

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST**

**REPUBLIC OF SRI LANKA**

Officer-in-Charge,  
Minor Complaints Unit,  
Police Station,  
Tangalle.

Complainant

v.

**Court of Appeal Case No.**  
**CA(PHC) 42/2016**

**High Court of Tangalle**  
**Case No. Revision 07/2015**

**Magistrate Court of**  
**Tangalle Case No. 11138**

Mohomed Najideen Mohamed Ishan,  
No.68,  
Bandaranayake Garage Road,  
Karapitiya,  
Tangalle.

Accused

Don Pasan Jayasinghe,  
No.96/17,  
Megoda Kolonnawa,  
Wellampitiya.

Power of Attorney Holder of the  
Registered Owner

AND

Don Pasan Jayasinghe,  
No.96/17,  
Megoda Kolonnawa,  
Wellampitiya.

Power of Attorney Holder of the Registered  
Owner-Petitioner

V

1. Officer-in-Charge,  
Minor Complaints Unit,  
Police Station,  
Tangalle.
2. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

Complainant-Respondents

AND NOW BETWEEN

Don Pasan Jayasinghe,  
No.96/17,  
Megoda Kolonnawa,  
Wellampitiya.

Power of Attorney Holder of the Registered  
Owner- Petitioner-Appellant

V.

1. Officer-in-Charge,  
Minor Complaints Unit,  
Police Station,  
Tangalle.
2. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

Complainant-Respondent-Respondents

**BEFORE**

: **K.K. WICKREMASINGHE, J**  
**K. PRIYANTHA FERNANDO, J**

**COUNSEL**

: Ershan Ariyaratnam for the Appellant.  
  
Shanaka Wijesinghe DSG for the  
Respondent.

**ARGUED ON**

: 13.11.2019

**WRITTEN SUBMISSIONS**

**FILED ON**

: 22.10.2019 by the Appellant.  
  
28.10.2019 by the Respondent.

**JUDGMENT ON**

: 17.12.2019

**K. PRIYANTHA FERNANDO, J.**

01. The above-named Accused was charged in the Magistrate's Court of Tangalle under Section 3A of the Animals Act and under section 2 to be read with section 2(1)c of the Cruelty to Animals Act. Upon convicting the Accused on his own plea of guilty, the learned Magistrate has sentenced the Accused by imposing fines on both counts.
02. The Appellant as the Power of Attorney Holder for the registered owner had made a claim for the vehicle that was used to transport the cattle. After holding the inquiry, the learned Magistrate on 28.04.2015 ordered the vehicle to be confiscated. The Appellant filed an application in the Provincial High Court of Tangalle to get the order of confiscation of the vehicle revised. After inquiry, the learned High Court Judge affirmed the order of the learned Magistrate by her Judgment dated 25.05.2016. Being aggrieved by the said Judgment of the learned High Court Judge, the Appellant preferred this appeal.
03. Learned counsel for the Appellant submitted that the Appellant has taken necessary precautions to prevent the vehicle being used to transport cattle or to be used for any other illegal activities. It was further submitted that the Appellant had no knowledge of the Accused committing the offence. Further, it was submitted that the learned Magistrate has erred when he rejected the document marked as 'X1'.
04. Counsel further submitted that there is no evidence to show that the Appellant was present at the time of the detection and that he was privy to the offence. The vehicle concerned was never involved in any offences of similar nature.

05. Learned Deputy Solicitor General for the Respondent submitted that the document marked as 'X1' has no legal validity. The Appellant has no *locus standi*, counsel submitted.
06. At the vehicle inquiry before the learned Magistrate, only the Appellant gave evidence. According to his testimony, the registered owner of the vehicle is one Ms. R.A.P.P. Ranasinghe from whom he has taken over the vehicle on the document marked as 'X1'. In terms of 'X1' said registered owner had already obtained a facility from Citizens Development Bank for the vehicle and therefore the absolute owner had been the said finance institution. 'X1' doesn't show that the absolute owner has consented or permitted to transfer or hand over the vehicle to the Appellant. However, Appellant had taken over the vehicle on the conditions stipulated in 'X1'. The Appellant had thereafter, handed over the vehicle to the Accused upon signing the agreement 'X3'. According to the Appellant's testimony, the Appellant had given the vehicle to the Accused on lease subject to the terms and conditions stipulated in the agreement 'X3'.

Section 3A of the Animals Act provides;

*“where any person is convicted of an offence under this part or any regulations made thereunder, any vehicle used in the commission of such offence shall, in addition to any other punishment prescribed for such offence, be liable, by order of the convicting Magistrate, to confiscation;*

*Provided however, that in any case where the owner of the vehicle is a third party, no order of confiscation shall be made, if the owner proves to the satisfaction of the court that he has taken all precautions*

*to prevent the use of such vehicle or that the vehicle has been used without his knowledge for the commission of the offence.”*

07. Appellant testified that he inquired from the Accused over the telephone as to whether the Accused is using the vehicle as agreed. He said that he sometimes inspected the vehicle and that he did not notice any alterations made to the vehicle other than to transport firewood. However, in cross examination he admitted that when he saw the vehicle after the detection by the police, there were changers done to the lorry. He admitted that there were two wooden poles fixed inside the lorry and also an iron rod was fixed on the floor behind. It is obvious that those changes were done to transport cattle. The detection was made by the police on 06.08.2011. The date on which the Appellant leased out the vehicle to the Accused was 14.07.2011. Therefore, the alterations to the vehicle to transport cattle had been made within those 21 days. If the Appellant inspected the vehicle on and off as he testified, he could have observed the said alterations made to the vehicle. It shows that the Appellant was not truthful when he said that he inspected the vehicle on and off and he did not see the alterations made.

08. In case of ***Mary Matilda Silva V. Inspector of Police, Habarana, [CA (PHC) 86/1997, 08.07.2010]***, Court said;

*“In my view, for the owner of the vehicle to discharge the burden (1) that he/she had taken all precautions to prevent the use of the vehicle for the commission of the offence (2) that the vehicle had been used for the commission of the offence without his/her knowledge, mere giving instructions is not sufficient. In order to*

*discharge the burden embodied in the proviso to section 3A of the Animals Act is it sufficient for the owner to say that instructions not to use the vehicle for illegal purpose had been given to the driver? If the courts of this country is going to say that it is sufficient, then all what the owner in a case of this nature has to say is that he gave said instructions. Even for the second offence, this is all that he has to say. Then there is no end to the commission of the offence and to the use of the vehicle for the commission of the offence. Every time when the vehicle is detected with cattle all what he has to say is that he had given instructions to the driver. Then the purpose of the legislature in enacting the proviso to section 3A of the Animals Act is frustrated.”*

09. In *Umma Habeeba V OIC Dehiattakandiya [1999] 3 SLR 89*, it was decided that;

*“What section 3A means is that the vehicle shall necessarily be confiscated if the owner fails to prove that the offence was committed without the knowledge but not otherwise. If, as contended, the Magistrate was given a discretion to consider whether to confiscate or not – the Magistrate could confiscate even when the offence was committed without the knowledge of the owner taking into consideration other damnable circumstances apart from knowledge or lack of it on the part of the owner.”*

10. When considering the above-mentioned facts and circumstances with the case precedents, I find that the Appellant has failed to prove any of the two requirements mentioned in the proviso to section 3A of the Animals Act.

11. At this juncture, I find that it is also important to discuss the submissions made by the learned DSG for the Respondent that the Appellant has no *locus standi* in the matter.
12. Who is the 'owner' referred to in the proviso to section 3A? This was extensively discussed by His Lordship Justice Sisira de Abrew in case of ***L. B. Finance PLC V. O.I.C. Police Station, Beliatta and others [CA (PHC) APN 41/2009, 09.12.2010]*** where it was held;

*"Who is the owner? Can it be said that the absolute owner (the finance company) committed the offence or it was committed with the knowledge or participation of him? The answer is obviously no. Surely a finance company cannot participate in a commission of an offence of this nature when the vehicle was not with it. Then the owner envisaged in the law cannot be the absolute owner. If the court is going to release the vehicle on the basis that the owner of the vehicle is the absolute owner, then after the release it is possible for the absolute owner to give the vehicle again to the registered owner who can use it for the same purpose. In the event of the registered owner using it for the same purpose and it being detected by the police the same procedure will take place resulting in the vehicle being handed over to the registered owner. Then there will be no end to the commission of the offence. If the courts of this country take this attitude, the purpose of the legislature in enacting the said provisions of the law would be defeated. Further, courts would encourage the offenders to commit offences of this nature. In my view, courts should*



*not interpret the law to give an absurd meaning to the law. In this connection, I would like to consider a passage from 'Interpretation of Statutes' by Bindra 7<sup>th</sup> edition page 235. "It is a well known rule of construction that a statute should not be construed so as to impute absurdity to the legislature." For these reasons I hold that the owner envisaged in Section 3A of the Animals Act is not the absolute owner and the owner, in a case of this nature, is the person who has control over the use of the vehicle. Absolute owner has no control over the use of the vehicle except to retake possession of the vehicle for non-payment of installments where the vehicle is on a hire purchase agreement. Here too absolute owner cannot retake possession of the vehicle if 75% of the price agreed has been paid. Vide section 20 of the Consumer Credit Act No.29 of 1982. Therefore, the principle that 'order of confiscation cannot be made if the owner establishes on a balance of probability that he has taken all precautions to prevent the use of the vehicle for the commission of the offence or that the vehicle has been used for the commission of the offence without his knowledge' is not applicable when the absolute owner makes an application for the release of the vehicle in cases where the allegation is that animals have been transported in the vehicle in contravention of the relevant legal provisions. The appeal of the Appellant should therefore fail."*

13. In the above *L. B. Finance* case, the claimant was the absolute owner who had no control over the vehicle. Although the claimant in this case is not the absolute owner, the same principle would apply. The Appellant had already handed over the possession of the vehicle to the Accused on the agreement X3. On that point

onwards until the raid in this case was conducted by the police, the vehicle had been under the control of the Accused, not the Appellant. This is not a case where the Appellant employed the Accused as a driver for a specific purpose. He has given control of the vehicle to the Accused upon signing the agreement of lease marked as X3. Therefore, as described in *L. B. Finance* case, in this case the Appellant cannot be considered as the 'owner' envisaged in proviso to section 3A of the Animals Act. Hence, I am of the considered view that the Appellant had no *locus standi* in the Magistrate's Court as a claimant. Neither the Accused under whose control the vehicle was, nor the registered owner has given evidence at the claim inquiry in the Magistrate's Court. Further, it is pertinent to note that the Appellant is claiming the vehicle as the Power of Attorney Holder of the registered owner. Neither the registered owner nor the Appellant had control over the vehicle at the time of the detection, but with the Accused.

14. Counsel for the Appellant in his written submissions has referred to a portion of the Judgment in case of *Abubakerge Jaleel V. OIC [CA (PHC) 108/2010]*, where the court said that the owner cannot be seated all the time in the lorry to closely supervise for what purpose the lorry is used. Further, court has referred to supervision of personal drivers employed by the government servants, Ministers and Judicial Officers and so on. However, in the instant case the Accused was not the personal driver of the Appellant. Appellant had handed over the possession of the vehicle to the Accused for one year on lease giving him the control of the vehicle. Therefore, the above submission would not be of any assistance to the Appellant's case.

For the reasons stated above, this appeal should necessarily fail.

15. Judgment of the learned High Court Judge dated 26.05.2016 and the order of the learned Magistrate dated 28.04 2015 confiscating the vehicle are affirmed.

Appeal is dismissed. The Appellant is ordered to hand over the vehicle immediately to the Registrar, Magistrate's Court, Tangalle.

**JUDGE OF THE COURT OF APPEAL**

**K.K. WICKREMASINGHE, J**

I agree.

**JUDGE OF THE COURT OF APPEAL**