

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

In the matter of an application for Revision in
terms of Article 138 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

**CA (PHC)APN 111/2014
HC Ampara Case No-AMP/HC/REV/416/14
M.C. Dehiattakandiya Case No.5884**

People's Leasing and Finance Company PLC
(formerly known as "People's Leasing Company
Limited")
No.67, Sir Chittampalam A Gardiner Mawatha,
Colombo 02.
Presently :- No. 1161, Maradana Road,
Colombo 08.

2nd Claimant-Petitioner-Petitioner

Vs.

1. The Additional Forest Officer,
Office of the Forest Department
Mahaoya.

Complainant-Respondent-Respondent

2. Mayadunna Appuhamilage Anuruddha
Priyadarshana
No. 302, Near Central College,
Padiyathalawa.
3. Sammuganathan Dinesh Kumara
No. 105, Upper Street,
Padiyathalawa.
4. Ediriweera Jayawickrama Patabendige
Dilan Kosala
No. 92/J, Padiydora Road,
Padiyathalawa.

Accused-Respondent-Respondent

5. Rupasinghe Arachchige Chandrika
No. 212/1/B, Koskandawala,
Yakkala.

1st Claimant- Respondent-Respondent

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

Respondent

**Before : H.C.J. Madawala , J
&
L.T.B. Dehideniya, J**

**Counsel : Saman Galappatti for the Petitioner
Varunika Hettige DSG for the Respondent**

Written Submissions On : 23 /08 /2016

Decided on : 09 / 01 /2017

H. C. J. Madawala , J

This is a Revision application by 2nd claimed-Petitioner-Petitioner to set aside the order of Learned High Court Judge of Ampara dated 28/4/2014 made in AMP/HC/Rev/416/14 and to set aside the order of Learned Magistrate of Dehiattakandiya dated 28/1/2014 in Magistrate's Court case No. 58/84. In the alternative to send back the case to the High Court of Ampara directing the Learned High Court Judge to issue notice on the Respondent and to hear the case on merits. Further to direct the Learned Magistrate of Dehiattakandiya to release the vehicle bearing No. WPLH 4867 to the Petitioner and to grant cost.

The Petitioner's version was that on or about 26/7/2013 the Complainant-Respondent-Respondent has taken in to custody the vehicle bearing No. WPLH 4867 together with 1st, 2nd and 3rd Accused-Respondent-Respondents for transporting timber without a permit obtained in terms of the provision of Forest Ordinance.

The 1st, 2nd and 3rd Accused-Respondent-Respondents were produced before the Magistrate's Court of Dehiattakandiya under case No. 58/84 and the 1st Accused-Respondent-Respondent was charged for transporting timber in the night in violation of the provisions in Sec 40(1), 40(a), 52 read with Section 25 sub Section (2) of the Forest Ordinance and the 2nd and 3rd Accused-Respondent-Respondents were charged for aiding abating the offence committed in terms of Section 25(3) of the Forest Ordinance. The 1st, 2nd and 3rd Accused-Respondent-Respondents pleaded guilty for all counts and the Learned Magistrate convicted them for the said counts on 26/7/2013 and pronounced the sentence. Accordingly the Petitioner and the 1st Claimed-Respondent-Respondent moved to show cause as to why the vehicle should not be confiscated at the inquiry. The 1st Claimed-Respondent-Respondent who is the registered owner of the vehicle gave evidence. She stated that the subject matter of this case the vehicle bearing No. WPLH 4867 was given to the 1st Claimed-Respondent-Respondent under finance lease agreement No. GPKILE1000012800 dated 24/6/2010. The vehicle had been used to transport metal from her husband's quarry and in the night it was used to park at the residence of one of the sister and a driver used to take the key of the vehicle with him. One of the sons of that sister having broken the glass of the lorry had entered and used another key together with two others for the purpose of transporting timber in the night. This incident has taken place after 3 years from the date, she obtained the possession of the vehicle and that there were no previous involvement of any kind of an illegal activity.

It was contended that the evidence given by the 1st Claimed-Respondent-Respondent in relation to forcible entry to the vehicle by one of her sister's son, that there were no previous conviction and have not been challenged or contradicted at the cross examination. She also stated that an officer from the Petitioner's company namely Ramila Vidya Hewavitharana has given evidence and has stated that the relevant vehicle was leased to 1st Claimed-Respondent-Respondent under finance leasing agreement on 24/6/2010 and had made several visits to inspect the vehicle and the investigation reports was marked "X1" to "X8". She further stated that the lease agreement was terminated on 22/6/2012 and termination letter has been marked as "X 10". The Petitioner closed its case with the evidence of the aforesaid witness having marked document "X1" to "X12".

The Learned Magistrate by his order dated 28/1/14 confiscated the vehicle having rejected the evidence led by both registered owner and the Petitioner. Being aggrieved by the said order of the Learned Magistrate of the Petitioner invoked the revisionary jurisdiction of High Court of Ampara in the case bearing No. AMP/HC/Rev/416/14. The Learned High Court Judge of Ampara refused the revision application of the Petitioner without issuing notices to the Respondent on 28/4/2014.

When this matter came up for support on 26/9/2014 the petition been supported by the counsel for the Petitioner for an interim order, court made an order directing the Learned Magistrate of Dehiattakandiya to keep the vehicle under the custody of court without taking steps to auction the same until this revision application is finally decided.

On 11/7/2016 when this matter came up for argument both parties agreeing to dispose this case by way of written submissions, court fixed the date for judgment.

The Learned Counsels for the Petitioner and Respondent has filed their respective written submissions on 29/8/2016 and 9/8/2016. On 2/9/2016 judgment was postponed for several dates and finally fixed for 9/01/2016.

On a perusal of the written submissions of both parties we find that the 2nd Claimed-Petitioner-Petitioner has taken up a preliminary objection. V12 with regard to the maintainability of this revision application. The main objection that was taken up is that Superior Court declined to entertain revision application when exceptional circumstances has not been averred in the revision application. On a perusal of the revision application tendered to court we find that exceptional circumstances has been pleaded in the application.

The Learned Counsel for the 2nd Claimed-Petitioner-Petitioner has pleaded exceptional circumstances in para 14 of this petition.

- a. The said order is contrary law,
- b. The said order is against the principle of natural justice,
- c. The Learned High Court Judge has misdirected himself in interpreting the principle laid down in “Orient Financial Service Corporation Limited Vs. Forest Officer SC Appeal 120/2011” where it was held that” even though the absolute owner has the ownership to the vehicle the proper person who should show cause at the inquiry under section 40 of the Forest Ordinance is the registered owner since the possession and the control of the vehicle at the time of commitment of the offence was with the registered owner”.
- d. The Learned High Court Judge failed to given an appropriate consideration to the fact that the registered owner’s evidence to the effect that she was not privy to the offence and that she has exercised due diligence in

deploying the vehicle by her driver for transporting metal from her husband's quarry and that the Petitioner has established that it has taken all precautions possible to prevent commission of any offence.

- e. The Learned High Court Judge failed to give an appropriate consideration to the fact that at the time of the commission of the offence the lease agreement has been terminated and therefore the absolute owner is entitled to the possession of the said vehicle.
- f. The Learned High Court Judge failed to give an appropriate consideration that the Petitioner has the right to claim the vehicle in terms of Law as well as decided cases.

In the petition dated 11/2/2014 by 2nd Claimant Petitioner we find exceptional circumstances has been pleaded in para 10 of the petition.

We are of the view that the Learned High Court Judge should have issue notice to the parties and proceeded to hear the application. As such we are of the view that we should not go to the merit of this application. We set aside the judgment dated 28/4/2014 delivered in the High Court of Ampara in case No. AMD/Rev/416/14 and direct the High Court Judge to issue notice on the Respondent and to hear the revision application filed by the Petitioner.

Judge of the Court of Appeal

L.T.D.Devideniya, J

I agree.

Judge of the Court of Appeal