

**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,
Rideegama

Complainant

Court of Appeal No.

CA/PHC/54/2023

Vs.

PHC Kurunegala No.

HCR 21/2019

M.C Rambadagalla Case No.

24762/18

1. D.M. Ishara Sampath
2. Madan Surendran

Defendants

AND NOW BETWEEN

Gallawa Dewayalage Wijyantha
Senarathne,
Jankure,
Delwita

Registered Owner – Petitioner – Appellant

Vs.

Officer in Charge,
Police Station,
Rideegama

Complainant - 1st Respondent

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

2nd Respondent - Respondent

Citizens Development Business Finance
PLC,
No.123, Orabipasha Mawatha,
Colombo 10

3rd Respondent - Respondent

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

Counsel: Avinda Silva for the Petitioner-Appellant
 Shezan Mahboob, S.C. for the State

Supported on: 21.05.2026

Decided on: 09.06.2026

Order

Amal Ranaraja. J.

1. On November 24th, 2017, officers of the *Rideegama* Police Station have arrested persons named, *Dasanayake Mudiyanseelage Ishara Sampath* and *Madan Surendran*, for transporting Mahogany timber logs valued Rs. 29,859.66 without the valid permit. This has occurred in a vehicle bearing Registration Number WP LA 8949.
2. Thereafter, the officer in charge of the *Rideegama* police has instituted proceedings in the *Rambadagalla* Magistrate's Court, against the persons referred to above for illegally transporting Mahogany 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 have been convicted and sentenced.
3. Subsequently, a confiscation inquiry has been held regarding the vehicle bearing Registration No. WP LA 8949. By order dated June 28th, 2019, the learned Magistrate has ordered the confiscation of the said vehicle. Aggrieved by the order, the registered owner petitioner-appellant (hereinafter referred to as the appellant) has filed an application in revision (HCR 21/19) in the High Court of *Kurunegala*.
4. The learned High Court Judge by the order dated January 31st, 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 January 31st, 2023, has preferred the instant appeal to this Court.
5. It is common ground, that the officer in charge at the *Rideegama* police has instituted proceedings against, *Dasanayake Mudiyanseelage Ishara Sampath* and *Madan Surendran*, for illegally transporting mahogany

timer logs valued at Rs. 29,859.66 on November 24th, 2017, 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 Registration No. WPLA 8949, has testified that he cautioned the driver against engaging the vehicle in any illegal activity. He has also maintained that he monitored the vehicle's movements by keeping constant contact with its driver.

12. The appellant has asserted that he spoke with the driver and obtained details of the vehicle's whereabouts at the relevant time. He has also stated that he was in telephone contact with the driver. However, he has not testified to the specific telephone numbers of either party, nor has he produced telephone records or other details to substantiate his narrative. No reasons have been offered for this omission.

Consequently, the appellant's approach appears superficial. In an inquiry of this nature, a Magistrate cannot rely on such testimony.

13. The appellant has also contended that the charge framed by the learned Magistrate was defective and that the subsequent conviction based on that defective charge sheet could not stand. He has further contended that the confiscation order issued thereafter, could not be sustained.
14. The claim raised by the appellant rests on the premise that two of the accused in the original case, pleaded guilty to the charge and were convicted of it. Any objection to a charge must be taken at the earliest opportunity. The appellant, therefore, cannot challenge the validity of the charge at this late stage.
15. Moreover, the appellant would have presumably been aware that the accused in the original case have already been convicted of the charge framed in that case. If the appellant's objection was entertained, it would cast doubt on the conviction of the accused in the original case, despite no challenge having been mounted to that conviction. Such confusion and absurdity should not be permitted before the eyes of the law. To permit such a course would also undermine the finality in criminal proceedings and frustrate the statutory confiscation regime.
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 a balance of probability, the legal requirement specified in the proviso of 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 June 28th, 2019, and January 31st, 2023, respectively.

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

Appeal dismissed

19. The Registrar of this Court is directed to send this Judgement to the Magistrate's Court in *Rambadagalla* for information and compliance.

Judge of the Court of Appeal

B. Sasi Mahendran, J.

I agree

Judge of the Court of Appeal