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

In the matter of an Appeal in terms of Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

The Officer-in-Charge
Police Station
Pulmoddai

Complainant

SC Appeal No. 62/2025
SC SPL LA No. 140 / 2024
CA/ PHC / 209 / 2018
HCT/REV/501/17
MC/P/16/Mis/17/K

V.

1. S.A.K. Subash Priyankara Aariyasinghe
2. W.A. Piyadasa
3. E.J. Saman Pushpakumara
4. S. Tuder
5. K.A. Ruwan
6. D.K. Sugath Jayawickrama
7. A.Anil Nilantha
8. K.A. Ranil Chaminda
9. G.K. Premachandra

Accused

AND BETWEEN

Siyaptha Finance PLC,
No. 110, Sir James Peiris Mawatha,
Colombo 02.

Claimant-Petitioner

V.

1.The Officer-in-Charge
Police Station
Pulmoddai

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

Respondents

AND BETWEEN

Siyaptha Finance PLC,
No. 110, Sir James Peiris Mawatha,
Colombo 02.

Claimant - Petitioner - Appellant

V.

1.The Officer-in-Charge
Police Station
Pulmoddai

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

Respondents - Respondents

AND NOW BETWEEN

1.The Officer-in-Charge
Police Station
Pulmoddai

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

Respondents - Respondents - Appellants

V.

Siyaptha Finance PLC,
No. 110, Sir James Peiris Mawatha,
Colombo 02.

Claimant - Petitioner - Appellant - Respondent

Before : **Shiran Gooneratne, J**

Mahinda Samayawardhena J

K. Priyantha Fernando, J

Counsel : Maheshika de Silva, DSG with Nishantha Nagaratnam, SC instructed by Ms. I. Kalanasuriya, SASA for the Respondents - Respondents - Appellants.

Naveen Maha Arachchige instructed by Lochana Jayasekara for the Claimant - Petitioner - Appellant - Respondent.

Argued on : 26.08.2025

Decided on : 19.09.2025

K. PRIYANTHA FERNANDO, J

1. The present appeal has been instituted by the respondents-respondents-Appellants (hereinafter referred to as "the Appellants") challenging the judgment of the Court of Appeal dated 01.04.24 by which an order was made directing the release of a vehicle that had been confiscated pursuant to offences committed under the Forest Ordinance and the Antiquities Ordinance. The Claimant - Petitioner-Appellant-Respondent (hereinafter referred to as the Respondent) to this appeal is the absolute owner of the said vehicle. At the time of the

arrest, however, the 1st accused who was charged with the commission of the aforementioned offences was the owner of the vehicle.

2. On 12.12.2016, nine suspects excavating in the Elandamunei Conservation forest were arrested along with tools used for excavation and a Van bearing Number SGPH 4430 (hereinafter referred to as the Vehicle). At the time of the seizure, the registered owner of the vehicle was the 1st accused and the absolute owner was the claimant respondent. On 11.01.2017, the nine accused were charged for the following offences in the Magistrate's Court of Kuchchaveli.

- ❖ Commission of the offence of trespass in conservation forest under S.06 (2)(a) of the Forest Ordinance.
- ❖ Digging soil in a conservation forest which is an offence under S.06 (2)(p) of the Forest Ordinance.
- ❖ Excavation in a forest conservation for the purpose of discovery of antiquities - Section 15 (1) of the Antiquities Ordinance.

3. Thereafter, on 11.01.2017, all nine accused persons including the registered owner of the Vehicle, pleaded guilty to all the above mentioned charges and were sentenced. By motion dated 18.01.2017, the absolute owner (claimant) made a claim for the vehicle. After inquiry the learned Magistrate refused the claim and ordered to confiscate the vehicle.

4. Aggrieved by the order of the learned Magistrate, the respondent made a revision application to the Provincial High Court of Trincomalee which also affirmed the order of the learned Magistrate. Being aggrieved, the respondent appealed to the Court of Appeal. The Court of Appeal on 01.04.2024 overturned the judgments of the Provincial High Court as well as the learned Magistrate and ordered the release of the Van to the claimant respondent.

5. Aggrieved by the judgement of the Court of Appeal, the instant application was filed to this Court by the appellants, and leave was granted for the following questions of law:

23)

a. *Did the Court of Appeal err in law by its failure to correctly appreciate and apply the provisions of Section 40(1) of the Forest Ordinance, as amended, in respect of the instant case?*
b. *Did the Court of Appeal err in law by its failure to correctly appreciate and apply the rules formulated by Your Lordships' Court as regards to the 'owner' contemplated under Section 40(1) of the Forest Ordinance, as amended, in respect of the instant case?*
c. *Did the Court of Appeal err in law by its failure to consider that the Respondent was estopped from challenging the jurisdiction of the learned Magistrate in holding a confiscation inquiry, belatedly during the appeal, having failed to raise any objection at the time of the inquiry?*

6. At the hearing, referring to Section 40 of the Forest Ordinance the Learned Deputy Solicitor General for the appellants stated that, the Court of Appeal has erred in law by incorrectly applying the proviso to Section 40 of the Forest Ordinance to the given matter. The Learned Deputy Solicitor General argued that, in the instant case it is the registered owner who has control and possession of the vehicle, who has also pleaded guilty for the commission of the offence. Therefore, the learned Deputy Solicitor General took the position that, the proviso to Section 40 of the Forest Ordinance, does not apply when the owner himself committed the offence under the Forest Ordinance.

7. The learned Deputy Solicitor General further contended that, it is very important to consider and understand the term “owner” as per section 40 of the Forest Ordinance. She referred to the case of ***Ceylinco Leasing Corporation Ltd V. M.H. Harison and Others CA (PHC) APN***

45/2011 dated 25.08.2011 and submitted that in the instant case, the control and possession of the vehicle in question was entirely with the registered owner, which means that in this circumstance when the registered owner commits the offence, then the vehicle that was used to commit such an offence must also be confiscated.

8. Further to that, the learned Deputy Solicitor General also submitted that the respondent had no right to challenge the jurisdiction of the Magistrates' Court belatedly during the appeal, when they did not raise objections in relation to the jurisdiction at the beginning of the vehicle inquiry. In the vehicle inquiry, no objection/s were taken up regarding the jurisdiction and instead, the absolute owner testified that if he knew that the vehicle would be used for the commission of an offence, he would not have given it to the accused. The learned Deputy Solicitor General argued that, the position of the Court of Appeal that as the charge does not include the 'use of the vehicle' the charge is defective, is erroneous because the substantive offence does not require that as an element of the offence. She contended that, what is to be stated and proved are the elements of the offence and the "modus operandi of the commission of the offence" is a matter to be proved by evidence . Therefore, she submitted that, when the accused pleaded guilty, and no formal evidence was led, the prosecution narrative as mentioned in the 'B' reports and production list along with the charge should be considered as admitted by the accused. Hence when the Absolute Owner takes part in the vehicle inquiry, he cannot challenge the charge. Neither the Absolute Owner challenged the use of the vehicle in the offence. Therefore, the learned Deputy Solicitor General for the appellants submitted that the respondents are estopped from now challenging the jurisdiction of the Magistrate and consequently call into question the validity of the charge sheet.

9. The learned Counsel for the respondent submitted that, the learned Magistrate and the Learned Judges of the High Court erred by failing to evaluate that under section 40 of the Forest Ordinance it is required

to ascertain whether the vehicle was used in the commission of the offence. At the hearing the Learned Counsel argued that, in an instance like this, initially the Learned Magistrate has to consider and form an opinion whether the vehicle was "used" in committing such offence and thereafter if such opinion is formed, then the vehicle may be confiscated. The learned Counsel takes the position that, it is in this instance the proviso is applicable which affords opportunity for the owner to satisfy the Learned Magistrate whether all precautions were taken to prevent the use of the vehicle for the commission of the offence and if the Learned Magistrate considers that the vehicle was not used in the commission of the offence, then the vehicle shall be released.

10. According to the learned Counsel for the respondent, in arriving at the opinion whether the vehicle was in fact "used" in committing the offence, the Learned Magistrate is to consider all material on record including B-report and further reports. He argued that neither the B-report nor the charge sheet mentioned the details in respect of the vehicle used in committing the offence and despite this lacuna, the Magistrate went on to erroneously confiscate the vehicle.

11. The learned Counsel for the respondent submitted that there was no evidence to establish that the vehicle was used in the commission of the offence. According to the Counsel, the B-report doesn't provide anything clearly to demonstrate whether the vehicle was used to commit the offence and therefore contends that Magistrate's order to confiscate the vehicle is bad in law.

12. Section 40 of the Forest Ordinance provides that,

"When any person is convicted of a forest offence, all timber or forest produce which is not the property of the State in respect of which such offence has been committed, and all tools, boats, carts, cattle, and motor vehicles used in committing such offence, shall, in addition to

any other punishment prescribed for such offence, be confiscated by order of the convicting Magistrate."

13. It is evident from the aforementioned section that, in order for a tool, motor vehicle, cart, or similar item to be subject to confiscation upon conviction for an offence, it must have been *used* in the commission of that particular offence. In the present case, the accused persons were charged under Section 6(2)(a) of the Forest Ordinance for unlawfully trespassing into a conservation forest.

14. According to the 'B' Report, the vehicle in question was utilized by the accused to gain access to the conservation forest, thereby facilitating the alleged trespass.

"මෙම සැකකරුවන් පැමිණි අංක එස්ජී පීඑච් 4430 දරන සුදු පැහැති වෑන් රථය හා ස්විච් යතුර භාරයටගෙන පොලිස්ථානයේ දේපල කුවිතාන්සිපත් අංක 390/16 යටතේම ඇතුලත් කර ඇත. "

While it is noted that the vehicle was found in an isolated area at the time of the arrest, the material on record indicates that it had, in fact, been used by the accused persons to enter the forest reserve. Accordingly, it is apparent that the vehicle played a contributory role in the commission of the offence which is the offence of trespass and was, therefore, used in furtherance of the unlawful act. These facts mentioned in the 'B' report were never disputed in the Magistrate Court by the accused including the owner of the vehicle who was the 1st accused, and they all pleaded guilty to the charges.

15. Upon a careful examination of the 'B' Report, there is sufficient material to establish that the vehicle was utilised for the commission of the alleged offence of trespass. Despite this, the respondents, in their written submissions, have urged the Court to consider the contents of the B Report and contend that there is no reference therein as to the

presence of the vehicle at the time of the offence. This assertion is both erroneous and can be considered to be an attempt to be misleading, in light of the clear and ample evidence contained in the B Report indicating that the said vehicle was in fact used in furtherance of the unlawful trespass.

16. In the case of ***Ceylinco Leasing Corporation Ltd V. M.H. Harison and Others CA (PHC) APN 45/2011*** decided on 25.08.2011 His Lordship Justice Sisira de Abrew held that,

"If the court is going to release the vehicle on the basis that the owner of the vehicle is the absolute owner, then after the release, it is possible for the absolute owner to give the vehicle to another person. If this person commits a similar offence, the finance company can take up the same position and the vehicle would be again released. Then where is the end to the commission of the offence? Where is the end to the violation of the Forest Ordinance? There will be no end.

If the courts of this country take up this attitude purpose of the legislature in enacting the said provisions of the Forest Ordinance would be defeated. In my view Courts should not interpret the law to give an absurd meaning to the law. In this connection I would like to consider a passage from 'Interpretation of Statutes by Bindra' 7' edition page 235. "It is a well-known rule of construction that a statute should not be construed so as to impute absurdity to the legislature."

17. It is therefore clear and settled law that the absolute owner cannot be considered to be the owner as mentioned in S. 40 of the Forest Ordinance, as the absolute owner has no control over the vehicle.

18. At the time of the inquiry, the Counsel for the respondent merely submitted that he was unaware of the accused intentions regarding the use of the vehicle. He stated that he had no knowledge of any criminal acts that were to be committed using the said vehicle, and accordingly

sought the release of the vehicle on the basis of this lack of knowledge. However, no challenge was raised at that stage regarding the jurisdiction of the Magistrates' Court. As the issue of jurisdiction was not taken as a ground of defence during the initial proceedings, it cannot now be introduced at the appellate stage.

19. In the case of ***Saman Kumara and Another V. Hon. Attorney General C.A (PHC) NO.157/12*** decided on 19.02.2015 His Lordship Justice K.T Chithrasiri held that,

> *"Furthermore, the person who makes a claim under the proviso to the said Section 40 could not have made such an application unless and until the accused are found guilty to a charge framed under the Forest Ordinance. Hence, it is clear that he is making such a claim, knowing that the accused were already been convicted for a particular charge under the Forest Ordinance. Therefore, the appellant is estopped from claiming the cover relying on the defects in the charge sheet, in his application made under the proviso to Section 40 of the Forest Ordinance."*

20. Therefore, having considered the foregoing, I am of the view that the learned Judges of the Court of Appeal have erroneously interpreted the provisions of the Forest Ordinance in arriving at their decision to overturn the order of the learned Magistrate. Upon a careful and thorough analysis of the material placed before the Court, it is evident that the vehicle in question was, in fact, used in the commission of the offence. It is further apparent that the absolute owner of the vehicle failed to exercise the necessary precautionary measures to prevent the commission of the said offence. As mentioned before in this Judgment, the absolute owner cannot claim the vehicle as the owner in terms of Section 40 of the Forest Ordinance. In light of the above reasoning, the Questions of Law are answered in the affirmative.

21. Accordingly, the judgment of the learned Judges of the Court of Appeal is hereby set aside, and the order of the learned Magistrate dated 23.08.2017 is thus affirmed.

Appeal is allowed

JUDGE OF THE SUPREME COURT

JUSTICE SHIRAN GOONERATNE

I agree

JUDGE OF THE SUPREME COURT

JUSTICE MAHINDA SAMAYAWARDHENA

I agree

JUDGE OF THE SUPREME COURT

.