
FARIS

v.

THE OFFICER-IN-CHARGE, POLICE STATION,
GALENBINDUNUWEWA AND ANOTHER

COURT OF APPEAL

S. N. SILVA, J.

APPLICATION NO. 156/90

M.C. ANURADHAPURA NO. 53104

16 JULY, 1990

Animals Act, Section 3A proviso – Transport of cattle – Confiscation of lorry – Standard of proof of defence.

Held:

In terms of the proviso to section 3A of the Animals Act, an order for confiscation cannot be made if the owner establishes one of two matters. They are:

- (1) that he has taken all precautions to prevent the use of the vehicle for the commission of the offence;
- (2) that the vehicle has been used for the commission of the offence without his knowledge.

In terms of the proviso, if the owner establishes any one of these matters on a balance of probability, an order for confiscation should not be made.

An order for confiscation could be made only if the owner was present at the time of the detection or there was some evidence suggesting that the owner was privy to the offence.

Case referred to:

1. *Nizar v. Inspector of Police, Wattegama* (1978-79) 2 Sri LR 204.

APPLICATION to revise order of confiscation of lorry by Magistrate, Anuradhapura.

Faisz Mustapha, P.C. with *Jayampathy Wickramaratne* and *T. S. Medahinna* for petitioner.

Nalinda Indatissa, S.C. for Attorney-General.

Cur adv vult.

16th July, 1990.

S. N. SILVA, J.

The Petitioner has filed this application in revision against the order dated 21.1.90, made by the Learned Magistrate of Anuradhapura confiscating the lorry bearing No. 41 Sri 6544. The said order of confiscation was made in terms of Section 3A of the Animals Act No. 29 of 1958 as amended by Act No. 10 of 1968.

The Petitioner is the owner of the said lorry which is subject to a hire purchase agreement. The lorry was detected by the Galenbindunuwewa Police on 31.12.89 in the course of a journey. There were several heads of cattle in the lorry and the driver Anwar, the cleaner Farook and one Kaffar who were in the lorry at the time of the detection were charged with the offence of transporting cattle from one administrative District to another without a permit. This is an offence under the Regulation made in terms of Section 3 of the Animals Act. The accused pleaded guilty and they were fined Rs. 100/- each. Therefore the Learned Magistrate took steps in terms of Section 3A of the Animals Act for the confiscation of the lorry.

The Petitioner sought to show cause against the confiscation, and an inquiry was held at which the Petitioner gave evidence. The Police Officer who was engaged in the detection also gave evidence. The Petitioner stated in his evidence, that he purchased the lorry about 1 1/2 years prior to the incident and gave it out to a driver on a commission basis. The arrangement being that the petitioner got 90% of the hire and the driver got 10%. The accounts were settled at the end of every week. Anwar who was driving the lorry at the time of the detection was the third driver to whom the lorry was given on this basis. The Petitioner stated that he was a textile trader in Matale and that he had no knowledge whatsoever of the commission of the offence. He also stated that the lorry was normally used for the transporting of timber and that he had warned his driver not to transport any goods where a permit is required without obtaining such a permit. The prosecution relied on the following items of evidence to negative the defence of the Petitioner. They are, (i) that there were certain holes on the hood of the lorry, each being about 2 feet in diameter and that there were iron rods fixed to the body of the lorry and the sides. This evidence shows that the vehicle had some special facility for transporting of animals. (ii) that on two previous instances detections were made where the same lorry was used for the transporting of animals contrary to the Prevention of Cruelty to Animals Ordinance.

As regards to item (i), the petitioner stated that the lorry was in that condition when he purchased it. As regards to item (ii), the petitioner stated that he was unaware of those two previous instances. He also stated that those drivers and the driver Anwar involved in the present detection were discontinued from service.

In terms of the proviso to Section 3A of the Animals Act, an order for confiscation cannot be made if the owner establishes one of two matters. They are, (i) that he has taken all precautions to prevent the use of the vehicle for the commission of the offence. (2) That the vehicle has been used for the commission of the offence without his knowledge.

In terms of the proviso, if the owner establishes any one of these matters on a balance of probability, an order for confiscation should not be made.

This section has been considered in the case of *Nizar v. Inspector of Police, Wattegama*.⁽¹⁾ In that case Vythyalingam, J. considered the implications of the proviso to Section 3A. It is observed that in view of this proviso, an order for confiscation could be made only if the owner was present at the time of the detection or there was some evidence suggesting that the owner was privy to the offence.

In the facts of this case it is clear that the owner was far away from the place where the offence was detected. There is no evidence that the owner knew in any way that the lorry was being used on this day for the particular purpose of transporting the animals contrary to the Regulations made under Section 3. Furthermore, there is the evidence of the Petitioner that he had warned the driver not to transport anything that requires a permit without such a permit. In the light of these contradicted items of evidence it would be not possible to infer that the petitioner had knowledge of the commission of this particular offence. The presence of some special facility in the lorry for the transporting of animals does not *per se* establish that the owner had knowledge of the commission of the particular offence. This however, could be a highly relevant fact, which may be used together with some other evidence, to negative the claim of the owner that he had no knowledge of the commission of the particular offence. In this case, I am of the view that there is no material to negative the claim of the owner that he had no knowledge of the commission of the particular offence.

I accordingly act in revision and set aside the order of the Learned Magistrate of Anuradhapura dated 29.1.90 confiscating the lorry bearing No. 41 Sri 6544.

The application is allowed.