

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

**An Appeal under Article 154 and 6 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka read with Section 9
of the High Court of the Provinces (Special
Provisions) Act, No.19 of 1990**

Office-in-Charge,
Police Station,
Nagoda.

Complainant

CA PHC 0059 /2020

Vs.

High Court of Galle
HC 341/2018

MC- Baddegama
Case No. 96066

1. Katuneliya Gamage Dilshan Theekshana
Kumara,
Wila Mawatha,
Unanvitiya.

Accused

2. Ganegoda Gamage Indika Sudarshani,
Bandaranayakapura,
Udalaramaththa.

Registered-Owner

3. Peoples Leasing Company,
Maradana Road,
Colombo 08.

Absolute-Owner

AND THEN BETWEEN

Ganegoda Gamage Indika Sudarshani,

Bandaranayakapura,
Udalamattha.

Registered-Owner- Petitioner

Vs.

Office-in-Charge,
Police Station,
Nagoda.

Complainant-1st Respondent

Katuneliya Gamage Dilshan Theekshana
Kumara,
Wila Mawatha,
Unanvitiya.

Accused-2nd Respondent

Peoples Leasing Company,
Maradana Road,
Colombo 08.

Absolute Owner- 3rd Respondent

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

Complainant-4th Respondent

AND NOW BETWEEN

Ganegoda Gamage Indika Sudarshani,
Bandaranayakapura,
Udalamattha.

Registered Owner- Petitioner-Appellant

Vs.

Office-in-Charge,
Police Station,
Nagoda.

Complainant-
1st Respondent-Respondent

Katuneliya Gamage Dilshan Theekshana
Kumara,
Wila Mawatha,
Unanvitiya.

Accused-2nd Respondent-
Respondent

Peoples Leasing Company,
Maradana Road,
Colombo 08.

Absolute Owner- 3rd Respondent-
Respondent

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

Complainant- 4th Respondent-
Respondent

Before: B. Sasi Mahendran, J.
 Amal Ranaraja, J.

Counsel: Thanuka Nandasiri for the Appellant.

Wishwa Wijesuriya, S.C. for the Respondents.

Supported on: 06.03.2025

Decided on: 27.03.2025

ORDER

AMAL RANARAJA, J.

1. The Registered Owner-Petitioner-Appellant's (hereinafter referred to as the "appellant") husband, a registered-contractor has utilised the vehicle bearing registration no. 47-4650 for purposes connected to his business such as the transport of building material and labourers to the building sites.

2. On 24.12.2017, the husband of the appellant as per the usual practice has utilised the particular vehicle to transport building material/labourers to a building site situated in a school in *Yakkalamulla Kottegoda*. Unknown to the appellant or her husband, the *Nagoda* Police had arrested the driver of such vehicle for transporting timber without a valid permit in terms of section 24(1) read with section 25(2) and section 40 of the Forests Ordinance No. 16 of 1907 (as amended). The *Nagoda* police has also seized the said

vehicle bearing registration no. 47-4650 which had been used to transport the timber.

3. Thereafter, the Officer-in-Charge of the *Nagoda Police Station* has filed action in the *Baddegama Magistrate Court* against the driver for transporting timber without a valid permit, an offence in terms of section 24(1) and section 40 of the Forest Ordinance. The driver (as the “accused”) upon pleading guilty to the charge has been convicted and sentenced.
4. Subsequently, a confiscation inquiry has been held regarding the vehicle bearing registration no. 47-4650. At the conclusion of the inquiry, by order dated 03.08.2018, the Learned Magistrate has ordered the confiscation of the said vehicle. Aggrieved by the order, the appellant has filed an application in revision [HC RA 341/2018] in the *High Court of Galle*. The Learned High Court Judge by his order dated 17.06.2020 has dismissed the revision application and affirmed the order of the Learned Magistrate dated 03.08.2018. The appellant also being aggrieved by the order of the Learned *High Court Judge of Galle* date 17.06.2020 has preferred the instant appeal to this Court.
5. The facts of this appeal were not disputed. It is common ground that the officer-in-charge of the *Nagoda Police Station* had instituted proceedings against the driver i.e. *Theekshana Kumara* for

transporting Nadun and Mahogany timber valued at Rs. 386,293.61 on 24.12.2017 without a permit and thereby committing an offence punishable under sections 24(1), 25(2) and 40 of the Forest Ordinance No. 06 of 1907 (as amended).

6. **Section 40 of the Forest Ordinance No. 16 of 1907 (as amended)** provides,

“(1) Where any person is convicted of a forest offence –

(a) All timber of forest produce which is not the property of the State in respect of which such offence has been committed; and

(b) all tools, vehicles, implements, cattle and machines used in committing such offence,

shall in addition to any other punishment specified for such offence, be confiscated by Order of the convicting Magistrate:

Provided that in any case where the owner of such tools, vehicles, implements and machines used in the commission of such offence, is a third party, no Order of Confiscation shall be made if such owner proves to the satisfaction of the Court that he had taken all precautions to prevent the use of such tools, vehicles, implements, cattle and machines, as the case may be, for the commission of the offence.

(2) Any property forfeited to the State under subsection (1) shall –

(a) if no appeal has been preferred to the Court of Appeal against the relevant conviction, vest absolutely in the State with effect from the

date on which the period prescribed for preferring an appeal against such conviction expires;

(b) if an appeal has been preferred to the Court of Appeal against the relevant conviction, vest absolutely in the State with effect from the date on which such conviction is affirmed on appeal.

In this subsection, “relevant conviction” means the conviction in consequence of which any property is forfeited to the State under subsection (1)”.

7. **Section 40** of the **Forest Ordinance** states that upon a conviction, all timber and forest produce that have been the subject matter of the offence and vehicles used for the commission of such offence would be confiscated. If the owner of a vehicle himself was the accused in the preceding case then the issue before a Court in a confiscation inquiry will not be complicated. However, if the owner is a third party, it would be necessary for a Court to ascertain whether the offence has been committed by a particular accused with the knowledge and the connivance of the owner of such vehicle used for the commission of the forest offence.

8. In ***The Finance Company PLC vs. Chandana and Others [SC Appeal No. 105A/2008 and SC. (SPL) L. A.166/2008]***, decided on 30.09.2010, Dr. Shirani Bandaranayake CJ has stated,

“(a) In terms of section 40 of the Forest Ordinance as amended, if the owner of the vehicle in question was a third party, no order of

confiscation shall be made if that owner had proved to the satisfaction of the Court that he had taken all precautions to prevent the use of the said vehicle for the commission of the offence.

(b) It would be necessary for the owner of the vehicle to establish that the vehicle that had been used for the commission of the offence had been so used without his knowledge and that the owner had taken all precautions available to prevent the use of the vehicle for the commission of such an offence".

9. The Learned Counsel for the appellant has contended that the Learned Magistrate has erred in concluding that the registered owner had not taken all precautions available to prevent the use of the vehicle for the commission of the offence stated in the charge and that the Learned High Court Judge erred in evaluating evidence that had not been admitted at the confiscation inquiry and remained outside the scrutiny of the legal process, rendering it irrelevant in the eyes of the law. He has further contended that, unadmitted evidence has created substantial gaps in understanding and has influenced the inquiry's fairness.

10. The appellant as the sole witness called to give evidence on behalf of the owner has declared that she was the registered owner of the vehicle in question. That she has provided explicit instructions to the driver regarding the use and parking of the vehicle to ensure it is not

involved in any unlawful activities. Specifically, she has instructed the driver to refrain from using the vehicle to commit any offences. Additionally, to further safeguard against the potential misuse of the vehicle, she has directed the driver to park it in the garden of her house at the end of each day. This precaution aims to minimise the risk of the vehicle being used unlawfully, the driver it is stated by following those instructions can maintain the integrity of the vehicle and uphold the law.

11. The appellant's evidence as the registered-owner is both cogent and compelling. As a witness, the appellant has not been impeached and therefore her testimony stands strong and reliable. She has presented irrefutable evidence demonstrating on a balance of probability that she has taken the necessary precautions to ensure that no offence is committed using her vehicle. Moreover, she has made diligent efforts to maintain both the integrity of the vehicle and adherence to the law.

12. In ***Adambarage Kelum Thushantha Alwis vs. The Attorney General [CA (PHC) 211/ 2019]*** decided on 07.02.2023, Iddawela J, has stated,

"However, it is more appropriate to note that corroboration of evidence is not imperative where there is irrefutable evidence at face value, provided by the appellant to satisfy the court on a balance of

probability that necessary precautionary measures have been taken as a reasonable owner of the vehicle to prevent the commission of offences by using the vehicle."

13. When considering the contents quoted above, it is clear that if indisputable evidence is provided by the appellant to satisfy the Court on a balance of probability of the precautionary measures taken by her to prevent the use of the particular vehicle to commit an offence, then evidence to corroborate the narrative of the appellant is not essential.
14. Further the Learned High Court Judge has concluded that the appellant did not have control over the vehicle in issue. This determination has been based on the contents of a document that had not been admitted as evidence during the confiscation inquiry. Such determination, therefore has not been based on a fact in evidence. In such circumstances, by relying on such document, the Learned High Court Judge has erred in his understanding;

"මෙම පෙන්සලකාරිය හැරුණු කොට ගෙන වෙනත් කිහිපි යාක්ෂිකරුවෙකු යාක්ෂි ලබාදී තැන. ඇය විභින් යාක්ෂි ලබාදීමේදී අදාළ වාහනයේ ලියාපදිංචි සහනිකයේ පිටපතක් ගෙනු කර ඇති අතර එහි පරම අධිනිකරු පිපල්ස ලිංග. සමාගම බව පෙනී යන අතර ඒ සමග සමානය ව්‍යවහරයේදී අක්ලියට්ලක් වශයෙන් හුදුන්වනු ලබන ඕවිපුමක්ද අමුණා ඇත. ඒ අනුව මෙකී යාක්ෂි දෙන ලද ලියාපදිංචි අධිනිකාරිය දැඩි සියලු ලබන ඉන්දිකා පුදරයනි යන ඇය විභින් මෙම වාහනය, යම් ඕවිපුමක් ප්‍රකාරව කළේ, ගැලුමන්ත, ටිලමාවත හි පදිංචි සාමුභාග්‍ය ගමගේ උදය කාන්ත තැබූනී අයයෙකුට කළේද මූල්‍ය පහසුකමේ වාරික මූදල් ගෙවාගෙන යාමේ පදනම් මන සහ තවත් කොන්දේසි මත, භාරදී ඇති බව රැඟැදිලිව පෙනීයයි. උගත් විනිපුරුණුමා ඒ

කොරත්ති අවධානය යොමු කර නොනිලුණු නඩු වාර්තාවට පෙන්සම්කාරිය විසින් ගොනු කර ඇති ලේඛනයක් බැඳීන්, ඒ කොරත්ති අවධානය යොමු කිරීමේදී මෙම ව්‍යාහනයේ භෞතික සන්නකය ලියපදිංචි අධිනිකාරිය හාරයේ ත්‍රිත්වා නොමැති බව බැඳු බැල්මටම පෙනීයයි. ඒ අනුව ලියාපදිංචි අධිනිකාරිය අධිකරණයට ඉදිරිපත් වි සාක්ෂි ලබා දුන්නාද එම ව්‍යාහනයේ පාලනය ඇය සතුව නොනිලු බව පැහැදිලිව පෙනීයයි. එයට අමතරව ඇයගේ මුලික සාක්ෂියෙන්ද ඇය කියා ඇත්තේ එම ව්‍යාහනය පාලනය කරනු ලබන්නේ ශ්‍රේ.රේ.රංගින් නැමැති තමාගේ ස්වාම්පූරුෂයා බවයි. නමුන් ස්වාම්පූරුෂයා සාක්ෂි ලබාදීමක් සිදු කර තැක.

“ ඒ අනුව උගේ විනිශ්ච්‍යම විසින් මෙම සාක්ෂිකාරිය විසින් මෙම අපරාධය පදනා මෙම රටය ගොනා ගැනීම සම්බන්ධයෙන් පුරුහුලේක්ෂණය කළ භැංකි ආරක්ෂක විධිවිධාන කියිවක් යදහා පියවර ගෙන නොනිවීම සම්බන්ධයෙන් ගෙන ඇති තීගමනය කැලු ආභා පනාගේ ප්‍රතිඵානවලට මෙහෙම ඉදිරිපත් යු සාක්ෂිවලටද අනුකූල බව පැහැදිලිව පෙනීයයි.”

15. As a consequence, the Learned High Court Judge has misdirected himself when he affirmed the order of the Learned Magistrate dated 03.08.2017. Hence, we set aside the orders dated 03.08.2017 and 17.06.2020 of the Learned Magistrate and the Learned High Court Judge respectively.

16. We direct the vehicle bearing registration no. 47-4650 be released to the appellant.

17. The Registrar of this Court is directed to communicate this judgment to the *Magistrate Court of Baddegama* for compliance.

Appeal allowed.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree.

Judge of the Court of Appeal