

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

Officer in Charge,
Police Station,
Pannala

Complainant

V.

Court of Appeal Case No.
CA PHC APN 17/19

Adhikari Mudiyanseelage Suraj Sanjeewa,
No 14/1, Kuliyaipitiya Road, Pannala.

HC Kuliyaipitiya Case No.
HCR 20/2018

Accused

AND

MC Kuliyaipitiya Case No.
32513

Adhikari Mudiyanseelage Suraj Sanjeewa,
No 14/1, Kuliyaipitiya Road, Pannala

Accused Petitioner

V.

Officer in Charge,
Police Station,
Pannala

1. Complainant Respondent

Hon. Attorney General,
Attorney General's Department,
Colombo 15.

2. Respondent

AND NOW BETWEEN

Adhikari Mudiyanseelage Suraj Sanjeeva,
No 14/1, Kuliyaipitiya Road, Pannala

Accused Petitioner

V.

Officer in Charge,
Police Station,
Pannala

Complainant Respondent

Hon. Attorney General,
Attorney General's Department,
Colombo 15.

Respondent

BEFORE

: **K.K. WICKREMASINGHE, J**
K. PRIYANTHA FERNANDO, J

COUNSEL

: Tenny Fernando for the Petitioner.
Nayomi Wickramasekara SSC for the
Respondent.

ARGUED ON

: 21.06.2019

JUDGMENT ON

: 24.09.2019

K. PRIYANTHA FERNANDO, J.

01. The Accused-Petitioner-Petitioner (Petitioner) was charged in the Magistrate's Court of Kuliyaipitiya in case No. 32513 for committing an offence punishable under section 78 (5) of the Poisons, Opium and Dangerous Drugs Ordinance.
02. On 12.06.2017 Petitioner tendered an unconditional plea of guilty that was recorded and moved for time to make sentencing submissions. On 31.07.2017, Petitioner moved further time to make submissions and on 04.09.2017 Petitioner filed an affidavit moving to withdraw his previous unconditional plea of guilty. On 15.02.2018 learned Magistrate has delivered the order refusing the application of the Petitioner to withdraw his earlier plea of guilty.
03. Being aggrieved by the said order of the learned Magistrate, Petitioner preferred an application to the High Court of Kuliyaipitiya to get the order of the learned Magistrate revised. The learned High Court Judge, for given reasons refused the revision application on 08.01.2019 without issuing notice to the Respondents. Being aggrieved by the said order of the learned High Court Judge, the instant application was filed by the Petitioner to get both orders of the learned Magistrate and the learned High Court Judge revised.

04. I have carefully considered the application by the Petitioner, objections filed by the Respondents and submissions made by counsel for both Petitioner and the Respondents.
05. Counsel for the Petitioner submitted that the learned Magistrate erred in law by not allowing the Petitioner to withdraw his earlier plea for the reasons set out in the affidavit.
06. Proviso to Section 183(1) of the Code of Criminal Procedure Act provides for withdrawing of a plea in the Magistrates' Court. Section reads;

"If the accused upon being asked if he has any cause to show why he should not be convicted makes a statement which amounts to an unqualified admission that he is guilty of the offence of which he is accused, his statement shall be recorded as nearly as possible in the words used by him; and the Magistrate shall record a verdict of guilty and pass sentence upon him according to law and shall record such sentence:

Provided that the accused may with the leave of the Magistrate withdraw his plea of guilt at any time before sentence is passed upon him, and in that event the Magistrate shall proceed to trial as if a conviction has not been entered."

07. Proviso to section 183 (1) makes it clear that the withdrawal of the plea has to be with the leave of the Magistrate. It is the discretion of the Magistrate whether to grant leave or not. As to how a Judge should use his discretion was discussed in case of ***Fathima Rinsa and another V. Attorney general CA(PHC) 48/2009***, 30.03.2019. In that case Court referred to case of ***Wijewardene V. Lenora 60 NLR 457 at 463*** where Court said;

“The mode of approach of an appellate Court to an appeal against an exercise of discretion is regulated by well established principles. It is not enough that the judges composing the appellate Court consider that, if they had been in the position of the trial Judge, they would have taken a different course. It must appear that some error has been made in exercising the discretion. It must appear that the Judge has acted illegally, arbitrarily or upon a wrong principle of law or allowed extraneous or irrelevant considerations to guide or affect him, or that has mistaken the facts, or not taken into account some material consideration. Then only can his determination be reviewed by the appellate Court.”

08. In the instant case, admittedly, the plea of guilty by the Petitioner had been unequivocal. Nowhere the Petitioner says that he was misled or that he could not understand the charge. The reason adduced in the application for withdrawal of his guilty plea is that later he found that the sentence imposed would affect his employment. The learned Magistrate has not acted illegally or arbitrarily. He has not acted upon a wrong principle of law. Hence, the learned High Court Judge had no reason to interfere with the order of the learned Magistrate.

09. Counsel for the Appellant submitted that the learned Magistrate has failed to comply with section 182 (1) of the Code of Criminal Procedure Act. In that, counsel submitted that the learned Magistrate has failed to sign the charge sheet.

10. A similar situation was discussed in case of *Imiyagamage Gunawathie V Attorney general CA (PHC) 139/2009* 09.10.2018.

In that case Court found that although the learned Magistrate has not put his signature on the charge sheet, he had signed the journal entry, which showed that the learned Magistrate has framed the charge.

11. The main requirement and the purpose of a charge is that the Accused must understand what he is charged for. In the instant case there is a charge sheet filed of record. The Petitioner has produced a certified copy of the same. Certified copy of the journal entry dated 12.06.2017 filed by the Petitioner clearly indicates that the learned Magistrate has read and explained the charge to the Petitioner. Petitioner has pleaded guilty and the learned Magistrate has signed the journal entry. This position is not challenged by the Petitioner. Petitioner admits that he was charged and that he pleaded guilty to the charge unconditionally (paragraphs 2 and 3 of the petition). Therefore, it is admittedly clear that the learned Magistrate has acted in terms of section 182 (1) of the Code of Criminal Procedure Act. The learned Magistrate merely not putting his signature underneath the charge sheet does not mean that he has violated section 182(1). In this case it has not caused any prejudice to the Petitioner.

In the above premise, I find no reason to interfere with the order of the learned High Court Judge dated 08.01.2019, and the order of the learned Magistrate dated 15.02.2018.

Application is dismissed.

JUDGE OF THE COURT OF APPEAL

K.K. WICKREMASINGHE, J

I agree.

JUDGE OF THE COURT OF APPEAL