

**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.

CA/PHC/APN/100/16
High Court Kuliyaipitiya
HC REV 14/2013
MC Kuliyaipitiya 79727

Officer in Charge, Police Station,
Narammala

Complainant

Vs

Dukgath Mudiyanseelage Sanantha
Neel Kumara, Pahamune, Pahamune

Accused

AND

Hewawasam Attanayake Mudalige
Kamal Krishantha

No. 97/01, Koswatta, Udugampola.

Claimant

AND THEN BETWEEN

Hewawasam Attanayake Mudalige
Kamal Krishantha

No. 97/01, Koswatta, Udugampola.

Claimant-Petitioner

Vs

1. Officer in charge, Police Station,
Narammala

Complainant-Respondent

2. Hon. Attorney General
2nd Respondent

AND NOW BETWEEN

Hewawasam Attanayake Mudalige
Kamal Krishantha

No. 97/01, Koswatta, Udugampola.

Claimant-Petitioner-Petitioner

Vs

1. Attorney General

2nd Respondent-Respondent

BEFORE: P.Padman Surasena, J. P(C/A)

K.K.Wickremasinghe, J.

COUNSEL: AAL Tenny Fernando for the Petitioner

DSG Varunika Hettige for the Respondent

WRITTEN SUBMISSION FOR THE RESPONDENT FILED ON: 11/12/2017

ARGUED ON: 02/11/2017

DECIDED ON: 22/01/2018

ORDER

K.K.Wickremasinghe J.

The Petitioner in this case is the registered owner (hereinafter referred to as the 'Petitioner') of the lorry bearing No.226-6075. The Accused was the driver of the vehicle at the time of detection. He was arrested for transporting timber without a valid permit. He was charged in the Magistrate Court of Kuliyaipitiya under the Forest Ordinance. The Accused pleaded guilty to the charged and accordingly he was sentenced. Thereafter, an inquiry was held with regard to the confiscation of the lorry. At the conclusion of the inquiry, the Learned Magistrate confiscated the lorry bearing No. 226-6075. Being aggrieved by the said order, the Petitioner sought to revise the same in the High Court of Kuliyaipitiya, where the said revision application was dismissed. The contention of the Petitioner was that he gave the vehicle to a relative who was the Accused for the purpose of selling the above mentioned lorry. The said vehicle was kept in the custody with the Accused for two months. The Accused was residing sixty Kilometers away from the Petitioner. At that point of time, the Petitioner claimed that the instructions were given to the Accused by him not to use the vehicle for an illegal purpose.

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 taken 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. In the present case, the Petitioner stated in his evidence that he gave the vehicle to a relative, who was the Accused, for the purpose of selling it. It was elicited that the petitioner had not taken any step to inspect or even look at the vehicle for two months. Therefore Petitioner is manifest of a person for not having taken any precaution regarding his own property rights. The Petitioner

submitted that he had instructed the Accused not to use the vehicle for illegal purpose. That wordings demonstrate the fact that the Petitioner had not in fact, given the vehicle to sell but for the use of the Accused. Anyhow, the Petitioner had confessed that he had not seen the vehicle for two months. Therefore, it is apparent that the Petitioner has not discharged his burden according to law. That is that the Petitioner has not proved on a balance of probability that he had taken all precautions to prevent an offence being committed.

The order of the High Court Judge has delivered the order by exercising his revisionary jurisdiction is sound in law.

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

The Revision Application is hereby dismissed without costs.

JUDGE OF THE COURT OF APPEAL

P.Padman Surasena J. (P/CA)

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