

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

Court of Appeal Case No.  
**CA/ PHC 61/16**

Kandy High Court Case No.  
**REV 03/16**

Matale magistrate's Court Case  
**No. 27936**

In the matter of an appeal to the Court of Appeal from the judgment of the High Court of the Central Province Holden in Kandy under provisions of Provincial High Court (Special Provisions) Act No. 19 of 1990.

Officer-In-Charge,  
Police Station,  
Raththota.

**Complainant**

**Vs.**

Suriya Arachchilage Prasantha Kumara Chandrasekara,  
No. 216/1, Allepola,  
Palapathwala.

**Accused**

**And**

Walisunadara Mudiyanselage Deepthi Aruna Kumari Jayarathna,  
No. 328/19, Sampath Uyana,  
Palapathwala, Matale.

**Petitioner**

**Vs.**

1. Suriya Arachchilage Prasantha Kumara Chandrasekara,  
No. 216/1, Allepola,  
Palapathwala.
2. Officer-In-Charge,  
Police Station,  
Raththota.
3. The Attorney General,

Attorney General's Department,  
Colombo 12.

**Respondents**

**And Now Between**

Walisunadara Mudiyanselage Deepthi  
Aruna Kumari Jayarathna,  
No. 328/19, Sampath Uyana,  
Palapathwala, Matale.

**Petitioner- Appellant**

**Vs.**

1. Suriya Arachchilage Prasantha Kumara Chandrasekara,  
No. 216/1, Allepola,  
Palapathwala.
2. Officer-In-Charge,  
Police Station,  
Raththota.
3. The Attorney General,  
Attorney General's Department,  
Colombo 12.

**Respondent - Respondents**

Before: Damith Thotawatte, J.  
K.M.S. Dissanayake, J.

Counsels: Mohan Weerakoon, PC with Sandamali Peiris for the Petitioner-Appellant.  
Jehan Gunasekara S.C for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

Argued: 13.10.2025

Written submissions 29.01.2020 By Petitioner-Appellant.  
tendered on: 17.06.2022 By 1<sup>st</sup> and 2<sup>nd</sup> Respondent- Respondents.

Judgement  
Delivered on: 13.01.2026

**Thotawatte, J.**

### **Introduction**

On or about 31.12.2014, a motor vehicle (truck) bearing registration No. 227-4183, of which the Petitioner-Appellant (hereinafter sometimes referred to as the "Appellant") was the registered owner, was seized, following the arrest of the driver for having transported *Pathuru Mara* timber worth Rs. 7085.71 without a permit, in contravention of the provisions of the Forest Conservation Ordinance, as amended (hereinafter sometimes referred to as "Forest Ordinance"). The accused driver of the vehicle had been fined Rs. 10,000/- upon him pleading guilty to the charge, and the timber concerned had been ordered to be confiscated. As the Appellant had not been an accused in the proceedings but a third-party owner, an inquiry had been conducted by the learned Magistrate under the proviso to Section 40 of the Forest Ordinance to determine her entitlement to relief. Upon the conclusion of that inquiry, confiscation of the vehicle had been directed by order dated 06.11.2015.

Being dissatisfied with the learned Magistrate's order, the Appellant had invoked the revisionary jurisdiction of the High Court of the Central Province held at Kandy, challenging the legality of the said order. Upon consideration, the learned High Court Judge, by order dated 30.06.2016, had dismissed the revision application, holding that no grounds had been disclosed warranting interference with the Magistrate's determination.

Being aggrieved by the said order of the learned Judge of the High Court, the Appellant has preferred this instant appeal to this court challenging the learned Magistrate's order dated 06.11.2015, and the order of the honorable Judge of the High Court dated 30.06.2016.

The Appellant has challenged the impugned orders primarily on the following grounds;

1. The confiscation proceedings were legally flawed on the grounds that correct provisions of the Forest Conservation Ordinance were not properly applied, section 40(1) was said to be repealed or inoperative, and no specific charge relating to confiscation had been framed.
2. The inquiry into the Appellant's claim as a third-party owner was unfair and incomplete, as the Appellant's lack of knowledge of the offence and other relevant mitigating factors, including the proportionality of confiscation, were not properly considered.

### **Issues for Determination**

The appeal raises three principal issues:

1. Whether alleged defects in the charge sheet or references to earlier amendments invalidate the confiscation proceedings.
2. Whether the Petitioner–Appellant satisfied the statutory burden imposed by the proviso to section 40(1) of the Forest Conservation Ordinance.
3. Whether the courts below erred in law so as to warrant appellate interference.

### **Section 40 after Forest (Amendment) Act, No. 65 of 2009**

Section 40 of the Forest Ordinance, as substituted by Act No. 65 of 2009, represents a deliberate legislative departure from earlier court-moderated confiscation, exemplified by cases such as *Manawadu v. Attorney-General*<sup>1</sup> and similar pre-2009 authorities. The section now establishes:

- That forfeiture follows as a legal consequence of a conviction for a forest offence; and

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<sup>1</sup> (1987) 2 SLR 30

- A statutory escape, available only if the owner proves that all precautions were taken to prevent the offence.

Lack of knowledge has been referred to by some post 2009 judgements, but not as an independent statutory defence to confiscation. Lack of knowledge is treated as supporting evidence relevant to whether precautions were taken, not as a substitute for them.

Further, by introducing sections 40A and 40B, Parliament expressly excluded the application of Sections 306 and 433A of the Code of Criminal Procedure Act, thereby removing general property-return mechanisms from the confiscation process.

### **Alleged Defects in the Charge Sheet**

The Petitioner–Appellant contended that since the charge sheet referred only to earlier amendments and failed to expressly cite Act No. 65 of 2009, such omission vitiated the conviction of the Accused (the driver of the vehicle), and that the consequential order for confiscation of the vehicle is therefore unsustainable in law.

Although the confiscation inquiry under section 40 is consequential upon conviction, the accused had pleaded guilty to an offence under the Forest Conservation Ordinance. As such, the conviction has attained finality and a third-party claimant appearing under the proviso to section 40 cannot mount a collateral attack on the charge or the conviction and cannot re-litigate the criminal charge. To permit such a course would undermine finality in criminal proceedings and frustrate the statutory confiscation regime.

This position is consistent with the approach adopted by **Atapattu Mudiyanselage Sadi Banda v. Officer-in-Charge, Norton Bridge**<sup>2</sup>, **Aththaragamage Ratnasiri v. Range Forest Officer, Thanamalwila and others**<sup>3</sup>, **Tikiriwanni Unnehelage Dhanapala v. Forest Range Officer**,

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<sup>2</sup> [2014] 01 Sri L.R 33, CA PHC 3/2013

<sup>3</sup> CA (PHC) 142/2019 CAM 23.11.2022

**Mahaoya and another<sup>4</sup>, H. G. Sujith Priyantha v. Officer-in-Charge, Police Station, Poddala and others<sup>5</sup>, Hewa Pathirana Jayawickrama v. Officer-in-Charge, Police Station, Mawathagama<sup>6</sup>**, where it was held that the inquiry under Section 40 is confined to the statutory conditions governing release of the vehicle and does not reopen the validity of the conviction.

### **The Statutory Burden: “All Precautions”**

The central question is whether the Petitioner–Appellant discharged the burden imposed by the proviso to section 40(1).

The burden is one of proof and evidence. It is not enough for an owner to merely assert a lack of knowledge. The statute requires proof, on a balance of probabilities, that effective and reasonable precautions were taken.

The evidence placed before the Magistrate revealed no system of supervision, control, or verification regarding the use of the vehicle. No corroborative material was tendered. The learned Magistrate was therefore entitled to conclude that the statutory threshold had not been met.

It has been consistently held by the Court of Appeal that, in an inquiry under Section 40 of the Forest Conservation Ordinance, mere verbal instructions, passive ownership, or bare assertions of innocence do not satisfy the statutory requirement. The proviso demands proof of effective and affirmative precautionary measures, established on a balance of probabilities, failing which confiscation must follow. This principle was reiterated in **H. G. Sujith Priyantha v. Officer-in-Charge, Police Station Poddala<sup>7</sup>**, where it was emphasized that the proviso demands definite precautionary conduct, not after-the-fact protestations of innocence.

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<sup>4</sup> CA (PHC) 27/2021 CAM 27.09.2023

<sup>5</sup> CA (PHC) No. 157/2012 CAM 19.02.2015

<sup>6</sup> CA (PHC) No. 143/2018 CAM 20.01.2023

<sup>7</sup> supra

## **Proportionality**

Reliance has been placed on by the Appellant on ***Atapattu Mudiyanselage Sadi Banda v. Officer-in-Charge, Norton Bridge***<sup>8</sup> to argue that confiscation was disproportionate. However, this authority does not assist the Petitioner–Appellant. *Sadi Banda* was decided on a clear factual finding that the owner had established a lack of knowledge and reasonable precautions. Proportionality was considered after the statutory burden had been discharged. This fact has been clearly emphasized in ***Hewa Pathirana Jayawickrama v. Officer-in-Charge, Police Station, Mawathagama and others***<sup>9</sup>

In the present case, the threshold requirement under Section 40 was never met. Proportionality cannot be invoked to override an express legislative command where the statutory preconditions for relief have failed.

## **Scope of Appellate Interference**

It is well settled that this Court, in the exercise of its appellate jurisdiction, will not interfere with findings of fact and law made by the learned Magistrate and affirmed by the High Court, save where such findings are shown to be vitiated by illegality, material misdirection, procedural impropriety, or a manifest failure of justice. Appellate intervention is therefore warranted only where a clear error affecting the legality or integrity of the decision-making process is established. In the present case, no such illegality, misdirection, or failure of justice has been demonstrated so as to justify interference by this Court.

## **Conclusion**

This appeal discloses no basis for disturbing the confiscation ordered under section 40 of the Forest Conservation Ordinance. The Appellant failed to discharge the burden imposed by law, and the confiscation reflects the legislative policy of strict deterrence against forest offences.

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<sup>8</sup> supra

<sup>9</sup> supra

For the foregoing reasons, this Court finds no basis to interfere with the impugned orders of the learned Magistrate and the learned High Court. Accordingly, the order of confiscation made by the learned Magistrate and affirmed by the Provincial High Court is confirmed, and the appeal is dismissed. We make no order as to costs.

**Judge of the Court of Appeal**

**K.M.S. Dissanayake, J.**

I agree

**Judge of the Court of Appeal**