

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

In the matter of an appeal from the Judgment
of Revision Application by the Provincial High
Court of Gampaha.

**Court of Appeal case no.
CA/PHC/149/2009**

**H.C. Gampaha case no.
33/2005**

Officer in Charge,
Police Station, Ragama.

Complainant

Vs.

Jayasinghe Arachchige Wasantha Nihal,
Accused

W.A.P.B. de Seram,
Vehicle Claimant Complainant

And Between

Liyana Arachchige Ivan Gamini de Silva
No.257, Seram Graden, Kurukulawa, Ragama.
Petitioner

Vs.

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

Respondents

And Now

Liyana Arachchige Ivan Gamini de Silva
No.257, Seram Graden, Kurukulawa, Ragama.

Petitioner Appellant

Vs.

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

Respondents Respondents

Before : H.C.J.Madawala J.

: L.T.B. Dehideniya J.

Counsel : Petitioner Appellant absent and unrepresented.

: D.S.Soosaithas SSC for the Respondent Respondent.

Argued on : 20.09.2016

Written submissions filed on 08.11.2016 (only by the respondent)

Decided on : 28.11.2016

L.T.B. Dehideniya J.

This is an appeal from the High Court of Gampaha.

On a complaint of robbery of a vehicle received by the police, the Accused was arrested and the vehicle in dispute was also taken into custody from the Accused and were produced before the Magistrate Court. After conducting inquiries the police informed the Court that the vehicle was registered in the accused's name and there is no crime committed and moved to discharge the Accused. Considering the report filed by the police, the learned Magistrate discharged the Accused and released the vehicle to the person from whom it was recovered, that is the Accused. (There was a revision application before the High Court of Gampaha challenging the release of the vehicle on a bond at the first instance and was dismissed. This revision application is not from that order.) After discharging the Accused an application had been made to the Magistrate Court on 27.05.2005 by an Attorney at Law to issue notice on the Accused. The learned Magistrate refused the application. The Petitioner Appellant (hereinafter sometime called and referred as to the Petitioner) instituted a revision application in the High Court of Gampaha to revise the said order. The learned High Court Judge after inquiry dismissed the application. Being aggrieved by the said order the Petitioner appealed to this Court.

The Accused and the registered owner of the vehicle involved in this case is Jayasinghe Arachchige Wasantha Nihal. The complaint on the robbery of the vehicle was made to the police by W.A.P.B. de Seram. The revision application to the High Court was by one Liyana Arachchige Ivan Gamini de Silva. He is neither the Accused nor the Complainant. He doesn't claim the vehicle too. His application is to issue notice to the Accused and to allow further steps to be taken as per the complaint of the vehicle claimant complainant. If the Petitioner is not claiming the vehicle, he has no *locus standi* to maintain an application on behalf of a third party claimant.

In his petition to the High Court the Petitioner doesn't plead that how he was aggrieved by the order of the learned Magistrate. There is no reason for him to be aggrieved on a decision made against a third party in relation to a vehicle where he has no interest. Even if the application is considered in the line of an aggrieved party, since the Petitioner is not an aggrieved party, he has no *locus standi* to institute a revision application.

The police conducted inquires on the complaint received on the robbery of the vehicle and found that there was no crime committed and decided not to institute a criminal action against the Accused. Unless otherwise directed by the Attorney General, the police have the right to decide whether there is evidence to institute criminal action. If the inquires reveled that there is no crime committed the only option available to police is to inform the Court that no crime committed. In the present case the police did informed the Court accordingly.

If no crime committed, the property taken over by the police from the person suspected that has committed the crime, must be returned to the person from whom it was taken over. The reason is if there is no crime is committed, the property is also not involved in any crime. If there is any dispute to the ownership of the property, the parties have to resolve to civil action to vindicate their rights.

Mariyathanasan v. Margaret Rose 71 NLR 164

When a police officer seizes any property alleged to have been stolen but does not proceed with the case, the Magistrate has no jurisdiction to order the restoration of the property to a person other than the person from whose possession it was taken.

K. Piyadasa v. R. M. Punchi Banda 62 NLR 307

Under section 419 of the Criminal Procedure Code the property seized by the Police must, if there is no inquiry or trial pending in the Magistrate's Court, be restored to the person who had possession of it at the time of the seizure and not to any other person who claims it.

COSTA v. PEIRIS. 35 New Law Reports 326 at 328,

The possession of property cannot be lightly interfered with, and I do not think it has power under the section to order property seized and removed from the possession of one person to be given to another person. If a Court under section 413 finds that an offence has been committed in respect of property produced before it or that it has been used for the commission of an offence, then it may make order interfering with the possession of the person from whom the property was taken. If it does not arrive at one of these findings then the "person entitled to possession" is the person from whom it was taken. Any person disputing his rights must do so in civil proceedings

No criminal action being instituted against the Accused, the learned Magistrate correctly returned the vehicle to the person from whom it was taken over by the police. The learned High Court Judge has correctly found that there are no errors on the face of the order of the learned Magistrate.

I see no reason to interfere with those findings.

The appeal is dismissed.

Judge of the Court of Appeal

H.C.J.Madawala J.

I agree.

Judge of the Court of Appeal