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/178/22
MC Baddegama Case No: 4499
HC Galle Case No: Rev/555/20

Office-In-Charge,
Police station,
Thelikada.

COMPLAINANT

Vs.

Gamage Sampath Niranjan
34, Woodland Garden,
Goonapinuwala.

ACCUSED

Keembiyage Jinapala
Baddegama Road,
Goonapinuwala

REGISTERED OWNER

AND

Keembiyage Jinapala
Baddegama Road,
Goonapinuwala

REGISTERED OWNER

Vs

Officer-In-Charge,
Police Station,
Thelikada.

COMPLAINANT RESPONDENT

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

RESPONDANT

Mamage Sampath Niranjan
34, Woodland Garden,
Goonapinuwala.

ACCUSED- RESPONDENT

AND NOW BETWEEN

Keembiyage Jinapala,
Baddegama Road,
Goonapinuwala.

REGISTERED OWNER
PETITIONER
APPEALANT

Vs.

Officer-In-Charge,
Police Station,
Thelikada.

COMPLAINT
RESPONDANT-
RESPONDANT

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

RESPONDENT-RESPONDENT

Magage Sampath Niranjan
34, Woodland Garden,
Goonapinuwala.

ACCUSED- RESPONDENT

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

Counsel: Sandamal Rajapaksha for the Appellate
Malik Azeez, SC, for the 1st and 2nd respondents

Argued On : 30.03.2026

Judgment On: 22.05.2026

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 Southern Province, holding in Baddegama, in case No. RE 555/2020 dated 20.09.2022, where the Learned High Court Judge affirmed the order of the Learned Magistrate of Baddegama bearing No. 4499/20

dated 29.04.2020, where the Learned Magistrate had confiscated a vehicle bearing No. 227-6372 consequent to an inquiry.

The Accused was charged before the Magistrate Court of Baddegama for transporting timber worth Rs. 3319.82 in a lorry on 22.12.2019 without a valid license, an offence punishable under Section 25(2) read with Section 40 of the Forest Ordinance. Thereafter, the Accused was found guilty and duly convicted. Following the conviction, the Learned Magistrate proceeded to conduct an inquiry concerning the vehicle that had been seized for its involvement in the unlawful transportation of timber, in contravention of the Forest Ordinance.

The Learned Magistrate, acting in terms of Section 40(1) of the Forest Ordinance, allowed the owner 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. The amendment to Section 40 of the Forest Ordinance by Act No. 65 of 2009 provides that,

> *"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*
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> *of which the offence has been committed, and*
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> *(B) All tools, vehicles, implements, cattle and machines used in committing such offence*
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> *Shall, in addition to any other punishment specified for such offence, be confiscated by order of the convicting magistrate.*
>
> *Provided that where the owner of the vehicle is a third party, no order of confiscation shall be made if such owner proves to the satisfaction shall be made if such owner proves to the satisfaction of the court that she 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.'*

This principle is followed by the Her Ladyship Justice K. K. Wickremasinghe in ***Karunapedi Durayalage Sumana Kumara v. Officer-in- Charge, Police Station, Narammala and others***has stated:

> *"Further, it is imperative to note that as per, section 40 of the Forest Ordinance (amendment Act No. 65 of 2009), it is mandatory to prove preventive measures taken by the vehicle owner in question. Even thoughthe previous law allowed a vehicle owner to prove either he took precautions or he had no knowledge of an offence being committed, the amended section40 only focuses on the precautions taken by a vehicle owner in question. Therefore, I am of the view that mere denial of the knowledge about an offence being committed or denial of t hecontrol over his own vehicle is not sufficient for a vehicle owner to discharge the burden cast on him, under section 40 of the Forest Ordinance (as amended)."*

Iddawala J in ***Rajapakse Dewage Asanga Kumara Chandrasena v. Officer- in-Charge, Police Station, Katugasthota and another*** has stated;

> *"By the amendment to the Forest Ordinance in 2009 by Act No. 65 of 2009, the legislature has determined that having no knowledge of the offence being committed is a not good enough a reason anymore to claim a confiscated vehicle. Therefore, Counsel has to be mindful in citing cases decided prior to the 2009 amendment or cases decided under other legislations. The judiciary has to only discern whether the claimant being the owner of the vehicle, had taken all precautions to prevent the use of the vehicle for the commission of the offence. This entails positive actions on the part of the owner and not claiming mere ignorance."*

Recently, in a Supreme Court judgment by K. 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 stated 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 is 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."

The aforementioned cases underscore the necessity for the vehicle owner to demonstrate that he implemented adequate preventive measures to ensure the vehicle was not involved in any unlawful activities. It must be shown that the owner issued clear and explicit instructions to the driver, prohibiting the use of the vehicle for unauthorized or illegal purposes. Accordingly, the owner is required to establish that all reasonable precautions were taken to prevent such misconduct.

During the inquiry, the Appellant stated that the Accused had taken the vehicle, which was intended for the transport of timber, without informing him. He further stated that the driver was not his permanent employee but was engaged only on an occasional basis. He emphasized that he had cautioned him against engaging

in unlawful activities. He denied any involvement in the illegal transportation of timber, maintained that he had no knowledge of such activity, and asserted that he was an innocent timber trader.

During cross-examination, the Appellant stated that he had known the Accused for about five years. He further testified that, on the day in question, the Accused had taken the vehicle for the purpose of transporting stones.

I am mindful that, under prevailing legal standards, the courts require the owner to demonstrate on the balance of probabilities that appropriate precautions were taken to prevent the commission of the offence. In my view, the Learned Magistrate correctly arrived at the conclusion with respect to Section 40(1) of the Forest Ordinance. It is incumbent upon the Magistrate to assess whether the owner has sufficiently established, on a balance of probabilities, that he exercised the necessary precautions to prevent the commission of the illegal activity.

Page 138 of the brief,

> "ලියාපදිංචි හිමිකරු කියන්නේ එහු විසින් ලී ප්රතවාහනයට චූදිතට අවසර නොදුන් බවත් එදින කොංක්රීට් ගල් ගෙන යාමක් සිදුව ඇති බවත්ය. මේ බව ඔප්පු කිරීමට අධිකරණය ලියාපදිංචි හිමිකරු ඉදිරිපත් කරන එකම සාක්ෂිය එහුගේ ප්රකකාශයම පමණි.
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> ඒ අනුව මා දකින්නේ ගල් ප්රණවාහනයක් සිදුකලා නම් අවම වශයෙන් ඒ කුමක් සඳහාද නැත්තම් එය ඔහුගේ දැනුම අනුව සිදු කළ සිද්ධියක්ද යන්න සම්බන්ධයෙන්ද හෝ කරුණු ලියාපදිංචි හිමිකරු විසින් ඉදිරිපත් කළ යුතුව ඇති බවයි. එසේ නොමැතිව සාක්ෂි කුඩුවට නැග කොංක්රීාට් ගල් ප්රිවාහනය කලා.දැව ප්රයවාහනය කරන්න අවසර දී තිබුනේ නැහැ යැයි යන ප්ර කාශයක් පමණක් ඔහු විසින් පූර්වාරක්ෂක ක්රිවයා ගත් බවට අධිකරණය සෑහීමට පත් කළ නොහැකි බව මා තීරණය කරමි."

I note that, although the Appellant asserts that he cautioned the Accused, the driver, against engaging in unlawful activities, the evidence presented does not, on a balance of probabilities, sufficiently demonstrate that he exercised the necessary precautions. A verbal warning, without any effective measures to

monitor or restrict the use of the vehicle, falls short of the standard of diligence expected in such circumstances. His failure to adopt adequate safeguards undermines his claim of innocence and establishes that the precautions taken were insufficient to prevent the commission of the offence.

Accordingly, the Appellant cannot rely solely on general oral cautions to escape liability. His conduct reflects a failure to exercise adequate care and supervision over the use of his vehicle, and therefore, the defence of lack of knowledge or innocent ownership cannot be successfully maintained. I note that the Learned Magistrate rightly observed that, although the appellant claimed to have taken all necessary precautions, this assertion remained unsubstantiated and was not proven on the balance of probabilities.

Upon perusal of the order made by the Learned High Court Judge on 20.09.2022, it is evident that the revision application was rejected on the ground that the petitioner had sought to have the Court accept and rely upon the statement of a person who had appeared before the Magistrate's Court as evidence in his favour, instead of calling the direct witness connected with the inspection of the vehicle. The Learned Judge held that as there was no impediment to calling the relevant witness and no sufficient basis was shown to justify reliance on the said statement, there was no necessity to treat it as evidence in support of the petitioner's case.

It is relevant to reproduce that portion of the impugned order of the Learned High Court Judge.

> පෙත්සම්කරුට අවංක අවශ්යමතාවයක් තිබුනේ නම් වාහන විමසීමට අදාළව චූදිත සාක්ෂියට කැඳවීමට කිසිදු බාධාවක් ඉහත දැක්වූ කරුණු හැරුණු විට නොතිබුණු බවට මෙම අධිකරණයට පැහැදිලිව පෙනීයන බැවැන්, චූදිත ලෙස මහේස්ත්රාුත් අධිකරණයට ඉදිරිපත් වූ පුද්ගලයාගේ ප්රකකාශය මෙම අධිකරණය සළකා බැලීමක් කර එය පෙත්සම්කරුගේ වාසියට සළකා බැලීමට කිසිදු අවශ්යතතාවයක් පැන නොනඟින බවට නිරීක්ෂණය කර සටහන් කරමි.
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> ඒ අනුව මෙම නියෝගයේ උපුටා දක්වන ලද අභියාචණාධිකරණයේ මැතකාලීනව ලබාදෙන ලද නියෝග සලකා බැලීමේදී, ලියාපදිංචි අයිතිකාර පෙත්සම්කරු විසින් උධිකරණය

ඉදිරියේ සාක්ෂි ලබාදී දක්වා සිටින ලද කරුණු සනාථ කිරීම සඳහා තමා වෙනුවෙන් සාක්ෂි ඉදිරිපත් කිරීමට කටයුතු කර නොමැති තත්වය මෙම අධිකරණයට පැහැදිලිව පෙනී යන අතර, එම හේතුව මත උගත් මහේස්ත්රාත්තුමාගේ 2020.04.29 දිනැති නියෝගයට මැදිහත් වීමට කිසිදු සාධාරණ හේතුවක් උත්ගත වී නොමැති බවට නිරීක්ෂණය කරමි.

ඒ අනුව උගත් මහේස්ත්රා ත්වරයාගේ නියෝගය ස්ථිර කිරීමක් සිදු කරනු ලබන අතර, ප්රතිශෝධන අයැදුම් පත්ර ය නිෂ්ප්රභා කරමි. ගාස්තු සම්බන්ධයෙන් නියමයක් නොකරමි.

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.

I am not satisfied that the owner, the Appellant, has demonstrated that he took all necessary and reasonable precautionary measures to prevent the commission of any illegal activity. The evidence indicates that mere general instructions or verbal warnings, without any effective system of supervision, monitoring, or restriction over the use of the vehicle, are insufficient to discharge the duty of care expected in such circumstances. Accordingly, the owner has failed to establish that adequate preventive steps were in place to guard against misuse of the vehicle for unlawful purposes.

In light of the foregoing facts, I am of the considered opinion that the confiscation of the vehicle is justified. Accordingly, I uphold the order of the Learned High Court Judge.

Having regard to the above circumstances, I find no reason to interfere with the order of the Learned High Court Judge dated 20.09.2022, and the order of the Learned Magistrate dated 29.04.2020.

The appeal is dismissed, and I order no costs.

I direct the Registrar to communicate this order to the Magistrate Court of Baddegama for further compliance.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL