

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

In the matter of an appeal in terms of Article 138 read
together with Article 154P of the Constitution of the
Democratic Socialist Republic of Sri Lanka

Court of Appeal case no. CA/PHC/11/2017

H.C. Colombo case no. 873/05

M.C. Colombo case no. 77648/08

Police Station, Kurunduwatta.

Complainant

Vs.

Hewapathirana Don Cletus Samaranayake

Accused

Muthuthantrige Peatro Sunil Bernard

Fernando for Indra Finance Company Ltd.

Applicant Absolute Owner

NOW

Muthuthantrige Peatro Sunil Bernard

Fernando for Indra Finance Company Ltd.

Applicant Absolute Owner Petitioner.

Vs.

Hewapathirana Don Cletus Samaranayake

Accused Respondent

AND NOW

Muthuthanthrige Peatro Sunil Bernard
Fernando for Indra Finance Company Ltd.

**Applicant Absolute Owner Petitioner
Appellant.**

Vs.

Hewapathiranage Don Cletus Samaranayake
Accused Respondent Respondent.

Before : H.C.J. Madawala J.
: L.T.B. Dehideniya J.

Counsel : Sunil Abeyrathne with Thashisa Gunathilake for the
Applicant Absolute Owner Petitioner Appellant.
: Respondent is absent and unrepresented.

Argued on : 13.01.2017

Written submissions filed on : 06.02.2017

Decided on : 20.02.2017

L.T.B. Dehideniya J.

The dispute is on the entitlement to possess the vehicle bearing the registered No. ^{WP} HF 3617 between the registered owner and the absolute owner. It is an admitted fact that the vehicle was on a lease agreement and the Appellant is the absolute owner and the Respondent is the registered owner. Further the facts that the Respondent has failed to pay the monthly rentals, thereafter the Appellant issued notice and canceled the agreement, the possession of the vehicle was obtained by the Appellant through a person who was given the written authority by the Appellant to obtain the possession on behalf of the Appellant after making a complaint to the police are not challenged. While the vehicle was taken away to the Appellant's

premises, the Respondent re possessed the vehicle forcibly. It was also not challenged.

At the vehicle inquiry, both parties, i.e. the registered owner and the absolute owner claimed the vehicle. The learned Magistrate satisfied on all the facts stated above but did not release the vehicle to the Appellant on the basis that the Appellant was not a registered finance leasing company under the Finance Leasing Act. The learned High Court Judge, on appeal, decided that since the vehicle has been produced by the registered owner, Court has to return it to the person from whom it was produced.

The Respondent submitted that the operation of the Gazette Extraordinary No. 1196/27 dated 10.08.2001 where the registration of the finance leasing companies has been regulated was suspended by the Court of Appeal in the case No. 1304/2002 and the registration under the Finance Leasing Act was not possible until 08.09.2005. The incident took place on 21.02.2005.

The Finance Leasing Act has provided a mechanism for the absolute owner to re possess a vehicle in case of nonpayment of the monthly installments. The absolute owner followed the procedure and re possessed the vehicle from the registered owner. While the vehicle was in the legal custody of the absolute owner, the Respondent forcibly taken the vehicle back. Therefore it cannot be said that the vehicle is not involved in a crime, the vehicle is the subject matter of the crime.

The Legislature in its wisdom enacted the law giving a right to the absolute owner to obtain possession of a vehicle subject to a finance leasing. The section 433A Criminal Procedure Code was brought in by the Amendment Act No. 12 of 1990 which reads thus;

433A.

(1) In the case of a vehicle let under a hire purchase or leasing agreement, the person registered as the absolute owner of such vehicle under the Motor Traffic Act (Chapter 203) shall be deemed to be the person entitled to possession of such vehicle for the purpose of this Chapter.

The vehicle involved in this case is under a finance leasing agreement and therefore the Appellant, as the absolute owner, is the person deemed to be entitled to possession of the vehicle.

The learned Magistrate's finding that the appellant was not registered under Finance Leasing Act cannot have an impact on this case because there was no possibility to register since the operation of the Gazette has been suspended. That fact was not brought to the notice of the learned Magistrate.

The vehicle was in the possession of the Respondent as result of a crime. Therefore the Court has to inquire in to the matter and release the vehicle to the person who is entitled to it. The finding of the learned High Court Judge that the Court needs not to involve in the dispute of the registered owner and the absolute owner is not tenable in law.

Under these circumstances I allow the appeal and set aside the order of the learned High Court Judge dated 08.03.2007 and the order of the learned Magistrate dated 17.06.2005.

I order to release the vehicle to the Appellant

I order no costs.

Judge of the Court of Appeal

H.C.J. Madawala J.

I agree.

Judge of the Court of Appeal