

DAVID PERERA  
v.  
THE ATTORNEY-GENERAL AND ANOTHER

SUPREME COURT.  
G. P. S. DE SILVA, C.J.,  
RAMANATHAN, J. AND  
DR. SHIRANI BANDARANAYAKE, J.  
S.C. APPEAL NO. 104/95.  
D.C. KANDY NO. H.C. 15683  
JANUARY 13, MARCH 03, 17 AND APRIL 01, 1997.

*Criminal Law – Charge Sheet – Magistrate's duty – Sections 182(1) and (2) of the Code of Criminal Procedure Act.*

Compliance with sections 182(1) and (2) of Code of Criminal Procedure Act is imperative. When an amended plaint is filed, a fresh charge sheet should be framed and read out to the accused. Failure to do so vitiates the conviction.

**APPEAL** from the judgment of the High Court (Central Province)

**Case referred to:**

1. *Abdul Sameem v. The Bribery Commissioner*, (1991) 1 Sri L.R. 76.

*Mohan Peiris with Ananda Panagoda and Susil Panagoda* for appellant.

*C. R. de Silva, A.S.G. with Kapila Waidyaratne, S.S.C. and S. Samaranayake, S.C.* for respondents.

*Cur. adv. vult.*

April 04, 1997.

**G. P. S. DE SILVA, C. J.**

The appellant was charged on three counts before the Magistrate's Court. The first charge was under the Offences against Public Property Act, No. 12 of 1982. The other two charges were falsification of accounts which are offences under the Penal Code. After trial, the appellant was convicted of all three charges. He appealed against his conviction and sentence to the High Court (Central Province) and his appeal was dismissed. He has now appealed to this court, with leave obtained from the High Court.

Counsel for the appellant, Mr. Mohan Peiris, raised a preliminary issue of law, which in his submission, vitiates the conviction. The proceedings were instituted by the Officer-in-Charge, Special Crimes Investigation Branch of Kandy on 20.1.93 by filing a report in terms of section 136(1) (b) of the Code of Criminal Procedure Act. On the same day a single charge was framed by the Magistrate and the plea of "not guilty" was recorded. Thereafter the prosecution moved to amend "the plaint" and a document described as the "amended plaint" was filed on 12.5.93. This document appears at page 4 of the record. It is to be noted that the original report to court filed on 20.1.93 contained only one charge, while the "amended plaint" filed on 12.5.93 contained three charges. The additional charges in the "amended plaint" were under Section 467 of the Penal Code.

On a perusal of the record it would appear that the Magistrate has failed to frame the charges, as he was required to do in terms of section 182(1) of the Code of Criminal Procedure Act. The Magistrate appears to have adopted the "amended plaint" filed on 12.5.93 as the "charge". Thus he has failed to comply with the provisions of section 182(1) and (2) of the Code of Criminal Procedure Act. The fact that there is no separate charge sheet apart from the "amended plaint" at page 4 of the record tends to support the contention that the appellant was "charged" from the amended plaint.

It was the submission of Mr. C. R de Silva, Additional Solicitor General, that the document which is described as the "amended plaint" at page 4 of the record, is in truth the "charge sheet", and that the label ("amended plaint") given to the document should be disregarded. I find myself unable to accept this submission. The journal entries show that after the original report to court was filed in terms of section 136(1) (b) of the Code of Criminal Procedure Act on 20.1.93, the prosecution moved to "amend the plaint" and it is pursuant to that application that the document described as the "amended plaint" at page 4 of the record was filed. I find it difficult to resist the conclusion that what the Magistrate has in fact done is to

read the charges to the appellant from the "amended plaint", a procedure which is not permitted by law. The Magistrate has failed to comply with the imperative provisions of section 182(1) and (2) of the Code of Criminal Procedure Act and this vitiates the conviction. (*Abdul Sameem v. The Bribery Commissioner*<sup>(1)</sup>).

There remains the question whether a re-trial should be ordered. Although the alleged offences were committed almost 7 years ago, yet on a consideration of the evidence on record, I am of the view that this is a fit and proper case in which a re-trial should be ordered. While setting aside the conviction and sentence imposed on the appellant, I make order directing a fresh trial. The Magistrate is further directed to hear and conclude this case very early.

**RAMANATHAN, J.** – I agree.

**DR. SHIRANI BANDARANAYAKE, J.** – I agree.

*Conviction set a side*

*Case sent back for re-trial.*