

**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 154P (6) of
the Constitution read with
provisions of the High Court of the
Provinces (Special Provisions) Act
No.19 of 1990.

Officer-in-Charge,
Police Station,
Nochchiyagama

Plaintiff

VS.

**CA (PHC) 126/2006
PHC Anuradhapura Rev.
Application No.45/2005
M.C. Tambuttegama 56739**

W.A.D. Saman Wasantha Milroy.

Accused

AND

Mallika Arachchige Sherly George
Godwin Perera,
Mudukatuwa,
Marawila.

Applicant-Petitioner

VS.

01. Officer-in-Charge,
Police Station,
Nochchiyagama.

02.Hon. Attorney General

Respondents

AND NOW

Mallika Arachchige Sherly George
Godwin Perera,
Mudukatuwa,
Marawila.

Applicant-Petitioner-Appellant

VS.

01. Officer-in-Charge,
Police Station,
Nochchiyagama.

02.Hon. Attorney General.

Respondent-Respondents

BEFORE : **W.M.M. Malinie Gunaratne, J. and
P.R. Walgama, J.**

COUNSEL : Gamini Hettiarachchi for the Appellant
Anoopa de Silva, SSC for the Respondent

Argued on : 03.08.2015

Written submissions :

of the appellant filed on:11.12.2015

Decided on : 18.12.2015

Malinie Gunaratne, J.

The Applicant-Petitioner-Appellant (hereinafter called and referred to as the Appellant) has preferred this Appeal to challenge the propriety of the Judgment pronounced by the learned High Court Judge of Anuradhapura, dated 26.04.2006, which dismissed the application made to the said High Court to revise the Order of the learned Magistrate Anuradhapura, dated 05.07.2005.

The facts that have given rise to the present application are briefly as follows:

One W.A.D. Saman Wasantha Milroy, who was the accused in Case No. 56739, was charged in the Magistrate's Court of Tambuttegama on three charges namely:

- (i) Committed an offence under Section 2(1)(b) of the Cruelty to Animals Act by transporting 10 pigs in a manner of causing pain to them;
- (ii) committed an offence under Section 23(c)(1) of the Animals Act by transporting 10 pigs from one district to another without a transport permit, and
- (iii) committed an offence under Section 6 of the Animals Act by not furnishing a return to the Government Veterinary Surgeon, Anuradhapura, regarding the transporting of animals.

The accused pleaded guilty to the aforesaid charges leveled against him and accordingly the learned Magistrate imposed a fine of Rs.100/- on the 1st Count, Rs.200/- on the 2nd Count and Rs.200/- on the 3rd Count.

Thereafter an inquiry was held regarding the confiscation of the vehicle bearing No.48 – 6738 and at the end of the inquiry the learned Magistrate confiscated the vehicle on the basis that the registered owner had not been able to prove and satisfactorily convince that the vehicle had been used for the commission of the offence without his knowledge and that he had taken all precautions to prevent the use of the vehicle for the commission of the offence.

In this case the Appellant is the registered owner of the vehicle. Being aggrieved by the said Order he moved the High Court of Anuradhapura in revision of the aforesaid Order, but the learned High Court Judge by his Order dated 26.04.2006, dismissed the Petition of the Appellant affirming the learned Magistrate's Order dated 05.07.2005. Being aggrieved by the said order of the learned High Court Judge, the Appellant has preferred this appeal.

At the hearing of this Appeal, it was the first stance of the Counsel for the Appellant, that there is no provision in the Cruelty to Animals Act for the confiscation of a vehicle. The second stance was, although the Magistrate has the power to confiscate a vehicle on the 2nd and 3rd charges according to the definition given in the schedule of the Animals Act, transport of “**Pigs**” without a permit or return from the Government Veterinary Surgeon, is not an offence under the Animals Act.

I will now consider the arguments advanced by the learned Counsel for the Appellant in support of his contentions.

The sole question that arises for consideration in this appeal is whether transporting of “pigs” without a transport permit or a return from the Government Veterinary Surgeon is not an offence under the Animals Act and whether “pigs” come within the purview of “Animals” under the definition of Animals Act No. 29 of 1958.

The learned Counsel for the Appellant has drawn the attention of this Court to the schedule of the Animals Act. In that schedule the word “Animal” has been defined as follows:

“Animal means neat cattle (ela haraka) or a buffalo and in Part (IV) includes a sheep, goat, pig or poultry”.

It is relevant to note that the 2nd and 3rd charges have been framed against the Accused under Part II of the Animals Act which relates to the slaughter and transport of Animals. On examining the definition given to the word “Animal” in the Animals Act, “Animal” means **neat cattle (ela haraka) or a buffalo, and in Part (IV) includes a sheep, goat, pig or poultry.**

In view of the aforesaid definition, I am of the view that, for the transportation of pigs there is no requirement to obtain a transport permit or a return from the Government Veterinary Surgeon.

A careful examination of Part (IV) of the Animals Act clearly shows, it deals with **“Trespass by Animals”** which has no relevancy to this case.

Hence it is the view of this Court, that there is no conformity with the provisions of the Animals Act and the charges framed in the Magistrate's Court.

On perusal of the entirety of the Judgment it is apparent that the learned High Court Judge has failed to take cognizance of the law set out in the Animals Act and failed to consider the provisions of the Animals Act. The learned High Court Judge has considered only the legality of the order made by the learned Magistrate in relation to the confiscation of the vehicle.

Hence, I am of the view, that the learned High Court Judge was misdirected in law in affirming the Order of the learned Magistrate.

Taking into consideration all these matters, it is my considered view that the Judgment of the learned High Court Judge and the Order of the learned Magistrate cannot stand.

For the foregoing reasons, I allow the Appeal and accordingly set aside the Judgment of the learned High Court Judge dated 26.04.2006 and the Order made by the learned Magistrate dated 05.07.2005.

JUDGE OF THE COURT OF APPEAL

P.R.Walgama, J.

I agree

JUDGE OF THE COURT OF APPEAL

Appeal allowed.