

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

In the matter of an appeal against
judgment of Provincial High Court
exercising its revisionary jurisdiction.

C A (PHC) APN 06 / 2016

Provincial High Court of

Eastern Province (Trincomalee)

Case No. Rev 372 / 2015

Magistrate's Court Kantale

Case No. 47419

Lokuwaduge Arjuna Isira Alwis,

No 40/ B,

9 Ela,

Agbopura,

Kantale.

PETITIONER - PETITIONER

-Vs-

1. Deanwatte gedara Janaranjanja,

No 63,

Unit 22,

Agbopura,

Kantale.

2. E A E Mahendra Nandasena,

Regional Forest Officer,

Kantale.

3. Peoples Leasing and Finance PLC,

Head Office,

No 1161,

Maradana Road,

Colombo 08.

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

RESPONDENT - RESPONDENTS

Before: P. Padman Surasena J (P/CA)

K K Wickremasinghe J

Counsel : Lasantha Hettiarachchi with H Silva and Sara Miskin instructed
by Medavini Thilakaratne for the Petitioner - Petitioner.

Varunika Hettige DSG for the Attorney General.

Argued on : 2017 - 10 - 30

Decided on : 2018 - 02 - 20

JUDGMENT

P Padman Surasena J (P/CA)

The person who had stood as the accused in the Magistrate's Court was Denawatte Gedera Janaranjana who is the 1st Respondent - Respondent in this application. He had been charged under the provisions of the Forest Ordinance in the Magistrate's Court. He then had pleaded guilty to the charges. The learned Magistrate had then convicted and sentenced him.

Learned Magistrate had thereafter taken steps to hold an inquiry to decide the question whether the vehicle (which is an earth excavator machine commonly referred to as a backhoe bearing registration No. EPZA 2942) should be confiscated or not.

Journal entry dated 2014-11-11 clearly shows that both the absolute owner as well as the registered owner had been aware of this inquiry. The absolute owner had made an application that the above vehicle be released to him.

However the registered owner (the Petitioner in the instant application) had categorically stated before the learned Magistrate that he does not claim the vehicle. This had compelled the learned Magistrate to hear only the absolute owner to ascertain whether he should release the vehicle to the absolute owner.

At the end of the said inquiry learned Magistrate by his order dated 2015-05-07 had concluded (for the reasons set out in that order) that the absolute owner has failed to satisfy him that he had taken all possible steps to prevent this vehicle being used for illegal activities. It was on that basis that the learned Magistrate had confiscated the said vehicle. It is to be noted that the absolute owner of this vehicle is the 3rd Respondent (Peoples' Leasing Company).

The application for revision filed in the Provincial High Court by the Petitioner clearly shows that he is the registered owner of this vehicle. His request in that application is to set aside the order of the learned Magistrate dated 2015-05-07 on the basis that the learned Magistrate did not afford him an opportunity to be heard.

At the outset this Court also has to observe that this position is quite contrary to the position he had taken before the Magistrate's Court. Further as has been pointed out by the learned Provincial High Court Judge in his judgement dated 2016-01-11, the Petitioner appears to have suppressed this position in the Petition he had filed before the Provincial High Court.

It is the view of this Court that the learned Provincial High Court Judge is correct when he decided to refuse and dismiss the application for revision filed by the Petitioner. One has to bear in mind that the revisionary jurisdiction of Court is a discretionary one. An application for revision is a request by the applicant urging the Court to exercise its discretionary powers. Therefore, such applicant must take care to place the correct factual position before the revisionary Court.

This Court observes that there had been no basis for the Provincial High Court to interfere with the conclusion of the learned Magistrate as there are adequate reasons to satisfy itself with its legality and propriety.

In these circumstances, this Court has no basis to interfere with the order of the learned Provincial High Court Judge. Thus, this Court decides to affirm the judgment dated 2016-01-11 of the learned Provincial High Court

Judge as well as the order dated 2015-05-07 of the learned Magistrate and dismiss this appeal.

We make no order for costs.

PRESIDENT OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL