

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

In the matter of an appeal made in terms of Section 5 of the High Court of the Provinces (Special Provinces) Act, No.19 of 1990 and Section 320(6) of Code of Criminal Procedure Act, No. 29 of 1979 read together with Article 154P(2)(a) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Range Forest Officer
Range Forest Office, Thanamalwila.

Complainant

Court of Appeal Application
No: **CA/PHC/142/2019**

Vs.

High Court of Monaragala
Case No: **15/2018 (Revision)**

Magistrate's Court of Wellawaya
Case No: **92935**

1. H. Amal Rohitha
Arabekema, Hambegamuwa.
2. R.P. Chamal Ranga Kumara
Karapinchapanda Road,
Hambegamuwa.

Accused

Aththaragamage Ratnasiri
No. 290,
Arabekema,
Thanamalwila

Claimant of Vehicle

AND BETWEEN

Aththaragamage Ratnasiri
No. 290,

Arabekema,
Thanamalwila

Claimant of Vehicle - Petitioner

Vs.

1. Range Forest Officer,
Range Forest Office, Thanamalwila.
2. Manager,
People's Leasing Company,
Embilipitiya.
3. The Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

AND NOW BETWEEN

Aththaragamage Ratnasiri
No. 290,
Arabekema,
Thanamalwila

**Claimant of Vehicle – Petitioner –
Appellant**

Vs.

1. Range Forest Officer,
Range Forest Office, Thanamalwila.
2. Manager,
People's Leasing Company,
Embilipitiya.
3. The Attorney General,
Attorney General's Department,
Colombo 12.

Respondents-Respondents

Before : Menaka Wijesundera J.
Neil Iddawala J.

Counsel : L.M.K. Arulanandam, PC with T.
Sivanandaraja for the Claimant of the
vehicle – Petitioner - Appellant.

Respondents – Respondents are absent
and unrepresented.

Argued on : 03.10.2022

Decided on : 23.11.2022

Iddawala – J

This is an appeal against the judgment of the Provincial High Court of Uva Province holden in Monaragala in Case No. 15/2018 delivered on 20.06.2019 which affirmed in revision, an order of confiscation under the Forest Conservation Ordinance No. 16 of 1907 as amended, delivered on 16.05.2018 by the learned Magistrate of Wellawaya in case No. 92935. The appellant is seeking to set aside both orders and thereby set aside the confiscation of a dozer bearing the Registration Number UP-ZA 3885 (*hereinafter referred to as the vehicle*).

On 23.08.2018, the vehicle was taken into custody for committing an offence under the Forest Conservation Ordinance. The accused pleaded guilty, and a fine was imposed. The vehicle inquiry was held to show cause as to why the vehicle should not be confiscated in which the appellant appeared as the claimant. After the conclusion of submissions, the learned Magistrate ordered the vehicle to be confiscated. Aggrieved by the said decision, the appellant filed a revision application in the High Court, which re-affirmed the order of the learned Magistrate.

In the appeal at hand, the learned President’s Counsel appearing for the appellant has relied on the following two grounds:

1. Section 20(k) of the Forest Conservation Ordinance as amended is a stand-alone Section, hence the confiscation provisions stipulated under Section 40 does not apply to the offences under Section 20.
2. In any case, alternatively the appellant has dispensed his burden as necessitated under Section 40.

In analysing the first ground, the attention should be drawn to the relevant provisions in the Forest Conservation Ordinance. Firstly, Section 20 (k) of the Ordinance provides that:

“20. A person who in a forest other than a Conservation Forest, Reserved Forest or Village Forest: -

(a)

(b)

(k) clears or breaks up soil or digs any land for cultivation or for any other purpose or cultivates any land already cleared”;

.....
.....

shall be guilty of an offence and be liable on conviction to imprisonment for a term not exceeding two years or to a fine not less than rupees five thousand and not exceeding rupees fifty thousand or to both such fine and imprisonment. In addition to the above, the Court may award compensation for any damage caused to such forest. Such compensation shall not be less than the value of the damage caused to such forest and shall be charged and recovered as a fine levied by Court. (Emphasis added)

Thereafter, Section 40 of the Forest Conservation Ordinance as amended by Forest (Amendment) Act No 65 of 2009 stipulates confiscation of vehicles connected with a forest offence 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)

This Court has carefully considered the submissions made by the learned President's Counsel for the appellant that the offence of unlawful clearing of a forest under section 20 (k) of the Ordinance, does not come within the ambit of section 40 of the Ordinance. At this juncture this Court would like to observe that all offences addressed by the Ordinance qualify as forest offences, no offences have been excluded and thereby Section 40 is applicable for offences under the Ordinance including Section 20 (k). The language used in Section 20 and 40 is plain and clear with no ambiguity at all. In Maxwell on the Interpretation of Statutes 11th Edition at page 28 it states that, "*The first and the most elementary rule of construction is that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one, and otherwise in their ordinary meaning, and the second is that the phrases and sentences are to be construed according to the Rules of grammar*". By the plain legislative provisions of these sections, it is apparent that there is no requirement to interpret Sections 20 and 40 going beyond its ordinary meaning and to arrive at a conclusion that it is a stand-alone Section. It has no ambiguity that calls for a further legislative interpretation by this Court. Thus, the first ground of appeal of the learned President's Counsel is insignificant.

As such, now I am going to consider the second argument that whether the appellant has fulfilled the burden cast upon unequivocally by the legislature on an owner of a vehicle under the Forest Conservation Ordinance to prove to the satisfaction of the court that he, having ownership of the vehicle concerned, had taken all precautions to prevent the use of such vehicle for the commission of the offence on a balance of probability. Hence, the primary contention to be decided by this Court is whether the learned Magistrate has correctly evaluated the evidence placed before him when arriving at the final determination that the appellant has failed to dispense the said burden.

Therefore, it is pertinent at this point to evaluate the facts of the case with a view to determine whether the appellant has taken all precautions to prevent the commission of the offence. Giving evidence before the Magistrate Court at the vehicle inquiry, the appellant has stated that the first accused driver of the vehicle is his own son, and that he instructed his son before handing over the vehicle to

him on this particular day, only to clear the area around the second accused's house and no further. He claims that his son has cleared a further area around the house of second accused, including part of the state forest on the persistent request of the second accused who had alleged it was to protect the property from wild elephant attacks. Thus, the appellant claims that his son has acted in strict contradiction to his instructions.

The appellant has thereafter visited the said location to observe the extent of the area cleared. After observing that a section of the state forest has been cleared, he has inquired his son as to why this was done and the son has stated that it was on the insistence of the second accused, believing it to be a part of the second accused's property, and that he was unaware it was part of a state forest. It must be noted that the appellant has claimed that there was no fence or visible boundary separating the forest from the second accused's property.

The appellant has stated in evidence that his son has been driving the said dozer for over 02 years now and has never committed an offence. As the vehicle is parked at the appellant's house at all times when not in use, and as his son resides in the same house as the appellant, he claims that he is always alert as to how and when the vehicle is used. He questions every evening after work about what work was undertaken each day and instructs him (Appeal Brief page 40-43).

When considering the submissions of the appellant, this Court must determine whether the steps taken by the petitioner satisfies the burden cast on him by the proviso to Section 40 of the Forest Conservation Ordinance. On a perusal of the appeal brief and the evidence presented by the appellant, it has to be determined that the appellant has dispensed the burden of proving to the satisfaction of the court that he had taken all precautions to prevent the use of the dozer for commission of the offence. Being constantly vigilant of the whereabouts and the use of the dozer and handing over temporary control of it only to his son, and frequently inquiring and instructing as to the type of work undertaken, indicate that the appellant has taken all reasonable precautions to prevent the dozer being used for any offence.

Moreover, the undisputed evidence of the appellant brings to light that he has not only given mere verbal instructions to the accused but has also taken many reasonable precautionary measures to ensure the prevention of the commission of the offence and has engaged in follow ups as to the vehicle's engagement in various excursions.

As recently held by this Court in, **Dewapurage Kamal Deshapriya Vs Officer in Charge, Police Station, Pannala and Others** CA, PHC/139/2015, Minute dated 20.09.2022 *“Nevertheless, the Act does not mean the owner of vehicle should sit beside the vehicle round the clock and should control the all activities of the driver. As stated by this division in CA/PHC/203/17 CA minute dated 21.06.2022 “A vehicle owner employing a driver to carry out transportation of goods cannot reasonably be expected to physically visit each and every site to ensure that illegal activities are not carried out using his vehicle”.*

Thus, it is further buttressed that the appellant's precautionary measures of giving instructions and implementing them through regular follow ups sufficiently dispense the burden cast upon a vehicle owner by the Forest Conservation Ordinance.

For the above reasons, this Court sets aside the order of the learned Magistrate Court of Wellawaya dated 16.05.2018 and order of the learned High Court Judge dated 20.06.2019.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL