

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

**CA PHC 162/2010**

Kavalahinge Shantha Kumara

No: 54/99,

Welikadaya,

Embilipitiya.

**Applicant-Petitioner-Appellant**

**Vs.**

Rakwana Range Officer

Rakwana Range Office,

Rakwana.

**Plaintiff-Respondent-Respondent**

Hon. Attorney General

Attorney General's Department,

Colombo 12.

**Respondent-Respondent**

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

In the matter of an application for a  
mandate in the nature of a writ of certiorari  
under Article 140 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.

**C.A. (PHC) 162/2010**

**PHC Embilipitiya No. 20/2010**

**BEFORE**

: A.W.A. Salam J.

Deepali Wijesundera J.

**COUNSEL**

: S. Collure with A.R.L. Jayantha  
for the Appellant.

: DSG Mr. Nawaz with SC Nayomi  
for the respondents.

**ARGUED ON**

: 09<sup>th</sup> October, 2012.

**DECIDED ON**

: 05<sup>th</sup> December, 2012

**Deepali Wijesundera J.**

This appeal has been filed against an order delivered by the Provincial High Court of Embilipitiya in a revision application filed by the petitioner seeking to revise the order of the Magistrate of Embilipitiya delivered in relation to a confiscation inquiry held under the Forest Ordinance read with *Section 425* of the Criminal Procedure Code.

At the conclusion of the argument both parties agreed that the limited question to be decided in this appeal is whether the learned Magistrate has erred in law in coming to the conclusion that the appellant was not the registered owner of the vehicle forfeited on the day the offence was committed and therefore he is not entitled to claim the said vehicle.

The submission of the appellant petitioner was that the accused though he pleaded guilty to the charge filed under *Sec. 26(2) and Sec. 40 and Sec. 40A* of the Forest Ordinance had a valid permit issued by the Divisional Secretary of Embilipitiya to transport timber. At the inquiry held to release the vehicle in question to the registered owner petitioner appellant giving evidence before the Magistrate has produced the Registration Certificate marked "R" and "X" which the Magistrate has stated was not valid on the date of the offence was wrong. The appellant submitted that he bought the vehicle on 20/02/2007 and registered it subsequently and that he was the lawful owner on the date

of the offence. The appellant submitted that in ***Sinnathamby Vs. Ramalingam 1924 26 NLR 371*** it was held that; *“when the owner himself is not convicted of the offence no order should be made against the owner unless he is implied in the offence which render the thing liable to confiscation”*.

The respondent's argument was that the vehicle was registered on 10/07/2007 which was after the date of the offence which is 28/06/2007 therefore the appellant was not the registered owner on the date of the offence. The respondents also submitted that on the date of the offence the vehicle was not registered in the appellant's name.

On perusal of the registration certificate and the evidence given in the Magistrates Court at the claim inquiry it is very clear that at the time of offence the registered owner was not the appellant. According to the registration certificate the registered owner of the vehicle was not the appellant on the date of offence. The argument of the appellant's that the accused had a valid permit and the confiscation of the timber was illegal is totally and out of context in this appeal which has to decide whether the appellant was the registered owner of the vehicle.

At the conclusion of the argument both parties agreed that there is a limited question to be decided which is at the time of the offence was the appellant the rightful owner of the vehicle. Court has also taken into account the fact that the appellant has not shown any exceptional circumstance or a manifest error in the original order to invoke the

jurisdiction of this court. The counsel for the respondents has cited case law in this issue in the written submissions which the court has taken into consideration.

The offence was committed on 28/06/2007 the vehicle was registered on 10/07/2007 therefore the appellant cannot be presumed to be the registered owner of the vehicle. In **Rodrigo Vs. Balasuriya and others 2002 3 SLR 49** it was held that the certificate of registration of a motor vehicle is regarded as the best evidence to establish the ownership of a vehicle. The learned Magistrate has correctly decided that the appellant was not the owner of the vehicle, and this court see no merit in the appellant's argument to set aside the said order. I affirm both the orders of the learned High Court Judge and the Magistrate and dismiss the petitioner appellant's application.

**JUDGE OF THE COURT OF APPEAL.**

**A.W.A. Salam J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**