

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

In the matter of an Revision in terms of Article 138 read with Article 154P (6) of the of the Constitution against the judgment of the Learned High Court Judge of Embilipitiya made in the Provincial High Court Sabaragamuwa Province Holden in Embilipitiya in Revision Application No.HCRA/05/2019.

Court of Appeal

S.D.Nimal

Application No:

Site Forest Officer,

CA(PHC)APN 0004/2021

Embilipitiya.

Complainant

High Court of Embilipitiya

Case No.HC/05/2019

Vs.

MC Embilipitiya

Case No.40290/16

1. S.L.Sugath Chaminda
2. Madaringe Sumathipala
3. Wickrama Arachchige Amal Chathura
4. H.A.Sanjaya Madhushanka
5. W.A.Supun Sandamal
6. W.K.Nevil Chathuranga

Accused

AND

Sugamuni Liyaage Karunasena
Polmandiya Watta,
Dadhu-hetekama,
Mul-ediyawala.

Applicant-Petitioner

Vs.

1. S.D Nimal
Site Forest Officer,
Embilipitiya.
2. The Attorney General
Attorney General's Department
Colombo-12.

Respondent-Respondents

AND NOW BETWEEN

Sugamuni Liyaage Karunasena
Polmandiya Watta,
Dadhu-hetekama,
Mul-ediyawala.

Applicant-Petitioner-
Petitioner

Vs.

1. S.D Nimal
Site Forest Officer,
Embilipitiya
2. The Attorney General
Attorney General's Department
Colombo-12.

**Respondent –Respondent-
Respondents**

BEFORE : **Sampath B. Abayakoon, J.**
P. Kumararatnam, J.

COUNSEL : **Kaushalya Nawaratne, PC with Bhagya
Herath and Thaveesha
Abeygunawardane instructed by NW
Associates for the Petitioner.
Jayalakshi De Silva, SSC for the
Respondents.**

ARGUED ON : **14/03/2024.**

DECIDED ON : **04/04/2024.**

JUDGMENT

P. Kumararatnam, J.

The Complainant-Respondent (Hereinafter referred to as the Complainant) filed a charge sheet against the 1-6 Accused under Section 25(2) read with Sections 40(1) (a) (b) and 40(2) of the Forest

Ordinance for transporting 09 Jack Trunks worth about Rs.21,921.25 using a vehicle bearing No. 41-0073 without a valid permit for such transportation.

The charge sheet was filed against the 1-6 Accused in the Magistrate Court of Embilipitiya. As the 1-6 Accused pleaded guilty to the charge sheet, the Learned Magistrate of Embilipitiya had convicted the Accused persons and imposed a fine of Rs.25000/- each and fixed for an inquiry to confiscate the Vehicle bearing No. 41-0073.

At the conclusion of the inquiry, the Learned Magistrate had decided to confiscate the aforesaid vehicle by his order dated 28.03.2019. At the inquiry the Petitioner, the 1st and 2nd Accused and person called Sunil Shantha had given evidence on his behalf.

Being aggrieved by the order of the Magistrate, the Appellant filed a revision application in the Provincial High Court of Sabaragamuwa-Province Holden at Embilipitiya to revise the order of the Magistrate of Embilipitiya. After an inquiry, the Learned High Court Judge had dismissed the said revision application and affirmed the order of Learned Magistrate of Embilipitiya by her order dated 28.03.2019.

Now the Petitioner filed this Revision to set aside the order of the Learned High Court Judge of Sabaragamuwa-Province Holden at Embilipitiya dated 10/12/2020 as well as the order of the Learned Magistrate of Embilipitiya.

The Petitioner is the father of the 1st Accused in the Magistrate Court case No. 40290/16. At the inquiry the Petitioner had taken up the position that he was never convicted for any offence. The Petitioner had the custody of the key of the vehicle and only given to 1st Accused to transport his merchandise when needed.

On 18.10.2016 the 1st Accused had taken the vehicle to transport some bricks to Debarayaya. On his way he had met 3-6 Accused who were trying to carry the logs to a carpenter and upon being urged to tender a

helping hand, helped the 3-6 Accused to move the logs to the carpenter at which point they were arrested. The Petitioner had told Court that he was completely unaware of the commission of the offence and he had taken all necessary precautions to prevent the use of the vehicle for the commission of the offence.

At the very outset, in keeping with the highest traditions of the Attorney General's Department, the Senior State Counsel informed this Court that the Hon. Attorney General is not supporting the confiscation order of the Learned Magistrate of Embilipitiya having considered the facts and the circumstances that led to the confiscation.

Considering all these matters into careful consideration, I set aside the order of the Learned High Court Judge of Embilipitiya dated 10.12.2020 and the order of Learned Magistrate Court of Embilipitiya dated 28.03.2019.

Therefore, this appeal is allowed.

I direct that the vehicle No. 41-0073 be released to the Petitioner.

The Registrar of this Court is directed to send this Judgement to the High Court of Embilipitiya and the Magistrate Court of Embilipitiya.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL