

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

*In the matter of an application made under and  
in terms of Article 138 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka  
seeking to revise and set aside the judgment made  
in P H C Tangalle Application No. HCRA  
03/2014 on 6<sup>th</sup> April 2017.*

Officer-in-Charge  
Special Crimes Investigation Unit,  
Tangalle.

C A Application No. CA (PHC) APN  
67/2017

Complainant

P H C Tangalle Application No.  
HCRA 03/2014

Vs.

No suspect had been arrested to date.

M C Walasmulla Case No. BR  
306/2013

Accused

1. Hewa Kankanamge Chaminda Lal  
Baghya,  
Horewela,  
Walasmulla.

2. Mohamed Jiffry Mohamed Ameer  
No. 259, Gulugahatenna,  
Akurana,  
Kandy.

Claimants

And

Hewa Kankanamge Chaminda Lal  
Baghya,  
Horewela,  
Walasmulla.

Claimant – Petitioner

Vs.

1. Mohamed Jiffry Mohamed Ameer  
No. 259, Gulugahatenna,  
Akurana,  
Kandy.

Claimant – Respondent

2. Officer-in-Charge  
Special Crimes Investigation Unit,  
Tangalle.

Complainant – Respondent

3. Hon. The Attorney General  
Attorney General's Department,  
Colombo 12

Respondent

AND NOW BETWEEN

Mohamed Jiffry Mohamed Ameer  
No. 259, Gulugahatenna,  
Akurana,  
Kandy.

Claimant – Respondent-Petitioner

Vs.

1. Hewa Kankanamge Chaminda Lal  
Baghya,  
Horewela,  
Walasmulla.

Claimant – Petitioner-Respondent

2. Officer-in-Charge  
Special Crimes Investigation Unit,  
Tangalle.

Complainant – Respondent-Respondent

3. Hon. The Attorney General  
Attorney General's Department,  
Colombo 12

Respondent-Respondent

BEFORE

: K. K. Wickremasinghe, J.

K.Priyantha Fernando, J.

COUNSEL

: Ranil Samarasooriya with Thiwanka  
Munasinghe for Claimant-Respondent-  
Petitioner

Ananda Kasthuriarachchi for the 1<sup>st</sup>  
Claimant Petitioner-1<sup>st</sup> Respondent.

Shanka Wijesinghe DSG for AG

WRITTEN SUBMISSIONS : Written Submissions of the Petitioner on  
27.11.2019  
Written Submissions of the 1st Respondent on  
26.11.2018

DECIDED ON : 18.02.2020

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

This is an appeal against a revision order of the Learned High Court Judge of the Provincial High Court of Tangalle dated 06.04.2017.

Being aggrieved by the said order, the claimant respondent petitioner filed this instant appeal.

The instant appeal is only with regard to the order of the inquiry of the vehicle bearing No. 57-3925 under section 431(1) of the CPC.

Both counsel appeared for both claimants, the petitioner and the 1<sup>st</sup> respondent agreed to dispose this case by way of written submissions already filed. The learned DSG appearing for the Attorney General informed that he was not filing written submissions.

The 1<sup>st</sup> claimant petitioner respondent (here in after referred to as the 1<sup>st</sup> Respondent) claiming the van bearing No. 57-3925, Chaminda Lal has made a complaint to the special investigation Bureau Tangalle. He has stated that this particular vehicle was advertised by him in Lankadeepa newspaper for sale. Accordingly one Jayantha Abeysekera has called the 1<sup>st</sup> Claimant Respondent and requested him to exchange an Alto car bearing No. NCKO 9606 said to have been belonged to him. Thereby the 1<sup>st</sup> complainant agreed to exchange the vehicles and handed over his van to Jayantha Abeysekera. At that time the registered owner of the van was one P.A.Nimal Dharmasiri. Chaminda Lal exchanged the van with open papers to said Jayantha Abeysekera without any money transaction.(according to evidence of IP Gunapala, at pg 142 , MC proceedings) All the documents related to the van were handed over to Jayantha Abeysekera. Later the 1<sup>st</sup> complainant, Chaminda Lal had come to know that the documents relating to the Alto car were forged and there after Chaminda Lal has made a complaint to the Special Investigation Beauru Tangalle. Accordingly facts were reported to MC Tangalle, charges were framed under

sections 454,457,403,389 and 386 but the investigating officers were unable to apprehend the suspect. After investigation the Alto car was handed over to the genuine owner.

There is no dispute with regard to the registered owner of the van and the transaction was up to Chaminda Lal, the Petitioner of the instant case. According to Ameer he has bought the said vehicle from one Jeewantha (receipt is marked as R1 was produced in MC without a date).

Ameer claimed that he bought the vehicle by a person called Jeewantha Kumara and on the same day he claimed that he bought the vehicle from Geeth, but at the time of the MC inquiry none of them were present and those two appeared to be non existing.

Therefore with regard to the ownership of the van bearing No.57-3925 is in doubt.

Page 6-8 of the High Court Order is reproduced as follows:-

මා දැන් අංක බී.ආර්. 306/13 නඩුවේ මෙකී වාහනය සම්බන්ධයෙන් පවත්වා ඇති විමසීමේදී එම නඩුවේ විත්තිකරු වන මෙම නඩුවේ 1 වන වගඋත්තරකරු විසින් ලබා දී ඇති සාක්ෂියට අවධානය යොමු කරමි.

එකී සාක්ෂිය පරිශීලනය කිරීමේදී පෙනී යන්නේ මෙම වාහනය වංචාවකට හසු වී ඇති වාහනයක් බව වගඋත්තරකරු හොඳාකාරවම දන්නා බවය. ඔහු මෙම වාහනය මිලදී ගත්තේ ජීවත්ත කුමාර නැමති අයෙකුගෙන් බවත්, ජීවත්ත කුමාර යන අය ඒ සඳහා රිසිට් පතක් දුන් බවත් ප්‍රකාශ කරමින් එකී රිසිට් පත R.1 ලෙස ලකුණු කොට ඉදිරිපත් කර ඇති අතර, එකී රිසිට් පත පරීක්ෂා කිරීමේ දී රිසිට් පතෙහි දිනයක් සඳහන් කර නොමැති බව පෙනී යයි. එදිනම වගඋත්තරකරු එකී විමසීමේදී සාක්ෂි දෙමින් මෙම වාහනය මිලදී ගත්තේ අකුරන දී ගිත් නැමති පුද්ගලයෙකුගෙන් බවට සාක්ෂි ලබා දී ඇත. ගිත් කියලා කියන්නේ R.1 දරණ ලේඛනයේ සිටින ජීවත්ත කුමාර නොවේ. එයා මම ජීවත්ත කුමාරගෙන් හඳුනා ගත්තේ. ගිත් කියලා කෙනෙක් මට වාහනය පෙන්නවා අකුරනදී. මම සල්ලි දීලා වාහනය ලබා ගත්තා. ඒ අනුව වගඋත්තරකරු එක ස්ථාවරයක සිටිමින් එකී විමසීමේදී සාක්ෂි ලබා දී නැති බව පෙනී යයි. එදිනම පැමිණිල්ලේ හරස් ප්‍රශ්න වලට පිළිතුරු දෙමින් ඔහු මෙසේ පවසා ඇත.

ඔ. මේ වාහනය මේ වලක්වීමේදී ප්‍රදේශයේ පිද්ගලයෙන් වංචනික ලෙස ආරගෙන නිසලා දන්වා දැන්වක් දන්වාද ?

උ. දන්වා.

ඒයා සස්සේ තමයි දන්නේ.

ඔ. තමා ස්ථානයට ගියා නේද පොලිසියට ද්‍රවණගොඩ පොලිසියට ?

උ. ඔව්.

ඔ. ඒ වාහනයේ වංචාවකට හසු වුනා නිසලා ඒ පිද්ගලයා නිව්වා නේද?

උ. ඔව්.

ඔ. මේ වාහනය සම්බන්ධයෙන් වංචා ප්‍රමර්ශන අංශයට නිව්වා නේද?

උ. ඔව්.

ඔ. තමා ඒ අවස්ථාවේදී දන්නේ වංචා කරලා ගනුදෙනු කරපු වාහනයක් නිසලා ?

උ. දන්නවා.

ප්‍රදානම පිටුව 8,

ඔ. මේ තමාට මේ වාහනය විකුණලා තියෙන්නේ මෙවැනි තමකින් හැදින්වෙන නැති පිද්ගලයෙන් නේද ? එහෙම පිද්ගලයෙන් නැහැ තමා පිළිගන්නවාද තමා මේ සම්බන්ධයෙන් ප්‍රදේශයේ වංචා ප්‍රමර්ශන අංශයට පැමිණිලි කලාද ?

උ. ඔව් කලා.

ඔ. කවදද පැමිණිලි කලේ ?

උ. පොලිසියට ඔ.අ.වි.සි. මහත්මයාට නිව්වා. පොලිස්පත්‍රිකටත් නිව්වා ඒ දිනය මත නැහැ.

Page 161 of the MC brief is reproduced as follows:-

ඔ. දැන් තමා මේ වාහනය මිලදී ගත්තේ කවදද?

උ. 2013 මාර්තු මාසේ.

- ප්‍ර. මාර්තු මාසේ කවදද?
- උ. 06 වැනිදා.
- ප්‍ර. තමාට මතකයි හොඳටම ?
- උ. 06 වැනිදා තමයි මතකයි.
- ප්‍ර. ඒ වේලාවේදී ආර්. 1 කියලා තමා සලකුණු කරපු ලිපිය ගත්තා?
- උ. ඔව්.
- ප්‍ර. තමා කිව්වා මතකද 2013.03.06 වැනි දින ?
- උ. ඔව්.
- ප්‍ර. එතකොට මේ නඩුව දාලා කොතැනකවත් එහෙම එකක් ආර්. 1 ලිපිය තමා 2013.03.06 වැනි දින මේ වාහනය මිලදී ගත්තා කියලා තිබෙනවාද ?
- උ. 2013.12.10 දින තිබෙන්නේ.
- ප්‍ර. ඒ දිනය තමා ගත්ත ලිපියේ තිබෙනවාද?
- උ. ලියුමේ නැහැ.
- ප්‍ර. තමා දන්නවද මේ වාහනය ලක්ෂ 10 ක් වටිනා වාහනයක් නේද මේ ගනුදෙනුව කරන වේලාවේදී ඒ තමාට වෙන තැනැත්තෙක් සහ තමා අතර ඇති කර ගන්නා ලේඛනයකට අත්සන වැදගත් වෙන බව තමා දන්නේ නැත්ද?
- උ. උත්තරයක් නැත.
- ප්‍ර. තමාට මම යෝජනා කරනවා මේ ලිපිය වංචනික ලෙස හදාගත්තු ලිපියක් කියලා ?
- උ. කිසිදු වංචාවක් කරලා නැහැ.
- ප්‍ර. මේ ලිපිය කාගෙන්ද ලබා ගත්තේ?
- උ. ජීවත්ත කුමාරගෙන්
- ප්‍ර. මේ වාහනය මේ වලස්මුල්ල ප්‍රදේශයේ පුද්ගලයෙක් වංචනික ලෙස අරගෙන කියලා දන්නවා දැන්වත් දන්නවද?
- උ. දන්නවා. එයා පස්සේ තමයි දන්නේ.....
- ප්‍ර. තමා ඒ අවස්ථාවේදී දන්නේ වංචා කරලා ගනුදෙනු කරපු වාහනයක් කියලා?
- උ. දන්නවා.

- ප්‍ර. තමා සොයා බැලුවේ නැන්ද මේ ජීවත්ත කුමාරු කියන පුද්ගලයා ව්‍යාජ ලේඛන හඳුලා සහ වංචාවක් කරන පුද්ගලයෙක් කියලා?
- උ. සොයා බැලුවා. ගිහිල්ලා බැලීමේදී එහෙම එක්කෙනෙක් නැහැ කිව්වා.

Therefore it is evident that the transaction of the van to Ameer is not genuine.

Anyhow there after Ameer sold the vehicle to one Jagath Wijenayake from Akurana and Ameer has taken the van back from Jagath Wijenayake and produced in MC on request of the investigating officer. After an Inquiry under sec. 431(1) of the CPC learned Magistrate has handed over the possession of the above mentioned vehicle to Ameer, the petitioner in the instant case. Now Chaminda Lal and Ameer both are claiming for the vehicle.

Being aggrieved by the above mentioned order of the Learned Magistrate, the original complainant Chaminda Lal made a revision application to the Provincial High Court of Tangalle where the order was reversed by the learned High Court Judge deciding in favour of the Chaminda Lal, the 1<sup>st</sup> Complainant Petitioner, 1<sup>st</sup> Respondent of the instant Appeal.

The Petitioner Ameer has filed this instant appeal against the above mentioned revision application.

Since the instant appeal is only with regard to the inquiry held under sec 431(1) of the CPC, this court will have to consider only the legality of the above mentioned order of both the High Court and the MC and not the main case of Cheating pending in MC. It is very clear that the vehicle was produced in MC by Ameer which was sold to Jeewantha by himself. According to the proceedings of MC, it is understood that Ameer has bought the vehicle from non-existing persons, but up to Chaminda Lal, transactions are clear.

Therefore it is evident that Chaminda Lal is a genuine buyer but not Ameer. The substantive case with regard to the Alto car is still pending in MC where Chaminda Lal is the virtual complainant. The registered owner of the van never claimed the vehicle since the chain of possession was transferred up to Chaminda Lal was taken place by legal means. Therefore it is amply demonstrated by Chaminda Lal that his chain of custody is genuine and he got caught to the fictitious person who exchanged the van to Alto car.

At the 431(1) inquiry, the Learned Magistrate has considered following cases. Sugathapala Vs. Thambiraja (67 NLR 91), Punchi Nona Vs. Hinni Appu (60 NLR 518) and Balagalle Vs. Somaratne (70 NLR 382).



Learned High Court Judge has considered Silva and Another Vs. OIC Thambuththegama (1991 2 SLR 83). In the case of Silva and Another Vs. OIC Thambuththegama, Hon. S.N.Silva J. by citing Section 431(1) and (2) of the Criminal Procedure Code, has mentioned that it provides discretion to the Magistrate to decide on a vehicle inquiry under the above mentioned Section as follows:-

*“ Subsection (1) deals with three categories of property seized by a police officer, namely:*

*(i) property taken under section 29 of the Code relating to the search of persons who are arrested;*

*(2) property alleged or suspected to have been stolen,*

*(3) property found under circumstances which create a suspicion of the commission of any offence.”*

S.N.Silva J. further mentioned that there are obvious limitations to its general application since there is a likelihood of delivering a property to a person having no legal right to have possession but obtained through criminal means.

Further mentioned that this observation is consistent with the current trend of India by citing following passage from Sohoni's The Code of Criminal Procedure, 1973, 18<sup>th</sup> Edition, 1986 p4839, as elaborated by Justice S.N.Silva in the above mentioned judgement.

*“But in determining who is entitled to possession, actual possession of the property may be a relevant factor, but not conclusive. The words "entitled" to the possession of the property" are not to be equated with actual possession or with the expression "the person from whom the property is seized or taken". Where it is proved that the person from whose possession the property was seized came by it dishonestly, the Magistrate may have to consider the question of title. But where the person from whose possession the property was seized is not shown to have committed any offence in relation to that property which means he was lawfully in possession, he would be entitled to possession"*

Therefore on the basis of above reasoning, it is very clear that the vehicle should be given to the genuine owner, 1<sup>st</sup> Réspndent Chaminda Lal. Therefore there is no reason to interfere with the correct decision of the Learned High Court Judge. Accordingly, the order of the Learned High Court Judge is affirmed.

Appeal is hereby dismissed without costs.

JUDGE OF THE COURT OF APPEAL

**K. Priyantha Fernando, J.**

I agree,

JUDGE OF THE COURT OF APPEAL