

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

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

Officer-in-Charge,
Police Station,
Thelikada.

COMPLAINANT

CA Case No : CA(PHC)161/2022

HC of Galle

Case No. HCG/RE/575/20

MC Baddegama Case No:
5000/20

Vs.

Madduma Galhenage Saman Kumara
Thelikada,
Ginimallagaha

ACCUSED

Hewawasam Gamage Himal
Chathuranga Jayahithagama,
Horagampita,
Ginimallagaha

REGISTERED OWNER

AND NOW

Hewawasam Gamage Himal
Chathurang Jayahithagama,
Horagampita,
Ginimallagaha

**REGISTERED OWNER-
PETITIONER**

Vs

01. Officer-In-Charge,
Police Station,
Thelikada.

COMPLAINT-RESPONDENT

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

2nd RESPONDENT

AND NOW

Madduma Galhenage Saman Kumara,
Thelikada,
Ginimallagaha.

ACCUSED-RESPONDENT

Hewawasam Gamage Himal Chathuranga
Jayahithagama,
Horagampita, Ginimallagaha.

REGISTERED OWNER- PETITIONER-
APPELLANT

Vs.

1. Officer-in-Charge,
Police Station,
Thelikada.

COMPLAINT-RESPONDENT-
RESPONDENT

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

2nd RESPONDENT-RESPONDENT

AND

Madduma Galhenage Saman Kumara,
Thelikada,
Ginimalla.

ACCUSED-RESPONDENT-
RESPONDENT

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

Counsel: Dr P.R. Dabare with Savanthi Ponnampereuma for the Appellant.
Shezan Mahboob, SG for the State.

Written 20.05.2026 (by the Petitioner-Appellant)

Submissions: 09.03.2026 (by the Respondent)

On

Argued On: 12.05.2026

Judgment On: 10.06.2026

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 Galle, in case No. HC 575/2020 dated 05.09.2022, where the Learned High Court Judge affirmed the order of the Learned Magistrate of Baddegama bearing No. 5000/20 dated 18.11.2020, where the Learned Magistrate had confiscated a vehicle bearing No. 47-3998 consequent to an inquiry.

The Accused was charged before the Magistrate Court of Baddegama for transporting timber worth Rs. 19,699.35 in a lorry 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

of which the 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 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 though

the previous law allowed a vehicle owner to prove either he took precautions or he had no knowledge of an offence being committed, the amended section 40 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 the control 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 Priyarthne*, 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 he had purchased the vehicle through a leasing arrangement for the purpose of transporting stones. After operating the vehicle for approximately two years, the appellant moved to another occupation and entrusted the vehicle to the accused for the transportation of stones. According to the appellant, the accused would take the vehicle at around 7:00 a.m. and return it between 6:30 and 7:00 p.m., after completing 5–6 trips. The vehicle was parked at the appellant’s residence. The appellant further testified that he had never instructed the accused to transport illegal timber, nor had he engaged in any unlawful activity.

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 Appellant has sufficiently established, on a balance of probabilities, that he exercised the necessary precautions to prevent the commission of the illegal activity.

Page 94 of the brief,

“මේ කරුණ අනුව ලියාපදිංචි හිමිකරු විසින් වාහනය වන සංරක්ෂණ ආඥාපනතේ විධාන ප්‍රකාරව වන වරදකට සම්බන්ධ වූ වාහනයක් රාජසන්තක කර නොගැනීමට නම් අධිකරණය සෑහීමට පත්වන පරිදි ඒ වරදට වාහනය යොමු නොවීමට ඔහු විසින් පුර්වේක්ෂණ ගනු ලැබූ බව ඔප්පු කළ යුතු වේ. අංක 47 - 3998 දරණ ලොරි රථයේ රියදුරු විසින් ඒ පිළිබඳව වචනයක් හෝ කියන්නේ නැත. මෙහිසා පෙර දැක් වූ නඩු තීන්දුවේ දී දක්වා ඇති කරුණු අනුව හිමිකරු විසින් තමුන් වාහනය වන අපරාධයකට යොමු නොවීම සඳහා ගනු ලැබූ පුර්වා රක්ෂණ පිළිබඳව කිසිදු සාක්ෂියක් නොමැති වීම හේතුවෙන් 40 (1) වගන්තියේ අතුරු විධානානුකූලව අධිකරණය සෑහීමට පත් කිරීමක් නොකරන බව තීරණය කරමි. එම නිසා අංක 47 - 3998 දරණ ලොරි රථය වන සංරක්ෂණ ආඥාපනතේ විධාන ප්‍රකාරව රාජසන්තක කිරීමට 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 05.09.2022, it is evident that the revision application was rejected on the ground that there is no fair reason to interfere with the judgment of the Learned Magistrate.

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

Page 42 of the brief,

ඉහත උපුටා දක්වන ලද නඩු තීන්දු මෙම නඩුවට අදාළ කර ගැනීමේ දී පෙනී යන්නේ, මෙම නඩුවේ ලියාපදිංචි අයිතිකර පෙත්සමකරු අධිකරණය ඉදිරියේ සාක්ෂි ලබාදී දක්වා ඇති කරුණු, සනාථ කිරීම සඳහා තමා වෙනුවෙන් කිසිදු සාක්ෂියක් ඉදිරිපත් කර නොමැති තත්ත්වය වන අතර, එම තත්ත්වය අනුව උගත් මහේස්ත්‍රාත්තුමාගේ 2020.11.18 වන දිනැති නියෝගයට මැදිහත් වීමට කිසිදු සාධාරණ හේතුවක් මෙම අධිකරණයට ඉදිරිපත් වී නොමැති බවට නිරීක්ෂණය 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.

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 Appellant 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 05.09.2022, and the order of the Learned Magistrate dated 08.11.2020.

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