

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

**In the matter of an appeal in terms of Article
154(P)6 of the Constitution of the
Democratic Socialist Republic of Sri Lanka
read with the Provisions of the High Court
of the Provinces (Special Provisions) Act
No.19 of 1990.**

Officer-in-Charge,
Police Station,
Borella.

Complainant

Court of Appeal Case No.:
CA (PHC) 63/2019

Vs.

High Court of Colombo
Case No. **HCRA 55/2018**

Magistrates Court of Colombo
Case No. **41754/2/15**

Jayaweera Mohandiramage Chaminda
Premaratna,
No.02, Southland Motors,
Lake Drive,
Colombo 08.

Accused

Lanka Rainwater Harvesting Forum,
No.41/12, New Parliament Road,
Pelawatta,
Battaramulla.

01st Complainant-Claimant

LOLC Factors Limited,
No.100/1,

Sri Jayawardenapura Mawatha,
Rajagiriya.

Registered Owner-Claimant

AND BETWEEN

LOLC Factors Limited,
No.100/1,
Sri Jayawardenapura Mawatha,
Rajagiriya

Registered Owner-Claimant-Petitioner

Vs.

Officer-in-Charge,
Police Station,
Borella.

1st Respondent

Jayaweera Mohandiramge Chaminda
Premaratne,
No.02, Southland Motors,
Lake Drive,
Colombo 08.

2nd Respondent

Lanka Rainwater Harvesting Forum,
No.41/12,
New Parliament Road,
Pelawatte,
Battaramulla.

3rd Respondent

Hon. Attorney General,
Attorney General's Department,
Hulftsdorp Street,
Colombo 12.

4th Respondent

Commissioner General of Motor Traffic,
No.341, Elvitigala Mawatha,
Narahenpita,
Colombo 05.

5th Respondent

AND NOW BETWEEN

LOLC Factors Limited,
No.100/1,
Sri Jayawardenapura Mawatha,
Rajagiriya.

**Registered Owner-Claimant-Petitioner-
Appellant**

Vs.

Officer-in-Charge,
Police Station,
Borella.

1st Respondent-Respondent

Jayaweera Mohandiramge Chaminda
Premaratne,
No.02,
Southland Motors,
Lake Drive,
Colombo 08.

2nd Respondent-Respondent

Lanka Rainwater Harvesting Forum,
No.41/12,

New Parliament Road,
Pelawatta,
Battaramulla.

3rd Respondent-Respondent

Hon. Attorney General,
Attorney General's Department,
Hulftsdorp Street,
Colombo 12.

4th Respondent-Respondent

Commissioner General of Motor Traffic,
No.341, Elvitigala Mawatha,
Narahenpita,
Colombo 05.

5th Respondent-Respondent

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

Counsel: Anil Silva, P.C., with Anjana Abeyratne and Avindra de Silva
 instructed by Indika Bambaradeniya for the Claimant-
 Petitioner-Appellant.

Chathura Galhena with Chathuri Perera instructed by
Ramya N. Geeganage for the 3rd Respondent-Respondent.

Jehan Gunasekara, S.C., for the 1st and 4th Respondents.

Argued on: 30.06.2025

Decided on: 23.07.2025

JUDGMENT

AMAL RANARAJA, J.

1. This is an appeal forwarded by the Registered-Owner-Claimant-Petitioner-Appellant (hereinafter referred to as the “Appellant”) who is aggrieved by the judgment pronounced by the Learned High Court Judge of the *Provincial High Court of the Western Province holden in Colombo* in case number HCRA 55/2018.
2. The Learned High Court Judge of Colombo by his judgment dated June 10, 2019 has affirmed the order of the Learned Magistrate of Colombo in *Magistrates Court* case no. 41754/2/15 dated April 06, 2018.

The order of the Learned Magistrate has been pronounced consequent to an inquiry conducted in terms of section 431(1) of the Code of Criminal Procedure Act No. 15 of 1979 in relation to vehicle bearing registration no. WP PD 9399 and the said vehicle has been temporarily released to the 3rd respondent-respondent named in the instant petition of appeal.

3. When the matter was taken up for argument, this Court heard the submissions of the Learned President’s Counsel who appeared on behalf of the appellant, the submissions of the Learned Counsel who appeared on behalf of the 3rd respondent-respondent, also the submissions of the Learned State Counsel who appeared on behalf of the 4th respondent-respondent and the 5th respondent-respondent.
4. The 1st respondent-respondent named in the instant petition of appeal, i.e., the Officer-in-Charge of the *Borella Police* has filed a B report in the *Magistrates Court of Colombo* on June 30, 2015 to report facts to Court regarding a complaint made to the *Borella Police* by the 3rd respondent-respondent.
5. The 1st respondent-respondent as stated above has received a complaint from the 3rd respondent-respondent regarding the latter’s purchase of a vehicle from the 2nd respondent-respondent. The issue at

hand had been that the 2nd respondent-respondent had not handed over to the former the documents necessary for registering the vehicle purchased in the name of the 3rd respondent-respondent.

6. Based on this complaint, the 1st respondent-respondent has reported facts of a commission of an offence to the *Magistrates Court of Colombo*. In the report, the 1st respondent-respondent has alleged that the 2nd respondent-respondent has committed an offence punishable under section 389 of the Penal Code.
7. Subsequently, the Learned Magistrate has proceeded to frame a charge against the 2nd respondent-respondent, who has pleaded not guilty to the charge of committing an offence punishable under section 389 of the Penal Code.
8. As the trial progressed, the Learned Magistrate has come to a finding that the investigation has not been conducted properly. Consequently, the Learned Magistrate has ordered that the vehicle bearing registration number WP PD 9399 be seized and presented in Court.
9. The 1st respondent-respondent has complied with the order. Furthermore, the Learned Magistrate has decided to conduct an inquiry concerning the seized vehicle as stipulated in section 431(1) of the Code of Criminal Procedure Act No.15 of 1979.
10. At the conclusion of the inquiry, the Learned Magistrate has decided as follows;
 - i. To amend the charge in the charge sheet in which the 2nd respondent-respondent had been named an accused, to reflect an offence punishable under section 400 of the Penal Code.

- ii. To temporarily deliver possession of the vehicle bearing registration number WP PD 9399 to the 3rd respondent-respondent.
 - iii. To issue incidental orders to the *Registrar of Motor Vehicles*, enabling the 3rd respondent-respondent to use the vehicle in question while it's in its position.
11. The appellant aggrieved by the order of the *Magistrate* dated April 06, 2018 has forwarded an application for revision to the *Provincial High Court of the Western Province holden in Colombo*, seeking to have the impugned order revised. After the matter was argued in that Court, the Learned High Court Judge has affirmed the order of the Learned Magistrate.
12. Dissatisfied with the decision of the Learned High Court Judge dated June 10, 2019, the appellant has now preferred the present appeal to this Court.

Statement of uncontested facts;

- i. It is undisputed that the appellant sold a Toyota Fortuner vehicle to a company known as *Gold Medal Consortium (Pvt) Ltd*, in exchange the appellant has received a total consideration of Rs.3.5 Million in cash along with a cheque for Rs. 1.2 Million and the vehicle in question, which bears registration number WP PD 9399.
- ii. Although the necessary documents for the registration of the vehicle bearing registration number WP PD 9399 were handed over to the appellant, in that instance, those documents were not submitted to the Registrar of Motor Vehicles in a timely manner.
- iii. The appellant subsequently provided the vehicle bearing registration number WP PD 9399 to the 2nd respondent-

respondent entrusting him with the responsibility of selling the particular vehicle to a third party.

iv. The 3rd respondent-subsequently purchased the vehicle bearing registration number WP PD 9399 from the 2nd respondent for a sum of Rs. 3.875 Million.

v. Though the possession of the vehicle was handed over to the 3rd respondent on April 23, 2015 upon such purchase, the essential documents required for registering the vehicle in the name of 3rd respondent were not provided by the 2nd respondent.

vi. After exhausting all attempts to obtain the documents for registration from the 2nd respondent, the 3rd respondent filed a lawsuit in the *District Court of Colombo* bearing case number DSP 104/2016.

Seeking a declaration that the 3rd respondent was the legitimate owner of the vehicle bearing registration number WP PD 9399.

vii. In response, the *District Court* has issued an interim order prohibiting the appellant from transferring ownership of the vehicle bearing registration number WP PD 9399 to any other party.

viii. It is noteworthy that the vehicle bearing registration number WP PD 9399 was in the possession of the 3rd respondent, at the time the appellant submitted the documents relevant to registration to the Registrar of Motor Vehicles in an effort to have the vehicle registered in its name.

13. The uncontested facts indicate that the appellant entrusted the sale of the vehicle bearing registration number WP PD 9399 to the 2nd respondent-respondent. The 2nd respondent-respondent has thereafter sold the vehicle to the 3rd respondent-respondent on April 23, 2015, who also took possession of it on the same day. Therefore, a bonafide purchaser. However, the vehicle has been registered in the name of the appellant on September 30, 2015, despite the fact that the appellant had not been in possession of the vehicle since April; it had remained with the 3rd respondent-respondent during that time.

14. In light of these circumstances, the registration of the vehicle bearing registration number WP PD 9399, in the name of the appellant is irregular as established in the case of *Merchant Bank of Sri Lanka vs. Mano Chanmugam* SC Appeal 157/97 2000 BLR 21, where it was held as follows;

“...we note that under the Motor Traffic Act the transferee should at first have possession of the car and only then an application should be made for the registration in his name of that car. The forms M.T.A. 8 and M.T.A.6 that have been produced clearly reflect the legal position as stated in section 2 onwards of part 1 of the Motor Traffic Act that what is registered is the change of possession upon a transfer of a motor vehicle. In this instance the bank never had possession of the car, but purported to secure a registration and a transfer in its favour. In fact, the bank had only a distinctive number of a motor vehicle without having possession of a motor vehicle

Hence the purported registration does not give any right to the bank as contemplated in section 431(1) of the Code of Criminal Procedure to obtain an order in its favour”.

15. Accordingly, in a situation where it is necessary to determine who is entitled to possession, it is appropriate to conclude that the 3rd respondent-respondent, as a bona fide purchaser in possession of the vehicle in question is indeed entitled to retain possession of it.

16. Further, as regards to the incidental orders made by the Learned High Court Judge such orders have been made to enable the 3rd respondent-respondent to use the vehicle in question when it is in the possession of the 3rd respondent-respondent and to comply with the provisions of section 2 of the Motor Traffic Act read with section 9(3) of the same legislation. Such incidental orders are legal and not perverse.

17. In those circumstances, I am not inclined to interfere with the impugned judgement of the Learned High Court Judge of Colombo

18. Hence, I dismiss the appeal and make no order regarding costs.

Appeal dismissed.

19. The Registrar of this Court is directed to send a copy of this judgment to the *Magistrates Court of Colombo* for compliance/information.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree,

Judge of the Court of Appeal