

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI**

**LANKA**

**Supreme Court Case No: SC  
Appeal 20/2021**

High Court of Panadura Case

No:

31/2018

Magistrate Court of Moratuwa

Case No:28151

***In the matter of an application for Special  
Leave to Appeal in Terms of Article 128 of  
the Constitution of the Democratic  
Socialist Republic of Sri Lanka.***

Officer-In-Charge,

Special Crime Investigation Unit,

Police Station, Moratuwa.

**Complainant**

**Vs.**

Rasika Deepal Bandara Dissanayake,

No. 154, Uduwerella,

Gampaha.

**Accused**

AND NOW

Rasika Deepal Bandara Dissanayake,

No. 154, Uduwerella,

Gampaha.

**Accused-Appellant**

**Vs**

1. Hon. Attorney General,

Attorney General's Department,

Colombo 12.

**Respondent**

2. Officer-In-Charge,  
Special Crime Investigation Unit,  
Police Station, Moratuwa.

**Complainant-Respondent**

AND NOW BETWEEN

Rasika Deepal Bandara Dissanayake,  
No. 154, Uduwerella,  
Gampaha.

**Accused-Appellant-Appellant**

**Vs**

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

**Respondent-Respondent**

2. Officer-In-Charge,  
Special Crime Investigation Unit,  
Police Station, Moratuwa.

**Complainant-Respondent-Respondent**

**BEFORE** : **B. P. ALUWIHARE, PC, J.**  
**MURDU N. B. FERNANDO PC, J.**  
**S. THURAIRAJA, PC, J.**

**COUNSEL** : Shehan De Silva with Hemal Seneviratne for the Accused-  
Appellant- Appellant.  
Sajith Bandara, SC for the Hon. Attorney General

**WRITTEN SUBMISSIONS:** Accused- Appellant -Appellant on 6<sup>th</sup> July 2021 and 1<sup>st</sup> and 2<sup>nd</sup> Respondents-Respondents on 23<sup>rd</sup> of June 2021.

**ARGUED ON:** 6<sup>th</sup> May 2022.

**DECIDED ON:** 30<sup>th</sup> September 2022.

**S. THURAIRAJA, PC, J.**

The Accused–Appellant-Appellant namely, Rasika Deepal Bandaranayake Dissanayake (hereinafter referred to as the “Appellant”) preferred an appeal from the order of the High Court of Panadura, case bearing No. 31/2018.

**Facts in brief**

The Appellant was attached to a firm called Puwakaramba Agencies as a Debt Recovery Officer. It is alleged that he had collected Rs.805,513/- from the debtors and the same was not returned to the Company. A complaint was made to the Police Station of Moratuwa and a charge sheet was filed at the Magistrate Court of Moratuwa under S.391 and S.386 of the Penal Code. After an extensive trial the Appellant was found guilty and the Learned Magistrate had imposed 6 months imprisonment and a fine of Rs. 1,500/-, in default 1 month imprisonment for the first count. In addition to the above the Learned Magistrate had imposed to pay Rs. 100,000/- to be paid as compensation to the virtual complainant in default 6 months imprisonment. Further for the second count the Appellant was found guilty and the Magistrate had imposed 6 months imprisonment and a fine of Rs. 1,500/-, in default 1 month imprisonment.

Being aggrieved with the said judgement the Appellant had appealed to the High Court of Panadura under case bearing no. 31/2018. After the appeal the Learned High Court Judge affirmed the conviction and the sentence and dismissed the appeal. Being aggrieved by the judgement of the High Court the Appellant preferred an appeal to this Court, and the Court granted special Leave to Appeal on 22/02/2021. When the

case was taken up for argument the Counsel for the Appellant submitted that there was a civil case filed against the Appellant to recover the said money at the District Court of Moratuwa and to reconsider the sentence imposed on the Appellant.

The AAL for the Appellant filed a motion dated 24/06/2022 and submitted a copy of the order delivered by the Learned District Judge of Moratuwa in case no. DMR/3534/18 which was marked as X, and filed of record. According to the said order, both parties have agreed to settle the dispute on following conditions:

1. Rs. 850,513.28/- to be paid in open court to the Complainant. The balance of Rs. 300,000 to be paid in 20 instalments of Rs. 15,000/-. (sic)
2. If there is any default, the procedure to be followed is set out by the Learned District Judge in the said settlement order, X.

The Counsel for the Appellant brings to our notice the submissions made by the Counsel who appeared at the Magistrate Court to mitigate the sentence of the Appellant. Further the Counsel submits that the Appellant is the First time Offender and he repents and regrets the offence which he committed and he prayed for mercy of the Court.

After careful consideration of the submissions made in mitigation of the sentence at the Magistrate Court, the judgements of the Magistrate Court and the High Court and all other circumstances of this case, I affirm the conviction of the Appellant.

Regarding the sentence for the first count, the sentence imposed was 6 months rigorous imprisonment and a fine of Rs. 1,500/- and in default 1 month imprisonment is affirmed and I suspend the said sentence for a period of 10 years from today. Considering the settlement at the District Court of Moratuwa under case no. DMR/3534/18 I set aside the order for payment of compensation (Rs. 100,000/-) ordered by the Magistrate.

For the second count, I affirm the sentence of 6 months rigorous imprisonment and a fine of Rs. 1,500/- in default 1 month imprisonment and hereby I suspend the said sentence for a period 10 years from today.

For the purpose of clarity, I reproduce the sentences as follows:

First count: 6 months rigorous imprisonment and a fine of Rs. 1,500/- in default 1 month simple imprisonment. The said 6 months imprisonment is suspended for a period of 10 years from today.

Second count: 6 months rigorous imprisonment and a fine of Rs. 1,500/- in default 1 month simple imprisonment. The said imprisonment is suspended for a period of 10 years from today.

Both sentences to run concurrently.

The Magistrate is hereby directed to pronounce these sentences and to take appropriate steps to record the conviction and the sentences accordingly.

***Appeal partly allowed.***

**JUDGE OF THE SUPREME COURT**

**B. P. ALUWIHARE, PC, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**MURDU N. B. FERNANDO PC, J.**

I agree.

**JUDGE OF THE SUPREME COURT**