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**SANJEEWA****Vs.****OFFICER—IN—CHARGE, POLICE STATION, PANNALA AND ANOTHER**

COURT OF APPEAL  
WICKREMASINGHE, J.  
P. FERNANDO, J.  
CA/PHC/APN/17/19  
HC/KULIYAPITIYA/HCR/20/2018  
MC/KULIYAPITIYA/32513  
JUNE 21, 2019

**Code of Criminal Procedure Act, proviso to section 183(1), section 182(1) - Poisons, Opium and Dangerous Drugs Ordinance, section 78(5) - Withdrawal of a guilty plea-Exercise of discretion-Failure to sign the charge sheet**

The petitioner was charged with an offence punishable under section 78(5) of the Poisons, Opium and Dangerous Drugs Ordinance. He initially tendered an unconditional plea of guilt but later moved to withdraw the said plea on the basis that the sentence imposed would affect his employment. The Magistrate refused the application of the petitioner and in revision the High Court affirmed it. The petitioner appealed to the Court of Appeal.

Before the Court of Appeal, the petitioner also took up the position that the Magistrate failed to comply with section 182(1) of the Code of Criminal Procedure Act in that the Magistrate failed to sign the charge sheet.

**Held:**

1. The proviso to section 183(1) of the Code of Criminal Procedure makes it clear that the withdrawal of the plea has to be with the leave of the Magistrate. Whether or not to grant leave is at the discretion of the Magistrate.
2. The approach of the appellate-court to an appeal against the exercise of discretion is regulated by well-established principles such as consideration of whether the Judge has acted illegally, arbitrarily or upon a wrong principle of law, disregarded relevant

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matters and taken into consideration irrelevant matters. The Magistrate has not exercised his discretion illegally or arbitrarily in refusing the said withdrawal.

3. The main purpose of a charge is that the accused must understand what he is charged for. In the instant case there is a charge sheet filed of record. The journal entry in the case record clearly indicates that the Magistrate has read and explained the charge to the petitioner, the petitioner has pleaded guilty and the Magistrate has signed the journal entry. The Magistrate has acted in terms of section 182(1) of the Code of Criminal Procedure Act.

**Cases referred to:**

1. Fathima Rinsa and another v. Attorney General (CA/PHC/48/2009, CA Minutes of 30. 03. 2019)
2. Wijewardene v. Lenora 60 NLR 457 at 463
3. Imiyagamage Gunawathie v. Attorney General (CA/PHC/139/2009, CA Minutes of 09. 10. 2018)

APPLICATION in Revision from the Orders of the Magistrate's Court and High Court of Kuliypitiya.

Tenny Fernando for the Petitioner.

Nayomi Wickramasekara, S. S. C., for the Respondent.

*cur. adv. vult.*

September 24, 2019

**P. FERNANDO, J.**

1. The Accused-Petitioner-Petitioner (Petitioner) was charged in the Magistrate's Court of Kuliypitiyain case No. 32513 for committing an offence punishable under section 78(5) of the Poisons, Opium and Dangerous Drugs Ordinance.
2. On 12. 06. 2017 Petitioner tendered an unconditional plea of guilt that was recorded and moved for time to make sentencing submissions. On 31. 07. 2017, Petitioner moved further time to make submissions and on 04. 09. 2017 Petitioner filed an affidavit moving to withdraw his previous unconditional plea of guilt. On 15. 02. 2018 learned Magistrate has delivered the order refusing the application of the Petitioner to withdraw his earlier plea of guilty.

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3. Being aggrieved by the said order of the learned Magistrate, Petitioner preferred an application to the High Court of Kuliyaipitiya to get the order of the learned Magistrate revised. The learned High Court Judge, for given reasons, refused the revision application on 08. 01. 2019 without issuing notice to the Respondents. Being aggrieved by the said order of the learned High Court Judge, the instant application was filed by the Petitioner to get both orders of the learned Magistrate and the learned High Court Judge revised.

4. I have carefully considered the application by the Petitioner, objections filed by the Respondents and submissions made by counsel for both Petitioner and the Respondents.

5. Counsel for the Petitioner submitted that the learned Magistrate erred in law by not allowing the Petitioner to withdraw his earlier plea for the reasons set out in the affidavit.

6. Proviso to section 183(1) of the Code of Criminal Procedure Act provides for withdrawing of a plea in the Magistrate's Court. Section reads;

*If the accused upon being asked if he has any cause to show why he should not be convicted makes a statement which amounts to an unqualified admission that he is guilty of the offence of which he is accused, his statement shall be recorded as nearly as possible in the words used by him; and the Magistrate shall record a verdict of guilty and pass sentence upon him according to law and shall record such sentence:*

*Provided that the accused may with the leave of the Magistrate withdraw his plea of guilt at any time before sentence is passed upon him, and in that event the Magistrate shall proceed to trial as if a conviction has not been entered . . .*

7. Proviso to section 183(1) makes it clear that the withdrawal of the plea has to be with the leave of the Magistrate. It is the discretion of the Magistrate whether to grant leave or not. As to how a Judge should use his discretion was discussed in the case of *Fathima Rinsa and another v. Attorney General*.<sup>1</sup> In that case Court referred to the case of *Wijewardene v. Lenora*<sup>2</sup> where Court said;

*The mode of approach of an appellate Court to an appeal against an exercise of discretion is regulated by well*

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*established principles. It is not enough that the judges composing the appellate Court consider that, if they had been in the position of the trial Judge, they would have taken a different course. It must appear that some error has been made in exercising the discretion. It must appear that the Judge has acted illegally, arbitrarily or upon a wrong principle of law or allowed extraneous or irrelevant considerations to guide or affect him, or that has mistaken the facts, or not taken into account some material consideration. Then only can his determination be reviewed by the appellate Court.*

8. In the instant case, admittedly, the plea of guilty by the Petitioner had been unequivocal. Nowhere the Petitioner says that he was misled or that he could not understand the charge. The reason adduced in the application for withdrawal of his guilty plea is that later he found that the sentence imposed would affect his employment. The learned Magistrate has not acted illegally or arbitrarily. He has not acted upon a wrong principle of law. Hence, the learned High Court Judge had no reason to interfere with the order of the learned Magistrate.

9. Counsel for the Appellant submitted that the learned Magistrate has failed to comply with section 182(1) of the Code of Criminal Procedure Act. In that, counsel submitted that the learned Magistrate has failed to sign the charge sheet.

10. A similar situation was discussed in the case of *Imiyagamage Gunawathie v. Attorney General*.<sup>3</sup>In that case Court found that although the learned Magistrate has not put his signature on the charge sheet, he had signed the journal entry, which showed that the learned Magistrate has framed the charge.

11. The main requirement and the purpose of a charge is that the Accused must understand what he is charged for. In the instant case there is a charge sheet filed of record. The Petitioner has produced a certified copy of the same. Certified copy of the journal entry dated 12. 06. 2017 riled by the Petitioner clearly indicates that the learned Magistrate has read and explained the charge to the Petitioner. Petitioner has pleaded guilty and the learned Magistrate has signed the journal entry. This position is not challenged by the Petitioner. Petitioner admits that he was charged and that he pleaded guilty to the charge unconditionally (paragraphs 2 and 3

of the petition). Therefore, it is admittedly clear that the learned Magistrate has acted in terms of section 182(1) of the Code of Criminal Procedure Act. The learned Magistrate merely not putting his signature underneath the charge sheet does not mean that he has violated section 182(1). In this case it has not caused any prejudice to the Petitioner.

In the above premise, I find no reason to interfere with the order of the learned High Court Judge dated 08. 01. 2019, and the order of the learned Magistrate dated 15. 02. 2018.

**WICKREMASINGHE, J.** - *I agree.*

*Application dismissed.*

*Judgment by: K. Priyantha Fernando, J.*

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