

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

Officer-in Charge

Police Station

Norton Bridge

Complainant

Vs.

1. Atapattu Mudiyansele Ranjith
Priyantha Kumara Atapattu
4th Mile Post
Norton Bridge
2. Dissanayake Mudiyansele
Ruwan Inon Dissanayake
101/31, Meegama Watte
Wattegama
3. Giddawa Gedera Gunasena
117/02, Meegama Watte
Wattegama.
4. Yatinuwara Gedera Ajith
Premakeerthi of Jayampathi Stores
Dombagamuwa
Makulpatha
Accused

CA (PHC) Appeal: 03/2013

HC/Nuwara Eliya / HC/NE/48/2012 (Rev)

Magistrate Court of Hatton/57576/6/12

Atapattu Mudiyanseelage Sadi Banda
Of Galkotuwa Mawatha
Polgahawela

And

Atapattu Mudiyanseelage Sadi Banda
Of Galkotuwa Mawatha
Polgahawela

Applicant Petitioner

Vs

Officer-in-Charge
Police Station
Norton Bridge

Complainant – 1st Respondent

-3-

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

2nd Respondent

And

Atapattu Mudliyansele Sadi Banda
Of Galkotuwa Mawatha
Polgahawela

Applicant-Petitioner-Appellant

Vs.

Officer-in Charge
Police Station
Norton Bridge

Complainant-1st Respondent

Respondent

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

2nd Respondent-Respondent

BEFORE : A.W.A. SALAM, J.
MALINIE GUNARATNE, J.

COUNSEL: Athula Perera with
Chathurani de Silva,
FOR THE APPELLANT

Anoopa de Silva, SSC
FOR THE RESPONDENT

Argued on 01.10.2013

Decided on 25.07.2014

Malinie Gunaratne, J.

In this matter Four accused in the Magistrate Court of Hatton, appeared and pleaded guilty to a charge of illicit transport of timber. The offence under the Forest Ordinance was, without a permit the transportation of Eight (08) logs of Tuna timber worth Rupees Eight hundred and seventy six and cents forty two (Rs.876/42).

The facts of this appeal were not disputed and it was common ground that the Norton Bridge Police had instituted proceedings in the Magistrate Court of Hatton against the four accused for transporting eight logs of Tuna timber valued at Rs.876/42, on 2012/02/04, without a lawful permit.

All four accused pleaded guilty, nevertheless the learned Magistrate convicted only the 1st and the 2nd accused and fined Rs.15,000/- each.

In addition to the fine imposed, the learned Magistrate has proceeded to confiscate the vehicle after an inquiry. Being aggrieved by the said Order the Petitioner moved the High Court of Nuwara Eliya in revision but the learned High Court Judge, by his Order dated 14.02.2013, dismissed the Petition of the Petitioner on the basis that there were no exceptional circumstances adduced before him. Being aggrieved by the said Order of the learned High Court Judge the Petitioner has filed the present Petition.

The Petitioner's Counsel contended in this Court that the learned Magistrate in his Order has accepted the fact that the Appellant did not have any knowledge about the transporting of timber without a permit. Further contended in such circumstances confiscation of the lorry is highly unreasonable and thereby had erred in law.

In the oral and written submissions of the learned Counsel for the Respondent, it has been stressed that there has in fact been a clear appreciation of the evidence lead in the Magistrate's Court together with a clear appreciation of the relevant law. Further submitted that the finding of the learned Magistrate and the High Court Judge is in fact sound in law.

Further submitted, that in no where in the said inquiry proceedings find that the Appellant had acted within the requisites of Sec.40. Sec 40(1) of the Forest Ordinance provides that :

“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”.

Hence, it is the position of the Respondent, that the Appellant had failed to satisfy Court to the effect that he had acted in accordance to the requisites of Sec. 40 of the Forest Ordinance.

The learned Magistrate has considered the provision laid down in Sec.40 of the Forest Ordinance as amended and had come to the conclusion that the Court has a discretion to confiscate the vehicle after an inquiry, on

the basis that the registered owner had not been able to prove that he had taken all precautions to prevent the use of the vehicle for the commission of the offence. The learned High Court Judge also has taken the same view and affirmed the order of the learned Magistrate and dismissed the Revision Application.

I have to admit that no where in the said inquiry proceedings there is evidence, that the Appellant had taken all precautions to prevent the commission of the offence. However, at the inquiry the Appellant has given evidence and stated, he purchased the lorry on 26/02/2000 and gave it to his son to transport the tea leaves. Further stated, that he had no knowledge about transporting timber. The learned Magistrate in his Order has accepted the fact that the Appellant did not have any knowledge about the transporting of timber without permit.

Nevertheless the learned Magistrate has confiscated the lorry. I am of the view, before making the Order of confiscation learned Magistrate should have taken into consideration, value of the timber transported, no allegations prior to this incident that the lorry had been used for any illegal purpose, that the appellant and or the accused are habitual offenders in this nature and no previous convictions, and the acceptance of the fact that the

Appellant did not have any knowledge about the transporting of timber without a permit. On these facts the Court is of the view that the confiscation of the lorry is not justifiable.

The learned High Court Judge has affirmed the learned Magistrate's Order and dismissed the Revision Application on the basis that there were no exceptional circumstances adduced before him.

The revisionary power of Court is a discretionary power. This is an extraordinary jurisdiction which is exercised by the Court and the grant of relief is entirely dependent on the discretion of the Court. The grant of such relief is of course a matter entirely in the discretion of the Court, and always be dependent on the circumstances of each case. Existence of exceptional circumstances is the process by which the Court should select the cases in respect of which the extraordinary power of revision should be adopted. The exceptional circumstances would vary from case to case and their degree of exceptionality must be correctly assessed and gauged by Court taking into consideration all antecedent circumstances using the yardstick whether a failure of justice would occur unless revisionary powers are invoked.

In all the above circumstances, I take the view that the learned High Court Judge has not exercised his revisionary jurisdiction justifiably over the determination made by the learned Magistrate.

Taking all these into consideration I set aside the Order of the learned High Court Judge, dated 14.02.2013 and the Order of the learned Magistrate dated 12.13.2012.

Appeal is allowed.

JUDGE OF THE COURT OF APPEAL

I agree

PRESIDENT OF THE COURT OF APPEAL