

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

In the matter of an Appeal made in terms of Article 154(P)(6) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 from the order of the Provincial High Court of Anuradhapura.

CA PHC: 67/2007

PHC Anuradhapura
Case No. HC 49/2005

MC Kekirawa No. 22641

Officer-in-charge,
Police station, Kekirawa

Complainant

1. M.I. Mohamed Fawmy,
Wawwana, Dambadeniya.
2. S. Sumanarathna
Wagollagama, Kapugollawa,
Horowpathana.
3. M. Abdul Raheem
Mawanawewa, Horowpathana.

Accused

AND

Omar Hatha Mohamed Kurshid,
No. 159/2, Sri Wajiragnana
Mawatha,
Colombo 9.

Claimant-Petitioner

1. Officer –in-charge
Police Station, Kekirawa.

Complainant-Respondent

2. Hon. Attorney General
Attorney General’s Department,
Colombo 12.

3. Commercial Leasing Company
No. 68, Bauddaloka Mawatha,
Colombo 4.

Respondent-Respondents

AND NOW BETWEEN

Omar Hathi Mohamed Kurshid,
No.159/2, Sir Wajiragnana Mawatha,
Colombo 9.

Claimant-Petitioner-Appellant

Vs

1. Officer –in-charge
Police Station, Kekirawa.

Complainant-Respondent

2. Hon. Attorney General
Attorney General’s Department,
Colombo 12.

3. Commercial Leasing Company
No. 68, Bauddaloka Mawatha,
Colombo 4.

Respondent-Respondent

Before: P.Padman Surasena ,J (P/CA)

K.K.Wickremasinghe, J.

COUNSEL: AAL Udaya Sri Keerthiwardhana with S. Panchadsaram for the Appellant

DSG Varunika Hettige for the Respondent

ARGUED ON: 09/11/2017

DECIDED ON: 02/02/2018

JUDGMENT

K.K.Wickremasinghe J.

The Claimant-Appellant in this case is the registered owner (hereinafter referred to as the 'Appellant') of the lorry bearing number 47-7889. Absolute owner of this lorry is the Commercial Leasing Company. The appellant leased the vehicle to the Accused N.H.Nazmi. The vehicle was taken into custody for illegal transportation of cattle. The accused was convicted on his own plea and thereafter a claim inquiry was held. At the conclusion of the inquiry, the said vehicle was confiscated. The Appellant sought to revise the said order in the Provincial High Court of Anuradhapura. The petition was dismissed. Being aggrieved by the said dismissal, the Appellant has made an appeal to this court. Though this is an appeal the caption indicates as if this is initiated by the Petitioner-Petitioner.

This court directed to the Attorney at Law who appeared for the Appellant to file an amended caption, but it is noted that the caption has filed with the name of the claimant only. That is also submitted only with the motion. Still no proper caption is filed by the Appellant. Without wasting further time we wish to consider the facts and the legal position of this case.

The Accused was the driver of the said vehicle at the time of detection. Accused pleaded guilty to the above mentioned charge. Accordingly, the said Accused was convicted and sentenced.

The contention of the Appellant was that he was the registered owner of the vehicle. The appellant and the lessee have given evidence to the effect that the vehicle had been cut to allow animals to be transported. The same vehicle has been used to commit similar offences previously.

The Appellant in his evidence had admitted that he inspected the vehicle. He further mentioned that he did not look at the roof of the vehicle also he was aware of the damages done to the vehicle and not asked for damages from the lessee.

The lessee in his evidence had admitted that he gave the vehicle to Anzar to transport cattle. Further stated, that he was aware of the previous illegal transportation of cattle. Also admitted, that he cut the roof of the vehicle.

It is decided law that in a vehicle inquiry, the claimant has to discharge the burden on a balance of probability that the claimant took all precautions to prevent the offence from taking place.

In the case of **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 and

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

In the above mentioned case, Justice Sisira de Abrew decided that the owner has to establish above mentioned two matters on a balance of probability to stop confiscation. Therefore, the Claimant of the vehicle has to prove on a balance of probability that he has taken all precautions to prevent the offence being committed and he had no knowledge of the offence.

The Orient Finance Services Corporation Ltd Case [SC Appeal No. 120/2011] held, that the registered owner should on a balance of probability must prove that

the offence was committed without his knowledge and that he took all precautions to prevent the offence.

It was elicited that the Petitioner had not taken any step to stop the offence being committed. He was well aware that the appellant was using the vehicle for transportation of illegal cattle.

The counsel for the appellant submitted that the charge sheet is bad in law. The accused has already pleaded guilty to the charge under section 3A of the Animals Act. The appellant had not instructed the Accused not to use the vehicle for illegal purpose. Therefore, it is apparent that the appellant has not discharged his burden according to law. That is that the appellant has not proved on a balance of probability that he had taken all precautions to prevent an offence being committed.

Therefore, considering above facts, we affirm the Order of the Learned Provincial High Court Judge of Anuradhapura.

The Appeal is hereby dismissed without costs.

JUDGE OF THE COURT OF APPEAL

P.Padman Surasena J.

I agree,

PRESIDENT OF THE COURT OF APPEAL

Cases Referred to:

1. Mary Matilda Silva Vs I.P. Habarana CA (PHC) 87/97 decided on 08.07.2010
2. The Orient Finance Services Corporation Ltd Case [SC Appeal No. 120/2011]