

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

In the matter of a Revision under and in terms of Article 138 of the Constitution read with Article 154P (6) of the Constitution and the High Court of the Provinces (Special Provisions) Act No.19 of 1990.

**Court of Appeal**

**Application No:**

**CA (PHC) APN 0150/2022**

The Officer-in Charge

Police Station

Ambalantota.

**Complainant**

**High Court of Hambantota**

**No. HCA/01/22**

**MC Hambantota Case No.**

**36797/17**

**Vs.**

Wanniarachchige Kasun Rathna Prabath  
Waliwawe Meegasjadhura,  
Suriyawewa.

**Accused**

**AND**

Warakapitiya Gamage Sujith Priyantha  
No. 91,  
Karabagalmulla  
Ruhunu Ridiyagama  
Ambalantota.

**Applicant-Appellant (Registered Owner)**

1. The Officer-in-Charge  
Police Station  
Ambalantota.
2. Hon. Attorney General  
Attorney General's Department  
Colombo-12

**Respondents**

**AND NOW BETWEEN**

Warakapitiya Gamage Sujith Priyantha  
No. 91,  
Karabagalmulla  
Ruhunu Ridiyagama  
Ambalantota.

**Applicant-Appellant-Petitioner**

**(Owner-Claimant)**

1. The Officer-in-Charge  
Police Station  
Ambalantota.
2. The Attorney General  
Attorney General's Department  
Colombo-12

**Respondents-Respondents**

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

**P. Kumararatnam, J.**

**COUNSEL** : **Sandamal Rajapaksha for the Appellant.**

**Jehan Gunasekara, SC for the Respondents.**

**ARGUED ON** : **06/11/2023.**

**DECIDED ON** : **13/03/2024.**

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**JUDGMENT**

**P. Kumararatnam, J.**

The Complainant filed a charge sheet Under Section 63(1) (a) of the Mines and Minerals Act No.33 of 1992 as amended by Act No.66 of 2009 against the Accused in the Magistrate Court of Ambalantota for mining sand without a valid license issued by the Geological Survey and Mines Bureau using an Excavator Machine bearing registration No. SK 200. As the Accused pleaded guilty to the charge sheet, the Learned Magistrate of Ambalantota had convicted the Accused and imposed a fine of Rs.50,000/- and fixed for an inquiry under Section 63 (b) (1) of the Mines and Minerals Act to decide whether to confiscate the Excavator Machine bearing No. SK 200.

At the conclusion of the inquiry, the Learned Magistrate had decided to confiscate the aforesaid machine by his order dated 25.11.2021. At the inquiry only the Registered Applicant-Appellant-Petitioner (Hereinafter referred to as the Petitioner) 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 Southern Province Holden at Hambantota to revise the order of the Learned Magistrate of Hambantota.

After an inquiry, the Learned High Court Judge had dismissed the said Revision Application of the Petitioner on the basis that the Petitioner had failed to take necessary precaution to prevent misuse of the aforesaid Excavator Machine bearing No. SK 200.

Now the Petitioner filed this Revision Application in terms of Article 154-P (6) of the Constitution to set aside the order of the Learned High Court Judge of Southern Province Holden at Hambantota dated 06/07/2022.

**The Appellant submitted following exceptional circumstances:**

- i. It is respectfully submitted that the order dated 06/07/2022 of the Honourable High Court Judge is void, bad in law and illegal in as much as the same has been delivered on without giving due courtesy to the Section 63 (b) (1) of the Mine and Minerals Act No 66 of 2009.
- ii. It is respectfully submitted that the Honourable Judge of the Provincial High Court has erroneously drawn an inference that the Petitioner could not take any precaution to prevent commission of offence using Excavator.

- iii. The Honourable Judge of the Provincial High Court has erroneously come to the conclusion that the test used by the Court in ***Aruna Pradeep Prasanna vs Attorney General CA (PHC) No 61/2012*** to decide whether the vehicle of the appellant was used for transportation of liquor without his knowledge or not in terms of the Excise ordinance, should be applied to this matter.
- iv. The Honourable Judge of the Provincial High Court has erroneously come to the conclusion that in the case of ***Aruna Pradeep Prasanna vs Attorney General CA (PHC) No 61/2012*** the Court of Appeal has imposed extent of burden of proof to the applicant as to why the goods which were used for the criminal offence should not be confiscated in terms of the section 54 (1) (2) of excise ordinance is same under the section 63 (b) (1) of the Mine and Mineral Act.
- v. The Honourable Judge of the Provincial High Court has failed to give due consideration to the different words used in section 54 (1) (2) of excise ordinance and section 63 (b) (1) of Mine and Mineral Act as in the section 54 (1) (2) of Excise Ordinance has indicated as **shall be liable to confiscation** but in section 63 (b) (1) of Mine and Mineral Act has indicated as **may make order to be confiscated.**
- vi. The Honourable Judge of the High Court has assigned burden of proof to the applicant who asking the goods in terms of the section 63 (b) (1) of the Mine and Mineral Act and that extent of burden of proof is not intended to be assigned by the Parliament.

- vii. The Honourable Judge of the High Court has erroneously used the judgment delivered under the Excise Ordinance to this matter without considering relevant facts of the present matter
- viii. The Honourable Judge of the High Court has come to conclusion that the evidence given by the Petitioner in the Magistrate Court is contrary to the law

It is settled law that revision is a discretionary remedy, and such power shall be invoked only upon demonstration of exceptional circumstances.

In **Marian Beebee v. Seyed Mohamed 69 CLW 34** the court held that:

*“Power of revision is an extraordinary power of the court which is independent and distinct from the appellate jurisdiction. The object of revisionary jurisdiction is to ensure the due administration of justice and the correction of all errors in order to avoid a miscarriage of justice”.*

In the case of **Rasheed Ali v. Mohammed Ali and Others [1981] 1 SLR 262**, the court held that:

*“...the powers of revision vested in the Court of Appeal are very wide and the Court can in a fit case exercise that power whether or not an appeal lies. When, however, the law does not give a right of appeal and makes the order final, the Court of Appeal may nevertheless exercise its powers of revision, but it should do so only in exceptional circumstances. Ordinarily the Court will not interfere by way of review, particularly when the law has expressly given an aggrieved party an alternative remedy such as the right to*

*file a separate action, except when non-interference will cause a denial of justice or irremediable harm”.*

In **Commissioner of Police v. Tanes (1957-58) 68 CLR 383**, the court held that:

*"It is a deep-rooted principle of the law that before anyone can be punished or prejudiced in his person or his property by any judicial or quasi-judicial procedure, he must be afforded adequate opportunity of being heard ... "*

In this case the Learned High Court Judge only considering the order of the Magistrate Court of Hambantota decided to dismiss the revision application stating that that the Petitioner had failed to prove that he did not had knowledge about committing of the offence.

In this case an Excavator Machine had been confiscated for mining sand without a valid license.

The Learned Magistrate has dismissed the application on the basis that the Petitioner had failed to show that he took all necessary precautions to prevent a crime being committed by using the Excavator Machine.

The Learned Counsel for the Petitioner has submitted that the evidence led at the vehicle inquiry had disclosed that the Petitioner had no knowledge of commission of the offence. According to the Petitioner, he had rented the Excavator Machine to one Pradeep Kumar who is the license holder of the place of mining of sand. The Petitioner had entered in to a verbal agreement with Pradeep Kumar who said have obtained mining license from the Geological Survey and Mines Bureau. The Petitioner had given specific instructions to the Accused not to use the Excavator Machine for any illegal work and use the same for mining of sand only at the relevant place.

In **Manawadu V. The Attorney General (1987) 2 SLR 30**, it was held that:

*"By Section 7 of Act No. 13 of 1981? it was not intended to deprive an owner, of his vehicle used by the offender; in committing a 'forest offence' without his (owner's) knowledge and without his participation. The word 'forfeited' must be given the meaning 'liable to be forfeited' so as to avoid the injustice that would flow on the construction that forfeiture of the vehicle is automatic on the conviction of the accused. The amended sub-section 40 does not exclude by necessary implication 'the rule of 'audi alteram partem' . The owner of the lorry not a party to' the case is entitled to be heard on the question of forfeiture of the lorry, if he satisfies the court that the accused committed the offence without his knowledge or participation, his lorry will not be liable to forfeiture.*

*The Magistrate must hear the owner of the lorry on the question of showing cause why the lorry is not liable to be forfeited. If the Magistrate is satisfied with the cause shown, he must restore the lorry to the owner. The Magistrate may consider the question of releasing the lorry to the owner pending inquiry, on his entering into a bond with sufficient security to abide by the order that may ultimately be binding on him"*

The Petitioner has given evidence in the Court and has claimed that he was unaware of the crime being committed as he has given the vehicle on rent to excavate sand only.



In this case the Petitioner, further had given evidence and explained to the Court that he had taken all the possible and necessary precautions to prevent the vehicle being used for illegal purposes. Previously, the vehicle was not used for any illegal activities by the Accused at any stage. According to the evidence of the Petitioner he had given instructions to the Accused not to use for any illegal activities. He has placed full trust on the Accused when he gave the vehicle to him. Hence, it is not correct to say that the Petitioner had not taken any action to prevent the vehicle being used for illegal purposes.

The Learned Magistrate should have considered that there had been no previous or pending case against in respect of the vehicle that had been used for illegal activities and the Accused is not a habitual offender.

In this case the Learned High Court Judge only considering the order of the Magistrate Court of Hambantota and decided to dismiss the Revision Application stating that that the Petitioner had failed establish to that he did not have any knowledge of committing the offence.

It is apparent that in the absence of the Petitioner having had knowledge of mining sand illegally and /or having had any monetary or personal benefit from the crime committed cannot be deemed as the person behind the illegal operation.

Hence, the Learned Magistrate simply dismissing the application on the basis that the Petitioner had failed to show that he took all necessary precautions to prevent a crime being committed is not correct in this case.

Hence, I set aside the order of the Learned High Court Judge of Hambantota dated 06.07.2022 and the order of Learned Magistrate Court of Hambantota dated 25.11.2021.

Therefore, this Revision Application is allowed.

I direct that the Excavator Machine bearing No. SK 200 be released to the Petitioner.

The Registrar of this Court is directed to send this Judgment to the High Court of Hambantota and the Magistrate Court of Hambantota.

**JUDGE OF THE COURT OF APPEAL**

**SAMPATH B. ABAYAKOON, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**