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

## **C.A. (PHC) No. 121/2012** P.H.C. Badulla Case No. 44/2011 Rev. M. C. Mahiyangane Case No.68676

Abdul Kapoor Mohomed Aliyar Mahiyanganaya.

## Petitioner

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

Respondent

# C.A. (PHC) No. 121/2012 P.H.C. Badulla Case No. 44/2011 Rev. M. C. Mahiyangane Case No.68676

<u>Before</u>	:	K. T. Chitrasiri, J &
		W.M.M. Malinie Gunarathne, J.
<u>Counsel</u>	:	Shantha Jayawardane for the Appellant.
		Anoopa de Silva, SSC, for the A.G.
Argued &		

<u>Decided on</u> : 01.09.2014.

### K. T. Chitrasiri, J.

This is an appeal to revise the orders dated 20.10.2010 and 30.08.2012 made by the learned Magistrate and the learned High Court Judge, respectively. Learned High Court Judge in his order dated 30.08.2012 has dismissed the revision application filed before him on the basis that the same had been filed without exercising the right to file an appeal that the petitioner could have invoked as of a right.

At this stage, learned Senior State Counsel brings to the notice of Court that the law does not provide for an appeal to be filed when an order is made confiscating a vehicle upon a conviction made consequent to an offence been committed under the Animals Act. Accordingly, she moves that this matter be sent back for re-hearing enabling the learned High Court Judge to consider the merits of the application and to make an order thereafter. Counsel for the appellant has no objection to this application.

Having considered the aforesaid submissions, we find that the learned High Court Judge has misdirected himself when he was of the opinion that the appellant had the right to file an appeal to revise the order of the learned Magistrate. Accordingly, we set aside the order dated 30.08.2012 of the learned High Court Judge of Badulla. Learned High Court Judge is directed to consider the merits of the revision application made by the petitioner-appellant and thereafter to make an order according to law.

The Registrar is directed to send the original record with this Order to the High Court of Badulla for the learned High Court Judge to take further steps as directed.

Appeal allowed.

#### JUDGE OF THE COURT OF APPEAL

### W.M.M. Malinie Gunarathne, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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