

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

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

Court of Appeal

Officer-in-Charge

Application No:

Police Station

CA PHC 0045/2024

Punewa.

Complainant

High Court of Anuradhapura

NCP/PHC/APN/RV/39/23 Vs.

MC Medawachchiya

Case No. 1429

1. Manikka Badathuruge Dimuthu

Prasanbna Dissanayake

Ahelagaha Wanguwa

A 09 Road, Punewa.

2. Sulakshana Indunil Gunasinghe

A 09 Road, Punewa.

Accused

Ranatunga Dissanayakelage Rohini

Ariyasena

Kudakumukgollewa

Punewa.

Claimant

AND BETWEEN

Ranatunga Dissanayakelage Rohini
Ariyasena
Kudakumukgollewa
Punewa.

Claimant-Petitioner

Vs.

1. Officer-in Charge
Police Station
Punewa.

Complainant-Respondent

2. The Attorney General
Attorney General's Department
Colombo-12

Respondent

3. Manikka Badathuruge Dimuthu
Prasanna Dissanayake
Ahelagaha Wanguwa
A 09 Road, Punewa.
4. Sulakshana Indunil Gunasinghe
A 09 Road, Punewa.

Accused-Respondents

AND NOW BETWEEN

Ranatung Dissanayakelage Rohini

Ariyasena

Kudakumukgollewa

Punewa.

Claimant-Petitioner-Petitioner

Vs.

1. Officer-in Charge

Police Station

Punewa.

Complainant-Respondent-

Respondent

2. The Attorney General

Attorney General's Department

Colombo-12

Respondent-Respondent

3. Manikka Badathuruge Dimuthu

Prasanna Dissanayake

Ahelagaha Wanguwa

A 09 Road, Punewa.

4. Sulakshana Indunil Gunasinghe

A 09 Road, Punewa.

Accused-Respondents-

Respondents

BEFORE

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

P. Kumararatnam, J.

COUNSEL : **Malindu Peiris with Dimuthu Bandara
for the Petitioner.
Maheshika Silva, DSG for the State.**

ARGUED ON : **26/09/2024.**

DECIDED ON : **18/12/2024.**

JUDGMENT

P. Kumararatnam, J.

The Officer-in-Charge of Punewa Police Station (hereinafter referred to as the 'Complainant') had filed a case against the Accused-Respondents-Respondents (Hereinafter referred to as the Accused Persons) for committing an offence under the Forest Ordinance for transporting timber without permit in the Magistrate Court of Medawachchiya under the case No.1429 on 31.10.2022.

As the Accused Persons pleaded guilty to the charge, they were sentenced accordingly. Thereafter an inquiry was held in respect of the vehicle involved in this case. The vehicle involved in this case is a tractor with a Tractor. The registered owner of the tractor and the trailer bearing No.NC RH 4929 and NC RZ 4519 respectively is the Petitioner in this case. The Learned Magistrate held an inquiry under Section 425 of the Code of Criminal Procedure Act No.15 of 1979 and summoned the Petitioner to show cause as to why the Tractor and the Trailer

should not be confiscated in terms of Section 40 of the Forest Ordinance. After the inquiry the Learned Magistrate pronouncing the order on 10.07.2023, confiscated the said Tractor and the Trailer to the State.

Being aggrieved by the order of the Learned Magistrate, the Petitioner filed a revision application in the Provincial High Court of North Central Province Holden at Anuradhapura to revise the order of the Magistrate of Medawachchiya. After an inquiry, the Learned High Court Judge of Anuradhapura had affirmed the order of the Learned Magistrate of Medawachchiya and dismissed the said revision application on the ground that the Petitioner had failed to adduce exceptional circumstances.

Now the Petitioner filed this revision application to set aside the both orders of the Learned High Court Judge of Anuradhapura dated 27/03/2024 and the Learned Magistrate of Medawachchiya dated 10.07.2023 and to release the said Tractor and the Trailer to the Petitioner.

The Petitioner submitted following grounds for the consideration of Court:

1. The learned High Court Judge and the learned Magistrate have failed to appreciate that the degree and limits of precautions an owner of a vehicle could take, depends, and varies on prevailing circumstances of each case.
2. The learned High Court Judge and the learned Magistrate have erred in expecting a higher degree of precautions from the Petitioner which would have been impractical under circumstances prevailed at the relevant time.
3. The learned High Court Judge and the learned Magistrate have erred in concluding that the Petitioner has thereby failed to sufficiently show cause in the confiscation inquiry.

4. The learned Provincial High Court Judge has failed to consider the findings of the judgment of Hewapathirana Jayawickrama v. OIC Mawathagama CA/PHC/143/2018, which were raised in the written submissions of the Petitioner as an appropriate judicial precedence to the instant case.
5. The learned Magistrate has erred in refusing to follow the judgment of Atapattu Mudiyanseelage Sadi Banda v. OIC Norton Bridge CA/PHC APN 03/2013, which more fully appropriate under the circumstances of the present case.
6. The learned High Court Judge and the learned Magistrate have failed to consider the grave prejudice and substantial loss caused to the Petitioner due to the impugned orders, especially where the Petitioner has not even been charged with the crime.

In the revision application there is a burden on the Petitioner to establish that his petition discloses exceptional circumstances.

In **AG Vs.Podisingho 51 NLR 385** the court held that:

“the revisionary jurisdiction ought not to be exercised unless there are exceptional circumstances”.

Background of the case albeit as follows:

According to the Petitioner, she is a farmer and she had purchased the Tractor and the Trailer mentioned above for the purpose of her farming activities. She had purchased the Tractor and the Trailer by obtaining financial facility from LOLC Development PLC.

On date of incident the 1st Accused a well-known person of her village borrowed the vehicle to transport paddy. He had borrowed the vehicle for the same purpose previously too. But this time her vehicle along with the Accused persons were arrested by the Punewa Police for transporting timber without a permit. The value of the timber is Rs.26,985.11.

The Petitioner who is the registered owner of the vehicle giving evidence had said that when she gave the vehicle to 1st Accused had given necessary instructions not to use the vehicle for illegal activities. She only came to know the vehicle had been used to transport timber when she received a call from a person of her village. When she gave the vehicle to 1st Accused, she had given specific instructions not to use for any illegal activity. In her evidence she had reiterated that she gave the vehicle only to transport paddy. According to the Petitioner the vehicle never involved in any illegal activity previously and this is the first time the police had taken into their custody.

Although the Petitioner who is the registered owner of the Tractor and the Trailer gave evidence how she had taken necessary precautions to thwart misuse of the Tractor and the Trailer, but the Learned Magistrate disregarded her evidence on the basis that she had not corroborated her evidence with necessary witnesses.

It is very pertinent to note that the timber logs transported in the tractor are less than 2 meters in length.

The main contention of the Counsel for the Appellants is that both the Learned High Court Judge and the Learned Magistrate had failed to evaluate the evidence led at the inquiry.

The Petitioner is a 54 years old woman who does the cattle farming. She had purchased the Tractor and the Trailer in order to use in her farm. In her evidence she said that she had taken all necessary steps to prevent the vehicle being used for illegal activity. No previous or pending cases reported.

In **Manadadu v. AG [1987] 2 SLR 30** the Court held that:

“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”.

Considering the evidence led before the Magistrate Court and the argument advanced by the Petitioner, I set aside the order dated 10.07.2023 by the Learned Magistrate of Medawachchiya and the order of the Learned High Court Judge of Anuradhapura dated 27.03.2024 as they cannot be allowed to stand.

I direct that the Tractor bearing No. NC-RH 4929 and the Trailer bearing No. NC-RZ 4519 which are the subject matters of this action shall be released to the Petitioner as she is the registered owner of the vehicle.

Therefore, this revision is allowed.

The Registrar of this Court is directed to send this Judgment to the High Court of Anuradhapura and the Magistrate Court of Medawachchiya for necessary action forthwith.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL