# IN THE COURT OF APPEAL OF THE

# DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

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

C A (PHC) APN 06 / 2018

Provincial High Court of

Central Province (Kandy)

Case No. Rev 85 / 2015

Magistrate's Court Teldeniya

Case No. 16059

Thilakarathne Adhikari Mudiyanselage

Ashoka Bandara,

Ekamuthu Mawatha,

Thulhiriya.

**PETITIONER - PETITIONER**

-Vs-

1. Officer in Charge,

   Police Station,

   Wattegama.

2. Hon. Attorney General,

   Attorney General's Department,

   Colombo 12.

**RESPONDENT - RESPONDENTS**

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

**A L Shiran Gooneratna J**

Counsel : Amila Palliyage for the Petitioner - Petitioner.

Supported on : 2018 - 03 - 22

Decided on : 2018 - 05 - 23

ORDER

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

The 1st Respondent - Respondent (hereinafter sometimes called and referred to as the 1st Respondent) had filed a charge sheet against two accused on an allegation that they were transporting timber without a valid permit, an offence punishable under the provisions of the Forest Ordinance. The said accused had thereafter pleaded guilty to the charges framed against them. Learned Magistrate had then convicted and sentenced them.

Thereafter the learned Magistrate had thereafter taken steps to hold an inquiry to decide the question whether the vehicle (which is lorry bearing registration No. 47 - 8897) should be confiscated or not.

At the end of the said inquiry learned Magistrate by her order dated 2015-08-13 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 lorry has failed to satisfy Court that he 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 two witnesses on behalf of the Petitioner including the Petitioner himself had been recorded before the learned Magistrate. The evidence of the Petitioner only contains a cursory remark with regard to the fact that he did not have knowledge of commission of this offence. However, he is silent on the question whether he had taken any steps as precautionary measures to prevent the relevant vehicle being used to commit illegal activities.

The second 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 or not.

In the case of K Mary Matilda Silva V P H De Silva, Inspector of Police, Police Station, Habarana[1], which is a case under the Animals Act, this Court took the view that in this type of a situation, giving mere instructions is not sufficient to discharge the burden cast on the owner of a vehicle. 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 he had taken all precautions is on the Petitioner. Therefore, the Petitioner should prove this fact through evidence to the satisfaction of the Magistrate.

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

'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

[1] CA (PHC) 86/97 Decided on 2010-07-08

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 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 made .

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.

This Court has to agree that there had been no basis for the Provincial High Court to interfere with the conclusion of the learned Magistrate as the Court can satisfy itself with the legality and propriety of the order pronounced by the learned Magistrate.

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.

This Court also observes that the impugned order has been delivered by the learned Provincial High Court Judge on 2016-06-16. The Petitioner has filed this application in this Court on 2018-01-12. i.e after a lapse of an year and

a half. The Petitioner has not even attempted to explain the said delay. Thus, the Petitioner is guilty of inordinate delay which affects his application and calls for dismissal on that ground alone.

In these circumstances, this Court decides not to issue notices on the Respondents. This Court proceeds 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**