

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

CA (PHC) 60/2011

HC Chilaw Case No: 03/2010

Yakdehige Mahesh Priyadarshana Fernando
No: 313/B,
Dehiyagana,
Ja-Ela

Petitioner Appellant

Vs.

OIC
Police Station,
Wennappuwa.

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

Respondents

C.A (PHC) 60/2011

HC Chilaw Case No: 03/2010.

Before : Rohini Marasinghe J. &
Deepali Wijesundera, J.

Counsel : Neranjan Jayasinghe for the Accused-
Appellant.
Anoopa De Silva S.C for the Respondent. .

Argued & decided on : 22.01.2013.

Rohini Marasinghe J.

The Petitioner had filed this application to revise the order of High Court Judge dated 05.05.2011 and the order of the Magistrate dated 22.01.2010 wherein the lorry bearing No: WPGR 8585 had been confiscated. The said orders for confiscation had been made in terms of section 3A of the Animals Act 29 of 1958 as amended by Act No: 10 of 1968.

The Petitioner is the owner of the lorry which had been detected by police transporting 33 heads of cattle and 3 heads of buffalos without a permit. The detection had been made on 07.07.2008. The driver and the cleaner of the lorry had been charged under section 3 of the Animals Act. They had

pleaded guilty and fined. Therefore, learned Magistrate took steps to confiscate the lorry in terms of section 3A of the Act.

The Petitioner sought to show cause against the confiscation. An inquiry was held. The Petitioner had given evidence. In his evidence he had stated that he was a businessman doing hotel catering services. The lorry is parked in the town and could be hired. He also stated that the lorry had never transported cattle prior to this date. And, he also had stated that he would not allow cattle to be transported in his lorry under any circumstance. The inquiry closed with this evidence. After inquiry the learned Magistrate by his order confiscated the lorry on the basis that the petitioner had not taken all precautions to prevent the use of his vehicle for the commission of the offence. The learned High Court Judge affirmed the order of the Magistrate on the same premise.

The manner in which a confiscation of the vehicle should be approached by court had been succinctly dealt in the case of *Faris V. Police Station Galenbindunuwewa and Another* [1992] 1 SLR page 168 at 169.

In terms of the 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 taken all precautions to prevent the use of the vehicle for the commission of the offence (2) That the vehicle had been used for the

commission of the offence without his knowledge. Therefore, if the owner establishes any one of these matters on a balance of probability, an order for confiscation should not be made.

In this case it is clear that in the impugned orders the learned Judges had been of the view that the petitioner had not taken all precautions to prevent the use of the vehicle for the commission of the offence. But, the court should have taken into consideration the evidence led by the petitioner in regard to the second element- meaning knowledge. The court should examine whether the petitioner had knowledge of the offence. Notwithstanding the fact that the petitioner had not taken all precautions to prevent the use of the vehicle for the commission of the offence, if the petitioner adduced evidence in regard to lack of knowledge, that fact should have been duly considered by court. It had not happened in this case. Therefore, we allow the application of the petitioner and grant the prayer 'b' in favour of the petitioner and refer the case back for fresh inquiry directing the court to consider the case of Faris in the correct manner as stated in the judgment.

We also direct that the vehicle (if not already released) be released to the petitioner in a sum of Rs.500,000 personal bail, subject to the condition

that the vehicle shall not be sold, and that no act shall be done to the vehicle to depreciate its present value and that it would be submitted to court on demand.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera.

I agree.

JUDGE OF THE COURT OF APPEAL

Vkg/-