

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

In the matter of an application for revision under and in terms of Article 138 of the Constitution, read with Article 154 P (6) of the Constitution and the High Court of the Provisions (Special Provisions) Act No. 19 of 1990.

**CA/CPA/67/25**

HC Case No: HC/AMP/MC/655/24

MC Ampara Case No. 12007/S

Officer-In-Charge

Police Station

Mangalagama

**Complainant**

**V.**

Herath Mudiyansele Wickramaratne

Palathuruwella, Serankada

Padiyathalawa

**Accused**

**And**

Wanigasekara Mudiyansele Pathma  
Kanthi

25<sup>th</sup> Mile Post

Mangalagama

**Applicant-Appellant-(Registered  
Owner)**

**Vs.**

1. Officer-In-Charge

Police Station

Mangalagama

**Complainant-Respondent**

Hon. Attorney General

Attorney General's Department

Colombo 12

**Respondent**

**AND NOW BETWEEN**

Wanigasekara Mudiyansele Pathma  
Kanthi

25<sup>th</sup> Mile Post

Mangalagama

**Applicant-Appellant-Petitioner  
(Registered-Owner)**

**Vs.**

1. Officer-In-Charge

Police Station

Mangalagama

**Complainant-Respondent-Respondent**

Hon. Attorney General

Attorney General's Department

Colombo 12

**Respondent-Respondent**

**Before :** B. Sasi Mahendran, J.  
Amal Ranaraja, J

**Counsel:** Sandamal Rajapakshe with Pramod Polpitiya for the Accused-  
Appellant

**Supported On:** 01.08.2025

**Order On:** 29.08.2025

### **ORDER**

**B. Sasi Mahendran, J.**

The Applicant- Appellant Petitioner (hereinafter referred to as the “Petitioner”) instituted this appeal against the order of the Learned High Court Judge of the Provincial High Court of Eastern Province, holding in Ampara in case No. HC/AMP/MC-APP/655/2024, where the Learned High Court Judge affirmed the order of the Learned Magistrate of Ampara bearing No. 12007/S, where the Learned Magistrate had confiscated a tractor and a trailer bearing No. EP RG-4331 and No. EP RW-5156, respectively, consequent to an inquiry.

The Accused, Herath Mudiyansele Wikremaratne, upon his unequivocal admission, was found guilty of the offence and was duly fined by the Learned Magistrate of Ampara. The petitioner, who is the absolute owner, submitted an application to claim the tractor on the basis that he has taken necessary precautions to prevent the commission of the offence regarding the confiscation of the vehicle involved in the sand excavation, which is an offence under the Mines and Minerals Act, No.33 of 1992.

Upon reviewing the Learned Magistrate’s order dated 08.08.2024, it was his considered view that the Petitioner failed to exercise due diligence and take meaningful steps to prevent the tractor and trailer from being used in the commission of an offence. On the day the offence occurred, the Petitioner handed

over the tractor to the Accused without making any inquiries regarding the nature of the work being undertaken. Although the evidence indicates that the Petitioner advised against engaging in unlawful activity, the Learned Magistrate found that such advice alone did not constitute meaningful preventive action. Consequently, while payment was made based on the work performed and the hours expended, the Petitioner's failure to question the nature of the assigned work was deemed unacceptable.

In an inquiry of this nature, it is incumbent upon the owner of the vehicle, Petitioner, to demonstrate to the Court that all reasonable precautions were taken to prevent the vehicle's use in the commission of the offence.

This was considered in the case of ***Finance Company PLC Vs. Priyantha Chandra and Five Others (2010) 2 SLR 220***, after considering several judicial pronouncements, Dr. Shirani Bandaranayake, J. (as she was then) held:

*“On a consideration of the ratio decidendi of all the aforementioned decisions it is abundantly clear that in terms of section 40 of the Forest Ordinance as amended, if the owner of the vehicle in question was a third party, an order of confiscation shall not be made if that owner had proved to the satisfaction of the Court that he has taken all precautions to prevent the use of the said vehicle for the commission of the offence. The ratio decidendi of all the aforementioned decisions shows that the owner has to establish the said matter on the balance of probability.”*

Held further:

*“As has been clearly illustrated by several decisions referred to above, it would be necessary for the owner of the vehicle to establish that the vehicle that had been used for the commission of the offence had been used without his knowledge and that the owner had taken all precautions available to prevent the use of the vehicle for the commission of such an offence.”*

In the case of **Orient Financial Service Corporation Ltd. v. Range Forest Officer and One Other**, CA (PHC) APN 26/2011, decided on 28.04.2011, Sisira De Abrew J held that:

*“It is therefore seen under the existing law a vehicle transporting timber cannot be confiscated if the owner of the vehicle on a balance of probability, establishes one of the following things.*

- 1. That he has taken all precautions to prevent the use of the vehicle for the commission of the offence.*
- 2. That the vehicle has been used for the commission of the offence without his knowledge.”*

In **Range Forest Officer v. Duwa Pedige Aruna Kumara**, SC Appeal No.120/2011, decided on 10.12.2013, Priyasath Dep, PC. J, (as he was then) held that:

*“The Supreme Court has consistently followed the case of Manawadu vs the Attorney General. Therefore, it is settled law that before an order for forfeiture is made the owner should be given an opportunity to show cause. If the owner on balance of probability satisfies the court that he had taken precautions to prevent the commission of the offence or the offence was committed without his knowledge nor he was privy to the commission of the offence then the vehicle has to be released to the owner.”*

It should be noted that there's a similar provision in **Section 3 (A) of the Animals Act** with regard to the confiscation of the vehicle.

*“In an order of confiscation cannot be made if the owner proves to the satisfaction of the court that he has taken all precautions to prevent the use of the vehicle for the commission of the offence without his knowledge.”*

The above Section was considered by His Lordship De Abrew J in **Matilda Silva Vs. Inspector of Police, Habrana and Another (2020) 2 Sri LR 265** on page 270, held that:

*“When I consider all these matters, I hold that the owner has not established, on a balance of probability, any of the following matters:*

*1. That she has taken all precautions to prevent the use of the vehicle for the commission of the offence;*

*2. that the vehicle has been used for the commission of the offence without her knowledge.”*

According to the above cases, it is evident that the vehicle owner, Petitioner, must prove she took proactive steps to prevent its use in illegal activities. Although the Petitioner asserts that she instructed the accused not to engage in any unlawful activity, the available evidence indicates that she failed to take all necessary and meaningful precautions to prevent such misconduct. The Petitioner must establish that she either exercised all reasonable precautions to prevent the misuse, or that the offence transpired entirely without her knowledge or involvement.

In her testimony before the Magistrate Court, the Petitioner stated that on the day of the incident, the tractor was taken by the Accused for the purpose of delivering a load of bricks, and that she was unaware it was being used to transport sand. However, this assertion does not reflect any reasonable steps taken by the Petitioner to prevent the vehicle from being used in the commission of an offence. The failure to make even basic inquiries, such as confirming the identity of the individual using the tractor, as indicated by the driver, demonstrates a lack of precaution and due diligence on the part of the Petitioner.

When we peruse the order of the Learned Magistrate, dated 08.08.2024, the Learned Magistrate undertook a comprehensive evaluation of the evidence presented, with particular attention to the conduct and precautionary measures adopted by the Petitioner prior to the commission of the offence. The Learned

Magistrate carefully considered whether the Petitioner, as the registered owner of the tractor and trailer, had exercised reasonable diligence to prevent their use in illegal activity.

The Learned Magistrate found that such verbal instructions, absent any substantive follow-up or verification, did not amount to meaningful or effective precautionary action. The Petitioner's failure to inquire into the nature of the work or the identity of the person utilizing the vehicle was deemed a critical lapse in responsibility.

Upon a thorough examination of the evidence presented before the Learned Magistrate, it is evident that the Petitioner's testimony lacks cogency and credibility. The Petitioner, as the owner of the vehicle, failed to demonstrate that appropriate and reasonable precautionary measures were taken to prevent its use in the commission of an offence. In light of these findings, we are satisfied with the order issued by the Learned Magistrate on 08.08.2024.

In light of the foregoing facts, I am of the opinion that the confiscation of the vehicle is justified and can be upheld.

We hold that the evidence placed before the Learned Magistrate is not satisfactory to discharge the burden placed on the Petitioner that she has taken all precautionary measures to prevent the use of the tractor and the trailer for the commission of the offence.

Upon reviewing the order delivered by the learned High Court Judge on 27.05.2025, it is evident that he has thoroughly and correctly analyzed the evidence presented before the learned Magistrate. He has rightly concluded that the petitioner failed to demonstrate that adequate precautionary measures were taken to prevent the commission of the offence.

Accordingly, we see no justification to interfere with the findings of the learned High Court Judge.

Accordingly, we dismiss the Appeal.

The Registrar of this Court is directed to communicate the judgment to the Magistrate Court of Ampara for further compliance.

Appeal is Dismissed.

**JUDGE OF THE COURT OF APPEAL**

**Amal Ranaraja, J.**

**I AGREE**

**JUDGE OF THE COURT OF APPEAL**