

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

In the matter of an appeal under Article 154 of the
Constitution of the Democratic Socialist Republic of
Sri Lanka

Court of Appeal case no. CA/PHC/119/2014

H.C. Kurunegala case no. 110/2012

Adikari Mudiyansele Shelton Appuhamy,
48, Sumanakusumgama, Marawila

Petitioner Appellant

Vs.

1. OIC, Police Station, Dummalasuriya.
2. The Hon. Attorney General,
Attorney General's Department
Colombo 12.
3. The Finance Co. Chilaw Branch,
Kurunegala Road, Chilaw.

Respondent Respondents.

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

Counsel : Appellant is absent and unrepresented
: Warunika Hettige DSG for the 1st and 2nd Respondents.
: Rawindra Mahindaratne for the 3rd Respondent

Argued on : 23.01.2017

Written submissions filed on : 14.02.2017

Decided on : 03.03.2017

L.T.B. Dehideniya J.

The Petitioner Appellant is the registered owner of the vehicle bearing registration no. 227 – 1329 which was used for the transportation of cattle without a valid permit. The driver of the vehicle was charged under Animals Act for transporting cattle without a permit and under Prevention of Cruelty to the Animals Ordinance. The driver pleaded guilty and was sentenced.

The Petitioner Appellant (the Appellant) being the registered owner made an application to Court to release the vehicle to him. The absolute owner informed Court that he has no objection in releasing the vehicle to the registered owner. The Appellant gave evidence in the Magistrate Court. The learned Magistrate after inquiry confiscated the vehicle. The Appellant moved in revision in the High Court of Kurunegala against the order. This appeal is on the dismissal of the said revision application.

The Appellant was represented by a Counsel in this Court but at the hearing, the Appellant was absent and unrepresented. The Counsel for the absolute owner had informed Court that he is not challenging the order of the learned Magistrate or the learned High Court Judge. Learned DSG was heard on behalf of the state.

The Appellant has failed to establish that he has taken all precautions to prevent the vehicle being used for illegal purposes and that he had no knowledge of the vehicle being used for the commission of this offence.

The Appellant in his evidence has stated that he was at Horowpathana on the 28th April and on the 29th he called his driver to ask him to bring the lorry to Horowpathana but the driver did not answer the telephone. Thereafter he has called his home and his wife has informed that the lorry was seized by the police for transporting cattle. Since the offence was committed on the 30th of April, there was no way for the Appellant to come

to know about a seizure of the vehicle on the 29th because there was no seizure on 29th. This confusion was not cleared in the re examination. Therefore the learned Magistrate disbelieved the Appellant.

The Appellant has further stated in his evidence that the driver had come to his house by a motor bicycle but as it had a tire puncture, he has kept the bicycle at the Appellant's house and asked his wife for the lorry and took it away and committed this offence. The learned Magistrate disbelieved this evidence also because the wife was not called to give evidence and the statement made by the wife to the Appellant remains as hearsay evidence.

The Appellant has not led any evidence to establish that he has taken any precaution to prevent the lorry being used for illegal purposes other than stating that the lorry is used only for his business purposes and not for hiring purposes. The learned Magistrate has considered this aspect also in confiscating the vehicle.

The Appellate Court should not interfere with any factual finding of the trial judge based on evidence led before him unless it is perverse. In the present case the trial judge's finding is supported by the evidence led before him. Therefore there is no reason to interfere with the findings of the learned Magistrate or the learned High Court Judge.

Accordingly, the appeal is dismissed. No Costs.

Judge of the Court of Appeal

H.C.J. Madawala J.

I agree.

Judge of the Court of Appeal