

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

Appeal made under the Section 331 of the Chapter XXVII read in conjunction with the Part VII of the Code of Criminal Procedure No.15 of 1979 Article 154 (o) of the Constitution of Sri Lanka:

CA PHC-166/20

HC Matara Case No: 183/2018 (REV)

MC of Matara Case No: 56396

Officer In Charge

Police Station

Akurassa

Complainant

Vs.

Welihena Hewage Samantha.

Accused

Urumuththa Hewa Radage Janaka

Sampath,

Agalakada, Godapitiya, Akuressa

Registered Owner

And

Urumuththa Hewa Radage Janaka

Sampath

Agalakada, Godapitiya, Akuressa

Registered Owner Petitioner

V.

1. Officer In Charge

Police Station

Akurassa

2. Honorable Attorney General,

Attorney General's Department,

Colombo 12.

Complainant-Respondents

AND

Urumuththa Hewa Radage Janaka

Sampath

Agalakada, Godapitiya, Akuressa

Registered Owner Petitioner Appellant

Vs.

1. Officer in Charge

Police Station

Akuressa

2. Hon. Attorney General

Attorney General's Department

Colombo 12.

Complainant-Respondent-Respondents

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

Counsel : Pradeep Fernando for the Accused-Appellant
 Tharaka Kodagoda , SC or the Respondent

Argument On : 08.10.2025

Judgment On: 12.11.2025

JUDGMENT

B. Sasi Mahendran, J.

The Registered Owner -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 Central Province holding in Kandy in case No. 66/2016 dated 21.10.2020 where the Learned High Court Judge affirmed the order of the Learned Magistrate of Kandy bearing No. 87998 dated 10.10.2018 where the Learned Magistrate has confiscated a lorry bearing No. SP LB 3340 consequent to an inquiry.

The accused, Walihena Hewage Samantha, was found guilty of the offence of illegally transporting eight Mahogany logs, in violation of Section 25(2) read with Section 40 of Act No. 65 of 2009 of the Forest Ordinance. Following the conviction, the Learned Magistrate proceeded to conduct an inquiry regarding the vehicle that had been seized for its involvement in the unlawful transportation of the Mahogany logs, in contravention of the Forest Ordinance.

The Learned Magistrate, acting in terms of Section 40(1) of the Forest Ordinance, allowed the owner to show cause as to why the lorry should not be confiscated.

In an inquiry of this nature, it is incumbent upon the owner of the vehicle to demonstrate to the Court that all reasonable precautions were taken to prevent the vehicle's use in the commission of the offence. The amendment to Section 40 of the Forest Ordinance by Act No. 65 of 2009 provides that,

“Where any person is convicted of a forest offence.

(A) All timber or forest produce which is not the property of the State in respect of which the 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 where the owner of the vehicle is a third party, no order of confiscation shall be made if such owner proves to the satisfaction shall be made if such owner proves to the satisfaction of the court that she 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.’

This principle is followed by the Her Ladyship Justice K. K. Wickremasinghe in *Karunapedi Durayalage Sumana Kumara v. Officer-in- Charge, Police Station, Narammala and others* has stated:

“Further, it is imperative to note that as per, section 40 of the Forest Ordinance (amendment Act No. 65 of 2009), it is mandatory to prove preventive measures taken by the vehicle owner in question. Even though the previous law allowed a vehicle owner to prove either he took precautions or he had no knowledge of an offence being committed, the amended section 40 only focuses on the precautions taken by a vehicle owner in question. Therefore, I am of the view that mere denial of the knowledge about an offence being committed or denial of the control over his own vehicle is not sufficient for a vehicle owner to discharge the burden cast on him, under section 40 of the Forest Ordinance (as amended).”

Iddawala J in *Rajapakse Dewage Asanga Kumara Chandrasena v. Officer- in- Charge, Police Station, Katugasthota and another* has stated;

“By the amendment to the Forest Ordinance in 2009 by Act No. 65 of 2009, the legislature has determined that having no knowledge of the offence being committed is a not good enough a reason anymore to claim a confiscated vehicle. Therefore, Counsel has to be mindful in citing cases decided prior to the 2009

amendment or cases decided under other legislations. The judiciary has to only discern whether the claimant being the owner of the vehicle, had taken all precautions to prevent the use of the vehicle for the commission of the offence. This entails positive actions on the part of the owner and not claiming mere ignorance.”

The aforementioned cases underscore the necessity for the vehicle owner to demonstrate that he implemented adequate preventive measures to ensure the vehicle was not involved in any unlawful activities. It must be shown that the owner issued clear and explicit instructions to the driver, prohibiting the use of the vehicle for unauthorized or illegal purposes. Accordingly, the owner is required to establish that all reasonable precautions were taken to prevent such misconduct.

During the inquiry, the owner testified that he had entrusted the vehicle to the accused to operate as a driver for a payment of Rs. 1,500. He further stated that after the vehicle was handed over to the wife of the owner, she informed him about its status. The owner also mentioned that he had been actively searching for the vehicle to the best of his ability.

During the cross examination the Appellant has asserted that he is a Navi Officer and that he was unaware that, on the date of the offence—04.07.2016—the driver intended to transport logs. He emphasized that had he known about such an intention, he would not have permitted the use of the lorry.

We are mindful that, under prevailing legal standards, the courts require the owner to demonstrate—on the balance of probabilities—that appropriate precautions were taken to prevent the commission of the offence. In our view, the Learned Magistrate correctly arrived at the conclusion with respect to Section 40(1) of the Forest Ordinance. It is incumbent upon the Magistrate to assess whether the owner has sufficiently established, on a balance of probabilities, that she exercised the necessary precautions.

Upon a comprehensive review of the evidence presented before the Learned Magistrate, we are not satisfied that the owner of the vehicle has demonstrated that he took appropriate and reasonable precautionary measures to prevent the vehicle from being used in the commission of an offence.

We note with concern that the wife of the vehicle owner did not provide evidence at the inquiry. Her testimony would have been pivotal in determining whether adequate precautions were taken to prevent the commission of the offence. While the owner, being a Naval Officer, was unable to monitor the vehicle's movements due to professional constraints, it is evident that his wife had direct control over the vehicle. Therefore, she would have been the more appropriate person to clarify the preventive measures, if any, that were in place.

We note that the Learned Magistrate rightly observed that, although the appellant claimed to have taken all necessary precautions, this assertion remained unsubstantiated and was not proven on the balance of probabilities

For the reasons stated above, we respectfully submit that the Learned Magistrate has rightly reached the conclusion and made the appropriate order.

Upon perusal of the order made by the Learned High Court Judge on 21.10.2020, it is evident that the revision application was rejected on the grounds that the Learned Magistrate had duly considered all the precautionary measures claimed to have been taken by the Appellant. It is relevant to reproduce that portion of the said order.

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එම නින්දාව කෙරෙහි අවධානය යොමු කිරීමේදී වාහනයට පාලනයේ තිබූ තැනැත්තා මෙවැනි විමසීමකදී අයිතිකරු ලෙස සැලකීම අපේක්ෂා කර ඇති අතර අධිකරණය වැඩි බර සාක්ෂි මත සාක්ෂි විශ්ලේෂණය කළයුතු බවට සඳහන් වේ.

ඉහත කී ආකාරයට සමස්ත කරුණු කෙරෙහි අවධානය යොමු කිරීමේදී උගත් මහෙස්ත්‍රාත්තුමියගේ ප්‍රශ්නගත නියෝගයට මැදිහත් වීමට තරම් ප්‍රමාණවත් සුවිශේෂීත හේතු පවතින බවට නිගමනය කළ නොහැක. එ බැවින් එකී ප්‍රතිශෝධන ඉල්ලුම් පත්‍රය ගාස්තුවට යටත්ව නිශ්ප්‍රභා කරමි.

We hold that the Learned High Court Judge of Province correctly arrived at the conclusion considering the precautions that was taken by the Appellant and evaluating the order of the Learned Magistrate.

We are not satisfied that the owner has demonstrated that he has not took all necessary steps to implement precautionary measures to prevent any illegal activity.

In light of the foregoing facts, I am of the considered opinion that the confiscation of the vehicle is justified. Accordingly, I uphold the order of the Learned High Court Judge.

Having regard to the above circumstances, we find no reason to interfere with the order of the Learned High Court Judge dated 21.10.2020 and the order of the Learned Magistrate dated 10.10.2018.

The appeal is accordingly dismissed and we order no cost.

We direct the Registrar to communicate this order to the Magistrate Court of Kandy for further compliance.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL

