

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

In the matter of an Appeal
under Article 154P (3)(b) of the
Constitution of the Democratic
Socialist Republic of Sri Lanka.

H.J.M.J. Herath
Forest Officer,
Anuradhapura.

Complainant

C.A. Case No: CA (PHC) 98/2018

P.H.C. Anuradhapura Case No:
41/2017 (REV)

M.C. Anuradhapura Case No: 73711

Vs.

1. R.K. Sumith Sandaruwan
8th Mile Post, Saliyapura,
Anuradhapura.
2. Premadasage
Chandrasiri,
Rathmale Janapadhaya,
Parasangswela.

Accused

AND BETWEEN

Jamaldeen Abdul Wahideen
Parasangswewa,
Anuradhapura.

Petitioner

Vs.

1. H.J.M.J. Herath
Forest Officer,
Anuradhapura.

Complainant-Respondent

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

Respondent

- 3(a). R.K. Sumith Sandaruwan
8th Mile Post, Saliyapura,
Anuradhapura.

- 3(b). Premadasage Chandrasiri,
Rathmale Janapadhaya,
Parasangawela.

Accused-Respondents

AND NOW BETWEEN

Jamaldeen Abdul Wahideen
Parasangawewa,
Anuradhapura.

Petitioner-Appellant

Vs.

1. H.J.M.J. Herath
Forest Officer,
Anuradhapura.

**Complainant-Respondent-
Respondent**

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

Respondent-Respondent

3(a).R.K. Sumith Sandaruwan
8th Mile Post, Saliyapura,
Anuradhapura.

3(b). Premadasage Chandrasiri,
Rathmale Janapadhaya,
Parasangawela.

**Accused-Respondents-
Respondents**

BEFORE : K. K. Wickremasinghe, J.
K. Priyantha Fernando, J.

COUNSEL : AAL J. Joseph for the Petitioner-Appellant

Anoopa De Silva, SSC for the Complainant-
Respondent-Respondent and the
Respondent-Respondent

ARGUED ON : 30.05.2019

WRITTEN SUBMISSIONS : The Petitioner-Appellant – On 28.06.2019
The Respondent-Respondent – On
10.07.2019

DECIDED ON : 06.08.2019

K.K.WICKREMASINGHE, J.

The Petitioner-Appellant has filed this appeal seeking to set aside the order of the Learned High Court Judge of the Provincial High Court of North Central Province holden in Anuradhapura dated 25.06.2018 in Case No. 41/2017 (REV) and seeking

to set aside the confiscation order made by the Learned Magistrate of Anuradhapura dated 02.10.2017 in Case No. 73711.

Facts of the case:

The 3(a) and 3(b) accused-respondents (hereinafter referred to as the 'accused persons') were charged in the Magistrate's Court of Anuradhapura for clearing and digging soil in a Reserve Forest, an offence punishable under section 20(1) and section 53A read with section 40(1)(a) and (b) of the Forest Ordinance as amended. The accused persons pleaded guilty and were convicted and imposed a fine of Rs. 2000/= on each accused. Thereafter a vehicle inquiry was held with regard to the Bulldozer/Caterpillar bearing No. CAT – D4E that was used for the commission of offence. The petitioner-appellant (hereinafter referred to as the 'appellant') gave evidence in the inquiry and the Learned Magistrate confiscated the vehicle by his order dated 02.10.2017.

Being aggrieved by the said order, the appellant preferred an application for revision to the Provincial High Court of Anuradhapura and the Learned High Court Judge affirmed the order of the Learned Magistrate.

Being aggrieved by the said order, the appellant filed this appeal.

The following grounds of appeal were averred on behalf of the appellant;

1. The order of the Learned High Court Judge is bad in law and against the material placed before Court
2. The finding of the Learned High Court Judge and the Learned Magistrate that the appellant was not the owner of the caterpillar at the time of taking it into custody, is erroneous

3. The Learned High Court Judge erred in law by rejecting the documents 'P1' to 'P28' stating that the documents were not produced before the Learned Magistrate when the appellant gave evidence
4. The Learned High Court Judge misapplied the findings of the case of 'Wijeyakoon V. Wijeyakoon (1986) 2 Sri L.R 325, to the facts of this case
5. The Learned High Court Judge misinterpreted section 40 of the Forest Ordinance
6. The Learned High Court Judge and the Learned Magistrate failed to judicially evaluate the evidence placed before them with regard to the ownership of the said caterpillar, thus erred in law
7. The Learned High Court Judge erred in law by rejecting the documents produced before him without evaluating the same in a positive manner

As per the evidence of the appellant, he had purchased the caterpillar for a sum of Rs. 2,800,000/= upon obtaining a leasing facility from a Leasing Company. The appellant testified that the caterpillar was used for agricultural and constructional purposes and the 3(a) accused was the driver of the vehicle. On the date of incident, the appellant had released the vehicle to construct a roadway on hire and in the afternoon, the appellant got to know that his vehicle had been taken into custody for clearing and digging soil in a Reserve Forest.

I wish to consider grounds of appeal 1 to 3 and 5-7 together. I observe that all these grounds address the questions as to whether the Learned High Court Judge and the Learned Magistrate erred in determining the ownership of the said caterpillar and whether the Learned High Court Judge erred in law by rejecting the documents 'P1' to 'P28', produced before him.

At the vehicle inquiry held in the Magistrate's Court, the appellant submitted an invoice marked as 'X1' which included the details of the said caterpillar. It is observed that the said invoice was dated 08.10.2015 whereas the offence was committed on 07.10.2015. Therefore the Learned Magistrate was of the view that the appellant did not prove to the satisfaction of Court that he was the lawful owner of the caterpillar on the date of the offence. The Learned Magistrate further observed that even though the appellant testified that he bought the caterpillar on a leasing facility, any Leasing company did not claim the said vehicle in the inquiry. Therefore the Learned Magistrate proceeded to confiscate the vehicle since the appellant failed to prove his ownership. As per the order of the Learned High Court Judge, the appellant submitted documents 'P1' to 'P28', to the High Court which were not submitted at the stage of inquiry in the Magistrate's Court. The Learned High Court Judge refused to consider aforesaid fresh material and made the following observation;

“එකී පි.1 සිට පි.28 දක්වා ලේඛන නඩුවට විෂය වූ කැටපිලර් යන්ත්‍රය සම්බන්ධයෙන් පැවති විමර්ශනයේදී ඉදිරිපත් නොකිරීමටත් මෙම ප්‍රතිශෝධන ඉල්ලුම්පත්‍රයට අදාළ විමර්ශනයේදී මුල්වරට මෙම නඩුවට ඉදිරිපත් කිරීම සම්බන්ධයෙනුත් කිසිදු සාධාරණ හේතුවක් පෙන්වීමකරු විසින් ඉදිරිපත් කර ද නැත. එකී පි.1 සිට පි.28 දක්වා වූ ලේඛන මෙම නඩුවේ පෙන්වීමකරුට කැටපිලර් යන්ත්‍රය සම්බන්ධයෙන් මහේස්ත්‍රාත් අධිකරණයේ පැවති විමර්ශනයට ඉදිරිපත් කිරීමටද ඕනෑ තරම් ඉඩකඩ තිබුණි.” (Page 129 of the brief)

The Learned SSC for the respondent-respondent (hereinafter referred to as the 'respondent') submitted that the Learned High Court Judge in any event could not have entertained the documents 'P1' to 'P28', since section 6(b) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 has no applicability to a revision application of this nature. As per aforesaid section 6, the High Court in

exercise of appellate jurisdiction may further receive and admit new evidence additional to, or supplementary of, the evidence already taken in the Court of First Instance. Therefore, it is understood that the High Court may receive new/fresh evidence only in exercising its appellate jurisdiction but not in revisionary jurisdiction. Since the purpose of the revisionary powers is to correct any procedural errors and/or failure of justice occurred in lower Courts, allowing fresh evidence at the stage of revision application would certainly defeat such purpose. Therefore, I am of the view that both the Learned High Court Judge and the Learned Magistrate made their orders well within law and therefore the aforesaid grounds of appeal of the appellant must fail.

The Learned Counsel for the appellant submitted that the High Court Judge misapplied the findings of the case of '**Wijeyakoon V. Wijeyakoon (1986) 2 Sri L.R 325**', to the instant case. I observe that the Learned High Court Judge referred to the case of 'Wijeyakoon' for the purpose of justifying his decision to reject fresh evidence at the stage of revision application. Since the Learned High Court Judge's decision to reject fresh evidence is sound in law as I have already mentioned, there had been no misapplication.

In the case of **Mariam Beebee V. Seyed Mohamed [68 NLR 36]** it was held that,

"The power of revision is an extraordinary power which is quite independent of and distinct from the appellate jurisdiction of this court. Its object is the due administration of justice and the correction of errors, sometimes committed by this court itself, in order to avoid a miscarriage of justice..."

In the case of **Bank of Ceylon V. Kaleel and others [2004] 1 Sri L.R 284**, it was held that,

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

Considering above, I am of the view that there had been no positive miscarriage of justice, in the instant case, which warrants the invocation of the revisionary powers of this Court. Therefore I affirm the order of the Learned High Court Judge dated 25.06.2018 and order of the Learned Magistrate dated 02.10.2017.

Accordingly this appeal is hereby dismissed.

JUDGE OF THE COURT OF APPEAL

K. Priyantha Fernando, J.

I agree,

JUDGE OF THE COURT OF APPEAL