

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

In the matter of an Appeal in terms
of Article 138 read with Article
154P(6) of the Constitution of the
Democratic Socialist Republic of
Sri Lanka.

Court of Appeal No:

CA(PHC)70/2008

Provincial High Court of
The Uva Province (holden in
Badulla) Rev.Appl.No: 58/2005

Officer-in-Charge,
Police Station, Haputale.

Complainant

Magistrate's Court

Bandarawela Case No:39307

Vs.

1. Vithanage Antony Rodrigo,
No.381/G, Batagama North, Ja-ela.

2. Ilandarige Piyatissa,
Kiri Ibban Ara, Sevanagala.

Accused

- **And Between** -

Padukkage Lawrence Perera,
No.42, Bogahatotupola Road,
Uswatta, Kandana.

Petitioner

Vs.

1. Officer-in-Charge,
Police Station, Haputale.

Complainant - 1st Respondent

2. Hon.The Attorney - General,
Attorney General's Department,
Colombo 12.

2nd Respondent

-And Now Between -

Padukkage Lawrence Perera,
No.42, Bogahatotupola Road,
Uswatta, Kandana.

Petitioner - Appellant

Vs.

1. Officer-in-Charge,
Police Station, Haputale.

1st Respondent - Respondent

2. Hon.The Attorney - General,
Attorney General's Department,
Colombo 12.

1st Respondent - Respondent

Before : W.M.M.Malanie Gunarathne, J
: P.R.Walgama, J

**Counsel : Ms. Yoosuff Nazar with Manjula Egodawattge for the
Petitioner.**

: Ms. Anooa De Silva for the A.G for the Respondent.

Argued on : 19.05.2015

Decided on : 14.07.2015

CASE-NO- CA- (PHC) 70/ 2008 JUDGMENT- 14.07-2015

P.R.Walgama, J

The Petitioner- Appellant(herein after called and referred to as the Appellant) has lodged the instant appeal to have the order of the Learned High Court Judge, dated 24th August 2006, and the order of the Learned Magistrate, dated 31st March 2005, to be reversed or quashed.

Two accused were charged in the Magistrate Court of Bandarawela in case No. 39507, for violating Section 2(1) of the Animals Act, amended by gazette extraordinary dated 14.03.2000, by transporting few heads of cattle, and also by transporting them in such a manner by not providing them with adequate hay for their consumption and thereby committing an offence punishable under Section 2(C) of the Cruelty to Animals Act.

The said Accused after pleading to the charge were imposed a fine of Rs. 250/ for each count. Thereafter the Learned Magistrate has fixed the case for inquiry regarding the vehicle and by the order of the Learned Magistrate dated 31.03.2005 has confiscated the said vehicle. Being aggrieved by the said order the Petitioner-Appellant made an application by way of revision to have the said impugned order vacated or set aside.

The Learned High Court Judge by his order dated 24.08.2006, has affirmed the order of the Magistrate and dismissed the revision application of the Petitioner- Appellant.

Being aggrieved by the said order of the High Court Judge, the Petitioner- Appellant has appealed to this Court to have the said order of the High Court too be vacated.

The facts crystallized in the instant appeal albeit brief are as follows;

That the said impugned judgment is contrary to the law and had caused grave miscarriage of justice, and further more the Appellant was the Registered owner of the alleged vehicle.

The Appellant in his testimony at the inquiry in to the confiscation of the vehicle has stated that he was not privy to the commission of the alleged offence and as to the opening of the hood of the vehicle was that for the convenience of loading of coconut for transportation. Further his version was

that there was an opening of the hood even at the time he purchased the same. On the day in question he had given permission to the Accused driver to transport roof tiles to Monaragala. But in fact the Accused had transported cattle without a valid permit. It is intensely relevant to note that according to his (appellant's) own admission another lorry belonging to him has been used for a similar purpose, and the said Lorry has been seized by the Police.

The Learned Magistrate has stated in the said impugned order that after the inquiry, he examined the said lorry and was satisfied that the said lorry could be used for transportation of animals, and the same has been altered for the purpose of transporting cattle.

In the above setting the learned Magistrate was of the view that the alleged vehicle had been used for the said illegal purpose and the testimony of the appellant lacks probity. In the attended circumstances the Learned Magistrate has confiscated the alleged lorry.

Being aggrieved by the said order of confiscation, the Petitioner has made an application by way of revision to the High Court of Badulla. After considering the arguments of both counsel the Learned High Court Judge up held the order of the Learned Magistrate as stated above and dismissed the Petitioner's application accordingly.

In the above order of the High Court Judge also adverted his mind to the fact, what was observed by the Learned Magistrate in determining as to the confiscation of the said vehicle.

The Section 3 of the Animal Act, which embraces, the issue in hand is stated below;

“Where any person is convicted of an offence under this part or any regulations made there under, any vehicle used in the commission of such offence, be liable, by order of the convicting Magistrate to confiscation, Provided however that in any case where the owner of the vehicle is a third party, no order of confiscation shall be made, if the owner proves to the satisfaction of the Court that he has taken all the precautions to prevent the use of such vehicle or that the vehicle has been used without his knowledge for the commission of the offence.”

In terms of the proviso to Section 3A of the Animals Act an order of confiscation cannot be made if the owner proves to the satisfaction of Court (1) that he has taken all precautions to prevent the use of the vehicle for the commission of the offence or (2) that the vehicle has been used for the commission without his knowledge”

The above Section was considered by his Lordship Sisira de Abrew in the case of MARY MATILDA SILVA .VS. I.P . POLICE STATION HABARANA- decided on 08.07.2010, in deciding a

similar matter, and had considered the case of FANS .VS. Officer In Charge of Police Station GALENBINDUNUWEWA (1992) 1-SLR 167- which held thus;

“In terms of the proviso to 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 has taken all the precaution to prevent the use of the vehicle for the commission of the offence,
2. That the vehicle has been used for the commission of the offence without his knowledge.

In terms of the proviso, if the owner establishes any one of these matters on a balance of probability, an order for confiscation should not be made. An order for confiscation could be made only if the owner was present at the time of the detection or there was some evidence suggesting that the owner was privy to the offence.”

Further His Lordship Sisira de Abrew observed thus;

“In my view, for the owner of the vehicle to discharge the burden(1) that he or she had 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/her knowledge, mere giving instructions is not sufficient. In order to discharge the burden embodied in the proviso to Section 3A of the Animals Act, is it sufficient

for the owner to say that the instructions not to use the vehicle for illegal purpose had been given to the driver? If the Courts of this country is going to say that it is sufficient, then all what the owner in a case of this nature has to say is that he gave said instructions. Even for the second offence, this is all that he has to say. Then there is no end to the commission of the offence and to the use of the vehicle for the commission of the offence. Every time when the vehicle is detected with cattle all what he has to say is that he had given instructions to the driver. Then the purpose of the legislature in enacting the proviso to section 3A of the Animals Act is frustrated."

It is intensely relevant to note the rationale observed in the case of UMMA HABEEBA .VS. Officer In Charge of Police Station DEHIATTAKANDIYA [1999] 3 SLR -89, which has stated thus;

"what section 3A means is that the vehicle shall necessarily be confiscated if the owner fails to prove that the offence was committed without the knowledge but not otherwise. If, as contended, Magistrate was given a discretion to consider whether to confiscate or not- the Magistrate could confiscate even when the offence was committed without the knowledge of the owner taking in to consideration other damnable circumstances apart from knowledge or lack of it on the part of the owner."

Therefore in view of the evidence transpired at the inquiry in the confiscation of the vehicle, it was revealed that another

lorry belonging to the Appellant was seized by the Haputale police for transporting cattle without a permit. The above instant too is a proof of the fact that the Appellant is one such, involves in such illegal activities.

In the instant appeal the Appellant has alleged that the conviction of the accused is bad in law as the accused had pleaded to a charge which was wrongly framed, and as such the said illegal plea of guilt has shuts out the legal basis to hold a confiscation inquiry set out in Section 3A of the Animals Act.

The ground norm of the argument of the Appellant was that a confiscation inquiry in terms of Section 3A would only come in to operation only where there had been a valid conviction. Therefore it is asserted by the Appellant that as there was no valid conviction, due to the failure on the part of the Learned Magistrate to comply with the requisites of Section 183 of the Code of Criminal Procedure Act No.15 of 1979, the alleged confiscation under Section 3A of the Animals Act is irregular.

But it is pertinent to note and it was the position of the Respondent that the third party is estopped from challenging the validity of conviction once a confiscation inquiry has commenced. Besides this Court also holds the view that a third party cannot challenge the validity of a conviction in an application filed to question the legality of the confiscation order.

In addition to the overwhelming facts which transpired in the course of the inquiry, it is salient to consider the observations made by the Learned Magistrate of the features that appeared in the alleged vehicle in arriving at the determination.

The Learned High Court Judge was also convinced of the evaluation by the Learned Magistrate of the facts transpired at the inquiry, and had no hesitation in affirming the order of the Learned Magistrate.

Thus in the light of the above this court is compelled to arrive at the irresistible conclusion that the appeal is devoid of merits and should stand dismissed subject to a cost of Rs.10,000/.

Appeal is dismissed accordingly.

JUDGE OF THE COURT OF APPEAL

W.M.M.Malanie Gunarathne, J

I agree.

JUDGE OF THE COURT OF APPEAL