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 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

COURT OF APPEAL CASE NO:
CA (PHC) 43/23

KANDY HIGH COURT REVISION
CASE NO: HC REV 16/21

GAMPOLA MAGISTRATE'S COURT
CASE NO: 201719

Office-In-Charge,
Police station,
Welambada

Complainant

v.

Walpitagahage Vajira Kumara Gamage
125/A, Pinthaliya,
Bowala.

Accused

MeewanaHettiarrachchige Grez
Wasanthi Meewana Hettiarrachchi
125/A, Pinthaliya,
Bowala.

Claimant

AND

Meewana Hettiarrachchige Grez
Wasanthi Meewana Hettiarrachchi,
125/A, Pinthaliya,
Bowala.

Claimant-Petitioner

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

2. Office-In-Charge,
   Police station,
   Welambada

Respondents

AND NOW BETWEEN

Meewana Hettiarachchige Grez
Wasanthi Meewana Hettiarrachchi,
125/A, Pinthaliya,
Bowala.

Claimant-Pettioner-Appellant

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

2. Officer-In-Charge,
   Police station,
   Welambada.

Respondant-Respondants

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

Counsel : Danushka Ruhunubadda, Dhanushka Udahewatta for the Appellant
Malik Azeez S.C. for the Respondent

Written Submissions: On 20.02.2025 (by the Accused-Appellant)

Argued On : 24.03.2026

Judgment On: 05.05.2026

JUDGMENT

B. Sasi Mahendran, J.

The Claimant -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 Central Province, holding in Kandy, in case No. REV 16/2021 dated 28.02.2023, where the Learned High Court Judge affirmed the order of the Learned Magistrate of Gampola bearing No. 20719 dated 19.02.2021, where the Learned Magistrate had confiscated a vehicle bearing No. 42 Sri 1548 consequent to an inquiry.

The Accused, the husband of the Appellant, was charged before the Magistrate Court of Gampola for transporting Durian timber valued at Rs. 7,556.96 in a lorry on 28 June 2020 without a valid license, an offence punishable under Section 25(2) read with Section 40 of the Forest Ordinance. On the same day, he pleaded guilty to the charge, and thereafter the Learned Magistrate ordered the release of the vehicle subject to a bond and fixed the matter for vehicle inquiry on 23 October 2020.

Thereafter, 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 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."

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 was engaged as the lorry driver for the purpose of constructing their house. A tree was required for the construction, and the Accused identified an Albizia tree as suitable. The Appellant paid Rs. 10,000, believing the transaction lawful since Albizia timber does not require a permit and the wood was taken from a fallen roadside tree.

The Appellant also produced a letter from the timber's owner confirming the sale, marked as V2. Acting on instructions, the Accused collected the Albizia timber, which was loaded onto the lorry by two servants. While transporting the timber, the police intercepted the lorry and arrested the Accused. Although payment had been made for ten Albizia logs, the police alleged that the timber consisted of ten Durian logs. Both the Appellant and the Accused maintained they were unaware of this discrepancy. Additionally, the Appellant stated that there was another case involving a lorry with a different driver.

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 concluded 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 she exercised the necessary precautions.

Upon a comprehensive review of the evidence, the Learned Magistrate held that the V.2 letter, dated 2020.06.27, was issued after the commission of the offence. It is therefore apparent that the document was prepared subsequent to the incident, with the specific intention of being used in support of this case.

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> එකී ඇල්බීසියා දැව මිලදී ගැනීම සම්බන්ධයෙන් එහි අයිතිකරු විසින් ලබා දී තිබෙන ලිපියක්ද ඉදිරිපත් කර ඇති අතර එය වී.2 වශයෙන් ලකුණු කර තිබේ. එකී වී.2 ලිපියට අවධානය යොමු කිරීමේදී පෙනී යනුයේ එම ලිපියෙහි සඳහන් දිනය මෙම වරද සිදුවීමට පසු දිනයක් වන 2020.06.27 දින වී ඇති බවයි. ඒ අනුව එකී ලිපිය මෙම නඩුවේ විමසීම සඳහා ඉදිරිපත් කිරීමේ අභිලාෂයෙන් පසුව සකස් කල ලිපියක් බවට බැලූ බැල්මට පෙනී යන කරුණක් වේ.

Further, Learned Magistrate observed that the appellant had failed to take the necessary precautions to prevent the commission of the offence, despite a similar offence having occurred three months earlier. Furthermore, since the driver was the appellant's husband, she was in a position to exercise greater vigilance and attention.

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> ඉහත විශ්ලේෂනය කර තිබෙන සාක්ෂි අනුව ලියාපදිංචි අයිතිකාරිය විසින් අධිකරණයට පිළිගත හැකි වෙවමෙහි සාක්ෂි ඉදිරිපත් කර නොමැති බවත්, ඇය ලොපි රථය දාගැනීමේ අදහසින් ඒ සඳහා නිරර්ථක උත්සාහයක යෙදී සිටින බව පැහැදිලි වේ. ෂ වරද සිදුවීමටෙ මාස 3ට පෙර මෙම ලොරි රථයට යොදා ගනිමින් වැතීම ආකාරයේ වරදක් සිදුවී අධිකරණයෙන් ලොරි රථය මුදාහැර තිබූ අවස්ථාවක දී සාමාන්‍ය තත්වයන්ට වඩා වැඩි ලෙස ලියාපදිංචි අයිතිකාරිය විසින් වාහනය සම්බන්ධයෙන් සොයා බැලීමක් සහ වරද සිදු නොවීමට පුරර්වෝපායන් ගත යුතුය. ඇය විසින් එකී තත්ත්වය පැහැර හැර තිබේ.

I am not satisfied that the owner of the vehicle, the Appellant, has shown that adequate and reasonable precautions were taken to prevent its use in the commission of an offence. The Learned Magistrate correctly concluded that the appellant's claim of ignorance regarding the nature of the timber, asserting she believed it to be durian rather than Albezia, is implausible. This contention is further weakened by the fact that a similar offence had occurred only three months earlier, and the driver was her husband, circumstances that demanded heightened vigilance.

Given the prior conviction for unlawful timber transportation, the appellant was under a clear duty to exercise greater caution and adopt preventive measures to avoid a recurrence. Her failure to do so undermines the credibility of her defence and demonstrates a lack of due diligence in ensuring compliance with the law.

For the reasons stated above, I hold 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 28.02.2023, it is evident that the revision application was rejected on the grounds that the Learned Magistrate had duly considered that the Appellant had failed to take all the precautionary measures to prevent such offence as required by the law. Further, the learned High Court Judge observed that the learned Magistrate had noted document V.2, dated 27.06.2020, appeared to postdate the offence, while the charge sheet recorded the offence as 28.06.2020. Although this reflects a minor discrepancy in dates, the Court held that it does not materially affect the Magistrate's reasoning or the decision to confiscate the lorry.

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> "වරද සිදු වූ දිනය පිළිබඳ යම් වැරදීමක් සිදුව ඇතත් අවසන් විග්‍රහයේදී අධිකරණයට පෙනී යන්නේ උගත් මහේස්ත්‍රාත්වරයා ලොරි රථය රාජසන්තක කිරීම සම්බන්ධයෙන් එළඹ ඇති නිගමනය ප්‍රතික්ෂේප කිරීමට එම කරුණු පමණක් නොසෑහෙන බවයි"

I hold that the Learned High Court Judge of the Province correctly reached the conclusion, having carefully considered the precautions claimed to have been taken by the appellant and thoroughly evaluated the order of the Learned Magistrate.

I am not satisfied that the owner, the Appellant, has demonstrated that she has not taken 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 28.02.2023, and the order of the Learned Magistrate dated 19.02.2021.

The appeal is dismissed, and I order no costs.

I direct the Registrar to communicate this order along with the original record to the Magistrate Court of Gampola for further compliance.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.
I AGREE

JUDGE OF THE COURT OF APPEAL