

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

1. Abeywickrema Dhanapala Saman
Sirilal
Muththetugodawatte
Thapaththala
Rotumba

Claimant- Petitioner - Appellant

**CA (PHC) No.153/2013
HC Matara Case No. 123/13 / REV
MC Morawaka Case No.17202**

Vs.

Officer in Charge
Police Station
Pitabeddara

Plaintiff – Respondent -Respondent

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

Respondent -Respondent

BEFORE: K.T. Chitrasiri J.

W.M.M. Malinie Gunaratne, J.

Counsel: A.I. Irfana - for the Appellant

Anoopa de Silva, SSC - for the two Respondents

Argued on : 17.9.2014

Decided on: 11.11.2014

Malinie Gunaratne, J.

A confiscation inquiry had been held by the learned Magistrate of Morawaka regarding the vehicle bearing No. SP LE 3153 and after inquiry, by her order dated 28.08.2013, the learned Magistrate had ordered the confiscation of the said vehicle.

Aggrieved by this Order, the Appellant filed an application in revision (HCA 123/2013) in the High Court of the Southern Province, Holden in Matara. On 08.10.2013, learned Judge of the High Court made order dismissing the revision application and affirmed the order of the learned Magistrate dated 28.08.2013.

Being aggrieved by the said order made by the learned Judge of the High Court Matara, the appellant has come before this Court, seeking to set aside the order dated 08.10.2013 of the learned High Court Judge Matara and the order dated 28.08.2013 made by the learned Magistrate of Morawaka.

The facts of this appeal were not disputed and it was common ground that the Pitabeddara Police had instituted proceedings in the Magistrate Court of Morawaka against the accused for possessing and transporting 38 Jak (Koss) logs valued at Rs.2,490/50 on 29.03.2011 without a lawful permit and thereby committing an offence punishable under the Forest Ordinance. The accused was convicted on his own plea by the learned Magistrate. Thereafter,

the learned Magistrate has proceeded to confiscate the vehicle No.SP LE 3153, after an inquiry in terms of the provisions contained in the Forest Ordinance as amended subsequently.

I will now refer to Section 40 in the Forest Ordinance upon which the confiscation of the vehicle had been made.

Section 40 of the Forest Ordinance, states as follows:

(1) 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 where 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”.

The learned Counsel for the appellant submitted that the appellant has specifically stated in his evidence that he had no knowledge about the transportation of timber and accordingly he submitted that the appellant had

established that the illegal transportation of timber has taken place without his knowledge.

I will now draw my attention to the evidence which the appellant had given at the inquiry. The appellant in his evidence has stated that on that particular day, at 8.00 a.m. he sent the vehicle to the service station through his driver (the accused in the main case). Further he has stated that, in the evening while he was at home, a Police Officer of Pitabeddara Police Station, informed him that his vehicle has been taken into police custody for transporting timber illegally. It is significant to note that, although he has sent the driver at 8.00 a.m. to the service station, he has not made an attempt to inquire about the vehicle until the Police Officer came in the evening to his home and informed him that his vehicle had been taken to police custody. In cross examination he has stated that he requested the driver to go to the service station and he will come to the service station with the money. But he has not stated the reason why he could not go with the money.

Further the appellant has stated that he had instructed the driver not to engage in any illegal activities. But it is important to note that he has not stated even a single word, that he had taken necessary precautions to prevent an offence being committed by using his vehicle. He has only stated that he had no knowledge or participation in the commission of the offence.

Is it sufficient for the owner merely to say that he was not aware or that he had no knowledge that the vehicle was used in the commission of the offence and instructions had been given to the driver not to use the vehicle for illegal purposes? The answer to this question is purely in the negative.

Giving mere instructions or stating that the vehicle had been used for the commission of the offence without his / her knowledge is not sufficient in order to discharge the burden embodied in the proviso to Section (40) (1) of the Forest (Amendment) Act.

The appellant cannot escape liability by stating that he was not aware or he had no knowledge that the vehicle was used in the commission of the offence. He must show that he had taken all precautions available to prevent the use of the vehicle for the commission of the offence. (Vide MaryMatilda Silva vs. Inspector of Police Habarana and The Finance Company PLC vs. Agampodi Mahapedige Priyantha Chandana and others).

The learned Magistrate has considered the provision laid down in Section (40) (1) of the Forest (Amendment) Act and has come to the conclusion that the Court has a discretion to confiscate a vehicle after an inquiry, on the basis that the owner of the vehicle had not been able to take every possible step to prevent the committing of the offence in question.

Counsel for the appellant has referred to an earlier decision pronounced by me in respect of the same issue. It is the case of CA (PHC) Appeal 03/2013 dated 25.07.2014. According to the material and the facts found in that case, the Court has decided that the claimant had no knowledge as to the commission of the offence committed in that case. Thus the said decision is not directly applicable in this case since the facts and circumstances of this case are quite different to the facts in that other case.

Accordingly, when I consider the facts of this case and the evidence given by the appellant, I am of the view that the appellant has not established on a balance of probability any of the following matters:

- (i) that he had taken necessary precautions to prevent an offence being committed by using his vehicle;
- (ii) that the vehicle has been used for the commission of the offence without his knowledge.

For the above mentioned reasons I am of the view that the Order of confiscation had correctly been made by the learned Magistrate.

I therefore refuse to interfere with the Orders of the learned Magistrate and the learned High Court Judge.

Accordingly I dismiss the appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

W.M. Malini Gunaratne, J.

K.T. Chitrasiri, J.

I agree

JUDGE OF THE COURT OF APPEAL