

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

In the matter of an application for appeal under and in terms of section 331 of the Code of Criminal Procedure Act No. 15 of 1979, reads in terms of Article 154 P of the constitution of the Democratic Socialist Republic of Sri Lanka.

CA/PHC 67/2024

HC of Negombo Case No:

HC REV 57/22

MC of Negombo Case No: M52853

Officer-in-Charge

Police Station

Kochchikade

Complainant

V.

Kachchakaduge Shehan Chanaka

No. 178/157/02

Koriyawaththa

Bambukuliya

Kochchikade

Accused

AND

Tharushi Sandamini de Silva Pulle

No. 74 E, Obberiya

Kochchikade

Registered Owner

THEN BETWEEN

Tharushi Sandamini de Silva Pulle

No. 74 E, Obberiya

Kochchikade

Registered Owner-Petitioner

Vs.

1. The Attorney General
Attorney General's Department
Colombo 12.

Respondent

2. Officer-in-Charge
Police Station
Kochchikade

Complainant-Respondent

And

Kachchakaduge Shehan Chanaka

No. 178/157/02

Koriyawaththa

Bambukuliya

Kochchikade

Accused –Respondent

AND NOW BETWEEN

Tharushi Sandamini de Silva Pulle

No. 74 E, Obberiya

Kochchikade

Registered Owner-Petitioner-Appellant

Vs.

1. The Attorney General

Attorney General's Department

Colombo 12.

Respondent-Respondent

2. Officer-in-Charge

Police Station

Kochchikade

Complainant-Respondent -Respondent

And

Kachchakaduge Shehan Chanaka

No. 178/157/02

Koriyawaththa

Bambukuliya

Kochchikade

Accused –Respondent-Respondent

Before : B. Sasi Mahendran, J.

Amal Ranaraja, J

Counsel: Anura Seneviratne with Gayal Kalatuwawa for the Registered Owner-

Petitioner- Appellant
Jayalakshi de Silva, SSC for the Respondent

Argued On : 26.03.2025

Judgment On: 30.04.2025

JUDGMENT

B. Sasi Mahendran, J

The Registered Owner- Petitioner- Appellant (hereinafter referred to as the Appellant) instituted this appeal against the order of the Provincial High Court of Western Province Holden in Negombo dated 10.01.2024 which affirmed the order of the Learned Magistrate of Negombo dated 25.10.2022 confiscating the vehicle under the amended Section 40 of Act No. 65 of 2009 of the Forest Ordinance.

According to the Appellant, the Accused in this case was arrested on 30.07.2022 and was charged in the Magistrate Court of Negombo in the case bearing No. M52853 for transporting timber using the Lorry bearing No. WP LC 0162 without a valid permit being obtained from the competent authority, thereby committing the offence punishable under Section 25(2) read with Section 9(1) of the Forest Ordinance as amended.

After the Accused pleaded guilty, he was sentenced by the Learned Magistrate. The Appellant states that the Learned Magistrate acting in terms of Section 40(1) of the Forest Ordinance allowed the Appellant as the registered owner of the lorry to show cause as to why the lorry should not be confiscated.

At the inquiry, the Appellant gave evidence that she took due precautions to prevent the offence and that she was unaware of the commission of the offence.

The Learned Magistrate, by order dated 25.10.2022, confiscated the lorry on the basis that the Accused, who was the driver and his father, were involved in the illegal transportation of timber therefore, the Appellant should have known the said vehicle be used for such illegal purposes. Further, the Learned Magistrate stated that the Appellant had the knowledge that the father of the Accused (driver) was convicted for a similar offence previously under the same law. For easy reference, I reproduce an excerpt of the said order;

On page 49 of the brief;

“ලියාපදිංචි අයිතිකරියට වුදින ලී, දැව හා වදුමදුටක් ආශ්‍රිත රැකියාවක නිරත වන තැනැත්තෙකු බව දැන දැනම එම වුදිනගේ පියා මෙම නඩුවකට මාසයකට පමණ පෙර දැව ප්‍රවාහනය කරමින් තිබියදී වෙනත් ලොරි රථයක් සමඟ අත්අඩංගුවට ගැනීම පිළිබඳ දැනුවත්ව සිට ඇති අතර, එම වුදින වෙනම දැන දැනම දැව ප්‍රවාහනය කිරීම සඳහා තම ලොරි රථය භාරදී තිබීම මගින් ලියාපදිංචි අයිතිකාරිය වුදින එවැනි ක්‍රියාවල නිරත නොවේ යැයි නිගමනයකට එළඹීමට තරම් අධිකරණය සැහීමකට පත් විය නොහැකි කරුණකි.”

What is required in an inquiry of this nature is for the registered owner of the vehicle to satisfy the Court that all precautions to prevent the use of the vehicle in the commission of the offence have been taken. The amendment to Section 40 of the Forest Ordinance by Act No. 65 of 2009 provides that,

“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 the 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 where the owner of the vehicle is a third party, no order of confiscation shall be made if such owner proves to the satisfaction 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.”

The above Section was considered in the following cases.

In the case of The Finance Company PLC. V. Agampodi Mahapedige Priyantha Chandana and 5 others (SC Appeal 105A/2008), it was held that,

“On a consideration of the ratio decidendi of all the aforementioned decisions, it is abundantly clear that in terms of section 40 of the Forest Ordinance, as amended, 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. The ratio decidendi of all the aforementioned decisions also show that the owner has to establish the said matter on a balance of probability.”

In Umma Habeeba v. OIC, Dehiattakandiya & Other, (1999) (3) SLR 89 states as follows:

“Provided, however, that in any case where the owner of the vehicle is a third party no order of confiscation shall be made if he proves to the satisfaction of the Court that he has taken all precautions to prevent the use of such vehicle or that the vehicle had been used without his knowledge for the commission of the offence.”

The above judgment was considered by Her Ladyship K.K. Wickremasinghe J in Officer In Charge of Police Station Dummalasuriya v. The Attorney General CA(PHC)/152/2018, decided on 07.02.2020.

An identical provision is available in Section 3 of the Animals Act which reads as follows;

“Where any person is convicted of an offence under this Part or any regulations made thereunder, any vehicle used in the commission of the offence shall, in addition to any other punishment prescribed for such offence, be liable, by order of the convicting Magistrate, to confiscation.

Provided, however, that in any case where the owner of the vehicle is a third party, no order of confiscation shall be made, if the owner proves to the satisfaction of the Court that he has taken all precautions to prevent the use of such vehicle or that the vehicle has been used without his knowledge for the commission of the offence.”

The above Section was considered by His Lordship De Abrew J in Matilda Silva Vs. Inspector of Police, Habrana and Another (2020) 2 Sri LR 265 on page 270, held that:

“When I consider all these matters, I hold that the owner has not established, on a balance of probability, any of the following matters:

1. that she has taken all precautions to prevent the use of the vehicle for the commission of the offence;
2. that the vehicle has been used for the commission of the offence without her knowledge.”

With the above authorities, the only matter to be considered by the Learned Magistrate is whether the owner, the Appellant has taken all the precautions to prevent the use of the vehicle for the commission of the offence and whether the vehicle has been used for the commission of the offence without her knowledge. But the Learned Magistrate

considered irrelevant facts when she refused the Appellant's application. When we peruse the record, there is no indication that the father of the driver was convicted of a similar offence.

It should be noted that the said driver had worked with the Appellant's father and her for more than 3 years and there was no prior conviction. Further, the said lorry was never used for any illegal activities or commission of an offence prior to this event.

We hold that the Learned Magistrate has wrongly come to the conclusion and has not applied the legal principles when she dealt with the inquiry on the confiscation. The only matter to be considered by the Learned Magistrate is whether the owner has established that she has taken all precautions against the commission of the offence and the offence was committed without her knowledge. This matter needs to be established on a balance of probability.

I hold that the Learned Magistrate has erred in analysing the law in relation to Section 40(1) of the Forest Ordinance. Therefore, the said order is to be quashed.

The next question is whether the Learned High Court Judge correctly come to the conclusion that the Appellant was not the registered owner of the vehicle at the time of the commission of the offence.

When we peruse the document of Certificate of Registration of Motor Vehicle marked as 91, the previous owner's name was Samaranayaka Mudalige Upali Samaranayaka contained in a column debited related to the lorry. According to the said document, the said transaction took place on 20.07.2022. In other words, the current owner Darshani Sandamali de Silva Pulle, became the owner of the lorry since 20.07.2022. According to the charge sheet, the offence was committed on 30.07.2022. Therefore, the Learned Provincial High Court Judge erred in concluding that the Appellant was not the registered

owner of the vehicle at the time of the commission of the offence. This position was accepted by the Senior State Counsel.

When we consider the totality of the evidence led before the Learned Magistrate, we are satisfied that the registered owner of the vehicle who is the Appellant has taken necessary precautionary measures to prevent the use of the vehicle for the commission of the offence and that the vehicle has been used for the commission of the offence without her knowledge. Further, we observe that the Learned Magistrate has not taken into consideration that the driver of the vehicle has been working with them for 3 years and there is no prior allegation concerning the vehicle being used for illegal activities.

As such, we allow the appeal and set aside the orders dated 25.10.2022 and 10.01.2024 of the Learned Magistrate of Negombo and the Learned Provincial High Court Judge of Western Province Holden in Negombo, respectively.

In considering the above facts, I am of the view that the confiscation of the vehicle is unjustifiable and cannot be allowed to stand.

Therefore, I direct that the lorry bearing No. WP LC 0162 be released to the Appellant.

The Registrar of this Court is directed to communicate this judgment to the Magistrate Court of Negombo for compliance.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL