

**MUDANKOTUWA  
V.  
ATTORNEY GENERAL**

COURT OF APPEAL  
HECTOR YAPA, J.  
C.A. 1061/88  
M.C. KANDY NO. 78490  
MAY 08, 29, 1996  
JUNE 05, 1996.

*Forests Ordinance S. 25 (2) S. 40 (1) - Transporting Timber without a Permit - Confiscation of Vehicle - Owner had no knowledge that Timber was to be transported - Can the vehicle be confiscated.*

On 23.8.88, six persons were detected transporting timber in a Tractor and Trailer owned by the Petitioner without a permit. At the trial the driver pleaded guilty and he was convicted. The Charges against the other accused were withdrawn.

An application by the Petitioner for the release of the said vehicle was inquired into, and after inquiry the learned Magistrate confiscated the said vehicle.

The Petitioner contended that on the material placed before Court it was clear that the Timber had been transported by the Driver without his permission and knowledge.

**Held :**

(1) As seen from the Evidence the vehicle was taken over by the Driver from the Petitioner's house in the morning and it was returned to him in the Evening with the collection. Further, clear instructions had been given by the Petitioner to the driver not to transport timber or use the vehicle for any other illegal purpose. The vehicle was in fact given to the driver to transport only metal and sand on hire.

(2) The observations by the learned Magistrate that "in view of the said abetment even though there was no knowledge on the part of the Petitioner regard to this incident, it was possible to state that generally the Petitioner had the knowledge that the vehicle would be used for illegal purpose or for the transport of items not permitted by Law - is a Misdirection. This conclusion, that the Petitioner had abetted the Driver in the commission of the illegal act of transporting timber without a permit had

been made when there was no material even to hold that the Petitioner had knowledge of the illegal act committed by the Driver.

**APPLICATION** in Revision from the order of the Magistrate Court of Kandy.

**Cases referred to :**

1. *Manawadu v. A. G.* 1987 - 2 SLR 30.
2. *Nizar v. I. P. Wattegama* - 1978-79 2. SLR 304.
3. *Faris v. O. I. C. Police Station, Galenbindunawewa* - 1992 - 1 SLR 167.

*Faiz Musthapa P.C.* with *S.N. Senanayake* for Petitioner.  
*V. Siriwardane SC* for A.G.

*Cur. adv. vult.*

July 21, 1996.

**HECTOR YAPA, J.**

In this case the Petitioner is the owner of Tractor No. 36 Sri 8968 and Trailer No. 45 Sri 3712. On 23.08.88 six persons were detected transporting timber valued at Rs. 2,125/- in the said tractor and trailer without a permit, by the Peradeniya Police. Thereafter, these six persons including the driver of the said vehicle were charged in the Magistrate's Court of Kandy with having committed an offence punishable under section 25 (2) read with section 40 (1) of the Forests Ordinance as amended. At the trial the 1st accused who was the driver of the said vehicle pleaded guilty to the charge and the Magistrate convicted him and imposed on him a fine of Rs. 1000/- with a default sentence of 6 months imprisonment. The charges against the other accused were withdrawn by the police. When an application was made for the release of the said tractor and trailer on behalf of the Petitioner, the Magistrate decided to hold an inquiry. After the inquiry the learned Magistrate by his order dated 20.09.88 confiscated the said tractor and trailer and the timber that was transported without a permit. The Petitioner has filed this revision application seeking to set aside the order confiscating the said tractor and trailer belonging to him.

At the inquiry before the Magistrate the Petitioner, the driver of the said vehicle Sonny and the owner of timber, Premaratne gave evidence. Petitioner in his evidence stated that he was the registered owner of tractor No. 36 Sri 8968 and trailer No. 45 Sri 3712, and Sonny was his

driver who was in his employment for the past five months. He said he obtained the said vehicle for the purpose of transporting metal on hire, as metal was available in the area and further he stated that the said vehicle was used only for the purpose of transporting metal and sand. He said that he had given instructions to his driver not to transport timber or not to use the vehicle for any illegal purpose. The witness also said that every morning the driver takes the tractor from his house and returns it in the evening with the money collected for transporting metal and sand on hire. He said normally he did not obtain in writing the details of the trips done for hire from the driver, but he got them orally. However he said that the driver submitted the bills for the diesel used on the vehicle. The witness stated that on 23.08.88 after the detection he came to know that his driver had used his vehicle to transport timber belonging to one Premaratne. The position of the Petitioner however was that he had no knowledge that timber belonging to said Premaratne was to be transported in his vehicle on that date. Petitioner further stated that he had no cases against him for transporting timber in his vehicle and that this was the first time that he came before a Court.

Premaratne the owner of timber gave evidence and stated that the tractor owned by the Petitioner was used for the transport of metal and sand. He said on 23.08.88 when he met Sonny, the driver of the tractor belonging to the Petitioner, returning after taking a load of metal, he requested him to transport some timber stating that he would help him. (මම සනීට කිව්වා උදව්වක් කරන්ට මේවා ප්‍රවාහකය කරන්ට කියා). Thereafter he said that when they were transporting the said timber it was detected by the police. He further stated that he did not know the Petitioner at the time of the detection and came to know him only later. The driver Sonny gave evidence and stated that the owner of the tractor namely the Petitioner had employed him as the driver of the said tractor for the purpose of transporting metal and sand on hire and further said that he had been instructed not to use the said vehicle for any illegal purpose. On 23.08.88 when he was returning in the tractor, Premaratne wanted him to transport some timber and while transporting the said timber it was detected by the police. He said that he transported the said timber without the permission of the Petitioner who was the owner of the vehicle. He further stated that what was normally transported in the said tractor was metal and sand and that he has never transported timber in this vehicle earlier. He also stated

that in the evening he returns to the Petitioner the money collected for the day, with a bill for the diesel used on the tractor. It was the position of this witness that the details of the trips done for hire were given by him to the Petitioner only if he was questioned.

At the hearing of this appeal the main submission of the learned Counsel for the Petitioner was that on the material placed before the Magistrate it was clear that the timber had been transported by driver Sonny without the permission of the Petitioner and without his knowledge and therefore it was incumbent upon the Magistrate to have released the said tractor to the Petitioner. The Counsel further submitted that the failure to release the tractor and the consequent order of confiscation amounted to a misdirection in law. To support this proposition he cited the case of *Manawadu v. The Attorney General*.<sup>(1)</sup> Counsel also cited two other cases namely *Nizar v. I.P. Wattagama*<sup>(2)</sup> and *Faris v. O.I.C. Police Station, Galenbindunuwewa*<sup>(3)</sup> decided under the Animals Act which provided for the confiscation of the vehicle used for the illegal transportation of cattle. In the case of *Manawadu v. The Attorney General (supra)* the principle has been clearly established that the owner of the vehicle who is not a party to the case is entitled to be heard on the question of forfeiture of the vehicle and if he satisfies the Court that the accused committed the offence without his knowledge or participation his vehicle will not be liable to forfeiture.

In the present case there was clear evidence to show that the Petitioner who was the owner of the vehicle was not a party to the case. He has not given permission to the driver to transport the timber in question. Further he had no knowledge about the commission of the said offence by his driver. This position has been corroborated by the evidence of Premaratne and driver Sonny. However, the Magistrate in his order has come to a finding that the Petitioner has permitted the driver to use the vehicle for any purpose without any control or supervision so long as the Petitioner was provided with the money obtained by hiring the said vehicle and thereby the petitioner had abetted the driver to use the said vehicle for illegal purposes. Thereafter the learned Magistrate in his order proceeded to state as follows : "In view of said abetment, even though there was no knowledge on the part of the Petitioner regard to this incident, it was possible to state that generally the Petitioner had the knowledge that the vehicle would be used for illegal purposes or for the transport of items not permitted by law. There-

fore I hold that the Petitioner had permitted the driver to transport the timber without a permit and confiscate the tractor No. 36 Sri 8968 and trailer No. 45 Sri 3712.". The above statement of the Magistrate is clearly a misdirection, and further it amounts to a failure on the part of the Magistrate to appreciate the evidence that had been led on behalf of the Petitioner. It is wrong to say that the Petitioner did not exercise control over the driver of the vehicle. As seen from the evidence the vehicle was taken over by the driver from the Petitioner's house in the morning and it was returned to him in the evening with the collections. Further clear instructions had been given by the Petitioner to the driver, not to transport timber or use the vehicle for any other illegal purpose. This vehicle was infact given to the driver to transport only metal and sand on hire. The conduct of the driver on this date in agreeing to transport timber belonging to Premaratne had been done contrary to the instructions given by the Petitioner and further it appears that this act had been done by the driver for his private gain, since he was induced to do so by Premaratne, who promised to help him for this Job.

Therefore, the Magistrate was in error when he came to the conclusion that the Petitioner had exercised no control or supervision over the driver regarding the use of the tractor. Further the evidence of the driver that he did not know that a permit was necessary to transport timber, did not alter the position that the Petitioner had control over the vehicle, since he had not given him permission to transport timber. Thus the learned Magistrate has misdirected himself in holding that the Petitioner had abetted the driver to use the vehicle belonging to him for illegal purposes. It is to be noted that this conclusion of the Magistrate, that the Petitioner had abetted the driver in the commission of the illegal act of transporting timber without a permit, had been made when there was no material even to hold that the Petitioner had knowledge of the illegal act committed by the driver.

Therefore I set aside the order of the learned Magistrate dated 20.9.88 confiscating the Tractor No. 36 Sri 8968 and Trailer No. 45 Sri 3712 and direct that the said Tractor and the Trailer be restored to the Petitioner.

**HECTOR YAPA, J.**

*Application allowed.*