

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

**In the matter of an Application for
Revision in terms of Section 154P (6) of
the Constitution of the Democratic
Socialist Republic of Sri Lanka.**

Officer in Charge
Police Station,
Wellawa.

Plaintiff

Court of Appeal Case No:
CA/PHC/0044/2023

Vs.

Provincial High Court of Kurunegala
Case No. HCR 16/2020

Kurunegala MC No. 6955/MIS/18

Lansakara Herath Mudiyansele
Duminda Bandara
Hiriyala,
Ambagaswewa,
Nikadalupotha

Defendant

AND BETWEEN

Lansakara Mudiyansele Premalatha
Hiriyala,
Ambagaswewa,
Nikadalupotha

Registered Owner-Petitioner

Vs.
Officer in Charge
Police Station,
Wellawa.

Plaintiff- 1st Respondent

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

2nd Respondent

Mercantile Investments and
Financial PLC
No. 236,
Galle Road,
Colombo 03.

3rd Respondent

AND NOW BETWEEN

Lansakara Mudiyanseelage Premalatha
Hiriyaya,
Ambagaswewa,
Nikadalupotha.

Registered Owner-Petitioner-Appellant

Vs.
Officer in Charge
Police Station,
Wellawa.

Plaintiff- 1st Respondent-Respondent

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

2nd Respondent-Respondent

Mercantile Investments and
Financial PLC
No. 236,
Galle Road,
Colombo 03.

3rd Respondent-Respondent

Before: **Amal Ranaraja, J.**

Dr. Sumudu Premachandra, J.

Counsel: C. Sooriyarachchi with D.B. Bulathgama for the Appellant

Shezan Mahboob, S.C. for the State.

Argued on: 01.07.2026

Judgment on: 06.08.2026

Judgment

Amal Ranaraja. J,

1. The officer in charge of the *Wallawa* Police has submitted a plaint with seized evidence to the *Kurunegala* Magistrates Court in Case No. 6955/MIS/18. This submission of a plaint has pertained to an incident involving the arrest of an accused for allegedly committing offences under the Animals Act No.29 of 1958 (as Amended) and the Prevention of Cruelty to Animals Ordinance No.13 of 1907 (as Amended).
2. Among the seized evidence had been cattle and a vehicle bearing Registration No. NWDL 1917. The accused upon pleading guilty to the charges has been convicted and sentenced. Subsequently, a confiscation inquiry has been held regarding the vehicle bearing Registration No. NWDL 1917.
3. By order dated May 18th, 2020, the learned Magistrate has ordered the confiscation of said vehicle. Aggrieved by the order, the registered owner petitioner-appellant (hereinafter referred to as appellant) filed an application in revision (HCR 16-20) in the High Court of *Kurunegala*.
4. The learned High Court Judge by order dated February 28th, 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 February 28th, 2023, has preferred the instant appeal to this court.
5. It is common ground that the officer in charge at the *Wallawa* police has instituted proceedings against *Lansakara Herath Mudiyanseelage Duminda Bandara*, for illegally transporting cattle and causing such cattle to be carried in a vehicle, in a manner as to subject such cattle to unnecessary pain/suffering, thereby, committing offences punishable under the Animals Act and the Prevention of Cruelty to Animals Ordinance.

6. Section 3A of the Animals Act No. 29 of 1958 (as Amended) provides as follows;

3A. Where any person is convicted of an offence under this Part or any regulations made thereunder, any vehicle used in the commission of such offence shall, in addition to any other punishment prescribed for such offence, be liable, by order of the convicting Magistrate, to confiscation:

Provided, however, that in any case where the owner of the vehicle is a third party, no order of confiscation shall be made, if the owner proves to the satisfaction of the Court that he has taken all precautions to prevent the use of such vehicle or that the vehicle has been used without his knowledge for the commission of the offence.

7. In terms of Section 3A of the Animals Act No. 29 of 1958 (as Amended), it would be necessary for the owner of the vehicle, to establish that the vehicle that had been used for the commission of the offence, had been so used without his knowledge, and that the owner had taken all precautions available to prevent the use of the vehicle for the commission of such an offence.
8. Upon perusal of the documents marked X, X1 and annexed to the revision application forwarded to the High Court of *Kurunegala*, it is apparent that the appellant, as the petitioner in that case, has tendered to the High Court copies of the plaint, certain journal entries in the Magistrates Court case record, and orders relating to the confiscation of the vehicle in issue, together with the order for the confiscation of the cattle involved. Nevertheless, the appellant has not tendered the testimony recorded at either of the inquiries.
9. This omission is significant because the recorded testimony constitutes “documents material to the application” within the meaning of Rule 3(1)(a) of the Court of Appeal (Appellate Procedure) Rules 1990. Accordingly,

where a petitioner fails to comply with the requirements of that Rule, the court is entitled to dismiss the application, either on its own motion (*ex mero motu*), or upon the request of any party.

10. The learned High Court Judge has referred to this fact in the impugned order. Further, in the absence of the testimony he would not have been in a position to decide whether the learned Magistrate's order was perverse.

11. In those circumstances, I am not inclined to interfere with the orders of the learned High Court Judge and the learned Magistrate dated February 28th, 2023 and May 18th, 2020, respectively.

12. Hence, I proceed to dismiss this appeal but I make no order regarding costs.

Appeal dismissed.

13. The Registrar of this Court is directed to send this Judgement to the High Court and Magistrates Court in *Kurunegala* for information/compliance.

Judge of the Court of Appeal

Dr. Sumudu Premachandra, J.

I agree

Judge of the Court of Appeal