

1970

Present: Thamotheram, J.

K. JOSLIN, Appellant, and S. BANDARA (Range Forest Officer),
Respondent

S. C. 600/69—M. C. Matara, 46922

Forest Ordinance (Cap. 451)—Section 40—Power of Court to confiscate a motor vehicle thereunder—Scope.

Where the driver of a lorry uses the lorry to commit an offence in contravention of the Forest Ordinance, an order of confiscation of the lorry cannot be made under section 40 against the owner if he was not in any way privy to the commission of the offence or had no reason to anticipate the commission of the offence.

APPEAL from an order of the Magistrate's Court, Matara.

A. C. de Zoysa, with *Justin Perera*, *M. M. Deen* and *Amara Wellapili*, for the claimant-appellant.

C. Dahanayake, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

October 2, 1970. THAMOTHERAM, J.—

This is an appeal from the order of the learned Magistrate confiscating lorry No. CN 1396 belonging to the appellant, under Section 40 of the Forest Ordinance.

The driver of the lorry pleaded guilty to a charge under the Forest Ordinance and the lorry was liable to forfeiture provided that where the owner proved to the satisfaction of the Court that he had used all precautions to prevent the use of the motor vehicle for the commission of the offence, no such order shall be made.

The precautions taken or the absence of any such precautions must be determined in relation to the actual offence committed and the circumstances under which it was committed. On the day that the offence was committed in the morning the lorry was used to transport goods for the Co-operative Society. In the evening the lorry was sent to transport some household goods to Kamburupitiya. Thereafter the driver without reference to the owner or to her husband who was managing the business of hiring the lorry, transported timber, without a permit, in contravention of the Forest Ordinance. In such a case I cannot see what effective precautions could have been taken by the owner. It has not been suggested that the owner or her husband were in any way privy to the commission of the offence or had any reason to anticipate the commission of the offence. In these circumstances I am of the view that the owner had led sufficient evidence to show that all precautions which could have been taken, had been taken.

I set aside the order of confiscation and direct that the lorry be returned to the owner.

Order set aside.