

GOVINDARAJAH
v.
ATTORNEY-GENERAL

SUPREME COURT
FERNANDO, J.
DHEERARATNE, J. AND
PERERA, J.
SC APPEAL NO. 81/94
CA NO. HC MCA 302/94
MC MT. LAVINIA NO. 79393
OCTOBER 06, 1994

Contempt of Court – Summary punishment – Code of Criminal Procedure Act, section 449 (1) – Breach of natural justice – Validity of the conviction.

Immediately after the appellant had given evidence in a criminal case the Magistrate held that the appellant had given false evidence and proceeded to convict and sentence him forthwith acting under the Judicature Act. The High Court attributed the conviction to section 449 (i) of the Code of Criminal Procedure Act and upheld the order.

Held :

- (1) Whichever provision was applicable it is settled law that the gist of the accusation should have been made clear to the appellant and he should have been given an opportunity to furnish an explanation.
- (2) The summary conviction and sentence of the appellant were a clear breach of the principles of natural justice.

Case referred to :

1. *Daniel Appuhamy v. The Queen* – (1962) 64 NLR 481.

APPEAL from the judgment of the High Court.

K. S. Tillekeratne with Jacob Joseph for appellant.

D. Weerasuriya, State Counsel for Attorney-General.

Cur. adv. vult.

Editor's Note :

Vide Tillekeratne v. Officer in-Charge, Pugoda Police Station (1997) 1 Sri LR 07 on the same view.

October 06, 1994

FERNANDO, J.

The appellant was a witness at a criminal trial. Immediately after he gave evidence, the learned Magistrate made an order in which he held that the appellant had given false evidence; stated his reasons for that conclusion; and dealt with the appellant for contempt of court under the provisions of the Judicature Act. He then sentenced the appellant to 3 months' rigorous imprisonment. He then acquitted the accused.

On appeal, the learned High Court Judge considered the Magistrate as having acted under section 449 (1) of the Code of Criminal Procedure Act, and upheld his order, but reduced the sentence.

Whichever provision was applicable, it is settled law that the gist of the accusation against him should have been made clear to the appellant (even though not with the same particularity required in an indictment) and he should have been given an opportunity to furnish an explanation : See *Daniel Appuhamy v. The Queen.*⁽¹⁾

In this case it is common ground that the learned Magistrate neither communicated the essence of the accusation to the appellant nor gave him an opportunity to furnish an explanation; instead, he proceeded to convict and sentence him forthwith. This is a clear breach of the principles of natural justice.

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State Counsel concedes that the order cannot stand. We allow the appeal and set aside the orders of the High Court and the Magistrate's Court.

DHEERARATNE, J. – I agree.

PERERA, J. – I agree.

Appeal allowed.