

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

In the matter of a Revision  
Application under Article 138 of the  
Constitution of the Democratic  
Socialist Republic of Sri Lanka.

The Officer in Charge,  
The Police Station,  
Warakapola.

**Complainant**

C.A. Revision Application No:  
**CA (PHC) APN 131/2018**

Vs.

H.C Kegalle Case No: 5266/2017

M.C. Warakapola Case No 90515

M.R. Niranjan Rukmal Seneviratne

**Accused**

Mallika Wijelath  
Delgamuwa,  
Tholangamuwa.

**Registered Owner**

AND BETWEEN

Mallika Wijelath  
Delgamuwa,  
Tholangamuwa.

**Registered Owner-Petitioner**

Vs.

M.R. Niranjan Rukmal Seneviratne

**1. Accused-Respondent**

The officer-in-charge  
Police Station  
Warakapola

**2.Complainant-Respondent**

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

**3. Respondent**

**And Now Between**

Mallika Wijelath  
Delgamuwa,  
Tholangamuwa.

**Registered Owner-Petitioner-  
Petitioner**

Vs.

M.R. Niranjan Rukmal Seniviratne

**1.Accused-Respondent**

The officer-in-charge  
Police Station  
Warakapola

**2. Complainant- Respondent**

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

**3. Respondent**

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

COUNSEL : AAL Amila Palliyage with AAL Dumindu  
De Alwis for the Petitioner.  
N. Wickremasekera, SSC with R.V.D.D.  
Rahubadda, SC for the Attorney General.

WRITTEN SUBMISSIONS : The Owner-Petitioner- Petitioner  
– On 14.06.2019  
The Complainant-Respondent  
– On 08.10.2019

ARGUED ON : 27.06.2019

DECIDED ON : 03.12.2019

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

The Registered Owner-Petitioner-Petitioner filed this revision application seeking to set aside the Order of the Learned High Court Judge of Kegalle dated 31<sup>st</sup> October 2018 bearing case No. 5266/2017 and seeking to set aside the confiscation order of the Learned Magistrate of Warakapola bearing Case No. 90515 dated 27<sup>th</sup> September 2017.

**Facts of the case:**

The Vehicle bearing No. 68-4469 was taken into custody by the Complainant for allegedly transporting timber without a valid permit on or about the 26<sup>th</sup> of April 2017.

The driver of the vehicle was charged for transportation of timber which is punishable under Section 25 (2) (b) of the Forest Ordinance as amended.

The driver (Accused) pleaded guilty for the charge and was convicted on his own plea and accordingly, the Learned Magistrate of Warakapola convicted him and imposed a fine of Rs.25, 000/-, in default 3 months rigorous imprisonment. Further, the case was fixed for inquiry regarding the aforesaid vehicle on the 28<sup>th</sup> of June, 2017.

On the 3<sup>rd</sup> May 2017, the aforesaid vehicle was released to the petitioner (Registered-Owner of the vehicle) after furnishing the vehicle registration certificate, on a bond of Rs. 1,500,000/-.

The inquiry regarding the vehicle commenced on 28 June 2017 and evidence of the Registered-Owner was led. After the inquiry on 27<sup>th</sup> September 2017, the learned Magistrate confiscated the Vehicle bearing No. 68-4469.

Being aggrieved by the said order, the Petitioner preferred an application for revision to the Provincial High Court of Kegalle. Thereafter, by Order dated 31<sup>st</sup> October 2018, the Learned High Court Judge dismissed the Revision Application on the basis that no exceptional circumstances have been alleged by the petitioner and affirmed the order of the learned Magistrate.

Being aggrieved by the said Order of the learned High Court Judge, the Petitioner filed this revision application to invoke the Revisionary Jurisdiction of this Court.

The following grounds of revision were averred on behalf of the petitioner;

- i. That the learned High Court Judge failed to consider the totality of evidence lead at the inquiry.
- ii. That the learned High Court failed to consider that the learned Magistrate came to a finding on the element of knowledge based on evidence that

had been led, namely that the Petitioner did not have any knowledge when committing the alleged offence.

- iii. That the learned High Court Judge failed to consider the fact that the Petitioner did not have knowledge is sufficient to release the vehicle to the Petitioner.
- iv. That the learned High Court Judge failed to consider that the Petitioner failed to aver exceptional grounds which warrants the jurisdiction of the High Court.

I observe that the first ground of appeal was correctly addressed by the Learned High Court Judge in his order. The Learned High Court Judge has compared law relevant to confiscating a vehicle under the Forest Ordinance prior to, and subsequent to the Amending Act No. 65 of 2009. Furthermore, this question of law was addressed in light of case law. The Learned High Court Judge was of the view that the burden cast on a vehicle owner under section 40 of the Forest Ordinance as amended by Act No. 65 of 2009, is not very different from previously held law, in which an owner had to prove: that he either took all precautions to avert such a situation, or that he had no knowledge of an offence being committed. It is observed that proving all necessary precautions having been taken by the owner of a vehicle has in fact remained a requirement under both past and present law. Therefore, the learned High Court Judge arrived at the correct conclusion that no prejudice had been caused to the petitioner.

When considering the fourth ground of appeal referring to the existence of exceptional circumstances, **Rasheed Ali Vs Mohamed Ali (1936, 6 CLW)** held,

*"The powers of revision conferred on the Court of Appeal are very wide and the Court has the 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."*

Furthermore, in the case of **Caderamanpule Vs Ceylon Paper Sacks Ltd. 2001 (3) SLR 112**, It was held that *"the existence of exceptional circumstances is precondition for the exercise of the powers of Revision"*

Thus, I observe that the learned High Court Judge had not erred in Law, as there had been no exceptional circumstances brought to light that would justify the exercise of the powers of Revision.

The Witnesses who testified at the Vehicle inquiry are as follows:

1. The registered owner of the vehicle
2. The accused
3. The owner of the timber

Mallika Wijelath, the registered owner, in her evidence, she confirmed that she is the registered owner of the Vehicle bearing no. 68-4469 and had hired the Driver (accused) 2 months prior to the said incident. Further, she testified that she had provided the accused with instructions to refrain from doing any illegal acts whilst using the aforementioned vehicle.

However, she had not taken or purported to take any further steps in ensuring the driver not commit such an offence.

In the case of **Orient Financial Services Corporation Ltd. V. Range Forest Officer of Ampara and another [SC Appeal No. 120/2011]**, it was held that,

*"The Supreme Court has consistently followed the case of Manawadu vs the Attorney General. Therefore it is settled law that before an order for forfeiture is made the owner should be given an opportunity to show cause. If the owner on a 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."*

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 has 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. Accordingly, it would be necessary for the owner to show the steps he had taken to prevent the use of the vehicle for the commission of the offence and that the said offence had been committed without his knowledge.

In the case of **Mary Matilda Silva, V. P.H De Silva [CA (PHC) 86/971]**

**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..."*

However, Section 40 of the principal enactment has been amended by the repeal of subsection (1) and thereby the petitioner must only prove that she has taken necessary precautions to avert such wrongdoing.

In the case of **W. Jalathge Surasena V. O.I.C, Hikkaduwa and 3 others [CA (PHC) APN100/2014]**, it was held that a mere denial by the registered owner of the fact that he did not have knowledge of the alleged commission is not sufficient.

I observe that it is evident that the petitioner had failed to take all reasonable precautions to ensure the said vehicle was not used in commission of the offence, since merely instructing the accused to refrain from partaking in illegal activities does not suffice in ensuring the proper use of a vehicle.

Therefore, I observe that the Learned Magistrate has correctly followed the legal principles governing a claim made by the Registered Owner.

For the aforesaid reasons, the order of the High Court dated 31<sup>st</sup> October 2018 is therefore affirmed.

The revision application 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. Orient Financial Services Corporation Ltd. V. Range Forest Officer of Ampara and another [SC Appeal No. 120/2011]
2. Mary Matilda Silva, V. P.H De Silva [CA (PHC) 86/971]
3. W. Jalathge Surasena V. O.I.C, Hikkaduwa and 3 others [CA (PHC) APN 100/2014]
4. Caderamanpule V. Ceylon Paper Sacks ltd. 2001 (3) SLR 112
5. Rasheed Ali V. Mohamed Ali (1936, 6 CLW)