

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

In the matter of an appeal against
judgment of Provincial High Court
exercising its revisionary jurisdiction.

C A (PHC) 70 / 2009

Provincial High Court

of Western Province (Gampaha)

Revision application

No. 16 / 2008

Magistrate's Court of Attanagalla

No 12917

Rajapakshage Madunushan Lakmali,

No 108/2,

Gurugodella Road,

Meerigama.

1st PARTY - RESPONDENT -
APPELLANT

-Vs-

1. Officer in Charge,
Police Station,
Meerigama.

COMPLAINANT - RESPONDENT
- RESPONDENT

2. Hewa Pandirathnage Gunadasa,
Kithsirimewan,
No 108,
Gurugodella,
Meerigama.

2nd PARTY - PETITIONER -
RESPONDENT

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

RESPONDENT - RESPONDENT

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

K K Wickremasinghe J

Counsel : Sumith Senanayake for the 1st Party - Respondent - Appellant.

Darshana Kuruppu with T Dissanayake for the 2nd Party
Petitioner - Respondent.

Varunika Hettige DSG for the Attorney General.

Argued on: 2017 - 10 - 26

Decided on : 2018 - 02 - 15

JUDGMENT

P Padman Surasena J (P/CA)

Officer in charge police station Meerigama who has been named as the 1st Complainant - Respondent - Respondent (hereinafter sometimes referred to as the 1st Respondent) has taken the motor car bearing No. WJ 4898 into custody in connection with a complaint made by the 1st Party - Respondent - Appellant (hereinafter be referred to as the Appellant)

against her father in law who has been named as the 2nd Party - Petitioner - Respondent (hereinafter referred to as the 2nd Respondent).

It is common ground that the 1st Respondent (the police) had taken this motor car into custody from the possession of the 2nd Respondent.

Perusal of the report filed in the Magistrate's Court by the 1st Respondent shows that the Appellant had made a complaint to the Meerigama Police Station to the effect that her husband had gone missing after some people had abducted him when travelling in the car bearing No. WPJB 4897. The complaint further states that the 2nd Respondent had started maintaining and using this car from that time onwards. She has claimed that she is the registered owner of this car.

The 2nd Respondent in his statement to police has stated that his son Samanatha Kithsiri had been using this car until he was abducted by some persons. According to him whereabouts of his son is not known. It is his position that he had started possessing and using it after police had handed over the said car to him. It is also his position that it was he who advanced money for the son to purchase this car.

It is under those circumstances that the 1st Respondent had reported facts to the Magistrate's Court.

Both the Appellant and the 1st Respondent had claimed this vehicle in the Magistrate's Court. Learned Magistrate by his 1st order dated 2008-03-07 had ordered that this motor car be handed back to the person from whose possession it was taken by the police. He has also stated in his order that it is not clear as to why the police had taken this vehicle into custody.

Proceedings of this case has commenced after the Appellant made a complaint to police with regard to a dispute between the Appellant and the 2nd Respondent for the possession of this vehicle. The said complaint has nothing to do with anyone committing any crime or the relevant vehicle being used to commit a crime. It appears to be purely a civil dispute to the ownership of the car between the Appellant and the 2nd Respondent. In these circumstances this Court is also of the view (as has been observed by the learned Magistrate in his 1st order) that taking this car into custody by police is not justifiable. Therefore the learned Magistrate's order that it be handed back to the person from whose possession it was taken is an appropriate order. That order should remain valid.

Perusal of the report filed by the 1st Respondent in the Magistrate's court shows that the 1st Respondent had taken this car into custody from the possession of the 2nd Respondent. Therefore the 1st Respondent in complying with the order of the learned Magistrate is obliged to hand over this car to the 2nd Respondent. However what appears from the proceedings is that the 1st Respondent (police) had handed over the car to the Appellant. This is not in conformity with the order of the Magistrate.

It was under those circumstances that the 2nd Respondent had brought that fact to the attention of the learned Magistrate. However learned Magistrate had refused to deal with that.

Once a court of law makes an order it is the duty and the obligation of the parties to comply with that order. When a non-compliance of such order is brought before Court, the Court has a duty to deal with that problem.

Learned Provincial High Court Judge also has held by his order dated 2009-07-17 that this vehicle be given back to the 2nd Respondent.

In these circumstances this Court directs the 1st Respondent (police) to comply with the learned Magistrate's order dated 2008-03-07 and take all necessary steps to handover his vehicle to the custody of the 2nd

Respondent from whose possession the police had taken the vehicle into custody. For the foregoing reasons this Court decides to dismiss this appeal without costs.

PRESIDENT OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL