

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

In the matter of an application for Revision in terms
of Article 138 of the Constitution of the Democratic
Socialist Republic of Sri Lanka

The Officer in Charge,
Special Crimes Investigation Unit,
Mirihana.

Plaintiff

Vs.

Abuthahir Mohammad Iqbal

Accused

And,

1. Gihan Jayanath Gamage
2. Thalarambage Umendra Lanka Dharmadasa
3. Sadeesh Kamalanadan

Aggrieved Parties

And Between

Thalarambage Umendra Lanka Dharmadasa

Aggrieved Party Petitioner

Vs.

1. The Officer in Charge,
Special Crimes Investigation Unit,
Mirihana.

Plaintiff Respondent

2. Gihan Jayanath Gamage,
17/2, Mahamegawatta Road,

**Court of Appeal case no.
CA/PHC/APN/ 10/2014**

**H.C. Colombo case no.
Revision 155/2011**

**M.C. Nugegoda case no.
B. 3704/09**

Maharagama.

Aggrieved Party Respondent

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

Respondent

And Now Between,

Gihan Jayanath Gamage,
17/2, Mahamegawatta Road,
Maharagama.

Aggrieved Party Respondent Petitioner

Vs.

Thalarambage Umendra Lanka Dharmadasa

Aggrieved Party Petitioner Respondent

1. The Officer in Charge,
Special Crimes Investigation Unit,
Mirihana.

Plaintiff Respondent Respondent

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

Respondent Respondent

Before : H.C.J.Madawala J.
: L.T.B. Dehideniya J.

Counsel : Razik Zarook PC with Rohana Deshapriya and C.Liyanage
for the Aggrieved Party Respondent Petitioner.

: Nalin Ladduwahetti PC with Lalani Silva for the Aggrieved Party Petitioner Respondent.

Argued on : 21.07.2016

Written submissions filed on: 19th and 29th September 2016

Decided on : 05.12.2016

L.T.B. Dehideniya J.

The Aggrieved Party Respondent Petitioner (the Petitioner) states that he was the owner of the vehicles bearing the registration No. 325-3865 and 32-4261. He has published several paper advertisements to sell these two vehicles giving his mobile telephone number. A person called Iqbal has called him and offered to exchange the two vehicles to a Toyota car bearing registration no. ^{W.P.}K.D. 9396. After discussions, the vehicles were exchanged and the Petitioner has paid Rs. 250,000.00 in addition to match the value of the car to the person called Liyana Arachchilage Wasantha Samarasinghe alias Sarathchandra who pretended to be the owner of the Toyota car. when he made the application to the Registrar of Motor Vehicles to register the Toyota car in his name it was revealed that the documents handed over to the Petitioner by Iqbal and Liyana Arachchilage Wasantha Samarasinghe alias Sarathchandra were counterfeited documents and the said Liyana Arachchilage Wasantha Samarasinghe alias Sarathchandra was not the real registered owner of the car. The Petitioner made a complaint to the police and after investigations, the police recovered the Toyota car and the two vehicles that were exchanged when the transaction was done and produced them before the Magistrate.

The issue in the present application is in relation to the vehicle bearing registration no. 32-4261 which is a Isuzu Jeep. (Hereinafter called

and referred to as the Jeep) the petitioner has handed over the Jeep and the other vehicle to Liyana Arachchilage Wasantha Samarasinghe alias Sarathchandra in exchange to the Toyota car. The police recovered the Jeep from the Aggrieved Party Petitioner Respondent (the Respondent). The Respondent has purchased this vehicle from L.A.W.Samarasinghe who was introduced to him by Iqbal.

The Petitioner and the Respondent both claimed the vehicle at the vehicle inquiry held by the Magistrate. The learned Magistrate after inquiry released the Jeep to the Petitioner on a bond. Being aggrieved by the said order the Respondent moved in revision in the High Court of Colombo. The learned High Court Judge set aside the order of the learned Magistrate and ordered to release the Jeep to the Respondent on a bond. The Petitioner moved in revision against the order of the learned High Court Judge.

In an inquiry under section 431 of the Criminal Procedure Code the Magistrate has to decide who is entitle to the vehicle if it is not necessary to keep the vehicle in official custody. If no criminal element is involved in recovering the vehicle, the Magistrate has no option other than releasing the vehicle to the person from whom it was recovered. In the case of *De Alwis v. De Alwis* [1979] 1 Sri L R 17 the Supreme Court held that;

That for an order to be made for disposal of this property under section 102 of the Administration of Justice Law (which was based on section 419 of the Criminal Procedure Code) the car must have been property alleged to be stolen or suspected to have been stolen or found in circumstances which created the suspicion of the commission of any offence. As the vehicle did not fall into any of these categories the Magistrate had no jurisdiction to make an order for its disposal under this section and had no alternative but to order its return to the possession of the person from whose custody the police had apparently taken it.

In the present case the criminal element of cheating is involved. In such a situation the Magistrate has the authority to release the vehicle to a person other than the person from whom it was recovered as it is stated in the case of *Silva and another v. Officer in Charge, Police Station, Tambuttegama and another* [1991] 2 Sri L R 83 where it has been held that;

There are limitations to the principle that property must be delivered to the person from whose possession it was seized, since it may result in the property being delivered to a person who may have obtained possession through criminal means. In such an event the Magistrate may have to consider the question of title.

If the vehicle has come in to the hands of the person who is having the possession by means of a criminal act, the Magistrate has to decide who is entitled for the vehicle.

The Jeep in issue in this case was originally owned by the Petitioner. It was registered in the name of Chilaw Plantation but they have auctioned it and through a series of transactions the ownership has come to the Petitioner. These facts were not in dispute. The Petitioner, when buying the Toyota car, has paid the consideration by two vehicles and cash. The Jeep is also a part of the consideration paid. It came to the hand of L.A.W.Samarasinghe, who sold the Jeep to the Respondent, at the transaction he had with the Petitioner, as a part of the consideration. The Respondent, as a *bona fide* buyer, purchased the Jeep from L.A.W.Samarasinghe.

If the Petitioner was cheated by the said Samarasinghe and Iqbal, he has a cause of action against them in a Civil Court, but the Respondent being a *bona fide* purchaser, is entitle to retain the property that he purchased.

The Respondent has led evidence in the Magistrate Court to establish that the vehicle was in his custody and the revenue license and the insurance was in his name. The Counsel for the Petitioner questioned the genuineness of the said documents. It is an admitted fact that the Jeep was recovered from the Respondent. As I have pointed out earlier, the ownership of the Jeep was surrendered to Samarasinghe by the Petitioner himself and the said Samarasinghe sold it to the Respondent on a valuable consideration. These facts were revealed in the report filed by the police. There is no necessity for the Court to consider the license and insurance to ascertain who is entitled to possess the Jeep. The Respondent, from whom the Jeep was recovered, possessed it as a *bona fide* buyer, who purchased it on a valuable consideration, is entitled to possess it until it is proved that the ownership was not shifted from the Petitioner to the said Samarasinghe at the transaction of buying the Toyota car.

Accordingly, I see no reason to interfere with the order of the learned High Court Judge.

The application dismissed subject to costs fixed at Rs. 10,000.00

Judge of the Court of Appeal

H.C.J.Madawala J.

I agree.

Judge of the Court of Appeal