

**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 and Article 154(P) of the Constitution read with Section 11 of the High Court of Provinces (Special Provisions) Act No.19 of 1990.

Court of Appeal

Ranjan Piyasiri Dantanarayana

Application No:

30/A 2nd Lane

CA PHC 0099/2018

Ratmalana

Complainant-Appellant

High Court of Colombo

No.HCRA/49/17

VS.

MC Colombo Case No.

34991/2/15

1.Jayaweera Muhamdiramge Premaratne

No.60/15 Templers Road

Mount Lavinia

Accused-Respondent

2. Mohamed Seynul Abdeen Saley

12/1, Dharmanikethana Place

Koswatte Road

Nawala

2nd Party Respondent

AND NOW BETWEEN

Ranjan Piyasiri Dantanarayana

30/A 2nd Lane

Ratmalana

Complainant-Petitioner-Appellant

1. Jayaweera Muhamdiramge Premaratne

No.60/15 Templers Road

Mount Lavinia

Accused-Respondent-Respondent

2. Mohamed Seynul Abdeen Saley

12/1, Dharmanikethana Place

Koswatte Road

Nawala

2nd Party Respondent-Respondent

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

COUNSEL : **Manohara De Silva, PC with**
H.Kumarage for the Appellant.
Sanjeewa Lal K. Dahanayake with
Dilan Perera for the 2nd Party-
Respondent.

ARGUED ON : **29/03/2023.**

DECIDED ON : **05/06/2023.**

JUDGMENT**P. Kumararatnam, J.**

The Criminal Investigation Department had filed a case against Jayaweera Muhandiram Premaratne the Accused-Respondent (hereinafter referred to as “the Accused”) for committing criminal breach of trust upon a complaint lodged by the Complainant-Appellant (hereinafter referred to as “the Appellant”) in the Magistrate Court of Colombo under the case No. 34991/2/15 on 03.10.2016.

As the property involved in the case is a Montero Jeep bearing registration No. WP-KI 9486, the Learned Magistrate held an inquiry under Section 431 of the Code of Criminal Procedure Act No.15 of 1979 and handed over the possession of the vehicle to the 2nd Party-Respondent (hereinafter referred to as “the Respondent”) by his order dated 03.10.2016. The Learned Magistrate had considered number of judgments for and against of handing over the vehicle to the person who had possessed last when the matter came before the court.

Being aggrieved by the order of the Magistrate, the Appellant filed a revision application in the Provincial High Court of Western Province Holden at Colombo to revise the order of the Magistrate of Colombo. After an inquiry, the Learned High Court Judge of Colombo had affirmed the order of the Learned Magistrate of Colombo and dismissed the said revision application subject to a cost of Rs.100000/ payable to Respondent.

Now the Appellant filed this appeal to set aside the both orders of the Learned High Court Judge of Colombo dated 11/05/2018 and Learned Magistrate of Colombo dated 03.10.2016 and to declare that the Appellant is entitled to possess the vehicle bearing registration No. WP KI 9486.

Background of the case albeit as follows:

The Appellant had purchased the subject matter the Montero Jeep from W.M.W. Mohammed Aslam of Mawanella for a sum of Rs.6.5 million on open papers. At the time of the purchase, the registered owner of the vehicle was one Sujeevi Sandra Samaranayeke as per the documents he had received.

As the Appellant wanted to sell the said vehicle, he entrusted the same to the Accused who is a known associate of him for a long period of time. In November 2014, the Accused had informed the Appellant that he had found a prospective buyer for a sum of Rs.6.2 million and the Accused had paid an advanced of Rs.400000/- which was acknowledged by the Appellant in writing.

As the transaction was not materialized as expected the Appellant had contacted the Accused several times but he was not satisfied with the explanations given by the Accused. As such he had gone to the Accused premises to collect the vehicle but was not to be found in the premises of the Accused. Hence, he had lodged a complaint against the Accused in the Criminal Investigation Department on 21.09.2015. As up to that point the said vehicle was on open papers, the Appellant took steps to register the same in his name and accordingly it was transferred in to his name on the 05.06.2016.

After the investigation the Criminal Investigation Department had arrested and produced the Accused before the Magistrate Court of Colombo. The aforementioned vehicle was seized from the possession of the Respondent and produced before the Court. At present the main case is pending before the Magistrate Court of Colombo.

The Appellant submitted following grounds of appeal:

1. The orders of the Learned High Court Judge and the Magistrate are contrary and against the weight of evidence as vehicle in question is registered in the name of the Appellant.

2. Both the Learned magistrate and the Learned High Court Judge had come to wrong conclusion that the Respondent is a bona fide purchaser.
3. The Learned Magistrate and the Learned High Court Judge had failed to consider Section 2(1) of the Motor traffic Act which states that “the person for the time being entitled to the possession of the vehicle is registered as the owner.”
4. The Learned Magistrate and the Learned High Court Judge erred in handing over the vehicle to the party whose possession it was in prior to being taken in by the police under section 431(1) of the Criminal Procedure Code when the registered owner of the vehicle was available and was therefore entitled to possession.
5. The Learned High Court Judge had failed to consider that in any event the title of the vehicle has not passed on to the Respondent.
6. In any event costs of Rs.100000/- is excessive considering the nature of the case.

As the 1st to 5th appeal grounds are interconnected, all said appeal grounds will be considered together in this appeal.

The Learned Magistrate after considering plethora of Assizes Court decisions come to a conclusion that the Respondent is a bona fide purchaser and therefore, his possession of the vehicle had not caused no any illegality. Therefore, proceeded to release the said vehicle to the Respondent. The relevant portion of the order of the Learned Magistrate is re-produced below:

(Page 59-60 of the brief)

මෙම නඩුවේදී දෙවන නිමිකම්පාන පුද්ගලයාගේ සන්නකයේ තිබේ අදාළ WPKI 9486 දරණ වාහනය අත් අඩංගුවට ගෙන ඇත. එම අය මෙම නඩුවේදී සැකකරුවකු නොවේ. ඉදිරිපත් කර තිබෙන කරුණු සහ බී වාර්තාව සැලකිල්ලට ගැනීමේදී තහවුරු වන්නේ ඔහුගේ සන්නකයේ වරදකාරීත්වයක් තිබෙන බවට තහවුරු නොවන බවටය. ඔහු

සඳහා වශයෙන් මිලදී ගත් නැතැත්තෙකු බවට ඉදිරිපත් වී තිබෙන කරුණු සැලකිල්ලට ගැනීමේදී තහවුරු වේ. ඒ අනුව මෙම නඩුවට අදාළව ඉදිරිපත් වී තිබෙන WPKI 9486 දරණ වාහනයේ සන්නිකය අපරාධ නඩු විධාන සංග්‍රහ පනතේ 431 (1) වගන්තිය ප්‍රකාරව පොලිසිය විසින් අත් අඩංගුවට ගත් අවස්ථාවේ එහි සන්නිකයේ දැරූ දෙවන නිමිකම්පාන අයට භාර දිය යුතු බවට තීරණය කරමි.

The Learned High Court Judge while agreeing with the order of the Learned Magistrate went in to say that the Appellant knowing that the vehicle was sold to a third party, got the vehicle registered in his name. As such the Appellant had not come before the High Court with clean hands. The relevant portion of the order of the Learned High Court Judge is re-produced below:

(Page 49-50 of the brief)

මෙම සිද්ධිමාලාව සහ ලේඛන සලකා බැලීමේ දී පැහැදිලිව පෙන්නුම්කරන්නේ 01 වන වගඋත්තරකාර විත්තිකරු ලෙස නම් කර ඇති ප්‍රේමරත්න යන අයත් අතර වාහනය විකිණීම සම්බන්ධයෙන් ගනුදෙනුවක් සිදු වී ඇත. එම ගනුදෙනුව අතරතුර දී 02 වන වගඋත්තරකරුට මෙම වාහන ප්‍රේමරත්න නැමැත්තා විකුණා ඇති බවත් එම විකිණීම වි.02 ලේඛනය ප්‍රකාරව 2014 ඔක්තෝම්බර් 21 වන දින සිදු වී ඇති අතර එම විකිණීම සිදු කිරීමෙන් පසුව පෙන්නුම්කරුට මුදලක් ගෙවා ලැබිය යුතු ඉතිරි මුදල සම්බන්ධයෙන් ද රිසිට් පතක් ද ලබා දී ඇත. ඉන් අනතුරුව කිසියම් හෝ හේතුවක් නිසා මෙම පෙන්නුම්කරුට වාහනය විකිණීම සම්බන්ධයෙන් වන මුදල ලැබීමේ ප්‍රමාදයක් හෝ නොලැබීමක් හේතුකොට ගෙන ප්‍රේමරත්න නැමැති විත්තිකරුන් සමඟ යම් ආරවුලක් ඇති වී ඇති බව පෙනේ. එම පසුබිම යටතේ මෙම නඩුවේ පෙන්නුම්කරු මේ වන විටත් මෙම වාහනය තුන්වන පාර්ශවයකට විකුණා ඇති බව දැන දැනම පෙන්නුම්කරු ඔහුගේ නමට මෙම වාහන ලියාපදිංචි කර ගැනීමට කටයුතු කර ඇත. පෙන්නුම්කරු විසින් මහෙස්ත්‍රාත් අධිකරණයේ දී ලබා දුන් සාක්ෂියෙන් හෙළිදරව් වන ආකාරයට වසර 30ක් පමණ කලක් සිට හඳුනා ප්‍රේමරත්න නැමැත්තාට වාහන විකිණීමට භාර දී වසර 02ක් ගත වීමට පසුව පැමිණිල්ලක් ගොනු කිරීමට ප්‍රථම තමාගේ නමට මෙම වාහනය ලියාපදිංචි කර ගැනීම තුළින් තුන්වන පාර්ශවයක් වන අභියාචක ගැනුම්කරුවෙකු වශයෙන් පැහැදිලිව පෙනී යන 02 වන වගඋත්තරකරුට දැඩි අගතියක් හිතාමතා සිදු කිරීමට පෙන්නුම්කරු කටයුතු කර ඇති බව පෙනේ. ඒ පසුබිම යටතේ පෙන්නුම්කරු මෙම අධිකරණයට ප්‍රතිරෝධී අයදුම්පත්‍රයක් ඉදිරිපත් කර ඇති නමුත් ඔහුගේ ක්‍රියාකලාපය සැලකිල්ලට ගැනීමේ දී සහ විශේෂයෙන්ම මෙය 03 වන පාර්ශවයකට විකුණා ඇත යන කාරණාව ඔහු සෘජුව හෙළිදරව් නොකිරීම හෝ ඔහු දැන සිටි බවක් හෙළිදරව් නොකිරීම මත ඔහු වැදගත් කරුණු වසන් කිරීමක් සිදු කොට පිරිසිදු දැනින් මෙම අධිකරණයට පැමිණ නැති බව තීරණය කරමි.

The position of the Appellant is that in November 2014, as per the entrustment to sell his vehicle, the accused had informed the Appellant that he had found a prospective buyer for a sum of Rs.6.2 million and paid an advanced of Rs.400000/- which was acknowledged by the Appellant in writing. After receiving the advance payment of Rs.400000/- from the accused, the Appellant heard nothing from the Accused nor from anybody regarding the sale of the vehicle to a third party. As he could not find the vehicle from the Accused's premises the Appellant took steps to register the vehicle in his name and lodged a complaint at the Criminal Investigation Department.

Further, the Respondent who claims that he bought the vehicle from the Accused on 21.10.2014, had not taken any meaningful action to register the vehicle in his name till the complaint was lodged at the Criminal Investigation Department on 21.09.2015 by the Appellant. The failure to act within the law and tender to the Registrar of Motor Vehicles the necessary documents to register the ownership of the vehicle in his name by the Respondent, clearly demonstrates that he is not a bona fide purchaser. Had he been the bona fide purchaser he should have taken meaningful and legal action to register the said vehicle in his name. Also, he should have approached the Appellant to have all original documents to act on the registration.

Further, the Respondent had not taken any endeavour to contact the Appellant to get the necessary documents to register the vehicle in his name. According to the Appellant, the Respondent had only contacted him after the case was filed. This lethargic attitude of the Respondent also amplifies the demonstration that he is not a bona fide purchaser.

In **Sugathapala v. Thambirajah 67 NLR 91** the court held that:

“that it is open to a Magistrate, when he acts under section 419 (1), to direct the property found in the possession of one person to be delivered to another person who is entitled to possess it. Section 419 has conferred jurisdiction on the

Magistrate to decide who is entitled to the possession of such property. In exercising that power, the Magistrate is not deciding a civil dispute, but only the right of possession in respect of the property. In the absence of anything to show the title to the property, it should be ordered to be delivered to the person in whose possession it was when it was seized by the police”.

Considering the above cited judicial decision, I set aside the order dated 03.10.2016 by the Learned Magistrate of Colombo and the order of the Learned High Court Judge dated 11.05.2018 as they cannot be allowed to stand.

I direct that the vehicle No. WP-KI 9486 which was the subject matter of this action shall be released to the Appellant who is the registered owner of the vehicle.

Therefore, this appeal is allowed.

The Registrar of this Court is directed to send a copy of this order to the High Court of Colombo and the Magistrate Court of Colombo along with the original case record for necessary action forthwith.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL