

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

In the matter of an Application for
revision under Article 138 of the
Constitution of the Democratic
Socialist Republic of Sri Lanka.

Officer in Charge

Police Station

Saliyawewa.

Puttalam Magistrate's Court

Complainant

Case No: **56855/19/P 1**

Vs.

Puttalam High Court Case No:

1.Narangaspitiyegedara Sunil,

APP 09 /19

131, Panawala,

Nittabuwa.

Court of Appeal Case No:

2.Upali Sarath Kumara Abeyratne
Meththagama,

CPA 59/2020

Puttalam Road,

Anamaduwa.

Accused

AND BETWEEN

Methisge Suresh Peiris,

Gren Traders,

Nainamadama West,
Nainamadama.

Claimant – Applicant

Vs.

Officer in Charge
Police Station
Saliyawewa.

Complainant – Respondent

AND BETWEEN

Methisage Suresh Peiris,
Gren Traders,
Nainamadama West,
Nainamadama.

Claimant – Applicant – Appellant

Vs.

01 Officer in Charge
Police Station,
Saliyawewa.

**Complainant – Respondent –
Respondent**

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

Respondent

AND NOW BETWEEN

Methisge Suresh Peiris

Gren Traders,

Nainamadama West,

Nainamadama.

Claimant – Applicant – Appellant
– Petitioner

Vs.

01 Officer in Charge

Police Station

Saliyawewa.

Complainant – Respondent –
Respondent – Respondent

02. Hon. Attorney General,

AttorneyGeneral’s Department,

Colombo 12.

Respondent – Respondent

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel – Anura Meddegoda PC with Asela Muthumudalige for the

Claimant – Applicant – Appellant – Petitioner.

Kanishka Rajakaruna SC for the State.

Argued On – 12.01.2022

Decided On – 25.01.2022

MENAKA WIJESUNDERA J.

The instant application for revision has been filed to set aside the orders of the *Magistrates Court* delivered on 9.7.2019 and the order dated 3.3.20 delivered by the High Court.

The Claimant Applicant Appellant Petitioner (hereinafter referred to as the petitioner) had been the registered owner of *Vehicle nu NWPC3161* and he had been having a rent a car business which had been a registered business.

In the said business the petitioner had rented out the vehicle mentioned above to a person by the name of *Nagaspitiyegedara Sunil*.

The said *Sunil* had obtained the vehicle on an agreement drawn between the Petitioner and the said Sunil. The said agreement had been marked and is part and parcel of the petition. According to the said agreement the above mentioned Sunil is obligated to maintain the vehicle during the period, and the said agreement is also marked and is part and parcel of the petition.

In the said agreement the said Sunil had undertaken to maintain the vehicle and not to engage the vehicle in illegal activities,

.But on the 9th of June 2019 the above mentioned vehicle and Sunil and the cleaner of the vehicle were taken in to custody for being in possession of imported cigarettes without paying taxes.

As such Sunil was charged under the provisions of the act and the charge sheet had been filed under section 15 (1) of the Tobacco Tax Act.

The Counsel for the petitioner argued that it is a defective charge because it does not specify an offence committed under a specific law, hence everything which stems from that is also defective.

The Counsel appearing for the respondents conceded that in the charge filed only the penal section is stated and not the section specifying the offence, but he submitted that the accused had not been misled because the charge has described the offence and the accused had pleaded guilty which shows that he was not misled as said in section 166 of the Code of Criminal Procedure.

In view of the submissions of the Counsel for the respondents the charge is incomplete as per the provisions of the Code of Criminal procedure Code but in the same Code it is stated as to how an incomplete charge should be looked at.

The relevant section says that the suspect or the accused person should not be misled in such an instance if so then the accused or the suspect is deemed to have been prejudiced.

In the instant matter the accused had tendered a plea to the charge and in the body of the charge the particulars of the offence had been stated although the correct section had not been cited.

As such this Court is unable to accept the contention put forward by the learned Counsel for the petitioner that there was no proper charge framed.

But in view of the documents filed by the petitioner marked as *V1 and V2* it is very clear that the petitioner had been running *a rent a car service* and the said Sunil had rented out the vehicle from him and in the said agreement the petitioner had added a clause stating that the vehicle should not be used for any illegal activities and just 3 days prior to the expiration of the contract the alleged incident had taken place, therefore it is the opinion of this Court that the probability of the petitioners knowledge of the alleged incident is very unlikely because the physical control of the vehicle was not with the petitioner.

As such according to the provisions of the relevant act before confiscating the tools used in an offence the claimant of the said tools has to be heard and he has to prove on acceptable terms to Court that he had no knowledge of the incident.

In the instant matter the knowledge of the petitioner has not been adequately considered by the learned High Court Judge and the Magistrate.

As such the instant application for revision is allowed and the impugned orders of the High Court and the Magistrate Court are hereby set aside.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.