.2012 / 09.08.2012

Count (1) breach of trust

- 1 year R.I - Suspended for 12 years

- Rs. 100,000 compensation - 9 months in default

These sentences were suspended by the learned Magistrate, *Kesbewa*.

#### **Magistrate's Courts of Wattala and Kalutara**

The Petitioner was convicted and sentenced by the Magistrate of *Wattala* and *Kalutara* in the following case:-

Case No.	Offence/Count	Date of Conviction/Sentence Sentence
----------	---------------	--------------------------------------

1. M.C. Wattala 65392

24.04.2012 / 24.04.2012

Count (1) Cheating

- 2 years R.I - Rs. 840,100/-

- Rs. 1500/- fine - 6 months in default

Case No.	Offence /Count	Date of Conviction/Sentence Sentence
----------	----------------	--------------------------------------

2. M.C. Kalutara 04972

03.09.2012 / 15.10.2012

Count (1) Cheating

- 6 months R.I - Rs. 445,000/-

- Rs. 1500/- fine

Count (2) Obtaining money for

providing foreign employment -Rs 5000/- fine - 3months in default

- Rs. 1000,000 compensation - 6 months in default

#### **Magistrate's Court, Moratuwa**

The following conviction was entered against the Petitioner on 09.11.2012 by the Magistrate of *Moratuwa*.

Case No.	Offence/Count	Date of Conviction/Sentence Sentence
----------	---------------	--------------------------------------

1. M.C. Moratuwa 17883

09.11.2012 / 14.12.2012

Count (1) Cheating - 3 months R.I - Rs. 575,000/-

Count (2) Criminal misappropriation - 3 months R.I

Count (3) Cheating with a cheque - 3months R.I

It has to be remembered that these offences for which the Petitioner was convicted and sentenced in the Magistrate's Court of *Moratuwa* were for offences committed in June 2010.

As shown by the charge sheet in the case record in Magistrate's Court of *Moratuwa* Case No.17883, the Petitioner had been charged under 3 counts in respect of the offences of cheating, criminal misappropriation and cheating by way of a cheque and the Petitioner was sentenced to 9 months' rigorous imprisonment in the aggregate. As it is apparent upon the warrant of commitment, marked as P6A and a copy of the proceedings marked P6B, the Court had made an order reviving the suspended sentences imposed by the *Kesbewa* Magistrate's Court in 3 cases, namely, M.C. *Kesbewa* 45517, 45813 and 46617 on 25.01.2012 and 09.08.2012.

In the said 3 cases in the *Kesbewa* Magistrate's Court, the Magistrate has sentenced the Petitioner to 3 years and 10 months' rigorous imprisonment and suspended the sentences for 12 years.

This imposition of the sentences had taken place on 25.01.2012 and 09.08.2012. In each of the said cases, the Petitioner was also ordered to pay Rs. 100,000/- as compensation with default sentences running up to 23 months. It has been brought to the notice of this Court that as the Petitioner could not pay the compensation that had been ordered, he has been serving default sentences since 25.01.2012. It would appear that the Petitioner did not commit any offences after the imposition of the said suspended sentences. If at all, the offences for which the Petitioner was convicted by the Magistrate's Court, *Moratuwa* were committed in June 2010-which is a date long prior to the imposition of the suspended sentences. Under Section 303(4)(6) of the Code of Criminal Procedure Act No.15 of 1979 (the CPC), a suspended sentence becomes operative only where a person has committed another offence during the operational period of the suspended sentence and is convicted and sentenced to imprisonment for the subsequent offence.

The CPC Section 303(4)-An offender sentenced to suspended imprisonment shall not serve any part of the suspended imprisonment unless-

- (a) During the operational period, the offender commits another offence the statutory penalty for which is, or includes, imprisonment; and
  - (b) A court makes an order under subsection (13).
- 5) The operational period shall be calculated with effect from the date of the order suspending the whole or part of the sentence.
- 6) If during the operational period an offender is sentenced to imprisonment for another offence committed prior to the commencement of the operational period, the operational period continues to elapse while the offender is serving the sentence. See Code of Criminal Procedure (Amendment) Act No. 47 of 1999.

As I said before, the offence for which the Petitioner was convicted was committed in June 2010, long before he was imposed the suspended sentences in *Kesbewa* Magistrate's Court in January 2012. It is quite clear that the Petitioner had committed this offence long before the suspended sentence was imposed on him in the *Kesbewa* Magistrate's Court in January 2012. Therefore, the learned Magistrate in the Magistrate's Court of *Moratuwa* could not have legally enforced the suspended sentences. In the circumstances, it is an illegality which is liable to be set aside in the revisionary jurisdiction of this Court. The learned Counsel for the Petitioner, Mr. Kalyananda Tiranagama also brought to the notice of this Court, another erroneous order made by the Magistrate's Court of *Moratuwa*. The learned Magistrate had erroneously re-imposed the sentences given by the Magistrate's Court, *Wattala* in Case No.65392 and the Magistrate's Court, *Kalutara* in Case No.07972 treating them as suspended sentences. The sentences imposed by the Magistrate's Court of *Wattala* and *Kalutara* in the said 2 cases were not suspended sentences at all. The Petitioner was in fact serving these sentences.

As a consequence of these erroneous orders, I find that the Petitioner has been compelled to serve each of these sentences twice. It clearly appears from the letter of the Superintendent of *Kalutara* Prison dated 02.02.2016 addressed to the Registrar,

Magistrate's Court, *Moratuwa* filed in the M.C. *Moratuwa* Case No.17883 that the prison authorities are in fact enforcing each of these sentences twice as orders made by the *Wattala* and *Kalutara* Magistrate's Court and as orders made by *Moratuwa* Magistrate's Court, on the basis that the sentences that have been activated are suspended sentences.

Nayomi Wikramasekara, Senior State Counsel appearing for the Attorney General accepted this position that this is an illegality since the sentences that are activated are not suspended sentences at all.

In the circumstances, I proceed to quash the erroneously made orders made by the Magistrate's Court, *Moratuwa* in Case No.17883. As a result, the orders made by the learned Magistrate enforcing the sentences imposed in M.C. *Kesbewa* Cases Nos.45517, 45813 and 46617, M.C. *Wattala* Case No.65392 and M.C. *Kalutara* Case No.04972 are set aside and they will be of no effect as far as this Petitioner is concerned. Accordingly, I allow the revision application of the Petitioner.

JUDGE OF THE COURT OF APPEAL