

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

In the matter of an application under
Section 331 of the Criminal Procedure Act
No. 15 of 1979, read with Article 138 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka

CA-PHC-0063/21

Officer-in-Charge

Police Station

Dikwella

Complainant

Vs.

Kokila Samarasingha Kankanamge Gamini
Sarath

Accused

Rathnayaka Arachchige Rohini

Rathnayaka

Registered Owner

And Now

Rathnayaka Arachchige Rohini Rathnayaka

Registered Owner-Petitioner

Vs.

1. Officer-in-Charge

Police Station

Dikwella

2. The Hon. Attorney General

Attorney General's department

Colombo 12.

Complainant-Respondents

AND NOW BETWEEN

Rathnayaka Arachchige Rohini

Rathnayaka

Registered-Owner-Petitioner-Appellant

1. Officer-in-Charge

Police Station

Dikwella

2. The Hon. Attorney General

Attorney General's department

Colombo 12.

Complainant-Respondent -Respondents

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

Counsel: Priyani Rathnayake with Thilini Atapattu for the Petitioner- Appellant
 Vishwa Wijesuriya, SC for the State

Argued On: 23.05.2025

Written

Submissions: 19.12.2024 (by the Petitioner-Appellant)

On

Judgment On: 27.06.2025

JUDGMENT

B. Sasi Mahendran, J.

The Registered Owner- Petitioner- Appellant (hereinafter referred to as the “Owner”) instituted this appeal against the order of the Provincial High Court of Southern Province in Matara dated 19.11.2021, which affirmed the order of the Learned Magistrate of Matara dated 07.08.2019 confiscating the vehicle.

According to the owner, the accused in this case was arrested on 16.12.2016 and was charged in the Magistrate Court of Matara in the case bearing no. 75350 for transporting timber using the hand tractor bearing no. SPSG. 0116 without a valid permit from the competent authority, thereby committing the offence punishable under amended Section 25(2) read with Section 40 of Act No. 65 of 2009 of the Forest Ordinance.

The owner states that the Learned Magistrate, acting in terms of Section 40(1) of the Forest Ordinance, allowed the owner to show cause as to why the tractor should not be confiscated.

In an inquiry of this nature, it is incumbent upon the owner of the vehicle to demonstrate to the Court that all reasonable precautions were taken to prevent the vehicle's use in the commission of the offence. 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 she 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 judgments.

In the case of Orient Financial Service Corporation Ltd. v. Range Forest Officer and One Other, CA (PHC) APN 26/2011, decided on 28.04.2011, Sisira De Abrew J held that:

“It is therefore seen under the existing law a vehicle transporting timber cannot be confiscated if the owner of the vehicle on a balance of probability, establishes one of the following things.

1. That he 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 his knowledge.”

In Range Forest Officer v. Duwa Pedige Aruna Kumara, SC Appeal No.120/2011, decided on 10.12.2013, Priyasath Dep, PC.J, (as he was then) held that:

“The Supreme Court has consistently followed the case of Manawadu vs the Attorney General. Therefore, it is settled law that before an order for forfeiture is made the owner should be given an opportunity to show cause. If the owner on balance of probability satisfies the court that he had taken precautions to prevent the commission of the offence or the offence was committed without his knowledge nor he was privy to the commission of the offence then the vehicle has to be released to the owner.”

It should be noted that there's a similar provision in Section 3 (A) of the Animals Act with regard to the confiscation of the vehicle.

“In an order of confiscation cannot be made if the owner proves to the satisfaction of the court that he has taken all precautions to prevent the use of the vehicle for the commission of the offence without his knowledge.”

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.”

The above cases clearly indicate that the owner of the vehicle has to establish that she has taken preventive measures to ensure the vehicle was not used for illegal activities. The owner has given explicit instructions to the driver not to use the vehicle for any unauthorized or illegal purposes. Therefore, the owner has to establish that she has taken all the precautionary measures to prevent the illegal activity, or that the illegal activity happened without her knowledge.

At the inquiry, the Owner testified that she is a teacher and she has owned the vehicle for nine years. She has stated that an additional income was obtained by using the vehicle for agricultural activities. Initially, her brother, R.A. Piyadasa, was the driver of the vehicle; however, due to a physical incapability, her brother was no longer able to drive the tractor. As a result, she obtained the services of the Accused. She further gave him clear instructions not to use the vehicle for any illegal activities. She further stated that following the incident, she terminated his services as the driver.

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.”

When we consider the evidence of the owner, she has clearly indicated that she has instructed the driver not to use the tractor to commence any offence. Also, she has used it for more than 9 years; these factors were not taken into account by the Learned Magistrate.

When such evidence is presented before the Court, it must be treated as credible and unchallenged, and should be given due consideration. However, in this instant case Learned Magistrate has not considered this evidence. When there is irrefutable evidence placed by the owner that she has taken precautionary measures to prevent the offence. The court has to be satisfied with this evidence. This dicta was considered; In Adambarage Kelum Thushantha Alwis v. The Attorney General 9CA (PHC) 221/2019 decided on 07.02.2023, Iddawela, J has stated that;

“However, it is more appropriate to note that corroboration 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 taken as a reasonable owner of the vehicle to prevent the commission of offences by using vehicle.”

The above said judgment was considered by His Lordship Justice Ranaraja, in Officer I Charge, Nagoda v. Katuneliya Gamage Dilsha Theekshana Kumara, CA PHC/59/2020, decided on 27.03.2025. held that;

“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 Corroborating the narrative of the appellant is not essential.”

We are mindful that our courts require the owner to establish, on the balance of probabilities, that appropriate precautions were taken to prevent the commission of the offence.

We are of the view that the Learned Magistrate arrived at an erroneous conclusion and misdirected him self on the law, particularly concerning Section 40(1) of the Forest Ordinance. The correct approach requires the Magistrate to assess whether

the owner has, on a balance of probabilities, established that she took necessary precautions and that the offence was committed without her knowledge.

Upon a comprehensive review of the evidence led before the Learned Magistrate, we are satisfied that the owner of the vehicle gave evidence that was both cogent and credible. The owner demonstrated that she has taken appropriate and reasonable precautionary measures to ensure that the vehicle was not used in the commission of any offence. For the above-mentioned reasons, we dissatisfy the order made by the Learned Magistrate on 07.082019.

When we peruse the Learned High Court Judge's order made on 19.11.2021, it is evident that he has rejected the revision application on the basis that the said order does not shock the conscious of the courts. And further, he stated that the owner has failed to establish that she has taken sufficient precautions to prevent the crime.

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“උගත් මහේස්ත්‍රාත්වරයා පෙත්සම්කාරියගේ සාක්ෂිය විශ්වසනීයත්වයෙන් යුක්ත බවට පිළිගත නොහැකි යැයි තීරණය කොට ඇත. ඉහත කී ආකාරයට පෙත්සම්කාරිය පමණක් සාක්ෂි දී ඇති අතර, ඇය තීරණාත්මක කරුණු වලට අදාලව අස්ථාවර ලෙස සාක්ෂි දී ඇති බව පැහැදිලි වේ.

එකී සමස්ත කරුණු කෙරෙහි අවධානය යොමු කිරීමේදී උගත් අතිරේක මහේස්ත්‍රාත්වරයාගේ ප්‍රශ්නගත නියෝගය සඳහා මැදිහත් වීමට ප්‍රමාණවත් සුවිශේෂී හේතු ඉදිරිපත් වී නොමැති බවට තීරණය කරමි. ඒ අනුව 2019.08.20 දිනැති ප්‍රතිශෝධන පෙත්සම නිෂ්ප්‍රභා කරමි.”

We hold that the Learned provisional High Court judge arrived at the conclusion that the owner has failed to discharge her burden of proof.

We are satisfied that the owner has demonstrated that she took all necessary steps to implement precautionary measures to prevent any illegal activity. It is also important to note that the vehicle had been used by the owner for nine years without a single incident of involvement in any unlawful activity. This aspect was not considered by either order.

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 owner 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 considered the above factors.

As such, we allow the Appeal and set aside the orders dated 07.08.2019 and 19.11.2021 of the Learned Magistrate of Matara and the Learned Provincial High Court Judge of Matara, respectively.

In light of the foregoing facts, I am of the opinion that the confiscation of the vehicle is unjustified and cannot be upheld.

Therefore, we direct to release of the tractor bearing registration number SPSG 0116 to the Appellant.

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

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL