

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

*In the matter of an application for
Revision in terms of Article 138 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.*

Madhu Range Forest Officer,
Divisional Forest Office,
Forest Department,
Madhu Road, Madhu, Mannar.

Court of Appeal

Revision Application No:

CPA/0116/2023

High Court of Mannar

Case No:

HC/MN/REV/08/2023

Magistrate's Court

Mannar Case No: 57705

COMPLAINANT

Vs.

Santhan Silvester
Kaddaiyadampan, Madhu Road,
Madhu, Mannar.

CLAIMANT

AND BETWEEN

Santhan Silvester,
Kaddaiyadampan, Madhu Road,
Madhu, Mannar.

CLAIMANT-PETITIONER

Vs.

Madhu Range Forest Officer,
Divisional Forest Office,
Forest Department,
Madhu Road, Madhu, Mannar.

COMPLAINANT-RESPONDENT

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

RESPONDENT

AND NOW BETWEEN

Santhan Silvester,
Kaddaiyadampan, Madhu Road,
Madhu, Mannar.

CLAIMANT-PETITIONER-PETITIONER

Vs.

Madhu Range Forest Officer,
Divisional Forest Office,
Forest Department,
Madhu Road, Madhu, Mannar.

COMPLAINANT-RESPONDENT-

RESPONDENT

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

RESPONDENT-RESPONDENT

Before : Sampath B. Abayakoon, J.
: P. Kumararatnam, J.
Counsel : Sriranganathan Ragul for the Claimant-Petitioner-
Petitioner.
: Jayalakshi de Silva, S.S.C., with I.M.M. Fahim for the
Respondents.

Argued on : 02-02-2024

Decided on : 20-05-2024

Sampath B Abayakoon, J.

This is an application by the claimant-petitioner-petitioner (hereinafter referred to as the petitioner) invoking the discretionary remedy of revision granted to this Court by Article 138 of the Constitution.

The petitioner is the registered owner of the tractor vehicle bearing registration number NP RG-1489 and the land vehicle trailer bearing registration number 46-8609. The said vehicles had been the subject matter of Magistrate's Court of Mannar Case Number 57705.

This was an action instituted in terms of the Forest Ordinance for collecting and illegally transporting sand from a reserve forest area and thereby causing damage. The accused had been the son of the petitioner and he has pleaded guilty to the charge preferred against him. After sentencing the accused, the learned Magistrate of Mannar has fixed the matter for an inquiry, allowing the petitioner to show cause as to why the vehicles involved in the crime should not be forfeited to the state in terms of section 40(1) of the Forest Ordinance.

The Learned Magistrate of Mannar of his order dated 03-08-2023 has forfeited the mentioned vehicle on the basis that the registered owner has failed to show cause as to why the vehicles should not be forfeited to the state.

Against this order, the petitioner has preferred an application in revision before the Provincial High Court of the Northern Province, Holden in Mannar, seeking to set aside the order pronounced by the learned Magistrate.

After having heard the petitioner, the learned High Court Judge of Mannar of his order dated 19-09-2023 has refused to issue notice on the basis that the petitioner has failed to adduce sufficient reasons to get notices issued to the

respondents mentioned. It has been determined that the petitioner has failed to show sufficient exceptional circumstances in this regard.

It is against this order the petitioner has come before this Court seeking to invoke the revisionary jurisdiction of the Court in order to get the relevant order set aside and also the order pronounced by the learned Magistrate of Mannar, where vehicles belonging to the petitioner were confiscated.

When this matter was supported for notice, after having considered the relevant facts and circumstances, this Court decided to issue notice. A stay order was also granted suspending the operation of the order pronounced by the learned Magistrate of Mannar until the final determination of this application.

At the hearing of this application, this Court heard the submissions of the learned Counsel for the petitioner and also heard the submissions of Learned Senior State Counsel on behalf of the respondents.

The revisionary jurisdiction of this Court is a discretionary remedy which would be exercised only upon the existence of exceptional circumstances which requires the intervention of the Court to remedy a miscarriage of justice.

In the case of **Caderamanpulle Vs. Ceylon Paper Sacks Ltd (2001) 3 SLR 112** it was held that,

“The existence of exceptional circumstances is a pre-condition for the exercise of the power of revision”.

Per Nanayakkara, J.

“...when the decided cases cited before us are carefully examined, it becomes evident in almost all the cases cited, that powers of revision had been exercised only in limited category of situations. The existence of exceptional circumstances is a pre-condition for the exercise of the powers of revision and absence of exceptional circumstances in any given situation results in refusal of remedies.”

It was held in the case of **Hotel Galaxy (Pvt) Ltd. Vs. Mercantile Hotels Management Ltd (1987) 1 SLR 5** that,

“It is settled law that the exercise of the revisionary powers of the appellate Court is confined to cases in which exceptional circumstances exist warranting its intervention.”

In the case of **Wijesinghe Vs. Thamararatnam (Sriskantha Law Report Vol. IV page 47)** it was held that,

“Revision is a discretionary remedy and will not be available unless the application discloses circumstances which shocks the conscience of the Court.”

In the case of **Vanik Incorporation Ltd. Vs. Jayasekare (1997) 2 SLR 365** it was observed,

“Revisionary powers should be exercised where a miscarriage of justice has occasioned due to a fundamental rule of procedure being violated, but only when a strong case is made out amounting to a positive miscarriage of justice.

In the petition filed before this court, at paragraph 12, the petitioner has urged several grounds which he termed as exceptional grounds available to him to challenge the order pronounced by the learned High Court Judge of Mannar.

He has stated that the said order was contrary to the law and against the evidentiary materials produced and the submissions made before the High Court, the learned High Court Judge erred in law when he refused to issue notices, and his finding that no exceptional circumstances have been established. The learned High Court Judge was erred by failing to consider the documents marked M-03 and M-04 in its correct perspective, which demonstrates that the petitioner had a reason for not appearing before the Magistrate’s Court of Mannar on 03-08-2023.

It has also been urged that the learned High Court Judge was erred in law when it was determined that, if the petitioner fell ill on the mentioned date, he could have taken steps to inform that fact to the Magistrate's Court of Mannar.

The petitioner states further that the learned High Court Judge has failed to consider the illegality of the order made by the learned Magistrate and the irreparable loss and the miscarriage of justice occurred to the petitioner by the said order as exceptional grounds that exists for him to challenge the order made by the learned High Court Judge of Mannar.

Before considering whether this Court has a basis to interfere with the order of the learned High Court Judge of Mannar, I would like to draw my attention to the facts that led to the confiscation of the vehicles by the learned Magistrate of Mannar.

As I have stated before, on 29-04-2021 after the accused pleaded guilty to the charge and sentenced, the learned Magistrate has ordered that the vehicles be released on a bond of Rs. 1,500,000/- to the petitioner, and had fixed the claim inquiry for 25-11-2021.

On 25-11-2021, the petitioner who was the registered owner, and made a claim for the vehicles, was absent, and the learned Magistrate of Mannar has been considerate enough to issue a notice to the owner to be returnable on 24-03-2022. The petitioner had been absent on that day too. However, the learned Magistrate has postponed the inquiry for 25-08-2022. On 25-08-2022, the learned Magistrate has issued a warrant of arrest against the owner of the vehicle and had postponed the inquiry again to 10-11-2022. On 10-11-2022 the claim inquiry has been again postponed to 15-06-2023.

In the meantime, the petitioner has surrendered himself to the Magistrate's Court of Mannar through an Attorney-at-Law. The learned Magistrate, although has observed that the petitioner continuously neglects to take necessary steps

as to the inquiry, has fixed the matter for inquiry on 15-03-2023. However, on 15-03-2023 the petitioner has been released on a personal bail bond of Rs. 50,000/- and the vehicle inquiry has been postponed to 15-06-2023.

On 15-06-2023, the petitioner has claimed that he is ready for the inquiry but the necessary documents are not available with him. This has resulted in the postponement of the inquiry for 03-08-2023. Having postponed the inquiry, the learned Magistrate of Mannar has also ordered the petitioner to surrender the relevant vehicles to the Court and come ready for the inquiry.

On 03-08-2023, the petitioner being the registered owner who claimed the vehicles was absent from the Court. The learned Magistrate has ordered the confiscation relevant tractor and the trailer in terms of section 40(1) of Forest Ordinance on the basis that the petitioner has failed to make any claim for the vehicles in terms of the ordinance. However, a warrant has also been issued against the petitioner.

On 21-08-2023, the petitioner has again surrendered to the Court through an Attorney-at-Law. The learned Magistrate has ordered him to surrender the tractor and the trailer to Court, and the petitioner has been released on another personal bail bond of Rs. 50,000/-.

When this order was challenged before the High Court of Mannar, the learned High Court Judge, after having considered all the relevant facts and circumstances had determined that the petitioner has failed to show due diligence in relation to his application before the Magistrate's Court, and the only option that was available to the learned Magistrate was to confiscate the vehicles as the petitioner has failed to establish his claim before the Court.

After having considered the medical certificate produced by the petitioner before the High Court, to claim that he was ill on 03-08-2023, the date upon which the confiscation order was made, it has been determined that the said medical certificates cannot be accepted as justification for the actions of the petitioner. It had been determined that if the petitioner was ill as claimed, he should have

taken steps to inform that fact to the Magistrate's Court when the matter was taken up for inquiry. It was in this backdrop the learned High Court Judge has refused to issue notice to the respondents.

For the better understanding of the provisions relating to the confiscation of vehicles used in the commission of forest offences, I would like to reproduce the relevant section 40(1) of the Forest Ordinance as amended by Forest (Amendment) Act No.65 of 2009 which reads thus;

40(1). Where 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 machine 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, vehicle, 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 has 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.

The section clearly stipulates that once an accused person is convicted for a forest offence, in addition to any other punishment specified to such offence, the things mentioned in subsections (a) and (b), used in the commission of such offence can be confiscated by the convicting Magistrate.

However, it has been provided that, for the owner of any such tools, vehicles, implements, and machines used in the commission of such offence, if he is a 3rd

party, to establish before the convicting Magistrate that he had taken all precautions to prevent the use of such things, as the case may be, for the commissions of the offence. If the owner proves that fact to the satisfaction of the Magistrate, no confiscation shall be made.

It is the view of this Court that, once an accused person is found guilty for a forest offence, it was up to the person who claims ownership of a vehicle used in the commission of the offence, to come before the Court and establish that he has taken necessary precautions to prevent the offence being committed, which includes establishing that he had no knowledge of the offence being committed.

It is the view of this Court that, once such vehicle or vehicles being produced before a Magistrate's Court on the basis that such vehicle or vehicles were used in the commissioning of the offence, and once the accused is convicted, it should not be the prerogative of the learned Magistrate to go after the owner seeking him to establish his claim as had happened in this case.

As I have stated before, once the vehicles were released on a bond to the petitioner and after the matter was fixed for inquiry, it is clear that the petitioner being the registered owner of the vehicle has shown scant disregard to the necessity of him having to establish that he had taken necessary precautions to prevent the offence being committed.

I find that there was no necessity for the learned Magistrate of Mannar to issue notice to the petitioner, when he failed to appear before the Court without a valid reason, or even to issue a warrant against him. If the petitioner fails to appear before the Court and establish his claim, it means that he has failed to establish the requirements of the proviso of section 40(1) of the Forest Ordinance.

Even after the learned Magistrate was considerate enough to accept the reasons given by the petitioner for not coming before the Court and fixed the matter for inquiry again, the petitioner has claimed that he does not have the required documents for the inquiry, which has resulted in the learned Magistrate allowing further time for the petitioner to establish his claim.

It appears from the proceedings of the Magistrate's Court that, after allowing the petitioner to establish his claim repeatedly, the learned Magistrate has decided that the petitioner has failed to establish his claim in terms of section 40(1) of the Forest Ordinance, where the petitioner has failed to appear before the Court as usual to substantiate his claim. This has resulted in the confiscation of the vehicles on 03-08-2023,

It is the view of this Court, that for a person who sleeps over his rights and fails to diligently maintain his claim before a Court of law and also guilty of laches, cannot make use of the discretionary remedy of revision as a tool to get over his own actions.

In the case of **Biso Manike Vs. C.R. de Alwis (1982) 1 SLR 368** which was a case where a writ of certiorari, a similar discretionary remedy as revision was sought.

It was held by **Sharvananda, J.** (As he was then),

“A Writ of Certorari is issued at the discretion of the court. It cannot be held to be a Writ of right or one issued as a matter of course. The exercise of this discretion by Court is governed by certain well-accepted principles. The Court is bound to issue it at the instance of a party aggrieved by the order of an inferior tribunal except in cases where he has disentitled himself to the discretionary relief by reason of his own conduct, submitting to jurisdiction, laches, undue delay and waiver...”

I am of the view that this is what exactly had happened in this matter.

In the case of **Perera Vs. People's Bank (1995) 2 SLR 84**, it was held that, revision is a discretionary remedy and the conduct of the defendant is a matter which is intensely relevant.

In the case of **Siripala Vs. Lanerolle and another (2012) 1 SLR 105** it was observed that several tests have to be applied before the discretion of the Court is exercised in favour of a party seeking the revisionary remedy. It was held that the aggrieved party must come to the Court with clean hands and should not have contributed to the current situation and such a party should have complied with the law at that time.

In the case of **Liyanage and another Vs. Rathnasiri – Divisional Secretariat, Gampaha and others (2013) 1 SLR 6** the Supreme Court cited and adopted the well-known Latin maxim “*Vigilantibus non dormientibus jura subveniunt*” which means “the laws assist those who are vigilant, not those who sleep over their rights”.

I find that the learned High Court Judge of Mannar has rightly understood this position and has recognized the necessity for not allowing the process of the Court to be used in whatever the way parties want. The learned High Court Judge has well considered the relevant facts and the circumstances and has come to a correct finding in that regard, which needs no disturbance from this Court.

I am of the view that the learned Magistrate of Mannar, has gone out of the way to accommodate the petitioner allowing him to establish the requirements of the proviso of section 40(1) of the Forest Ordinance.

However, the petitioner has failed to make use of that opportunity and had failed to show due diligence in maintaining his application to release the vehicles to him on the basis that he is the registered owner of the vehicles and he took all necessary precautions to prevent the offence being committed. I am also of the view that, under the circumstances the learned Magistrate has had no option but to order the confiscation of the vehicles, which I find the only correct order that should have been made.

Accordingly, the revision application filed before this Court is dismissed for want of merit.

The order pronounced by the learned High Court Judge of Mannar dated 19-09-2023 and the order made by the learned Magistrate of Mannar 03-08-2023 is hereby affirmed.

The Registrar of the Court is directed to communicate this judgment to the Provincial High Court of the Northern Province, Holden in Mannar, and to the Magistrate's Court of Mannar for information and necessary further steps.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal