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

In the matter of an appeal in terms of Article 138 and 154 (P) of the Democratic Socialist Republic of Sri Lanka read with Act No 19 of 1999 of the High Court of the Provinces (Special Provisions) Act.

CA/PHC/117/22
MC Balangoda Case No: 63643
HC Rathnapura Case No: Rev. 75/2019

Officer-In-Charge,
Police station,
Balangoda.

COMPLAINANT

Vs.

Mohommdu Irufan Infar
No. 30/30, Randola,
Kirimetitenna,
Balangoda.

ACCUSED

Rathnayake Mudiyanselage Prasanna Indika
Rathnayake,
No. 367, Mathawa,
Kohilegedara, Kurunegala.

REGISTERED OWNER

Vs.

Rathnayake Mudiyanselage Prasanna Indika
Rathnayake,
No. 367, Mathawa,
Kohilegedara, Kurunegala.

REGISTERED OWNER PETITIONER

Officer-In-Charge,
Police Station,
Balangoda.

COMPLAINANT RESPONDENT

Mohommdu Irufan Infar
No. 30/30, Randola,
Kirimetitenna,
Balangoda

ACCUSED RESPONDENT

Vs.

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

2. Indra Finance Ltd.
   Now known as,
   (Serendib Finance Ltd),
   No. 187, Katugasthota Road,
   Kandy.

RESPONDANTS

And now between

Rathnayake Mudiyanselage Prasanna
Indika
Rathnayake,
No. 367, Mathawa,
Kohilegedara, Kurunegala.

REGISTERED OWNER PETITIONER APPEALANT

Vs.

Officer-In-Charge,
Police Station,
Balangoda.

<u>COMPLAINT RESPONDANT-RESPONDANT</u>

Mohommdu Irufan Infar
No. 30/30, Randola,
Kirimetitenna,
Balangoda

<u>ACCUSED RESPONDENT-RESPONDENT</u>

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

2. Indra Finance Ltd.
   (Serendib Finance Ltd),
   No. 187, Katugasthota Road,
   Kandy.

RESPONDENT-RESPONDENT

Before : **Hon. Justice B. Sasi Mahendran**
Hon Justice Amal Ranaraja

Counsel: Maheesha Dushyantha for the Petitioner
Riyaz Bary D.S.G. for the State

Written Submissions 19.11.2025 (by the Accused-Appellant)
17. 02.2026 (by the Respondent)

On

Argued On : 26.03.2026

Judgment On: 25.05.2026

JUDGMENT

B. Sasi Mahendran, J.

The Registered Owner -Petitioner-Appellant (hereinafter referred to as the "Appellant") instituted this appeal against the order of the Learned High Court Judge of the Provincial High Court of Sabaragamuwa Province holding in Rathnapura, in case No. RA 75/2019 dated 03.09.2022, where the Learned High Court Judge affirmed the order of the Learned Magistrate of Balangoda bearing No. 63643 dated 03.05.2019, where the Learned Magistrate had confiscated a vehicle bearing No. SP LF 7807 consequent to an inquiry.

The Accused-Respondent-Respondent (hereinafter referred to as the Accused) was charged before the Magistrate Court of Balangoda under Section 3(c), read with Section 3(a)(i), and Section 4 of the Animals Act No. 29 of 1958, together with Section 2(a)(i) of the Prevention of Cruelty to Animals Ordinance No. 13 of 1907, for transporting five head of cattle in a cruel manner. The Accused entered a plea of guilty to the charge, whereupon the Learned Magistrate duly convicted him. Following the conviction, the Learned Magistrate proceeded to conduct an inquiry in terms of Section 3(A) of the Animals Act as amended regarding the vehicle that had been seized for its involvement in the unlawful transportation of animals, in contravention of the Act.

The Learned Magistrate allowed the Appellant to show cause as to why the vehicle should not be confiscated. In an inquiry of this nature, it is incumbent upon the owner of the vehicle to demonstrate to the Court that all reasonable precautions were taken to prevent the vehicle's use in the commission of the offence, or the vehicle has been used without his knowledge for the commission of the offence.

The amendment to Section 3(A) Animals Act No. 29 of 1958 provides that,

> *"Where any person is convicted of an offence under this Part or any regulations made thereunder, any vehicle used in the commission of such offence shall, in addition to any other punishment prescribed for such offence, be liable, by order of the convicting Magistrate, to confiscation:*
>
> *Provided, however, that in any case where the owner of the vehicle is a third party, no order of confiscation shall be made, if the owner proves to the satisfaction of the Court that he has taken all precautions to prevent the use of such vehicle or that the vehicle has been used without his knowledge for the commission of the offence."*

In accordance with the proviso, an order for confiscation cannot be issued if the Appellant establishes, on the balance of probabilities, the following matters:

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.

This concept was considered by S.N. Silva J (as he was then) in the case of ***Faris v Officer in Charge Police station, Galendindunuwawe and another***

> *"This section has been considered in the case of Nizar v. Inspector of Police, Wattegama. In that case Vythyalingam, J. considered the implications of the proviso to Section 3A. It is observed that in view of this proviso, an order for confiscation could be made only if the owner was present at the time of the detection or there was some evidence suggesting that the owner was privy to the offence."*

The above judgement was considered by Achala Wengappuli J, in the case of ***Attorney General v Mohamed Buhari Ikram and another***, SC Appeal 47/2008, Decided On 15.12.2022.

The issue to be determined is whether the Appellant has established, on the balance of probabilities, any of the matters set out under the Animals Act.

During the inquiry, Appellant contended that, through document X1, he had obtained a vehicle from Indra Finance Limited. As he was unable to pay the lease rental, he entered into a rental agreement with the Accused. The Appellant admitted that the Accused was residing in Balangoda and that they had executed a business agreement, marked as X.3 at the Ambalangoda, where the appellant was living in Kurunagala.

This fact was considered by the Learned Magistrate in his order. According to the Appellant, this agreement expressly stipulated that the Accused was not to engage in any illegal activities. However, following the arrest of the vehicle at Balangoida, the Appellant came to know that it had been used by the Accused to transport animals illegally. The appellant worked in the Kalpitiya hospital as a nurse, and he used to call and inquire about the vehicle.

The learned magistrate was clearly unimpressed with the appellant's evidence, rejected it, and consequently made an order for confiscation.

It is pertinent to refer to the relevant portion of the impugned order of the learned Magistrate.

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> මේ අනුව මුල් අවස්ථාවේදී මෙම ලොරි රථයේ අනන්‍යතාවද ප්‍රශ්නගත වී ඇති බව වාර්ථා කරමින් මෙම ලොරි රථය ව්‍යාජ අංකයක් යොදා සකස් කරන ලද ලොරි රථයක්ද යන්න පිළිබඳ පරීක්ෂණ පවත්වන බවද පැමිණිල්ල අනාවරණය කර ඇත. මේ අනුව ලියාපදිංචි අයිතිකරු සිය සාක්ෂියේදී අනාවරණය කළ පුද්ගලයා පැමිණිල්ල විසින් මුල් අවස්ථාවේදී මෙම ලොරි රථය අයිති බවට ප්‍රකාශ කරමින් ප්‍රකාශයක් ලබාදුන් පුද්ගලයාද එකම අයෙකු බව පෙනී යයි. මේ අනුව ලොරි රථයේ ලියාපදිංචි අයිතිකරු ලෙස මෙම නඩුවේ වරද පිළිගත් චූදිත හා ගිවිසුමකට එළඹීමක් සිදු වුවද එමගින් මෙම ලොරි රථයේ නියම අයිතිකරු නැතහොත් සන්තකය දැරූ තැනැත්තා කවුද යන්න ප්‍රශ්න සහගත වේ. විශේෂයෙන්ම ලොරි රථයේ අංක සැසඳීමක් නොවීමෙන්ද ඒ බව තවදුරටත් පෙනී යන්නකි.
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> කෙසේ වෙතත් මෙහිදී මූලිකවම මෙම අපරාදය සිදු කිරීම සඳහා පූර්වාරක්ෂණ ක්‍රියාමාර්ග ගත් බව ඔප්පු කිරීම ලොරි රථයේ ලියාපදිංචි අයිතිකරු සිදුකලයුතු වන බැවින් ඔහු ඉදිරිපත් කළ කරුණු පිළිබඳ අධිකරණය සෑහීමකට පත් නොවන්නේ නම් ලොරි රථය මුදා හැරීමක් කළ නොහැකි බව පැහැදිලි වන්නකි. විශේෂයෙන්ම හුදු උපදෙස් ලබා දීමක් සියලු පූර්වාරක්ෂක ක්‍රියාමාර්ග ගැනීමක් නොවන බව <u>මේරි මැටිල්ඩා සිල්වා එදිරිව අයි.පී සිල්වා පොලිස් ස්ථානය හබරණ CAPHC 86/97</u>, 2010.07.08 හිදී තීරණය කර ඇත.
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> ……………………..

ලොරි රථය ලබා ගත් මෙම නඩුවේ වරද පිළිගත් චූදිත මෙම අපරාධය සිදු කිරීම සඳහා ලොරි රථය භාවිතා කළ බව පැහැදිලි වේ. සමස්ථ එම කරුණු සැලකීමේදී මෙම ලොරි රථයේ ලියාපදිංචි අයිතිකරු කී අය මෙවැනි අපරාධයක් සිදුවීම වැළැක්වීම සඳහා සියලු පූර්වාරක්ෂක ක්‍රියාමාර්ග ගත් බව තහවුරු කර නොමැති බවට තීරණය කළ හැකි වේ. එසේම ලියාපදිංචි අයිතිකරු සාක්ෂි ලබාදී ඇති ආකාරය සහ විලාෂය සැළකීමේදී ඔහු සිය ලොරි රථයේ භාවිතාව සම්බන්ධයෙන් ප්‍රමාණවත් උනන්දුවකින් සොයා බලා කටයුතු කර නොමැති වන බව පැහැදිලි වේ.

I also note that the Learned Magistrate carefully analyzed the evidence presented and was in a better position to assess the testimonial trustworthiness of the witnesses who appeared before him. I am mindful that the credibility of witnesses is a question of fact, and our courts have consistently held that the original courts are in a better position to determine the testimonial trustworthiness of those witnesses. Accordingly, superior courts are reluctant to interfere with such findings unless

a. the verdict of the judge is so unreasonable against the weight of the evidence
b. Or there is a misdirection of the law on the evidence.

At this juncture, I am mindful of the dictum of McDonald CJ in King v. Gunaratne and Another, CLR V.14 page 144, Macdonnel CJ:

> *"This is an appeal mainly on facts from a Court which saw and heard the witnesses to a Court which has not seen or heard them, and in dealing with this judgment I have to apply the three tests, as they seem to be, which a Court of Appeal must apply to an appeal coming to it on questions of fact. Can we say that the verdict of the learned District Judge, namely, that these people are guilty, was unreasonably. against the, weight of the evidence adduced on both sides? Clearly it is not possible to say that. Can we say that there has been any misdirection either on the law or on the evidence? Again I do not think it would be possible to say so. There was a point of law argued here that accused had no intention to cause loss in the end. I have dealt with that, and properly understood, I do not think it is a misdirection in law at all. I do not remember any other point that was seriously raised to this Court as a misdirection, Them there is the third ground of interference, that the Court of trial has drawn the wrong inferences from matter in evidence which is as much before this Court as. it. was before the Court of trial, for instance, documents. Again, I do not think it can be said that there has been any wrong inferences drawn by the Court of trial.*

On the contrary, the documents put in seem, rightly apprehended, to support the findings of fact arrived at by the learned District Judge."

He held further:

"The principles laid down by the authorities, referred to above, make it clear: that, although the findings of a Magistrate on questions of fact are entitled to great weight, yet, it is the duty of the Appellate Court to test, both intrinsically and extrinsically the evidence led at the trial: that, if after a close and careful examination of such evidence, the Appellate Court entertains a strong doubt as to the guilt of the accused, the Appellate Court must give the accused the benefit of such doubt."

The main defence raised by the Appellant was that the agreement contained a condition expressly prohibiting the Accused from engaging in any illegal activity. The issue is whether the inclusion of such a clause alone is sufficient.

In the circumstances, the following judgements are relevant to the above contention. ***H.G Sujith Priyantha vs OIC Poddala*** CA(PHC) 157/2012 by Chithrasiri J stated as follows:

"This court on many occasions have decided that mere verbal instructions given to the driver as to the manner in which the vehicle is to be used is not sufficient to establish that owner has taken the necessary precautions to prevent the offence being committed as required in the proviso to S3(A) of the Animals Act"

Recently, Kumudini Wickremasinghe, J in ***Officer in Charge v Ranbandaraghe Hasitha Sulochana Priyarathne,*** SC Appeal 56/2024, decided on 16th of January 2026 held that,

" In the present case, the respondent has only established that he issued certain oral instructions to the driver. However, such instructions, by themselves, cannot be regarded as constituting all the precautions that a prudent owner ought to have taken. In his testimony before the learned Magistrate, the respondent started that he had instructed the driver not to transport sand or wood but made no mention issuing any direction with regard to the transportation of timber without a valid permit. This omission is significant. The testimony of the accused driver corroborates this position, as he too confirmed that the respondent had not given any specific instructions regarding the transport of timber. The driver

further stated that the respondent had no knowledge of the incident and that his employment was terminated following the incident in question.

It is also noteworthy that the respondent admitted that he had never personally inspected or visited the locations to verify the movements of his vehicle and had solely on telephone communication for this purpose. Such a method cannot be regarded as a sufficient precautionary measure. It I neither reasonable nor realistic to expect that a driver engaged in unlawful activities would voluntarily disclose such conduct to the vehicle owner during routine telephone calls."

Considering the above judicial literature, I am of the view that the Appellant has failed to establish, on the balance of probabilities, that he took all necessary and reasonable precautionary measures to prevent the use of the vehicle in the commission of any illegal activity, or that the offence was committed without his knowledge.

Upon perusal of the judgment of the Learned High Court Judge, it is evident that she stated the Appellant had failed to demonstrate exceptional circumstances warranting revision of the order made by the Learned Magistrate.

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"මා ඉහතින් සඳහන් කරන්නට යෙදුන කරුණු අනුව මෙම නඩුවේදී උගත් මහේස්ත්‍රාත්තුමා විසින් ස්වකීය තීන්දුවේදී වාහනය ලියාපදිංචි අයිතිකාර පෙත්සම්කරුට මුදාහැරීමක් නොකරන බවටත් එනයින් වාහනය රාජසන්තක කරන බවටත් කර ඇති අවසාන නියෝගය නිවැරදි නියෝගයක් බවටත්, එකී නියෝගය වෙනස් කිරීමට තරම් වන්නා වූ සුවිශේෂ කාරණා කිසිවක් අනාවරණය වී නොමැති බවටත් මම තීරණය කරමි."

I hold that the Learned High Court Judge correctly arrived at the conclusion, considering the precaution that was taken by the Appellant and evaluating the order of the Learned Magistrate.

At this juncture, it is my considered view that, in the instant case, the Appellant had given his vehicle to a third party, Accused, on a rental basis, thereby placing control of the vehicle in the hands of the Accused. When the third party has control of the vehicle, can the Appellant then contend before the Court that he took all necessary precautions to prevent its use in the commission of any illegal activity, or that the offence was committed without his knowledge? The Appellant could not even establish that the driver was his employee, through whom he exercised control over the vehicle.

It is my considered view that this application is frivolous, and that the Appellant has abused the time of the Court by filing it before the Magistrate's Court in order to delay the confiscation proceedings. When the vehicle is rented to the Accused under the Agreement, and the Accused thereby assumes independent possession and control over it, any breach of the Agreement by the Accused entitles the Appellant to seek legal remedy by instituting proceedings before the District Court.

The fact as to who has control over the vehicle in issue has been gone into by Sisira de Abrew, J, in ***Oriental Finance Services Corporation Ltd vs Range Forest Officer and Another*** [2011] 1 SLR 86.

> *"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 to the commission of the offence?"*

Further held that,

> *"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."*

The above dictum was considered by His Lordship Amal Ranaraja J in ***Mahamudali Arachchilage Sujana Krunarathne v Office in Charge, Police Station, Weerambugedara and two others*** in CA PHC 53/2023, decided on 20.05.2026.

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.

Having regard to the above circumstances, I find no reason to interfere with the order of the Learned High Court Judge dated 03.09.2022, and the order of the Learned Magistrate dated 03.05.2019

The appeal is accordingly dismissed, and I order the Appellant to pay Rs. 500,000/= as the state cost.

I direct the Registrar to communicate this order to the Magistrate's Court of Balangoda for further compliance.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.
I AGREE

JUDGE OF THE COURT OF APPEAL