

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST**

**REPUBLIC OF SRI LANKA.**

In the matter of an appeal under and in terms of Article 138 read with Article 154P (6) of the Constitution and the Court of Appeal (Procedure for appeals for High Court established by Article 154P of the Constitution) Rules, 1988.

Court of Appeal Case No:

**CA (PHC) 67/2014**

High Court Tangalle No:

**HCRA 08/2012**

Walasmulla MC No:

**22636**

Officer in Charge,

Police Station,

Weerakatiya.

**Complainant**

Vs.

Liyanapathirana Maithreepala,

No. 31B

Beliatta Road,

Weerakatiya.

**Accused**

**And**

Rev. Mirissee Dhammawansa Thero,

Wjiragiri Temple,

Thisa Road,  
Tangalle.

**Petitioner**

1. Officer in Charge,  
Police Station,  
Weerakatiya.

**Complainant – Respondent**

2. Liyanapathirana Maithreepala,  
No 31B,  
Beliatta Road,  
Weerakatiya.

**Accused – Respondent**

3. Hon. Attorney General,  
Attorney General’s Department,  
Colombo 12.

**Respondent**

**And Now Between**

Liyanapathirana Maithreepala,  
No 31B,  
Beliatta Road,  
Weerakatiya.

**Accused – Respondent – Appellant**

1.Rev. Mirisse Dhammawansha Thero,  
Wjiragiri Temple,  
Thisa Road  
Tangalle.

**Petitioner – Respondent**

2.Officer in Charge,

Police Station,

Weerakatiya.

**Complainant – Respondent – Respondent**

3.Hon Attorney General,

Attorney General’s Department,

Colombo 12.

**Respondent – Respondent**

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel – Chathurangi Mahawaduge,

SC for the State.

Argued On – 10.01.2022

Decided On – 18.01.2022

**MENAKA WIJESUNDERA J.**

The instant appeal has been filed to set aside the order of the learned High Court Judge dated 10.7 2014.

In the instant matter the accused respondent appellant (hereinafter referred to as the appellant) has been charged in the Magistrates Court of Wallasmulla for causing cruelty to 17 buffaloes under the provisions of **the Animals Act no 13 of 1907** .The appellant has pleaded guilty and he has been fined and the animals had been handed over to the Petitioner Respondent (hereinafter referred to as the petitioner) who had a trust to look after the animals until the matter was concluded.

But upon the appellant pleading guilty to the charge and being convicted the Magistrate had made an order handing over the animals to the appellant.

The petitioner being aggrieved by the said order had filed an application for revision to set aside the order of the Magistrate, in the High Court.

The learned High Court Judge has held that the Magistrate has violated the provisions of the Animals Act by releasing the animals to the appellant without an inquiry.

According to the provisions of the Animals Act section 3AA (3) (b) “where the person who committed the offence referred to in subsection (1) is convicted of such offence, the Magistrate shall in addition to the punishment he may impose, in relation thereto make order that the animals be handed over to the owner of the animal, upon him establishing ownership.....”

Therefore there is very clear provision to hold an inquiry before making an order with regard to the cattle, because the claimant has to establish his ownership.

Similar provision is found in the Forest Ordinance where if illegal transport of timber is found in violation of the provisions of the ordinance upon conviction of the guilty parties the property involved can be confiscated upon inquiry and the underlying principle had been

very lengthily discussed in the case of ***Manawadu vs. Attorney General (1987) 2 SLR 30*** in which ***Sharvananda CJ*** had quoted.

***“Dixon CJ in Commissioner of Police vs. Tanes (1957-58) 68 CLR 383 underlined this canon of interpretation***

***“It is deep rooted principle of the law that before anyone can be punished or prejudiced in his person or property by any judicial or quasi-judicial procedure he must be afforded adequate opportunity of being heard”***

Even if the Magistrate has failed to follow the very clear provisions of the relevant act he could have followed the clear provisions of *the Code of Criminal procedure, SECTION 431*.

Therefore the order of the learned High Court Judge is not capricious or illegal under the relevant law hence this Court sees no reason to interfere with the said order.

But at the same time we are very much aware of the impracticality of holding an inquiry after so much of time has elapsed since the original order of the Magistrate.

But at least for academic purposes we do not make an order to interfere with the findings of the learned High Court Judge.

As such the order of the learned High Court Judge is affirmed and the instant appeal is dismissed.

**Judge of the Court of Appeal**

**I agree.**

**Neil Iddawala J.**

**Judge of the Court of Appeal**