

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANK A

In the matter of an application for Special Leave to Appeal to the Supreme Court from an Order dated 9th February 2011 of the Court of Appeal in revision Application No. CA/ (PHC) APN 187/2010.

SC Appeal No. 67/2011

SC (SPL) Revision No. 187/2010

High Court Case No. HC-5309/10

Honourable Attorney-General
Attorney-General's Department
Colombo-12.

Complainant

Vs.

1. Ayiduroos Abdul Rahim
2. Shavul Hameed Nasir
3. Abdul Baffoor Amanullah
4. Sahibu Mohideen

Accused

AND BETWEEN

1. Ayiduroos Abdul Rahim
No.2, Re-settlement Village
Aajarawatta
Norochhole.
2. Shavul Hameed Nasir
No.A1, Kandakuliya
Kalpitiya.

3. Abdul Gaffoor Amanullah
Samagipura
Puttalam.

4. Sahibu Mohideen,
No.87/1, Obanbaduda Road,
Puttalam.

Accused-Petitioners

Vs.

Honourable Attorney-General,
Attorney General's Department,
Colombo-12.

Complainant –Respondent

AND NOW BETWEEN

1. Ayiduroos Abdul Rahim
No.2, Re-settlement Village
Aajarawatta
Norochchole.

2. Shavul Hameed Nasir
No.A1, Kandakuliya
Kalpitiya.

3. Abdul Gaffoor Amanullah
Samagipura
Puttalam.

4. Sahibu Mohideen,
No.87/1, Obanbaduda Road,
Puttalam.

Accused-Petitioners-Petitioners

Vs.

Honourable Attorney-General
Attorney-General's Department
Colombo 12.

**Complainant-Respondent
Respondent**

BEFORE: Priyasath Dep, PC. J
Buwaneka Aluwihare, PC J &
Sarath de Abrew, J

COUNSEL: Faiz Musthapha, PC for the Accused-Petitioners-Petitioners.
Ms. V. Hettige, SSC for the Complainant-Respondent-Respondent.

ARGUED ON: 10 -12-2014

DECIDED ON: 16 -02-2015

ALUWIHARE PC. J

The Accused-Appellants (hereinafter the Appellants) had been indicted before the High Court of Colombo for having been in possession of seven boat engines (outboard motors), exceeding fifteen horsepower, thereby violating Regulation 2 of Emergency (Restricted use of Outboard Motors) Regulation No.8 of 2006 (Hereinafter referred to as, the Regulations).

When the case came up for trial before the High Court on the 30th of November 2010, all appellants tendered an unqualified plea of guilty and the court proceeded to convict the Appellants and then were accordingly sentenced.

Each Appellant was imposed a three months term of imprisonment and a fine of Rupees five hundred thousand was imposed, with a default sentence of one year imprisonment. In addition the seven outboard motors that were in the possession of the Appellants were forfeited to the state.

The attention of this court was drawn to the Gazette Notification, bearing No.147/24 dated 29th December 2006 issued under the Public Security Ordinance (Chapter 40), under which the appellants were indicted.

In the English version of the Gazette Notification, Regulation No.6 reads as follows:-

“Any person who commits an offence under paragraph (2) of regulation 2, or paragraph (4) of regulation 3 or paragraph (2) of regulation 4 of the regulations, shall on conviction after Trial by the High Court established under Article 154P of Constitution for the Western Province Holding in Colombo , be liable to rigorous imprisonment for a term not less than three months and not exceeding five years **and** to a fine not less than Five Hundred Thousand Rupees and the outboard motor , water scooter or swimmer delivery vehicle used in or connection with the commission of the offender shall be forfeited to the Republic”.

However, in the Gazette Notification published in Sinhala Regulation No.6 read as follows:-

“ මෙම නියෝගවල දෙවන නියෝගයේ වන ඡේදය යටතේ හෝ 3 වන නියෝගයේ 4 වන ඡේදය යටතේ හෝ 4 වන නියෝගයේ 2 ඡේදය යටතේ වූ වරදක් සිදුකරන යම් තැනැත්තෙක් සිදු කරන කොළඹදී පවත්වනු ලබන පස්නාහිර පළාත සඳහා ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 154 ග ව්‍යවස්ථාව යටතේ සිදුවන ලද දඬුවම්කරණයක් වසින් පවත්වනු ලබන නඩු විභාගයකින් පසු වරදකරුවකු කරනු ලැබීමේදී මාස 3 ක නොඅඩු සහ අවුරුදු පහකට නොවැඩි කාල සීමාවක් සඳහා බරපතල වැඩ ඇතිව බන්ධනාර කිරීමකට හෝ රු 500,000 කට අඩු නොවන දඩයකට යටත් විය යුතු අතර එම වරද සිදු කිරීම සඳහා හෝ හාවිතා කරන ලද පිටපත සවි කරන ලද එන්ජින් ජල ස්කටරය හෝ පිහිනුම්කරුවන් රැගෙන යාමේ වාහනය ජන රජය වෙත රාජසන්නක කරනු ලැබිය යුතුය”.

It was contended by the learned Counsel on behalf of the Appellants that the Regulation No. 6 referred to above the Sinhala text is different to that of the English text of said Regulation. In view of the inconsistency between the Sinhala and English texts of this Regulation, it was submitted by the Counsel that the publication in Sinhala is the authoritative Regulations and it is the Sinhala Regulations that should prevail in the event of an inconsistency. In view of the above, it was contended on behalf of the Appellants that the High Court is only empowered either to impose a sentence of rigorous imprisonment for a term not less than three (3) months and not exceeding five (5) years or to a fine of not less than Five Hundred Thousand Rupees, but cannot impose both, that is, a term of imprisonment and a fine. It was submitted that the imposition of three (3) months imprisonment and the fine of Rs. 500,000/- on each of the appellants by the learned Judge of the High Court, by her order dated 30th November 2010, therefore is an illegal sentence.

When the matter came up before the Court of Appeal their Lordships made order, suspending the sentence of imprisonment of three months imposed by the High Court for a period of ten (10) years, but did not interfere with the fine of Rs. 500,000 that was imposed on each of the Appellants.

Thus the complaint in the main by the Appellants is that the Court of Appeal without considering the Regulation No. 6 of the Gazette Notifications bearing No. 1477/24 dated 24th December 2006, declined to interfere with the fine imposed on each Appellant, without giving any reasons.

Although the Appellants complain, that the Court of Appeal by its order dated 9th February 2011 suspended the sentence of imprisonment imposed on the Appellants but did not interfere with the fine imposed on each of the Appellants without any reason. It must be noted that the Appellants came before the Court of Appeal on the premise that the minimum mandatory

sentence imposed by Regulation 6 of the Emergency (Restricted use of Outboard Motors) Regulations No.8 of 2006 is unconstitutional and is in conflict with Articles 4 (c), 11 and 12 (1) of the Constitution and therefore is illegal.

In fairness to their Lordships of the Court of Appeal it must be pointed out that the case on behalf of the Appellants was presented before the Court of Appeal on the above premise, citing the decision of this court in Reference No 03/2008, wherein this court held that, a minimum mandatory sentence in a statute is in conflict with Articles 4 (c), 11 and 12 (1) of the Constitution and the High Court is not inhibited from imposing a sentence that it deems appropriate in the exercise of its judicial discretion.

It was also argued before the Court of Appeal that the sentence imposed by the learned trial judge on the Appellants was excessive, but the inconsistency of the texts in Sinhala and English versions of Regulation 6 in the relevant Gazette, was never brought to the attention of the Court of Appeal.

It is contended on behalf of the Appellants that in the event of an inconsistency between the texts of a statute or any other law, that it is the Sinhala text that would prevail and this court is inclined to accept the said argument. The learned Senior State Counsel who represented the Attorney General also subscribed to the views expressed on behalf of the appellants. Thus, as the law stands, any person convicted of an offence under paragraph (2) of Regulation 2 or paragraph (4) Regulation 3 or paragraph 2 of Regulation 4 of Emergency (Restricted use of Outboard Motors) Regulations No. 08 of 2006, is only liable to be punished with a term of imprisonment referred to therein OR with a fine not exceeding Rupees 500,000 and imposition of a term of imprisonment and a fine would certainly be an illegal sentence.

Having considered the legal position as to the sentence referred to above, I make order setting aside the order of the Court of Appeal dated 9th February 2011. The fine of Rupees 500,000 imposed on each of the appellants by the High court by its order dated 30th November 2010 is also hereby set aside. Subject to the said variation the sentence imposed by the learned High Court judge by the said order is affirmed.

It has been brought to the attention of this court that the Appellants have already served the term of three months imprisonment imposed on them. The High Court is further directed to verify this fact before the sentence is brought into operation.

The appeal is partly allowed.

JUDGE OF THE SUPREME COURT

Priyasath Dep P.C J

I agree.

JUDGE OF THE SUPREME COURT

Sarath de Abrew J

I agree.

JUDGE OF THE SUPREME COURT

