

IN THE COURT OF APPEAL  
[On appeal from the High Court]

CRIMINAL APPEAL NO. AAU0048 of 2013  
[High Court Appeal No. HAA 13 & 14/12S]

BETWEEN : JADISHWAR SINGH  
*Appellant*

AND : THE STATE  
*Respondent*

Coram : Goundar JA

Counsel : Mr. S. Sharma for the Appellant  
Ms J. Prasad for the Respondent

Date of Hearing : 19 September 2014

Date of Ruling : 14 January 2015

RULING

- [1] This is an application for an extension of time to appeal against a judgment of the High Court in its appellate jurisdiction. The appeal is out of time by 6 months. The reason for the delay is that the appellant suffers from mental illness. Due to his illness, he was handicapped from filing a timely appeal. The State has not refuted this claim. No prejudice is claimed by the State. The question is whether there is any merit in the appeal?
- [2] The appellant was sentenced on numerous fraud related charges in the Magistrates' Court. His total sentence was 4 years' imprisonment and not 8 years as asserted by him. He appealed against his sentence to the High Court.

- [3] On 5 October 2012, the High Court after giving the standard warning regarding the Court's power to increase the sentence, imposed the following sentences:

**Case No. 1966/2010**

14 counts - total sentence – 3 years' imprisonment.

**Case No. 796/2010**

36 counts – total sentence - 3 years' imprisonment.

**Case No. 345/2010**

7 counts – total sentence - 3 years' imprisonment.

- [4] The total sentence imposed in Case No. 796/2010 was made consecutive to the total sentence imposed in Case No. 345/2010. One year from the total sentence in Case No. 1966/2010 was made consecutive while 2 years were made concurrent. In effect, the High Court imposed a total sentence of 7 years' imprisonment.
- [5] According to the learned High Court judge, although the appellant could not be declared a habitual offender under the Sentencing and Penalties Decree, he still classified him as a habitual offender to justify a longer sentence. The appellant contends that there was an error of law in declaring the appellant a habitual offender, and that the erroneous declaration was used to justify the consecutive sentence.
- [6] Since this is a second tier appeal, the appellant's right of appeal is governed by section 22 of the Court of Appeal Act. Section 22 states:

“22(1) Any party to an appeal from a magistrate's court to the [High Court] may appeal, under this Part, against the decision of the [High Court] in such appellate jurisdiction to the Court of Appeal on any ground of appeal which involves a question of law only.....”

Provided that no appeal shall lie against the confirmation by the [High Court] of a verdict of acquittal by a magistrate's court.

[(1A) No appeal under subsection (1) lies in respect of a sentence imposed by the High Court in its appellate jurisdiction unless the appeal is on the ground –

- (a) The sentence was an unlawful one or was passed in consequence of an error of law; or
- (b) That the High Court imposed an immediate custodial sentence in substitution for a non-custodial sentence].”

[7] In my judgment, the declaration of the appellant as a habitual offender and the subsequent imposition of consecutive sentence raise an issue whether the High Court passed the sentence in consequence of an error of law.

[8] For these reasons, the appellant has a right of appeal and the appeal against sentence has merits.

**Result**

[9] Extension of time to appeal is granted.



*D. Goundar*

Hon. Justice D. Goundar  
**JUSTICE OF APPEAL**

**Solicitors:**

Office of the Director of Legal Aid Commission for Appellant  
Office of the Director of Public Prosecutions for State