

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

In the matter of an application for Appeal
under and in terms of Section 331 of the Code
of Criminal Procedure Act No. 15 of 1979 s
amended.

CA Case No: CA-PHC 29/2021

HC of Matara Case NO: REV 69/2018

MC of Matara Case No: 3757

The Officer-in-Charge

Police Station

Akuressa.

Complainant

Vs.

1. Diyalape Gamage Dilan Sankalpa
2. Meekandawattage Aruna Shantha
Sanjeewa

Accused

B.R. Nalin Udaya Kumara

No. 216, Illukwella

Diyalape

Akurassa

Registered Owner

And

1. Diyalape Gamage Dilan Sankalpa

2. Meekandawattage Aruna Shantha
Sanjeewa

Accused

B.R. Nalin Udaya Kumara

No. 216, Illukwella

Diyalape

Akurassa

Registered Owner -Petitioner

Vs

1. The Officer-in-Charge

Police Station

Akuressa.

2. The Attorney General

Attorney General's Department

Colombo 12.

Complainant- Respondent

AND

B.R. Nalin Udaya Kumara

No. 216, Illukwella

Diyalape

Akurassa

Registered Owner -Petitioner-Appellant

Vs.

1. The Officer-in-Charge

Police Station

Akuressa.

2. The Attorney General

Attorney General's Department

Colombo 12.

Complainant- Respondent-Respondent

Before: B. Sasi Mahendran, J.

Amal Ranaraja, J

Counsel : Punarji D. Karunasekara for the Respondent-Owner- Respondent-
Petitioner

Wasantha Perera DSG, for the State

Written

Submissions: 10..10.2025 (by the Registered Owner-Petitioner-Appellant)

On

Argued On: 02.02.2026

Judgment On: 30.03.2026

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 Sothern Province holding in Matara in case No. 69/2018 dated 05.08.2021 where the Learned High Court Judge affirmed the order of the Learned Magistrate of Mathara bearing No. 3757 dated 16.02.2018 where the Learned Magistrate has confiscated a vehicle bearing No. SP LB 39674 consequent to an inquiry.

The Akurassa police have seized the said vehicle, which had been used to transport the timber on 12.11.2013. Both Accused, Diyalapa Gamage Dilan Sankalpa and Meekandawaththage Aruna Shantha Sanjeewa, pleaded guilty of the offence of illegally transporting timber worth Rs. 101 422.46 without a valid permit in violation of Section 24(1) read with Section 25(2) and Section 40 of Act No. 65 of 2009 of the Forest Ordinance. Following the conviction, the Learned Magistrate proceeded to conduct an inquiry regarding 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 his 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.”

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 contended that the vehicle was exclusively utilized for transporting concrete, where it had been continuously deployed on a daily rental basis for a period of 11 years. It was further stated that the 1st Accused had only been employed

under him since the year 2011. According to the Appellant, each morning, he would inquire about the vehicle from the Accused and also contact the concrete yard to verify its use. He further stated that his wife likewise made checks regarding the vehicle.

After taking the vehicle in the morning, the 1st Accused goes to the yard and comes back between 5.00 and 5.30 in the evening. He also inspected the truck to ensure that it was being used solely for transporting cement-based materials. In particular, he examined the floor of the vehicle to verify that no other materials were being carried apart from concrete. During this entire period, he stated that he had never harbored any suspicions regarding the misuse of the vehicle. The vehicle was parked at his residence each night, with the key remaining in his possession. When the Accused collected the vehicle in the morning, he was instructed to return it in the evening, hand over the key, and leave.

On the day in question, the owner of the concrete workshop informed the Appellant about the incident. According to the Appellant, the Accused had left his home at approximately 8:00 a.m.

During cross-examination, the Appellant stated that on the day in question, at 8:00 a.m., the Accused had taken the vehicle. Based on the quantity of timber involved, the Appellant asserted that it would require approximately one hour to load. The defence, however, suggested that the Accused had taken the vehicle at around 6:00 a.m.

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ප්‍ර : මම තමුන්ට පළමුවෙන්ම යෝජනා කරනවා මෙදින උදේ 8.00 විතර නොවෙයි කියලා පිළිගන්නවා නම් පිළිගන්නවා කියන්න පිළිගන්නේ නැත්නම් පිළිගන්නේ නැහැ කියලා කියන්න?

උ : උදේ 8.00 විතර ඉල්ල ගත්තේ.

ප්‍ර : තමුන්ට යෝජනා කරනවා අලුයම 6.00 විතර තමයි වාහනය ඉල්ල ගත්තේ කියලා?

උ : 6.00 ට වාහනය ගෙනියන්නේ නැහැ. උදේ 8.00 ත් 8.45 වගේ කාලයේදී වාහනය ගත්තේ. කවදාවත් 6.00ට ගෙනියන්නේ නැහැ වාහනය.

ප්‍ර : තමා අධිකරණයට කිව්ව්ව නේ පැයක පමණ කාලයක් ලී ටික පටවන්න කාලයක් ගත වෙනවා කියලා?

උ : පටවන්න කොච්චර වෙලාවක් ගත වෙනවද මම දන්නේ නැහැ.

ප්‍ර : මේ කියන දවසේ මේ ලී අහුවෙලා තියෙන්නේ උදේ 8.45ට ?

උ : උදේ 8.00 වාහනය ගෙනිව්වේ.

ප්‍ර : ඩී. 45 යද්දි ලී පිට පටවා ගෙන ගොස් පොලිස්සියට අහු වෙලත් තියෙනවා කියලා යෝජනා කරනවා?

උ : 8.00 වාහනය ගෙනිව්වේ . ලී මම දන්නේ නැහැ කොච්චර වෙලාවකින් පැටව්වද කියලා.

ප්‍ර : මම තමුන්ට යෝජනා කරනවා ඊට පෙර දිනයේ ලී අයිති පුද්ගලයාගේ තාත්තා හෝදීන් හඳුනනවා කිව්ව නේ මේ නඩුවට අදාළ පුද්ගලයාගේ තාත්තා?

උ : තාත්තා හඳුනනවා.

ප්‍ර : යෝජනා කරනවා හඳුනන නිසා මේ ලී ටික ගෙනත් දෙන්න කියල කිව්ව කියලා?

උ : මම ගන්නෙත් නැහැ. මම කවදාවත් කියන්නෙත් නැහැ.

It should be noted that the police had seized the vehicle at approximately 8:45 a.m and the timeline which they argued was improbable.

The witness, Sarath Kumara, was called on behalf of the Appellant. He testified that he was the owner of the concrete business and that, for the past eleven years, the vehicle in question had been used for his business transportation. However, during cross-examination, he was unable to disclose the complete registration number of the said vehicle.

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ප්‍ර : තමන්ගේ ආයතනයට යොදවා ගන්නා ලද වාහනයේ අංකය මොකක්ද? නලින් කුමාරගේ වාහනය අවුරුදු 11ක් තිස්සේ ඔබේ ලග වැඩ කරනවයි කිව්වනේ. මොකක්ද අංකය ?

උ : නිල්පාට විපර් රථයක් LB ඉංග්‍රීසි අකුරු මතකයි.

ප්‍ර : තමන් මාසයකට දවස් කීයක් වැඩ කරනවයි කියලද කිව්වේ?

උ : දවස් 20 ක් පමණ.

ප්‍ර : දැනට අවුරුදු කීයක් වැඩ කර තියෙනවද?

උ : අවුරුදු 11ක්.

ප්‍ර : මෙපමණ කාලයක් තමන්ගේ ආයතනයේ වැඩ කළ වාහනයේ අංකය මතක නැහැ කියලා කියන්නේ තමන් අංකයටත් දන්නේ නැතිව තමන් මේ වාහනයේ ලියාපදිංචි අයිතිකරුගේ ඉල්ලීම මත ඇවිල්ලා සාක්ෂි දෙන නිසාය කියලා පැමිණිල්ලෙන් යෝජනා කරන්නේ ?

උ : නැහැ.

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 our 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.

Upon a comprehensive review of the evidence presented before the Learned Magistrate, I am not satisfied that the owner of the vehicle has demonstrated that he took appropriate and reasonable precautionary measures to prevent the vehicle from being used in the commission of an offence.

I note with concern that the owner stated it would take at least one hour to load the timber. However, the vehicle was seized at 8:45 a.m., which makes such a timeline improbable. The learned Magistrate has duly considered this inconsistency in his judgment. It is relevant to reproduce that portion of the said order.

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

For the reasons stated above, we respectfully submit that the Learned Magistrate has rightly reached the conclusion and made the appropriate order.

Upon perusal of the order made by the Learned High Court Judge on 05.08.2021, it is evident that the revision application was rejected on the grounds that the Learned Magistrate had duly considered all the precautionary measures claimed to have been taken by the Appellant.

I hold that the Learned High Court Judge of Province 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 has demonstrated that he has not took all necessary steps to implement precautionary measures to prevent any illegal activity.

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 05.08.2021 and the order of the Learned Magistrate dated 16.02.2018

The appeal is accordingly dismissed, and I order no costs.

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

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL