

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

In an application for Revision under Article
154P of the Constitution of the Democratic
Socialist Republic of Sri Lanka

Officer-in-charge
Police Station
Dickwella.

COMPLAINANT

CA Case No :

CA/PHC/0083/2023

HC of Matara Case No.

HC/Rev/0042/2021

Magistrate Court of Matara

Case No. B/96530

Vs.

Wiriththa Mulla Gamage Amal Ranjith

ACCUSED

AND NOW BETWEEN

Wishwanath Priyadarshana Ekanayake,
Wasana Julgoda,
Dickwella.

REGISTERED OWNER-CLAIMANT

AND NOW

Vs.

Wishwanath Priyadarshana Ekanayake,
Wasana Julgoda,
Dickwella.

REGISTERED-CLAIMANT-PETITIONER

Officer-in-charge
Police Station
Dickwella.

COMPLAINANT-RESPONDENT

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

AND NOW BETWEEN

Wishwanath Priyadarshana Ekanayake,
Wasana Julgoda,
Dickwella.

**REGISTERED-CLAIMANT-
PETITIONER-PETITIONER**

Vs.
Officer-in-charge
Police Station
Dickwella.

COMPLAINANT-RESPONDENT-
RESPONDENT

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

RESPONDENT-RESPONDENT

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

Counsel : Lakitha Wakishta Arachchi for the Appellant.
Anusha Azeez, SC for the State.

Written : 09.03.2026 (for the Registered owner-Claimant-Petitioner- Petitioner)

Submission 07.05.2016 (for the Respondent-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 Matara, in case No. HC/REC/0042/2021 dated 10.03.2023, where the Learned High Court Judge affirmed the order of the Learned Magistrate of Matara bearing No. 96530 dated 22.02.2021, where the Learned Magistrate had confiscated a vehicle bearing No. SP JU 1962 consequent to an inquiry.

The Accused was charged before the Magistrate Court of Matara for transporting timber worth Rs. 27,206.62 in a lorry without a valid license on 26.05.2016, 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 the accused had been employed as a driver since January 2015. It was further noted that the vehicle in question had been purchased in November 2013. According to the appellant, the lorry was regularly used to transport stones from the quarry to the grinding facility. The appellant emphasized that the accused had been instructed not to use the vehicle for any illegal activities and confirmed that the lorry was kept at home during the night.

Evidence also indicated that on the morning of the incident, the lorry had been dispatched to the stone mill. The appellant reiterated that he had consistently warned the driver against using the vehicle for unlawful purposes. He explained that the driver had been working for him for several years, and he regularly monitored the driver's activities with the vehicle. Even when visiting the stone mill, the appellant would inspect the stones and inquire with friends along the route about the vehicle's movements. He had also requested his friends to keep an eye on the lorry. At the time of the investigation, it was noted that Mahinda had been examining the vehicle on behalf of Mahinda.

It should be noted that the Appellants' version was not corroborated by any of the witnesses.

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.

“මෙම නඩුවට අදාළ ලියාපදිංචි අයිතිකරු පමණක් සාක්ෂි ලබා දී ඇති අතර ඔහුගේ සාක්ෂිය අනුව මෙම නඩුවට විෂය ගත ටීපර් රථය කැළෑ ආඥා පන්ත ප්‍රකාරව කැළෑ වරදක් වැළැක්වීම සඳහා නිසි පූර්වා රක්ෂණ ක්‍රියා මාර්ග ගත් බවට ලියාපදිංචි අයිතිකරු විසින් කිසිදු කරුණක් අධිකරණය ඉදිරියේ අනාවරණය කර නොමැති අතර හුදෙක් වාචික උපදෙස් ලබා දුන් බවට පමණක් ප්‍රකාශ කර ඇති අතර ඊට අමතරව වෙනත් කිසිදු සාක්ෂියක් අධිකරණය ඉදිරියේ අනාවරණය කර ගෙන නොමැත.”

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. Further, though he claims that many were put to investigate the vehicle, this evidence was not corroborated by any.

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 are no exceptional circumstances to shock the conscience of the court 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.

ඉහත කී සමස්ත කරුණු කෙරෙහි අවධානය යොමු කිරීමෙන් පසු පෙත්සම්කරු විසින් උගත් මහේස්ත්‍රාත්තුමාගේ ප්‍රශ්නගත නියෝගය ප්‍රතිශෝධනය කිරීමට ප්‍රමාණවත් සුවිශේෂිත හේතු

ඉදිරිපත් කර නොමැති බවට තීරණය කරමි. ඒ අනුව 2021.03.30 දිනැති ප්‍රතිශෝධන පෙත්සම නිශ්චුභ 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 10.03.2023, and the order of the Learned Magistrate dated 22.02.2021.

The appeal is 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