

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

In the matter of an Appeal made in terms of Article 138 of the Constitution read with Article 154P (3) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal

Application No:

CA (PHC) 0147/2019

The Officer-in-Charge

Special Investigation Branch,

Avissawella.

COMPLAINANT

High Court of Kegalle

No. 5527/REV

MC Ruwanwella

No. B 79014

Vs.

1. Dilip Kumara

183/N, Kandy Road,

Mahara, Kadawatha,

SUSPECT

2. Ranaweera Arachchige Don

Priyantha Chandrapala

No.157/7, Pasal Mawatha,

Halpita, Polgasovita.

VIRTUAL-COMPLAINANT

3. A and R. Manufacturing (PVT) LTD

Gomaduwa

Yatiantota.

FIRST PARTY CLAIMANT

4. Chaminda Srimal Hemantha

416, Enderamulla

Wattala.

SECOND PARTY CLAIMANT

AND

Chaminda Srimal Hemantha

416, Enderamulla

Wattala.

**SECOND PARTY CLAIMANT-
PETITIONER**

Vs.

1. A and R Manufacturing PVT Ltd

Gomaduwa,

Yatiantota.

**FIRST PARTY CLAIMANT-
RESPONDENT**

2. The Officer-in-Charge

Special Investigation Branch,

Avissawella.

COMPLAINANT-RESPONDENT

3. Dilip Kumara

183/N, Kandy Road, Mahara,

Kadawatha,

SUSPECT-RESPONDENT

4. The Hon. Attorney General

Attorney General's Department,

Colombo-12.

RESPONDENT

AND NOW BETWEEN

Chaminda Srimal Hemantha
416, Enderamulla
Wattala.

**SECOND PARTY CLAIMANT-
PETITIONER-APPELLANT**

Vs.

1. A and R Manufacturing PVT Ltd
Gomaduwa,
Yatiantota.

**FIRST PARTY CLAIMANT-
RESPONDENT-RESPONDENT**

2. The Officer-in-Charge
Special Investigation Branch,
Avissawella.

**COMPLAINANT-RESPONDENT-
RESPONDENT**

3. Dilip Kumara
183/N.Kandy Road, Mahara,
Kadawatha,

**SUSPECT-RESPONDENT-
RESPONDENT**

4. The Hon. Attorney General
Attorney General's Department,
Colombo-12.

RESPONDENT-RESPONDENT

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

P. Kumararatnam, J.

COUNSEL : **J.P.Gamage with Chamara Fernando,
Sachini Ranaweera and Hansika
Ranaweera for the Appellant.**

**Pradeep Perera with Panchali
Pathirana for the 1st Party Claimant-
Respondent-Respondent.**

**Jehan Gunasekera, SC for the 2nd
Complainant Respondent and 4th
Respondent-Respondent.**

SUPPORTED ON : **12/12/2023.**

DECIDED ON : **02/05/2024.**

JUDGMENT

P. Kumararatnam, J.

The 2nd Party Claimant-Petitioner-Appellant (Hereinafter referred to as 'the Petitioner') is a businessman engaged in import and sale vehicles

and spare parts, and the sole owner of the individual business named 'Chaminda Enterprises' with the registration No. WR 37129. The Appellant had imported a freezer truck bearing chassis No. NPR 85-7015540. The Appellant used to sell and effect repairs if any, of his vehicles through 'Kumar Car Sales' owned by the Suspect-Respondent-Respondent (Hereinafter referred to as the Suspect).

The Appellant brought the freezer truck mentioned above to Suspect's car sale but retained all original documents with him. The Suspect had agreed to sell the vehicle in dispute to 1st Party Claimant-Respondent-Respondent (Hereinafter referred to as the 1st Party Claimant) for Rs.4,950,000/-. According to the Appellant this intended transaction was not intimated to him by the Suspect. The virtual complainant who was a director of the 1st Party Claimant had paid the consideration in two cheques and taken the possession of the vehicle. The Suspect had undertaken to register the vehicle in the name of Virtual Complainant.

After about three months, the Suspect had removed the freezer truck from Virtual Complainant claiming that it was necessary to take the vehicle for inspection of the Registrar of Motor Vehicle to register it.

Thereafter, the Suspect had informed the Appellant that the vehicle was available at 'Kumar Car Sales', the Appellant removed the vehicle and brought it into another garage for remaining repairs.

On 08.01.2019, the Virtual Complainant had lodged a complaint at the Awissavella Police Station that the Suspect had cheated him by taking money but not provided the vehicle as contracted. On the same day, the Complainant-Respondent-Respondent (Hereinafter referred to as the 'Complainant') has seized the vehicle from the garage where the Appellant had placed it for remaining repairs, in the absence of the Appellant. The Appellant had lodged a complaint on the same day at the Kandana Police Station in this regard.

The Complainant reported the facts under B/79014 in the Magistrate Court of Ruwanwella. In the meantime, the Appellant, by way of a motion dated 30.01.2019 made an application to add him to the case as a party. Further, the filed another motion dated 13.02.2019 requested the Court to release the vehicle in question to the Appellant. After filing second motion the Learned Magistrate of Ruwanwella directed the Appellant to file all original import documents in the Court.

As the Court decided to adjudicate the matter by way of written submissions, both parties had tendered their written submission and the matter was fixed for order. Delivering the Order on 15.05.2019, the Learned Magistrate had delivered the possession of the vehicle to 1st Party Claimant.

Being aggrieved by said order, the Appellant filed a revision application in the High Court of Kegalle under case No. 5527/REV. On 10.07.2019 when the matter was supported, the Learned High Court Judge of Kegalle refused notice to the Respondent and dismissed the application.

Now the Appellant filed this appeal to set aside the order of the Learned High Court Judge of Kegalle dated 10/07/2019.

The Appellant submitted following grounds of appeal:

1. The order of the Learned Magistrate in delivering possession of the vehicle to the 1st Party Claimant is contrary to law and precedent of the apex Courts.
2. The Learned Magistrate erred in law and fact, and has caused grave prejudice to the Appellant in not considering and scrutinizing the evidence and not complying with the legal provisions on conducting the inquiry.

3. The Learned High Court judge erred in law and fact when he refused to issue notice and dismissed the revision application of the Appellant.

Among the appeal grounds raised, the Appellant strenuously argued that the decision of the Learned High Court Judge to not to issue notice violates the maxim *audi alteram partem*. It is fundamental legal principle in which each party is entitled to a fair hearing and given the opportunity to respond to evidence against them.

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 judgment of the Magistrate Court of Ruwanwella decided to dismiss the revision application stating that that the Appellant had failed shock the conscious of the Court.

Considering the argument advanced by the Appellant that he was not afforded a fair inquiry, I conclude that the Learned High Court Judge should have inquired this matter by affording an opportunity to all necessary parties to present their submissions before he could come to a conclusion. As this caused great prejudice to the Appellant, I decide to send this case back to the High Court of Kegalle for re-hearing by affording an opportunity to all necessary parties to present their submissions.

Accordingly, I set aside the order of the Learned High Court Judge of Kegalle dated 10.07.2019 and send the case back to the High Court for a fresh hearing on merits, after issuing notice of this matter to the relevant parties.

Therefore, this appeal is allowed.

The Registrar of this Court is directed to send this order to the Provincial High Court of Kegalle.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL