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

In the matter of an appeal under and in terms of Section 154P (6) of the Constitution together with High Court of the Provinces (Special Provisions) Act No. 19 of 1990.

Court of Appeal
Case No. CA (PHC) 00076 /2021

Provincial High Court of Polonnaruwa
Case No. (Rev) 67/2020

MC Hingurakgoda
Case No. 66729

Officer-in-Charge,
Police Station,
Medirigiriya.

Complainant

Vs.

Yakabe Watthe Gedara Janaka Bandara
No. 677,
08, Ela,
Diyasenpura.

Accused

AND BETWEEN

Aththanagala Ralalage Samantha Priyadarshana
No. 1236,
Vijayapura,
Diyasenpura.

Petitioner

Vs.

1. Officer-in-Charge,
   Police Station,
   Medirigiriya.

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

Respondents

AND NOW BETWEEN

Aththanagala Ralalage Samantha
Priyadarshana,
No. 1236,
Vijayapura,
Diyasenpura.

Petitioner-Appellant

Vs.

1. Officer-in-Charge,
Police Station,
Medirigiriya.

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

Respondents-Respondents

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

Counsel: Shantha Jayawardena, with Ashiq Hassim, Sumendra Fernando, Aneeraz Samahon, Basura Rajapaksha and A. Marrikar for the Petitioner-Appellant.

Shezan Mahboob, S.C. for the Respondents.

Argued on: 25.09.2025

Judgment on: 13.10.2025

JUDGMENT

AMAL RANARAJA, J.

1. The petitioner-appellant (hereinafter referred to as the "Appellant") is the registered owner of the vehicle bearing registration number 226-1186. He has employed a driver and hired the vehicle for transporting building material, paddy and other goods.

2. On May 10, 2019, the driver has requested permission to use the vehicle to transport some building material to the site where the driver's house was under construction. The petitioner has granted his permission for the intended purpose.

3. However, the driver has not returned by 4.00 p.m. on that day. Concerned about his employee's prolonged absence, the petitioner has begun making inquiries with the driver's household. During these inquiries, the petitioner has learned that the *Medirigiriya Police* has arrested the driver for allegedly transporting timber without a valid permit.

4. In terms of section 26, read with section 40 of the Forest Ordinance No.16 of 1907 (as amended), the *Medirigiriya Police* has also seized the said vehicle bearing registration number 226-1186 which had been used to transport the timber.

5. Thereafter, the officer in charge of the *Medirigiriya Police* has filed action in the *Hingurakgoda Magistrate Court* against the driver for transporting timber without a valid permit, an offence punishable in terms of section 26 read with section 40 of the Forest Ordinance.

6. The driver (the accused) upon pleading guilty to the charge has been convicted of the same and sentenced.

7. Subsequently, a confiscation inquiry has been held regarding the vehicle bearing registration number 226-1186. At the conclusion of the inquiry, by Order dated June 30, 2020, the learned Magistrate had ordered the confiscation of the said vehicle.

8. Aggrieved by the Order, the appellant had filed an application in revision [පුනරීක්ෂණ/67/2020] in the *High Court of Polonnaruwa*.

9. The learned High Court Judge by his Order dated November 17, 2021, had dismissed the revision application and affirmed the Order of the learned Magistrate dated June 30, 2020.

10. The appellant also being aggrieved by the Order of the leaned *High Court Judge of Polonnaruwa* dated November 17, 2021, has preferred the instant appeal to this court.

11. The facts of this appeal are not disputed. It is common ground that the officer-in-charge of the *Medirigirya Police Station* had instituted proceedings against the driver i.e. *Janaka Bandara* for transporting Teak and Burutha timber valued at Rs. 100,880.92 on May 10, 2019, without a permit and thereby committing an offence punishable under section 26 read with section 40 of the Forest Ordinance No.16 of 1907 (as amended).

12. Section 40 of the Forest Ordinance No. 16 of 1907 (as amended) provides;

> *"(1) Where any person is convicted of a forest offence –*
>
> > *(a) All timber of forest produce which is not the property of the State in respect of which such offence has been committed; and*

(b) All tools, vehicles, implements, cattle and machines used in committing such offence,

Shall in addition to any other punishment specified for such offence, be confiscated by Order of the convicting Magistrate:

Provided that in any case where the owner of such tools, vehicles, implements, and machines used in the commission of such offence, is a third party, no Order of Confiscation shall be made if such owner proves to the satisfaction of the Court that he had taken all precautions to prevent the use of such tools, vehicles, implements, cattle and machines, as the case may be, for the commission of the offence.

(2) Any property forfeited to the State under subsection (1) shall-

(a) if no appeal has been preferred to the Court of Appeal against the relevant conviction, vest absolutely in the State with effect from the date on which the period prescribed for preferring an appeal against such conviction expires;

(b) if an appeal has been preferred to the Court of Appeal against the relevant conviction, vest absolutely in the State with effect from the date on which such conviction is affirmed on appeal.

In this subsection, "relevant conviction" means the conviction in consequence of which any property is forfeited to the State under subsection (1)".

13. Section 40 of the Forest Ordinance states that upon a conviction, all timber and forest produce that have been a subject matter of the offence and vehicles used for the commission of such offence would confiscated. If the owner of a vehicle himself was the accused in the preceding case then the issue before a court in a confiscation inquiry will not be complicated. However, if the owner is a third party, it would be necessary for a court to ascertain whether the offence has been committed by a particular accused with the connivance of the owner of such vehicle used for the commission of the forest offence.

14. The proviso to section 40(1) of the Forest Ordinance states that if a vehicle seized for being used in the commission of a forest offence, and the vehicle's owner is a third party, who is not an accused individual charged with that offence, no Order of confiscation shall be made if the third party owner can demonstrate to a court that he took all precautions to prevent the vehicle from being used in the commission of the forest offence.

15. The owner of the vehicle will have to establish such fact on a balance of probability. In *Adambarage Kelum Thushantha Alwis vs. The Attorney General* [CA (PHC) 211/2019] decided on 07.02.2023, Iddawela J. has stated,

> *"However, it is more appropriate to note that corroboration of evidence is not imperative where there is irrefutable evidence at face value provided by the appellant to satisfy the court on a balance of probability that necessary precautionary measures have been taken as a reasonable owner of the vehicle to prevent the commission of offences by using the vehicle."*

16. When considering the precautions that an owner must take, it is important to recognize that these measures can be highly subjective and may not apply universally to all situations. Each context will be

unique, influenced by factors such as the nature of the vehicle, the specific risks involved, and the owner's personal circumstances.

17. Nevertheless, any precautions taken should be thorough rather than superficial. A superficial approach might involve merely checking off boxes or implementing changes that appear to address the problem without truly engaging with it.

18. In contrast, thorough precautions involve a thoughtful, comprehensive evaluation of potential misuse. Such evaluation should not only identify vulnerabilities but also explore various deterrent options and implementing a layered deterrent strategy.

19. The learned Counsel for the appellant contends that the learned Magistrate has failed to evaluate the testimony of the appellant presented during the confiscation inquiry in a judicially sound manner.

20. It is asserted that both the learned Magistrate and the learned High Court Judge have approached the issue with a preconceived notion that the appellant should have been aware that the vehicle seized would be used for illegal purposes by the accused named in the charge sheet.

21. In light of these circumstances, it is argued that the learned Magistrate and the learned High Court Judge have misdirected themselves in law regarding the imperative stipulations outlined in the proviso to section 40(1) of the Forest Ordinance.

22. The appellant as the sole witness called to give evidence on behalf of the owner has declared that he was the registered owner of the vehicle in question. That he had provided instructions to the driver regarding the use of the vehicle to ensure it is not involved in any unlawful

activities. Specifically, that he has instructed the driver to refrain from using the vehicle to commit any offences.

"මගේ මිතුරා නිවසක් ඉදි කරනවා කියලා මම කිව්වානේ. ඒ වෙනකොට මම දැනගෙන සිටියා මේ තැනැත්තා නිවසක් ඉදි කරනවා කියලා. මම ඒ සම්බන්ධයෙන් සොයලා බලලා මේ තැනැත්තාට වාහනය දුන්නේ. මේ කාල වකවානුව වන විට යාළුවා නිවසක් ඉදි කරපු බව තහවුරු කරන්න ලේඛනයක් ප්‍රදේශයේ ග්‍රාම නිලධාරී මහත්තයාගෙන් ලේඛණයක් ලබා ගත්තා ගරු ස්වාමිණි."

"මම කිසිම අවස්ථාවක මගේ ලොරි රථය නීති විරෝධී කටයුත්තකට යොදවා ගන්න කාටවත් දුන්නේ නැහැ ස්වාමිණි. මම මේ ලොරි රථය මේ තැනැත්තාට දුන්නේ තමන්ගේ නිවස අලුත්වැඩියා කර ගන්න සිමෙන්ති හා සෙවිලි තහඩු ප්‍රවාහනය කර ගන්න දුන්නේ. ඒ හැරෙන්න වෙන කිසිම කටයුත්තකට මම ලබා දීමක් කලේ නැහැ ස්වාමිණි. අද දින මම සාක්ෂි දිලා ගරු අධිකරණයේ අයැදීමක් කරන්නේ මම කිසිම නීති විරෝධී කටයුත්තක් සඳහා මගේ රථය ලබා නොදුන් බවට තමයි කියා සිටින්නේ."

"ප්‍ර: දැන් ඔය තමුන් කිව්වානේ නීති විරෝධී කටයුතුවලට තමුන්ගේ ලොරි රථය කිසි වේලාවක තමුන් දෙන්නේ නැහැ කියලා තමුන් කිව්වානේ?

උ: ඔව් ස්වාමිණි.

ප්‍ර: තමුන් නීති විරෝධී කටයුතු සම්බන්ධයෙන් ඔහුට ඒ දේවල් සිද්ධ කලොත් එහෙම තමුන් ඒ සම්බන්ධයෙන් මොකක්ද මොන වගේ පියවරක්ද ගන්නේ කියලා තමුන් ඒ තැනැත්තාට දැනුම් දිලා තියෙනවද තමුන් ඒ තැනැත්තා සම්බන්ධයෙන් ක්‍රියා මාර්ගයක් ගන්නවා කියලා. මොන වගේ ක්‍රියා මාර්ගයක්ද තමුන් වැලැක්වීම සඳහා අරගෙන තියෙන්නේ?

උ: නීති විරෝධී මොනවා හරි අවස්ථාවක් වුනොත් සේවයෙන් අයින් කරන බවට තමයි දැනුම් දිලා තියෙන්නේ ස්වාමිණි. නැවත සේවයට ගන්නේ නැහැ කියලා දැනුම් දීම කරලා තියෙන්නේ."

23. Upon reviewing the testimony provided by the appellant, it is evident that his involvement in the attempt in taking all precautions to prevent the use of the relevant vehicle in the commission of an offence has been largely superficial.

24. He has simply instructed/warned the accused individual named in the charge sheet to refrain from using the vehicle for unlawful activities. This approach lacks depth and fails to adequately address the broader context in which the vehicle was employed.

25. A genuine preventive strategy would have required a comprehensive assessment of the environment surrounding the vehicle's use. The appellant's testimony does not reflect any consideration of the various measures that could have been implemented to deter the vehicle's use in committing the offence.

26. In order to effectively mitigate the risk of the vehicle being misused, a thorough evaluation of the potential threats and vulnerabilities associated with its operation would have been essential. This would have included regular monitoring or clear guidelines for the authorized use of the vehicle.

27. By neglecting to address these critical elements, the appellant's strategy appears insufficient and ultimately ineffective in preventing the commission of the offence involving the vehicle. Effective crime prevention necessitates a proactive, well informed approach rather than superficial directives.

28. In the case of *Mary Matilda Silva V. P.H. De Silva* [CA (PHC) 86/97] Sisira De Abrew, J. has stated that,

> *"For these reasons I hold that giving mere instructions is not sufficient to discharge the said burden. She must establish that genuine instructions were in fact given and that she took every endeavor to implement the instructions... "*

29. As a consequence, the learned High Court Judge has not misdirected himself and affirmed the Order of the learned Magistrate dated June 30, 2020.

30. In those circumstances, I am not inclined to interfere with the disputed Orders of the learned Magistrate and the learned High Court Judge dated June 30, 2020, and November 17, 2021, respectively and dismiss the instant appeal.

I make no order regarding costs

31. The Registrar of this Court is directed to communicate this judgment to the *Magistrate Court of Hingurakgoda* for compliance.

Appeal dismissed.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree

Judge of the Court of Appeal