

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

In the matter of an application for Revision under Article 138 and 154P (3) (b) of the Constitution and Sections 9 and 10 of the High Court of the Provinces (Special Provisions) Act, No:19 of 1990.

CA (PHC) APN No: 42/2014
HC Case No: HCR 147/2013

Range Forest Officer,
Forest Office,
Puttalam.

Complainant

Vs.

1. Ratweera Patabadige
Sandaruwan,
9th Mile Post,
Anuradhapura Road,
Karuwalagaswewa.
2. Pinidiya Arachchige
Asanka,
Tabbowa, Puttalam.

Accused

Pathirage Ann Rani Perera,
Kolinjadiya,
Wennappuwa.

Vehicle owner

AND BETWEEN

Pathirage Ann Rani Perera,
Kolinjadiya,
Wennappuwa.

Vehicle - Owner -
Petitioner

Vs.

1. Forest Officer,
Forest Office,
Puttalam.
2. Hon. Attorney General,
Attorney General's
Department,
Colombo 12.

Complainant -
Respondent

And Now Between

Pathirage Ann Rani Perera,
Kolinjadiya,
Wennappuwa.

Vehicle Owner -
Petitioner - Petitioner

Vs.

1. Forest Officer,
Forest Office,
Puttalam.
2. Hon. Attorney General,
Attorney General's
Department,
Colombo 12.

Complainant -
Respondents -
Respondents

Before : P.R. Walgama, J
: L.T.B. Dehideniya, J

Council : Nalin Ladduwahetti P.C. with Shantha
Jayawardhana for the Petitioner – Petitioner.
: Varunika Hettige SSC for the Respondent.

Argued on : 17.03.2016

Decided on : 15.07.2016

CASE- NO- CA (PHC)- APN- 42/2014- JUDGMENT- 15.07.2016

P.R. Walgama, J

This appeal is directed against the order of the Learned High Court Judge dated 19.12.2013 and the order of the Learned Magistrate dated 20.03.2013, by which orders the lorry that was involved in the transportation of timber without a valid permit was confiscated.

The facts of the case need mention in brief to appreciate the issue involved in this appeal are as follows;

The Petitioner is the registered owner of the Motor Lorry bearing No. 226-4220. The said lorry was engaged by two accused to transport timber without

a valid permit, and there by had committed an offence in terms of Section 40 read with Section 25 (1) of the Forest Ordinance.

The two accused pleaded guilty to the charge and was imposed a fine of Rs. 10,000/.

There after the Learned Magistrate held an inquiry as to the release of the vehicle and after the inquiry the Learned Magistrate by his order dated 20.03.2013 has confiscated the vehicle.

Being aggrieved by the said order the Petitioner invoked the revisionary jurisdiction of the Provincial High Court holden at Puttalam. The Learned High Court Judge after the inquiry in to application of the Petitioner had affirmed the order of the Learned Magistrate, by the order dated 19.12.2013.

It is against the said order the Petitioner had come by way or Revision to this Court to have the said impugned orders vacate or set aside.

It is submitted by the Counsel for the Petitioner that on the day in issue the Petitioner's son drove the vehicle taken from the custody of the petitioner's brother whom the petitioner has given for transportation, of bricks and sand.

The Petitioner's son was the 1st Accused in the action filed by the Respondent in the Magistrate Court. It is the contention of the Petitioner that the

vehicle was given to her brother, and her son had taken the vehicle without the knowledge of her brother.

It has been observed by the Learned Magistrate that the petitioner has concealed the fact that the 1st Accused was her son. It is seen from the testimony of the brother of the petitioner who testified to the fact that the said vehicle was given to him for the purpose of transporting the bricks and sand, and on this day in question the Petitioner's son had taken the vehicle without his knowledge.

The Learned Magistrate having considered the law pertaining to the current issue had observed that fact that the Petitioner has not established the fact that she had taken all necessary precautions to prevent the said crime committed under Forest Ordinance No.65 of 2009. Thus the Learned Magistrate proceeded to confiscate the said vehicle.

Being aggrieved by the said order the Petitioner sought to invoke the revisionary jurisdiction of the High Court. After the inquiry the Learned High Court Judge was of the view that the Learned Magistrate has arrived at the correct decision and had up held the said impugned order.

The counsel for the 2nd Respondent in opposing the above application had raised a preliminary objection

as to the maintainability of the present application of the petitioner.

Primary bone of contention is that the failure on the part of the petitioner to aver the existence of the exceptional circumstances, for this court to exercise the Revisionary jurisdiction in terms of the Constitution.

Further it is contended by the counsel for the Respondent that the petitioner has failed to established the fact that the said impugned orders of the Learned High Court Judge and the Learned Magistrate, are erroneous and fundamentally wrong.

It is evident from the testimony of the petitioner that she has given the lorry to her brother for two years. Therefore within the said period the petitioner would have not had any control over the vehicle and there by had failed to take all precautions to prevent any commission of an offence of this nature.

The judgment of his Lordship in the case of DHARMARATNE .VS. PALM PARADISE CABANAS LTD (2003) volume 3 page 24 has observed thus;

“ existence of exceptional circumstances is the process by which the Court selects the cases in respect of which the extraordinary method of rectification should be adopted, if such a selection process is not there revisionary jurisdiction of this court will become a

gate way of every litigant to make a second appeal in the garb of a revision application or to make an appeal in situations where the legislature has not given a right of appeal”.

It is seen from the submissions tendered by the counsel for the Respondent- Petitioner, has completely ignored or overlooked to answer the said vital issue raised by the Respondent, as such the issue should be resolved in favour of the Respondent.

Hence in the above context this court is of the view that there is no exceptional circumstances been averred by the petitioner for this court to exercise its revisionary jurisdiction to resolve the matter in issue.

Application is dismissed accordingly. Subject to costs fixed at Rs.5000/-.

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya, J

I agree.

JUDGE OF THE COURT OF APPEAL