

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

*In the matter of an application for
Revision made under Section 138 of
the Constitution read with Section 364
of the Code of Criminal Procedure Act
No. 15 of 1979.*

The Officer-in-Charge,
Police Station,
Badulla.

Complainant

Vs.

Court of Appeal Application
No: **CA (PHC) APN 95/17**

Badulla High Court
Case No: **HC/65/2014**

Badulla MC Case
No: **73847**

1. Sammugam Sundaram,
Line No. 6, Mapalaga Division,
Uri Estate,
Passara.

2. Sinnaiah Sivakumar,

Line No. 6, Mapalaga Division,
Uri Estate,
Passara.

Accused

AND BETWEEN

1. Sammugam Sundaram,
Line No. 6, Mapalaga Division,
Uri Estate,
Passara.

2. Sinnaiah Sivakumar,

Line No. 6, Mapalaga Division,
Uri Estate,
Passara.

Accused-Appellants

Vs.

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

Complainant- Respondents

AND NOW BETWEEN

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

**Complainant- Respondent-
Petitioners**

Vs.

1. Sammugam Sundaram,
Line No. 6, Mapalaga Division,
Uri Estate,
Passara.

2. Sinnaiah Sivakumar,
Line No. 6, Mapalaga Division,
Uri Estate,
Passara.

Accused-Appellants-Respondents

BEFORE : Menaka Wijesundera J
Neil Iddawala J

COUNSEL : N.R. Abeysuriya P.C. ASG for the
Complainant- Respondent-
Petitioners.

Accused-Appellants-Respondents
absent and unrepresented

Argued on : 15.11.2022

Decided on : 16.12.2022

Iddawala-J

This is a revisionary application filed on 14.07.2017 by the State to set aside the order of the learned High Court Judge of Badulla in Case No. HC/65/2014 dated 02.11.2016, to stay the order of learned Magistrate of Badulla in case No. 73847 dated 03.07.2017 and to call and examine the records of both the aforementioned cases.

The facts of the case are as follows. On 30.12.2013 the Officer-in-Charge of Badulla (*hereinafter referred to as Petitioner*) made a complaint against the Accused-Appellants-Respondents (*hereinafter referred to as Respondents*) under section 5 of the Animals Act as amended by Act No. 46 of 1988 and under section 4 (1) of the said Act as amended by Act No. 10 Of 2009 to be read with section 3(a) and 3(d) of the said Act for the offense of illegal transportation of two heads of cattle without a lawful permit, in a cruel manner. Respondents (Accused) pleaded not guilty and thereafter were convicted with a fine by the learned Magistrate of Badulla. Aggrieved by the said order, the respondents appealed to the HC of Badulla where they were acquitted on 02.11.2016 and consequent to such order the MC Badulla in the order dated 03.07.2017 directed to handover the cattle to the respondents.

The petitioner has submitted to this Court that the ownership of the cattle has not been established in any of the courts mentioned above and the learned Magistrate has made the order without a disposal inquiry in terms of section 425 of the Code of Criminal Procedure Act No. 15 of 1979 as amended (*hereinafter referred to as CCP*). The contention that has placed before this Court is to ascertain whether the criminal courts can make a decision upon their discretion without such inquiry when disposing property under section 425. The content of this section is as follows:

425 (1) "*When an inquiry or trial in any criminal court is concluded the court may make such order as it thinks fit for the disposal of any document or other property produced before it regarding which any offence appears to have been*

committed or which has been used for the commission of any offence". (Emphasis added).

Subsection (4) to section 425 defines property to include *such property as has been originally in the possession of any party or property converted or exchanged and anything acquired by such conversion or exchange.*

From the wordings of the provision, it is evident that the legislature has placed its trust in the judiciary to determine the disposal of the property under section 425. The learned ASG appearing for the petitioners relied on decided case law on this subject in support of his contention.

In the case of **Meegahapola Vs OIC Harbour Police and Another** it is decided that:

"An acquittal from a charge of possession of 25 radio cassettes does not entitle the accused to receive the productions as the police took them from him. Under Section 425(1) of the Code of Criminal Procedure Act, the court after inquiry must make such order as it thinks fit in regard to the disposal of the productions. The claimant should have satisfied court that he was the real owner of the productions in court. Instead by relying on his acquittal and not adducing evidence after raising a preliminary objection, he left the Magistrate with no alternative but to confiscate the productions."

Furthermore, in **Jayagoda & Another v. Attorney General** (2006) 2 Sri L.R. 387, it was held that:

"At the conclusion of a trial when an accused is acquitted, a court may not always find whether an offence was committed. What the court finds out is whether the accused had committed a crime. There may be numerous occasions where although crimes are committed no charges are successfully brought against anyone. It may be that the accused' are not known or that the evidence is not sufficient or that the witnesses cannot be traced. A court will not just go in to the question whether a crime had been committed against a person or property unless there is a person who can be held responsible. Even if a particular accused could not be found guilty, it does

not mean that a crime had not been committed. That may be the reason why courts are given authority to dispose of property when it appears to court that an offence has been committed in respect of any property. When the court finds that there is no evidence to prove a charge, there is no rule that the property against which an offence appears to have been committed should be returned to the person from whom it was taken.”

Therefore, such discretion is granted to the Court not to dispose productions related to an offence without any reasoning, but to provide judges further opportunity to prevail justice in instances such as failure to dispense the burden of proof where there is a prima facie case. Therefore, holding a disposal inquiry is not a hindrance to the discretion of court but rather provides a pre-requisite in arriving at a just decision.

Basnayake J. in **Jayagoda & another v. Attorney General** (supra) further provided an example on this matter where he stated;

“If that is the case criminals could obtain the maximum benefit by eliminating all the evidence against them. To illustrate this point if, for example, X robbed a bank and hid the loot but one day got caught and showed the police where the loot was, admitting to the police that he robbed the bank and what was shown was part of the loot, and yet got an acquittal due to lack of evidence, should the court return the money to X to be taken away? This is the reason why the law empowers court to ‘make such order as it thinks fit for the disposal of property produced before it’”.

In the case at hand, at no point in the course of the proceedings the ownership of the cattle has been proven to be of the respondents. In **Thirunayagam v. IP Jaffna** 74 NLR 163 it was held that,

“I am in agreement with the view that it is open to a Magistrate, where special circumstances exist, to order property to be delivered to a person other than the person from whose possession it was seized.” Therefore, it is not right before the eyes of the law to dispose the cattle to the respondents without any disposal inquiry merely because the respondents were acquitted in appeal.

At the argument stage learned ASG did not pursue to set aside the order of acquittal by the High Court of Badulla in order No. HC/65/2014, therefore this Court would not examine the said HC order or make any determination on that matter.

This Court sets aside the order made by the Magistrate Court of Badulla in Case No. 73847 dated 03.07.2017 disposing the productions of the matter to the respondents. The Magistrate of Badulla is ordered to hold a disposal inquiry pertaining to this application according to the law set out herein.

Application partly allowed.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL