

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

In the matter of an appeal under Section
331 of the Code of Criminal Procedure Act
No. 15 of 1979.

CA Case No: CA/PHC/167/2020

HC of Kandy Case No: REV/66/16

OIC
Prevention of Vice Division
Kandy Police
Kandy

Complainant

V.

Chandrapathi Mudiyanseelage Lionel
No.85
Thoppinnagala, Thedaththaawa
Sorabora Janapadaya
Mahiyanganaya.

Accused

AND

Wijekoon Mudiyanseelage Sudu
Banda
No.150/80, Sorabora Janapadaya

Mahiyanganaya

Claimant

Wijekoon Mudiyanseelage Sudu
Banda
No.150/80, Sorabora Janapadaya
Mahiyanganaya

Claimant-Petitioner

Vs.

1. OIC
Prevention of Vice Division
Kandy Police
Kandy
2. Attorney General
Attorney General's Department
Colombo 12
3. The Central Finance
Kandy

Respondents

Presently

Wijekoon Mudiyanseelage Sudu
Banda
No.150/80, Sorabora Janapadaya

Mahiyanganaya

Claimant-Petitioner-Appellant

1. OIC
Prevention of Vice Division
Kandy Police
Kandy
2. Attorney General
Attorney General's Department
Colombo 12
3. The Central Finance
Kandy

Respondents-Respondents

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

Counsels: S.L.Bulathsinalage with D. Rathnayake for the Petitioner
Anoop de Silva, DSG for Respondent

Written

Submissions: 05.09.2024 (by the Appellant)
On

Argued On: 11.06.2025

Judgment On: 18.07.2025

JUDGMENT

B. Sasi Mahendran, J.

The Claimant-Petitioner-Appellant (hereinafter referred to as the “Appellant”) instituted this appeal against the order of the Learned High Court Judge of the Provincial High Court of Central Province holding in Kandy in case No. 66/2016 where the Learned High Court Judge affirmed the order of the Learned Magistrate of Kandy bearing No. 87998 where the Learned Magistrate has confiscated a tipper bearing No. UP LJ 7266 consequent to an inquiry.

The accused, Lionel Kumara, on his unqualified admission, was found guilty of the offence committed under the Forest Ordinance. Thereafter, the Learned Magistrate has decided to conduct an inquiry concerning the vehicle which was seized due to being involved in transporting timber in violation of the Forest Ordinance.

Upon reviewing the order delivered by the Learned Magistrate on 22 June 2016, it is clear that the absolute ownership of the vehicle was vested in Central Finance. Document X3 evidences the existence of a lease agreement between the Petitioner and the said owner. Thereafter, the vehicle was transferred to Weeresinghe Mudiyanseelage Danushka Sampath under a sales agreement. As revealed in document X1, the ownership of the vehicle ultimately vested in Danushka Sampath. Consequently, at the time the vehicle was seized by the police, it was not in the Petitioner’s possession. The Learned Magistrate accordingly opined that the Petitioner did not hold ownership of the vehicle at the time of the incident, and further determined that the Petitioner’s evidence was neither credible nor acceptable.

According to the order of the Learned Magistrate, it was his considered opinion that, since the vehicle was not owned by the Petitioner, he could not have exercised control over it. It is further noted that the Petitioner did not possess the vehicle at the time of the incident; possession lay with Weeresinghe Mudiyanseelage

Danushka Sampath. Accordingly, the Petitioner could not have had control of the said vehicle.

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“ඒ අනුව සුදු බණ්ඩා නමැති අය වාහනයේ හිමිකම වෙනත් අයෙකුට පවරා එහි පාලනය හා සන්තකයද වෙනත් අයෙකුට පවරා දී තිබී ඇති බව පැහැදිලි වේ. ඒ අනුව තමා සන්තකයේ ලොරි රථයේ යතුර තිබුන බවත්, එය සෑම දිනකම තමාගෙන් ලබා ගන්නා බවටත් සෑම අවස්ථාවකම ලොරි රථය පිලිබඳ සොයා බලමින් එය නීති විරෝධී කටයුතු සඳහා යොදා ගැනීම වැලක්වීමට ක්‍රියා කළ බවට, තමා වාහනයේ හිමිකරු ලෙසට වාහනයේ පාලනය තමා වෙත තිබූ බවටත් ප්‍රකාශ කරන්නේ සත්‍යයක් ලෙසට කල්පනා කළ නොහැක.”

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“ඒ අනුව විමසීමේදී සුදු බණ්ඩා යන අය වාහනයේ හිමිකරු ලෙසට සාක්ෂි ලබා දුන්නද, මෙම වාහනයේ නියම හිමිකරු ධනුෂ්ක සම්පත් වීරසිංහ විසින් ඔහු මෙම වරද සඳහා වාහනය යොදා ගැනීම වැලක්වීමට සියලු පූර්වාරක්ෂක ක්‍රියාමාර්ග ගෙන තිබූ බව අධිකරණය සැඟිමකට පත් වන පරිදි ඔප්පු කළ යුතුව තිබේ.. නමුත් ඔහු අවම වශයෙන් සාක්ෂියක් හෝ ලබා දී නැත.”

This issue was considered by Justice Dep (as he then was) in the case of Range Forest Officer Ampara Vs. Orient Finance Services Corporation Ltd. Sc Appeal 120/2011- Supreme Court Minutes of 10.12.2013, and his Lordship held

*“When it comes to showing cause as to why the vehicle should not be confiscated, **only the person who is 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 of transportation” (emphasis added).*

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 judgment.

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.”

Upon examination of the order issued by the Learned High Court Judge on 27 November 2020, it is apparent that he concluded that, at the time of the incident, namely 07 December 2013, the vehicle was in the possession of Weeresinghe Mudiyanseelage Danushka Sampath. Furthermore, the Appellant has failed to establish that Sampath had taken all reasonable precautions to prevent the commission of the alleged offence with the said vehicle.

X1 සහ X2 ලේඛන අනුව මෙම ප්‍රතිශෝධන අයදුම්පතට අදාළ වාහනයේ සන්තකය සහ පාලනය දරා ඇත්තේ එකී විරසිංහ නැමැත්තා බවට මහේස්ත්‍රාත්වරයාට සැඟිමකට පත් වී ඇත. එම සාක්ෂි අනුව එම කරුණ පිළිබඳව උගත් මහේස්ත්‍රාත්තුමාගේ නිගමනය සම්බන්දයෙන් මෙම අධිකරණයටද සැඟිමකට පත් විය හැකිය. සෙලින්කෝ ලිසින් කෝපරේෂන් ලිමිට්ට් එදිරිව එම් . එච්. හැරිසන් ස්ථානාධිපති කුට්ටිගල පොලිසිය සහ අන් අය (ශ්‍රේෂ්ටාධිකරණ අභියාචනා නඩු අංක 43/2012) යන නඩුවේදී තීරණය වී ඇත්තේ කැලෑ අඥා පනතේ 40 වගන්තියේ අර්ථය අනුව වාහනයේ අයිතිකරු යනු වාහනයේ සන්තකය සහ පාලනය දරා ඇති තැනැත්තා බවයි.

We hold that the evidence placed before the Learned Magistrate is not satisfactory to discharge the burden placed on the owner that he has taken all precautionary measures to prevent the use of the vehicle for the commission of the offence.

Accordingly, we dismiss the appeal with a cost of Rs. 50,000/-.

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

Appeal is Dismissed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL