

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

CA (PHC) 150/09

HC Hambantota HCA.No.39/2004.

MC Hambantota Case No.25539.

Gamini Wickrama Arachchi,
"Erandika" T. V. Centre,
Ambalantota.

Aggrieved Party Petitioner

Vs.

01. Abeyapura Hewage Indika
No. 4811, Beligalgoda Road,
Ambalantota.

Accused Respondent

02. Hon.Attorney General
Attorney General's Department,
Colombo 12.

Respondent - Respondent.

C.A.(PHC) APN No. 150/2009 - H.C. Hambantota HCA No. 39/2004 *
M.C. Hambantota Case No. 25539

Before : **SISIRA DE ABREW, J. &**
K.T. CHITHRASIRI, J.

Counsel : W. Dayarathne P.C. with Dilan Sampath
For the petitioner.

Gihan Kulatunga S.S.C. for the 2nd Respondent

Arusha Silva for the Accused-Respondent-
Respondent

Argued &
Decided on : 04.10.2011.

Sisira de Abrew, J.

The petitioner in this case made a complaint to the Hambantota Police Station alleging that vehicle No. 14 Sri 1221 was stolen. After investigation police recovered the vehicle from the possession of the accused. Magistrate first held an inquiry under Section 431 of the Criminal Procedure Code and by his order dated 28th June 1995 handed over the possession of the vehicle to the petitioner in this case.

The Revision Application filed by the accused against the said order, was dismissed by the learned High Court Judge by his order dated 16th of July 1996. Thereafter learned Magistrate after trial acquitted the accused from the charge. Learned Magistrate after acquitting the accused on 14th of June 2004 decided to hold an inquiry with regard to the possession of vehicle under Section 425 of the Criminal Procedure Code. Before the said inquiry was conducted the petitioner in this case filed a Revision Application against the order of acquittal made by learned Magistrate. The learned High Court Judge by his order dated 14th of September 2009^l whist[^] dismissing the Revision Application decided that the accused was entitled to the possession of the vehicle (14 Sri 1221). Being aggrieved by the said order the petitioner has filed present Revision Application. The petitioner, by this revision application, seeks to set aside only the order of the learned High Court Judge relating to the release of the vehicle to the accused.

We note that when the learned High Court Judge made the order on 14th of September 2009, deciding that the accused was entitled to the possession of the vehicle No. 14 Sri 1221, the learned Magistrate had not made an order with regard to the possession of the vehicle. Therefore it appears that the learned High Court Judge had assumed original jurisdiction in deciding the person who is

entitled to the possession of the vehicle. This fact is admitted by counsel for all three parties.

In these circumstances we hold that the order made by the learned High Court Judge deciding that the accused was entitled to the possession of the vehicle is wrong. We therefore set aside the order of the learned High Court Judge with regard to the release of the vehicle to the accused. We direct the learned Magistrate of Hambantota to hold an inquiry under Section 425 of the Criminal Procedure Code.

JUDGE OF THE COURT OF APPEAL

K.T. Chitrasiri, J.

I agree.

JUDGE OF THE COURT OF APPEAL

/mds