

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

In the matter of an application for revision in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal

Application No:

CA(PHC)APN 0014/2023

The Officer-in-Charge

Rideegama Police Station

Rideegama.

Complainant

High Court of Kurunegala

No. HCR/15/2019

MC Rambadagalla

Case No.26336/18

Vs.

Kaluarachchilage Asela Kaluarachchi
Minsara Fish Shop,
Swarnamaliwatta,
Warakawehera, Morathiha.

Accused

AND THEN

Hawwa Dewalayage Sugath Lalana
No. 224, Mahaiyawa,
Morathiha.

Registered Owner-Petitioner

Vs.

1. The Officer-in-Charge
Rideegama Police Station
Rideegama.

Complainant-Respondent

2. Attorney General
Attorney General's Department
Colombo-12.
3. The People's Leasing and France
Company
No. 1161, Maradana Road,
Colombo-08

Respondents

AND NOW BETWEEN

Hawwa Dewalayage Sugath Lalana
No. 224, Mahaiyawa,
Morathiha.

Registered Owner-Petitioner-
Petitioner

1. The Officer-in-Charge
Rideegama Police Station
Rideegama.

Complainant-Respondent-
Respondent

2. Attorney General

Attorney General's Department

Colombo-12.

4. The People's Leasing and Finance

Company

No. 1161, Maradana Road,

Colombo-08.

Respondent-Respondents

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

P. Kumararatnam, J.

COUNSEL : **Hejaaz Hizbulla for the Petitioner.**

I.M.M.Fahim, SC for the Respondents.

ARGUED ON : **07/03/2024.**

DECIDED ON : **12/07/2024.**

JUDGMENT

P. Kumararatnam, J.

The Complainant-Respondent (Hereinafter referred to as the Complainant) filed a charge sheet Under Section 28(2) of the Forest Ordinance No. 13 of 1966 as amended for transporting 118 planks of teak wood valued about 278,151.69 using a vehicle bearing No. NW LE-2587 without a valid permit on 14.10. 2018.

The charge sheet was filed against the Accused in the Magistrate Court of Rambadagalla. As the Accused pleaded guilty to the charge sheet, the Learned Magistrate of Rambadagalla had convicted the Accused and imposed a fine of Rs.40,000/- and fixed for an inquiry to confiscate the Vehicle bearing NW LE-2587.

At the conclusion of the inquiry, the Learned Magistrate had decided to confiscate the aforesaid vehicle by his order dated 05.08.2019. At the inquiry, the Petitioner, his father, the Accused, and a representative of the absolute owner had given evidence on his behalf of the Petitioner.

Being aggrieved by the order of the Magistrate, the Appellant filed a revision application in the Provincial High Court of North-Western Province Holden at Kurunegala to revise the order of the Magistrate of Rambadagalla. After an inquiry, the Learned High Court Judge had dismissed the said revision application and affirmed the order of Learned Magistrate of Rambadagalla by his order dated 16.12.2022.

Now the Petitioner filed this revision application to set aside the order of the Learned High Court Judge of North-Western Province Holden at Kurunegala dated 16/12/2022.

The Petitioner submitted following exceptional circumstances:

- a) The Learned Judge of the Provincial High Court has not analysed the grounds on which the revision application of the Petitioner was made, but has rather commented extensively on the legal position that pertains to a case regarding illegal transportation of timber, which in the instant matter were undisputed;
- b) The Learned Judge of the Provincial High Court has failed to appreciate the fact that the Learned Magistrate has not taken into consideration the evidence that indicate all the steps that

the Petitioner and his father had actively taken to prevent the vehicle from being used for an illegal activity;

- c) The Learned Judge of the Provincial High Court has stated that the Learned Magistrate has correctly analysed the case, that the Learned Magistrate has correctly arrived at a conclusion in terms of the burden of proving the preventive steps taken, that the Learned Magistrate has followed the steps laid down by the Law in delivering his Judgement, etc.
- d) The Learned Judge of the Provincial High Court has not appreciated the fact that the Learned Magistrate has not given reasons for rejection or not considering the evidence placed before him about the steps taken by the Petitioner and his father to prevent the vehicle from being used for an illegal purpose;
- e) The Learned Judge of the Provincial High Court has failed to appreciate that the Petitioner has taken all precautionary steps he could take;
- f) The Learned Judge of the Provincial High Court has failed to appreciate that the total distance travelled by the said lorry was within the radius of 9-10 kilometres.
- g) The Learned Magistrate has taken irrelevant details in arriving at his Judgement and the Learned Judge of the Provincial High Court has failed to appreciate the same.
- h) The Learned Judge of the Provincial High Court has upheld the Judgement of the Learned Magistrate although the Petitioner has established and proved the preventive measures taken on a balance of probability;
- i) The Learned Judge of the Provincial High Court has upheld the Judgement of the Learned Magistrate when the Petitioner has taken all precautionary measures humanely possible under the circumstances of the case.

The Partitioner has given evidence in the court and has claimed that he was unaware of the crime being committed as he has employed the Accused as a driver of the vehicle. The Petitioner has given specific instructions to the Accused not to use the vehicle for the illicit transport of sand, timber and other items which need permits. Further, he used to contact the Accused daily in the evening to ascertain and assess the happenings regarding the hires and related matters for the day.

The representative of the leasing company giving evidence said that they had conducted an inquiry in this regard but the inquiry did not reveal that the illegal timber transportation had happened with the consent of the Petitioner.

The father of the Petitioner giving evidence stated that the vehicle in question was purchased to transport lime stones. At the initial stages, this witness and the Petitioner had driven the vehicle. As their lime stones business was not successful, they appointed the Accused as the driver of the vehicle. Although this witness employed as a watcher in an estate, he used to check the vehicle and was vigilant about the vehicle. After this incident, the Accused had been terminated. He refutes the suggestion that the driver of the vehicle is a close relation of him.

The Accused also gave evidence and admitted that he transported timber without the permission of the Petitioner or his father. He also said that the Petitioner had given instructions not to use the vehicle for any illegal activities.

The Learned Magistrate has dismissed the application on the basis that the Petitioner had failed to show that he took all necessary precautions to prevent a crime being committed.

Further, the Accused was working as the driver since 2007. During this period there was no complaint about misusing the vehicle.

In this case the Petitioner's and his witnesses' evidence has not been contradicted or challenged by the Complainant.

The Petitioner had given cogent evidence that he had no knowledge about transporting timber in this case. The complainant had charged the Accused for transporting timber. Further, last ten years there was no any offence committed by the Accused nor the vehicle involved in any illegal activity. These matters had not been considered by the either Courts. Further, the Petitioner had proved on balance of probability that he had all precautionary measures humanely possible under the circumstances of the case.

It is settled law that revision is a discretionary remedy, and such power shall be invoked only upon demonstration of exceptional circumstances.

In **Marian Beebee v. Seyed Mohamed 69 CLW 34** the court held that:

“Power of revision is an extraordinary power of the court which is independent and distinct from the appellate jurisdiction. The object of revisionary jurisdiction is to ensure the due administration of justice and the correction of all errors in order to avoid a miscarriage of justice”.

In the case of **Rasheed Ali v. Mohammed Ali and Others [1981] 1 SLR 262**, the court held that:

“...the powers of revision vested in the Court of Appeal are very wide and the Court can in a fit case exercise that power whether or not an appeal lies. When, however, the law does not give a right of appeal and makes the order final, the Court of Appeal may nevertheless exercise its powers of

revision, but it should do so only in exceptional circumstances. Ordinarily the Court will not interfere by way of review, particularly when the law has expressly given an aggrieved party an alternative remedy such as the right to file a separate action, except when non-interference will cause a denial of justice or irremediable harm”.

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 order of the Magistrate Court of Rambadagalla decided to dismiss the revision application stating that that the Petitioner had failed to prove that he did not had knowledge about committing of the offence.

Considering all these matters in to careful consideration, the only conclusion this Court could reach is that Learned High Court Judge has not exercised his revisionary jurisdiction justifiably in considering the order made by the Learned Magistrate of Rambadagalla.

Hence, I set aside the order of the Learned High Court Judge of Kurunegala dated 16.12.2022 and the order of Learned Magistrate Court of Rambadagalla dated 05.08.2019.

Therefore, this revision is allowed.

I direct that the vehicle No. NW LE 2587 be released to the Petitioner.

The Registrar of this Court is directed to send this Judgement to the High Court of Kurunegala and the Magistrate Court of Rambadagalla.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL