

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

In the matter of a Revision  
Application under Article 138 of the  
Constitution of the Democratic  
Socialist Republic of Sri Lanka.

Officer in Charge  
Police Station,  
Chillaw.

**Complainant**

**Vs.**

Edirisuriya Mudiyanseage Pushpa  
Kumara Edirisuriya  
Hallawa,  
Galapitamada.

**Accused**

**And Now**

Vidanalage Chandralatha  
Hallawa,  
Galapitamada.

**Registered Owner - Petitioner**

**Vs.**

1. Officer in Charge  
Police Station,  
Chillaw.

**Complainant - Respondent**

C.A. Case No: CA PHC APN 28/2019

P.H.C. of North Western Province Holden  
in Chillaw Case No: HCR 14/2018

M.C. Chillaw

Case No: 92001

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

**Respondent**

3. Edirisuriya Mudiyanse  
Pushpa Kumara Edirisuriya  
Hallawa,  
Galapitamada.

**Accused - Respondent**

4. Merchant Bank of Sri Lanka  
and Finance PLC  
BOC Merchant Tower,  
No.28,  
St. Michael Road,  
Colombo 03.

**Respondent**

**And Now Between**

Vidanalage Chandralatha  
Hallawa,  
Galapitamada.

**Registered Owner - Petitioner -  
Appellant**

**Vs.**

1. Officer in Charge  
Police Station,  
Chillaw.

**Complainant - Respondent -  
Respondent**

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

**Respondent-Respondent**

3. Edirisuriya Mudiyanse  
Pushpa Kumara Edirisuriya  
Hallawa,  
Galapitamada.

**Accused – Respondent -  
Respondent**

4. Merchant Bank of Sri Lanka  
and Finance PLC  
BOC Merchant Tower,  
No.28,  
St. Michael Road,  
Colombo 03.

**Respondent - Respondent**

BEFORE : K. K. Wickremasinghe, J.  
K.Priyantha Fernando, J.

COUNSEL : Shehan De Silva for the Petitioner  
Panchali Witharana, S.C. for the Attorney  
General

SUBMISSIONS ON : 29.11.2019

WRITTEN SUBMISSIONS : The Petitioner – On 07.08.2019  
The Respondents – On 02.08.2019 and on  
01.11.2019

DECIDED ON : 11.06.2020

**K.K.WICKREMASINGHE, J.**

The Registered Owner-Petitioner-Petitioner has filed this Revision Application seeking to set aside the order of the Learned High Court Judge of the Provincial High Court of North Western Province holden in Chillaw dated 11.01.2019 in Case No. HCR 14/2018 and seeking to set aside the order made by the Learned Magistrate of Chillaw dated 25.10.2018 in Case No. MC 92001.

**Facts of the case:**

The vehicle bearing No. SGGC 8791 was taken into custody on or about 25.05.2017 for violating the conditions of the permit which was issued for the purpose of transporting timber. The driver (hereinafter referred to as the ‘accused’) of the said lorry was charged under an offence punishable under Section 25(2) of the Forest Ordinance as Amended by Act No. 13 of 1966 and Act No. 65 of 2009.

The accused pleaded guilty to the charge on 02.06.2017 and the Learned Magistrate convicted the accused and imposed a fine of Rs. 10,000/= Thereafter a vehicle inquiry was held with regard to the lorry that was used for the commission of the offence. After concluding the inquiry, the Learned Magistrate confiscated the vehicle by order dated 25.10.2018.

Being aggrieved by the said order, the Registered Owner-Petitioner-Petitioner (hereinafter referred to as the 'Petitioner') preferred a revision application to the Provincial High Court of North Western Province holden in Chillaw under case No. HCR 14/2018. On 11.01.2019, the Learned High Court Judge dismissed the said revision application.

Being aggrieved by the said dismissal, the Petitioner has preferred this application before this Court.

The Learned Counsel for the Petitioner has submitted following grounds as exceptional circumstances to invoke the Revisionary Jurisdiction of this Court, in her Written Submission dated 07.08.2019;

- 1) Order dated 11.01.2019 was made by the Learned High Court Judge on a wrong factual premise;  
and
- 2) That the Learned High Court Judge has misdirected herself on the burden applicable under Section 40 of the Forest Ordinance.

1. According to the submission made by the Learned Counsel for the Petitioner, the Learned High Court Judge has made the order on a wrong factual premise. The wrong factual premise is two way as it has been argued by the Learned Counsel for the Petitioner.

- i. The Learned High Court Judge has misdirected herself on the facts of the case that the Petitioner was abroad at the time the vehicle was taken to Police custody.

I agree with this contention made by the Learned Counsel on behalf of the Petitioner, as it is evident that the Learned High Court Judge has misdirected herself on the factual situation where the Petitioner was abroad when the case was been heard before the Magistrate Court of Chillaw, as it has been explained by the Learned Counsel on behalf of the Petitioner in his submission before the Learned High Court Judge on 11.01.2019.

I am of the view that this is a factual situation that does not go to the root of the case as the Learned High Court Judge has clearly analysed the fact that the Registered owner has not proven to the satisfaction of the Court that she has taken all precautions to prevent the use of the vehicle for the commission of the offence, and thus has not caused any prejudice to the Petitioner.

This is proven from the Order of the Learned High Court Judge dated 11.01.2019, which states as follows:

“.... මෙම ප්‍රතිශෝධන ඉල්ලුම්පත්‍රය පරිදි මහේස්ත්‍රාත් තුමා විසින් 2018.10.25 වන දින ප්‍රකාශයට පත් කර ඇති නියෝගය අනුව අවම වශයෙන් ඇය රියදුරු රථය භාවිතා කිරීම පිළිබඳ නිසි උපදෙස් ලබාදීමක් සිදුකර ඇති බවට හෝ සාක්ෂි අනාවරණය කර නොමැති බව දක්වා ඇත.

ඒ බැවින් ඇගේ සාක්ෂි අනුව වාහනය අපරාධය සම්බන්ධයෙන් රථය භාවිතා කිරීම වැළැක්වීමට ගත් පූර්වාරක්ෂණ ක්‍රියා මාර්ග පිළිබඳ උපදෙස් ලබාදීමට ක්‍රියාකර නොමැති බව පැහැදිලි වේ...”

- ii. The Learned High Court Judge has misdirected herself by applying the principle laid down in **Mary Matilda V. OIC Habarana - CA(PHC) 86/97**, as she has failed to appreciate the fact that unlike in the case of **Mary Matilda V. OIC Habarana**, the Petitioner in the instant case had valid license for the purpose of transporting timber on the particular day.

As it is argued in the written submissions on behalf of the Petitioner, it was held in **Mary Matilda V. OIC Habarana**,

*“an order for confiscation cannot be made if the owner establishes one of two matters. They are,*

- 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.”*

In the instant case, none of these facts has been proved before the Court and it is an offence committed under the Forest Ordinance which requires the confiscation of the vehicle, even though the Petitioner has had a valid license for the purpose of transporting timber.

- 2) According to the submission made by the Learned Counsel for the Petitioner, the Learned High Court Judge has misdirected herself on the burden applicable under Section 40 of the Forest Ordinance.

The Learned Counsel on behalf of the Petitioner had relied on the observation made by Justice A.W.A.Salam in **Abubackerge Jaleel V. OIC, Anti-Vice unit, Police Station, Anuradhapura CA PHC 108/2010**, as follows:

*“The testimony of the owner has not been discredited under cross-examination. There has been no previous instance where the driver has been charged for similar offence. When someone is under a duty to show cause that he has taken all precautions against the commission of similar offences, I do not think that he can practically do many things than to give specific instruction.”*

In the instant case there is no evidence as to prove or even to support the fact that the Registered owner had given any instruction or any specific instruction as to not commit any offence by using the vehicle. The proceedings dated 27.09.2018, before the Magistrate Court of Chillaw in case No. 92001, is evident of the fact that the Registered owner had not even clarified the fact that whether there is any valid permit to transport timber on that particular day, as it is produced bellow.

“ප්‍ර : ඒ දවසේ ඔය දැව ප්‍රවාහනය කරන්න බලපත්‍ර තියනවද කියල බැලුවද?

උ : උත්තරයක් නැත.”



Therefore, I am of the view that the Learned High Court Judge has not misdirected herself on the burden applicable under Section 40 of the Forest Ordinance, in a context where the Registered owner had not made an attempt to take any precaution to prevent the use of the vehicle for the commission of the offence.

- 3) Further, I see no any exceptional circumstances that allow the Petitioner to evoke the Revisionary Jurisdiction of this Court.

In the case of **Mariam Beebee V. Seyed Mohamed [68 NLR 36]** it was held that,

*"The power of revision is an extraordinary power which is quite independent of and distinct from the appellate jurisdiction of this court. Its object is the due administration of justice and the correction of errors, sometimes committed by this court itself, in order to avoid a miscarriage of justice..."*

Further, in the case of **Bank of Ceylon V. Kaleel and others [2004] 1 Sri L.R 284**, it was held that,

*"In any event to exercise revisionary jurisdiction the order challenged must have occasioned a failure of justice and be manifestly erroneous which go beyond an error or defect or irregularity that an ordinary person would instantly react to it - the order complained of is of such a nature which would have shocked the conscience of court."*

Considering above, I am of the view that there had been no miscarriage of justice in the instant case, which warrants the invocation of the revisionary powers of this Court. Therefore I affirm the order of the Learned High Court Judge dated 11.01.2019 and the order of the Learned Magistrate dated 25.10.2018.

Accordingly this application is hereby dismissed.

JUDGE OF THE COURT OF APPEAL

**K.Priyantha Fernando, J.**

I agree,

JUDGE OF THE COURT OF APPEAL