

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

**In the matter of an Appeal in terms of
Section 331 of the Code of Criminal
Procedure Act No. 15 of 1979**

Range Forest Officer,
Range Forest Office,
Department of Forest,
Siyambalanduwa.

Complainant

**Court of Appeal
Case No. CA PHC 74/2020**

Vs.

Provincial High Court of Monaragala
HC REV 09/2019

Magistrate Court of Siyamabalanduwa
Case No. 76068

1. Wijesinghe Mudiyanseelage Wijesiri,
Ekamuthupura,
Nakkala,
Monaragala.
2. Konakara Mudiyanseelage Thilakarathne,
Ekamuthupura,
Nakkala,
Monaragala.

Accused

3. Rathnayake Mudiyanseelage Indika
Pushpakumara Rathnayake,
Samagipua,
Bibila Road,
Nakkala,
Monaragala.

Registered Owner-Claimant

And Then Between

Rathnayake Mudiyansele Indika
Pushpakumara Rathnayake,
Samagipua,
Bibila Road,
Nakkala,
Monaragala.

Registered Owner- Claimant-Petitioner

Vs.

1. Wijesinghe Mudiyansele Wijesiri,
Ekamuthupura,
Nakkala,
Monaragala.
2. Konakara Mudiyansele Thilakarathne,
Ekamuthupura,
Nakkala,
Monaragala.

Accused-Respondents

3. Range Forest Officer,
Range Forest Office,
Department of Forest,
Siyambalanduwa.

Complainant-Respondent

4. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Additional Respondent

And Now Between

Rathnayake Mudiyanse Indika
Pushpakumara Rathnayake,
Samagipua,
Bibila Road,
Nakkala,
Monaragala.

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

Vs.

1. Wijesinghe Mudiyanse Wijesiri,
Ekamuthupura,
Nakkala,
Monaragala.
2. Konakara Mudiyanse Thilakarathne,
Ekamuthupura,
Nakkala,
Monaragala.

Accused-Respondents-Respondents

3. Range Forest Officer,
Range Forest Office,
Department of Forest,
Siyambalanduwa.

Complainant-Respondent-Respondent

4. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Additional Respondent-Respondent

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

Counsel: Udaya Sri Keerthiwardena for the Appellant.

Padmal Weerasinghe De Silva, S.S.C for the 3rd and 4th
Respondents.

Argued on: 26.03.2025

Decided on: 03.04.2025

JUDGMENT

AMAL RANARAJA, J.

1. The Registered Owner-Petitioner-Appellant (hereinafter referred to as the “Appellant”) has rented i.e. granted for use at a price the tractor and the trailer bearing registration nos UPRS 4264 and UPRW 3860 respectively to third parties as per their requirements. On 20.10.2015 the appellant has as usual rented the particular tractor and its trailer to a third party to dispatch sand extracted from a land named “*Ura Oya*” situated in the *Monaragala District*. Unknown to the appellant, the forest officers of the forest range office at *Siyamabalanduwa* have seized the tractor and its trailer for them being a vehicle used in committing

an offence described in section 20(1)(g) of the Forest Conservation Ordinance No.30 of 1945 as amended. Thereafter, the forest range officer of *Siyamabalanduwa* has filed action in the *Siyamabalanduwa Magistrate Court* against the persons who had extracted sand and loaded the same onto the trailer of the tractor in violation of the conditions of the permit issued for such purpose, an offence in terms of section 20(1) (g) and section 40(1)(b) of the Forest Conservation Ordinance. The accused have been found guilty, convicted and sentenced at the conclusion of the trial. Subsequently, a confiscation inquiry has been held regarding the tractor and its trailer bearing registration nos UPRS 4264 and UPRW 3860. After the inquiry by order dated 19.07.2018, the Learned Magistrate has ordered the confiscation of the said tractor and its trailer.

2. Aggrieved by the order, the appellant has filed an application in revision [HCRA9/2017] in the *High Court of Monaragala*. The Learned High Court Judge by his order dated 26.05.2020, has dismissed the revision application and affirmed the order of the Learned Magistrate dated 19.07.2018. The appellant also being aggrieved by the order of the

Learned High Court Judge of *Monaragala* dated 26.05.2020 has preferred the instant appeal to this Court. The facts of this appeal were not disputed, it is common ground that the forest range officer of *Siyamabalanduwa* had instituted proceedings against the persons who extracted sand and loaded the same onto the trailer of the tractor in violation of the conditions of the permit issued for such purpose on 20.10.2015 and thereby committing an offence punishable under sections 20(1)(g) and 40(1)(b) of the Forest Conservation Ordinance No.30 of 1945 as amended.

Section 40(1)(b) of the Forest Conservation Ordinance No.30 of 1945 as amended provides,

“(1) Where any person is convicted of a forest offence –

(a) All timber of forest produce which is not the property of the State in respect of which such 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 in any case where the owner of such tools, vehicles, implements and machines used in the commission of such offence, is a third party, no Order of Confiscation 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.

3. Section 40(1)(b) of the Forest Conservation Ordinance states that upon a conviction, all tools, vehicles, implements used for the commission of such offence shall be confiscated. If the owner of a vehicle himself was the accused in the preceding case, then the issue before a Court in a confiscation inquiry will not be complicated. However, if the owner is a third party, it would be necessary for a Court to ascertain whether the offence has been committed by a particular accused with the

connivance of the owner of such vehicle used for the commission of the offence.

4. The appellant as the registered owner of the tractor and its trailer in issue has given evidence at the confiscation inquiry and he has been the only witness summoned to give evidence on behalf of the owner. The appellant has stated in his evidence that he has instructed the driver to not use the said tractor and its trailer to commit any offence. He has also made a deliberate effort to verify the permit marked “B-1” to ensure that the third person renting the tractor and its trailer had a valid permit for sand extraction which was scheduled for dispatch.

5. The evidence provided by the appellant is implicit and credibility of this witness has not been impeached. Therefore, the appellant has provided indicating irrefutable evidence that he has taken necessary precautions as the owner of the tractor and its trailer to prevent the commission of an offence using the same.

6. In ***Adambarage Kelum Thushantha Alwis vs. The Attorney General***

[CA (PHC) 211/2019] decided on 07.02.2023, Iddawela, J, has stated,

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

7. It is clear that if an owner presents irrefutable evidence demonstrating the precautionary measures taken to prevent his vehicle from being used in the commission of an offence, additional corroborative evidence supporting the owner’s narrative is not essential.

8. The Learned High Court Judge has not drawn his attention to the facts discussed in this judgment, thereby, misdirected himself when he affirmed the order of the Learned Magistrate dated 19.07.2018.

Therefore, I set aside the orders dated 19.07.2018 and 26.05.2020 of the Learned Magistrate and the Learned High Court Judge respectively.

9. I direct that the tractor and its trailer bearing registration nos UPRS4264 and UPRW3860 be released to the appellant.

10. The Registrar of this Court is directed to communicate this judgment to the *Magistrate Court of Siyamabalanduwa* for compliance.

Appeal allowed.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree.

Judge of the Court of Appeal