

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

In the matter of an Application
for Revision in terms of Article
138 of the Constitution of the
Democratic Socialist Republic
of Sri Lanka to revise the order
of High Court directing the
confiscation of vehicle used in
the commission of an offence
under Poisons, Opium and
Drugs Law.

OIC Police Station Ganemalwila

Complainant

Vs

W.M.Sampath Preethi Viraj

Accused

And Now

W.M. Piyal Senadhira

South Karyamadiththa

(Registered Owner Claimant)

Petitioner

Vs

The Hon. Attorney General

Respondent

CA (PHC) APN: 04/2017

HC Monaragala: HC 72/2014

Before: K.K.Wickremasinghe J.

P.Padman Surasena J.

COUNSEL : AAL Dr. Ranjith Fernando for the Petitioner

DSG Varunika Hettige for the Respondent

ARGUED ON: 23/06/2017

DECIDED ON:14/09/2017

ORDER

K.K.Wickremasinghe J.

The Petitioner in this case is the registered owner of the vehicle. The accused is the brother of the Petitioner. The accused was charged for Possessing and transporting 106 kilograms and 150 grams of Cannabis Sativa in Contravention to section 54A (b) and (c) of the Poisons, Opium & Dangerous Drugs Ordinance. The accused pleaded guilty for both charges leveled against him.

The vehicle in question was taken into custody while transporting 106 kilograms and 150 grams of Cannabis sativa.

At the Production inquiry, the Petitioner and the Accused gave evidence. Although the Accused pleaded guilty to the charges, at the inquiry he denied that he had the knowledge of having Cannabis Sativa. Further it was revealed that he has pending cases.

The Accused in his evidence at the inquiry stated that he borrowed the vehicle from his brother, the Petitioner in this case around 7.30 in the morning and the brother was sleeping. The petitioner had asked the Accused to get keys from where it was hung inside the room and further asked him to return the vehicle safely .On his return journey home from Embilipitiya, he had offered a lift to a friend who wanted transportation of 'Ganja' to an Ayurveda Centre at Beliyatte.

In the case of **K. Mary Matilda Silva Vs I.P. Habarana**, it was held that “ *the order of confiscation cannot be made if the owner proves to the satisfaction of court :*

(1) that he has all precautions to prevent the use of the vehicle for the commission of the offence or

(2)that the vehicle has been used for the commission of the offence without his knowledge”.

The Petitioner has the burden to prove on a balance of probability that he has no knowledge and that he took all necessary steps to prevent the offence being committed. When considering his evidence in the High Court he had only asked the Accused to return the vehicle safely. Therefor it is apparent that the Petitioner has not taken precautions or necessary steps to prevent an offence being committed by his brother who borrowed the vehicle. Further the Petitioner was unable to prove on balance of probability that he has no knowledge of the offence being committed by his brother.

In any case the circumstances mentioned above do not constitute exceptional circumstances to urge this court to invoke the Revisionary Jurisdiction.

Thus there is no ground to reverse the order of the Learned High Court Judge, affirming the order of the learned Magistrate in confiscating the Vehicle bearing Registered No. SP/ PE 1214.

Revision Application is Hereby Dismissed without costs.

JUDGE OF THE COURT OF APPEAL

P.Padman Surasena J

I agree,

JUDGE OF THE COURT OF APPEAL

Cases Referred to:

1. K. Mary Matilda Silva Vs I.P. Habarana decided on CA (PHC) 87/97
08.07.2010
2. Orient Finance Services Cororation Ltd. Case (SC Appeal No. 120/2011
3. Manawadu Vs AG (1987) 2 Sri LR 30
4. K.D.Dharmadasa Vs AG (1988) 2 CALR 193
5. Faris Vs OIC Galenbindunuwewa and another (1992) 1 Sri LR 167
6. Mudankotuwa Vs AG (1996) 2 Sri LR 77
7. Umma HabiabaVs OIC, Dehiattakandiya and another (1999) 3 SLR 89