

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

In the matter of a revision under  
article 138 of the Constitution of the  
Democratic Socialist Republic of Sri  
Lanka.

A.S.Udaya, Excise Inspector,  
Excise Head Quarteres, No. 28  
Staple Street Colombo 02.

**Complainant**

Vs

Diyagu Arachchige Jayathilake,  
No. 1, Mawanella, Uthuwankanda

**Accused**

CA (PHC) : 71/2012

HC Kegalle Case No: PHC 3945

And

Kinigamayalage Jayasinghe,  
No. 10, Uthuwankanda

**Claimant Petitioner**

Vs

(1) The Hon. Attorney General  
The Attorney General's Department  
Colombo 12.

(2) A.S.Udaya, Excise Inspector,  
Excise Head Quarters, No. 28  
Staple Street, Colombo 02.

**Complainant Respondents**

(3) Diyagu Arachchige Jayathilake,  
No. 1, Mawanella, Uthuwankanda

**Accused Respondent**

**Respondent Respondent**

(4) Abdul Azeez Safiya  
Church Road,  
Hinguloya,  
Mawanella.

**Registered Owner**

**Respondent Respondent**

(4) a A.C.M. Ameer  
Church Road, Hinguloya,  
Mawanella.

**Substituted Responent**

**Respondent**

**And now between**

Kinigamayalage Jayasinghe,

No. 10, Uthuwankanda

**Claimant Petitioner**

**Appellant**

**Vs**

(1) The Hon. Attorney General

The Attorney General's Department

Colombo 12.

**Respondent Respondent**

(2) S.A. Udaya, Excise Inspector,

Excise Head Quarteres, No. 28

Staple Street, Colombo 02.

**Complainant Respondents**

**Respondent Respondent**

(3) Diyagu Arachchige Jayathilake,

No. 1, Mawanella, Uthuwankanda

**Accused Respondent**

**Respondent Respondent**

(4) Abdul Azeez Safiya

Church Road,

Hinguloya,

Mawanella.

**Registered Owner Respondent**

**Respondent Respondent**

(4) a A.C.M. Ameer

Church Road, Hinguloya,

Mawanella.

**Substituted Respondent**

**Respondent Respondent**

Before: K.K.Wickremasinghe J.

P.Padman Surasena J.

COUNSEL: AAL W. Dayaratne PC for the Appellant

DSG Varunika Hettige for the Respondent

ARGUED ON: 18/09/2017

DECIDED ON: 28/11/2017

### **JUDGMENT**

**K.K.Wickremasinghe J.**

The Appellant in this case is the registered owner of the vehicle bearing No.43-9890. The accused was the driver of the vehicle at the time of detection. He was arrested on 19.03.2009 for possession and transporting 506 bottles of liquor. The driver pleaded guilty. The bottles were confiscated and an inquiry for the confiscation of the vehicle was held. The learned Magistrate confiscated the vehicle. Being aggrieved by that order the appellant sought to revise the same in the High Court. The Learned High Court Judge affirmed the order of the Learned Magistrate.

At the Production inquiry, the appellant gave evidence. The offence was taken place on 09.03.2009. At the time of offence, the appellant was not the registered owner. The vehicle was registered on his name only on the 17.04.2009.

The appellant in his evidence at the inquiry stated that he works at a liquor bar in Mawanella. At the time of offence, the accused driver was transporting liquor to Mawanella. The appellant bailed out the driver.

The registered owner did not mention that he took any precautions to prevent the offence being committed, but bailed out the accused driver of the vehicle.

The appellant, not being the registered owner at the time of offence cannot claim the vehicle.

In the case of **Kavalahinge Shantha Kumara Vs Rakwana Range officer [CA(PHC0162/2010)]** Their Lordship held that *"the certificate of registration of a motor vehicle is regard as the best evidence to establish the ownership of a vehicle"*

In the instant case, the best available evidence demonstrates that the vehicle does not belong to the appellant. There for the appellant is debarred from claiming the vehicle which he does not own.

Further, the appellant was unable to prove that he took all precautions to prevent the offence taking place.

In the case of **K. Mary Matilda Silva Vs I.P. Habarana**, it was held that *"the order of confiscation cannot be made if the owner proves to the satisfaction of court:*

*(1) that he has all precautions to prevent the use of the vehicle for the commission of the offence or*

*(2) that the vehicle has been used for the commission of the offence without his knowledge".*

The appellant has the burden to prove on a balance of probability that he has no knowledge and that he took all necessary precautions to stop an offence being committed. Therefor it is apparent that the Petitioner has not taken precautions or necessary steps to prevent an offence being committed by the accused driver of the vehicle. Further the appellant was unable to prove on balance of probability that he has no knowledge of the offence being committed by the accused.

Thus, there is no ground to reverse the order of the Learned High Court Judge, or the order of the learned Magistrate in confiscating the Vehicle bearing Registered No. 43- 9890.

Appeal is hereby dismissed without costs.

**JUDGE OF THE COURT OF APPEAL**

**P.Padman Surasena J.**

I agree,

**JUDGE OF THE COURT OF APPEAL**

**Cases Referred to:**

1. K. Mary Matilda Silva Vs I.P. Habarana CA (PHC) 87/97 decided on 08.07.2010
2. Kavalahinge Shantha Kumara Vs Rakwana Range officer [CA(PHC0162/2010)]