

**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/31/2010

H.C. Kandy case no. 14/2008

M.C. Kandy case no. 9620/07

Officer in Charge,
Police Station, Alwathugoda.

Complainant

Vs.

1. Viyangoda Gedara Nishshanka,
50/30, Temple Road, Mathale.
2. Sahakathulla Mohamed Farook,
Parawitta, Kaludewala, Matale.
3. S.M.M.Mohideen.

Accused

And Between

Suleman Mohamed Mohideen,
Pallevediketiya, Akurana.

Accused Petitioner.

Vs.

1. Officer in Charge,
Police Station, Alawathugoda.
2. Hon. Attorney General,
Attorney General's Office, Colombo 12.

Respondents

And Now Between

Suleman Mohamed Mohideen,
Pallevediketiya, Akurana.

Accused Petitioner Appellant.

Vs.

1. Officer in Charge,
Police Station, Alawathugoda.
2. Hon. Attorney General,
Attorney General;s Office, Colombo 12.

Respondent Respondents

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

Counsel : Upali A Gunarathne PC with Ravitha Dissanayake and
Prasad Chathuranga for the Accused Petitioner Appellant.
: Varunika Hettige DSG for the Respondent Respondents.

Argued on : 21.02.2017

Written submissions filed on 22.03.2017

Decided on : 31.03.2019

L.T.B. Dehideniya J.

The 1st and 2nd accused were detected by the police while transporting 40 heads of cattle in a lorry without a permit in a cruel manner and were brought before the Court. The 3rd Accused Petitioner Appellant (hereinafter sometimes called and referred to as the Appellant) who was the owner of the cattle was present in Court and on the direction of the learned Magistrate he was also made an accused. The charge sheet,

where the charges were framed against the all three accused is not available in the record but according to the plaint filed by the police against the 1st and 2nd Accused the charges were charged under section 4(2) of the Butchers ordinance and section 2(1) of the Cruelty to Animal Act as amended. All the accused pleaded guilty to the charges and were fined Rs. 250/- each on each count with a default term of sentence of one month.

The learned Magistrate held an inquiry in relation to the cattle where the Appellant gave evidence and claimed the cattle. He gave evidence and said that he is the owner of the cattle. He was taking them to the Mosque to be slaughtered on the Hajj festival day. The learned Magistrate was of the view that the cattle being less than 12 years of age, they cannot be slaughtered, confiscated them. Being aggrieved by this order, the Appellant moved in revision in the High Court of Kandy without success. This appeal is from the order of the High Court Kandy.

There is no provision in law to confiscate cattle under Animal Act, Cruelty to Animals Act or Butchers ordinance. The purpose of transporting cattle is not a material fact. The question is the way of transporting them. Whether it is with a valid permit issued by the relevant authority or not and whether the transportation is done in a cruel manner. The Accused were punished for violating the law in transporting the cattle. They cannot be burdened with an additional punishment of forfeiture of the cattle considering the purpose of transporting them.

Forfeiture of the vehicle used to commit the offence as an additional punishment is provided by the Legislature in several laws such as Forest Ordinance, Excise Ordinance and Animal Act. Under section 40(1) of the Forest Ordinance it has been enacted that all timber or forest produce which is not the property of the State in respect of which such offence has been committed shall, by reason of such conviction, be

forfeited to the State. There is no like provision in laws relating transporting cattle to confiscate them.

It has been held by this Court in several cases that there is no provision to confiscate cattle under Cruelty to Animal Act. In the case of C.A. case No. 614/85 decided on 01.11.1985 Moonamalle J. held so. In C.A. case Nos. 615/85 and 616/85 decided on 18.11.1985, T.D.G. De Alvis J. also released the cattle on the same basis. C.A. Application No. 403/85 decided on 09.05.1985 H.A.G.de Silva J. also accepted that there is no provision to confiscate cattle.

The Court cannot utilize the inherent power of the Court granted under section 7 of the Criminal Procedure Code to impose an additional financial burden to an accused or in that case to any person, which was not provided by law.

I set aside the order of the learned Magistrate and the learned High Court Judge confiscating the cattle and order to release them to the Appellant, if they are among living, since this case has taken a long time.

Appeal allowed.

Judge of the Court of Appeal

H.C.J.Madawala J.

I agree.

Judge of the Court of Appeal