

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

**In the matter of an appeal made under  
and in terms of Article 154P (6) of the  
Constitution of the Democratic  
Socialist Republic of Sri Lanka.**

Officer in Charge,  
Police Station,  
Weerambugedara.

**Complainant**

**CA PHC 53/2023**

Vs.

Provincial High Court of Kurunegala

Case No. HCR 06/2023

Samarajeewa Liyanarachchige Thilak  
Wijerathne

MC- Kurunegala

Case No. 43480/20

**Defendant**

**AND NOW BETWEEN**

Mahamudali Arachchilage Sujana  
Krunarathne,  
Central Saloon,  
Kuliyapitiya Road,  
Narammala.

**Registered Owner- Petitioner**

Vs.

**01.** Office in Charge,  
Police Station,  
Weerambagedara.

**Complainant-1<sup>st</sup> Respondent**

**02.**Hon. Attorney General,  
Attorney General's Department,  
Colombo 05.

**2<sup>nd</sup> Respondent**

**03.**L.B. Finance Private Company,  
No. 275, 75,  
prof. Stanely Wijesundara Mawatha,  
Colombo 07.

**3<sup>rd</sup> Respondent**

**AND NOW**

Mahamudali Arachchilage Sujana  
Krunarathne,  
Central Saloon,  
Kuliyapitiya Road,  
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**Registered Owner- Petitioner**

Vs.

01. Office in Charge,  
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**Complainant-1<sup>st</sup> Respondent-Respondent**

**04.**Hon. Attorney General,  
Attorney General's Department,  
Colombo 05.

**2<sup>nd</sup> Respondent-Respondent**

**05.**L.B. Finance Private Company,  
No. 275, 75,  
prof. Stanely Wijesundara Mawatha,  
Colombo 07.

**3<sup>rd</sup> Respondent-Respondent**

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

**Counsel:**    Ramith Dunusinghe for the Petitioner.  
                  Malik Azeez, S.C., for the State.

**Argued on:** 11.05.2026

**Judgement on:** 20.05.2026

## Judgment

**Amal Ranaraja, J,**

1. On August 31<sup>st</sup>, 2020, officers of the *Weerambugedara*, Police Station, have arrested a person named *Thilak Wijerathne* for transporting teak timber logs valued Rs.229,273.09 without a valid permit. This has occurred in a vehicle bearing registration number NW.JP.2229.
2. Thereafter the Officer in Charge of the *Weerambugedara* police has instituted proceedings in the *Kurunegala* Magistrates Court against the person referred to above for illegally transporting teak timber logs an offence punishable under Section 24(1) read with Sections 25(2) and 40 of the Forest Ordinance No.16 of 1907 (as Amended). The accused upon pleading guilty to the charge has been convicted and sentenced.
3. Subsequently, a confiscation inquiry has been held regarding the vehicle bearing Registration No. NW.JP.2229. By Order dated January 18<sup>th</sup>, 2023, the learned Magistrate has ordered the confiscation of said vehicle. Aggrieved by the Order, the Registered Owner Petitioner-Appellant (hereinafter referred to as the appellant) has filed an application in revision (HCR 06/2023) in the High Court of *Kurunegala*.
4. The learned High Court Judge by the Order dated February 28<sup>th</sup>, 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 28<sup>th</sup>, 2023, has preferred the instant appeal to this Court.
5. It is common ground that the Officer in Charge of the *Weerambugedara* police, has instituted proceedings against one *Thilak Wijerathne* for illegally transporting teak timber logs valued at Rs. 229,273.09 on August 31<sup>st</sup>, 2020, thereby committing an offence punishable under

Section 24(1) read with Sections 25(2) and 40 of the Forest Ordinance No.16 of 1907 (as Amended).

6. Section 40 of the Forest Ordinance No. 16 of 1907 (as Amended) provides as follows;

**40.**

*(1) 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 such 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 in any case where the owner of such tools, vehicles, implements and machines used in the commission of such offence, is a third party, no Order of Confiscation shall be made if such owner proves to the satisfaction of the Court that he 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.'*

*(2) Any property forfeited to the State under subsection (1) shall*

*(a) if no appeal has been preferred to the Court of Appeal against the relevant conviction, vest absolutely in the State with effect from the date on which the period*

*prescribed for preferring an appeal against such conviction expires;*

*(b) if an appeal has been preferred to the Court of Appeal against the relevant conviction, vest absolutely in the State with effect from the date on which such conviction is affirmed on appeal.*

*In this subsection, 'relevant conviction' means the conviction in consequence of which any property is forfeited to the State under subsection (1).'*

7. Section 40 of the Forest Ordinance, states that upon a conviction, all timber and forest produce that have been the subject matter of the offence, and vehicles used for the commission of such offence, would be confiscated. If the owner of the vehicle himself was the accused in the preceding case, then the issue before the Court in a confiscation inquiry will not be complicated. However, if the owner is a third party, it would be necessary for a Court to ascertain whether the offence was committed by a particular accused with the knowledge and the connivance of the owner of the vehicle used for the commission of the forest offence.
8. The owner of the vehicle must establish on a balance of probability, that he took all precautions to prevent the vehicle from being used in the commission of a forest offence. The specific precautions deemed relevant will vary from case to case; there are no universal measures that all vehicle owners must follow. It is crucial that the precautions taken are convincing and clearly demonstrate the owner's diligence. Any actions that suggest a lack of sincerity or responsibility, may undermine the owner's position.

9. Further, in an inquiry in the nature of the one in question, the owner of a vehicle is considered to be the person who has control over the vehicle in issue.

10. In *Oriental Finance Services Corporation Ltd vs Range Forest Officer and Another* [2011] 1 SLR 86, Sisira de Abrew, J, has stated,

*“Who is the owner of the vehicle? This is the most important question that must be decided in this case. Can it be said that the absolute owner (the finance company) committed the offence or it was committed with the knowledge or participation of the absolute owner.*

*The answer is obviously no. Surely a finance company cannot participate in the commission of an offence of this nature when the vehicle is not with it. It cannot be said that the finance company had the knowledge of the commission of the offence when the vehicle was not with it. The owner envisaged in the law cannot be the absolute owner.*

*In the present case the registered owner is the one who drove the vehicle at the time of the commission of the offence. He was convicted on his own plea. If the court is going to release the vehicle on the basis that the owner of the vehicle is the absolute owner, then after the release, it is possible for the absolute owner to give the vehicle to another person. If this person commits a similar offence, the finance company can take up the same position, and the vehicle would be again released. Then where is the end to the commission of the offence? Where is the end of the violation of the Forest Ordinance? There will be no end. If the courts of this country take up this attitude the purpose of the legislature in enacting the said provisions of the Forest Ordinance would be defeated. In my view Courts should not interpret the law to give an absurd meaning to the law. In this*

*connection I would like to consider a passage from 'Interpretation of Statutes by Bindra 7th edition page 235.' It is a well known rule of construction that a statute should not be construed so as to impute absurdity to the legislature."*

*For these reasons I hold that the owner envisaged in law is not the absolute owner and the owner envisaged in law in a case of this nature is the person who has control over the use of the vehicle. The absolute owner has no control over the use of the vehicle except to retake the possession of the vehicle for non-payment of instalments.*

*If the vehicle is confiscated holding that the absolute owner is not the owner envisaged in law, no injustice would be caused to him as he could recover the amount he spent from the registered owner by way of action in the District Court on the basis of violation of the agreement."*

11. The appellant being the registered owner of the vehicle bearing reg no NW.JP.2229 has testified that he cautioned *Thilak Wijerathne* against engaging the vehicle in any illegal activity when he lent it for a short period on the day of the incident. The appellant has verbally cautioned *Wijerathne*. However, no subsequent steps have been implemented to ensure the directive was followed, thereby limiting the action to mere verbal advice.
12. A verbal caution by its nature leaves no written record. This absence of documentation can make it difficult to prove that the caution occurred, what exactly was said, or when it took place. The testimony indicates that no "other steps" have been taken by the appellant. This could mean that the appellant has not said specific deadlines for *Wijerathne* to comply with the directive, establish a system for monitoring *Wijerathne's* adherence or outline the potential consequences for non-compliance. Without any formal steps or consequences attached to a

verbal caution might have been perceived by the recipient Wijerathne as less binding or less serious. It can be seen as informal advice rather than a mandatory directive. When a directive is only verbal and lack a follow up, there is an increased likelihood that it may not be fully understood, prioritised or acted upon leading to a situation remaining unaddressed.

13. A vehicle owner's mere instruction to a third party not to use the vehicle for illegal purposes would not satisfy the legal requirements outlined in the proviso to Section 40 of the Forest Ordinance No.16 of 1907 (as Amended). This position is further affirmed by the Superior Courts of the country, which have constantly held that a simple verbal caution is insufficient in such circumstances.

14. In the case of *Mary Matilda Silva v Inspector Police, Habarana md Another 2020 2 SLR 265*, Sisira Abrew, J, has held that,

*"In my view, for the owner of the vehicle to discharge the burden (1) that he/she had taken all precautions to prevent the use of the vehicle for the commission of the offence (2) that the vehicle had been used for the commission of the offence without his/her knowledge, mere giving instructions is not sufficient"*

15. Further, in *AG vs Ranbandaraghe Hasith Sulochana Piyaratne SC APL. LA No. 262/2023 and SC Appeal No. 56/2024*, decided on 16.01.2026, K.K. Wickremasinghe J, has held,

*"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."*

16. Given these circumstances, both the learned Magistrate and the learned High Court Judge have correctly determined that the appellant has failed to establish, on balance of probability, the legal requirement specified in the proviso to Section 40 of the Forest Ordinance No. 16 of 1907.

17. Accordingly, I am not inclined to interfere with the disputed orders of the learned Magistrate and the learned High Court Judge dated January 18<sup>th</sup>, 2023, and February 28<sup>th</sup>, 2023, respectively.

18. I hereby dismiss the appeal but make no order regarding costs.

*Appeal dismissed*

19. The Registrar is directed to communicate this Judgement to Magistrates Court in *Kurunegala* for information and compliance.

**Judge of the Court of Appeal**

**B. Sasi Mahendran, J.**

**Judge of the Court of Appeal**