

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

In the matter of a Revision
Application under Section 138 read
together with 154P (6) of the 1978
constitution of the Democratic
Socialist Republic of Sri Lanka

W.P. Weerasinghe
Area Forest Officer,
Balangoda.

Complainant

VS

1. Chamira Heshan Samarasinghe
No. 106, Pettigala Road,
Bumbuwa, Balangoda.
2. Hodamunige Asanka
No. 13A, Saraswathi Road,
Uda Ellepola, Balangoda

Appeal No. CA (PHC)APN/ 40/15

Provincial High Court of Ratnapura

Revision Application No. HCR/RA 60/2013

Balangoda Magistrate Court Case No. 40643

Accused/ Defendants-

And Between

1. Samarasinghe Dharmasena,
No., Main Street,
Balangoda.

**Petitioner (Registered
Owner of Vehicle)**

VS

W.P. Weerasinghe
Area Forest Officer,
Balangoda.

Complainant - Respondent

Attorney General
Attorney General Department
Colombo 12

Respondent

And Now Between

Samarasinghe Dharmasena,
No., Main Street,
Balangoda.

Petitioner

VS

W.P. Weerasinghe
Area Forest Officer,
Balangoda.

Complaint-Respondent-Respondent

Attorney General
Attorney General Department
Colombo 12

Respondent-Respondent

BEFORE: P.Padman Surasena J (P/CA)
K.K.Wickremasinghe J.

COUNSEL: AAL Dhanya Gunawardane for the Petitioner
DSG Varunika Hettige for the Respondent

Written Submission for the Petitioner: 20/09/2017

Written Submission for the Respondent: 20/09/2017

ARGUED ON: 28/11/2017

DECIDED ON: 20/02/2018

JUDGEMENT

K.K.Wickremasinghe J.

The Petitioner in this case is the registered owner of the vehicle bearing No.SG LB 3270. The two accused were charged for an offence under the Forest Ordinance and were convicted. Subsequent to that a vehicle inquiry was held pertaining to lorry number SG LB 3270, after which it was confiscated on or about 10/04/2012. The vehicle was arrested on the basis of transportation of a specified quantity of Mahogany Timber without a valid permit. Both the accused pleaded guilty for the said offence and the accused were fined Rs. 25,000/- each by the learned Magistrate of the Balangoda Magistrate court.

Thereafter the Vehicle was physically released to the Petitioner upon a bond of Rs. 2,000,000/- furnished before the learned Magistrate.

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.SG LB 3270. Being aggrieved by the said order, the Petitioner sought to revise the same in the High Court of the Ratnapura where the said revision application was dismissed.

Being aggrieved by the said order of the Learned High Court Judge dated 09.12.2013, the Petitioner is seeking to revise the order through this court.

Facts of the case:-

The contention of the Petitioner at the inquiry was that he is a businessman by profession and has bona fide handed over the vehicle bearing Registration No. SG LB 3270 to the first accused who is a relation of the Petitioner, only for the limited purpose to be utilized for legitimate private transportation services. The said vehicle was stationed in the Balangoda town Centre where all Lorries and private vehicles available to private hires which are customarily made available for such users. The Petitioner stressed before the Magistrate that strict instructions were given to the Accused at all times, the Lorry was not to be used for unlawful and or criminal and or illegal activities whatsoever. The Petitioner also stressed that the said vehicle was handed over to the Accused on good faith and bona fide believed and or trust and confidence reposed on the Accused being a relation of the Petitioner and on the understanding that at all times material that the said vehicle would solely use for all legal activities in compliance with strict instructions of the Petitioner.

The Petitioner states that the learned Magistrate without appreciating and or properly evaluating the evidence has delivered the order thus confiscating the lorry under Section 40 of the Forest Ordinance.

The learned Counsel for the Petitioner submits that the learned High Court Judge had misdirected himself in law by dismissing the revision. 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 DSG raises a preliminary objection as to laches and contends that upon that ground this revision application should be dismissed. Further the Petitioner has previously filed other revision applications and withdrawn them for the reason that they did not comply with the rules and that is demonstrative of the Petitioner's negligence. The learned counsel for the Respondent states that the learned High court judge has gone into all the merits and has delivered a judgment which is legal.

With regard to the facts of the case, the Petitioner giving evidence stated he hired the vehicle to a relative. To the question if that driver was still in service, the Petitioner remained silent. The Petitioner has admitted that he did not supervise the running of the vehicle- for the reason he was busy. The Petitioner admitted that he did not demonstrate due diligence regarding the vehicle. Further he failed to prove court that he took steps to prevent the offence being taken place.

The law as it stands today in Sri Lanka is that the claimant of a vehicle should demonstrate that, the owner took all the precautions to prevent the vehicle being used for an unlawful purpose. This is clearly demonstrated 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 Petitioner in this case has offered a weak explanation that he is unaware of the fact that the vehicle is being used for an illegal activity. The Petitioner did not demonstrate due diligence regarding the vehicle. Further he failed to prove the court that he took steps to prevent the offence being committed.

Therefore this court is of the view that the Petitioner 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.

In the case of **Orient Finance Services Corporation Ltd case (SC Appeal no 120 / 2011)** held that *the owner should on a balance of probability prove that the offence was committed without the knowledge or that all precautions to prevent the offence was taken.*

Therefore the registered owner has not established on a balance of probability that he took all precautions to prevent the offence taking place.

Considering the above circumstances this court is of the view that there is no basis to interfere with the findings of the learned High Court judge.

The Revision application is hereby dismissed without costs.

Judge of the Court of Appeal

P.Padman Surasena J (P/CA).

I agree

President of the Court of Appeal.