

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

In the matter of an Appeal in terms  
of Article 154P (6) of the  
Constitution of the Democratic  
Socialist Republic of Sri Lanka.

Range Forest Officer,  
Galgamuwa.

**CA (PHC) 0214-17**

**PHC Kurunegala**  
**HCR 172-2012**

**MC – Mahawa**  
**70197-F**

**Complainant**

**Vs.**

1. George Nishantha Fernandopulle  
268/B, Gonawila – North,  
Dankotuwa.
2. Warnakulasooriya Josheph Cruise  
03/140, Galawatta,  
Bandirippuwa,  
Lunuwila.

**Accused**

**AND**

Saman Palitha Fernando  
By his **Power of Attorney holder**  
Lindara Midiyanselage Chandani  
PushpikaLindara,  
Theresa Road,  
Nainamaduwa.

**Aggrieved Party - Petitioner**

**Vs.**

1. Range Forest Officer,  
Galgamuwa.

**Complainant – Respondent**

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

**Respondent**

3. George Nishantha Fernandopulle  
268/B, Gonawila – North,  
Dankotuwa.
4. Warnakulasooriya Josheph  
03/140, Galawatta,  
Bandirippuwa,  
Lunuwila.

**Accused – Respondent**

**AND NOW BETWEEN**

Saman Palitha Fernando,  
By his Power of Attorney holder  
Lindara Midiyanselage Chandani  
Pushpika Lindara,  
Therese Road,  
Nainamaduwa.

**Aggrieved Party – Petitioner  
Appellant**

**Vs.**

1. Range Forest Officer,  
Galgamuwa.

**Complainant – Respondent –  
Respondent**

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

**Respondent – Respondent**

3. George Nishantha Fernandopulle  
268/B, Gonawila – North,  
Dankotuwa.
4. Warnakulasooriya Josheph Cruise  
03/140, Galawatta,  
Bandirippuwa, Lunuwila.

**Accused – Respondents –  
Respondents**

Before : **Hon. M Sampath K. B Wijeratne, J.(CA)**  
: **Hon. M. Ahsan R. Marikar, J.(CA)**

Counsel : Dimuthu Bandara with Kaheliya  
Alahakoon and Buddhika Thilakarathna  
for the Aggrieved Party – Petitioner –  
Appellant.  
Jehan Gunasekara, S. C., for the 1<sup>st</sup> and  
2<sup>nd</sup> Respondents.

Written Submissions : Aggrieved Party – Petitioner – Appellant  
filed on 27.07.2022.  
  
Complainant – Respondent – Respondent  
and Respondent – Respondent filed on  
16.01.2024.

Argued on : 06.08.2024

Decided on : 27.09.2024

**M. Ahsan R. Marikar, J. (CA)**

**Introduction**

- 1) The Petitioner-Appellant had preferred this appeal against the Order made by the Learned High Court Judge of Kurunegala dated 6<sup>th</sup> September 2017, and seeks the following reliefs prayed for in the prayer of the petition dated 20<sup>th</sup> September 2017.
- 2) The said reliefs are reproduced as follows;

එසේ හෙයින් අභියාචක විසින් මෙම උතුම් අභියාචනාධරණයෙන් ඉතා ගෞරවයෙන්  
අයැද සිටින්නේ,

- (අ) උගත් මහෙස්ත්‍රාත්තුමන් විසින් 2011.11.30 දින දරණ නියෝගය නිප්පුනා කරන ලෙසද,
- (ආ) උගත් මහාධිකරණ විනිසුරුතුමිය විසින් 2017.09.06 දින දරණ නියෝගය නිප්පුනා කරන ලෙසද,
- (ඇ) අංක NWPA 2814 දරණ වාහනය රාජසන්නක කිරීමට යටත් නොවිය යුතු බවට නියෝග කරන ලෙසද,
- (ඈ) ඔබතුමන්ලාගේ ගරු අධිකරණය මගින් මෙම නඩුව අයා හිමි කරන තෙක් අංක NWPA 2814 දරණ වාහනය සම්බන්ධයෙන් අභියාචක හට අගතිගාමී සිසිල් නියෝගයක් නොකරන ලෙසට අතුරු නියෝගයක් නිකුත් කරන ලෙසද,
- (ඉ) නඩු ගාස්තු සහ
- (ඊ) ගරු අධිකරණයට සුදුසු යැයි හැඟෙන වෙනත් සහ තවත් සහනයන් ලබා දෙන ලෙසද වේ..

**Facts of this case**

- 3) The Petitioner-Appellant is hereinafter referred to as the Appellant and the Complainant-Respondent-Respondent is hereinafter referred to as the 1<sup>st</sup> Respondent.
- 4) The 1<sup>st</sup> Respondent being the Range Forest Officer had instituted an action against the 3<sup>rd</sup> and 4<sup>th</sup> Respondents at the Magistrate's Court of *Mahawa* under the Forest Ordinance entering a reserve forest, felling six teak trees and transporting the said timber in the vehicle No.MWPA-2814.
- 5) Initially, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent had not pleaded guilty. However, subsequently, they had withdrawn their plea and pleaded guilty for the charge sheet which was filed by the 1<sup>st</sup> Respondent.
- 6) After finding the said 3<sup>rd</sup> and 4<sup>th</sup> Respondents guilty of the charges to which they had pleaded, the Learned Magistrate had held an inquiry regarding vehicle No.MWPA-2814 to determine whether reasons to prevent its confiscation existed.
- 7) After the conclusion of the said inquiry the Learned Magistrate ordered the confiscation of the said vehicle.
- 8) Dissatisfied with the Order of the Learned Magistrate, the Appellant had preferred a revision application before the High Court of Kurunegala.
- 9) The Learned High Court Judge had dismissed the application for revision filed by the Appellant.
- 10) Aggrieved by the said Order, the Appellant has preferred this appeal.
- 11) The grounds raised by the Appellant are that the 3<sup>rd</sup> and 4<sup>th</sup> Respondents had committed the offence which they were punished by the Magistrate's Court, without the knowledge of the Appellant, the registered owner of the vehicle. The said facts had not been

duly considered by the Learned Magistrate and or the High Court Judge.

- 12) On the said grounds, the Appellant has sought to obtain the reliefs prayed for in the plaint.

### **Disputed Facts**

- 13) This case was taken up for argument on 6<sup>th</sup> August 2024. Counsel for the Appellant and the State Counsel appearing for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents concluded the argument.

- 14) As per the argument raised by the Appellant and on perusal of the documents the following disputed points should be considered.

- (i) Were the 3<sup>rd</sup> and 4<sup>th</sup> Respondents found guilty in the *Mahawa* Magistrate Court Case No.70197 for felling six Teak trees from the reserve forest and transporting it in vehicle No.MWPA-2814?
- (ii) If so, was there an inquiry held to confiscate the vehicle No.MWPA-2814 for transporting illegal timber?
- (iii) Has the Learned Magistrate considered the evidence and the documents pertinent to the aforesaid inquiry?
- (iv) Has the Learned High Court Judge considered the order made by the Learned Magistrate?
- (v) If so, can the Appellant maintain this action

- i) Were the 3<sup>rd</sup> and 4<sup>th</sup> Respondents found guilty in the *Mahawa* Magistrate Court Case No.70197 for felling six Teak trees from the reserve forest and transporting it in vehicle No.MWPA-2814?**

- 15) The 1<sup>st</sup> Respondent had filed a B report in *Mahawa* Magistrate Court against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in the instant

application. The said B report is found on page 74 of the High Court brief.

- 16) Subsequently at page 94 for the said B report the charge sheet had been filed by the 1<sup>st</sup> Respondent against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. Referring to page 95 of the said brief the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents had withdrawn their earlier plea and pleaded guilty for the charge sheet filed at page 94 of the High Court brief.
- 17) On that the Learned Magistrate has imposed a fine against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.
- 18) Thus, it is evident that the Learned Magistrate of *Mahawa* had punished the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

**ii) If so, was there an inquiry held to confiscate the vehicle No.MWPA-2814 for transporting illegal timber?**

- 19) Learned Magistrate of *Mahawa* had conducted an inquiry to determine whether the vehicle No. MWPA-2814 should be confiscated.
- 20) During the said inquiry the parties have led evidence. Upon conclusion of the said inquiry, the Learned Magistrate of *Mahawa* had delivered the Order confiscating the vehicle No. MWPA-2814.

**iii) Has the Learned Magistrate considered the evidence and the documents pertinent to the aforesaid inquiry?**

- 21) On perusal of the Order made by the Learned Magistrate, as found on page 126 of the High Court brief, it is evident that the Learned Magistrate had scrupulously considered the facts and the documents pertinent to the inquiry held before him. Subsequently, had decided to confiscate the vehicle.

- 22) I draw my attention to page No, 126 and 129. The Appellant in this case had stated that he had purchased the vehicle from the 2<sup>nd</sup> Respondent on 3<sup>rd</sup> February 2011, while the incident pertinent to the charge sheet, had occurred on 28<sup>th</sup> February 2011. The forms MT6 and MT8 forms had been tendered to the Registrar of Motor Vehicles on 15<sup>th</sup> March 2011.
- 23) On the face of it, the Appellant and the 2<sup>nd</sup> Respondent had collusively acted to mislead Court by stating that the Appellant was the owner of the said vehicle at the time the offence was committed by the 2<sup>nd</sup> Respondent.
- 24) The Learned Magistrate thoroughly considered this fact by providing a hearing to the Department of Motor Traffic officials and in reviewing the documents pertinent to registration.
- 25) Therefore, it is my considered view that the Learned Magistrate had carefully considered the evidence and the documents pertinent to this action.

**iv) Has the Learned High Court Judge considered the order made by the Learned Magistrate?**

- 26) On perusal of the High Court Judge's Order dated 6<sup>th</sup> September 2017, the Learned High Court Judge had very well considered the Order made by the Learned Magistrate in the instant application confiscating vehicle No.MWPA-2814.
- 27) In the said Order, on page No. 2 to 4, the Learned High Court Judge had reiterated that the ownership had not been transferred during the period in which the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents had committed the offence referred to in the *Mahawa* Magistrate Court case No. 70197.



- 28) In the inquiry held before the said Magistrate, related to the vehicle No. MWPA-2814, the Appellant had failed to prove that the Appellant was the registered owner of the aforesaid vehicle and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents committed the offence without his knowledge.
- 29) Considering the said facts, the Learned High Court Judge had decided that there are no exceptional circumstances to invoke the revisionary jurisdiction of the High Court to set aside the Learned Magistrate's order.
- 30) I concur with the High Court Judge's Order after perusing the Learned Magistrate's reasons given to confiscate vehicle No. MWPA-2814.

**v) If so, can the Appellant maintain this action?**

- 31) In considering the aforesaid analysis I am of the view the Appellant has failed to prove a single reason to set aside the order made by the Learned High Court Judge.

In a revisionary application, it is decided in ***Hotel Galaxy Ltd v Mercantile Hotel Management Ltd (1987)***<sup>1</sup>, Sharvananda CJ stated;

*“It is settled law that the exercise of revisionary powers of the Appellate Court is confined to cases in which exceptional circumstances exist warranting its intervention.”*

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<sup>1</sup> 1 SLR 5

And in the case of **Cademmanpulle v Ceylon Paper Sacks Ltd (2001)**<sup>2</sup> it was held;

*“The existence of exceptional circumstances is a precondition for the exercise of the powers of revision”*

- 32) In the said cases, a revisionary jurisdiction can be exercised only in a limited category of situations and exceptional circumstances warrant such intervention.
- 33) On perusal of the Learned High Court Judge’s Order, it is evident that there are no exceptional circumstances and or reasonable grounds proven by the Appellant for the High Court Judge to invoke the Writ Jurisdiction.
- 34) Furthermore, the Learned Magistrate and the High Court Judge had observed the lack of any explanation given by the Appellant at the *Mahawa* Magistrate’s Court inquiry for the delay of submitting transfer papers necessary to register the confiscated vehicle in his name.
- 35) It is apparent that the Appellant, along with the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, being friends, have collusively worked to mislead the Court producing the Department of Motor Traffic documents.
- 36) In the said circumstances, I draw my attention to the decision given by Justice K. Priyantha Fernando in the case of **W.M Piyal Senadheera v AG Appeal**<sup>3</sup>;

*“Further, where one relies on the position that a third-party owner of a vehicle must be treated differently and that there should be no automatic confiscation and that a hearing should be accorded to such a person, as set out under the Forest Ordinance and the Animals Act, the proviso in its entirety should be considered. One cannot simply request that the proviso should be applied to the extent where it is*

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<sup>2</sup> 3 SLR 112

<sup>3</sup> No. 249/2017

*beneficial to them. The proviso is conditional on the word "if". The benefit of the proviso could only be attained if the owner of the vehicle proves to the satisfaction of the Court that he has taken all precautions to prevent the use of the vehicle in question or that the vehicle has been used without his knowledge".*

- 37) In view of the aforesaid decision and the facts analyzed by me I do not see any reason to set aside the Order made by the Learned High Court Judge on 6<sup>th</sup> September 2017.

### **CONCLUSION**

- 38) In the light of the facts stated above, in considering the argument raised by the counsels and perusal of the documents, the Appellant had failed to satisfy this Court and/or given any reason to satisfy to set aside the Order made by the Learned High Court Judge, Provincial High Court of Kurunegala dated 6<sup>th</sup> September 2017.
- 39) On that, I dismiss the Appellant's petition dated 20<sup>th</sup> September 2017 subject to tax cost.

**Judge of the Court of Appeal**

**M Sampath K. B. Wijeratne, J. (CA)**

I agree.

**Judge of the Court of Appeal**