

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

In the matter of an Application for
Revision made under Article 138 of
the Constitution of the Democratic
Socialist Republic of Sri Lanka.

CA Revision Application No.

CA (PHC) APN 54/2016

H.C Balapitiya Case No: 932/REV

MC Elpitiya Case No: 70009

Officer-in-Charge
Police station,
Elpitiya

Complainant

Vs.

Ranasinghe Weerakkody Wasantha
Kumara,
Waththegoda,
Prowagama

Accused

AND BETWEEN

Ranasinghe Weerakkody Chaminda
Parakrama,
No. 72A, Near the Temple,
Prowagama.

(Registered owner of Vehicle bearing
registration no. SPLB 0492)

Respondent-Petitioner

Vs.

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

Respondent

2. Officer-in-Charge
Police station,
Elpitiya.

Complainant-Respondent

AND NOW BETWEEN

Ranasinghe Weerakkody Chaminda
Parakrama,

No. 72A, Near the Temple,

Prowagama.

Respondent-Petitioner-Petitioner

Vs.

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

Respondent-Respondent

2. Officer-in-Charge
Police station,
Elpitiya.

Complainant-
Respondent-Respondent

BEFORE : K. K. Wickremasinghe, J.
Janak De Silva, J.

COUNSEL : Niranjan Jayasinghe AAL for the
Respondent- Petitioner-Petitioner
Chethiya Gunasekara, DSG for the
Respondent-Respondent

WRITTEN SUBMISSIONS : On 02.05.2018 for the Petitioner
On 09.05.2018 for the Respondent-
Respondent

DECIDED ON : 05.06.2018

K.K. WICKREMASINGHE, J.

The Respondent-Petitioner-Petitioner has filed a revision application in this court to set aside the order of the Learned High Court Judge in Case No.932/Rev dated 10.03.2018 and to set aside the order of the Learned Magistrate of Elpitiya in the case No. 70009 dated 20.10.2015 ordering the confiscation of the vehicle bearing registration No. SPLB 0492. At the stage of argument it was agreed to conclude the case by way of filing Written Submissions and both parties had agreed to abide by the same.

Facts of the case

The Accused (a person named R.W.Wasantha Kumara) was charged in the Magistrate Court of Elpitiya for transporting Sand without a valid permit on 01.12.2010, an offence punishable in terms of section 20 read with the sections 40, 40(a) and 40(b) of the Forest Ordinance. Since the Accused pleaded guilty to the said charge, a fine of Rs.10, 000 and Rs. 4,000 crown cost were imposed on him (Case No. 67582). The claimant petitioner (hereinafter referred to as the Petitioner)

submitted that being the registered owner of the said motor Lorry, he had immediately terminated the service of the Accused as Driver of the Lorry and the Accused had lodged a complaint against him at the Labour Department claiming compensation. Subsequent to the Order of the Magistrate court, the Learned Magistrate of Elpitiya proceeded to hold an inquiry for the purpose of deciding whether the said vehicle allegedly used for committing of the offence should be confiscated or not.

While the Inquiry was pending, the vehicle was released to the Petitioner on a Bond and he submitted that he had to re-employ the Accused as per the requests of his parents. He further submitted that he had warned the Accused not to use the vehicle for any illegal purpose and he closely monitored the movements of the Accused.

However, on 22.06.2011 the Driver (The Accused) had been again arrested by the Officers of the Forest Department for transporting Bamboo valued at Rs. 15,375 without a valid permit. Accordingly, he had been charged for the second time before the Magistrate court of Elpitiya in terms of section 25 read with sections 40 and 40(a) of the Forest Ordinance as Amended. While the confiscation inquiry of the second incident (Case No.70009) was pending, the Learned Magistrate of Elpitiya concluded the confiscation inquiry of first incident (Case No. 67582) and made an order dated 02.03.2012 to confiscate the said vehicle. Being aggrieved by that order, the Petitioner made a revision application to the High Court of Balapitiya and the Learned High Court Judge of Balapitiya had ordered for a fresh confiscation inquiry to be held by another Magistrate. Accordingly a fresh inquiry was held by another Magistrate appointed by the Judicial Service Commission and the Learned Magistrate by his order dated 21.11.2014 had released the vehicle to the Petitioner having satisfied that the Petitioner had taken all the precautions to

prevent the vehicle being used for any illegal purpose. A lengthy trial was held against the Accused with regard to the second incident (**Case No.70009**) and the Learned Magistrate of Elpitiya had found the Accused guilty of an offence punishable under of section 25 read with sections 40 and 40(a) of the Forest Ordinance and imposed a fine of Rs.100, 000 if default 06 months simple imprisonment and a sentence of 01 year imprisonment suspended for 05 years. Again a confiscation inquiry was held and the Learned Magistrate pronounced order dated 20.10.2015 to confiscate the alleged vehicle and to sell it by public auction. Being aggrieved by the said order the Petitioner filed a revision application bearing No REV 932/16 before the High Court of Balapitiya which was dismissed by the Learned High Court Judge of Balapitiya.

The Petitioner being aggrieved by the said dismissal of the High Court and the Order of the Learned Magistrate of Elpitiya wishes to invoke the revisionary jurisdiction of this court.

In the case of **Manawadu v The Attorney General (1987) 2 SLR 30**, it was held that

“...if the owner on the balance of probability satisfies the court that he had taken precautions to prevent the commission of the offence or the offence was committed without his knowledge nor he was privy to the commission of the offence then the vehicle has to be released to the owner...”

It is settled law that the burden is casted on the claimant to prove that the he took all precautions to prevent the offence being committed and such burden needs to be discharged on a balance of probability.

In the aforementioned **Manawadu** case, **Sharavananda, C.J**, stated that,

...Dixon C.J., in Commissioner of Police v. Tanes(1957-58) 68 CLR 383,
underlined this canon of interpretation:

"It is a deep-rooted principle of the law that before anyone can be punished or prejudiced in his person or his property by any judicial or quasi-judicial procedure, he must be afforded adequate opportunity of being heard ..."

It is important to note that the Petitioner was afforded with this opportunity of being heard by the Learned Magistrate of Elpitiya and the confiscation order was made only after considering the evidence placed before him.

In the case of **Mary Matilda Silva, Vs. P.H. De Silva [CA (PHC) 86/97]**

Sisira De Abrew, J has stated that,

"For these reasons I hold that giving mere instructions is not sufficient to discharge the said burden. She must establish that genuine instructions were in fact given and that she took every endeavor to implement the instructions..."

Accordingly we are of the view that giving mere verbal instructions to the driver by the owner of the vehicle does not sufficiently establish the precautionary measures. It is pertinent to note that the vehicle was previously involved in another offence as well. Therefore the degree of preventive measures that should have been taken by the owner of the vehicle to prevent an offence being committed again using the vehicle is comparatively higher. But the Petitioner had re employed the Accused driver after giving mere verbal instructions which in fact is insufficient to establish, on a balance of probability, that he has taken every possible precaution to prevent an offence being committed.

Considering the above, this court is of the view that the order of the Learned High Court Judge of Balapitiya affirming the order of the Learned Magistrate of Elpitiya is in accordance with the law. Thus, we see no ground to interfere with the decisions of both the High Court and the Magistrate Court.

Appeal is hereby dismissed without costs.

JUDGE OF THE COURT OF APPEAL

Janak De Silva, J.

I agree,

JUDGE OF THE COURT OF APPEAL

Cases referred to:

1. Manawadu v The Attorney General (1987) 2 SLR 30
2. Mary Matilda Silva, Vs. P.H. De Silva [CA (PHC) 86/97]