

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

Orient Financial Services Corporation Ltd.

Petitioner-Petitioner

Vs

CA (PHC) APN 26/2011
HC Ampara 343/2009
MC Ampara 31773

1. Range Forest Officer
Department of Forest Conservation,
Regional Office, Ampara
2. The Attorney General

Respondent-Respondents

Before : Sisira de Abrew J &
Anil Gooneratne J

Counsel : Astika Devendra for the Petitioner-Petitioner

Argued on : 15.3.2011
Decided on : 28.4.2011

Sisira de Abrew J.

In this case the registered owner of vehicle No.EPLE 3471 was convicted on his own plea for transporting timber without a permit.

Thereafter an inquiry was held whether the vehicle should be confiscated or not. At the inquiry the absolute owner from whom the registered owner obtained financial assistance to purchase the vehicle, gave evidence and claimed the vehicle but the registered owner did not give evidence. After the inquiry the learned Magistrate made order confiscating the vehicle. Being aggrieved by the said order the petitioner moved the High Court in revision but the learned High Court Judge, by his order dated 2.11.2010, dismissed the petition of the petitioner. Being aggrieved by the said order of the learned High Court Judge (HCJ) the petitioner has filed the present petition to revise it.

The position taken up by the petitioner is that he is unaware of the commission of the offence and that he has no knowledge of the commission of the offence. He therefore contends that both orders of the learned Magistrate and the learned HCJ are wrong and the vehicle should be released to him. Learned Counsel for the petitioner relied on *Manawadu Vs Attorney General* [1987] 2 SLR page 30. In considering the contention of learned counsel for the petitioner, it is necessary to consider Section 40 of the Forest Ordinance as amended by Act No. 13 of 1982 is as follows:

"Upon the conviction of any person for a Forest Offence

(a) all timber or forest produce which is not the property of the State in respect of which such offence has been committed and

(b) all tools, boats, carts, cattle and motor vehicles used in committing such offence (whether such tools, boats, carts, cattle and motor vehicles are owned by such person or not)

shall by reason of such conviction be forfeited to the State.”

I have cited the above section since that was the section that was considered in the judgment of Manawadu case (supra). For the purpose of completeness I would like to state that this section was repealed by Act No.65 of 2009 and following section was substituted in its place.

“Where any person is convicted of a forest offence-

(a) all timber or forest produce which is not the property of the State in respect

of which such offence has been committed; and

(b) all tools, vehicles, implements, cattle and machines used in committing such offence,

shall in addition to any other punishment specified for such offence, be confiscated by order of the convicting Magistrate:

Provided that in any case the owner of such tools, vehicles, implements and machines used in the commission of such offence, is a third party, no order of confiscation shall be made if such owner proves to the satisfaction of the court that he had taken all precautions to prevent the use of such tools, vehicles, implements, cattle and machines, as the case may be, for the commission of the offence.”

At this stage it is relevant to consider certain judicial decisions relating to confiscation of vehicles under the Animals Act.

In *Faris Vs OIC Galenbidunuweva* (supra) Justice SN Silva (as he then was) held: “In terms of the proviso to section 3A of the Animals Act, an order for confiscation cannot be made if the owner establishes one of two matters. They are

(1) that he has taken all precautions to prevent the use of the vehicle for the commission of the offence;

(2) that the vehicle has been used for the commission of the offence without his knowledge.

In terms of the proviso, if the owner establishes any one of these matters on a balance of probability, an order for confiscation should not be made. An order for confiscation could be made only if the owner was present at the time of the detection or there was some evidence suggesting that the owner was privy to the offence.”

In *Nizar Vs IP Watthegama* (supra) Justice Vythialingam and Justice Abdul Cader held: “The learned Magistrate was clearly wrong when he took the view that by reason of the removal of the proviso to section 3A by the Emergency Regulation, confiscation of the vehicle must automatically follow on conviction and that he was under no obligation to consider the cause shown by the owner. The words "be liable to confiscation" used in section 3A gave a discretion to the Magistrate whether to confiscate the vehicle or not and accordingly the owner should be given an opportunity of showing cause that he had taken all precautions against the use of his vehicle for the commission of the offence and that he was not in any way a privy to the commission of the offence. The vehicle ought not to be confiscated where the owner succeeded in showing cause.”

In *Umma Habeeba Vs OIC Dehiattghakandiya* [1999] 3SLR 89 Justice Yapa and Justice Gunawardene observed: “The lorry in question had been used for illegally transporting nine heads of cattle and four accused were found guilty on their own pleas. The Driver of the lorry was the husband of the owner of the vehicle. The Court was of the view, that the fact that the Driver was the husband, itself proved knowledge on the part of the appellant (owner) that the offence in question was committed with the knowledge of the appellant.”

Held: “What section 3A means is that the vehicle shall necessarily be confiscated if the owner fails to prove that the offence was committed without the knowledge but not otherwise. If, as contended, the Magistrate was given a discretion to consider whether to confiscate or not - the Magistrate could confiscate even when the offence was committed without the knowledge of the owner taking into consideration other damnable circumstances apart from knowledge or lack of it on the part of the owner.”

In *Manawadu Vs The AG* (supra) Sharvananda CJ and Atukorale J held: “By s. 7 of Act No. 13 of 1982 it was not intended to deprive an owner of his vehicle used by the offender in committing a forest offence without his (owner's) knowledge and without his participation. The word "forfeited" Must be given the meaning “liable to be forfeited” so as to avoid the injustice that would flow on the construction that forfeiture of the vehicle is automatic on the conviction of the accused. The amended subsection 40 does not exclude by necessary implication the rule of *audi alteram partem*. The owner of the lorry not a party to the case is entitled to be heard on the question of forfeiture of the lorry. If he satisfies the court that the accused

committed the offence without his knowledge or participation, his lorry will not be liable to forfeiture.

The Magistrate must hear the owner of the lorry on the question of showing cause why the lorry is not liable to be forfeited. If the Magistrate is satisfied with the cause shown, he must restore the lorry to the owner. The Magistrate may consider the question of releasing the lorry to the owner pending inquiry, on his entering into a bond with sufficient security to abide by the order that may ultimately be binding on him.”

It is therefore seen under the existing law a vehicle transporting timber cannot be confiscated if the owner of the vehicle on a balance of probability establishes one of the following things.

1. that he has taken all precautions to prevent the use of the vehicle for the commission of the offence.
2. that the vehicle has been used for the commission of the offence without his knowledge.

Who is the owner of the vehicle? This is the most important question that must be decided in this case. Can it be said that the absolute owner (the finance company) committed the offence or it was committed with the knowledge or participation of the absolute owner. The answer is obviously no. Surely a finance company cannot participate in the commission of an offence of this nature when the vehicle is not with it. It cannot be said that the finance company had the knowledge of the commission of the offence when the vehicle was not with it. The owner envisaged in the law cannot be the absolute owner. In the present case the registered owner is the one who

drove the vehicle at the time of the commission of the offence. He was convicted on his own plea. If the court is going to release the vehicle on the basis that the owner of the vehicle is the absolute owner, then after the release, it is possible for the absolute owner to give the vehicle to another person. If this person commits a similar offence, the finance company can take up the same position and the vehicle would be again released. Then where is the end to the commission of the offence? Where is the end to the violation of the Forest Ordinance? There will be no end. If the courts of this country take up this attitude purpose of the legislature in enacting the said provisions of the Forest Ordinance would be defeated. In my view Courts should not interpret the law to give an absurd meaning to the law. In this connection I would like to consider a passage from 'Interpretation of Statutes by Bindra 7th edition page 235. "It is a well known rule of construction that a statute should not be construed so as to impute absurdity to the legislature." For these reasons I hold that the owner envisaged in law is not the absolute owner and the owner envisaged in law in a case of this nature is the person who has control over the use of the vehicle. The absolute owner has no control over the use of the vehicle except to retake the possession of the vehicle for non payment of installments. If the vehicle is confiscated holding that the absolute owner is not the owner envisaged in law, no injustice would be caused to him as he could recover the amount he spent from the registered owner by way of action in the District Court on the basis of violation of the agreement. There may be other situation^s where a vehicle being used for transport of timber in violation of the Forest Ordinance, but it is difficult to give an answer to each and every situation. Such cases must be decided on the facts of the case and those decisions must be reserved for future.

I have earlier pointed that the owner envisaged in law is not the absolute owner. Therefore even if the absolute owner proves that he had taken all precautions to prevent the use of the vehicle for the commission of the offence or that the vehicle had been used for the commission of the offence without his knowledge, he cannot succeed in this case.

For the above reasons I dismiss the petition of the petitioner and refuse to issue notice on the respondents.

Petition dismissed.

Judge of the Court of Appeal.

Anil Gooneratne J.

I agree.

Judge of the Court of Appeal.