

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

In the matter of an application for Revision under Article 138 and 154P (3) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka and sections 9 and 10 of the High Court of Provinces (Special provisions) Act No. 19 of 1990.

C.A. Revision Application No:  
CA (PHC) APN 41/14

H.C. Puttalam Case No: HCR 09/2013

M.C. Puttalam Case No: 71179/12/P

Range Forest Officer,  
Forest Office,  
Puttalam.

**Complainant**

**Vs.**

Sujeewa Rohana,  
8<sup>th</sup> Mile Post,  
Anuradhapura Road,  
Puttalam.

**Accused**

D.L. Seetha,  
8<sup>th</sup> Mile Post,  
Anuradhapura Road,  
Puttalam.

**Vehicle Owner**

**AND BETWEEN**

D.L. Seetha,  
8<sup>th</sup> Mile Post,  
Anuradhapura Road,  
Puttalam.

**Vehicle Owner-Petitioner**

**Vs.**

1. Range Forest Officer,  
Forest Office,  
Puttalam.

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

**Complainant – Respondents**

**AND NOW BETWEEN**

D.L. Seetha,  
8<sup>th</sup> Mile Post,  
Anuradhapura Road,  
Puttalam.

**Vehicle Owner-Petitioner –  
Petitioner**

**Vs.**

1. Range Forest Officer,  
Forest Office,  
Puttalam.

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

**Complainant – Respondents-  
Respondents**

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

COUNSEL : AAL Shantha Jayawardane with AAL  
Chamara Nanayakkarawasam for the  
Vehicle owner-Petitioner-Petitioner  
Varunika Hettige, DSG for the  
Complainant- Respondent- Respondents

WRITTEN SUBMISSIONS : The Vehicle owner-Petitioner-Petitioner –  
on 12.10.2016  
The Complainant-Respondents-  
Respondents – on 21.09.2016

DECIDED ON : 28.06.2018

**K.K. WICKREMASINGHE, J.**

The Vehicle Owner-Petitioner-Petitioner has filed a revision application in this court seeking to set aside the order of the Learned High Court Judge of the Provincial High Court of North Western Province holden in Puttalam bearing case No. HCR 09/2013 dated 11.11.2013 and to set aside the order of the Learned Magistrate of Puttalam in the case No. 71179/12/P dated 06.03.2013.

At the stage of argument, both parties agreed to conclude the case by way of written submissions and to abide by the same.

**Facts of the case:**

The Accused was charged in the Magistrate Court of Puttalam for illegal transportation of 05 square meters of wood valued at Rs.6000.00, an offence punishable under section 40 read with section 25(1) of the Forest Ordinance (as amended). The Learned Magistrate of Puttalam, on 09.11.2012, had convicted the Accused on his own plea and imposed a fine. Thereafter a vehicle inquiry was conducted with regard to the confiscation of the vehicle bearing No. 226-4220, which was allegedly used for the said offence. After concluding the inquiry, the Learned Magistrate of Puttalam on 06.03.2013, had ordered to confiscate the vehicle. Being aggrieved by the said order, the Vehicle Owner of the said vehicle (hereinafter referred to as the Petitioner) filed a revision application bearing No. HCR 09/2013 in the Provincial High Court of the North Western province holden in Puttalam to have the said vehicle released to him. Pronouncing the order dated 11.11.2013, the Learned High Court Judge had dismissed the revision application. Being aggrieved by the said dismissal, the Petitioner preferred an application for revision in this court.

The Learned Counsel for the Petitioner contended that the Learned Magistrate of Puttalam had failed to assess the Petitioner's evidence and the conclusion of the Learned Magistrate was misconceived. The Learned Magistrate in the Order had stated as follows;

“අයිතිකරු පමණක් සාක්ෂි දීම තුළින් අධිකරණය සෑහීමකට පත්වන පරිදි කරුණු ඔප්පු වන බවට මම නොසිතමි...” (at page 65 of the Case Record)

The Learned Counsel for the Petitioner further submitted that the conclusion of the Learned Magistrate of Puttalam was repugnant to the rule of evidence enshrined in section 134 of the Evidence Ordinance, that ***“No particular number of witnesses shall in any case be required for the proof of any fact”*** and the said misconceived conclusion itself constitutes an exceptional circumstance to invoke the revisionary jurisdiction of this court.

In the present case, what the Learned Magistrate meant was that the witness has not given evidence to satisfy Court. That does not mean that there should be a particular number of witnesses in a case. It is evident that the Learned Magistrate was of the view that evidence of the Petitioner was not sufficient enough to prove Court that she had no knowledge of committing the offence. The particular issue is very well explained and adequately elaborated by the Learned High Court Judge.

The Senior State Counsel for the Respondents raised a preliminary objection that the Petitioner has filed this revision application in March 2014, after a delay of 4 months from the order of the Learned High Court Judge of Puttalam dated 11.11.2013. However, the seal of the High Court of the Puttalam on the Petition reveals that the Petition was filed on 25.11.2013.

In the case of **Orient Financial Services Corporation Ltd. v. Range Forest Officer, Ampara [SC Appeal No. 129/2011]**, it was held that,

*“...if the owner on the balance of probability satisfies the court that he had taken precautions to prevent the commission of the offence or **the offence was committed without his knowledge** nor he was privy to the commission of the offence then the vehicle has to be released to the owner...”*

However the proviso to Section 40 of the Forest Ordinance (as amended by Act No.65 of 2009) reads as follows;

*"Provided that in any case where the owner of such tools, vehicles, implements and machines used in the commission of such offence, is a third party, no Order of confiscation shall be made if such owner proves to the satisfaction of the Court that he had taken all precautions to prevent the use of such tools, vehicles, implements, cattle and machines, as the case may be, for the commission of the offence."*

Accordingly it can be construed that the Legislature intended to cast the burden on the claimant to prove that he took all precautions to prevent the offence being committed and such burden needs to be discharged on a balance of probability.

In the case of **Mary Matilda Silva, Vs. P.H. De Silva [CA (PHC) 86/97]**

**Sisira De Abrew, J** has stated that,

*"For these reasons I hold that giving mere instructions is not sufficient to discharge the said burden. She must establish that genuine instructions were in fact given and that she took every endeavor to implement the instructions... "*

The Learned Counsel for the Respondents submitted that the Petitioner had simply told the Accused to refrain from any illegal transportation and she had failed to ask what was being transported on the particular date. (Page 53 and 57 of the Case Record).

The Learned Counsel for the Petitioner submitted the case of **Atapattu Mudiyanseelage Sadi Banda v. OIC, Police Station, Norton Bridge [CA (PHC)**

**Appeal No. 03/2013- decided on 25.07.2014]**, in which, **Malinie Gunaratne, J**, held that,

*“Nevertheless the learned Magistrate has confiscated the lorry. I am of the view, before making the order of confiscation learned Magistrate should have taken into consideration, value of the timber transported, no allegations prior to this incident that the lorry had been used for any illegal purpose, that the appellant and or the accused are habitual offenders in this nature and no previous convictions, and the acceptance of the fact that the Appellant did not have any knowledge about the transporting of timber without a permit. On these facts the Court is of the view that the confiscation of the lorry is not justifiable...”*

When considering the facts of the case, it is evident that the Accused in this case is not a habitual offender, no previous convictions, etc., but no one can say that the Petitioner had no knowledge of transporting the timber. Though she had given instructions to the Accused not to use the vehicle for any illegal transportation, the Petitioner was unable to satisfy the Court that, in fact she had no knowledge of transporting timber and/or she had taken every precaution to stop an offence being committed. Therefore we are of the view that the order of the Learned Magistrate is in accordance with the law.

In the case of **M.Roshan Dilruk Fernando v AG [CA (PHC) 03/2016]**, it was held that,

*“It is settled law that the extraordinary jurisdiction of revision can be invoked only on establishing the exceptional circumstances. The requirement of exceptional circumstances has been held in a series of authorities.*

***Ameen v. Rasheed 3 CLW 8,***

*Rastom v. Hapangama [19787-79] 2 Sri L R 225,*

*Cader (on behalf of Rashid Kahan) V s Officer - In - Charge  
Narcotics Bureau, [2006]3 Sri LR 74,*

*Colombo Apothecaries Ltd. and others V. Commissioner of Labour  
[1998] 3 SriLR 320 are some of the authorities where it has been  
emphasized that unless the existences of the exceptional  
circumstances are been established in cases where an alternative  
remedy is available, revisionary jurisdiction cannot be invoked..."*

The significance of demonstrating exceptional circumstances had been held in numerous judgments and it is mandatory to consider them in order to invoke the jurisdiction of this court.

In the case of *Bank of Ceylon v. Kaleel & Others (2004) 1 SLR 284* it was held that,

*"To exercise the revisionary jurisdiction, the order challenged must have occasioned a failure of justice and be **manifestly erroneous** which is beyond an error or defect or irregularity that an ordinary person would instantly react to it... the order complained of is of such nature which would have shocked the conscience of the court..."*

In the case of *Rasheed Ali v. Mohamed Ali (1981) 2 SLR 29* it was held that,

*"The powers of revision conferred on the Court of Appeal are very wide and the Court has discretion to exercise them whether an appeal lies or not or whether an appeal had been taken or not. However this discretionary remedy can be invoked only where there are exceptional circumstances warranting the intervention of the court..."*



In the case of *Rustom v. Hapangama* (1978-79) 2 SLLR 225, His Lordship Ismail stated that,

*“the trend of authority clearly indicates that where the revisionary powers of the Court of Appeal are invoked the practice has been that these powers will be exercised if there is an alternative remedy available only if the existence of special circumstances are urged necessitating the indulgence of this court to exercise these powers in revision. If the existence of special circumstances does not exist then this court will not exercise its powers in revision.”*

In the light of above circumstances, we are of the view that the Petitioner has failed to demonstrate the existence of exceptional circumstances to invoke the revisionary jurisdiction of this court. Therefore, we see no reason to interfere with the order of the Learned High Court Judge of Puttalam dated 11.11.2013 and the order of the Learned Magistrate of Puttalam in the case of 71179/12/P dated 06.03.2013.

Accordingly the revision application is hereby dismissed without costs.

JUDGE OF THE COURT OF APPEAL

**P. Padman Surasena, J.**

I agree.

PRESIDENT OF THE COURT OF APPEAL

Cases referred to:

1. Rustom v. Hapangama (1978-79) 2 SLR 225
2. Orient Financial Services Corporation Ltd. v. Range Forest Officer, Ampara [SC Appeal No. 120/2011]
3. Mary Matilda Silva, v. P.H. De Silva [CA (PHC) 86/97]
4. Atapattu Mudiyanse Sadi Banda v. OIC, Police Station, Norton Bridge [CA (PHC) Appeal No. 03/2013]
5. M.Roshan Dilruk Fernando v. AG [CA (PHC) 03/2016]
6. Bank of Ceylon v. Kaleel & Others (2004) 1 SLR 284
7. Rasheed Ali v. Mohamed Ali (1981) 2 SLR 29
8. Rustom v. Hapangama (1978-79) 2 SLR 225