

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST**

**REPUBLIC OF SRI LANKA.**

In the matter of an application for  
Revision under Article 154 P of the  
Constitution and Section 4 of High  
Court of Provinces (Special  
Provisions) Act No. 19 of 1990.

CA(PHC) No. 94/2013

Kegalle HC Case No. HCR 3827  
Kegalle MC Case No. 841/10

Y.M. Darmadasa,  
Ranger Forest Officer,  
Forest Office, Pinnawala,  
Rambukkana.

**Complainant**

- Vs -

1. H.I.S.P. Hewage,  
Alagollawatta, Malakariya Road,  
Rambukkana.
2. B.G. Mervin Thilakeratne,  
Alagollawatta, Malakariya,  
Rambukkana.

**Accused**

**AND**

Iluwalayalage Gedara Kusum Thilak  
Wijeratne Wijaya Concrete Works,  
Kiriwallapitiya, Rambukkana.

**Registered Vehicle Owner**

**AND BETWEEN**

Iluwalayalage Gedara Kusum Thilak  
Wijeratne Wijaya Concrete Works,  
Kiriwallapitiya, Rambukkana.

**Registered Vehicle Owner-  
Petitioner**

- Vs -

1. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.
2. Y.M. Darmadasa,  
Ranger Forest Officer,  
Forest Office, Pinnawala,  
Rambukkana.

3. H.I.S.P. Hewage,  
Alagollawatta, Malakariya Road,  
Rambukkana.

4. B.G. Mervin Thilakeratne,  
Alagollawatta, Malakariya,  
Rambukkana.

**Respondents**

**AND NOW BETWEEN**

Iluwalayalage Gedara Kusum Thilak  
Wijeratne Wijaya Concrete Works,  
Kiriwallapitiya, Rambukkana.

**Vehicle Owner-Petitioner-  
Appellant**

- Vs -

1. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.
2. Y.M. Darmadasa,  
Ranger Forest Officer,  
Forest Office, Pinnawala,  
Rambukkana.

3. H.I.S.P. Hewage,  
Alagollawatta, Malakariya Road,  
Rambukkana.

4. B.G. Mervin Thilakeratne,  
Alagollawatta, Malakariya,  
Rambukkana.

**Complainant-Respondent-  
Respondents**

**BEFORE** : P.R.Walgama, J &

: L.T.B. Dehideniya, J.

**COUNSEL** : Dasun Nagashena for the appellant.

Varunika Hettige SSC for the respondents.

**ARGUED ON:** 26.05.2016

**DECIDED ON:** 30.08.2016

CASE-NO- CA (PHC) 94/ 2013- JUDGMENT- 30.08.2016

**P.R. WALGAMA, J.**

The short point for consideration in this appeal emanates from the petition of the Petitioner- Appellant( Registered Owner of the vehicle in issue).

Two accused named in the plaint, filed by the Ranged Forest Officer in the case bearing No. 841/10 in the Magistrate Court of Kegalle, was charged with transporting illicit timber without a valid permit, and there by committing an offence for violating section 24 of the Forest Ordinance No. 56 of 1979, amended by Act No. 13 of 1982 , Act No. 84 of 1988 and Act No. 23 of 1995.

At the very inception the Accused pleaded guilty to the said charge, and a fine of Rs. 15,000/ was imposed and the Learned Magistrate has fixed the case for inquiry regarding the vehicle for 04.06.2010.

It is seen from the journal entry that on the day fixed for the inquiry, as the Petitioner-Appellant was absent the Learned Magistrate has made order confiscating the vehicle in terms of Section 40(1) of the Forest Ordinance.

Being aggrieved by the said confiscation order the Petitioner –Appellant has come by way of revision to the Provincial High Court holden at Kegalle to have the said impugned order set aside.

The shortly stated facts in the petition to the Provincial High Court state thus;

That on the day fixed for the inquiry whether the vehicle should be released to the owner, the petitioner was unable be in court, according to him that there was a breakdown in the said vehicle and in proof of the said fact the Petitioner-Appellant has tendered a receipt marked P3 which is the payment made for the repairs done to the vehicle in issue.

In challenging the said position of the Petitioner –Appellant it is the position of the Respondents that the Petitioner has not acted with due care and responsibility as he has not taken any step to inform even his lawyers as to the delay. Further it is submitted that the Petitioner him self should have been present in court to explain to court in fact what happened to the vehicle.

The Learned High Court Judge having considered the facts placed before court was of the view that the Petitioner-Appellant has failed to aver exceptional circumstances which warrants the High Court to exercise this extraordinary power, and had rightly dismissed the revision application accordingly.

To impugned the order of the Learned High Court Judge dated 10.07.2013 the Petitioner-Appellant appealed to this Court to have the said order set aside.

It was the contention of the Petitioner -Appellant that his absence was due to the mechanical defect in the vehicle that occurred on his way to Court.

It is reiterated by the counsel for the Respondents in her submissions that the order of the Learned High Court Judge is unattended in error as the revisionary power vested in the Provincial High Court, the exercise of which will take place only on exceptional circumstances attended thereto.

The learned Counsel for the Respondents has adverted Court to the judicial decisions stated herein below;

THILAGARATNEM .VS. E.A.P. EDIRISINGHE- (SRI L.R. 1982 VOL (I) page 56 ) has observed thus;

“though the Appellate Courts powers to act in revision were wide and would be exercised whether an appeal has been taken against the order of the original court or not such powers would be exercised only in exceptional circumstances”.

Further in the case of ATTORNEY GENERAL .VS. GUNAWARDENA (1996) 2 SLR 149 page 156- has expressed thus;

“ Revision like an appeal, is directed towards the correction of errors, but it is supervisory in nature and its object is the due administration of justice and not, primarily or solely, the relieving of grievances of a party. An appeal is a remedy, which a party who is entitled to it , may claim to have as of right and its object is the grant of relief to a party aggrieved by an order of court which is tainted by error”.

It is also contended by the Counsel for the Respondents that the document marked P3 was tendered by the Petitioner- Appellant only after 4 days of the inquiry, and



said document was never produced before the Magistrate Court. Therefore it is contended by the Counsel for the Respondent that the Learned High Court Judge was correct in not accepting the said document as it was a new material tendered to court.

It was also observed by Court that this the appeal was rejected as the Appellant did not pay the brief fees, but nevertheless, on an application made subsequently to have the said appeal restored the court has accordingly has restored the same.

Therefore it is contended by the Counsel for the Respondent that through out the Appellant has been negligent and careless in prosecuting this matter.

When reviewed the facts in the said back drop it is abundantly clear that there is no valid reason to set aside the orders of the Learned Magistrate and the Learned High Court Judge.

Accordingly we dismiss the appeal.

Appal is dismissed subject to a costs of Rs. 10,000/.

**JUDGE OF THE COURT OF APPEAL**

**L.T.B. DEHIDENIYA, J.**

I agree,

**JUDGE OF THE COURT OF APPEAL**