

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

In the matter of an Appeal to the Supreme
Court of Democratic Socialist Republic of Sri
Lanka.

Officer in Charge
Police Station
Welikada

Complainant

SC APPEAL 188/2016
SC SPL LA 66/2015
HIGH COURT HCMCA 323/12
MAGISTRATE COURT 980/86

Rasnayake Mudiyanse Sanjeewa
Rasnayake
Ehala Agarauda Monnekulama
Nikaweratiya

Accused

AND BETWEEN

Rasnayake Mudiyanse Sanjeewa
Rasnayake
Ehala Agarauda Monnekulama
Nikaweratiya

Accused - Appellant

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

02. Officer in Charge
Police Station

Welikada

Complainant- Respondent

AND NOW BETWEEN

Rasnayake Mudiyanse Sanjeewa
Rasnayake
Ehala Agarauda Monnekulama
Nikaweratiya

Accused-Appellant-Appellant

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

02. Officer in Charge
Police Station
Welikada

Complainant-Respondent-Respondent

BEFORE : S.THURAIRAJA, PC, J.

K.KUMUDINI WICKREMASINGHE, J.

JANAK DE SILVA, J.

COUNSEL : Harishke Samaranayake, Attorney- at- Law for Accused- Appellant-
Appellant

Madhawa Tennakoon, DSG for the Hon Attorney General.

WRITTEN SUBMISSIONS ON : By The Accused- Appellant- Appellant on
20.03.2017

By the Complainant- Respondent- Respondent on 01.02.2022

ARGUED ON : 26.08.2024

DECIDED ON : 13.02.2026

K. KUMUDINI WICKREMASINGHE, J

This application for special leave to appeal in SC Appeal No. 188/2016 and SC Appeal No. 189/2016 were preferred by the Accused-Appellant-Appellant (hereinafter referred to as the Appellant) against the judgment of the High court of Colombo dated 12.03.2015. Aggrieved by which the Accused-Appellant-Appellant appealed to the Supreme Court.

In SC Appeal No. 189/2016, the charge is under **Section 64(a)** of the **Sri Lanka Bureau of Foreign Employment Act, No 21 of 1985** read with **Section 13** of **Sri Lanka Bureau of Foreign Employment (Amendment) Act No. 56 of 2009**. In SC Appeal No. 188/2016, the charge is under **Sections 64(a) and 64(b)** of the **Sri Lanka Bureau of Foreign Employment Act, No 21 of 1985** read with **Section 13** of **Sri Lanka Bureau of Foreign Employment (Amendment) Act No. 56 of 2009**. In SC Appeal No. 189/2016, the Accused-Appellant was charged by the Complainant-Respondent-Respondent (hereinafter referred to as the 2nd Respondent) as follows:

“ඉහත නම් සඳහන් වූදින විසින් මෙම අධිකරණ බල ප්‍රදේශය ඇතුළත වූ වැලිකඩ රාජගිරියේදී 2011.02.17 දින හෝ ඊට ආසන්න දිනයක ව්‍යාජ අන්දමින් බිලු ස්කයි නමින් විදේශ රැකියා ඒජන්සියක් වැලිකඩ ප්ලාසා ගොඩනැගිල්ලේ දෙවන මහලේ අංක 52 දරණ ස්ථානයේ පවත්වාගෙන යමින් (වරකිඅම්මාන් කෝවිල පාර, කොකුවිල් බටහිර , යාපනය ලිපිනයේ පදිංචි සින්නතුරෙයි අන්නතුරෙයි යන අයට විදේශ රැකියාවක් ලබාදෙන බවට පොරොන්දු වී වංක ලෙසින් එකී තැනැත්තාගෙන් රුපියල් 2,10,000 ක මුදලක් ලබාගෙන එම මුදල නොදී වංචාවක් සිදු කිරීමෙන් 1985 අංක 21 දරණ ශ්‍රී ලංකා විදේශ සේවා නියුක්ති කායීංග පනතේ 64(අ) වගන්තිය සමඟ කියවෙන 2009 අංක 56 දරණ සංශෝධන පනතේ 13 වන වගන්තිය යටතේ දඬුවම් ලැබිය හැකි වරදක් කරන ලද බවට මෙයින් චෝදනා කරනු ලැබේ.”

In SC Appeal No. 188/2016, the charge against the Accused–Appellant is that

“ඉහත නම් සඳහන් වූදින විසින් මෙම අධිකරණ බල ප්‍රදේශය ඇතුළත වූ වැලිකඩ රාජගිරියේදී 2011.02.17 දින හෝ ඊට ආසන්න දිනයක ව්‍යාජ අත්දමින් බිලු ස්කයි නමින් විදේශ රැකියා ඒජන්සියක් වැලිකඩ ප්ලාසා ගොඩනැගිල්ලේ දෙවන මහලේ අංක 52 දරණ ස්ථානයේ පවත්වාගෙන යමින් (වරකිඅම්මාන් කෝවිල පාර, කොකුවිල් බටහිර , යාපනය ලිපිනයේ පදිංචි සින්නතුරෙයි අන්නතුරෙයි යන අයට විදේශ රැකියාවක් ලබාදෙන බවට පොරොන්දු වී වංක ලෙසින් එකී තැනැත්තාගෙන් රුපියල් 2,10,000 ක මුදලක් ලබාගෙන එම මුදල නොදී වංචාවක් සිදු කිරීමෙන් 1985 අංක 21 දරණ ශ්‍රී ලංකා විදේශ සේවා නියුක්ති කායීය පනතේ 64(අ) (ආ) වගන්තිය සමඟ කියවෙන 2009 අංක 56 දරණ සංශෝධන පනතේ 13 වන වගන්තිය යටතේ දඬුවම් ලැබිය හැකි වරදක් කරන ලද බවට මෙයින් චෝදනා කරනු ලැබේ.”

As both appeals arise from the same facts and the same legal issue, both counsel agreed that SC Appeal No. 188/2016 together with SC Appeal No. 189/2016 be argued together and to abide by one judgment.

Accordingly, this Court by order dated 19.10.2016 granted special leave to appeal on the question of law set out in **paragraph 14(iii)** stated as follows for both appeals:

“Has the learned High Court Judge erred in law by failing to consider that the learned Magistrate has not acted as per section 271 of the criminal Procedure Code where when an accused is not represented by a pleader the law casts a special burden on the trial judge to explain the prosecution case to the accused?”

Factual Matrix

The Appellant was the accused in this case before the Magistrates Court of Colombo. The 2nd Respondent alleged that on 17.02.2011, at Welikada, Rajagiriya, the Appellant operated an unauthorised foreign employment agency under the name “Blue Sky”. It was alleged that he promised to obtain a foreign visa for a person from Sitthnathurai Annathurai and dishonestly obtained a sum

of Rs. 210,000. The Appellant was charged under **64(b) of the Sri Lanka Bureau of Foreign Employment Act, No 21 of 1985** read with **Section 13 of Sri Lanka Bureau of Foreign Employment (Amendment) Act No. 56 of 2009**.

Following the amendment introduced by **Act No. 56 of 2009, Section 64(a)** of the Act provides that *‘any person who, being a licensee, charges any fee otherwise than as provided in section 51 for the purposes of providing or securing employment outside Sri Lanka for any other person, shall be guilty of an offence under this Act and shall be liable on conviction after summary trial by a Magistrate to a fine not less than fifty thousand rupees and not exceeding one hundred thousand rupees and to imprisonment of either description for a term not exceeding two years. The Magistrate shall, in addition, order the offender to refund the fee which is the subject of the offence to the person from whom such fee was received.’*

Following the abovementioned amendment, **Section 64(b)** provides that *‘any person who, not being a licensee, demands or receives or attempts to receive for himself or any other person any money for the purpose of providing or securing employment for any person outside Sri Lanka, shall be guilty of an offence under this Act and shall be liable on conviction after summary trial by a Magistrate to a fine not less than fifty thousand rupees and not exceeding one hundred thousand rupees and to imprisonment of either description for a term not exceeding two years. The Magistrate shall, in addition, order the offender to refund the money which is the subject of the offence to the person from whom such money was received.’*

The amended **Section 64** substantially enhanced the penalties, substituting the earlier fine of one thousand to one thousand five hundred rupees with a fine not less than fifty thousand rupees and not exceeding one hundred thousand rupees, together with imprisonment of either description for a term not exceeding two years. In the present case, the allegation that the Appellant, without being a licensed agent, operated an unauthorised foreign employment agency under the name “Blue Sky” and obtained a sum of Rs. 210,000 on the promise of securing

foreign employment, squarely attracts the mischief contemplated under **Section 64(b)**, as amended by **Section 13 of Act No. 56 of 2009**.

At the trial, the prosecution called six witnesses. One of these witnesses, identified as PW 6, did not testify in this case. Instead, the prosecution sought to adopt the testimony that the witness had given in another case. The Appellant contended that such adoption of evidence is not recognised under the Code of Criminal Procedure Act, No. 15 of 1979 (as amended) and is therefore unlawful.

The Appellant further stated that he had faced 22 separate cases of a similar nature. He had been convicted in 9 of them and acquitted in 13. He stated that three of the convictions were later sent for retrial because the respective charge sheets had not been read out to him. He maintained that this same defect occurred in the present case as well.

The Appellant has been in custody since 23.06.2011 the date on which he was arrested. The learned Magistrate convicted the Appellant on 27.09.2012 and imposed a sentence of two years' rigorous imprisonment.

The Appellant appealed to the High Court. The 2nd Respondent did not tender written submissions and the High Court accepted the submissions filed by the Appellant. The matter was thereafter taken up for oral argument on 30.10.2014. During oral argument, the Appellant challenged the conviction on several grounds, including the failure to read the amended charge, the failure to prove production P1 and the improper adoption of the testimony of PW 6.

After hearing submissions, the High Court fixed the matter for judgment. The case was listed for judgment on 19.12.2014. On that date, the learned High Court Judge informed the Appellant that she required certain clarifications from the State Counsel. The matter was then re-fixed for judgment on 20.02.2015.

The Appellant stated that when the case was taken up on 20.02.2015, the 2nd Respondent made fresh submissions. These included an admission that the

rubber-stamped charge sheet was unsigned. The 2nd Respondent also submitted that the Appellant had not been misled by the amended charge and that the court had no duty to appoint counsel since the Appellant had not requested legal representation.

The Appellant objected to this procedure. He stated that the acceptance of fresh submissions after the matter had been fixed for judgment was contrary to the proper appellate process. He requested that the appeal be re-listed and heard afresh. This request was refused.

On 12.03.2015, the learned High Court Judge dismissed the appeal and affirmed the conviction. The Appellant then sought Special Leave to Appeal against the judgment of the High Court . He asserted that several procedural safeguards were not followed at the trial and that the High Court failed to consider, among other matters, the obligations imposed on a trial judge under **Section 271** of the **Code of Criminal Procedure Act, No. 15 of 1979 (as amended)** when an accused person is unrepresented.

The 2nd Respondent maintained that the prosecution was properly initiated under **Section 64(b)** of the Sri Lanka Bureau of Foreign Employment Act, as amended and that the trial before the learned Magistrate was conducted in accordance with law. The Appellant, though unrepresented, proceeded to trial and was convicted after the conclusion of the prosecution case. The 2nd Respondent further asserted that the Appellant appealed to the High Court, where the appeal was dismissed on a correct evaluation of the material. With regard to the question of law on which leave was granted, the 2nd Respondent contends that **Section 271(1)** of the **Code of Criminal Procedure Act, No. 15 of 1979 (as amended)** imposes two duties on a trial judge faced with an unrepresented accused: to inform the accused of his right to give evidence on his own behalf and, if the accused elects to testify, to draw his attention to the principal points in the prosecution case. The 2nd Respondent submitted that these duties were in fact satisfied. Reliance is placed on the proceedings dated

06.09.2012, where the Appellant expressly indicated that he was ready to proceed and that he would give evidence from the witness box. According to the 2nd Respondent, this demonstrated that the Appellant understood the prosecution case and elected to testify knowingly. The 2nd Respondent therefore argued that the absence of a specific recorded explanation under **Section 271** does not invalidate the conviction, as established judicial authority recognises that the lack of explicit wording in the record does not, by itself, vitiate an otherwise fair trial.

Legal Analysis

Question of law

The question of law on which special leave to appeal has been granted is whether the learned High Court Judge erred by failing to consider that the trial Magistrate did not act in accordance with **Section 271 of the Code of Criminal Procedure Act, No. 15 of 1979 (as amended)**, when the accused was unrepresented.

Section 271 Code of Criminal Procedure Act, No. 15 of 1979(as amended)

Section 271 imposes a duty on the trial judge to explain the prosecution case to an accused who does not have legal representation. **Section 271** reads as follows:

- “(1) At every trial if and when the court calls upon the accused for his defence it shall, if he is not represented by a pleader, inform him of his right to give evidence on his own behalf and if he elects to give evidence on his own behalf shall call his attention to the principal points in the evidence for the prosecution which tell against him in order that he may have an opportunity of explaining them.*
- (2) At every trial whether evidence is called by the accused or not, the accused shall have the right of reply.*
- (3) The failure at any trial of any accused, or the husband or wife as the*

case may be of any accused, to give evidence shall not be made the subject of adverse criticism by the prosecution.”

Section 271 is designed to protect an accused who does not have a lawyer and to ensure that the trial is conducted fairly. It requires the trial judge to inform an unrepresented accused of his right to give evidence in his own defence. If the accused chooses to give evidence, the judge must explain the main points of the prosecution’s case that are adverse to him, so that he can respond properly. The section also ensures that the accused has a right of reply, whether or not he testifies and that his decision to remain silent cannot be used against him. In essence, **Section 271** safeguards the accused’s ability to understand the case, participate meaningfully in his defence and be treated fairly during the trial.

In the present case, the trial record clearly shows that the accused was informed of his right to give evidence and actively elected to do so. As noted in the appeal brief at page 48, it is recorded:

“වුදින විත්තියේ නඩුව සඳහා සුදානම් බව දන්වයි. වුදින සාක්ෂි කුඩුවෙ සිට සාක්ෂි ලබා දෙන බව දන්වයි. වුදින සාක්ෂියට කැඳවමි.”

In addition, the trial record shows that the accused actively participated in the examination of witnesses. As noted in the appeal brief at pages 21, 23 and 25, it is recorded:

“විත්තිකරුට හරස් ප්‍රශ්න ඇසීමේ අයිතිවාසිකම පහදා දෙමි. විත්තිකරු හරස් ප්‍රශ්න නොමැති බව කියා සිටී.”

This indicates that the accused was informed of his right to cross-examine the witnesses and confirmed that he had no cross-questions at certain points. These entries demonstrate that the accused was fully aware of the evidence against him and had the opportunity to challenge the prosecution’s case, thereby satisfying the substantive requirements of **Section 271**. The record shows that

the accused was able to understand the principal points of the prosecution's case, respond meaningfully and exercise his right to participate in his defence.

It is also relevant to note that the journal entry dated 24.11.2011 contains a court seal indicating that the amended charge sheet was read out to the accused. However, the entry is not signed by the learned Magistrate. A deficiency in the form of a journal entry does not, by itself, determine whether the accused understood the charge. The decisive consideration remains whether any prejudice was caused.

However, the respondents, during submissions on 30.10.2014, acknowledged that the Appellant was initially charged under **Section 64(a)** of the **Sri Lanka Bureau of Foreign Employment Act No. 21 of 1985**, but the charge sheet was later amended to **Section 64(b)**. The State admitted that the amended charge sheet was not read out to the accused and that there was no record or case note reflecting that it had been read.

“වග උත්තරකරුවන් වෙනුවෙන් කරනු දක්වයි.

ගරු මැතිණියනි, මුලින්ම මෙම වූදින අභියාචක හට චෝදනා පත්‍රයේ චෝදනාව වෙලා තිබුණේ ශ්‍රී ලංකා විදේශ සේවා නියුක්ති කායීංග පනතේ 64(අ) වගන්තිය යටතේ. නමුත් උගත් නීතිඥ මහත්මයා ප්‍රකාශ කළ ආකාරයටම එය 64(ආ) වගන්තිය යටතේ සංශෝධනය කළ බවට චෝදනා පත්‍රයෙන් පැහැදිලි වන නමුත් එම චෝදනාව නැවත එම චෝදනාව නැවත එම සංශෝධිත චෝදනා පත්‍රය වූදින හට කියවා දීමක් නොමැත යැයි කරුණු රජය පිළිගන්නවා.”(page 45 of the Appeal brief).

Although the State has conceded that the amended charge under **Section 64(b)** was not formally read out to the accused, the central question before this Court is whether that omission caused a failure of justice so as to vitiate the conviction. **Section 271** is intended to ensure fairness to an unrepresented accused. It is not meant to nullify a conviction for a mere procedural lapse in the absence of prejudice. In the present case, the trial record clearly shows that the accused was aware of the substance of the allegation against him. He actively participated

in the trial. He elected to give evidence on his own behalf. He was also afforded the opportunity to challenge the prosecution case. The evidence led by the prosecution, the defence adopted by the accused and his testimony all relate directly to the ingredients of the offence under **Section 64(b)**. This demonstrates that the accused understood the case he was required to meet. Accordingly, the failure to read out the amended charge, though an irregularity, did not occasion a miscarriage of justice. It is not of such gravity as to vitiate the conviction.

The present case bears similarities to the decision in ***The King v. Roma (129-130 D. C. (Crim.) Kalutara, 3666, 7th October 1919), 7 CWR 14*** where the accused was unrepresented and informed of his right to give evidence, but the trial judge did not call his attention to the principal points of the prosecution's case. Schneider, A.J., observed:

"I am not sure that the failure to observe the provisions of section 296 is an irregularity or omission of the kind contemplated in section 425 of the Criminal Procedure Code. It seems to me to be something more. It is an illegality. But I do not feel justified in the present case in not following the precedent of Somaliya v. Kaluwa. I would therefore dismiss the appeal."

In that case, the Court held that the conviction was **not vitiated**, as the evidence given by the accused showed that he was fully aware of the effect of the evidence against him and had not been prejudiced by the omission. The Court also referred to earlier authorities, noting that even where the record does not expressly show compliance with procedural requirements, a conviction may stand if the accused clearly understood the prosecution's case. Schneider, A.J., explicitly relied on ***Somaliya v. Kaluwa (4 CWR 121)*** and stated:

"The evidence shows that the accused [was] quite aware of the effect of evidence against them. They have not complained that they have in any way been prejudiced."

Similarly, in the present case, although certain procedural formalities under **Section 271**, such as explicitly recording that the prosecution's principal points were explained to the accused, may not have been perfectly documented, the accused actively participated in the trial, cross-examined witnesses and addressed the evidence against him. In light of ***The King v. Roma (129-130 D. C. (Crim.) Kalutara, 3666, 7th October 1919), 7 CWR 14*** these omissions do not vitiate the conviction, as the accused suffered no prejudice and was fully able to understand and respond to the prosecution's case.

The principle articulated in ***The King v. Roma (129-130 D. C. (Crim.) Kalutara, 3666, 7th October 1919) 7 CWR 14*** was further affirmed in ***Muhandiram v. Simon [1928] 30 NLR 151, (P.C. Hambantota, 8145)***, where Dalton J. considered the effect of a Magistrate's failure to strictly comply with **section 296(1) of the Criminal Procedure Code** when the accused was unrepresented. His Lordship held that "*the failure on the part of the Magistrate to comply with the requirements of section 296 (1) of the Criminal Procedure Code did not vitiate the conviction,*" where the accused's own evidence demonstrated that he had understood the principal points in the prosecution case. Dalton J. emphasised that although strict compliance with the section is important, the decisive factor is whether the accused was prejudiced. The Court observed that "*it is clear from his evidence that he understood the principal points in the evidence of the witnesses for the prosecution against him,*" and that he was "*quite aware of the effect of the evidence against him.*" Relying on ***The King v. Roma (129-130 D. C. (Crim.) Kalutara, 3666, 7th October 1919) 7 CWR 14*** and ***Somaliya v. Kaluwa (4 CWR 121)***, the Court affirmed that a conviction will not be set aside merely due to procedural omission, where the record and conduct of the accused show clear awareness of the case he had to meet. This reasoning directly applies to the present case.

The same principle was reiterated in ***King v. Joseph [1934] 36 NLR 416 (D.C. (Crim.) Colombo, 10817)***, where Dalton J. held that the mere absence of a

record indicating compliance with section 296 of the Criminal Procedure Code does not justify an inference that the section was not complied with. His Lordship observed that *“the Supreme Court will not infer from the mere fact that no record has been made that the section had not been complied with.”* The Court emphasised that where the petition of appeal does not allege non-compliance and where there is no material before Court to show that the accused was unaware of his rights, a conviction should not be disturbed. Dalton J. further held that if the provisions of the section were in fact complied with, but not recorded and *“no prejudice whatsoever has in that event been caused to the accused,”* ordering a retrial would be unwarranted. The Court affirmed that procedural omissions relating to the recording of compliance do not vitiate a conviction unless actual prejudice is demonstrated. This reasoning, consistent with ***The King v. Roma (129-130 D. C. (Crim.) Kalutara, 3666, 7th October 1919) and Muhandiram v. Simon [1928] 30 NLR 151, (P.C. Hambantota, 8145)***, supports the position that non-compliance with the formal aspects of **section 271** does not automatically invalidate a conviction in the absence of prejudice to the accused.

Although certain formal requirements, including the reading of the amended charge sheet under **Section 64(b)**, were not fully complied with, there was no practical prejudice to the Appellant. **Section 64(a)** applies to licensed agents who charge fees outside the limits provided under the law, while **Section 64(b)** applies to persons who are not licensed but receive or attempt to receive money for providing employment abroad. In the present case, the Appellant was charged under **Section 64(b)** and the trial record shows that he was fully aware of the nature and substance of the allegations against him.

He actively participated in the trial, elected to give evidence on his own behalf and had the opportunity to cross-examine the prosecution witnesses. His conduct demonstrates that he understood the main aspects of the prosecution’s case and responded appropriately. While the charge was amended from **Section**

64(a) to 64(b), the Appellant was not misled or disadvantaged by this change. He was able to comprehend the essential elements of the offence and present his defence effectively.

For this reason, the procedural lapses did not compromise the fairness of the trial or the validity of the conviction. Therefore, the learned High Court Judge did not err in law. The judgment of the High Court is affirmed.

I answer the question of law on which leave has been granted in the negative.

Appeal dismissed.

JUDGE OF THE SUPREME COURT

S.Thurairaja PC, J.

I agree.

JUDGE OF THE SUPREME COURT

Janak De Silva, J.

I agree.

JUDGE OF THE SUPREME COURT