

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

An Appeal under Article 138(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Article 154(P)(6) of the Code of Criminal Procedure Act No. 15 of 1979.

**Court of Appeal**

**Application No:**

**CA (PHC) 0147/2020**

**High Court of Kandy**

**Case No. HCR 49/19**

**MC Kandy**

**Case No.5103/15**

The Officer-in-Charge

Police Station

Menikhinna.

**Complainant**

**Vs.**

Liyanage Dahananda Kumarasinghe

No.1/4, Lunukandiyamaditta,

Menikhinna.

**Accused**

**AND**

Kodituwakkugedera Udaya Shri  
Jayampathy

No. 09, Lunukandiyamaditta,

Menikhinna.

**Registered Owner-Petitioner**

**Vs.**

1. The Officer-in-Charge  
Police Station  
Menikhinna.

**Complainant-Respondent**

2. The Attorney General  
Attorney General's Department  
Colombo-12.

**Respondent**

**AND NOW BETWEEN**

Kodituwakkugedera Udaya Shri  
Jayampathy  
No. 09, Lunukandiyamaditta,  
Menikhinna.

**Registered Owner-Petitioner-**

**Appellant**

**Vs.**

1. The Officer -in-Charge  
Police Station  
Menikhinna.

**Complainant-Respondent-**

**Respondent**

**2. The Attorney General**

Attorney General's Department  
Colombo-12.

**Respondent-Respondent**

**BEFORE** : **Sampath B. Abayakoon, J.**

**P. Kumararatnam, J.**

**COUNSEL** : **Migara Kodituwakku for the Appellant.**  
**I.M.M.Fahim, SC for the Respondents.**

**ARGUED ON** : **12/03/2024.**

**DECIDED ON** : **19/07/2024.**

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**JUDGMENT**

**P. Kumararatnam, J.**

The Complainant-Respondent-Respondent (hereinafter referred to as the 1<sup>st</sup> Respondent) filed a charge sheet Under Section 25(2) read with Section 40(b) of the Forest Ordinance against the Accused in the Magistrate Court of Kandy for illegally transporting timber without a valid permit on 03.11.2015. As the Accused pleaded guilty to the charge sheet, the Learned Magistrate of Kandy had convicted the Accused as

charged and imposed a fine of Rs.10,000/- with a default sentence and fixed for an inquiry whether to confiscate or not the vehicle bearing No. 48-3955 which had been used for the transportation of the timber mentioned above.

At the conclusion of the inquiry, the Learned Magistrate had decided to confiscate the aforesaid vehicle by his order dated 01.04.2019. At the inquiry, the Registered Owner-Petitioner-Appellant (Hereinafter referred to as the Appellant), the Accused and a person from LB Finance had given evidence on his behalf and marked two documents.

Being aggrieved by the order of the Magistrate, the Appellant filed a Revision Application in the Provincial High Court of Kandy to revise the order of the Learned Magistrate of Kandy. After an inquiry, the Learned High Court Judge of Kandy by her order dated 25.11.2020 dismissed the revision application on the basis that the Appellant had failed to prove existence of exceptional circumstances.

Now the Appellant filed this appeal to set aside the order of the Learned High Court Judge of Kandy dated 25.11.2020 and the order of Learned Magistrate of Kandy dated 01.04.2019.

**The Appellant submitted following grounds of appeal:**

- a. That there was no proof that the accused had knowledge regarding the illicit transport of timber;
- b. Conversely, there was proof that the appellant had 'no knowledge' of the illicit transport of timber;
- c. That it is proved that the appellant *took all necessary precautions under the circumstances* to prevent the commission of an offence;
- d. That the sole reason for the learned Magistrate to confiscate the vehicle was a contradiction in the evidence of the driver, which when assessed with other evidence, and the conduct of the

police point to the fact that the appellant had taken all necessary precautions under the circumstances to prevent the commission of an offence;

- e. That the learned Magistrate had failed to appreciate the words *under the circumstances* attached to the words 'necessary precautions' that is found in section 40 of the Forest Conservation Ordinance.
- f. That the learned Magistrate had failed to follow the guidelines in cases of *confiscation* laid down by the Court of Appeal.

In this case the Learned High Court Judge considering the order of the Magistrate Court of Kandy decided to dismiss the revision application stating that that the Appellant had failed shock the conscience of the Court.

In this case a lorry had been confiscated for transporting timber worth about Rs.4417.85 illegally.

The Appellant of the vehicle has given evidence in the Court and has claimed that he was unaware of the crime being committed as he has given the vehicle for hire after appointing the accused as the driver. The Appellant had given evidence and vividly explained how he had taken preventive measures that the vehicle not being used for illegal activities.

The Accused (driver) giving evidence endorsed the evidence given by the Appellant regarding the precaution and preventive measures which had been taken by the Appellant. But in the cross examination the Accused was confronted with his statement given to the police by the prosecution. The Accused admitted that he gave his statement to police on his own accord. In his statement the Accused had stated that the Appellant, being a timber seller had directed him to saw 05 logs of 'Milla Timber' from a place called 'Mudunkoth'. As he has denied making such a portion in his statement, the said portion was marked as X1 by the prosecution. Also suggested to him that he had not mentioned that he transported five logs of timber to make door frame for his house.

Now I am going to consider whether the grounds of appeal raised on behalf of the Appellant have any merit. As the appeal grounds mentioned above are interconnected, all appeal grounds will be considered together hereinafter.

As the law stands today, the Claimant in a vehicle confiscation inquiry should prove that he or she had have taken all preventive measures on a balance of probability. Hence, the Learned Magistrate should consider all the evidence very carefully before coming to a conclusion.

In **The Orient Financial Services Corporation Ltd v The Range Forest Officer, Ampara and Hon. Attorney General [2013] 1 SLR 208** the Court held that:

*“1. Before an order for forfeiture is made the owner should be given an opportunity to show cause. If the owner on balance probability 209 satisfies the Court that he had taken precautions to prevent the commission of the offence or the offence was committed without his knowledge nor, was he privy to the commission of the offence, the vehicle has to be released to the owner.*

*2. When it comes to showing cause as to why the vehicle should not be confiscated, only the person who was in possession and control of the vehicle could give evidence to the effect that the offence was committed without his knowledge and he had taken necessary steps to prevent the commission of the offence.”*

In **Mudankotuwa v Attorney General [1996] 2 SLR 77** the court held that:

*“As seen from the evidence the vehicle was taken over by the driver from the Petitioner’s house in the morning and it was returned to him in the evening with the collections. Further, clear instructions had been given by the Petitioner to the driver, not to transport timber or use the vehicle for any illegal purpose.....Therefore, the Magistrate was in error when he came*

*to the conclusion that the Petitioner had exercise no control or supervision over the driver regarding the use of the tractor”.*

In this case the Appellant had hired the Accused only in the capacity of a driver.

Although the Appellant, as the owner of the vehicle had given evidence and explained to the Court that he had taken all the possible and necessary precautions to prevent the vehicle being used for illegal purposes, but the Accused had given contradictory evidence which certainly effect the root of the case. The Appellant failed to adduce cogent evidence that the offence committed without his knowledge.

Hence, the Learned High Court Judge dismissing the application on the basis that the Appellant had failed to show that he took all necessary precautions to prevent a crime being committed is correct in this case. Therefore, I affirm the order of the High Court Judge Kandy dated 25.11.2020 and the order of the Learned Magistrate of Kandy dated 01.04.2019. Therefore, this appeal is dismissed.

The Registrar of this Court is directed to send this Judgement to the High Court of Kandy and the Magistrate Court of Kandy for information.

**JUDGE OF THE COURT OF APPEAL**

**SAMPATH B. ABAYAKOON, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**