

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

Appeal under article 154 of the
Constitution of the Democratic
Socialist Republic of Sri Lanka and
High Court Special Provisions Act
No.19 of 1990 read with section 320
of the Criminal Procedure code.

OIC Police Station,
Ahangama.

Complainant

Vs

Nagahawaththa Arachchige
Chaminda Godauda

Hampe Baduwatta Imaduwa

Accused

CA (PHC) APN: 110/2012

HC of Galle Case No: 804/11

MC Galle Case No. 58313

Mahawalla Vithanawasam Rahula

Kudahil Aramba

Ihala Mawella, Imaduwa.

Claimant

And Now

Mahawalla Vithanawasam Rahula

Kudahil Aramba

Ihala Mawella, Imaduwa.

Claimant Petitioner

Vs

(1) Officer-in-Charge,

Police Station,

Ahangama.

(2) The Hon. Attorney General

The Attorney General's Department

Colombo 12.

Respondents

Nagahawaththa Arachchige

Chaminda Godauda

Hampe Baduwatta Imaduwa

Accused Respondents

And now between

Mahawalla Vithanawasam Rahula

Kudahil Aramba

Ihala Mawella, Imaduwa.

Claimant Petitioner Appellant

Vs

(1)OIC Police Station,

Ahangama.

Complainant Respondent Respondent

(2)The Hon. Attorney General

TheAttorney General's Department

Colombo 12.

Respondent Respondent

(3)Nagahawaththa Arachchige

Chaminda Godauda

Hampe Baduwatta Imaduwa

Accused Respondent Respondent

Before: K.K.Wickremasinghe J.

P.Padman Surasena J.

COUNSEL : PC Saliya Peiris for the Petitioner

DSG Varunika Hettige for the Respondent

DECIDED ON: 02/11/2017

K.K.Wickremasinghe J.

The Appellant in this case is the registered owner of the truck No. SPLA 1425(herein after referred to as the vehicle). The accused is the driver of the registered owner (Appellant). The accused committed an offence under the Forest Ordinance. The vehicle in question was taken into custody while transporting illicit timber. The accused was convicted and sentenced. Thereafter the learned Magistrate held an inquiry and made order confiscating the above-mentioned vehicle.

At the production inquiry, the appellant gave evidence. In the examination in chief and stated that there are no previous convictions but in cross examination the appellant admitted that the vehicle was involved in another offence under the forest ordinance. The accused driver is still working for the appellant in another vehicle.

The appellant made an appeal to the High Court against the confiscation order, under appeal No. 869.He also made a revision application to the High Court Numbered Rev. 804.

The appellant has made this appeal against the order of the High Court Judge.

The learned counsel for the respondent take up the objection that the present appeal before the Court of Appeal is Appeal upon an Appeal. The first appeal to the High Court, to set aside the confiscation order No. 869.According to the record. There is nothing on record to show that the appeal to the high court was withdrawn. Therefor the order of the High Court is pertaining to the appeal.

In the case of Wickremasinghe Vs OIC Ampara (2004 1SLR 257) held that “the jurisdiction from an appeal in the High Court is to the Supreme Court.”

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

- (1) that she has taken all precautions to prevent the use of the vehicle for the commission of the offence.*
- (2) that the vehicle has been used for the commission of offence without his knowledge.”*

The appellant has the burden of prove on a balance of probability that he has no knowledge and that he took all necessary steps to prevent the offence being committed. It was further decided that simply telling the driver (the accused) does not amount to a positive step. In this present case, when considering the evidence of the appellant in the Magistrate Court there is no evidence to demonstrate that the appellant has taken any precaution to prevent the offence being committed by the accused or appellant had no knowledge of the offence being committed. Further the appellant has admitted that the vehicle was previously involved in another offence. That itself shows that even after he had taken any precautions to prevent the offence taking place.

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 judgment of the Learned High Court Judge, affirming the order of the Learned Magistrate in confiscation the truck bearing No. SPLA 1425.

Appeal is hereby dismissed.

JUDGE OF THE COURT OF APPEAL

P.Padman Surasena, J.

I agree

JUDGE OF THE COURT OF APPEAL