

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

In the matter of an application for
Revision in terms of Article 138 of the
constitution of the Democratic Socialist
Republic of Sri Lanka.

CA (PHC) APN : 92/2014

High Court Puttalam

Case No : HCR 21/2013

Magistrate Court Puttalam

Case No : 73856/P

Officer In Charge,

Police Station,

Mundalama.

Complainant

Vs.

Balasooriya Mudiyanseelage Dinesh
Priyantha,

6th Post,

Mahadumbukkadawala.

Accused

And Now

Wanniarachchige Kankanange Asanka
Sudesh Kumara,

Kiula Youth Project,

Madurankuliya.

Registered Owner – Claimant

Vs.

Officer In Charge,
Police Station,
Mundalama.

Complainant – Respondent

AND NOW

Wanniarachchige Kankanange Asanka
Sudesh Kumara,
Kiula Youth Project,
Madurankuliya.

**Registered Owner – Claimant –
Petitioner**

Vs.

Officer In Charge,
Police Station,
Mundalama.

**Complainant – Respondent –
Respondent**

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

Respondent – Respondent

And Now Between

Wanniarachchige Kankanange Asanka
Sudesh Kumara,
Kiula Youth Project,
Madurankuliya.

**Registered Owner – Claimant –
Petitioner – Petitioner**

Vs.

Officer In Charge,
Police Station,
Mundalama.

**Complainant – Respondent –
Respondent – Respondent**

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

Respondent – Respondent

Before : W.M.M.Malinie Gunarathne, J

: P.R.Walgama, J

Counsel : Amila Palliyage with N. Randeniya for the Petitioner.

: Anoop De Silva SSC for the Respondent.

Argued on : 13.07.2015

Decided on: 13.11.2015

CASE NO – CA (PHC) APN – 92/2014 – Judgment - 13.11.2015

P.R.Walgama, J

The instant appeal arises against the backdrop of the following facts;

The Registered owner – Claimant – Petitioner – Petitioner (in short the Petitioner) has come by way of revision seeking inter alia;

To revise and set aside the confiscation order dated 13.11.2013 of the Learned Magistrate of Puttlam.

AND

To revise and set aside the order dated 30.04.2014 of the High Court Judge of Puttlam.

The Petitioner was the Registered owner of the Lorry bearing No.226 - 3757 which was used by the accused for transportation of timber without a valid permit. At the trial in the Magistrate Court of Puttlam, the accused pleaded guilty to the charge and the Learned Magistrate has fixed the case for inquiry regarding the confiscation of the subject Lorry, whereupon the Learned Magistrate deemed to have confiscated the above Lorry by the order dated 13.11.2013.

In the above inquiry the stance of the Petitioner, was that the alleged offence has been committed by the accused without

his knowledge Further he has admitted that he does not know, whether the accused had a driving license or not, Besides Petitioner has not inquired about the vehicle after it has been handed over to the accused viz the driver.

The Learned Magistrate in the said impugned order has alluded to the celebrated Judgment of MANAWADU .VS. ATTORNEY GENERAL (1987) 2 SLR 30.

In following the above Judgment the Learned Magistrate has adhered to the rule of Audi alteram parte and allowed, the Petitioner (Registered Owner) to adduced evidence at the inquiry in to the confiscation of the vehicle in issue.

It is apparent from the document marked X1 that the Commercial Leasing Company was the absolute owner of the vehicle and by the document marked X2 the said Commercial Leasing Company has issued the said document marked X2, to the effect that they have no objection in releasing the vehicle in issue to the Petitioner.

The Petitioner's position was that the accused had used the said vehicle to transport timber without a valid permit, without his knowledge, and the said vehicle was given only to transport bricks and Cajon and not any other material.

In fact the Petitioner has admitted the that he never checked whether the accused (driver) has a driving license, and after handing over the vehicle to the accused he does not inquire in to any matter there after.

The Learned Magistrate has considered that the Petitioner has although stated that, he had given instructions to the driver, he had not explained what it was.

In the said backdrop the Learned Magistrate was of the view that the Petitioner has failed to satisfy court that he took every precaution to avoid the commission of the offence in terms of Section 40 of amendment Act No 65 of 2009 of the Forest Ordinance, and had confiscated the said vehicle.

Being aggrieved by the said order the Petitioner has assailed the said order to the High Court of Puttlam by way of Revision.

In considering the above application of the Petitioner, the Learned High Court Judge was of the view that the Learned Magistrate has arrived to the Conclusion, to confiscate the said vehicle in the correct perspective, and being satisfied with the reasons set out there in had affirmed the said impugned order.

Aggrieved by the above order of the High Court Judge dated 30.04.2014, the Petitioner has lodged, an application in Revision seeking to set aside the said impugned orders of the Learned High Court Judge and the Learned Magistrate made on the above dates.

In the instant application in Revision, the Respondent has taken a preliminary objection as to the maintainability of this application.

The ground norm of the said objections relate to the failure on the part of the Petitioner to exercise the right of appeal.

The Counsel for the Respondent has adverted court to the Judgment of Abeywardena.Vs. Ajith De Silva - 1998(1) SLR 134 where in it was held that "an appeal should be lodged in the Court of Appeal in respect of an order arrived by a Provincial High Court exercising its revisionary jurisdiction"

Therefore it is contended by the Counsel for the Respondent that the Petitioner has failed to indicate the reasons why the Court of Appeal should exercise revisionary powers when a right of appeal against the same was available. Further it is alleged that the Petitioner has not averred the existence of any exceptional circumstance, which warrant the exercise of the Revisionary jurisdiction of this Court. The said legal position was recognized in the case of DHARMARATNE AND ANOTHER .VS. PALMPARADISE CABANAS LTD AND OTHERS 2003 (3) SLR - 25. Which has held thus;

"Existence of exceptional circumstances is the process by which the Court selects the cases in respect of which the extraordinary method of rectification should be adopted, if such a selection process is not there revisionary jurisdiction of this Court will become a gateway of every litigant to make a second appeal in the garb of a Revision Application or to make an appeal in situations where the legislature has not given a right of appeal..."

It also salient to recognized the substance that stemmed from the Judgment in case of VANIK INCORPORATION LTD .VS . JAYASEKARA - 97 (2) SLR. 365 which held thus;

“Revisionary power should be exercised where a miscarriage of justice has occurred due to a fundamental rule of procedure being violated, and also that not in all instances where there has been a miscarriage but only when a strong case is made out amounting to a positive miscarriage of justice”

Thus it is asserted by the Counsd for the Respondent that in the instant matter the Petitioner has not established that by the said impugned orders, substantive miscarriage of justice has been caused to him which warrants this Court to exercise its discretionary power of revision.

It is salient to consider the Judgment of K.MARY MATILDA SILVA .VS . P.H. DE SILVA INSPECTOR OF POLICE, Decided on - 08.07.2010 which has observed thus;

“It the Courts of this Country are going to say that it is sufficient, then all that the owner in a case of this nature has to say is that...(I gave verbal instructions to the driver to not use the vehicle to commit offence) even for the second offence. This is no end, to the commission of the offence. “Then the purpose of the legislature in enacting the proviso to Section 40 (1) of the Forest Ordinance is frustrated”

The stance of the Petitioner is that the High Court Judge has erred in law in the exercise of his revisionary powers by requiring the Petitioner to prove his case beyond reasonable doubt and not

on a balance of probability. But it is worthy to mention that for the Petitioner to say merely that he never had the knowledge of the commission of the alleged offence or to say that he had advised the driver, not to engage in illegal transportation is by no means proof of his innocence or is not sufficient to exonerate him from any liability.

For the above compelling reasons I am of the view that this Court should not interfere with the said impugned orders. Hence I would therefore dismiss the appeal.

Appeal is dismissed subject to a cost of Rs. 10,000/-

JUDGE OF THE COURT OF APPEAL

W.M.M.Malinie Gunarathne, J

I agree,

Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL