IN THE COURT OF APPEAL OF THE

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for revision against an order of Provincial High Court exercising its revisionary jurisdiction.

C A (PHC) APN 53 / 2018

Provincial High Court of

North Western Province (Puttalam)

Case No. NWP/PHC/PUT/RV/ 04 / 2018

Magistrate's Court Anamaduwa

Case No. 10703/17

Karunarathne Herath Mudiyanselage

Mahinda Karunarathne,

Pansalpitiya,

Mahauswewa.

CLAIMANT - PETITIONER - PETITIONER

-Vs-

1. Range Forest Officer,
   Range Forest Office,
   Anamaduwa.

COMPLAINANT - RESPONDENT - RESPONDENT

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

RESPONDENT - RESPONDENT

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

Arjuna Obeyesekere J

Counsel : Shavindra Fernando PC for the Claimant-Petitioner- Petitioner.

Supported on : 2018 - 05 - 22

Decided on : 2018 - 05 - 25

ORDER

P Padman Surasena J (P/CA)

The Complainant - Respondent - Respondent (hereinafter sometimes called and referred to as the 1st Respondent) had filed a charge sheet against two accused on an allegation that they were transporting timber without a valid permit, an offence punishable under the provisions of the Forest Ordinance. The said accused had pleaded guilty to the charges framed against them. Learned Magistrate had then convicted and sentenced them.

Thereafter the learned Magistrate had taken steps to hold an inquiry to decide the question whether the vehicle (which is the lorry bearing registration No. 325 - 3976) should be confiscated or not.

At the end of the said inquiry the learned Magistrate by her order dated 2008-01-29, had decided to confiscate the said lorry on the basis that the Claimant - Petitioner - Petitioner (hereinafter sometimes called and referred

to as the Petitioner) who is the registered owner of the lorry has failed to satisfy Court that he had taken all possible steps to prevent this vehicle being used for illegal activities.

The Petitioner being dissatisfied with the said order of the learned Magistrate had filed an application in the Provincial High Court seeking to revise the said order. The Provincial High Court Judge however has decided to refuse to issue notices on the Respondents and proceeded to dismiss the said revision application on the same basis. Petitioner has filed the instant application for revision in this Court to challenge the said order of the Provincial High Court.

The sole argument put forward by the learned President's counsel for the Petitioner is that the learned Magistrate had erroneously stated in his order that the Petitioner had suppressed the fact that his son drove the vehicle at the time of detection of this lorry transporting timber without a permit. It is his submission that such a finding is not supported by the evidence of the Petitioner.

Although this Court can observe that the learned Magistrate had stated so in his order, he had also taken care to qualify the said statement immediately thereafter. Even if this Court holds with the Petitioner on that point, this Court is still required to consider whether the Petitioner has discharged the

burden cast by law on him as the registered owner. Such a step would be necessary if this Court is to vary the learned Magistrate's conclusion.

It is to be noted at the outset, that only the evidence of the Petitioner was adduced on behalf of the Petitioner before the learned Magistrate.

It would be convenient to set out here briefly the law pertaining to the burden, which a registered owner is required to discharge at an inquiry of this nature.

The burden of proving that the Petitioner did not have knowledge or that he had taken all precautions is on the Petitioner. Therefore, the Petitioner should prove this fact through evidence to the satisfaction of the Magistrate.

This Court observes that the evidence of the Petitioner does not contain at least a cursory remark with regard to the fact that he did not have knowledge of commission of this offence. He is also silent on the question whether he had taken any steps as precautionary measures to prevent the relevant vehicle being used to commit illegal activities.

Thus, it would be correct to say that the Petitioner had adduced no material with regard to the facts he must prove before Court.

Furthermore, this Court had gone further to state in the case of K Mary Matilda Silva V P H De Silva, Inspector of Police, Police Station, Habarana[1], which is a case under the Animals Act, that in this type of a situation, giving mere instructions is not sufficient to discharge the burden cast on the owner of a vehicle. This Court went on to hold in the said case that the owner of the vehicle must not only prove that genuine instructions were in fact given, but also took every endeavor to implement the instructions so given. This Court in that case had held that the failure to prove the above requirements would indicate that indeed no genuine instructions had been given.

It would not be irrelevant to refer at this stage to section 3 of the evidence ordinance, which has defined the word 'proved'. It is as follows.

'A fact is said to be proved when, after considering matters before it, the Court either believes it to exist or considers its existence is so probable that a prudent man ought, under the circumstances of the case, to act upon the supposition that it exists.'

[1] CA (PHC) 86/97 Decided on 2010-07-08

Perusal of the evidence adduced on behalf of the Petitioner shows clearly that a prudent man ought not to have believed that the Petitioner has taken all precautions to prevent the relevant lorry being put to illegal use.

Further, the Petitioner has chosen not to lead the evidence of the driver of the vehicle. Thus, the Petitioner has also failed to adduce any material to the satisfaction of the learned Magistrate to establish that the relevant offence was committed without his knowledge.

Moreover, one must be mindful that in the instant case the Provincial High Court was called upon to exercise its revisionary jurisdiction. According to the caption of the revision application filed in the Provincial High Court, it is under Article 154 P of the Constitution read with the provisions of the High Courts of Provinces (Special Provisions) Act No. 19 of 1990 that the said application has been made .

Section 5 of the High Courts of Provinces (Special Provisions) Act No. 19 of 1990 has made the provisions of written law applicable to appeals and revision applications made to Court of Appeal, applicable to such cases filed in the Provincial High Courts. Thus, chapter XXIX of the Code of Criminal Procedure Act No. 15 of 1979 is applicable to the exercise of revisionary jurisdiction by the Provincial High Courts as well.

Article 154 (3) (b) states that notwithstanding anything in Article 138 and subject to any law, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province; ....".

Further, this Court is mindful that this is a revision application. According to section 364 of the Code of Criminal Procedure Act No. 15 of 1979, the Court exercising revisionary jurisdiction, can call for and examine the record of any case for satisfying itself as to the legality or propriety of any order passed therein or as to the regularity of the proceedings of such Court. Thus, three aspects, which a Court could consider in revisionary proceedings, have been specified in that section. They are

i. legality of any order,
ii. propriety of any order and
iii. regularity of the proceedings of such Court.

This Court in the case of Attorney General Vs Ranasinghe and others[2] had referred to this criterion embodied in section 364 of the Code of Criminal Procedure Act in the following way;

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[2] 1993 (2) Sri. L. R. 81.

"..... This power can be exercised for any of the following purposes;

1) to satisfy this Court as to the legality of any sentence or order passes by the High Court or Magistrate's Court,
2) to satisfy this Court as to the propriety of any sentence or order passed by such Court,
3) to satisfy this Court as to the regularity of the proceeding of such Court.

....."

Having this in mind, it is the observation of this Court that the Petitioner in the instant case has failed to prove any ground, which is at least suggestive of any illegality or any impropriety of the order under challenge.

In the instant case there is no complain about the last aspect i.e. regularity of the proceedings.

For the foregoing reasons, this Court has to conclude that there had been no basis for the Provincial High Court to interfere with the conclusion of the learned Magistrate as the Court can satisfy itself with the legality and propriety of the order pronounced by the learned Magistrate.

Therefore, this Court holds that the learned Provincial High Court Judge is correct when he decided to refuse to issue notices on the Respondents and dismiss the application for revision filed by the Petitioner.

In these circumstances, this Court decides not to issue notices on the Respondents. This Court proceeds to dismiss this application without costs.

PRESIDENT OF THE COURT OF APPEAL

Arjuna Obeyesekere J

I agree,

JUDGE OF THE COURT OF APPEAL