

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

In the matter of an Appeal against  
judgment of Provincial High Court  
exercising its revisionary jurisdiction.

C A (PHC) 69 / 2014

Provincial High Court of

Sabaragamuwa Province (Embilipitiya)

Case No. REV 06 / 2013

Madanasinghage Upali Ananda,  
Magaha Koratuwa,  
Kanumul Junction South,  
Walasmulla.

**CLAIMANT - PETITIONER -**

**APPELLANT**

-Vs-

1. Range Forest Officer,

Embilipitiya.

2. Hon. Attorney General,

Attorney General's Department

Colombo 12.

**RESPONDENT - RESPONDENTS**

**Before:      K K Wickremasinghe J**

**P. Padman Surasena J**

Counsel : Anura Meddegoda PC with Asela Muthumudalige

for the Claimant-Petitioner-Appellant.

Varunika Hettige DSG for the Attorney General.

Decided on : 2017 - 10 – 24

### JUDGMENT

### **P Padman Surasena J**

Learned counsel for both Parties, when this case came up on 2017-07-31 before us, agreed to have this case disposed, by way of written submissions, dispensing with their necessity of making oral submissions. They stated that they had already filed written submissions and the judgment could be pronounced on that. Therefore, this judgment would be based on the material that the parties have so adduced before this Court.

The 1<sup>st</sup> Respondent-Respondent (hereinafter sometimes referred to as the 1<sup>st</sup> Respondent) produced two accused in the Magistrate's Court of Embilipitiya alleging that they transported timber without a permit by vehicle bearing No. 227-1261. Upon the two accused pleading guilty to the charges framed against them, learned Magistrate had convicted and sentenced them.

The Claimant-Petitioner-Appellant (hereinafter sometimes referred to as the Appellant) had thereafter come forward to claim the vehicle. Learned Magistrate after an inquiry, by his order dated 2013-05-08, had ordered that the said vehicle be confiscated.

Being dissatisfied with the said order of the learned Magistrate, the Appellant had made an application to the Provincial High Court seeking a revision of the learned Magistrate's order. The Provincial High Court after inquiry, by its judgment dated 2014-06-24, had refused that application holding that there is no basis to revise the learned Magistrate's order. The Appellant has filed this appeal in this Court against the said order of the Provincial High Court.

Three witnesses namely

- i. the Appellant - Madanasinghege Upali Ananda,
- ii. the Appellant's wife – Kodithuwakku Arachchige Latha,
- iii. accused driver – Dhanushka Manoj

had testified before the learned Magistrate in the course of the inquiry, which led to the confiscation of this vehicle.

The Appellant - Madanasinghege Upali Ananda, in his evidence has stated;

- i. that he is the registered owner of the vehicle,
- ii. that the said vehicle was generally kept at the premises of his house,
- iii. that it was his son Dhanushka Manoj who drove this vehicle when it was detected with illicit timber,
- iv. that he had advised his son (driver) not to engage in unlawful activities

The Appellant admittedly is a timber mill owner. He on his own admission knew that his son was going to transport timber. It is his position that his son told him that permits are not required for the kind of timber to be transported on that date.

It is the evidence of the Appellant's wife, Kodithuwakku Arachchige Latha, that her son is a stubborn person who does not follow advises given.

It is appropriate at this juncture to look at the liability of a registered owner of a vehicle involved in a commission of a crime, which attracts a penalty of confiscation.

In the case of K Mary Matilda Silva V P H De Silva, Inspector of Police, Police Station, Habarana<sup>1</sup>, which is a case under the Animals Act, this Court

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<sup>1</sup> CA (PHC) 86/97 Decided on 2010-07-08

took the view that in this type of situation giving mere instructions is not sufficient to discharge the said burden. This Court went on to hold in the said case that the owner of the vehicle must not only prove that genuine instructions were in fact given but also took every endeavor to implement the instructions so given. This Court in that case had held that the failure to prove the above requirements would indicate that indeed no genuine instructions had been given.

This Court has to observe in the instant case that the claimant admittedly knew that his son took the vehicle for transportation of timber. Therefore, the claimant had knowledge about the purpose as to why his son took away the vehicle and that it was to transport timber.

The claimant himself is a timber mill owner and hence should have known (more than anybody else) about the gravity of timber being transported by his vehicle without a permit. However, he has not taken any step to verify whether indeed there was a permit for such transportation or not. This is despite the fact that he was fully aware of the stubborn nature of his driver son. Thus, the claimant's case, even if his evidence is believed, remains giving mere instructions, which cannot be taken as having discharged the burden referred to above, placed upon him by law.

In these circumstances, the submission of the learned President's Counsel for the Appellant that he had taken all precautions, to prevent the use of the said vehicle for the commission of the said offence, has to be rejected.

Perusal of the order made by the learned Magistrate and the learned High Court Judge shows to the satisfaction of this Court that this Court cannot find any basis to deviate from the course of action adopted by those Courts in this case.

Further, as pointed out by the learned DSG, one must be mindful that in the instant case the Provincial High Court was called upon to exercise its revisionary jurisdiction. According to the caption of the revision application filed in the Provincial High Court, it is under Article 154 P (3) (b) of the Constitution read with section 5 of the High Courts of provinces (Special provisions) Act No. 19 of 1990 that the said application has been made .

Article 154 (3) (b) states that notwithstanding anything in Article 138 and subject to any law, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province; ....".

What section 5 of the High Courts of provinces (Special provisions) Act No. 19 of 1990 has done is to make the provisions of written law applicable to appeals and revision applications made to Court of Appeal applicable to such cases filed in the Provincial High Courts. Thus, chapter XXIX of the Code of Criminal procedure Act No. 15 of 1979, has been made applicable to the exercise of revisionary jurisdiction by the Provincial High Courts.

According to section 364 therein, the Court can examine the record of any case for the purpose of satisfying itself as to the legality or propriety of any order passed therein or as to the regularity of the proceedings of such Court. Thus, three aspects which a Court could consider in revisionary proceedings have been specified by that section. They are legality, propriety and regularity.

In the instant case there is no complain about the last aspect i.e. regularity of the proceedings.

This Court has to agree that there had been no basis for the Provincial High Court to interfere with the conclusion of the learned Magistrate as there are ample reasons to satisfy itself with its legality and propriety.



In these circumstances, this Court has no basis to interfere with the order of the learned High Court Judge. Thus, this Court decides to affirm the judgment dated 2014-06-24 of the learned Provincial High Court Judge as well as the order dated 2013-05-08 of the learned Magistrate and dismiss this appeal.

We make no order for costs.

**JUDGE OF THE COURT OF APPEAL**

**K K Wickremasinghe J**

I agree,

**JUDGE OF THE COURT OF APPEAL**