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

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

Plaintiff

VS.

C.A. 105/13
High Court Moneragala
Case No. 52/2010

1. W.M. Rangana Suneth Kumara
2. U. Nalin Akalanka Wijerathne
3. W.M. Chaminda Pushpa Kumara
4. Milla Gedera Anura Kirthi

Defendants

AND

D.A. Anura Priyantha Dasanayake

Claimant

AND BETWEEN

D.A. Anura Priyantha Dasanayake

Claimant-Appellant

VS.

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

Respondent

BEFORE : **W.M.M. Malinie Gunaratne, J. and**

S. Devika D.L. Tennekoon, J.

COUNSEL : Daya Guruge
for the Appellant.

Shavindra Fernando, A.S.G.
for the Respondent.

Argued on : 02.03.2016

Written submissions
filed by Appellant on: 11.05.2016

Decided on : 08.06.2016

Malinie Gunaratne, J.

A confiscation inquiry had been held by the learned Trial Judge of Moneragala, regarding the Vehicle (Tractor) No. N C S D 6014 and after inquiry, by his Order dated 07.05.2013, the learned Trial Judge had ordered the confiscation of the said vehicle.

Aggrieved by this Order, the Appellant has come before this Court, seeking to set aside the said Order.

The facts of this Appeal were not disputed and it was a common ground that W.M.R. Suneth Kumara, U. Nalin Akalanka Wijerathne, W.M. Chaminda Pushpa Kumara and M.G. Anura Keerthi were indicted by the State under the provisions of Poisons, Opium and Dangerous Drugs Act No. 13 of 1984, (hereinafter referred to as the said Act) for possessing and trafficking 15.920 kg. of cannabis sativa without a valid permit.

The accused were convicted on their own plea by the learned Trial Judge. Thereafter the learned Trial Judge has proceeded to confiscate the vehicle No. N C S D 6014, after an inquiry held under Section 79(1) in terms of the Provisions contained in the said Act.

The learned Trial Judge in his decision has stated that the Appellant has failed to establish that he had no knowledge as to the commission of the offence to which the accused had pleaded guilty. Accordingly, the learned Trial Judge has decided to confiscate the vehicle. Hence, it is necessary to ascertain whether or not the learned Trial Judge has implemented the law referred to in Section 79(1) of the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 13 of 1984.

The aforesaid Section 79 (1) of the said Act reads thus:

> 79 (1) Where any person is convicted of an offence against the Ordinance or any regulation made thereunder the Court shall order that all or any articles in respect of which the offence was committed and any boat, vessel, vehicle, aircraft or air-borne craft or equipment which has been used for the conveyance of such article shall, by reason of such conviction, be forfeited to the State.

A simple reading of the Section clearly shows that the vehicle claimed by the Appellant is liable to be confiscated since the said vehicle had been used to commit an offence under the said Act.

The impression that comes to a judicial mind by looking at the manner, in which those words are being used in Section 79(1) is that it is to ensure holding of an inquiry by the trial judge before he makes an order. Then only the trial judge becomes entitled to make an appropriate order.

As such, the learned Trial Judge held an inquiry when the Appellant made an application to have the said vehicle released to him relying upon Section 79(1) of the said Act. After the inquiry, the learned Trial Judge, deciding that the Appellant has failed to establish that he had no knowledge as to the commission of the offence, confiscated the vehicle.

Now it has to be considered whether the learned Trial Judge has correctly evaluated the available evidence when he decided to confiscate the vehicle claimed by the Appellant. It is necessary to ascertain whether the Appellant in this instance was successful in establishing whether he in fact had no knowledge whatsoever of the Act of illegally transporting cannabis making use of the vehicle that he owns, on a standard of balance of probabilities.

When this case was taken up for argument the learned Counsel for the Appellant contended that, the learned Trial Judge has failed to evaluate and assess the totality of the evidence led at the inquiry. The learned Counsel further contended that, the learned Trial Judge has considered extraneous matters that had not been elicited in the evidence.

It is the stance of the learned Additional Solicitor General, as the Appellant had not proved his case on balance of probability the learned Trial Judge has correctly made the Order of confiscation of the vehicle.

I will now consider the evidence, which the Appellant had given at the inquiry. Summarily the relevant evidence is as follows:

"මම යුධ හමුදාවේ සේවය කරනවා. ට්‍රැක්ටර් රථය රු:65000/- ක් වියදම් කරලා ගත්තේ පොළොන්නරුවෙන්. කුඹුරු වැඩවලට දීලා ආදායමක් ලබාගන්න අරමුණින් මිලදී ගත්තේ. මට කුඹුරු වැඩ වලට යොදන්න හැකියාවක් නැති නිසා

පොළොන්නරුවේ ඉන්න පුංචි අම්මාට ට්‍රැක්ටරය බාර දුන්නා. ඒසේ බාර දෙනකොට කිව්වා නීතිමය (නිවැරදිව නීතිවිරෝධී විය යුතුය) වැඩ කරන්නේ නැතිව කුඹුරු වැඩ කරලා මටත් කොටසක් දෙන්න කියලා. ඒසේ දුන්නට පස්සේ කුඹුරේ වැඩ කරලා එයින් ආදායමක් මටත් ලැබුණා. පුංචි අම්මා call කරලා කිව්වා ට්‍රැක්රය වැල්ලවාය උසාවියේ තිබෙනවා කියලා. පුංචි අම්මාගේ පුතා ගංජා වගයක් අරගෙන ගිහින්. ට්‍රැක්ටරයේ ගංජා ප්‍රවාහනය කරනවා කියා දැනුමක් තිබුණේ නැහැ.

Appellant's aunt also has given evidence at the inquiry.

Having considered the totality of the evidence of both, the learned Trial Judge had concluded that the Appellant has failed to establish that he had no knowledge as to the commission of the offence.

I will now look at the evidence of the Appellant to ascertain whether he has successfully shown valid reasons to establish that he had no knowledge or participation in the offence.

The Appellant has stated in his evidence in chief that he had no knowledge of the offence, in one word.

(1) ප්‍ර. දැන් තමුන් ඔය ඒ සම්බන්ධයෙන් දැනුමක් තිබුණද ගංජා ප්‍රවාහනය කරනවා කියලා?

(2) උ. නැහැ.

It is to be noted that, it is a leading question put to the Appellant by his Counsel. However is it sufficient for the Appellant merely to say that he was not aware or that he had any knowledge or participation that the vehicle was used in the commission of the offence and instructions had been given to his Aunt not to use the vehicle for illegal purposes? The answer to the question is purely in the negative. The Appellant cannot escape liability by

stating that he had no knowledge of the offence. He should satisfy the Court and establish it on a standard of balance of probabilities.

On perusal of the evidence of the Appellant, it is to be noted even though he has stated that he entrusted the vehicle to his Aunt, he has not revealed the arrangement that he had made when he entrusted the vehicle to the Aunt. No evidence is forthcoming to support that he provided a driver, discussed the method of payments to be charged for hires, how to pay the purported instalments to the finance company etc. According to his evidence the Appellant has merely entrusted the vehicle to his Aunt.

It is curious indeed, why the vehicle was entrusted to his Aunt, although she has two sons. When the said question was asked by Court, the Appellant has not given an answer.

ප්‍ර. ඇයි පුංචි අම්මාගේ පුතාලට දුන්නේ නැත්තේ

උ. උත්තරයක් නැත

It was elicited from the Appellant's Aunt's evidence that the vehicle had been driven by her sons, who are the 1st and 3rd Accused of this case. Even though the Appellant has stated in his evidence that he had given instructions to the driver not to use the vehicle for illegal purposes, he has not disclosed or elicited from his evidence who the driver was, or the name of the driver.

It is to be noted even though the Appellant's Aunt has stated in her evidence on the date of the commission of the offence that she requested her two sons (1st and 3rd Accused) to go to Anuradhapura and bring some zinc sheets, the Appellant has not stated a single word about that. When the

Courts asked the Appellant without giving the vehicle to his own brothers who are residing in Kirindiwela, why the vehicle was given to his Aunt, he has stated " කිරිඳිවැල එච්චර කුඹුරු නැහැ සුලු ප්‍රමාණයක් තියෙන්නේ " It is to be noted that this answer cannot be accepted.

Further, the evidence of the Appellant is that he bought the vehicle subject to finance facilities from a finance company. But no evidence is forthcoming to support the income or profit that he received after entrusting the vehicle to his Aunt, or how much he paid as the instalment to the Finance Company.

Accordingly, looking at the said evidence of the Appellant, it is clear that he has failed to reveal fully, the facts that are necessary to establish whether he had any idea or knowledge as to the commission of the offence in this instance. Moreover a reasonable person who owns a vehicle does not just entrust the vehicle to another person without making proper arrangements to hire the vehicle for field work and without giving proper instructions.

Under those circumstances, it is my considered view that the Appellant has failed to show that he had no knowledge as to the commission of this offence under the said Act to which the accused had pleaded guilty. Neither had he shown any other particular reason to consider in order to have the vehicle released.

In the above circumstances it is evident that the learned Trial Judge had not erred when he held that the Appellant had not satisfied Court that he had no knowledge as to the commission of the offence to which the Accused had pleaded guilty.

On perusal of the Judgment it is apparent, that the evidence has been evaluated judicially by the learned Trial Judge. As such, I do not see any wrong in the manner in which the learned Trial Judge has considered the facts and the way in which he has applied the law in this instance.

For the above reasons, I see no basis to interfere in the Judgment of the learned Trial Judge. Accordingly, I affirm the Order dated 07.05.2013 and dismiss the Appeal with costs.

JUDGE OF THE COURT OF APPEAL

S. Devika D.L. Tennekoon, J.

I agree

JUDGE OF THE COURT OF APPEAL

Appeal is dismissed with costs.