

**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, as
amended.*

The Officer-in-Charge
Anti-Corruption Unit,
Police Station, Matara.

Complainant

Court of Appeal Case
No: **CA/PHC/33/2021**

Vs.

High Court of Matara Case
No: **24/19 (Revision)**

Mohammad Zukir Mohammad Hussain

Magistrate's Court of Matara
Case No: **45734**

Accused

Kankanamge Sujith Siriwardena
No. 128 2A, Weluwanaarama Road,
Weraduwa,
Matara.

Registered Owner

And Now

Kankanamge Sujith Siriwardena
No. 128 2A, Weluwanaarama Road,
Weraduwa,
Matara.

Registered Owner - Petitioner

Vs.

1. The Officer-in-Charge
Anti-Corruption Unit,
Police Station, Matara.

2. The Attorney General
Attorney General's Department,
Colombo 12.

Complainant - Respondents

And Now between

Kankanamge Sujith Siriwardena
No. 128 2A, Weluwanaarama Road,
Weraduwa,
Matara.

**Registered Owner – Petitioner –
Appellant**

Vs.

1. The Officer-In-Charge
Anti-Corruption Unit,
Police Station, Matara.

2. The Attorney General
Attorney General's Department,
Colombo 12.

**Complainant – Respondent –
Respondents**

Before : Menaka Wijesundera J.
Neil Iddawala J.

Counsel : Sharmal Herath for the Registered Owner –
Petitioner – Appellant.
Panchali Witharana, SC for the Respondents.

Argued on : 26.09.2022

Decided on : 08.11.2022

Iddawala – J

This application concerns an appeal by the Registered Owner-Petitioner-Appellant (Hereinafter, the appellant) pleading for the vehicle confiscation order issued by the Magistrate's Court of Matara on 25.01.2019 and its affirmation by the High Court of Matara on 16.07.2021, to be set aside.

The facts of the case briefly are as follows. The accused was charged in the Magistrate's Court of Matara (case number 45734) under the Animals Act, No. 29 of 1958 (last amended in 2009) for unlawfully transporting 11 bulls using the lorry bearing No. SP LE-9581 on the 03.07.2011. The accused pleaded guilty to the charges and was fined, and subsequently a vehicle inquiry was held. After evaluating the submissions made by the appellant, the learned Magistrate had ordered the confiscation of the said vehicle on the ground that the appellant has failed to satisfy the court of the requirements imposed on him by the law as the owner of the vehicle, have been fulfilled by the appellant. Being aggrieved by the said order, the appellant has invoked the revisionary jurisdiction of the High Court of Matara, and the learned High Court Judge has dismissed the application upholding the confiscation order.

The learned High Court Judge in judgment dated 16.07.2021 has acknowledged that the learned Magistrate has misquoted the relevant section 3A of the Animals Act due to a technical error. However, the spirit of the provision has been captured by the learned Magistrate and she has gone on to evaluate facts under both requirements given in proviso to Section 3A.

The learned High Court Judge has also analysed both limbs of the proviso to Section 3A of the Act which are as follows:

*“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.**”* (Emphasis

added)

The learned High Court judge has considered the facts of the case and evaluated them under both limbs, and has been satisfied that *neither* of the two has been proved on a balance of probability. The vehicle being released to the appellant for merely stating that he was ignorant of the offence being committed or merely instructing the person to whom he rented out his vehicle not to use it for illegal purposes, without establishing facts to the ‘satisfaction of the Court’ has not been the legislative intent in introducing Section 3A proviso.

The appellant who had purchased the vehicle through a leasing facility for hiring out the vehicle, had lent it to one ‘Liafdeen’ on monthly rent. The learned Magistrate’s and the learned High Court Judge’s considered view has been that the appellant had been unable to substantially establish on a balance of probability that he was unaware that Liafdeen, who he entrusted the vehicle to, was a butcher who dealt with cattle and had previous convictions in illegal transportation of cattle (Appeal Brief pages 115 and 41, respectively).

It must be noted at this point that the onus of proving this is on the appellant as per the proviso to Section 3A of the Act which stipulates “if the owner proves to the satisfaction of the court” that either of the two limbs were satisfied. Doing a bare-minimum background check on the person who one rents out his vehicle to, is a reasonable expectation from a responsible and diligent owner of a vehicle. Even though the appellant has stated that a written rent agreement exists between Liafdeen and himself, he has been unable to produce it before the Court. And upon gaining knowledge that Liafdeen had handed over the possession of the vehicle to one Hussain without his knowledge, the appellant has taken no additional precautions to ensure that the vehicle is not being used for any suspicious/illegal activity by an unknown party. Neither Liafdeen nor the accused Hussain have given evidence at the inquiry to corroborate the appellant’s ignorance of what the vehicle was being used for.

The learned Magistrate has also in detail considered the first limb of the proviso; how the petitioner has failed to take all precautions to prevent the use of the vehicle for committing an offence (pages 116-117 of the Appeal brief).

As clearly stated in the case, **Faaris v OIC Galenbindunuwewa** 1992(1) SLR 167 which has been referred to by both the learned Magistrate and the learned High Court Judge,

“In terms of the proviso to Section 3A of the Animals Act, an order for confiscation cannot be made if the owner establishes one of two matters. They are, (i) that he has taken all precautions to prevent the use of the vehicle for the commission of the offence. (2) That the vehicle has been used for the commission of the offence without his knowledge.

In terms of the proviso, if the owner establishes any one of these matters on a balance of probability, an order for confiscation should not be made.”

Thus, it is well-established law that either one of these requirements should be satisfied on a balance of probability if the vehicle is to be released to the registered owner.

As His Lordship Justice Sisira de Abrew in the case of **Mary Matilda Silva V. P.H. De Silva, IP Police Station Habarana** [CA (PHC) 86/97, decided on 08.07.2010] highlighted succinctly, a heavy burden is placed on the owner of vehicle to be discharged if he/she is to secure release of the vehicle,

"In my view, for the owner of the vehicle to discharge the burden (1) that he or 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 the 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."

Therefore, it is clear that *neither* of the two limbs, one of which if established on a balance of probability would have been sufficient to exonerate the owner, has been satisfactorily established by the appellant.

Therefore, in light of the above, it is the considered view of this Court that even though the learned Magistrate has misquoted Section 3A of the Act due to a technical error, her order for confiscation was correct in law, having considered the facts in light of both limbs stated therein, and has not prejudiced the Appellant. The judgement of the learned High Court Judge of Matara affirming the confiscation order of the learned Magistrate is similarly in accordance with the law. Thus, this Court sees no reason to interfere with the decisions of both the learned High Court Judge and the learned Magistrate.

Appeal is hereby dismissed.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL