

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

C.A. (PHC) 72/2012

P.H.C. Kegalle Case No: 4395/Rev.

M.C. Kegalle Case No: 11216 /11

P.S. Priyantha Rajapakshe

Petitioner

Vs.

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

Respondent

C.A. (PHC) 72/2012

P.H.C. Kegalle Case No: 4395/Rev.
M.C. Kegalle Case No:11216 /11

Before : K.T. Chitrasiri,J. &

W.M.M. Malinie Gunaratne,J.

Counsel : Shanaka Ranasinghe P.C. with Niroshan
Mihindukulasuriya for the Appellant.

Anoopa de Silva SSC. for the Respondent


Argued &
Decided on : 27.10.2014

K.T. Chitrasiri,J.

This is an appeal seeking to set aside the order dated 09.05.2012 wherein the learned Magistrate of Kegalle confiscated the vehicle SGLC 7978 pursuant to a conviction imposed on the accused in the case bearing No: 11216/11 filed in the Magistrate's Court of Kegalle. The action filed in the Magistrate's Court ^{is} ~~is~~ an action filed under the Mines & Minerals Act No: 33 of 1992 as amended by the Act No: 66 of 2009, for transporting sand without a permit. Accordingly, the accused pleaded guilty to the charge under Section 28(1) read with 63(1) of the aforesaid Act. Thereafter the learned Magistrate confiscated the aforesaid vehicle SGLC 7978 having held an inquiry.

Learned Senior State Counsel at this stage informs Court that this Court in the case of CA(PHC) 120/2012 (C.A. minutes dated 03.09.2014) has decided that the vehicle used in committing an offence under the provisions of

the Mines & Minerals Act is not forfeitable. The aforesaid decision is applicable in this instance as well since the confiscation of the vehicle in this case also had been made in terms of the provisions contained in the Mines & Minerals Act.

Relying upon the aforesaid decision of this Court, we decide that it is wrong to have the aforesaid vehicle confiscated in this instance. For the aforesaid reasons, we set aside the decision dated 09.05.2012 of the learned Magistrate confiscating the vehicle bearing No: SGLC 7978. We also make order setting aside the decision dated 22.06.2012 of the learned High Court Judge ~~has affirmed~~ ^{affirming} the decision of the learned Magistrate. 

Learned Magistrate is directed to release the vehicle to the registered owner. For the aforesaid reasons, this Appeal is allowed.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

Malinie Gunaratne, J.

I agree.

JUDGE OF THE COURT OF APPEAL

Jmr/-