

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

In the matter of an Appeal
under Section 331 of the Code
of Criminal Procedure Act No.
15 of 1979, read with Article
138 of the Constitution of the
Democratic Socialist Republic
of Sri Lanka.

The Democratic Socialist
Republic of Sri Lanka

**Court of Appeal Case No.
CA/HCC/0249/2019**

Complainant

**High Court of Avissawella
Case No. HC/109/2017**

V.

Muthukandage Ariyaratne

Accused

AND NOW BETWEEN

Kodikara Arachchige
Kusumawathi

Claimant

V.

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

Respondent

AND NOW BETWEEN

Kodikara Arachchige
Kusumawathi

Claimant – Appellant

V.

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

Respondent–Respondent

BEFORE : **K. PRIYANTHA FERNANDO, J. (P/CA)**
WICKUM A. KALUARACHCHI, J.

COUNSEL : Shamil Liyanage for the Claimant–
Appellant.

Rohantha Abeysuriya, Additional
Solicitor General, PC for the
Respondent.

ARGUED ON : 18.05.2022

ORAL SUBMISSIONS

FILED ON : 18.05.2022 by the Claimant –
Appellant.

18.05.2022 by the Respondent.

WRITTEN SUBMISSIONS

FILED ON : 14.07.2020 by the Claimant –
Appellant.

JUDGMENT ON : 16.06.2022

K. PRIYANTHA FERNANDO, J.(P/CA)

1. The accused *Mathukandage Ariyaratne* was indicted in the High Court of *Avissawella* on count no. 1 for having in possession of ‘*cannabis sativa*’ punishable in terms of Poisons Opium and Dangerous Drugs Ordinance.
2. On count no. 2, he was charged for trafficking of the said ‘*cannabis sativa*’ punishable in terms of the said Ordinance. Upon pleading guilty to both counts in the indictment, the accused was sentenced by the learned High Court Judge.
3. The vehicle that was used to transport the said cannabis was owned by the claimant appellant, who was the wife of the accused. After inquiry, the learned High Court Judge forfeited the three-wheeler bearing registration number SG AAK 4608 to the State. Being aggrieved by the above order of confiscation of the vehicle, the claimant appellant preferred the instant appeal.
4. Section 79 of the Poisons, Opium and Dangerous Drugs Ordinance Act No. 13 of 1984 as amended provides;

“Forfeiture 79.

(1) Where any person is convicted of an offence against this Ordinance or any regulation made there under the court shall order that all or any articles in respect of which the offence was committed and any boat, vessel, vehicle, aircraft or airborne craft or equipment which has been used for the conveyance of such

article shall, by reason of such conviction, be forfeited to the State.

(2) Any property forfeited to the State under subsection (1) shall

(a) if no appeal has been preferred to the Court of Appeal against the relevant conviction, vest absolutely in the State with effect from the date on which the period prescribed for preferring an appeal against such conviction expires;

(b) if an appeal has been preferred to the Court of Appeal against the relevant conviction, vest absolutely in the State with effect from the date on which such conviction is affirmed on appeal.

In this subsection “relevant conviction” means the conviction in consequence of which any property is forfeited to the State under subsection (1).”.

5. An appeal is a statutory right and must be expressly created and granted by statute, it cannot be implied. **(Martin V. Wijewardena [1998] 2 Sri LR 250, Gunaratne V. Thambinayagam and Others [1993] 2 SLR 355, Bakmeewewa V. Raja [1989] 1 Sri LR 231 (SC))**

6. In case of **Prithvi Singh V. State of U.P. And Others, (Leave to appeal No. 329 of 2012, 21 April 2022)**, it was held that,

“Now on a comparison between Section 404 of Cr.P.C. 1898 and Section 372 of Cr.P.C. 1973, it is clear that the main provision is intact, insofar it provides that no appeal shall lie from any judgment or order of a criminal court, except as

provided by this Code or by any law for the time being in force. ...”

Section 316 of the Code of Criminal Procedure Act No. 15 of 1979 is identical to section 404 of the Indian Criminal Procedure Code 1898.

Section 316 of the Code of Criminal Procedure Act provides;

“316.(1) An appeal shall not lie from any judgment or order of a criminal court except as provided for by this Code or by any other law for the time being in force.”

7. The vehicle in the instant case was confiscated by the learned High Court Judge acting in terms of section 79 of the amended Act No. 13 of 1984. Although right of appeal is expressly provided in the Poisons Opium and Dangerous Drugs Ordinance against the conviction of an accused, no right of appeal is expressly provided against an order of forfeiture of a vehicle after inquiry in terms of section 79 of the Act or under any other section of the Act.

Hence, as there is no right of appeal, this appeal is dismissed.

PRESIDENT OF THE COURT OF APPEAL

WICKUM A. KALUARACHCHI, J.

I agree.

JUDGE OF THE COURT OF APPEAL