

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

In the matter of an Appeal made under Section 331(1) of the Code of Criminal Procedure Act No.15 of 1979 read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal No:
CA/HCC/0155/2023
High Court of Colombo
Case No: HC/1946/20

The Hon. Attorney General
Attorney General's Department
Colombo-12.

COMPLAINANT-APPELLANT

Vs.

Subramaniam Sabapathi
No.07, Jalashakanda,
Bandarawela.

ACCUSED-RESPONDENT

BEFORE : **P. Kumararatnam, J.**
R. P. Hettiarachchi, J.

COUNSEL : **Wasantha Perera, DSG, for the Appellant.**
Shyamal A.Collure with Prabath S.Amarasinghe for the Respondent.

ARGUED ON : **02/10/2025**

DECIDED ON : **30/10/2025**

JUDGMENT

P. Kumararatnam, J.

This is an application preferred by the Complainant-Petitioner (Hereinafter referred to as the Petitioner) challenging the order delivered on 27.04.2023 by the learned High Court Judge of Colombo accepting the preliminary objections raised by the Accused-Respondent (Hereinafter referred to as the Respondent) before the commencement of the trial.

The Respondent was indicted in the High Court of Colombo for criminal offences allegedly to have been committed between 10.03.2015 to 10.06.2016. The charges in the indictment are reproduced below:

1. That on or about 10th of March 2015 to 10th January 2016 at Colombo, the Accused was indicted for cheating a sum of Rs. 7,945,000.00 from Govindasami Vijayakumar, an offence punishable under section 403 of the Penal Code.
2. That at the same time, at the same place and in the course of the same transaction on or about 29th of April 2015, the Accused by drawing No. 519614, a dishonoured cheque of Rs. 500,000.00 from Account No 0002068082 of Bank of Ceylon Bandarawela branch, knowing that the current account has insufficient funds, committed an offence

punishable under section 25(1) read with Section 25(1)(a) of the Debt Recovery (Special Provisions) Act No 02 of 1990 as amended by Debt Recovery (Special Provisions) Act No 09 of 1994.

3. That at the same time, at the same place and in the course of the same transaction on or about 14th of May 2015, the Accused, by ordering the Bank of Ceylon Bandarawela branch to pay Rs. 500,000.00 using a cheque No. 525485, under Account No 0002068082 and subsequently making a counter-order with dishonest intention, committed an offence punishable under section 25(1) read with section 25(1)(b) of the Debt Recovery (Special Provisions) Act No 02 of 1990 as amended by the Debt Recovery (Special Provisions) Act No 09 of 1994.
4. That at the same time, at the same place and in the course of the same transaction on or about 17th of June 2015, the Accused by ordering the Bank of Ceylon Bandarawela Branch to pay Rs. 540,000.00 using a cheque No. 529856, under Account No 0002068082 and subsequently making a counter-order with dishonest intention, committed an offence punishable under section 25(1) read with section 25(1)(b) of the Debt Recovery (Special Provisions) Act No 02 of 1990 as amended by the Debt Recovery (Special Provisions) Act No 09 of 1994.
5. That at the same time, at the same place and in the course of the same transaction on or about 15th of March 2015, the Accused by ordering the Bank of Ceylon Bandarawela branch to pay Rs. 500,000.00 using a cheque No. 525487, under Account No 0002068082 and subsequently making a counter-order with dishonest intention, committed an offence punishable under section 25(1) read with section

25(1)(b) of the Debt Recovery (Special Provisions) Act No 02 of 1990 as amended by the Debt Recovery (Special Provisions) Act No 09 of 1994.

6. That at the same time, at the same place and in the course of the same transaction on or about 12th of September 2015 the Accused by ordering the Bank of Ceylon Bandarawela branch, to pay Rs. 500,000.00 using a cheque No. 548016 under Account No 0002068082 and subsequently making a counter-order with dishonest intention, committed an offence punishable under section 25(1) read with section 25(1)(b) of the Debt Recovery (Special Provisions) Act No 02 of 1990 as amended by the Debt Recovery (Special Provisions) Act No 09 of 1994.

7. That at the same time, at the same place and in the course of the same transaction on or about 28th of September 2015 the Accused by ordering the Bank of Ceylon Bandarawela branch, to pay Rs. 100,000.00 using a cheque No. 525480 under Account No 0002068082 and subsequently making a counter-order with dishonest intention, committed an offence punishable under section 25(1) read with section 25(1)(b) of the Debt Recovery (Special Provisions) Act No 02 of 1990 as amended by the Debt Recovery (Special Provisions) Act No 09 of 1994.

8. That at the same time, at the same place and in the course of the same transaction on or about 23rd of September 2015, the Accused by drawing No. 525481, a dishonoured cheque of Rs. 100,000.00 from Account No 0002068082 of Bank of Ceylon Bandarawela branch, knowing the current account has insufficient funds, committed an offence punishable under section 25(1) read with section 25(1)(a) of the

Debt Recovery (Special Provisions) Act No 02 of 1990 as amended by the Debt Recovery (Special Provisions) Act No 09 of 1994.

9. That at the same time, at the same place and in the course of same transaction on or about 28th of November 2015 the Accused by drawing No. 525482, a dishonoured cheque of Rs. 100,000.00 from Account No 0002068082 of Bank of Ceylon Bandarawela branch, knowing the current account has insufficient funds, committed an offence punishable under section 25(1) read with section 25(1)(a) of the Debt Recovery (Special Provisions) Act No 02 of 1990 as amended by the Debt Recovery (Special Provisions) Act No 09 of 1994.

10. That at the same time, at the same place and in the course of the same transaction on or about 23rd of January 2016, the Accused by ordering the bank to pay 170,000.00 using a cheque No. 573661 from Account No 0002068082 of Bank of Ceylon Bandarawela branch and subsequently making a counter-order with dishonest intention, committed an offence punishable under section 25(1) read with section 25(1)(b) of the Debt Recovery (Special Provisions) Act No 02 of 1990 as amended by the Debt Recovery (Special Provisions) Act No 09 of 1994.

11. That at the same time, at the same place and in the course of the same transaction on or about 19th of March 2016 the Accused by ordering the bank to pay Rs. 130,000.00 using a cheque No. 596045 from Account No 0002068082 of Bank of Ceylon Bandarawela branch and subsequently making a counter-order with dishonest intention, committed an offence punishable under section 25(1) read with section 25(1)(b) of the Debt Recovery (Special Provisions) Act No 02 of

1990 as amended by the Debt Recovery (Special Provisions) Act No 09 of 1994.

12. That at the same time, at the same place and in the course of the same transaction on or about 28th of April 2016, the Accused by drawing a dishonoured cheque of Rs. 100,000.00 using a cheque No. 573664 from Account No. 0002068082 of Bank of Ceylon Bandarawela branch knowing the current account has insufficient funds, committed an offence punishable under section 25(1) read with section 25(1)(a) of the Debt Recovery (Special Provisions) Act No 02 of 1990 as amended by the Debt Recovery (Special Provisions) Act No 09 of 1994.
13. That at the same time, at the same place and in the course of the same transaction on or about 28th of May 2016, the Accused by ordering the Bank of Ceylon Bandarawela branch to pay Rs. 170,000.00 using cheque No. 573665 from Account No 0002068082 and subsequently making a counter-order with dishonest intention, committed an offence punishable under section 25(1) read with section 25(1)(b) of the Debt Recovery (Special Provisions) Act No 02 of 1990 as amended by the Debt Recovery (Special Provisions) Act No 09 of 1994.
14. That at the same time, at the same place and in the course of the same transaction on or about 28th of June 2016 the Accused for drawing No. 573666, a dishonoured cheque of Rs. 170,000.00 from Account No 0002068082 of Bank of Ceylon Bandarawela branch, knowing the current account has insufficient funds, committed an offence punishable under section 25(1) read with section 25(1)(a) of the Debt Recovery (Special Provisions) Act No 02 of 1990 as amended by the Debt Recovery (Special Provisions) Act No 09 of 1994.

15. That at the same time, at the same place and in the course of the same transaction on or about 28th of July 2016 the Accused by drawing No. 573667, a dishonoured cheque of Rs. 170,000.00 from Account No 0002068082 of Bank of Ceylon Bandarawela branch, knowing the current account has insufficient funds, committed an offence punishable under section 25(1) read with section 25(1)(a) of the Debt Recovery (Special Provisions) Act No 02 of 1990 as amended by the Debt Recovery (Special Provisions) Act No 09 of 1994.

16. That at the same time, at the same place and in the course of the same transaction on or about 24th of December 2016 the Accused by drawing No. 330804, a dishonoured cheque of Rs. 500,000.00 from Account No 017001007853 of DFCC Bank, Bandarawela branch knowing the current account has insufficient funds, committed an offence punishable under section 25(1) read with section 25(1)(a) of the Debt Recovery (Special Provisions) Act No 02 of 1990 as amended by the Debt Recovery (Special Provisions) Act No 09 of 1994.

17. That at the same time, at the same place and in the course of the same transaction on or about 04th of February 2016 the Accused by drawing No. 340996, a dishonoured cheque of Rs. 150,000.00 from Account No 017001007853 DFCC Bank, Bandarawela branch, knowing the current account has insufficient funds, committed an offence punishable under section 25(1) read with section 25(1)(a) of the Debt Recovery (Special Provisions) Act No 02 of 1990 as amended by the Debt Recovery (Special Provisions) Act No 09 of 1994.

18. That at the same time, at the same place and in the course of the same transaction on or about 26th of February 2016, the Accused by

drawing No. 340995, a dishonoured cheque of Rs. 150,000.00 from Account No 017001007853 of DFCC Bank, Bandarawela branch knowing the current account has insufficient funds, committed an offence punishable under section 25(1) read with section 25(1)(a) of the Debt Recovery (Special Provisions) Act No 02 of 1990 as amended by the Debt Recovery (Special Provisions) Act No 09 of 1994.

19. That at the same time, at the same place and in the course of the same transaction on or about 24th of March 2016 the Accused by for drawing No. 340995, a dishonoured cheque of Rs. 500,000.00 from Account No 017001007853 of DFCC Bank, Bandarawela branch knowing the current account has insufficient funds, committed an offence punishable under section 25(1) read with section 25(1)(a) of the Debt Recovery (Special Provisions) Act No 02 of 1990 as amended by the Debt Recovery (Special Provisions) Act No 09 of 1994.
20. That at the same time, at the same place and in the course of the same transaction on or about 17th of September 2016 the Accused by drawing No. 216179, a dishonoured cheque of Rs. 300,000.00 from Account No 017001007853 of DFCC Bank, Bandarawela branch, knowing the current account has insufficient funds, committed an offence punishable under section 25(1) read with section 25(1)(a) of the Debt Recovery (Special Provisions) Act No 02 of 1990 as amended by the Debt Recovery (Special Provisions) Act No 09 of 1994.
21. That at the same time, at the same place and in the course of the same transaction on or about 27th of October 2016, the Accused by ordering the bank to pay a sum of Rs. 600,000.00 using a cheque No.

260966 from Account No 0073776069 of Bank of Ceylon, Bandarawela branch, which was a closed account at that time, committed an offence punishable under section 25(1) read with section 25(1)(b) of the Debt Recovery (Special Provisions) Act No 02 of 1990 as amended by the Debt Recovery (Special Provisions) Act No 09 of 1994.

22. That at the same time, at the same place and in the course of the same transaction on or about 27th of October 2016, the Accused by ordering the Bank of Ceylon, Bandarawela branch to pay, a sum of Rs. 140,000.00 using a cheque No. 260965, from Account No 0073776069, which was a closed account at that time, committed an offence punishable under section 25(1) read with section 25(1)(b) of the Debt Recovery (Special Provisions) Act No 02 of 1990 as amended by the Debt Recovery (Special Provisions) Act No 09 of 1994.

Before commencement of the trial, the Counsel for the Respondent had raised the preliminary objection against the maintainability of the 2nd to 22nd charge on the basis that the Debt Recovery (Special Provisions) Act No 02 of 1990 as amended, conferred Jurisdiction in the Magistrate Court in respect of offences committed under Section 25(1) of the said Act and as such the Hon. Attorney General is not empowered to forward an indictment to the High Court including charges in terms of Section 25 (1) of the Debt Recovery (Special Provisions) Act No. 02 of 1990.

After the submissions by the Counsels for the Respondent and the prosecution, the Learned High Court Judge had accepted the preliminary objection raised by the Respondent and rejected the stance of the prosecution regarding the 2nd to 22nd counts in the indictment and ordered only to proceed with the 1st count of the indictment.

Being aggrieved by the order of the Learned High Court Judge of Colombo, the Appellant had filed this instant Appeal to set aside the order of the

learned High Court Judge of Colombo dated 27.04.2023. The Appellant had cited the following grounds of appeal in support of this application.

- a. The learned High Court Judge has erred in determining that the charges under the Debt Recovery (Special Provisions) Act No. 02 of 1994 as amended by the Debt Recovery (Special Provisions) Act No.09 of 1994, can only be filed at the Magistrate Court and that the Hon. Attorney General should not have filed charges under the said Act to the High Court through an indictment.
- b. The learned High Court Judge has misled himself in determining that Section 393(7) of the Code of Criminal Procedure had not given any power to the Attorney General to override the provisions of the Special Provisions Act.
- c. The learned High Court Judge has erroneously determined that the Code of Criminal Procedure is not applicable to the Acts which have specific provisions with regard to filing of charges for the offences recognized under the Special Provisions Act and that Section 393(7) of the Code of Criminal Procedure is not applicable for the charges filed under the Debt Recovery Act (Special Provisions) Act No.02 of 1990 as amended by the Debt Recovery (Special Provisions) Act No. 09 of 1994 at the High Court.
- d. Citing the case of “**Lanka Walltiles PLC v. Commissioner General of Inland Revenue** CA/TAX/0010/2015 and the exert of the Hansard of the debate held at the time, the amendment to the Code of Criminal Procedure Act No. 52 of 1980 which was brought consequently after the Court of Appeal judgment “**Wijesiri v. AG** [1980] 2 SLR 317”, the learned High Court Judge has erroneously determined that the Hon. Attorney General has no power to resort to Section 393(7) to file charges at any Court on his discretion, when Acts specifically provide the court to which the charges should be filed.
- e. The learned High Court Judge erred in determining that the 2nd to 22nd charges cannot be maintained.

The main argument of the Learned Deputy Solicitor General for the Petitioner is that the High Court has jurisdiction to try offences under Section 25(1) of the Debt Recovery (Special Provisions) Act No. 02 of 1990 as amended by Act No. 04 of 1994 as the Act confers jurisdiction to the Magistrate Court to try the said offences.

In this context, it is very pertinent to discuss Section 393(7) of the Code of Criminal Procedure Act No. 15 of 1979 which reads as follows:

Notwithstanding any other provisions contained in this Act, it shall be lawful for the Attorney-General, having regard to the nature of the offence or any other circumstances, in respect of any summary offence - (a) to forward an indictment directly to the High Court, or (b) to direct the Magistrate to hold a preliminary inquiry in accordance with the procedure set out in Chapter XV in respect of any offence specified by him where he is of opinion that the evidence recorded at a preliminary inquiry will be necessary for preparing an indictment; and thereupon such offence shall not be triable by a Magistrate's Court.

In an identical issue, Sisira De Abrew, J. in **Sellaiya Sribalan v The Attorney General** CA(PHC) APN 09/2012 decided on 29.03.2012 after considering Section 2 of the Code of Criminal Procedure Act and the Section 9(1) of the Judicature Act, held that:

“When the above legal provisions are considered, I hold the view that the Attorney General has the power to send an indictment to the High Court in respect of a summary offence (an offence triable by the Magistrate) and when such an indictment is forwarded, the High Court Judge has the power to hear, try and determine the case and that the Magistrate loses jurisdiction to hear such a case.”

In this case the decision taken to try the charges preferred under the Debt Recovery Act No.02 of 1990 as amended in the indictment is not open to challenge as it is the decision of the Attorney General under the power vested on him under Section 393(7) of the Code of Criminal Procedure Act No. 15 of 1979.

Hence, the High Court under Section 9(1) of the Judicature Act, has the jurisdiction to hear, try and determine the indictment which include summary offences triable by the Magistrate.

Hence, I set aside the order of Learned High Court Judge dated 27.04.2023 and direct the learned High Court Judge of Colombo to restore the case back into the Court's case roll, to cause the Respondent to appear before the High Court and proceed the trial to its conclusion.

The Registrar of this Court is directed to send this Judgment to the High Court of Colombo for information.

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL