

**IN THE COURT OF APPEALS OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA.**

In the matter of an application made under and in terms of Article 138 of the Constitution of the Democratic Republic of Sri Lanka seeking to revise and set aside the Order made in H C Panadura Case No. HC 2958/2013 on 21st July 2014.

CA Application No. CA (PHC) APN

119/2014

HC Panadura Case No. 2958/2013

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

Complainant

Vs.

1. Alghandi Sanath Rumesh De Silva
2. Disanayade Mudiyanse Aranda
Dasanayake
3. Juwan Jemislage Suresh Priyantha
Fernando

Accused

AND

Meril Karunasagara,
No. 352/1, Mabima,
Heiyanthuduwa.

Claimant

Vs.

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

Respondent

AND NOW BETWEEN

Meril Karunasagara,
No. 352/1, Mabima,
Heiyanthuduwa.

Claimant – Petitioner

Vs.

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

Respondent – Respondent

Before : W.M.M.Malinie Gunarathne, J

: P.R.Walgama, J

**Counsel : Ranil Samarasuriya with Manjula Ranasinghe for the
claimant - Respondent.**

: Himali Jayanetti s.c for the Respondent.

Argued on : 25.05.2015

Decided on: 18.12.2015

CASE-NO- CA (PHC)-119/2014- JUDGMENT- 18.12.2015

P.R.Walgama, J

The instant appeal concerns the validity of the order of the Learned High Court Judge dated 21st July 2014, by which order the vehicle belongs to the Claimant-Petitioner was confiscated.

The Claimant- Petitioner was the Registered owner of the vehicle bearing No. 301-3818. The three Accused stated in the Petition was indicted for having used the said vehicle for the transportation of 750 grams of Cannabis, and there by committing an offence under

the provisions of the Poison, Opium and Dangerous Drugs Act, No. 13 of 1984, in the case No. HC 2958/2013 in the High Court of Panadura.

The said Accused pleaded guilty to the said charge, and the Learned High Court Judge has imposed the sentence accordingly. Pursuant to the afore said the Learned High Court Judge has fixed the case for inquiry regarding the confiscation of the said vehicle.

Before the said inquiry the High Court has issued notices to the Absolute owner and the Registered owner of the said vehicle, and the proceedings of 22.10.2013 reveals that the Absolute owner will have no claim as the Registered owner has paid the entire amount due on the above vehicle to the Absolute owner.

The Learned High Court Judge by his order dated 21st July 2014 has confiscated the above vehicle. Being aggrieved by the said order the Claimant- Petitioner made the instant application to this Court seeking to set aside the said order of the High Court Judge.

In the said petition the Petitioner has unspooled the following;

That the Petitioner is an employee at the Ports Authority, and he purchased the above vehicle on a Hire Purchase Agreement with the Finance Company PLC. After the purchase of the said vehicle the Petitioner has given the vehicle to Buddhi Cabs for hire. The said Company was running a hiring service, and one Pradeep was managing the said service.

It is specifically stated that the Petitioner after being satisfied that the said service in not involve in any illegal activity had entered into the Agreement with Buddhi Cabs which is marked as A2.

Pursuant to the afore said, the Petitioner has given the said vehicle on rent to Buddhi Cabs from 11th September 2009 to 11th May 2010. It is also stated that monthly rental of Rs. 35,000/ was paid for the Month of September by cheque dated 28th October 2009, which was dishonoured.

After collecting the said cheque on 28th October 2009, the Petitioner on 31st October 2009, learnt that the vehicle has been taken in to custody by the police for illegal transportation of Cannabis, which is an offence contrary to Section 54 of the Poison, Opium and Dangerous drugs Act.

The Petitioner further states that he took all the necessary precautions to ensure that the said vehicle would not be used for any illegal activity.

The Petitioner has adverted to the fact that he never gave the vehicle on hire to the 1st Accused and further more the owner of Buddhi Cabs had gone missing, and his whereabouts are not known.

Therefore it is the position of the Petitioner that he should not be held liable for the offence committed by the accused, for transporting the Cannabis. In the above inquiry the wife of the wife of the owner of Buddhi cabs had adduced evidence to the effect that the he had left the family and was unable to say about the business transaction he had with third party.

Therefore it is categorically stated by the Petitioner, that he has taken necessary precautions to prevent the use of the said vehicle for any illegal activity.

It is also pertinent to note the relevant Section deals with the forfeiture of the vehicle used in the commission of any offence under the Poison, Opium and Dangerous Drugs Act No.13 of 1984.

For better appreciation of the relevant Section 79 is reproduced herein below;

(1)“where any person is convicted of an offence against this ordinance or any regulation made there under, the Court shall order that all or any articles in respect of which the offence was committed and any boat, vessel, vehicle, aircraft , or airborne craft or equipment which has been used for the conveyance of such article shall, by reason of such conviction, be forfeited to the State.”

(2) Any property forfeited to the state under subsection (1) shall

(a) if no appeal preferred to the Court of Appeal against the relevant conviction, vest absolutely in the state with effect from in the State with effect from the date on which the period prescribed for preferring an appeal against such conviction expires;

(b) if an appeal has been preferred to the Court of Appeal against the relevant conviction, vest absolutely in the State with effect from the date on which such conviction is affirmed on appeal.

In this subsection “relevant conviction” means the conviction in consequence of which any property is forfeited to the State under subsection((1).

The process of confiscation of a vehicle involved in the commission of an offence particularly under Forest Ordinance, Exercise Ordinance, Cruelty to the Animals Act and Poison, Opium and Dangerous Act, it is deemed that the same principle is

applicable in respect of a third party to vit. The Registered owner who did not have any involvement in the commission of the offence.

The cardinal principle distilled in respect of the above proposition is in the case of MANAWADU .VS. ATTORNEY GENERAL- (1987) 2 SLR-30 which has stated thus;

“If the owner of the lorry who is not a party to the case is entitled to be heard on the of forfeiture of the lorry. If he satisfies the Court, that the accused committed the offence without his knowledge or participation, his lorry will not be liable to forfeiture”

The said salutary principle was also observed in the case of ORINTIAL FINANCE SERVICES CORPORATION LIMITED .VS. RANGE FOREST OFFICER AND ANOTHER- (2011) 51 SLR- 86- which was held thus;

“it is therefore seen under the existing law a vehicle transporting timber cannot be confiscated if the owner of the vehicle on a balance of probability establishes one of the following things;

- (1). That he has taken all precautions to prevent the use of the vehicle for the commission of the offence,
- (2). That the vehicle has been used for the commission of the offence without his knowledge.

Hence in the above setting it is abundantly clear that the Petitioner has rent the afore said vehicle to a cab service, on a written Agreement. It is noted in the said Agreement it is specifically stated that the said vehicle should not be used for an illegal purpose. Therefore it is apparent that the petitioner has taken all

precautions to avoid any offence been committed by using the said vehicle.

In the said back drop this Court is of the view that the Petitioner has proved his non involvement in the commission of the said offence on a balance of probability, to have the said vehicle released from confiscation.

Accordingly we are inclined to release the said vehicle, and set aside the order of the Learned High Court Judge dated 21st July 2014, made in the case bearing No. HC 2958/2013 in the High Court of Panadura.

JUDGE OF THE COURT OF APPEAL

W.M.M.Malinie Gunarathne, J

I agree,

JUDGE OF THE COURT OF APPEAL