

**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
Section 11 of the High Court (Special
Provisions) Act No. 19 of 1990.

Officer-in-charge

Police Station, Thalangama

CA (PHC) 77/08

Kaduwela MC No. 56234

Avissawella HC No. 2/2017

Complainant

Vs

Justin Chandrasiri Sudasinghe

No. 39, Vije Mawatha,

Galawilawatta,

Homagama.

Accused

AND NOW

G.W. Wijeratne

958/2, Pannipitiya Road,

Battaramulla.

Petitioner

Vs

1. Justin Chandrasiri Sudasinghe
No. 39, Vije Mawatha,
Galawilawatta,
Homagama.

Accused-Respondent

2. Officer-in-charge
Police Station, Thalagama

Complainant-Respondent

3. The Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondent

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

K.K. Wickremasinghe, J.

COUNSEL: AAL S.A.D.S. Suraweera for the Petitioner-Appellant

DSG Varunika Hettige for the Respondent

WRITTEN SUBMISSIONS OF THE APPELLANT ON: 11/01/2018

WRITTEN SUBMISSIONS OF THE RESPONDENT ON: 07/11/2017

DECIDED ON: 15/02/2018

JUDGEMENT

K.K. Wickremsinghe, J.

The Appellant in this case is the registered owner of the lorry bearing No 42-4601. The Accused was the driver of the vehicle at the time of detection. He was arrested for transporting timber (Jack Wood) without a valid permit. He was charged in the Magistrate's Court of Kaduwela under the Forest Ordinance. The Accused pleaded guilty to the charge and the learned Magistrate imposed a fine of Rs. 25000/-. Thereafter, a claim inquiry was held with regard to the confiscation of the lorry. At the conclusion of the inquiry, the learned Magistrate confiscated the lorry bearing No. 42-4601. Being aggrieved by the said order, the Petitioner sought to revise the same in the High Court of Avissawella, where the said revision application was dismissed. Being aggrieved by the said order of the Learned High Court Judge dated 27.08.2008, the appellant has appealed to this court.

Facts of the case:-

The contention of the Appellant at the inquiry was that he had ordered a load of mahogany timber from a timber depot in Moratuwa and on the day of the incident, his permanent driver was absent and the appellant had employed the accused, who was also a friend of his, as a driver. It is claimed that the accused driver could not identify one variety from another, as he was engaged in another business and therefore he was not familiar with the business. The stock of jack timber was not the stock that the appellant had ordered from the supplier and it had been loaded to the lorry by mistake on the part of the timber depot. The Appellant denied total knowledge of the transportation of timber. The Learned Trial Judge made an order rejecting the claim of the appellant on the ground that the said timber had been transported with the knowledge of the appellant.

The appellant then preferred a revision application against the said order in the Provincial High Court of Avissawella where the application was dismissed for the lack of exceptional circumstances.

The Learned Counsel for the appellant submits that the Learned High Court Judge had misdirected himself in law by dismissing the appeal for want of exceptional circumstances. Under the provisions of the Forest Ordinance, the right of appeal is

specifically taken away from an aggrieved party after a claim. In this situation, an aggrieved party need not show exceptional circumstances but must show illegality or some form of procedural impropriety to invoke the revisionary jurisdiction of an appellate court as decided Ranjit Silva J. in **Ratnayaka Mudiyansele Muthubanda Ratnayaka Vs Gallamanage Titus Jayatillaka CA (PHC) No. 82/97.**

The Learned Counsel for the Appellant further submits that the Learned Magistrate had placed great reliance on the demeanor of the Appellant rather than considering the submissions when arriving at her order and the Learned High Court Judge had proceeded to affirm the order of the Learned Magistrate on the ground that the Learned Magistrate had given due consideration to the facts and circumstances of the case, thereby misdirecting himself and erring in the law.

The Learned DSG submits that it is highly unlikely that the timber dealer would 'accidentally' upload a more expensive timber than what had been ordered without due instructions from the buyer and it has been noted that the invoice clearly shows that the Jak timber had been invoiced for and not mahogany timber. The Appellant had also produced a receipt which has the timber which was taken into custody. Also, the seller had not been summoned to give evidence thus the stance of the Appellant remains heresay.

In the case of **Mary Matilda Silva Vs I.P. Habarana CA (PHC) 87/97 08.07.2010**, it was held that "*the order of confiscation cannot be made if the owner proves to the satisfaction of court:*

(1) that he has taken 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".

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 Appellant in this case has offered a weak explanation that he is unaware as to how the timber was in the vehicle as he had ordered Mahogany timber. The Appellant did not even summon the seller who

would have clarified the disparities. Thus, the Learned DSG submits that the Appellant has not discharged the burden cast on him by the law.

Therefore this court is of the view that the Appellant was unable to establish that he had no knowledge of the offence being committed and also he had taken all the precautions to prevent the offence being committed.

The appeal is dismissed without costs.

Judge of the Court of Appeal

P.Padman Surasena, J.

I agree.

President of the Court of Appeal