

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

*In the matter of an Appeal in terms of Article
138 (1) (2) of the Constitution of the Democratic
Socialist Republic of Sri Lanka.*

Range Forest Officer
Range Forest Officer - Puttalam

Complainant

Vs.

Court of Appeal Application
No: **CA/PHC/116/2016**

High Court of Puttalam
No: **HRC 04/2016**

Magistrate's Court of Puttalam
No: **67788/12/P**

1. Dissanayake Mudiyanseelage Sameera
Jayasanka

Accused

2. Weerasinghalage Kusumalatha
15th Post,
"Buddhi", Dasungama,
Ihala Puliyankulama

Claimant

AND IN BETWEEN

Weerasinghalage Kusumalatha
15th Post,
"Buddhi", Dasungama,
Ihala Puliyankulama

Claimant-Petitioner

Vs.

1. Range Forest Officer
Range Forest Officer – Puttalam
2. The Hon. Attorney General
Attorney General’s Department,
Colombo 12.

Respondents

AND NOW IN BETWEEN

Weerasinghalage Kusumalatha
15th Post,
“Buddhi”, Dasungama,
Ihala Puliyankulama

Claimant Petitioner Appellant

Vs.

1. Range Forest Officer
Range Forest Officer – Puttalam
2. The Hon. Attorney General
Attorney General’s Department,
Colombo 12.

Respondents

BEFORE : Menaka Wijesundera J
Neil Iddawala J

COUNSEL : Aruna Pathirana with Shermila Muthalif for
the Appellant.
Chathurangi Mahaduwege, SC for the
Respondent.

Argued on : 05.09.2022

Decided on : 11.10.2022

Iddawala – J

This is an appeal against the order dated 24.10.2016, delivered by the High Court of the North Western Province holden in Puttalam which acted in revision and affirmed the vehicle confiscation order dated 16.12.2015, delivered by the Puttalam Magistrate Court under the Forest Ordinance. The claimant petitioner appellant (hereinafter the appellant) has preferred this instant appeal to this Court in order to have both the orders set aside, and thereby disallow the confiscation of the vehicle bearing registration no. NW HJ 3437.

The facts of the case are briefly as follows. The accused is a son of the appellant who was charged in the Magistrate Court of Puttalam for the offence of transporting one cube of granite in a lorry bearing the registration no. NW HJ 3437 (hereinafter the vehicle) within a reserved forest without a valid license, thereby contravening Section 20 (1) (d), read with Section 40 and Section 40 (1) of the Forest

Ordinance as amended by laws, inter alia, Act no.65 of 2009 (hereinafter the Act). The accused pleaded guilty to the charge and the Magistrate convicted the accused on 21.10.2014, and imposed a fine of Rs 20000/= with a default imprisonment sentence of three months. The conviction of the accused ensued the confiscation of the vehicle in relation to the offence which was released temporarily to its registered owner, the appellant on a bond. After an inquiry into the matters of the appellant's knowledge of the said diversion of the vehicle in relation to the case and whether the appellant has taken sufficient precautionary measures to prevent such an offence to the satisfaction of the court, the learned Magistrate set out the order dated 16.12.2015 to confiscate the vehicle. Aggrieved by the said order dated 16.12.2015, the appellant filed a revision application in the High Court of Puttalam, and the revision application was rejected by the High Court for want of necessary precautions on the part of the appellant to prevent the commission of the offence under the Forest Ordinance. Hence, the appellant has preferred the instant appeal to the Court of Appeal, seeking to set aside the order dated 16.12.2015 of the Magistrate Court and the order dated 24.10.2016 of the High Court.

Before diving into an analysis of the merits, it is apt to quote the relevant law in this instant application. Thus, Section 40 of the Act is quoted as follows:

“(1) Where any person is convicted of a forest offence—

(a) all timber or forest produce which is not the property of the State in respect of which such offence has been committed; and

(b) all tools, vehicles, implements, cattle and machines used in committing such offence,

shall in addition to any other punishment specified for such offence, be confiscated by Order of the convicting Magistrate: Provided that in any case where the owner of such tools, vehicles, implements and machines used in the commission of such offence, is a third party, no Order of Confiscation shall be made if such owner proves to the satisfaction of the Court that he had taken all precautions to prevent the use of such tools, vehicles, implements, cattle and machines, as the case may be, for the commission of the offence.” (Emphasis added)

As such, the legislature on Forest Law has unequivocally casted a burden on the third party of an offence within the ambit of Section 40 to dispense the burden of proving to the satisfaction of the court that he, as the registered owner of the vehicle in dispute, has taken necessary precautionary measures to prevent the vehicle from being employed in acts of crime. Therefore, this Court primarily looks into the contention of whether the learned Magistrate has correctly applied the relevant legal provisions and evaluated the evidence presented before the court in arriving at the final determination that the appellant has failed to dispense the said burden.

The Magistrate Court, followed by the High Court decided against the appellant for want of satisfactory show of cause as to why the vehicle should be released to the appellant. The learned Magistrate, in delivering the impugned order, has firstly examined whether the appellant has sufficiently established the ownership to the vehicle and after affirming such evaluation, the learned Magistrate has evaluated the evidence presented by the appellant, during which, certain discrepancies in the presented evidence were noted to hold that the appellant has failed to constitute, on a balance of probability, the burden of proving to the satisfaction of the court,

that the appellant has unequivocally dispensed the burden casted on him by the Forest Ordinance.

It was the contention of the appellant that, she was uninformed of the said diversion of the vehicle. The appellant admitted that she has given the vehicle to the accused to be serviced and until such time of notification of the arrest, the appellant was unaware of the whereabouts of the accused and the vehicle. Hence, the learned Magistrate delivered the order dated 16.12.2015 to confiscate the vehicle for the lackadaisical attitude of the appellant towards the accused and the use of the vehicle infers a want of precautionary measures to prevent the commission of illegal acts. Thus, mere instructions given to the accused on the ordinary course of using the vehicle does not properly dispense the burden cast on her under the Forest Ordinance. The High Court, following the invocation of its revisionary jurisdiction, affirmed the order by the learned Magistrate.

In this instant application, this Court primarily looks into the submissions made on behalf of the appellant, to determine whether the appellant has satisfied the

burden cast on him under the Forest Ordinance. At this juncture, it is apt to quote the observations made in **Samarasingheghe Dharmasena v W. P. Wanigasinghe CA(PHC) 197/2013 CA Minute dated 22.01.2019**, where it's stipulated that "it is amply clear that simply giving instructions to the driver is insufficient to discharge the burden cast on a vehicle owner. Therefore, merely giving instructions alone will not fall under the possible preventive measures ought to be taken by a vehicle owner".

In the matter at hand, the appellant contends that she has given instructions to her son, the accused to abstain from using the

vehicle for illegal activities. However, the cross examination of the appellant, revealed that the vehicle has been engaged in a prior offence where the accused has diverted the vehicle and gotten arrested for the illegal transportation of sand. Therefore, it further cements the observation of this Court, that a mere exchange of instructions to the accused, does not suffice the burden cast on her, the fact that the accused is the appellant's son and that there is a record of a prior offence, imputes a duty upon the appellant to closely monitor the use of the vehicle by the accused and to take all precautions to prevent the commission of such an offence, as a reasonably responsible person in ownership of a vehicle, in order to satisfy this Court.

As held in **S. D. N. Premasiri v Officer In Charge, Mawathagama C A (PHC) 46/2015 Court of Appeal Minute dated 27.11.2018** "...it is imperative to prove to the satisfaction of Court that the vehicle owner in question has not only given instructions but also has taken every possible step to implement them". It is observed by this Court that, in this instant application, the appellant has proved neither.

Similarly, in **H.G.Sujith Priyantha v O.I.C.Police Station, Poodala C.A (PHC) No 157/12**, it was held that mere verbal instructions to the driver on the conduct of employing the vehicle does not suffice to dispense the burden cast on him, on a balance of probability. As such, in this instant matter, this Court observes that the appellant has not properly dispensed the burden of proving on a balance of probability, the burden cast on him to constitute, to the satisfaction of the Court that she has taken all necessary precautions to prevent the commission of an offence, as a responsible owner of a vehicle.

For the above reasons, it is considered the view of this Court, since the appellant has failed to dispense the burden cast on her, that the learned Magistrate has duly concluded the matter at hand and the learned High Court Judge has correctly dismissed the revision application. Accordingly, we see no reason to interfere with the order of the learned High Court Judge dated 24.10.2016 and the confiscation order of the learned Magistrate dated 16.12. 2015.

The appeal is hereby dismissed without costs.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL