

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

In the matter of an application for Revision made in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka seeking to revise and set aside the order made in HC Ratnapura.

CA (PHC) APN 39/2017
HC Ratnapura.
Case No. HCR 27/2010

The Hon. Attorney General,
Attorney General's Department,
Colombo 12.
Complainant

Vs

Dolamulla Hewa Kankanamge
Priyantha

Accused

AND

Epa Kankanamlage Chandrea
Kanthi Kanka Muduna,
Demata Road, Yodagala,
Thanamalwila

Claimant

Vs

The Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondent

AND NOW BETWEEN

EpaKankanamgeChandreaKanthiKa
nkaMuduna
Demata Road, Yodagala,
Thanamalwila.

Claimant-Petitioner

Vs

The Hon. Attorney General
Attorney General's Department,
Colombo 12.

Respondent-Respondent

BEFORE: P. Padman Surasena, J. (P/CA)

K.K. Wickremasinghe, J.

COUNSELS: AAL Ranil Samarasooriya for the Claimant-Petitioner

DSG Varunika Hettige for the State

Written submissions for the petitioner filed on: 12/12/2017

Written submissions for the respondent filed on: 12/12/2017

DECIDED ON: 24/01/2018

ORDER

K.K.Wickremasinghe, J.

The Claimant- Petitioner in this case is the registered owner (hereinafter referred to as the 'Petitioner') of the van bearing number 250-2383 sought a claim inquiry. Thereafter, at the conclusion of the inquiry, the said vehicle was confiscated. The petitioner sought to revise the said order of the High Court of Ratnapura. The petition was dismissed. Being aggrieved by the said dismissal, the petitioner has filed a Revision Application before this court. The petitioner made an application in the High Court of Ratnapura to revise the said order. The accused was the driver of the said vehicle at the time of detection. He was indicted in the High Court of Ratnapura for trafficking and possession of six kilos and five hundred and ten grams of ganja. On the 13th January 2011, the Accused pleaded guilty to both charges mentioned above. Accordingly, the said accused was convicted and sentenced.

The contention of the petitioner was that she was the registered owner of the vehicle bearing number 250-2383. The petitioner got married in 1997 and the husband who was a soldier of Sri Lanka Army died in action. At the time of his death, the petitioner had a child who was then five months. Using compensation received from Sri Lanka Army and the finance facility that was obtained from Central Finance PLC, purchased the said vehicle. Since the petitioner had no license to drive the vehicle, she employed a driver (the Accused) who was distantly related to the petitioner and hired the said vehicle. She had to pay a monthly

installment of Rs. 38,000 to the Central Finance PLC on the said finance facility. The petitioner's contention was that she instructed the driver not to use the said vehicle for any illegal activity and the said vehicle was generally parked at the residence of the petitioner but the petitioner does not inspect the vehicle at the time of cleaning. Further submitted that she had not noticed any change being made to the vehicle and the petitioner had no knowledge of the commission of the offence by the accused.

The petitioner in her evidence had admitted that she lied over other matters whilst giving evidence. She also claimed that she had an agreement between the accused and her but failed to produce the same. When perusing the brief, it is noted that there were some additional repairs done to the vehicle and there was a special place in the van under the seat and it was appeared to be a setup for the transportation of substance. The petitioner's contention was that she did not see the extra repair done to the vehicle. After the confiscation, the petitioner had gone to see the vehicle only after two days.

It is decided law that in a vehicle inquiry, the claimant has to discharge the burden on a balance of probability that the claimant took all precautions to prevent the offence from taking place.

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

Therefore, the claimant of the vehicle has to prove on a balance of probability that he has taken all precautions to prevent the offence being committed and he had no knowledge of the offence. It was illicit that the petitioner had not taken any step to inspect or even look at the vehicle. Therefore petitioner is manifest of a person for not having taken any precaution regarding her own property rights. The petitioner submitted that she had instructed the accused not to use the vehicle for illegal purpose but failed to check the vehicle. Therefore, it is apparent that the

petitioner has not discharged her burden according to law. Thus the petitioner has not proved on a balance of probability that she had taken all precautions to prevent an offence being committed.

In this case, the petitioner has to demonstrate exceptional circumstances to invoke the revisionary jurisdiction of this court. But, the petitioner has failed to do so. Therefore, considering the above facts, we affirm the order of the learned High Court Judge of Ratnapura.

The Revision Application is hereby dismissed without cost.

JUDGE OF THE COURT OF APPEAL

P.Padman Surasena J.

I agree,

PRESIDENT OF THE COURT OF APPEAL

Cases Referred to:

1. Mary Matilda Silva Vs I.P. Habarana CA (PHC) 87/97 decided on 08.07.2010