

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

In the matter of an appeal application to the Court of Appeal in terms of Section 331 (1) of the Code of Criminal Procedure Act No. 15 of 1979, read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA PHC 03/19

HC Colombo Case No: HCRA/91/15

MC of Maligakanda Case No: 8792/2015

Officer In Charge

Police Station

Kirulapana

Complainant

Vs.

1. Merinnage Sarath Kumara de Costa
No. 122/29
Arnold Place, Kirulapona.
2. Yowan Shantha Kumara
No. 11/A
Wijesekara Mawatha
Dehiwala.

Accused

AND NOW BETWEEN

Lewkebandarage Siri Kaushika
Lakmali
No. 68, Sri Sidharatha Road
Kirulapona Colombo 05.

Registered Owner Claimant

V.

Officer In Charge

Police Station

Kirulapana

Complainant-Respondent

AND/Between

Lewkebandarage Siri Kaushika Lakmali

No. 68, Sri Sidharatha Road

Kirulapona Colombo 05.

Registered Owner Claimant Petitioner

Vs.

The Attorney General

Attorney General's Department

Colombo 12.

Respondent

Officer In Charge

Police Station

Kirulapana

Complainant-Respondent-Respondent

AND/NOW BETWEEN

Lewkebandarage Siri Kaushika

Lakmali

No. 68, Sri Sidharatha Road

Kirulapona Colombo 05.

**Registered Owner Claimant
Petitioner-Appellant**

Vs.

The Attorney General
Attorney General's Department
Colombo 12.

Respondent-Respondent

Officer In Charge
Police Station
Kirulapana

**Complainant-Respondent-
Respondent-Respondent**

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

Counsel : Widura Ranawaka for the registered Owner Claimant Petitioner-
 Appellant
 Oswald Perera SC for the Respondent

Written 14.03.2025 (by the Accused)

Submission: 25.08.2025 (by the Respondent)

On

Argued On: 27.08.2025

Order On: 15.10.2025

ORDER

B. Sasi Mahendran, J.

The Registered Owner Claimant-Petitioner-Appellant (hereinafter referred to as the “Appellant”) instituted this appeal against the judgment of the Learned High Court Judge of the Provincial High Court of Western Province, holding in Colombo in case No. 100/2015 where the Learned High Court Judge the Learned High Court Judge affirmed the order of the Learned Magistrate of Maligakanda in case No. 8792/15 where the Learned Magistrate has confiscated a lorry bearing registration No. WP LA 0576 consequent to a vehicle inquiry as provided for by Section 40 (1) of the Forest ordinance.

Complainant-Respondent-Respondent instituted proceedings in the Magistrate Court of Maligakanda bearing case number 8792/15 against the accused above named for committing an offence under the Forest Ordinance by transporting three logs of jack timber without a permit. Both accused pleaded guilty to the charges against them, and they were sentenced. Following their conviction, the Learned Magistrate initiated an inquiry into the confiscation of the vehicle, which had been seized due to it being used in the commission of the offence.

During the course of the vehicle inquiry, evidence was led on behalf of the Appellant, of the registered owner, her father Lewkebandara Sripala, and a representative of the company identified as the absolute owner of the vehicle. Upon conclusion of the inquiry, written submissions were tendered on behalf of the Appellant, contending that the charge sheet was unlawful and, as such, the vehicle was not liable for confiscation. Thereafter, on 5th June 2015, the Learned Magistrate delivered an order and confiscated the vehicle and the trailer.

Aggrieved by the said order, Appellant has filed the revision application in the High Court of Colombo, where the Learned High Court Judge dismissed the said revision application. The Appellant has preferred this instant appeal seeking to set aside the order of the Learned High Court Judge.

Appellant has raised the following grounds of appeal in their written submission.

1. The learned High Court Judge erred in law and fact by affirming the confiscation order, which was based on an invalid charge sheet and, consequently, an invalid conviction.
2. The learned High Court Judge erred in law in holding that the appellant was estopped from challenging the validity of the charge sheet after the accused had pleaded guilty, without considering that the appellant was not a party to the case at the time the plea of guilty was tendered in the Magistrate Court.
3. The learned High Court Judge erred in fact in holding that the appellant had failed to prove that she had taken all necessary precautions to prevent the use of the vehicle for the commission of the offence.

In an inquiry of this nature, particularly following the amendment to the Forest Ordinance by Act No. 65 of 2009, the sole matter for consideration by the learned Magistrate is whether the owner had taken all necessary precautions to prevent the use of such tools, vehicles, implements, cattle, or machinery, as the case may be, in the commission of the offence.

Section 40 (1) of the said Act , as amended by Act No 65 of 2009;

Section 26

Section 40 of the principal enactment is hereby amended by the repeal of subsection (1) thereof and the substitution therefore of the following.

“Where any person is convicted of a forest offence.

(A) All timber or forest produce which is not the property of the State in respect of which the 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 where the owner of such tools, 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, implement, cattle and machines as the case may be, for the commission of the offence.”(emphasis added)*

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 **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.”

The above cases clearly indicate that the only matter to be considered at the said inquiry is that the vehicle owner is to demonstrate that adequate preventive measures were taken to avoid the vehicle's involvement in illegal activities. It must be shown that the owner issued clear and explicit instructions to the driver, prohibiting any unauthorised or unlawful use of the vehicle. Accordingly, the owner must establish either that all reasonable precautions were implemented to prevent such misuse or that the illegal activity occurred without their knowledge or consent.

Upon examining the evidence presented by the Appellant, it is clear that the lease instalments for the lorry were paid by her father. Although the registered owner claimed that the lorry was parked at her residence, testimony revealed that her father would take the vehicle to the shop each morning and hand it over to the driver. Furthermore, the registered owner stated that she was unaware of the hiring arrangement and affirmed that she had advised the Accused not to engage in any unlawful activity.

The witness, who is the father of the Appellant, testified that the vehicle had been given to the Appellant as part of her dowry. He further stated that the Accused had contacted him to inform him about the hiring arrangement. However, when

questioned by the Court, the witness admitted that he had not inquired from the accused driver about the nature of the goods being transported. During cross-examination, he also conceded that he had not sought any details regarding the hire. Moreover, when asked to clarify what he meant by the term "home stuff," he was unable to provide a specific explanation, despite attempting to do so.

Based on the evidence presented, it is apparent that the Appellant failed to take all reasonable precautions to prevent the commission of the offence. Although she was the registered owner of the vehicle, the day-to-day control and operation of the lorry were managed by her father, who regularly handed it over to the driver without verifying the nature of its use. The Appellant herself admitted to being unaware of the hiring arrangement, and her father, despite being informed of the hire, made no effort to inquire about the goods being transported or the purpose of the hire. These facts collectively demonstrate a failure on the part of the Appellant to exercise due diligence and implement safeguards to prevent the vehicle from being used in unlawful activity.

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 05.06.2015.

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

Upon reviewing the order delivered by the learned High Court Judge on 18.01.2019 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.

During the course of the argument, Counsel for the Appellant submitted that the learned High Court Judge had erred in law by failing to consider that the confiscation order of the magistrate was bad in Law in the absence of a valid charge framed by the Magistrate.

In the present application, the Learned Magistrate is tasked with determining whether the owner has convincingly demonstrated that all necessary precautions were taken to prevent the vehicle from being used in the commission of the offence.

The appellant's principal argument was that no valid charge had been presented before the Magistrate's Court, thereby rendering the accused unable to enter a plea of guilty or not guilty. Consequently, the learned Magistrate lacked the legal foundation to commence an inquiry under Section 40 of the Forest Ordinance concerning the vehicle in question. As stipulated in that section, the scope of the inquiry is narrowly defined: the Magistrate is required to ascertain whether the owner of the vehicle had taken all reasonable precautions to prevent its use in the commission of the alleged offence. If the Magistrate is satisfied with the owner's explanation, the vehicle must be released to the owner.

It is important to note that an inquiry into the confiscation of a vehicle under Section 40 (1) of the Forest Ordinance is initiated by the learned magistrate following the conviction of the accused, where the vehicle was used in the commission of the offence.

Upon the commission of such an offence, law enforcement officers typically take custody of the vehicle and produce it before the learned magistrate in accordance with Section 431(1) of the Code of Criminal Procedure Act. The magistrate then issues an order for the delivery of the property to the person legally entitled to its possession. At this point, the owner becomes aware that the vehicle was involved in the alleged crime. If the offence is subsequently proven, the vehicle is liable to

be confiscated automatically, unless the owner can establish that reasonable precautions were taken to prevent its misuse.

The pertinent question is whether, during the said inquiry, the owner could challenge the conviction itself. In this case, neither the accused nor the petitioner pursued an appeal against the conviction. The petitioner was fully aware that a finding of guilt would automatically trigger an inquiry under Section 40 (1) of the Forest Ordinance to determine whether the vehicle should be confiscated. However, no steps were taken to contest the conviction at the appropriate time. Instead, the petitioner sought to raise objections during the confiscation inquiry, where the conviction had already been established.

It must be emphasized that the scope of the inquiry under Section 40(1) of the Forest Ordinance is strictly confined to determining whether the owner had exercised due diligence to prevent the use of the vehicle in the commission of the offence.

We find that, at the said inquiry, the owner may only present evidence demonstrating that all reasonable precautions were taken to prevent the vehicle from being used in the commission of the offence no other material is irrelevant.

This proposition was considered by **Chithrasiri J in N. saman Kumara and others v. The Attorney General, CA (PHC) No. 157/12, Decided on 1902.2015:**

“Moreover, in the event this court makes a determination on the issue as to the defects in the charge sheet at this late stage, it may lead to raise questions as to the conviction of the accused as well. Such a position is illogical and certainly it will lead to absurdity. Such an absurdity should not be allowed to prevail before the eyes of the law. In the circumstances, I am not inclined to accept the contention of the learned Counsel for the appellant on the legality in the charge framed against the accused.”

It is pertinent to refer to Section 9 of the amended State Land Recovery Act, which contains a similar provision concerning the inquiry to be conducted by the learned magistrate.

9. *Scope of inquiry.*

(1) At such inquiry the person on whom summons under section 6 has been served shall not be entitled to contest any of the matters stated in the application under section 5 except that such person may establish that he is in possession or occupation of the land upon a valid permit or other written authority of the State granted in accordance with any written law and that such permit or authority is in force and not revoked or otherwise rendered invalid.

(2) It shall not be competent to the Magistrate's Court to call for any evidence from the competent authority in support of the application under section 5.

Under this provision, the only defence available to a person summoned is to demonstrate that he or she is lawfully occupying land subject to the State Land Recovery Act. The individual who is summoned is otherwise precluded from raising any other form of defence.

This concept was considered in the following case.

In *Nirmal Paper Converters (Pvt) Ltd V. Sri Lanka Ports Authority and Another* (1993) 1 SLR 219 at 223. His Lordship Wijeyaratne J held that:

“The only ground on which the petitioner is entitled to remain on this land is upon a valid permit or other written authority of the State as laid down in Section 9 (1) of the State Lands (Recovery of Possession) Act. He cannot contest any of the other matters.”

We hold that the evidence placed before the Learned Magistrate is not satisfactory to discharge the burden placed on the owner that he has taken all precautionary measures to prevent the use of the vehicle for the commission of the offence.

Accordingly, we dismiss the appeal with a cost of Rs. 50,000/-.

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

Appeal is Dismissed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE.

JUDGE OF THE COURT OF APPEAL