

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

In the matter of an Appeal under and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka read along with the provisions in the High Court of Provinces (Special Provisions) Act No 19 of 1990.

CA-PHC-38-22

HC of Rathnapura Case No : HCR-RA-21-19

MC of Kalawana Case No:15071

Officer-in Charge,
Police Station,
Kalawana.

Complainant

Vs.

Kalaha Gamage Priyantha Nandanapala,
No. 105 B/1,
Rambuka,
Kalawana.

Accused

J.M. Manusha Nirmal Muhandiram,
No. 97/3,

Thanabela, Rambuka,
Kalawana.

Registered Owner Of The Vehicle

AND

J.M. Manusha Nirmal Muhandiram,
No. 97/3,
Thanabela, Rambuka, Kalawana.

Registered Owner-Vehicle - Petitioner

Vs.
Officer-in Charge
Police Station,
Kalawana.

Complainant- Respondent

Kalahe Gamage Priyantha Nandanapala,
No. 105 B/1,
Rambuka,
Kalawana.

Accused- Respondent

Honorable Attorney General,
Attorney General's Department,
Colombo 12.

Respondent

And Now Between

J.M. Manusha Nirmal Muhandiram,
No. 97/3,
Thanabela, Rambuka, Kalawana.

**Registered Owner Of The
Vehicle-Petitioner-Appellant**

Vs.
Officer-in Charge,
Police Station,
Kalawana.

Complainant- Respondent-Respondent

Kalahe Gamage Priyantha Nandanapala,
No. 105 B/1,
Rambuka,
Kalawana.

Accused- Respondent-Respondent

Honorable Attorney General,
Attorney General's Department,
Colombo 12.

Respondent-Respondent

Before: **B. Sasi Mahendran, J.**
 Amal Ranaraja, J

Counsel : Anushka Rajapakse with Apeksha Karunarathne for the Appellant
 Oswald Perera, SC for the Respondent

Written

Submissions 13.10.2025 (by the Respondent-Respondents)

On : 02.10.2025 (by the Petitioner- Appellant)

Argument On: 13.10.2025

Judgment On: 14.11.2025

JUDGMENT

B. Sasi Mahendran, J.

The Registered Owner -Claimant- Petitioner-Appellant (hereinafter referred to as the “Appellant”) instituted this appeal against the order of the Learned High Court Judge of the Provincial High Court of Sabaragamuwa Province holden in Ratnapura in case No. 21/2019 dated 28.10.2021 where the Learned High Court Judge affirmed the order of the Learned Magistrate of Kalawana bearing No. 15071 dated 06.02.2019 where the Learned Magistrate has confiscated a threewheeler bearing No. SG AAK 2006 consequent to an inquiry.

The accused, Kalaha Gamage Priyantha Nandanapala, was found guilty of the offence of transporting illicit liquor in violation of Section 47(1) of the Excise Ordinance on his own plea. Following the conviction, the Learned Magistrate proceeded to conduct an inquiry under Section 54(2) of the Excise Ordinance in respect of the vehicle that had been seized for its involvement in the unlawful transportation of illicit liquor, in contravention of the Excise Ordinance.

The Appellant, in their capacity as the registered owner of the vehicle, submitted evidence seeking its release pursuant to Section 54(2) of the Excise Ordinance. In response, the Learned Magistrate, exercising authority under Section 40(1)(a) of the Forest Ordinance, granted the owner an opportunity to show cause as to why the three-wheeler should not be subject to confiscation.

The Learned Magistrate held that, in circumstances of this nature, it is incumbent upon the owner of the vehicle to satisfy the Court that all reasonable precautions were taken to prevent its use in the commission of the offence. Upon consideration of the evidence presented, the Magistrate ordered the confiscation of the vehicle bearing registration number SG AAK 2006 on 06.02.2019.

Aggrieved by the aforementioned order, the Appellant proceeded to file a revision application before the High Court of Ratnapura. It is noteworthy that the vehicle in question was found transporting illicit drugs, constituting an offence under the Excise Ordinance. In this context, it is pertinent to refer to Section 54(2) of the Excise Ordinance, which provides the legal framework for the confiscation of vehicles involved in such offences.

*“54(2) Any excisable article lawfully imported, transported, manufactured, had in possession, or sold along with, or in addition to any excisable article liable to confiscation under this section, and the receptacles, packages, and coverings in which any such excisable article, materials, still, utensil, implement, or apparatus as aforesaid is found, and the other contents, if any, of the receptacles or packages in which the same is found, and the animals, carts, vessels, or other conveyance used in carrying the same, **shall likewise be** liable to confiscation.” (Emphasis added)*

The above section was considered in Sinnetamby v. Ramalingam, 26 NLR 371 at page 373, Sohneider, J held that;

“For the purpose of deciding this appeal, it is necessary to consider the position of the owner of any of the things which are mentioned in section 51 as liable to confiscation in those cases, where the owner himself is not convicted of any offence. Sections 51 and 52 contain no express provision by which the owner could be touched with notice before an order of confiscation is made. In the special case contemplated in section 52 (2), it is provided that any person claiming to be owner is to be heard. Our Excise Ordinance was borrowed from the Bengal Excise and Licencing Act (VII. B. C. of 1878). Mr.

Perera who appeared for the appellant in this appeal drew my attention to the case of Golap Saha v. Emperor. In that case it was held that the boat in which the excisable article was carried should not be confiscated under the provisions of section 75 of the Bengal Act (which corresponds to section 52 of our Ordinance) unless it is found that the owner of the boat was in some way implicated in the offence.although the section empowers the Court to confiscate the boat, yet, as a matter of sound judicial discretion, such an order should not be passed in the absence of the owner of the boat.”

The above judgment was considered by Chithrasiri J in **Aruna Pradeepa Prasanna v OIC Special Crime Investigation Unit and Attorney General** CA (PHC) 61/2012, decided on 28.11.2014 held that,

“The law referred to above shows that the vehicle claimed by the appellant is liable to be confiscated since the said vehicle had been used to commit an offence under Section 47 read with Section 54 of the Excise Ordinance. However, it must be noted that the words "be liable to confiscation" is specifically being mentioned therein. Therefore, in such a situation the Court should take into account, those words mentioned in that Section before making an order for confiscation of a vehicle under the provisions contained in the Excise Ordinance.

The impression that comes to a judicial mind by looking at the manner, in which those words are being used in that Section 54(2), is that it is to ensure holding of an inquiry by the trial judge before he makes an order. Then only the trial judge becomes entitled to make an appropriate order. However, such a decision should be made only after having addressed his mind to the material before him in a judicious manner. [Inspector Fernando Vs Marther (1932) 1 CLW 249, Sinnetamby Vs. Ramalingan 26 NLR 371]”

According to the above judgments, the owner of the vehicle, which has to be confiscated, should be given an opportunity to be heard. It is incumbent upon the owner, during the inquiry, to establish that the offence was committed without his knowledge or consent. However, in the present case, the Appellant failed to discharge this burden.

His explanation was confined to stating that he had handed over the vehicle to a friend upon request because he wanted to attend to a ‘Bana Gedara’, though he was unable to specify the exact date of the handover. He further claimed that he was informed by the police that the

vehicle was taken in to the custody. Additionally, he stated that he had cautioned the accused not to engage in any unlawful activity. The relevant evidence pertaining to this is as follows:

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“2013 වර්ෂයේ සිට මේ රථය පාවිච්චි කරනවා. මේ ත්‍රිවිල් රථය මගෙන් මේ නඩුවේ විත්තිකාරයා වන ප්‍රියන්ත නන්දපාල කියන තැනැත්තා ඉල්ලාගෙන ගියා. 2015.09.15 ත් 20ත් අතර දිනයක ඉල්ලාගෙන ගියා. දිනය හරියටම මතක නැහැ. ඉන් පසුව ත්‍රිවිල් රථයේ කසිප්පු වගයක් අරන් ගිහිල්ලා අහු වෙලා කිඳයලා නට කලවාන පොලිසියෙන් පණිවිඩයක් ලැබුනා. මම ඒ වෙලාවේ පොලිසියට ආවා . මේ ත්‍රිවිල් රථය ප්‍රියන්ත නන්දපාල කියන මේ නඩුවේ විත්තිකරුට මීට කලින් අවස්ථාවකවත් මම දීලා තියෙනවා ළඟකට ගිහින් එන්න. ප්‍රියන්ත නන්දපාල කියන්නේ මගේ යාලුවෙක්. මේ සිදුවීම වුන දවසේ ඔහු ගමේ එක්කෙනෙක්ගේ පින්කම් ගෙයක් තියෙනවා කියලා කිව්වාම ත්‍රිවිල් එක ඉල්ලුවා. මම ත්‍රිවිල් එක දුන්නා. ප්‍රියන්ත නන්දපාල කියන තැනැත්තා මගේ ත්‍රිවිල් රථයේ නීතිවිරෝධී මත්පැන් ප්‍රවාහනය කරනවා කියලා මම දැනගෙන හිටියේ නැහැ. මට ඒ සම්බන්ධයෙන් දැනුමක් තිබුනේ නැහැ. එහෙම දැනුමක් තිබුනා නම් මම ඔහුට ත්‍රිවිල් රථය දෙන්නේ නැහැ. මෙවැනි වැරදි වලට සම්බන්ධ වෙලා නැහැ. ප්‍රියන්ත නන්දපාලට මේ ත්‍රිවිල් රථය දෙනවිට ඔහුට මේ ත්‍රිවිල් රථය මේ වගේ වැරදි වලට පාවිච්චි කරන්න එපා කියලා තමයි දුන්නේ.”

We note that the Appellant has not called his friend, who is the accused, to assert his version. Having considered evidence that the Learned Magistrate has come to the conclusion that the appellant has failed to discharge this burden, that he took precautionary measures to prevent the offence or to prove that he didn't have the knowledge. We note that the arrest took place on 17 November 2015.

Generally, our courts require that the burden of proof concerning the owner's knowledge and the precautions taken in relation to the act of transporting illicit liquor be discharged on the standard of a balance of probabilities. But in the instant case, the only available evidence is the evidence of the Appellant. When we analyse the evidence until the police informed him, he was not aware of the crime. The Accused claimed that the vehicle was taken to attend a ‘Bana Gedara’. It is undisputed that the Appellant had known the Accused for many years. However, despite this longstanding relationship, the Appellant failed to summon the Accused to testify in support of his evidence. This omission was duly noted and considered by the Learned Magistrate in assessing the evidence of the Appellant.

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‘මෙම ත්‍රී රෝද රථයේ අයිතිකරුගේ සාක්ෂියද මෙම සාක්ෂිකරු විසින් පමණක් කියා සිටින සාක්ෂියක් වේ. ඕනෑම පුද්ගලයෙකුට මෙවැනි පියවර ගන්නා යැයි කියා සිටිය හැක. නමුත් එම සාක්ෂි වැඩි බර සාක්ෂි රීතිය අනුව ඔප්පු කිරීමේ භාරය ඇත්තේ මෙම වාහනයේ ලියාපදිංචි අයිතිකරුටය. එබැවින් අඩු තරමේ මෙම ලියාපදිංචි අයිතිකරු ඔහු කියා සිටින අයුරින් කටයුතු කළාද යන්න රියදුරු සාක්ෂියට කැඳවමින් ඒ බව අධිකරණයට අනාවරණය කිරීමට ඕනෑ තරම් ඉඩ තිබුණි. නමුත් මෙම ලියාපදිංචි අයිතිකරු එසේ රියදුරු සාක්ෂියට කැඳවා නැත.’

When we consider the evidence, the vehicle owner, Appellant, has failed to establish that he had taken the precautions to avoid the commission of the offence or he had no knowledge with regard to the offence. He has merely allowed the Accused to take charge of the vehicle to attend the ‘Bana Gedara’.

It is my considered view that the evidence led before the Magistrate with regard to that he has no knowledge as to the commission of this offence does not release his burden as required by the said Act which mandate ‘*shall likewise b liable to confiscation*’. The best person is the Accused, who is the friend of the Appellant, who would have given evidence with regard to the how the Appellant took precautions to avoid this crime.

And also, we note that the Appellant has failed to satisfy the Learned High Court Judge that the order made by the Learned Magistrate shocks the conscience of the courts. Upon reviewing the evidence, the Learned High Court Judge has decided that the Appellant he has failed to establish on a balance of probability that the offence took place. It is pertinent to refer to the order of the Learned High Court judge dated 28.10.2021,

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‘The above observations pertinent to this case too. In this case also the petitioner has failed to established on a balance of probability that the offence of transporting illicit liquor took place without his knowledge.’

For the above-mentioned reasons, we are not inclined to interfere with the order of the Learned Magistrate dated 06.02.2019 and the Order of the Learned High Court Judge dated 28.10.2021.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL