

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

**In the matter of an Application for Appeal  
under and in terms of Section 331 of the  
Code of Criminal Procedure Act No. 15 of  
1979 reads in terms of Article 154 P of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.**

Officer -in- Charge,  
Police Station,  
Kandaketiya.

**Complainant**

**CA PHC 0068/2020**

Provincial High Court of Uva  
Province Revision No. HC RA 35/2017  
MC -Badulla Case No. 84460

**Vs.**

Rathnayake    Mudiyansele    Nishnetha  
Kumara Rathnayake,  
Yaya 19/19/166,  
Welanpele,  
Arawatte,  
Mahiyanganaya.

**Accused**

**And**

B. G. Sumith Abeywickrama  
No. 446/11,  
Beliganwewa,  
Giradurukotte.

**Registered Owner**

## **AND THEN BETWEEN**

B. G. Sumith Abeywickrama  
No. 446/11,  
Beliganwewa,  
Giradurukotte.

**Registered Owner- Petitioner**

Vs.

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

**Respondents**

## **AND NOW BETWEEN**

B. G. Sumith Abeywickrama  
No. 446/11,  
Beliganwewa,  
Giradurukotte.

**Registered Owner- Petitioner-Appellant**

Vs.

1. Officer -in- Charge,  
Police Station,  
Kandaketiya

2. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12

**Respondents-Respondent**

**Before:**     **Sampath B. Abayakoon, J.**  
                  **Amal Ranaraja, J.**

**Counsel:**    Gayal Kalatuwawa for the Registered Owner-Petitioner-Appellant.  
                  Maheshika Silva, D.S.G. for the Respondent.

**Argued on:**  21.10.2024

**Decided on:** 09.12.2024

**JUDGMENT**

**AMAL RANARAJA, J.**

1. The Registered Owner-Petitioner-Appellant (hereinafter referred to as the 'appellant'), a businessman by profession has utilized the vehicle bearing **Registration No. UP LL 0358** for his business purposes, including to transport sand. Sand has been transported from *Mahiyangana* to *Hatton* and the appellant has been in possession of a valid permit for such purpose.
2. On **29.01.2015**, the appellant as per the usual practice has handed over the permit and the particular vehicle to its driver one, *Rathnayake Mudiyanzilage Kumara Rathnayake* to transport a load of sand from

*Mahiyangana* to *Hatton*. Unknown to the appellant the *Kandaketiya* Police had arrested the driver for transporting timber without a valid permit in terms of Section 24 (1) read with Sections 25 (2) and 40 of the **Forest Ordinance No. 16 of 1907 (as Amended)**. The *Kandaketiya* Police has also seized the said vehicle bearing **Registration No. UP LL 0358** which had been used to transport the timber.

3. Thereafter, the Officer-in-Charge of the *Kandaketiya* Police Station has filed action in the *Badulla Magistrate Court* against the driver referred to above, for transporting timber without a valid permit, an offence in terms of Section 24(1) and Section 40 of the Forest Ordinance. The driver (as the “accused”) upon pleading guilty to the charge has been convicted and sentenced.
4. Subsequently, a confiscation inquiry has been held regarding the vehicle bearing **Registration No. UP LL 0358**. After the inquiry by order dated **22.02.2017**, the Learned Magistrate has ordered the confiscation of the said vehicle. Aggrieved by the order, the appellant has filed an application in revision [HCRA 35/2017] in the *High Court of Badulla*. The Learned High Court Judge by his order dated **25.06.2020** has dismissed the revision application and affirmed the order of the Learned Magistrate dated **22.02.2017**. The appellant also being aggrieved by the order of the Learned High Court Judge of Badulla, dated **25.06.2020**, has preferred the instant appeal to this Court.
5. The facts of this appeal were not disputed. It is common ground that the Officer-in-Charge of the *Kandeketiya Police* had instituted proceedings

against the driver i.e. *Rathnayake Mudiyanzilage Kumara Rathnayake* for transporting 14 logs of jack timber valued at **Rs. 102,108.37** on **29.01.2015** without a permit and thereby committing an offence punishable in Sections 24(1), 25(2) and 40 of the **Forest Ordinance No. 16 of 1907 (As Amended)**.

6. **Section 40** of the **Forest Ordinance No. 16 of 1907 (As Amended)** provides,

*“(1) Where any person is convicted of a forest offence –*

*(a) All timber of 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,*

*shall in addition to any other punishment specified for such offence, be confiscated by 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 may be, for the commission of the offence.*

*(2) Any property forfeited to the State under subsection (1) shall –*

*(a) if no appeal has been preferred to the Court of Appeal against the relevant conviction, vest absolutely in the State with effect from the date on which the period prescribed for preferring an appeal against such conviction expires;*

*(b) if an appeal has been preferred to the Court of Appeal against the relevant conviction, vest absolutely in the State with effect from the date on which such conviction is affirmed on appeal.*

*In this subsection, “relevant conviction” means the conviction in consequence of which any property is forfeited to the State under subsection (1)”.*

7. **Section 40** of the **Forest Ordinance** states that upon a conviction, all timber and forest produce that have been the subject matter of the offence and vehicles used for the commission of such offence would be confiscated. If the owner of a vehicle himself was the accused in the preceding case then the issue before a Court in a confiscation inquiry will not be complicated. However, if the owner is a third party, it would be necessary for a Court to ascertain whether the offence has been committed by a particular accused with the knowledge and the connivance of the owner of such vehicle used for the commission of the forest offence.

8. In *The Finance Company PLC vs. Chandana and Others* [SC Appeal No. 105A/2008 and SC. (SPL) L. A.166/2008], decided on 30.09.2010, Dr. Shirani Bandaranayake CJ has stated,

*“(a) In terms of section 40 of the Forest Ordinance as amended, if the owner of the vehicle in question was a third party, no order of confiscation shall be made if that owner had proved to the satisfaction of the Court that he had taken all precautions to prevent the use of the said vehicle for the commission of the offence.*

*(b) It would be necessary for the owner of the vehicle to establish that the vehicle that had been used for the commission of the offence had been so used without his knowledge and that the owner had taken all precautions available to prevent the use of the vehicle for the commission of such an offence".*

9. The Counsel for the appellant has contended that the Learned Magistrate has erred in concluding that the evidence of the appellant (the registered owner) alone was not sufficient to discharge the burden placed on a "third party owner" in an inquiry of this nature.

*"ඔහු විසින් කරන ලද ප්‍රකාශය පමනක් ගෙන ඒ මත පිහිටා මෙම වහනය රාජසන්නක නොකිරීමට...ඔහු විසින් අඛාල කරුණු ඔප්පු කල බවට තීරනය කිරීමට ප්‍රමානවත් නොවන බව නිරීක්ෂණය වේ."*

10. The appellant as the registered owner of the vehicle in issue has given evidence at the "confiscation inquiry" and he has been the only witness called to give evidence on behalf of the owner. The appellant in his evidence has stated that he had given instructions to the driver to not use the said vehicle to commit an offence and on the days the vehicle was used for the purpose of transporting sand, he had handed over the permit obtained for such purpose to the driver to further emphasize the fact that the vehicle should be used on those particular days for the purpose of transporting sand only.

11. The evidence of the registered owner is cogent and impressive. The credibility of the appellant as a witness has not been impeached. Hence,

irrefutable evidence has been provided by the appellant on a balance of probability that necessary precautions have been taken by him as the owner of the vehicle to prevent the commission of an offence, using such a vehicle.

12. In *Adambarage Kelum Thushantha Alwis vs. The Attorney General* [CA (PHC) 211/ 2019] decided on 07.02.2023, Iddawela J, has stated,

*“However, it is more appropriate to note that corroboration of evidence is not imperative where there is irrefutable evidence at face value, provided by the appellant to satisfy the court on a balance of probability that necessary precautionary measures have been taken as a reasonable owner of the vehicle to prevent the commission of offences by using the vehicle.”*

13. When considering the contents quoted above, it is clear that if indisputable evidence is provided by an owner to satisfy the Court on a balance of probability of the precautionary measures taken by him to prevent the use of the particular vehicle to commit an offence, then evidence to corroborate the narration of such owner is not essential.

14. The vehicle in issue has been picked up by the driver at about 04.30hrs on **29.01.2015**, the registered owner has got to know about the seizure of the vehicle at about 06.00hrs on the same day. The vehicle had been loaded with 14 logs of jack timber, the annexure to the plaint set out the details of the logs in itself and the logs have been of substantial sizes.

15. The Learned Magistrate in the impugned order has drawn her attention to facts discussed in the previous paragraph and inferred that the logs have been loaded onto the vehicle prior to 04.30hrs on that day. She has made such an inference based on the fact that the logs that were loaded



onto the vehicle were of substantial sizes and such logs could not have been loaded to the vehicle concerned within a short period of 1.5 hrs. Hence, the appellant had connived with the driver to commit the offence the driver was convicted of.

16. There is no evidence as regard to the manner in which the logs were loaded onto the vehicle in issue. Further there is no evidence to eliminate the possibility of the logs being loaded onto the vehicle in a very short period of time if it was done mechanically. The Learned Magistrate therefore has misdirected herself on that point too.

17. The Learned High Court Judge has not given his mind to the facts discussed in this judgment and thereby misdirected himself to when he affirmed the order of the Learned Magistrate dated 22.02.2017. Hence, we set aside the orders dated **22.02.2017** and **25.06.2020** of the Learned Magistrate and the Learned High Court Judges respectively.

We direct that the vehicle bearing **Registration No. UP LL 0358** be released to the appellant.

The Registrar of this Court is directed to communicate this judgment to the *Magistrate Court of Badulla* for compliance.

*Application allowed.*

**Judge of the Court of Appeal**

**SAMPATH B. ABAYAKOON, J.**

I agree.

**Judge of the Court of Appeal**