

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

Officer in Charge,  
Police Station,  
Kalpitiya.

**Complainant**

V.

**Court of Appeal Case No.**  
**CA PHC 164/2016**

**High Court of Puttalam**  
**HC Case No. Rev. 05/16**

01. Ramanadan Somsundaram

02. Mohamed Ansar

03. Dulan Madhushan

**Accused**

AND BETWEEN

Segu Alawdeen Mohamadu Riyaldeen,  
Elite Bake House,  
Beach Road,  
Kalpitiya.

**Petitioner**

V.

1. Officer in Charge,  
Police Station,  
Kalpitiya.

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

**Complainant- Respondents**

AND NOW BETWEEN

Segu Alawdeen Mohamadu Riyaldeen,  
Elite Bake House,  
Beach Road,  
Kalpitiya.

Petitioner- Appellant

V.

1. Officer in Charge,  
Police Station,  
Kalpitiya.
2. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

Respondent-Respondents

**BEFORE** : **ACHALA WENGAPPULI, J**  
**K. PRIYANTHA FERNANDO, J**

**COUNSEL** : Panchali Witharana SC for the Respondents.

**ARGUED ON** : 09.06.2020

**WRITTEN SUBMISSIONS**  
**FILED ON** : 20.05.2020 by the Respondents.

**JUDGMENT ON** : 23.06.2020

**K. PRIYANTHA FERNANDO, J.**

01. Petitioner- Appellant (Appellant) preferred this appeal against the judgment dated 07.11.2016 by the learned High Court Judge of Puttalam affirming the order of confiscation

of the vehicle by the learned Magistrate of Kalpitiya dated 25.05.2015. After paying the relevant brief fees, upon receiving notice by this Court, on 21.01.2020, Appellant appeared, and learned counsel for the Appellant moved for time to collect the brief. However, thereafter the Appellant failed to appear or to take steps to pursue the appeal. Thus, as the Appellant opted not to attend Court, nor retain counsel, Court decided to proceed to consider the merits of the appeal, in terms of section 349(3) of the Code of Criminal Procedure Act.

02. I have carefully considered the evidence led at the vehicle inquiry held in the Magistrate's Court, the order of the learned Magistrate, the proceedings in the High Court including the judgment of the learned High Court Judge, petition of appeal by the Appellant and the written submissions filed by the learned State Counsel for the Respondent.

#### **Facts in brief**

03. The Accused was charged in the Magistrate's Court of Kalpitiya in terms of the Forest Ordinance for transporting timber without a valid permit. Upon pleading guilty to the charge, the Accused was sentenced by the learned Magistrate. As the registered owner of the vehicle in question (Appellant) was a third party, a vehicle inquiry was held by the learned Magistrate in terms of Section 40(1) of the Forest Ordinance. Upon inquiry the learned Magistrate made an order confiscating the vehicle.
04. The Appellant being dissatisfied by the said order of confiscation, made an application to the High Court of Puttalam to get the order of the learned Magistrate revised. Upon hearing the application, the learned High Court Judge affirmed the confiscation order of the learned Magistrate.
05. In his petition of appeal, the Appellant has urged the following grounds of appeal.
1. The learned High Court Judge's order is illegal.
  2. The learned High Court Judge has failed to properly analyze the evidence adduced at the inquiry when making the order.

3. The learned High Court Judge has failed to take into account that the Respondent has failed to prove that the Appellant was giving false evidence.

06. Section 40 (1) of the Forest Ordinance provides;

*“(1) when any person is convicted of a forest offence-*

*(a) all timber or 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.”.*

07. Hence, it is clear that, to prevent the confiscation of the lorry, the owner (Appellant) has to prove to the satisfaction of the court, that he had taken all precautions to prevent the use of the vehicle for the commission of the offence, in this case, transporting timber without a valid permit.
08. In case of *Manawadu V. The Attorney General (1987 2 Sri L.R. 30)*, it was held that the owner of the lorry who is not a party to the case is entitled to be heard on the question of forfeiture of the lorry. If he satisfies the Court that the Accused committed the offence without his knowledge or participation, his lorry will not be liable to forfeiture.

09. Section 40 of the Forest Ordinance was amended by Act No. 65 of 2009 (certified on 16<sup>th</sup> November 2009) by adding the proviso to section 40(1). Although the added proviso did not speak about 'knowledge' on the part of the owner in committing the offence, our Superior Courts have continuously followed the principle laid down in '*Manawadu*' case.
10. The burden to prove that the owner (Appellant) took all precautions to prevent the vehicle being used in the commission of the offence and that he was not privy to the offence being committed rests upon the owner of the vehicle and not on the Respondent, and the standard of proof is on balance of probability.
11. The evidence of the Appellant at the vehicle inquiry was that he handed over the vehicle to his driver on a daily rental of Rs. 2000/-. Hence, it is apparent that it was the driver who decided on what he was going to transport using the vehicle. Although the Appellant said in his examination in chief that he inspected the vehicle daily, in cross examination it was revealed that he was out of the country on the day the driver was apprehended by the authorities when transporting the timber without the permit. The Appellant had returned to the country only after two weeks. He had not been in the country for him to inspect the vehicle daily as he testified. Hence, the Appellant was not a credible witness.
12. In case of *Mary Matilda Silva V. P.H. de Silva, Inspector of Police, Habarana [CA (PHC) 86/97, decided on 08.07.2010]*, it was held that mere giving oral instructions to the driver is not sufficient to discharge the burden to prove that the owner had taken all precautions to prevent the offence being committed and that he was not privy to the offence.
13. In case of *W. Jalathge Surasena V. O.I.C. Hikkaduwa and others. (CA (PHC) APN 100/2014)*, it was held that mere denial by the registered owner that he did not have the knowledge of the commission of the offence is not sufficient to prevent the confiscation of a vehicle.
14. In this instance, the Appellant had even failed to call the driver to give evidence and establish that he had given instructions. Although the Appellant later had said that his wife

inspected the vehicle, he has failed to call the wife on his behalf to establish the same. Appellant has failed to discharge the burden cast upon him in terms of the proviso to section 40(1) of the Forest Ordinance.

15. In the above premise, I find that the grounds of appeal urged by the Appellant should necessarily fail and I see no reason to interfere with the judgment of the learned High Court Judge affirming the order of confiscation by the learned Magistrate.

Appeal is dismissed.

**JUDGE OF THE COURT OF APPEAL**

**ACHALA WENGAPPULI, J**

I agree.

**JUDGE OF THE COURT OF APPEAL**