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

In the matter of an Appeal made in terms of Article 154 P (6) of the Constitution read with Article 138(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka and provisions of the High Court of the Provinces (Special Provisions) Act, No.19 of 1990, as amended.

Range Forest Officer,
Polonnaruwa.

Complainant

Court of Appeal Case No.:
CA PHC 81/2020

Vs.

High Court of Polonnaruwa
Case No.:
HC REV 01/18

Hingurakoda Magistrate's Court
Case No.:
10009

1. B.G.Ranjith Kumara
2. B.G.Pieris
3. S.P.Chamninda Sirisena
4. B.G.Anura Kumara (deceased)
5. D.M.Indika Prasad

Accused

AND THEN BETWEEN

Abeyweera Mirissa Patabendige
Bandrajith Harshanath Abeyweera,
Residing in Brisbane Australia appearing by his power of attorney holder A.Cyril Abeyweera of "Abhayasevana",
Rajaphilla Terrace, Kandy.

Petitioner

Vs.

Range Forest Officer,
Polonnaruwa

Complainant-Respondent

1. B.G.Ranjith Kumara
2. B.G.Peiris
3. S.P.Chaminda Sirisena
4. B.G.Anura Kumara (deceased)
5. D.M.Indika Prasad

Accused-Respondents

6. Assetline Leasing Company No.75,
   Hyde Park Corner,
   Colombo 02.

Absolute Owner-Respondent

7. Sunil Mayadunne
   "Danuka Hardware"
   Digana Road, Menikhinna

Respondent

AND NOW BETWEEN

Abeyweera Mirissa Patabendige
Badrajith Harshanath Abeyweera,
Residing in Brisbane Australia appearing by his power of attorney holder A.Cyril Abeyweera of "Abhayasevana",
Rajaphilla Terrace, Kandy.

Petitioner-Appellant

Vs.

Range Forest Officer,
Polonnaruwa.

Complainant-Respondent
-Respondent

1. B.G.Ranjith Kumara
2. B.G.Pieris
3. S.P.Chaminda Sirisena
4. B.G. Anura Kumara (deceased)
5. D.M.Indika Prasad

Accused-Respondent-Respondent

1. Assetline Leasing Company.
   No.75, Hyde Park Corner,
   Colombo 02.

Absolute Owner-Respondent-
Respondent

2. Sunil Mayadunne
   "Danuka Hardware"
   Digana Road,
   Menikhinna

Respondent-Respondent

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

Amal Ranaraja, J.

Counsel: Asela Seresinghe, for the Appellant.

Oswald Perera, S.C. for the State.

Amal Randeniya, Subash Fernando with Rajitha Kulathunga for the 6th Absolute Owner-Respondent-Respondent

Argued on: 25.08.2025

Decided on: 30.09.2025

JUDGMENT

AMAL RANARAJA, J.

1. On June 29, 2010, officers of the *Range Forest Office* in *Polonnaruwa* have arrested the accused-respondent-respondents for illegal entry and logging of "Weera trees" within a protected forest reserve. During the arrest, the officers have also seized the lorry bearing registration number CP-LD 2482 together with a tractor trailer that were loaded with logs.

2. Thereafter, the range forest officer, *Polonnaruwa*, has filed the action in the *Hinugurakgoda Magistrates Court* against the accused-respondent-respondents for illegally logging "Weera trees" within a protected forest reserve and causing a loss to the government of Sri Lanka, an offence punishable in terms of section 20 read with section 40 of the Forest Ordinance. The accused-respondent-respondents upon pleading guilty to the charge have been convicted and sentenced.

3. Subsequently, a confiscation inquiry has been held regarding the vehicle bearing registration no. CP LD 2482. By order dated October 06,2017, the learned Magistrate has ordered the confiscation of the said vehicle. Aggrieved by the order, the petitioner-appellant [hereinafter referred to as the appellant] has filed an application in revision [HCRA 01/2018] in the *High Court of Polonnaruwa*. The learned High Court Judge by his order dated May 14, 2020, has dismissed the revision application and affirmed the order of the learned Magistrate. The appellant also being aggrieved by the order of the High Court Judge of Polonnaruwa dated May 14, 2020, has preferred the instant appeal to this Court.

4. It is common ground that the *Range Forest Officer* of Polonnaruwa has instituted proceedings against the accused-respondents for illegally logging "Weera trees" valued at Rs. 24,000.00 on June 29, 2010 and thereby committing an offence punishable in terms of section 20 read with section 40 of the Forest Ordinance No.16 of 1907 (as amended).

5. 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)".

6. Section 40 of the Forest Ordinance states that upon a conviction, all timber and forest produce that have been the subject matter of the offence and vehicles used for the commission of such offence

would be 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 knowledge and the connivance of the owner of such vehicle used for the commission of the forest offence.

7. The owner of the vehicle must establish on a balance of probability, that he took all precautions to prevent the vehicle from being used in the commission of a forest offence. The specific precautions deemed relevant will vary from case to case; there are no universal measures that all vehicle owners must follow. It is crucial that the precautions taken are convincing and clearly demonstrate the owner's diligence. Any actions that suggest a lack of sincerity or responsibility may undermine the owner's position.

8. Further, in an inquiry in the nature of the one in question, the owner of a vehicle is considered to be the person who has control over the vehicle in issue.

9. In *Oriental Finance Services Corporation Ltd vs. Range Forest Officer and Another* [2011] 1 SLR 86, Sisira de Abrew, J, has stated;

> "*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.*
>
> *Who is the owner of the vehicle? This is the most important question that must be decided in this case. Can it be said that the absolute owner (the finance company) committed the offence or it was committed with the knowledge or*

participation of the absolute owner. The answer is obviously no. Surely a finance company cannot participate in the commission of an offence of this nature when the vehicle is not with it. It cannot be said that the finance company had the knowledge of the commission of the offence when the vehicle was not with it. The owner envisaged in the law cannot be the absolute owner. In the present case the registered owner is the one who drove the vehicle at the time of the commission of the offence. He was convicted on his own plea. If the court is going to release the vehicle on the basis that the owner of the vehicle is the absolute owner, then after the release, it is possible for the absolute owner to give the vehicle to another person. If this person commits a similar offence the finance company can take up the same position and the vehicle would be again released. Then where is the end of the commission of the offence? Where is the end of the violation of the Forest Ordinance? There will be no end. If the courts of this country take up this attitude the purpose of the legislature in enacting the said provisions of the Forest Ordinance would be defeated. In my view Courts should not interpret the law to give an

absurd meaning to the law. In this connection I would like to consider a passage from "Interpretation of Statures by Bindra 7th edition page 235". "It is a well-known rule of construction that a statue should not be construed as to impute absurdity to the legislature". For these reasons I hold that the owner envisaged in law is not the absolute owner and the owner envisaged in law in a case of this nature is the person who has control over the use of the vehicle. The absolute owner has no control over the use of the vehicle except to retake the possession of the vehicle for non-payment of instalments. If the vehicle is confiscated holding that the absolute owner is not the owner envisaged in law, no injustice would be caused to him as he could recover the amount he spent from the registered owner by way of action in the District Court on the basis of violation of the agreement".

10. The petitioner being the registered owner of the lorry bearing registration no. CP LD 2482 has executed a power-of-attorney on May 03, 2010. The document has been drawn by *A. M. Ganganatha, Attorney-at-Law and Notary Public* and produced

marked “X1”. Through this document, he has nominated and appointed his father, *Siril Abeyweera*, as his lawful Attorney, granting him the authority to superintend, manage and control his movable and immovable property whether freehold or leasehold.

11. The lorry in issue has been taken into custody on June 29, 2010, consequent to the control of the lorry being assumed by the Attorney, thereby designating him as the owner for the purposes of an inquiry of this nature.

12. The Attorney of the petitioner-appellant i.e. the father of the petitioner appellant has however failed to take necessary steps to advance the prosecution during the confiscation inquiry. Over the course of the inquiry, which has extended for more than one year and six months, the Counsel retained by the petitioner-appellant has also requested multiple adjournments. This includes where the inquiry was scheduled to proceed finally.

13. In light of these circumstances, the learned Magistrate has taken action to confiscate the vehicle bearing registration number CP LD 2482, citing the owner's failure to actively prosecute the case during the inquiry. This Court finds that the learned Magistrate's decision to proceed with the confiscation, in the absence of prosecution by the owner is not irregular.

14. Such action, underscores the importance of adhering to timelines and the responsibility of a party in prosecuting his case effectively. This Court, recognises the need for judicial efficiency and fairness, particularly in the situations where undue delay may adversely affect proceedings. The failure of the Attorney i.e. the father of the appellant to engage in the inquiry has led to an unavoidable consequence to the appellant, illustrating the critical role that prompt action and diligence play in legal processes.

15. In those circumstances, I am not inclined to interfere with the disputed orders of the learned Magistrate and the learned High Court Judge dated October 06, 2017 and May 14, 2020 respectively.

16. I hereby dismiss the appeal. I make no order regarding costs.

17. The Registrar of this Court is directed to communicate this judgment to the *Magistrate Court* in *Hinugurakgoda* for information and compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree,

Judge of the Court of Appeal