

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

*In the matter of an application for Revision
in terms of Article 138 of the Constitution of
the Democratic Socialist Republic of Sri
Lanka.*

CA (PHC) APN No. CPA/81/22

The Officer in Charge,

Police Station,

High Court Kalmunai

Sammanthurai.

No. EP/HCK/REV/307/2020

COMPLAINANT

Vs.

Magistrate's Court Sammanthurai

No. 24468/PC/20

1. Muhammed Saly Rafeek,
133, Methagama Kolugama,
Monaragala.
2. Abul Hassan Asmy,
217, Central Road,
Mavadippalli.

ACCUSED

Iyoob Mohamed Rifas,
144/B, Kuthirayar Road,
Malayadikkiramam-03,
Sammanthurai.

1ST CLAIMANT

AND BETWEEN

Iyoob Mohamed Rifas,
144/B, Kuthirayar Road,
Malayadikkiramam-03,
Sammanthurai.

1ST CLAIMANT-APPELLANT

Vs.

1. The Officer in Charge,
Police Station,
Sammanthurai.
2. The Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

AND NOW BETWEEN

Iyoob Mohamed Rifas,
144/B, Kuthirayar Road,
Malayadikkiramam-03,
Sammanthurai.

1ST CLAIMANT-APPELLANT-PETITIONER

Vs.

1. The Officer in Charge,
Police Station,
Sammanthurai.
2. The Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENT-RESPONDENTS

Before : Sampath B. Abayakoon, J.
: P. Kumararatnam, J.

Counsel : Keheliya Alahakoon for the 1st claimant-appellant-
petitioner
: Nishanth Nagaratnam, S.C. for the Respondent

Argued on : 20-06-2023

Decided on : 12-09-2023

Sampath B. Abayakoon, J.

This is an application by the 1st claimant-appellant-petitioner (hereinafter referred to as the petitioner) invoking the revisionary jurisdiction of this Court in terms of Article 138 of the Constitution.

When this matter was supported before this Court, having heard the petitioner, this Court decided to grant notice, and accordingly, upon receiving the notice, the respondent-respondents have filed their objections as required.

At the hearing of this application, this Court had the benefit of listening to the submissions made by the learned Counsel for the petitioner, as well as the learned State Counsel, on behalf of the respondent-respondents.

The Officer in Charge of Sammanthurai police has charged the two accused mentioned in the petition before the Magistrate's Court of Sammanthurai for allegedly committing an offence punishable in terms of section 3D of the Animals Act No. 29 of 1958 as amended by the Animals (Amendment) Act No. 10 of 2009.

The provided translation of the charge sheet preferred against the two accused on 29-06-2020 reads as follows;

The above named accused on or about 26th June 2020 at Nellupitiya junction within the jurisdiction of this Court by transporting buffaloes in the night without having a valid permit you have committed an offence knowingly and intentionally under the section 3D of the Animals Act No. 29 of 1958 and amended Animals Act No. 10 of 2009.

When the charge was read over to the accused before the learned Magistrate of Sammanthurai, both of them have pleaded guilty to the charge and accordingly they have been sentenced to a fine of Rs.10000/= each, with a default sentence of three-month imprisonment each.

It is clear from the charge to which the accused have pleaded guilty, they have been informed that transporting 68 heads of buffaloes in the night without having a valid permit was the offence committed by them.

As a result of the conviction and the sentence on the basis that the accused have transported the 68 heads of buffaloes mentioned in the charged sheet, the learned Magistrate of Sammanthurai has allowed the petitioner who came before the Court as the owner of the animals to show cause as to why the animals should not be confiscated in terms of the Animals Act.

At the inquiry held in that regard, the petitioner has given evidence and had claimed that he purchased 70 heads of animals from a person in Siyambalanduwa. It had been his position that while he was in the process of obtaining the necessary permits to transport the animals, his two assistants have herded the animals, at which point, the police have taken the animals and the two accused into custody. He has produced cattle vouchers and cattle receipts he obtained from the person from whom he purchased the cattle as evidence, and has also called the person who sold the animals to him as a witness to substantiate his position.

The position of the petitioner had been that he is the owner of the animals and he purchased them legally, and while he was in the process of obtaining the necessary permits to transport, the accused have herded the animals without his knowledge. On that basis, he has claimed the animals.

The learned Magistrate of Kalmunai by his order dated 07-07-2020 has decided that the owner of the animals failed to prove his ownership or to satisfy the Court that the offence was committed without his knowledge, presence, and beyond his consent. On that basis, the learned Magistrate of Sammanthurai proceeded to confiscate the said cattle in terms of section 3AA(3)(a) of the Animals Act as amended.

The petitioner being aggrieved by the said order has preferred an application in revision to the Provincial High Court of the Eastern Province Holden at Kalmunai.

After considering the application, the learned High Court Judge of Kalmunai, pronouncing his order dated 09-02-2022, has decided that there was no material for the Provincial High Court to interfere with the order of the learned Magistrate and had affirmed the order and dismissed the application made in revision by the petitioner.

It is against the above-mentioned two orders; the petitioner has now come before this Court seeing to invoke the revisionary jurisdiction conferred to this Court in terms of Article 138 of the Constitution.

At the hearing of this application, it was the contention of the learned Counsel for the petitioner that the main reason for the rejection of the claim by the owner of the animals by the learned Magistrate had been that the age of the animals given in the cattle vouchers and the corresponding cattle receipts do not match, and the claim of the owner that he was not privy to the actions of the accused cannot be accepted.

It was his position that there was no dispute as to the ownership of the cattle and although the accused were charged for having transported the cattle, in fact, they were only herding the cattle when they were arrested. It was his position that herding of cattle by foot would not amount to transporting of the cattle as envisaged in the provisions of the Animals Act. It was also his position that if the learned Magistrate was not certain about the ages of the animals claimed by the owner, the learned Magistrate should have given effect to his order made in the journal entry dated 02-07-2020 of the Magistrate Court case record, before pronouncing his order five days thereafter, on 07-07-2020.

It appears from the journal entry dated 02-07-2020 of the Magistrate's Court case record, that it was the date fixed by the learned Magistrate for his order in relation to the inquiry. However, on that day, the learned Magistrate, instead of pronouncing his order, has made the following Directive which reads thus;

“At this stage-

For the interest of justice, I order to Registrar of the Court to call the full report regarding cattle of this case from the veterinary surgeon-Sammanthurai. Registrar to take steps and issue a letter to the veterinary surgeon.

Speedy action is needed for this purpose. Refixed for order on 07-07- 2020.”

However, there is no indication in the Magistrate’s Court case record whether the Registrar of the Court carried out the Directive of the learned Magistrate for whatever the purpose the directive was given, or whether the veterinary surgeon sent a report as required.

On 07-07-2020, the relevant order in relation to the inquiry had been pronounced, confiscating the animals and, the learned Magistrate has directed that the cattle to be handed over to an animal care center. He has also called for a report from the veterinary surgeon on the basis that he has failed to submit a report to the Court.

It was in this backdrop the petitioner has invoked the revisionary jurisdiction of the Provincial High Court of the Eastern Province Holden at Kalmunai.

The learned High Court Judge by the impugned order has justified the reasons given by the learned Magistrate in his order of confiscation of the cattle. However, it appears from the impugned order that the learned High Court Judge has extensively discussed the provisions as to the transportation of animals under the provisions of the Act and the requirements an owner of a vehicle should prove in an inquiry.

In his order, the learned High Court Judge has stated;

“Thus, it cannot be considered that taking of the said cattle from Siyambalanduwa to this area without permit was done without the

knowledge of the petitioner. In this case nobody else has submitted ownership claims other than 1st and 2nd claimants for these 68 cattle.

Based on the above reasons, there is a doubt whether those 68 cattle were purchased by the petitioner? It should be ascertained if Jayantha Kamal sold those 68 cattle unto the petitioner, whether he abetted for taking those cattle from Siyambalanduwa to Sammanthurai without permit.

Legal Position

The following decided cases has dealt with the legal position in respect of matters that should be proved by the person who claim ownership of things and vehicles that is used while commitment of an offence under section 3 of the Animals Act.”

It is clear from the above reasoning, that the learned High Court Judge has been careful not to use the word transport in his order. Instead, he has used the term ‘taking of the said cattle’ which gives a different meaning than the word ‘transport’.

I am of the view that the learned High Court Judge was not correct when he decided to use ‘taking’ instead of the words used in the charge preferred against the accused which was ‘transporting of the cattle’, as the two terms mentioned above have different meanings, I am of the view that a Court is not entitled to twist the words mentioned in a particular section of a statute to justify a decision reached by a Court of law.

In the above conclusion of the learned High Court Judge, section 3 of the Animals Act has been mentioned as the provision under which he has determined that a person who claims ownership of things and vehicles should establish his or her claim, in citing decided judgements in that regard.

However, it needs to be noted that section 3 of the Animals Act provides for the Subject Minister to make regulations in following matters, which reads;

- 3. (1) the prohibition, restriction, control, or regulation of the transport of animals within, to or from, any administrative district;**
- (2) the conditions subject to which the slaughter of animals may be permitted;**
- (3) the stoppage and examination of vehicles in which animals are being ‘transported;’ and**
- (4) the establishment of checking stations at which any vehicle may be required to stop to enable the officer-in-charge of such station to examine the vehicle for the purpose of ascertaining whether any animals are being transported in contravention of any regulation made under this part;**
- (5) Procedure to be observed in applying for permits for the transport of animals; and**
- (6) Prescription of fees in respect of transport permits.**

Although the learned High Court Judge has used section 3 of the Animals Act as the provision under which the relevant legal positions should be considered, the actual section the learned High Court Judge has considered appears to be section 3A of the Animals Act as amended by Animals Amendment Act No. 10 of 1968, which is the provision under which a Magistrate’s Court has power to confiscate vehicles. The relevant section 3A reads as follows;

3A. Where any person is convicted of an offence under this part or any regulations made thereunder, any vehicle used in the commission of such offence shall in addition to any other punishment prescribed for such offence, be liable, by order of the convicting Magistrate to confiscation.

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 had been used without his knowledge to the commission of the offence.

I am of the view that the learned High Court Judge was misdirected when he decided to mix the claim of ownership of things and confiscation of vehicles, to determine this matter.

Whereas, it should be in terms of section 3AA(3) that a Magistrate should act in a case of an animal in relation to an offence by a person who has committed an offence referred to in subsection (1) of section 3AA of the Animals Act.

The subsection (1) refers to situations where a Magistrate with competent jurisdiction can order the temporary custody of an animal against whom an offence has been committed to an institution mentioned in the section.

The relevant section 3AA(3) which attracts the confiscation of animals as considered by the learned Magistrate of Sammanthurai reads as follows;

3AA(3). 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-

(a) make order that the animal be confiscated; or

(b) make order that the animal be handed over to the owner of the animal, upon his establishing ownership of the animal and on the owner showing cause that the offence was committed or was sought to have been committed without his knowledge or connivance.

It is abundantly clear from the charge preferred against the accused before the learned Magistrate of Sammanthurai, the Officer-in-Charge of the police station of Sammanthurai has formulated the charge on the basis that the accused were transporting 68 heads of cattle in the night without having a valid permit. Although the charge preferred indicates the section namely, 3D of the of the

Animals Act as the penal section, this is a penal section that should be common to any offence committed under Part II of the of the Animals Act, which includes contravention of any regulation made under the Act.

However, since it had been informed in the charge that the offence committed by the accused was transporting cattle without a permit, it needs to be assumed that the relevant section the accused supposed to have violated is section 3C(1) of the Act.

The relevant section 3C(1) of the Act reads;

3C(1). No person shall transport any animal within, to, or from, any administrative district except under the authority of a transport permit issued by the Assistant Government Agent of a division of that administrative district for that purpose.

There is no dispute that, although the charge refers to the transportation of animals, in fact when this alleged detection was made, the accused had been herding the 68 heads of cattle by foot in a place called Nellupitiya junction.

Since the accused have been charged on the basis of transportation of animals, it becomes necessary for this Court to look into the possible interpretation of the word 'transport' in order to find whether herding of animals in this manner can be interpreted as a form of transportation as envisaged for the purposes of the Animals Act.

The argument of the learned Counsel for the petitioner was that herding of animals would not fall under the category of transportation and therefore there was no basis for the learned Magistrate to charge the accused for illegal transportation and to order an inquiry in terms of section 3AA(3).

It is the view of this Court that, although the learned State Counsel on behalf of the respondents contented that the confiscation of animal's was justified as the owner has failed to establish his ownership and his knowledge as stated in the impugned orders, what matters the most is the fact whether the herding of

animals would come under the meaning of transportation of animals as stated in the Animals Act.

The word 'transportation' had not been defined in the Act. However, if one reads the relevant sections of the Act, it is abundantly clear that the purpose of making regulations in terms of section 3 of the Animals Act was to regulate transportation of the animals in vehicles and for nothing else.

It is the view of this Court that the word 'transport' mentioned in section 3C of the Animals Act needs to be considered in that context. If the intention of the legislature was to place restrictions as to taking cattle or any other animal for that matter from place to place in any means other than vehicles, it should have been reflected in the wordings of the relevant section. I do not find any reasons to interpret the relevant sections to say that transport should include even herding or any other form of taking cattle from one place to another.

In village settings where cattle herding is a common occurrence, if the provisions of the Animals Act are to be interpreted in such a manner, it would amount to a situation where the farmers or cattle herdsman would require permits to engage in their daily livelihood. I do not see that this was the purpose of the Animals Act.

I am of the view that there was no basis for the Officer-in-Charge of the Sammanthurai police to charge the accused in terms of the Animals Act for transporting without a permit other than charging them in terms of the Prevention of Cruelty to Animals Act, if they have committed an offence in terms of the said Act.

It is my considered view that the learned Magistrate was wrong to have charged the accused on the basis of transporting the animals without a permit, and misdirected as to the facts and the relevant law when it was decided to hold an inquiry in terms of section 3AA(3) of the Animals Act.

I am also of the view that the learned High Court Judge was also misdirected as to the facts and the relevant law when the order of the learned Magistrate was affirmed. I find that the petitioner has adduced sufficient exceptional circumstances before this Court for this Court to interfere into the relevant orders considered in this matter.

For the reasons as considered above, I set aside the order of the learned Magistrate of Sammanthurai dated 07-07-2020, and the order of the learned High Court Judge of the Provincial High Court of the Eastern Province Holden at Kalmunai dated 09-02-2022, as both the above orders cannot be allowed to stand.

I direct the learned Magistrate of Sammanthurai to release the heads of cattle which were the subject matter of the inquiry held before the learned Magistrate to the person or persons who claimed the ownership of the animals before the Magistrate's Court.

The Registrar of the Court is directed to communicate this judgement to the Magistrate's Court of Sammanthurai as well as to the Provincial High Court of the Eastern Province Holden at Kalmunai for information and necessary action.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal