

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

*In the matter of an application in terms of  
Section 138 and Section 154G (3) (a) of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka read with the provisions  
in the High Court of the Provinces (Special  
Provisions) Act No. 19 of 1990*

Officer in Charge,  
Police Station,  
Giriulla.

**Plaintiff**

**Vs.**

Court of Appeal Application  
No : **CA/ PHC/24/17**

Hight Court of Kuliypitiya No :  
**HCR/03/16**

Magistrate's Court of  
Kuliypitiya No : **16186**

Wickramarachchi Priyadharshanalage  
Aruna Priyadharshana  
No. 517/2,  
Mahingamuwa,  
Narangoda

**Accused**

**And**

Imiya Mudiyanseleage Aruna Chandana  
No. 04,  
Mahingamuwa, Agara, Narangoda

And Now – No 38, Palliwawatta  
Alabadagama.

**Petitioner**

**Vs.**

1. Officer in Charge  
Police Station,  
Giriulla

**Plaintiff – Respondent**

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

**2<sup>nd</sup> Respondent**

3. Wickramarachchi Priyadharshanalage  
Aruna Priyadharshana  
No. 517/2, Mahingamuwa,  
Narangoda

**Accused – Respondent**

4. Senkadagala Finance PLC  
12 Kotugodalla Street, Kandy  
  
Branch Office – No. 101, Ground Floor,  
Negombo Road, Giriulla

**4<sup>th</sup> Respondent**

**And now between**

Imiya Mudiyanseleage Aruna Chandana  
No. 04,  
Mahingamuwa, Agara, Narangoda

And Now – No 38, Palliwawatta  
Alabadagama.

**Petitioner - Appellant**

**Vs.**

1. Officer in Charge  
Police Station,  
Giriulla
2. Wickramarachchi Priyadharshanalage  
Aruna Priyadharshana  
No. 517/2, Mahingamuwa,

Narangoda

3. Senkadagala Finance PLC  
12 Kotugodalla Street, Kandy

Branch Office – No. 101, Ground Floor,  
Negombo Road, Giriulla

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

**Respondents**

**BEFORE** : Menaka Wijesundera J  
Neil Iddawala J

**COUNSEL** : Migara Doss for the Appellant  
Priyani Abeygunawardena SC for the  
respondents.

**Argued on** : 02.02.2022

**Decided on** : 03.03.2022

**Iddawala – J**

This is an appeal filed on 16.02.2017 against the judgment of the High Court of Kuliyaitya in Case No HCR3/2016 delivered on 30.01.2017 which affirmed in revision, an order of confiscation under the Forest Ordinance delivered on 28.06.2016 by the Magistrate Court of Kuliyaitya. The petitioner has invoked the appellate jurisdiction of this Court to set aside both orders and thereby set aside the confiscation of vehicle bearing registration No 47 -0994.

On 22.02.2016 vehicle bearing registration No 47 – 0994 (hereinafter the vehicle) was taken into custody for violation of the Forest Ordinance. The accused pleaded

guilty, and a fine was imposed. An inquiry was held to show cause as to why the vehicle should not be confiscated in which the petitioner appeared as the claimant. After the conclusion of submissions, the learned Magistrate ordered the vehicle to be confiscated. Aggrieved by the said decision, the petitioner filed revision application in the High Court, which reaffirmed the order of the learned Magistrate.

Section 40 of the Forest Ordinance (as amended) 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)

As such, the legislature has unequivocally cast a burden on a claimant of a vehicle inquiry under the Forest Ordinance to dispense the burden of proving 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. 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 petitioner has failed to dispense the said burden.

The learned Magistrate, in delivering the impugned order, firstly examines whether the petitioner has sufficiently established ownership to the vehicle, after which an evaluation of the submissions made by the petitioner in relation to the precautionary steps taken by him, ensues. The learned Magistrate refers to certain omissions and contradictions in the evidence tendered on behalf of the petitioner to hold that the petitioner has failed to satisfactorily dispense the burden cast on him under the Forest Ordinance.

It was contended on behalf of the petitioner that he was a beetle cultivator and ordinarily uses the vehicle in question to transport his produce and fertilizer. He states that on the day in question, he handed over the vehicle to the driver (accused) after the day's work around 5.30 pm, requesting the same to be returned to the petitioner by 7.00 am the next morning. Petitioner submitted that he handed over the vehicle since the driver is required to return early in the morning. It was further submitted that on the following day morning, petitioner received a telephone call stating that his vehicle has been taken into custody by the police for illegal transportation of timber. He further contended that he had no knowledge of the forest offence and that he had asked the driver to use the vehicle only for the transportation of beetle.

When considering the submissions of the petitioner, this court must determine whether the steps taken by the petitioner satisfies the burden cast on him under the Forest Ordinance. At this juncture, the following observation in *Samarasinghege Dharmasena v W. P. Wanigasinghe CA(PHC) 197/2013 CA Minute* dated 22.01.2019 is applicable: *".....it is well settled law that in a vehicle inquiry the claimant has to discharge his burden on a balance of probability. According to section 40 of the Forest Ordinance (as amended) it is mandatory to prove on a balance of probability that the owner took every possible precaution to prevent the vehicle being used for an illegal activity.... 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"* .

(Emphasis added)

In the instant matter, the petitioner has merely narrated the events precedent to the commission of the forest offence, without attempting to convince the court of the measures he had taken as a responsible person in ownership of a vehicle. The legislature has unequivocally cast a burden on the petitioner which the petitioner has failed to dispense.

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”.

However, this Court observes that the appellant in the instant application has failed to prove either on a balance of probability.

Accordingly, this Court agrees with the conclusion of the learned Magistrate. Furthermore, this Court is of the view that 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 30.01.2017 and the confiscation order of the learned Magistrate dated 28.06.2016. Therefore, this Court affirms the same.

The appeal is hereby dismissed without costs.

**JUDGE OF THE COURT OF APPEAL**

**Menaka Wijesundera J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**