

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

In the matter of an Appeal under Article 138 and 154P of the Constitution of the Democratic Socialist Republic of Sri Lanka read with provisions of the Act No. 19 of 1990.

C.A. Case: **CA (PHC) 13/2018**

P.H.C. Galle Case No: **REV 261/2018**

M.C. Galle Case No: **51711/16**

OIC,  
Police Station,  
Hikkaduwa.

**Complainant**

**Vs.**

Patuwana Uyanage Ranjith  
Devapriya,  
Kollawita, Batapola.

**Accused**

**AND BETWEEN**

Vajira Kalyani Kumudapperuma  
123/1, Atambagaha junction,  
Pollewwa, Batapola.

**Petitioner**

**Vs.**

1. OIC,  
Police Station,  
Hikkaduwa.

2. The Attorney General  
Attorney-General's  
Department,  
Colombo 12.
3. Patuwana Uyanage Ranjith  
Devapriya,  
Kollawita, Batapola.

**Respondents**

**AND NOW BETWEEN**

Vajira Kalyani Kumudapperuma  
123/1, Atambagaha junction,  
Pollewwa, Batapola.

**Petitioner-Appellant**

**Vs.**

1. OIC,  
Police Station,  
Hikkaduwa.
2. Patuwana Uyanage Ranjith  
Devapriya,  
Kollawita, Batapola.

**Complainant-Respondent**

**Accused-Respondent**

3. The Attorney General  
Attorney-General's  
Department,  
Colombo 12.

**Respondent-Respondent**

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

COUNSEL : AAL Ranjith Meegaswatte for the  
Petitioner-Appellant  
Nayomi Wickremasekara, SSC for the  
Respondent-Respondent

ARGUED ON : 11.06.2019

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

DECIDED ON : 17.09.2019

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

The Registered owner-Petitioner-Appellant has filed this appeal seeking to set aside the order of the Learned High Court Judge of the Provincial High Court of Southern Province holden in Galle dated 14.02.2018 in Case No. REV 261/2018 and seeking to set aside the confiscation order made by the Learned Magistrate of Galle dated 16.10.2017 in Case No. 51711/16.

**Facts of the Case:**

The accused-respondent (hereinafter referred to as the ‘accused’) was charged in the Magistrate’s Court of Galle for transporting 5 Jack tree logs worth of Rs. 39859.34 on or about 20.03.2016, utilizing a lorry bearing No. 43-9223 and thereby committed an offence punishable under section 25(2) of the Forest Ordinance. The accused pleaded guilty on 28.03.2016 and the Learned Magistrate convicted him accordingly and imposed a fine of Rupees 5000/=.

Thereafter, a vehicle inquiry was held with regard to the lorry bearing number No. 43-9223 and the petitioner-appellant (hereinafter referred to as the 'appellant') claimed the vehicle in the said inquiry. After concluding the inquiry, the Learned Magistrate had confiscated the vehicle by order dated 16.10.2017.

Being aggrieved by the said order, the appellant filed a revision application in the Provincial High Court of Southern Province holden in Galle bearing No. REV 237/2017. However, the appellant withdrew the same on 11.01.2018 due to a defect in the prayer of the petition, reserving her right to file a fresh application. Thereafter, the appellant filed a revision application bearing No. REV 261/2018. The Learned High Court Judge has dismissed the said application without issuing notices on the respondents, holding that the Learned Magistrate had arrived at the correct conclusion.

Being aggrieved by the said dismissal the appellant preferred an appeal to this Court.

The Learned Counsel for the appellant submitted that;

1. The Learned Magistrate did not consider all the evidence given in the Magistrate's Court.
2. The Learned High Court Judge has dismissed the application without giving any reason
3. The petitioner has been doing this transport for last 23 years without any previous convictions and pending cases.
4. The petitioner has no knowledge of transport of illegal timber.
5. Timber was not transported on a public road, it was only loaded to put to a corner of the same land.

6. Previous Learned High Court Judge had issued notices, but the present Learned High Court Judge has not issued notices and therefore, it is discrimination.

It is noted that in the petition of appeal and in the written submissions of the appellant, she was referred to as the 'petitioner', by mistake. Since this is an appeal, it must be corrected as 'the appellant'.

The incident in question is summarized as follows;

As per the evidence of the accused-driver and the appellant, the vehicle was used to transport cinnamon leaves, on the date of the incident. The accused and the appellant are husband and wife. On the date of incident, one chamin silva who was the owner of the timber had stopped the lorry and asked the accused-driver to shift some logs of Jack tree that were in front of his house to a corner of the same land. It was revealed that the timber owner had obtained a permit to cut down the said Jack tree which was in his land. While the accused and the owner of timber were loading to the lorry, Police officers of the Hikkaduwa Police had come there and taken the accused into custody along with the vehicle. The accused -driver had pleaded guilty to the charge framed against him, namely transporting Jack timber illegally on Katukoliya road. The appellant testified that she was unaware of the incident in question and she had advised her husband not to do any illegal activity. The timber owner testified that he did not have a permit to transport the timber even though he obtained a permit to cut the Jack tree. The accused-driver testified that the timber owner showed him a permit, but the accused did not check the said permit.

I wish to consider grounds of appeal of 01 and 03 to 05 together. I observe that the accused-driver and the timber owner took up the position that they were not

planning to transport timber on main road, but simply were trying to put the timber to a corner of the same land. However, the accused-driver had pleaded guilty to the charge framed against him which clearly mentioned that the accused was transporting timber on Katukoliya road (Page 103 of the brief). I think the fact that the Lorry was not on a main road, but inside a private land should have been challenged at the time of conviction and not subsequently at the vehicle inquiry or the appeal. On this issue, the Learned Magistrate has observed that both the appellant and the accused had taken up the position that the vehicle was not on the main road. Accordingly, the Learned Magistrate was of the view that the accused had contradicted himself and therefore not creditworthy. At the same time, I observe that the Learned Magistrate had evaluated all the evidence placed before her and therefore, the 01<sup>st</sup> and 5<sup>th</sup> grounds of appeal should fail.

The Learned Counsel for the appellant contended that the appellant had no knowledge of transport of illegal timber and the appellant had no previous convictions or pending cases regarding the vehicle in question.

The Learned SSC for the respondent-respondent submitted that an offence which comes under the Forest Ordinance cannot be committed regularly since the Legislature had enacted strict law and as a safe guard method, firm decisions have been taken. It was argued by the Learned SSC that the Legislature does not provide any offender to commit the same offence more than once.

As per section 40(1)(b), all tools, vehicles, implements, cattle and machines used in committing an offence under the Forest Ordinance, shall in addition to any other punishment specified for such offence, be confiscated by Order of the convicting Magistrate. Therefore it is trite law that any vehicle involved in an offence under the Forest Ordinance is subject to confiscation upon a valid conviction. It is observed that the amendment made to section 40 of the Forest Ordinance in 2009,

requires Court to look into the preventive measures taken by the vehicle owner whose vehicle is involved in an offence under Forest Ordinance.

In the case of **The Finance Company PLC. V. Agampodi Mahapedige Priyantha Chandana and 5 others [SC Appeal 105A/2008]**, it was held that,

*“On a consideration of the ratio decidendi of all the aforementioned decisions, it is abundantly clear that in terms of section 40 of the Forest Ordinance, as amended, if the owner of the vehicle in question was a third party, no order of confiscation shall be made if that owner had proved to the satisfaction of the Court that he had taken all precautions to prevent the use of the said vehicle for the commission of the offence. The ratio decidendi of all the aforementioned decisions also show that the owner has to establish the said matter on a balance of probability.”* (Emphasis added)

The Learned Counsel for the appellant submitted the case of **Atapattu Mudiyansele Sadi Banda V. OIC, Police Station, Norton Bridge [CA (PHC) 03/2013]**, in which it was held that,

*“...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...”*

However in the case of **W. Jalathge Surasena V. O.I.C, Hikkaduwa and 3 others [CA (PHC) APN 100/2014]**, it was held that,

*“...A mere denial by the of Registered Owner of the fact that he did not have knowledge, of the alleged commission is not sufficient as per the principle laid down in the line of authorities regarding the confiscation, of a vehicle which had been used for a commission of an offence for an unauthorized purpose...”*

As law stands today, it is mandatory to prove preventive measures taken by a vehicle owner in question, on a balance of probability. Undoubtedly, such burden would not be discharged merely because the owner in question did not have knowledge about an offence being committed or because the vehicle was not involved in an offence previously. The Learned Magistrate had correctly analyzed this question and came to the conclusion that the appellant was not monitoring the vehicle and she was aware only about the things told by her husband (the accused-driver). Therefore, the Learned Magistrate was of the view that the appellant failed to satisfy the Court, that she had taken all precautions to prevent the use of the vehicle for the commission of the offence (Page 70 & 71 of the brief). I am of the view that, above conclusion of the Learned Magistrate is well within law and therefore, the grounds of appeal of 03 and 04 should fail.

Now I wish to consider grounds of appeal 02 and 06, in which it was contended that the Learned High Court Judge has not given any reason to dismiss the petition and he did not consider any grounds which the Learned Counsel stated before the Learned High Court Judge.

Since the appellant filed an application for revision in the High Court, the appellant was required to prove the existence of exceptional circumstances.

In the case of **Dharmaratne and another V. Palm Paradise Cabanas Ltd. and others (2003) 3 Sri L.R 24**, it was held that,



*“Existence of exceptional circumstances is the process by which the court selects the cases in respect of which the extraordinary method of rectification should be adopted. If such a selection process is not there revisionary jurisdiction of this court will become a gateway of every litigant to make a second appeal in the garb of a Revision application or to make an appeal in situations where the legislature has not given a right of appeal...”* (Emphasis added)

In the case of **Rasheed Ali V. Mohamed Ali and others (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 light of above, it is understood that, a party who wishes to invoke revisionary jurisdiction is required to demonstrate the existence of exceptional circumstances. The Learned High Court Judge, in his order, has considered the contradictory position taken on behalf of the appellant even after the accused pleading guilty to the charge. The Learned High Court Judge was of the view that Learned Magistrate came to the correct conclusion after considering the above said contradictory positions. Accordingly, the Learned High Court Judge refused to issue notices on the respondents since there were not sufficient grounds to issue notices.

The Learned Counsel for the appellant further argued that previous Learned High Court Judge has issued notices however present Learned High Court Judge has not

issued notices and it is discrimination. I observe that it was the same High Court Judge who had held inquiry in both revision applications filed by the appellant. There could have been a possibility that the Learned High Court Judge was aware of the facts of the case since he had already issued notices in the previous application filed by the appellant. I observe that the Learned High Court Judge has adequately given reasons to refuse the application and therefore, there had been no injustice or irregularity.

Considering above, I see no reason to interfere with the order of the Learned High Court Judge and the order of the Learned Magistrate. Therefore, I affirm both orders.

The appeal is hereby dismissed without costs.

JUDGE OF THE COURT OF APPEAL

**K. Priyantha Fernando, J.**

I agree,

JUDGE OF THE COURT OF APPEAL

**Cases referred to:**

1. The Finance Company PLC. V. Agampodi Mahapedige Priyantha Chandana and 5 others [SC Appeal 105A/2008]
2. Atapattu Mudiyansele Sadi Banda V. OIC, Police Station, Norton Bridge [CA (PHC) 03/2013]
3. W. Jalathge Surasena V. O.I.C, Hikkaduwa and 3 others [CA (PHC) APN 100/2014]
4. Dharmaratne and another V. Palm Paradise Cabanas Ltd. and others (2003) 3 Sri L.R 24
5. Rasheed Ali V. Mohamed Ali and others (1981) 2 SLR 29