

**IN THE COURT OF APPEAL OF THE**

**DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

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

C A (PHC) APN 160 / 2017

Provincial High Court of

North Central Province (Anuradhapura)

Case No. NCP/PHC/ANP/Rev 12 / 2017

Magistrate's Court Thambuththegama

Case No. 33027

Wimalasenage Jayawathi,

No 76,

Pathkolawetiya,

Eppawala.

**PETITIONER - PETITIONER**

-Vs-

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

2. Officer in Charge,  
Police Station,  
Eppawala.

**RESPONDENT - RESPONDENTS**

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

**A L Shiran Gooneratna J**

Counsel : Shyamal A Collure for the Petitioner - Petitioner.

Supported on : 2018 - 02 - 22

Decided on : 2018 - 05 - 08

ORDER**P Padman Surasena J (P/CA)**

The 2<sup>nd</sup> Respondent – Respondent (hereinafter sometimes called and referred to as the 2<sup>nd</sup> Respondent) had arrested two suspects on an allegation that they were transporting timber without a valid permit, an offence punishable under the provisions of the Forest Ordinance. They had thereafter pleaded guilty to the charges framed against them. The learned Magistrate had then convicted and sentenced them.

Learned Magistrate had thereafter taken steps to hold an inquiry to decide the question whether the vehicle (which is the lorry bearing registration No. NC PV 7952) should be confiscated or not.

At the end of the said inquiry learned Magistrate by his order dated 2017-02-15 had confiscated the said lorry on the basis that the petitioner – Petitioner (hereinafter sometimes called and referred to as the Petitioner) who is the registered owner of the vehicle has failed to satisfy Court that she had taken all possible steps to prevent this vehicle being used for illegal activities.

Thereafter, the Provincial High Court has also refused the application for revision filed by the Petitioner on the same basis. Petitioner has filed the instant application for revision in this Court, to challenge the said order of the Provincial High Court.

Evidence of three witnesses on behalf of the Petitioner including the Petitioner herself had been recorded before the learned Magistrate. The evidence of the Petitioner shows that there is only a cursory remark with regard to giving instructions to her son who had driven the vehicle at the time of detection.

The second witness called by the Petitioner, Subasinghe Arachchige Chandrasiri is the son of the Petitioner who stood as an accused in the case. It was his position that her mother who is the Petitioner, was not aware that he was committing this offence. He has also stated that he has received instructions from his mother not to do 'unwanted activities' with the lorry. He had also stated that her mother gets on to the lorry to inspect it. This evidence also only includes just a passing remark with regard to the fact which the Petitioner was expected to prove in Court.

The third witness called by the Petitioner is an agent of the Central Finance Company which is the absolute owner of this lorry. His evidence does not

relate to the question whether the Petitioner has had knowledge about the commission of this offence.

In the case of K Mary Matilda Silva Vs P H De Silva, Inspector of Police, Police Station, Habarana<sup>1</sup>, which is a case under the Animals Act, this Court took the view that in this type of situation giving mere instructions is not sufficient to discharge the burden placed on the owner. This Court went on to hold in the said case that the owner of the vehicle must not only prove that genuine instructions were in fact given but also took every endeavor to implement the instructions so given. This Court in that case had held that the failure to prove the above requirements would indicate that indeed no genuine instructions had been given.

The burden of proving that the Petitioner did not have knowledge or that she had taken all precautions is on the Petitioner. Therefore, the Petitioner should prove this fact through evidence for the satisfaction of the Magistrate.

Section 3 of the evidence ordinance has defined the word 'proved'. It is as follows.

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<sup>1</sup> CA (PHC) 86/97 Decided on 2010-07-08

'A fact is said to be proved when, after considering matters before it, the Court either believes it to exist or considers its existence is so probable that a prudent man ought, under the circumstances of the case, to act upon the supposition that it exists.'

Perusal of the evidence adduced on behalf of the Petitioner shows clearly that the Petitioner has failed to prove to the satisfaction of the Court that a prudent man ought not to have believed that the Petitioner has taken all precautions to prevent the relevant lorry being put to illegal use.

Further, one must be mindful that in the instant case the Provincial High Court was called upon to exercise its revisionary jurisdiction. According to the caption of the revision application filed in the Provincial High Court, it is under Article 154 P of the Constitution read with the provisions of the High Courts of provinces (Special provisions) Act No. 19 of 1990 that the said application has been filed.

Article 154 (3) (b) states that notwithstanding anything in Article 138 and subject to any law, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province; ...".

Section 5 of the High Courts of provinces (Special provisions) Act No. 19 of 1990 has made the provisions of written law applicable to appeals and revision applications made to Court of Appeal applicable to such cases filed in the Provincial High Courts. Thus, chapter XXIX of the Code of Criminal procedure Act No. 15 of 1979 is applicable to the exercise of revisionary jurisdiction by the Provincial High Courts as well.

According to section 364 therein, the Court can examine the record of any case for the purpose of satisfying itself as to the legality or propriety of any order passed therein or as to the regularity of the proceedings of such Court. Thus, three aspects, which a Court could consider in revisionary proceedings, have been specified by that section. They are legality, propriety and regularity.

In the instant case there is no complain about the last aspect i.e. regularity of the proceedings.

Moreover, when there is a right of appeal provided for by law, an applicant in a revision application must show the existence of exceptional circumstances for any intervention by a revisionary Court. Perusal of the Petition shows that the grounds urged therein are not acceptable as exceptional circumstances.

This Court sees no basis upon which the Provincial High Court could have interfered with the conclusion of the learned Magistrate as the Court can satisfy itself with its regularity, legality and propriety.

It is the view of this Court that the learned Provincial High Court Judge is correct when he decided to refuse and dismiss the application for revision filed by the Petitioner.

In these circumstances, this Court has no basis to issue notices on the Respondents.

Therefore, this Court decides to dismiss this application without costs.

**PRESIDENT OF THE COURT OF APPEAL**

**A L Shiran Gooneratna J**

I agree,

**JUDGE OF THE COURT OF APPEAL**