

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

In the matter of an Appeal in terms of Article 154P (6) of the Constitution of the Democratic Socialist Republic of Sri Lanka read together with the section 9 of the High Court of the Provinces (Special Provisions) Act no.19 of 1990.

Pradeep Chamara Bandaranaike,
No. 155, Beraleewaththa,
Halpathota, Baddegama.

Registered Owner -Petitioner

Vs.

Court of Appeal Application

No :

CA (PHC) 13/2021

High Court of Galle No :

230/17

Magistrate's Court of Galle

No :

54930

1. The Hon. Attorney General
Attorney General's Department,
Colombo 12.

1st Respondent

2. Officer-in-Charge,
Police Station,
Poddala

Complainant-Respondent

3. Kariyawasam Manaage Vishan
Madusha,
Halpathota,
Baddegama

Accused-Respondent

AND

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Pradeep Chamara Bandaranaike,
No. 155, Beraleewaththa,
Halpathota, Baddegama.

**Registered Owner-Petitioner-
Appellant**

Vs.

1. The Hon. Attorney General
Attorney General's Department,
Colombo 12.

1st Respondent -Respondent

2. Officer-in-Charge,
Police Station,
Poddala

**Complainant-Respondent-
Respondent**

3. Kariyawasam Maanage Vishan
Madusha,
Halpathota,
Baddegama

Accused-Respondent-Respondent

BEFORE : Menaka Wijesundera J
Neil Iddawala J

COUNSEL : Ridma Kuruwita SC for the State.

Argued on : 16.02.2023

Written Submissions : 19.01.2023

Decided on : 01.03.2023

Iddawala – J

This is an appeal against the order dated 23.03.2021, delivered by the Provincial High Court of the Southern Province holden in Galle, which acted in revision and affirmed the vehicle confiscation order dated 25.08.2017, delivered by the Magistrate Court of Galle under the Animal's Act No.29 of 1958, (last amended in 2009). 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. SP DAC 4186 which is a lorry.

The facts of the case are briefly as follows. The accused was charged in the Magistrate Court of Galle for committing the following offences:

- I. Acting in contravention of Section 16 of the Act by transporting cows and goats without a valid permit within the district of Galle on or around 09.06.2016.
- II. Acting in contravention or Section 2 (a) of the Act.

In the commission of the above offences, the said vehicle was employed without a valid permit, thereby acting in contravention of the law in the Act, thus enabling the confiscation of the vehicle used therein by the learned Magistrate.

The Magistrate Court of Galle framed charges against the accused on 10.06.2016. The accused pleaded guilty to the charges levelled against him, upon which, the learned Magistrate imposed a fine of Rs. 40, 000/= with a default sentence of imprisonment for three months. Consequent to which the vehicle was released on a bond of Rs.1, 000,000/= to the appellant (vehicle owner). Then an inquiry was held by the learned Magistrate on 09.06.2017 to show cause as to why the

vehicle in question should not be confiscated, pursuant to which the appellant gave evidence. After the conclusion of the evidence adduced by the appellant, the learned Magistrate ordered the vehicle to be confiscated for want of necessary precautionary measures to prevent the commission of the crime, on the part of the registered owner of the vehicle as per the law set out in Section 3A of the Act.

It is therefore, pertinent to produce the relevant law at this juncture in the following manner:

*“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)

Accordingly, the above legislation has cast a burden upon the owner of a vehicle to prove to the satisfaction of the court, on a balance of probability that he has either implemented necessary precautionary measures in order to prevent the use of this vehicle to commit an offence or that he had no knowledge of the said offence being committed by the accused by using his/her vehicle.

Therefore, it is apparent that the above legislation, quite unlike the law promulgated in the Forest Ordinance with regards to vehicle confiscation, has two limbs under Section 3A where only one of the two limbs has to be proved before the Magistrate in order to prove on a balance of probability that the vehicle owner, as a third party had no culpability in the offence and as such the vehicle in use cannot be confiscated, for either there’s sufficient precautionary measures taken by the owner **or** that he had no knowledge of the offence being committed by the employment of the vehicle.

Therefore, it is important to note that only one of the two limbs has to be satisfied, in which case the vehicle can be released to the owner. However, the learned High Court Judge has perused the facts of the case and has arrived at the determination that the appellant has not taken any precautionary measures and proven before the court on balance of probability that such measures were implemented in order to prevent the commission of the crime by using the vehicle. Although, it is agreed upon by this Court, it is also the observation of this Court that the learned High Court has only considered one limb of Section 3A and has not evaluated the second limb which is that the appellant had no knowledge of the offence being committed.

සත්ව ආඥා පනතේ 3A වගන්තිය යටතේ යම් පුද්ගලයෙකු එකී පනත යටතේ වරදකරුවෙකු වූ අවස්ථාවකදී දඬුවමට අමතරව අදාල වාහනය රාජ්‍යත්වක කිරීම සඳහා ප්‍රතිසාදන සලසා ඇත. එසේ රාජ්‍යත්වක කළ හැකි වන්නේ, අදාල වාහනයේ අයිතිකරු 3 වන සාර්ථකයක් වන අවස්ථාවකදී ඔහු පෙනී සිට අදාල වාහනය එකී වරද සඳහා යොදා-ගැනීම වැළැක්වීම සඳහා තමා විසින් ගත යුතු සියලු පූර්වාපේක්ෂණ ක්‍රියාවන් ගෙන ඇති බව අධිකරණය සැහීමට පත් කිරීමට අපොහොසත් වූ අවස්ථාවක පමණි.

(Appeal Brief- Page 44)

The above statement of the learned High Court Judge's order dated 23.03.2021 sheds light on how the learned High Court judge has considered only one the first limb of the criterion prescribed by the law which is the requirement of precautionary measures on the vehicle owner. It is pertinent to reiterate that satisfying at least one limb suffices to disallow the confiscation of the vehicle.

A perusal of the facts reveal that the offence was committed by the accused by transporting goats and cows in the lorry as a hired ride for another party while he was away with the vehicle on a different excursion authorized by the appellant. Therefore, as the said offence has been committed by way of an opportunity posed on the way to another commitment by the accused, the culpability of the appellant in such a scenario cannot be established as it is observed by this Court that the appellant had no knowledge of such an offence being committed. Thus, satisfying one limb of the criterion promulgated by the law.

Therefore, in light of the above considerations, it is the view of this Court that the learned High Court Judge has failed to consider both the limbs of the criterion stipulated in the Act in order to affirm the confiscation order. Hence, the order of the learned High Court Judge in terms of the application of Section 3A is erroneous and thus contrary to law.

Moreover, in considering the order of the learned Magistrate, the same error is visible where the learned Magistrate too has considered one limb of the law in order to make the confiscation order where the major consideration has been that there's want of precautionary measures on the part of the appellant and the other criterion of satisfying that the appellant had no knowledge of the offence being committed has been disregarded. Thereby rendering the learned Magistrate's order erroneous and contrary to law.

It is well established law under Section 3A of the Act that both the limbs under the Section must be considered in order to determine whether or not to confiscate the vehicle in question. In a scenario, where either one limb is satisfied on a balance of probability before the Court, the vehicle should not be subjected to

confiscation. However, if neither requirement is met, then an order of confiscation will be justly made.

However, in the instant application as the learned High Court and the learned Magistrate has only considered one limb in arriving at the current determination, both the orders are considered to be erroneous and contrary to law, by this Court as it is observed that the second limb of the criterion under Section 3A of the Act, which is the requisite of lack of knowledge, is sufficiently established as revealed by the facts of the case and as such the order of the confiscation cannot be affirmed.

Thus, it is the view of this Court that as the learned Magistrate and the learned High Court Judge had erred in the orders dated 25.08.2017 and 23.03.2021 respectively, the appeal by the appellant to have both the orders set aside can be allowed. Therefore, this Court intervenes to set aside the order of the High Court dated 23.03.2021 and the order of the Magistrate Court dated 25.08.2017.

The appeal is hereby allowed.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL