

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

In the matter of an application made under and in terms of Article 138 of the Constitution of the Democratic Republic of Sri Lanka seeking to revise and set aside the Order made in H.C Monaragala Case No. 60/2014 on 02.12.2014.

**Democratic Socialist Republic of
Sri Lanka.**

**C.A. APPLICATION NO.
CA PHC APN 25/2015
COMPLAINANT**

Vs.

**HC MONARAGALA CASE
NO. 60/2014**

Wickramage Ranjith Kumara alias
Podi

ACCUSED

**MC WELLAWAYA CASE
NO. BR 616/2012**

AND NOW BETWEEN

Widanagamage Ajith Kumara
1888, Shakthi Mawatha,
Modarawana,
Ambilitiya.

APPLICANT – PETITIONER

Vs.

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

RESPONDENT

Before : P.R. Walgama, J

: L.T.B. Dehideniya, J

**Council : Shanaka Ranasinghe PC with P. Padmasiri for
the Applicant – Petitioner.**

: V. Hettige, SSC for Respondent.

Argued on : 30.03.2016

Decided on : 14.10.2016

CASE –NO- CA (PHC) APN- 25/ 2015- JUDGMENT- 14.10.2016

P.R. Walgama, J

The instant application in Revision is directed against the order of the Learned High Court Judge dated 02.12.2014, by which order, the lorry, involved in the commission of an offence under the Poisons, Opium, and Dangerous Drugs Ordinance, was confiscated.

The Learned High Court Judge has made the said order of confiscation in terms of Section 79 of the said Act. For the convenience and brevity the said Section is reproduced herein below;

- (1) Where any person is convicted of an offence against this 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 born craft of equipment which has been used for conveyance of such article shall, by reason of such conviction, be forfeited to the State.
- (2) Any property forfeited to the State under subsection (1) shall,
- (a) If no appeal has been preferred to the Court of Appeal against the relevant conviction vest absolutely in the State with effect from the date on which the period prescribed for preferring an appeal against such conviction expires;
 - (b) If an appeal has been preferred in the Court of Appeal against the relevant conviction, vest absolutely in the State with effect from the date on which such conviction is affirmed n appeal.

In this subsection "relevant conviction" means the conviction in consequence of which any property is forfeited to the State under subsection (1).

Therefore it is abundantly clear that the above Section does not give a right to be heard in respect of the claim to the vehicle, as there is no inquiry

contemplated under this section when the accused had pleaded guilty or there is no appeal has been preferred against such conviction. Hence the confiscation of the vehicle which involved in the commission of an act prescribed in the Statute will be automatic, and no inquiry should be held before the confiscating the same. It is to be noted that the above section and the effect is different from the section in the Forest Ordinance which deals with the confiscation of a vehicle involved in illegal transportation of timber.

Section 40 of the principle enactment is amended by the Forest (Amendment) Act No. 65 of 2009, which reads thus;

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”.

Therefore it is ostensible that under the above statute, if a third party is the owner of the vehicle it is incumbent on the Magistrate to hold an inquiry before he confiscate the vehicle in issue. But it seen from the Poisons, Opium, and Dangerous Drugs Ordinance. under which the offender was charged has not been provided for such an opportunity to a third party. Nevertheless the Learned Magistrate held an inquiry and was not satisfied with the evidence adduced, and as such moved to confiscate the vehicle in issue.

Therefore the case law cited by the Petitioner are cases which do not attract an offence under the said Act.

Notwithstanding the said section in the act concerned the Learned High Court Judge allowed the Petitioner to be heard.

It is to be noted that the accused in this case was indicted for trafficking and possession of 7 kilograms 564 of Cannabis Sativa in the High Court of Monaragala in the case No. 60/14,

As the accused pleaded guilty, he was sentenced, and an inquiry was held regarding the vehicle. At the end of the inquiry the Learned High Court Judge by his order dated 02.12.2014 has confiscated the said vehicle.

Being aggrieved by the said order the petitioner has lodged the instant application in revision to have the said order set aside.

It is the contention of the Respondent that the petitioner has not established any exceptional grounds which will compel this court to exercise the revisionary powers vested in terms of the Constitution.

It is intensely relevant to note that when the above Statue has specifically laid down conditions as to the confiscation of the vehicle involved in the commission of an offence stated thereof, any procedure contrary cannot be followed where the same is concerned.

Therefore it is the observation of this court that the petitioner is debarred from making this Revision Application in order to get relief which is not allowed by the Section 79 of the said Act.

The Learned High Court Judge has by his order dated 13.01.2015 dismissed the appeal of the petitioner on the basis that there is no right of appeal in terms of Section 79(1) of the above Act. Therefore the question lies whether the petitioner has

a right to come by way of revision, to have such order of confiscation set aside.

In the above setting this court is of the view that it is not incumbent on the courts below to hold an inquiry or to exercise the revisionary powers to set aside the impugned orders of the Learned Magistrate and the Learned High Court Judge as stated above.

For the above compelling reasons the Petitioner's application in revision is dismissed accordingly.

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

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya, J

I agree.

JUDGE OF THE COURT OF APPEAL