

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

In the matter of an application for Special Leave to Appeal against the Judgment dated 26/10/2017 delivered in the Provincial High Court of Ampara Appeal No. HC/AMP/APP/437/2016 under the Constitution of the Democratic Socialist Republic of Sri Lanka.

Officer-in-Charge,
Police Station,
Padiyatalawa.

Complainant

**SC Appeal No: 16/2018
SC (SPL) LA No. 268/2017
HC Ampara Case No.
HC/AMP/APP/437/2016
MC Dehiattakandiya No. 1780**

Vs.

Gamini Harischandrage Nandana Sisira
Kumara,
No. 28/A, Kekirihena,
Maha-Oya.

Accused

AND BETWEEN

Gamini Harischandrage Nandana Sisira
Kumara,
No. 28/A, Kekirihena,
Maha-Oya.

Accused-Appellant

Vs.

1. Officer-in-Charge,
Police Station,
Padiyatalawa.
2. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

AND NOW BETWEEN

Gamini Harischandrage Nandana Sisira
Kumara,
No. 28/A, Kekirihena,
Maha-Oya.

Accused-Appellant-Petitioner

3. Officer-in-Charge,
Police Station,
Padiyatalawa.
4. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Complainant-Respondents-Respondents

Before: **Justice Priyantha Jayawardena, PC**
 Justice A.L. Shiran Gooneratne
 Justice Mahinda Samayawardhena

Counsel: Malaka Herath instructed by Niroshi de Alwis for the **Accused-Appellant-Appellant.**

 Induni Punchihewa, SC for the **Hon. Attorney General.**

Argued on: 14/11/2022

Decided on: 25/05/2023

A.L. Shiran Gooneratne J.

This is an appeal against the Judgment of the Provincial High Court of Ampara Case No. HC/AMP/APP/437/2016.

The Accused-Appellant-Appellant (hereinafter sometimes referred to as the Appellant) was convicted and sentenced in the Magistrates Court of Dehiattakandiya in Case No. 1780 for driving a bus bearing No. EP NA - 6856 in a rash or negligent manner, and causing the death of a person which is an offence punishable under Section 298 of the Penal Code, and four other counts under the Motor Traffic Act, which stated that the Appellant;

1. failed to avoid an accident, an offence punishable under Section 149(1) read with Sections 214(1)(a) and 224 of the Motor Traffic Act
2. driving the said bus negligently or without reasonable consideration for other persons using the highway, an offence punishable under Section 151(3) read with Section 214(1)(a) and 217(2) of the Motor Traffic Act

3. driving the said motor vehicle in a manner as to cause obstruction to other traffic, an offence punishable under Section 148(1) read with Section 214(1)(a) and 224 of the Motor Traffic Act, and
4. driving the said motor vehicle on a highway recklessly or in a dangerous manner or at a dangerous speed, an offence punishable under Section 151(2) read with Section 217(1) of the Motor Traffic Act.

At the conclusion of the trial the learned Magistrate by Judgment dated 08/03/2016 convicted and sentenced the Appellant on all five counts. Prior to the sentencing, the learned Magistrate observed that the Appellant had no previous convictions.

The sentence imposed on the Appellant is found in journal entry dated 23/03/2016. The learned Magistrate has dealt with each of the five counts as charged in the following manner;

Count 1 - 12 months Rigorous Imprisonment suspended for 12 months and Rs. 1500/- fine in default 06 months imprisonment.

Count 2 - fine of Rs. 3000/- in default 01 month imprisonment.

Count 3 - fine of Rs. 15000/- in default 06 months imprisonment.

Count 4 - fine of Rs. 3000/- in default 01 month imprisonment.

Count 5 - fine of Rs. 15000/- in default 06 months imprisonment.

Thereafter the Court having considered the mitigatory circumstances pleaded on behalf of the Appellant, proceeded to cancel his driving licence. The Appellant was also ordered to pay compensation in a sum of Rs. 100,000/-.

Being aggrieved by the said conviction and sentence the Appellant by Petition of Appeal dated 06/04/2016 appealed to the Provincial High Court of Ampara (the Appellate Court). The Appellate Court by Judgment dated 26/10/2017 dismissed the Appeal subject to a variation of the fine imposed on count 2 and 4. The Appellant sought

Special Leave to Appeal from this Court and was granted leave on the following questions of law.

1. Whether the prosecution has established a charge under Section 298 beyond reasonable doubt.
2. In the circumstances of this case, is the custodial sentence imposed is excessive.
3. Has the learned High Court Judge erred in law by cancelling the driving licence.

When this matter was taken up for argument, the learned Counsel for the Appellant submitted that he would not contest the conviction entered against the Appellant by Judgment dated 08/03/2016, but would confine this application only to the sentence dealing with the cancellation of the Appellant's driving licence. It was also brought to the notice of Court and as borne out by the case record, the prison sentence imposed on count 01 by the impugned Judgement dated 08/03/2016, had been suspended by the learned Magistrate. In the aforesaid circumstances, the only question of law before this Court is to investigate into the validity of the sentence dealing with the cancellation of the driving licence.

The position of the learned Senior State Counsel is that in terms of Section 136(1)(a) of the Motor Traffic Act, the learned Magistrate was acting within the law when the cancellation of the driving licence was imposed. The learned Counsel for the State relies on Section 136(1)(a) of the said Act to substantiate her claim.

Section 136(1)(a) of the Motor Traffic Act which deals with the suspension or cancellation of driving licences, reads as follows;

- (1) Subject to the provisions of Subsection (2), any court before which a person is convicted of any offence under this Act, or of any offence under any other written law committed in connection with the driving of a motor vehicle, may in addition to any other punishment which it may lawfully impose for that offence-

- (a) if the person convicted is the holder of a driving licence issued or deemed to be issued under this Act, suspend the licence for a specified period not exceeding two years, or cancel the licence; or
- (b) if the person convicted is not the holder of a driving licence declare him to be disqualified for obtaining a driving licence for a specified period.

It is noted that the learned Magistrate when cancelling the driving licence has not referred to an offence to which such cancellation would apply, but has merely cancelled the licence, as observed in Journal Entry dated 23/03/2016.

Although the Senior State Counsel in her written submissions dated 03/07/2018 stated that, the learned Magistrate was acting within the law as defined in Section 136(1)(a) when enforcing the cancellation of the driving licence, such cancellation does not relate to any of the offences brought against the Appellant.

In terms of Subsection (2) and (3) of Section 136, a prior conviction endorsement of an offence which relates to Section 151 of the Motor Traffic Act, Section 298 of the Penal Code or correspond to the provisions of such offence/ offences is a prerequisite for a suspension or a cancellation of a driving licence to take effect.

Section 136 subsection (2) and (3) reads as follows;

- (2) Where the driving licence of any person convicted of the offence of contravening any of the provisions **of Subsections (1) and (2) of Section 151**, or of any offence in connection with the driving of a motor vehicle punishable under **Section 272 or Section 328 of the Penal Code**, contains at the time of such conviction endorsements, made after the 1st day of January, 1941, under the Motor Car Ordinance, No. 45 of 1938, **or made under this Act** in respect of *not less than two and not more than four previous convictions* of any of those offences or of the offence of contravening any of the provisions of any such enactment corresponding to the provisions of **Subsections (1) and (2) of Section 151**, the court shall either

cancel the licence or suspend the licence for a stated period, which shall be not less than six months nor more than two years; and where the licence contains at the time of such conviction endorsements so made in respect of *five previous convictions* of any of the offences aforesaid, the Court shall cancel the licence.

(3) Where the driving licence of any person convicted of any offence in connection with the driving of a motor vehicle punishable under **Section 298 or Section 329 of the Penal Code** contains at the time of such conviction endorsements, made after the 1st day of January, 1941, under the Motor Car Ordinance, No. 45 of 1938, or made under this Act, in respect of *two previous convictions of any of those offences*, the Court shall cancel the licence.

(Emphasis is mine)

Section 136 Subsection (2), deals with the suspension or cancellation of a driving licence of any person convicted of the offence of contravening any of the provisions of Subsections (1) and (2) of Section 151 of the Motor Traffic Act or of any offences in connection with the driving of a motor vehicle punishable under Section 272 or Section 328 of the Penal Code. When previous convictions of an offence contravening any of the said provisions, which are not less than two and not more than four, the Court is mandated to either cancel the licence or suspend the licence for a stated period, which shall not be less than six months nor more than two years, and at the time of such conviction where the licence contain endorsements so made in respect of five previous convictions of any of the offences aforesaid, the Court shall cancel the licence.

Subsection (3) of the said Act deals with the driving licence of any person convicted of any offence in connection with the driving a motor vehicle punishable under Section 298 or Section 329 of the Penal Code. An endorsement of such conviction, in two previous convictions of any of the said offences, the Court is mandated to cancel the licence.

Accordingly, in terms of Section 136 Subsection (2) and (3) of the said Act, in addition to any other punishment which the court may lawfully impose, the Court may impose a suspension or a cancellation of a driving licence taking into consideration, the number of previous convictions of any of the offences of contravening the provisions of Subsections (1) and (2) of Section 151 or the offence of contravening any of the provisions of any such enactment corresponding to the provisions of those sections and also of a person convicted of any offence in connection with the driving of a motor vehicle punishable under Section 298 or Section 329 of the Penal Code.

Therefore, in the instant case a cancellation of the driving licence cannot be enforced under Section 151(2) of the Motor Traffic Act or Section 298 of the Penal Code as the Appellant has no prior conviction endorsements as defined in Subsection (2) or (3) of Section 136.

The sentences imposed by Court upon conviction for the aforesaid offences committed by the Appellant is lawful. However, prior to the said cancellation, the Court was aware that the Appellant had no previous conviction endorsements. Therefore, a cancellation of the driving licence in addition to the sentences imposed as charged, is not according to law. Furthermore, the learned Magistrate when imposing the cancellation of the driving licence gave no reasons justifying the said cancellation nor made any reference to the effect that the cancellation was in addition to the sentence imposed to a particular offence to which the said cancellation related to. In the circumstances, it is abundantly clear that the learned Magistrate was not acting within the law when imposing a cancellation of the driving licence of the Appellant.

In view of this position, the third ground on which leave was granted by this Court has to be answered in the affirmative. As mentioned earlier in this Judgment the Court was not called upon to answer the questions of law No. 1 and 2. In any event for the reasons stated earlier, the second ground on which leave was granted would not arise.

Accordingly, the Order dated 23/03/2016, cancelling the driving licence of the Appellant is set aside. The Registrar of the Magistrates Court of Dehiattakandiya is directed to inform the Commissioner of Motor Traffic of the order setting aside the cancellation of the Appellant's driving licence. The Appellant may apply to the Commissioner of Motor Traffic for a new driving licence in accordance with the provisions of the Motor Traffic Act.

Subject to the said variation in sentence, the Judgment dated 26/10/2017 of the Provincial High Court of Ampara, Case No. HC/AMP/APP/437/16 is affirmed.

Appeal partly allowed. No costs ordered.

Judge of the Supreme Court

Priyantha Jayawardena, PC. J

I agree

Judge of the Supreme Court

Mahinda Samayawardhena, J

I agree

Judge of the Supreme Court