

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

C.A. (PHC) APN No: 50/2013

H.C. Anuradhapura Rev. No: 14/11

M.C. Kebithigollewa No: 68283

Gamagedara Mudiyanseelage Dickson Keerthisinghe,
1st Mile Post,
Padaviya

Hidagollagedara Prema Priyangani,
1st Mile Post,
Padaviya

Claimant-Petitioner-Petitioner

Vs.

1. H.J.M.J Perera,
Forest Officer,
The Forest Conservation Office,
Kebithigollewa

Complainant-Respondent-Respondent

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

Respondent-Respondent

C.A. (PHC) APN No:50/2013 - H.C. Anuradhapura Rev. No: 14/11

M.C. Kebithigollewa No: 68283

BEFORE : **K.T. Chitrasiri, J. &
P.R. Walgama J**

COUNSEL : Saliya Pieris with Thanuka Nandasiri for the
Claimant-Petitioner-Petitioner.

Anoopa de Silva SSC. for the Complainant-
Respondent-Respondent.

ARGUED &

DECIDED ON : 29.01.2015.

K.T. Chitrasiri, J.

Heard both counsel in support of their respective cases.

The Complainant Petitioner-Petitioner (hereinafter referred as the Petitioner) by his petition dated 05.04.2013 made an application seeking inter alia to revise and set aside the order of the learned High Court Judge of the North Central Province wherein the learned Judge refused an application to vary the order of confiscation of the tractor bearing No. NCHY. 2278 and the trailer bearing No. 44 Sri 4160. Learned Magistrate by his order dated 12.05.2011 confiscated the aforesaid tractor and the trailer which had been used to commit an offence under the Forest Ordinance as subsequently amended.

In the Magistrate's Court, the accused pleaded guilty to the charge levelled against him under the said Forest Ordinance. In such a situation, the proviso to section 40, enables the owner of the vehicle that had been used to commit the offence under the Forest Ordinance, to claim that vehicle provided he establishes that he has taken all

precautionary measures to prevent the offence being committed. Accordingly, it is

necessary to look at the evidence that had been adduced to establish the precautions, taken by the owner in order to consider making an order releasing the vehicle.

The Petitioner, namely Dickson Keerthisinghe alleged to have been the owner of the vehicle, has given evidence to show the manner in which the precautionary measures were taken. Another witness, by the name of Nimal Keerthisinghe who is the brother of the Petitioner also has given evidence. (vide at pages 37 to 44 of the appeal brief). In the evidence of the Petitioner he has clearly stated that he and his brother who had been the Registered owners at all material times had been working abroad. (at page 38 of the appeal brief). Hence, it is clear that the owners of the vehicle had no physical control of the vehicle for them to take precautionary measures.

Learned Counsel for the Petitioner too admit that both the persons who have given evidence had been out of the country during the period the offence was committed. Their evidence is that they have given instructions to the wife of the Petitioner to have the control over the vehicle in their absence. Learned Magistrate has come to the conclusion that such directions given by the owners are not sufficient to establish the precautionary measures that were taken in order to prevent committing the offence making use of the vehicle in question. We do not see any error in such findings.

Significantly, the wife of the petitioner who had the physical control over the vehicle has not come forward to give evidence. Failure to give evidence by the person who had the control over the vehicle at all material times show the inability of the Petitioner to satisfy Court to establish the necessary precautions that were taken to prevent the offence being committed in this instance.

For the aforesaid reasons, we are not inclined to interfere with the findings of the learned Magistrate and the learned High Court Judge. Accordingly, this petition is dismissed.

Registrar is directed to inform the learned High Court Judge of Anuradhapura and the learned Magistrate of Kebathigollawa to take necessary steps in accordance with the order made by the learned Magistrate on 12.05.2011, since the said order is to prevail with the pronouncement of this decision.

Petition is dismissed.

JUDGE OF THE COURT OF APPEAL

P.R. Walgama, J.

I agree

CN/-

JUDGE OF THE COURT OF APPEAL