

**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 of the Constitution and in terms of Section 9 & 10 of the High Court of Provinces (Special Provisions) Act No.19 of 1990.

Court of Appeal

Warnakula Patabandige Aquinas

Application No:

Susantha Perera

CA PHC 138/2017

**Registered Owner Claimant-Petitioner
-Appellant**

High Court of Chilaw No.

HCR/12/17

VS.

MC Marawila Case No.

1145/D

1. The Officer-in Charge

Police Station,

Marawila

Complainant-Respondent-Respondent

2. Warnakulasuriya Nimal Ajith

Fernando

Accused-Respondent-Respondent

3. The Attorney General

Attorney General's Department

Colombo-12.

Respondent-Respondent

BEFORE : **Sampath B. Abayakoon, J.**
P. Kumararatnam, J.

COUNSEL : **Chathura Amarathunga for the**
Appellant.
S.Dunuwilla, SC for the Respondent.

ARGUED ON : **28/03/2023.**

DECIDED ON : **01/06/2023.**

JUDGMENT

P. Kumararatnam, J.

The 1st Respondent filed a charge sheet Under Section 47 and 54(2) of the Excise Ordinance against the 2nd Respondent in the Magistrate Court of Marawila. As the 2nd Respondent pleaded guilty to the charge sheet, the Learned Magistrate of Marawila had convicted the 2nd Respondent and imposed a fine of Rs.100000/- and fixed for an inquiry to confiscate the Vehicle bearing No. WP KA-0456.

At the conclusion of the inquiry, the Learned Magistrate had decided to confiscate the aforesaid vehicle by his order dated 28th April 2017. At the inquiry only the Appellant had given evidence on his behalf.

Being aggrieved by the order of the Magistrate, the Appellant filed a revision application in the Provincial High Court of North-western Holden at Chilaw to revise the order of the Magistrate of Marawila. After

support, the Learned High Court Judge had dismissed the said application without issuing notice to the Respondent.

Now the Appellant filed this appeal to set aside the order of the Learned High Court Judge of North-western Holden at Chilaw dated 18/07/2017.

The Appellant submitted following grounds of appeal:

1. The Appellant has no right of appeal under the Excise Ordinance against the confiscation.
2. The Learned High Court Judge had simply dismissed the revision application filed by the Appellant without adhering to the maxim *Audi alteram partem*.

It is settled law that revision is a discretionary remedy, and such power shall be invoked only upon demonstration of exceptional circumstances.

In **Ramu Thamodarampillai v. The Attorney General [2004] 3 SLR 180** the court held that:

“the decision must in each case depend on its own peculiar facts and circumstances”.

In **Marian Beebee v. Seyed Mohamed 69 CLW 34** the court held that:

“Power of revision is an extraordinary power of the court which is independent and distinct from the appellate jurisdiction. The object of revisionary jurisdiction is to ensure the due administration of justice and the correction of all errors in order to avoid a miscarriage of justice”.

In the case of **Rasheed Ali v. Mohammed Ali and Others [1981] 1 SLR 262**, the court held that:

“ ...the powers of revision vested in the Court of Appeal are very wide and the Court can in a fit case exercise that power whether or not an appeal lies. When, however, the law does not give a right of appeal and makes the order final, the Court of Appeal may nevertheless exercise its powers of revision, but it should do so only in exceptional circumstances. Ordinarily the Court will not interfere by way of review, particularly when the law has expressly given an aggrieved party an alternative remedy such as the right to file a separate action, except when non-interference will cause a denial of justice or irremediable harm”.

In **Commissioner of Police v. Tanes (1957-58) 68 CLR 383**, the court held that:

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

In this case the Learned High Court Judge only considering the order of the Magistrate Court of Marawila decided to dismiss the revision application stating that that the Appellant had failed shock the conscious of the court.

In this case a car had been confiscated for transporting 320 drams of illicit liquor.

The Claimant of the vehicle has given evidence in the court and has claimed that he was unaware of the crime being committed as he has given the vehicle on rent to the accused.

The Learned Magistrate has dismissed the application on the basis that the Claimant had failed to show that he took all necessary precautions to prevent a crime being committed.

Considering the argument advanced by the Appellant that he was not afforded a fair inquiry, I conclude that the Learned High Court Judge should have inquired this matter by affording an opportunity to all necessary parties to present their submissions before he could come to a conclusion. As this caused great prejudice to the Appellant, I decided to send this case back to the High Court of Chilaw for re-hearing by affording an opportunity to all necessary parties to present their submissions.

Accordingly, I set aside the order of the Learned High Court Judge of Chilaw dated 18.07.2017 and send the case back to the High Court for a fresh hearing on merits.

Therefore, this appeal is allowed.

The Registrar of this Court is directed to send a copy of this order to the High Court of Chilaw.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL