

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

*In the matter of an Appeal under Article 154P and 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with the Provisions of No.19 of 1990 High Court of the Provinces (Special Provisions) Act from the High Court of Trincomalee No. HCT/REV/501/17.*

**Court of Appeal Case No:**

CA/PHC/0209/2018

**Provincial High Court Trincomalee**

Case No: HCT/REV/501/17

**Magistrate's Court Kuchchaveli**

Case No: MC/P/16/Mis/17/K

The Officer-In-Charge

Police Station,

Pulmoddai.

**COMPLAINANT**

**Vs.**

1. S. A. K. Subash Priyankara
- Aariyasinghe
2. W. A. Piyadasa
3. E. J. Saman Pushpakumara
4. S. Tudar
5. K. A. Ruwan
6. D. K. Sugath Jayawikrama
7. A. Anil Nilantha
8. K. A. Ranil Chaminda
9. G. K. Premachandra

**ACCUSED**

**AND NOW**

Siyapatha Finance Plc,  
No.110, Sir James Peiries  
Mawaththa,  
Colombo 02.

**CLAIMANT-PETITIONER**

**Vs.**

1. The Officer-In-Charge,  
Police Station,  
Pulmoddai.
2. The Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**COMPLAINANT-RESPONDENTS**

**AND NOW BETWEEN**

Siyapatha Finance Plc,  
No.110, Sir James Peiries  
Mawaththa,  
Colombo 02.

**CLAMINAT-PETITIONER-**

**APPELLANT**

**Vs.**

1. The Officer-In-Charge,

Police Station,

Pulmoddai.

2. The Hon. Attorney General,

Attorney General's Department,

Colombo 12.

**COMPLAINANT-RESPONDENT-**

**RESPONDENTS**

Before : Sampath B. Abayakoon, J.

: P. Kumararatnam, J.

Counsel : J. P. Gamage with Chamara Fernando, Hansika  
Ranaweera and Theekshana Ranaweera for the  
Appellant

: Malik Azeez, S.C. for the Respondents

Argued on : 12-12-2023

Written Submissions : 18-07-2023 (By the Respondent)

: 11-07-2023 (By the Claimant-Petitioner-Appellant)

Decided on : 01-04-2024

**Sampath B. Abayakoon, J.**

This is an appeal preferred by the claimant-petitioner-appellant (hereinafter referred to as the appellant) in terms of Article 138 of The Constitution.

The appellant is the absolute owner of the vehicle bearing the registration number SG-PH 4430, which had been confiscated by the learned Magistrate of Kuchchaveli.

Nine accused persons had been charged before the learned Magistrate of Kuchchaveli by the Officer-in-Charge of the Pulmoddai Police for committing the following offences.

1. The accused trespassed into the protected forest, namely Elandamunei forest reserve, without proper authority on 12-12-2016, and thereby committed an offence punishable in terms of section 6(2)(a) of the Forest Ordinance as amended.
2. At the same time and at the same transaction, they dug the soil of the said reserve forest, and thereby committed an offence punishable in terms of section 6(2)(p) of the Forest Ordinance as amended.
3. At the same time and at the same transaction, the accused conducted digging of the said reserve forest with the intention of exploring antiquities, and thereby committed an offence punishable in terms of section 6 of the Antiquities Ordinance as amended, read with the Increase of Fines Act No. 12 of 2005.

In the plaint filed in that regard, the complainant has listed several witnesses and had listed the following as productions.

1. Nissan Caravan white-coloured vehicle numbered SG-PH 4430 and its ignition key.
2. One mamoty of 8 x 14 size.
3. One picas.

When the accused were charged before the learned Magistrate of Kuchchaveli, they have pleaded guilty to all three counts preferred against them.

Based on their own plea, the learned Magistrate has sentenced them, and thereafter, has decided to hold an inquiry in relation to the vehicle mentioned as a production on the basis that the 1<sup>st</sup> and the 2<sup>nd</sup> count preferred against them are counts under the Forest Ordinance and hence, the earlier mentioned vehicle is subject to confiscation in terms of section 40 of the Forest Ordinance.

At the inquiry held in that regard, the petitioner who had been the absolute owner of the vehicle has come forward and claimed the vehicle. It is clear from the certificate of registration of the relevant motor vehicle produced in the Court that, the 1<sup>st</sup> accused charged before the Magistrate's Court had been the registered owner of the vehicle, which explains the application by the absolute owner, rather than the registered owner.

After the conclusion of the inquiry, the learned Magistrate of Kuchchaveli by the order dated 23-08-2017 had decided to confiscate the vehicle on the basis that the absolute owner has failed to establish the fact that he had meaningful control over the vehicle at the time of the commission of the offence, and the owner of the vehicle has failed to show that he took the necessary precautions to prevent the offence being committed.

Being dissatisfied by the said order, the appellant has preferred an application in revision in terms of Article 154P of The Constitution to the Provincial High Court of the Eastern Province Holden in Trincomalee.

After hearing the application, the learned Provincial High Court Judge of the Eastern Province Holden in Trincomalee has dismissed the said application by the judgment dated 15-10-2018, on the basis that there are no exceptional circumstances for the Court to interfere with the order of the learned Magistrate of Kuchchaveli.

It is against this judgment the appellant has preferred this appeal.

At the hearing of this appeal, the position taken up by the learned Counsel for the appellant was that this was not a charge or charges where section 40(1) of the Forest Ordinance becomes applicable, and hence, the learned Magistrate has ordered an inquiry in terms of the said section without a legal basis. Therefore, the order of the learned Magistrate as well as the judgment of the learned Provincial High Court Judge has no validity before the law.

His contention was that, to attract the provisions of section 40(1) of the Forest Ordinance, there must be an allegation or a charge to the effect such tool, vehicle, implement, cattle, or the machine was used in committing the offence mentioned in the charge or charges.

It was pointed out that though the vehicle in question has been mentioned as a production before the Magistrate's Court case, no charge has been formulated on the basis that the said vehicle was used in committing any offence. The learned Counsel for the appellant moved for the release of the vehicle on the basis that it had been confiscated not in accordance with the law.

The learned State Counsel who represented the complainant-respondent-respondents was of the view that the charge need not explain the *modus operandi* of the accused. He was of the view that the learned Magistrate has well considered who can claim a vehicle under section 40(1) of the Forest Ordinance and has correctly come to her decision after analyzing the relevant legal principles which needs no disturbance from this Court.

He contended further that the learned Provincial High Court Judge has also considered the relevant legal provisions in his judgment and had come to a correct determination when it was decided to dismiss the revision application filed before the High Court. The learned State Counsel moved for the dismissal of the appeal.

Having considered the submissions made by the learned Counsel for the appellant, I find that this was not a position taken up when the matter was heard before the learned Magistrate of Kuchchaveli or argued at the hearing of the revision application before the learned Provincial High Court Judge. However, since the matter taken up before this Court was a pure question of law, I find that this question of law can be taken up before this Court at the hearing of this appeal.

As the argument revolves around the interpretation of section 40(1) of the Forest Ordinance, I find it relevant to reproduce the relevant section 40(1) of the Forest Ordinance as amended by the Forest (Amendment) Act No. 65 of 2009, which reads as follows;

**40. (1) Where any person is convicted of a forest offence-**

- a) All timber or forest produce which is not the property of the state in respect of which such offence has been committed; and**
- b) All tools, vehicles, implements, cattle and machines *used in committing such offence* (the emphasis is mine)**  
**shall in addition to any other punishment specified of such offence be confiscated by the order of the convicting Magistrate:**

**Provided that in any case where the owner of such tools, vehicles, implements, and machines used in the commission of such offence, is a third party, no order of confiscation shall be made if such owner proves to the satisfaction of the Court that he had taken all precautions to prevent the use of such tools, vehicles, implements, cattle and machines, as the case maybe *for the commission of the offence.* (the emphasis is mine)**

In view of the above section which is the relevant section under which a confiscation order can be made, it is abundantly clear that the intention of the legislature had been to confiscate the items mentioned in the section if the said item has been used in committing any of the offences mentioned in terms of the Forest Ordinance.

I am in agreement with the submission of the learned Counsel for the appellant that the only way for an accused person to know that he is being charged for using an item which can be subjected to confiscation in terms of section 40(1) of the Forest Ordinance would be by stating that the offence was committed using the relevant vehicle or any other item mentioned in section 40(1) and also mentioning the relevant section in the charge itself.

I am of the view that only by mentioning the relevant offence in detail and the relevant sections the accused person has violated, the necessary ingredients of a charge in terms of section 164 and 165 of the Code of Criminal Procedure Act can be fulfilled which amounts to giving sufficient notice of the charge preferred against an accused person.

As I have stated before, the 1<sup>st</sup> and the 2<sup>nd</sup> count preferred against the accused-appellant had been under the Forest Ordinance for trespassing the mentioned reserve forest and digging inside the said reserve forest.

The only section which may attract a confiscation of a vehicle was the 1<sup>st</sup> count, where the allegation had been that the accused trespassed into the protected reserve forest. If the intention of the complainant was to charge the accused for using a vehicle to trespass into the reserve forest, the charge in that regard should reflect that fact, indicating the vehicle used for such trespassing into the reserve forest.

I am of the view that by mere inclusion of a vehicle as a production in the plaint filed against the accused would not be sufficient to fulfill the mandatory requirements of a charge.



For the matters considered as above, I am of the view that there was no legally valid basis for the learned Magistrate of Kuchchaveli to direct the owner of the vehicle to show cause as to why the vehicle should not be confiscated, since there had been no allegation that the vehicle was used in committing any of the relevant two counts mentioned in the charge sheet preferred against the accused in the Magistrate's Court case.

I find that in the order of the learned Magistrate, the evidence has been considered on the basis that the vehicle had been used in the commissioning of the offence, whereas there was no basis for such a conclusion.

Under the circumstances, I find that all the decided cases of our Superior Courts considered by the learned Magistrate and the learned Provincial High Court Judge are cases where the charges were on the footing that the relevant vehicles considered in those decided cases were used in the commission of the offence, which has been specifically mentioned in the relevant charges filed before the relevant Magistrate's Court.

I find that this was not the case in the charges filed before the learned Magistrate of Kuchchaveli in the action under consideration. If it was so, it can be safely determined that the learned Magistrate, as well as the learned Provincial High Court Judge, was correct in their determinations. However, as I have determined previously, since there had been no allegation that the vehicle concerned had been used in committing the mentioned offence, I find that the relevant confiscation order had been made without a legal basis in terms of section 40(1) of the Forest Ordinance in that regard.

Accordingly, agreeing with the legal submissions made by the learned Counsel for the appellant, I set aside the order dated 23-08-2017 of the learned Magistrate of Kuchchaveli and the judgment dated 15-10-2018 of the learned Provincial High Court Judge of Eastern Province Holden in Trincomalee as both the said order and the judgment cannot be allowed to stand.

I direct that the vehicle numbered SG-PH 4430 shall be released to the appellant, who claimed the vehicle as the absolute owner of the same.

The Registrar of the Court is directed to communicate this judgment to the Provincial High Court of the Eastern Province Holden in Trincomalee together with the original case record.

The Registrar is also directed to send a copy of this judgment to the Magistrate's Court of Kuchchaveli for necessary action and compliance.

Judge of the Court of Appeal

**P. Kumararatnam, J.**

I agree.

Judge of the Court of Appeal