

**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 of  
the Democratic Socialist Republic of Sri  
Lanka.

The Officer-in Charge

Police Station

Chilaw.

**Court of Appeal**

**Application No:**

**CA (PHC) APN 0013/2022**

**Complainant**

**High Court of Chilaw No.**

**HCR/11/20**

**Vs.**

**MC Chilaw Case No.**

**2035/18**

Hettiarachilage Savinda

Mahamanaweriya,

Rajakadhaluwa.

**Accused**

**AND**

Mahamalage Sunali Wathsala

Jeewakumari

Elivitiya

Kumarakattuwa.

**Registered-Owner-Claimant**

1. The Officer-in-Charge  
Police Station  
Chilaw.
2. The People's Leasing Company PLC  
No.1161  
Maradana Road,  
Colombo-07.

**Respondents**

**AND NOW**

Mahamalage Sunali Wathsala  
Jeewakumari  
Elivitiya,  
Kumarakattuwa.

**Registered-Owner-Claimant-Petitioner**

1. The Officer-in-Charge  
Police Station  
Chilaw.
2. The Attorney General  
Attorney General's Department  
Colombo-12.
3. The People's Leasing Company PLC  
No.1161  
Maradana Road,  
Colombo-07.

**Respondents-Respondents**

**AND NOW BETWEEN**

Mahamalage Sunali Wathsala

Jeewakumari

Elivitiya,

Kumarakattuwa.

**Registered-Owner-Claimant-Petitioner-**  
**Petitioner**

1. The Officer-in-Charge

Police Station

Chilaw.

2. The Attorney General

Attorney General's Department

Colombo-12.

**Respondents-Respondents-**  
**Respondents**

**BEFORE**

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

**P. Kumararatnam, J.**

**COUNSEL**

**: Anil Siva, PC with Amaan Bandara for  
the Appellant.**

**Chaturangi Mahawaduge, SC for the  
Respondents.**

**ARGUED ON**

**: 04/09/2023.**

**DECIDED ON**

**: 04/12/2023.**

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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 Chilaw for mining sand without a valid permit using a JCB Machine bearing Registration No. NWZA 1783. As the Accused pleaded guilty to the charge sheet, the Learned Magistrate of Chilaw had convicted the Accused and imposed a fine of Rs.50,000/- and fixed for an inquiry to confiscate the JCB Machine bearing No. NWZA 1783.

At the conclusion of the inquiry, the Learned Magistrate had decided to confiscate the aforesaid machine by his order dated 09.06.2020. At the inquiry only the Registered Owner-Claimant-Petitioner-Petitioner (Hereinafter referred to as the Petitioner) had given evidence on her behalf.

Being aggrieved by the order of the Magistrate, the Appellant filed a Revision Application in the Provincial High Court of North-Western Holden at Chilaw to revise the order of the Learned Magistrate of Chilaw.

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 afore said JCB Machine bearing No.NWZA 1783.

Now the Petitioner filed this Revision Application in terms of Article 154P of the Constitution to set aside the order of the Learned High Court Judge of North-Western Holden at Chilaw dated 15/12/2021.

**The Appellant submitted following exceptional circumstances:**

1. The Petitioner she 34 years old.
2. She and her husband brought this JCB vehicle bearing Registration No. NW ZA 1783 using all their savings and also taking a Lease facility from the Peoples's Leasing PLC.
3. The monies obtained by renting this JCB vehicle was the only income the Petitioner had.
4. Therefore, grave and irreparable loss would be caused to the Petitioner if this JCB vehicle bearing No.NW ZA 1783 is forfeited.

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 Marawila decided to dismiss the revision application stating that that the Petitioner had failed to prove that she did not had knowledge about committing of the offence.

In this case a JCB Machine had been confiscated for mining sand without a valid permit.

Although, the Petitioner set out several grounds regarding the interpretation of a machine as in the chargesheet, the Learned President's Counsel has not harped this point in view of the recent Supreme Court decision.

In **Hettiarachchige Anton Sujeewa Perera v The Attorney General SC Appeal No. 101/2012** decided on 05.06.2023, His Lordship Priyantha Jayawardena PC, J held that:

*“Furthermore, as stated above, Section 63B (1) has conferred power on the learned Magistrate to forfeit to the State any mineral, machinery, equipment or material used in or in connection with the commission of an offence under the Act. Moreover, as the transportation of minerals without a valid license issued under the Act is an offence under the said Act, the equipment used to transport minerals falls within the scope of section 63B (1). In this regard, it is pertinent to note that any machinery, equipment or material used not only directly for exploration of mining but also anything that would facilitate mining and transportation are subject to the scope of the said section.*

*Thus, having considered the aforesaid dictionary meaning and the context where the word “equipment” is used in the Mines and Minerals Act, I am of the opinion that the word “equipment” used in the Act should be taken to include a ‘vehicle’ (Lorry, tipper or even a bullock cart) used to transport minerals without a valid license issued under the said Act”.*

Hence, The JCB No. NWZA-1783 also falls in the category of vehicle.

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

The Learned President’s Counsel for the Petitioner has submitted that the evidence led at the vehicle inquiry had disclosed that the Appellant had no knowledge of commission of the offence.

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 she was unaware of the crime being committed as she has given the vehicle on rent to excavate a ditch to bury broken floor tiles and other dusty items from an abandoned tile factory. The first day she had gone to the abandoned factory with her husband to inspect the work. On the second day when a ditch was excavated to put all broken tiles and other



items to bury, the police had taken the JCB along with the driver on the allegation of mining sand.

In this case the Petitioner, further had given evidence and explained to the Court that she had taken all the possible and necessary precautions to prevent the vehicle being used for illegal purposes. The vehicle was not used for any illegal activities by the driver at any stage. According to the evidence of the Petitioner she had given instructions not to use for illegal activities. She has placed full trust on the driver when she 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 Chilaw and decided to dismiss the revision application stating that that the Petitioner had failed establish to establish that she did not have any knowledge of committing the offence.

It is apparent that in the absence of the Petitioner having had knowledge of the transportation of timber 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 she 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 Chilaw dated 15.12.2021 and the order of Learned Magistrate Court of Chilaw dated 09.06. 2020.

Therefore, this appeal is allowed.

I direct that the vehicle No. NWZA-1783 be released to the Petitioner.

The Registrar of this Court is directed to send this Judgment to the High Court of Chilaw.

**JUDGE OF THE COURT OF APPEAL**

**SAMPATH B. ABAYAKOON, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**