

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

**In the matter of an Appeal under and
in terms of Article 154P(6) of the
Constitution read together with the
High Court of the Provinces (Special
Provisions) Act No. 19 of 1990 (as
amended).**

Ranasinghe Pathiranalage Bernard
Karunathilaka
NO. 319/1,
Pathahamulla,
Pansala Para,
Nikadalupotha.

Petitioner-Appellant

**Court of Appeal Case No:
CA/PHC/0123/2023**

Provincial High Court of Kurunegala Vs,
Case No. HCR 04/2023
Kurunegala MC No. 43779/20

01. Officer in Chage
Police Station,
Kambukgate.
02. Hon. Attorney General
Attorney General's Department,
Colombo 12.
03. Vallibel Finance PLC
No. 310,
Galle Road,
Colombo 03.

Respondent-Respondents

Before: **Amal Ranaraja, J.**

Dr. Sumudu Premachandra, J.

Counsel: Shantha Jayawardana with Wihangi Tissera for the
Petitioner-Appellant

Wishwa Wijesooriya, S.C. for the State.

Argued on: 03.07.2026

Judgment on: 06.08.2026

Judgment

Amal Ranaraja. J.,

1. On November 28th, 2020, officers of the *Kumbukgate* police station have arrested a person named *Kodithuwakku Arachchilage Gayan Erandha Kodikara*, for transporting *Teak, Halmilla and Kohamba* timber logs valued at Rs.18,037.89 without a valid permit. This has occurred in a vehicle bearing Registration Number NWHB 5911.
2. Thereafter, the officer in charge of the *Kumbukgate* police has instituted proceedings in the *Kurunegala* Magistrates Court against the person referred to above for illegally transporting *Teak, Halmilla and Kohamba* timber logs, an offence punishable under Section 24(1) read with

Sections 25(2) and 40 of the Forest Ordinance No.16 Of 1907 (as Amended). The accused upon pleading guilty to the charge has been convicted and sentenced.

3. Subsequently, a confiscation inquiry has been held regarding the vehicle bearing Registration No. NWHB 5911. By order dated November 24th, 2022, the learned Magistrate has ordered the confiscation of said vehicle. Aggrieved by the order, the registered owner petitioner-appellant (hereinafter referred to as the appellant) has filed an application in revision HCR 04/23 in the High Court of *Kurunegala*.
4. The learned High Court Judge, by his order dated March 31st, 2023, has dismissed the revision application and affirmed the order of the learned Magistrate. The appellant also being aggrieved by the order of the learned High Court Judge of *Kurunegala* dated March 31st, 2023, has preferred the instant appeal to this Court.
5. It is common ground that the officer in charge of the *Kumbukgate* police has instituted proceedings against *Kodithuwakku Arachchilage Gayan Erandha Kodikara*, for illegally transporting *Teak, Halmilla and Kohamba* timber logs valued at Rs. 18,037.89 on November 28th, 2020, thereby, committing an offence punishable under Section 24(1) read with Sections 25(2) and 40 of the Forest Ordinance No.16 Of 1907 (as Amended).
6. Section 40 of the Forest Ordinance No.16 Of 1907 (as Amended) provides as follows;

40.

(1) 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 such 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 case where the owner of such tools, vehicles, 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, implements, cattle and machines, as the case may be, for the commission of the offence.'

(2) Any property forfeited to the State under subsection (1) shall

(a) if no appeal has been preferred to the Court of Appeal against the relevant conviction, vest absolutely in the State with effect from the date on which the period prescribed for preferring an appeal against such conviction expires;

(b) if an appeal has been preferred to the Court of Appeal against the relevant conviction, vest absolutely in the State with effect from the date on which such conviction is affirmed on appeal.

In this subsection, 'relevant conviction' means the conviction in consequence of which any property is forfeited to the State under subsection (1).'

7. Section 40 of the Forest Ordinance, states that upon a conviction, all timber and forest produce that have been the subject matter of the offence, and vehicles used for the commission of such offence, would be confiscated. If the owner of the vehicle himself was the accused in the preceding case, then the issue before the Court in a confiscation inquiry will not be complicated. However, if the owner is a third party, it would be necessary for a Court to ascertain whether the offence was committed by a particular accused with the knowledge and the connivance of the owner of the vehicle used for the commission of the forest offence.
8. The owner of the vehicle must establish on a balance of probability, that he took all precautions to prevent the vehicle from being used in the commission of a forest offence. The specific precautions deemed relevant will vary from case to case; there are no universal measures that all vehicle owners must follow. It is crucial that the precautions taken are convincing and clearly demonstrate the owner's diligence.
9. 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.
10. In *Oriental Finance Services Corporation Ltd vs Range Forest Officer and Another* [2011] 1 SLR 86, Sisira de Abrew, J, has stated,

"Who is the owner of the vehicle? This is the most important question that must be decided in this case. Can it be said that the absolute owner (the finance company) committed the offence or it was committed with the knowledge or participation of the absolute owner. The answer is obviously no. Surely a finance company cannot participate in the commission of an offence of this nature when the vehicle is not with it. It cannot be said that the finance company had the knowledge of the commission of the offence when the vehicle was

not with it. The owner envisaged in the law cannot be the absolute owner.

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? Where is the end of the violation of the Forest Ordinance? There will be no end. If the courts of this country take up this attitude the purpose of the legislature in enacting the said provisions of the Forest Ordinance would be defeated. In my view Courts should not interpret the law to give an absurd meaning to the law. In this connection I would like to consider a passage from 'Interpretation of Statutes by Bindra 7th edition page 235.' It is a well known rule of construction that a statute should not be construed so as to impute absurdity to the legislature."

For these reasons I hold that the owner envisaged in law is not the absolute owner and the owner envisaged in law in a case of this nature is the person who has control over the use of the vehicle. 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.

If the vehicle is confiscated holding that the absolute owner is not the owner envisaged in law, no injustice would be caused to him as he could recover the amount he spent from the registered owner by way

of action in the District Court on the basis of violation of the agreement.”

11. The appellant being the registered owner of the vehicle bearing the Registration No. NWHB 5911 has testified that he had cautioned the driver against engaging the vehicle in illegal activity.
12. On the day in question the driver had been the appellant’s brother. The brother had not been the regular driver. He has taken the vehicle on that day on ad-hoc basis. The appellant has stated that he verbally cautioned his brother against engaging the vehicle in any illegal activity, or to not use the vehicle for any unlawful purpose.
13. Though the appellant has also testified that he remained in telephone contact with his brother afterwards, he has been unable to provide any telephone details of the individuals involved. Taken together with the discrepancy already mentioned, this evidence suggests a causal approach by the appellant. The testimony is vague and lacking in supporting detail. In these circumstances, the Magistrate cannot safely rely on it
14. Further in the case of *Attorney General Vs. Ranbandaraghe Hasitha Sulochana Priyaratne SC Appeal No. 56/2024* decided on 16.01.2024, K. Kumuduni Wickramasinghe, J, has held,

“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.”

15. Given these circumstances, both the learned Magistrate and the learned High Court Judge have correctly determined that the appellant has failed to establish, on a balance of probability, the legal

requirement specified in the proviso of Section 40 of the Forest Ordinance No. 16 of 1907.

16. Accordingly, I am not inclined to interfere with the disputed orders of the learned Magistrate and the learned High Court Judge dated November 24th, 2022 and March 31st, 2023 respectively.

17. I hereby dismiss the appeal and make no order regarding costs.

Appeal dismissed.

18. The Registrar is directed to send this judgement to the Magistrates Court in *Kurunegala* for information and compliance.

Judge of the Court of Appeal

Dr. Sumudu Premachandra, J.

I agree

Judge of the Court of Appeal