

NIZAR
v.
SUB-INSPECTOR KIRINDA AND ANOTHER

COURT OF APPEAL.

DR. A. DE Z. GUNAWARDANA, J.

C. A. NO. 861/85

P.C. PALAPATHWELA COURT NO. 14251

MARCH 17 AND 23, 1994.

Animals Act No. 29 of 1958 as amended by Act No. 20 of 1968, Section 3A – Whether the Primary Court has jurisdiction to make an order for the confiscation of the vehicle, used in the commission of an offence – Exclusivity of the jurisdiction of the Primary Court – Section 33(1) and Section 33(2) of the Judicature Act No. 2 of 1978.

The driver and the cleaner of the lorry used for transport of cattle, without a permit, were convicted and fined by the Primary Court, for committing offences under the Animals Act and Prevention of Cruelty to Animals Ordinance. After an inquiry into the disposal of the lorry used for the transportation of cattle, without a permit the Primary Court made Order confiscating the said lorry.

Held:

(1) that it is clear from the evidence and the other circumstances proved in the case that, the vehicle had been used for the transport of cattle, without a permit, with the knowledge of the petitioner, who is the owner of the said lorry.

(2) that in terms of Section 33(1) and (2) of the Judicature Act, the Primary Court had exclusive jurisdiction, to try offences under Section 37 of the Animals Act. It is specifically stated in Section 3A of the Animals Act that, in addition to the punishment prescribed for such offence, the vehicle used in the commission of such offence, "be liable, by order of the convicting Magistrate to confiscation." Therefore, the Primary Court which convicted the accused in this case, is the proper Court to make an Order of confiscation of the vehicle, used for the commission of the offence.

Per Dr. Gunawardana, J. "In my view, if Section 3A of the Animals Act is interpreted to mean that, the trial for offences under the Animals Act can be held in the Primary Court, but the inquiry into the disposal of the vehicle used in the commission of an offence, under that Act must be held by a Magistrate, would not only be contrary to the provisions of law, I have enumerated above, but would also negate the intention of the legislature."

APPLICATION for Revision of the judgment and Order of the Primary Court of Palapathwela.

F. Mustapha P.C. with Rohan Sahabandu for petitioner.

M. E. Hadi S.C. for Attorney-General.

Cur. adv. vult.

March 23, 1994.

DR. A. DE Z. GUNAWARDANA, J.

This is an application for revision, of an Order of the Learned Primary Court Judge of Palapathwela, dated 11.6.1985, whereby lorry No. 24 SRI 6274, owned by the Petitioner, was ordered to be confiscated under Section 3A of the Animals Act, for transporting of cattle, without a permit.

The driver and the cleaner of the said lorry, who were charged, in the same case, for committing offences under Section 3(1) of the Animals Act and Section 2(1) (b) of the Prevention of Cruelty to Animals Ordinance, pleaded guilty to the said charges, and were convicted on their own plea, by the learned Primary Court Judge, and each of them were sentenced to pay a fine of Rs. 100/-.

At the inquiry into the disposal of the said lorry, the petitioner gave evidence and stated that, he was unaware that the lorry was being used for the transport of cattle, without a permit. However, the owner admitted that the body of the said lorry is specially built in such a way, with wire fencing, to enable the transport of cattle. He admitted in cross-examination that, there were at least two cases in the Naula Magistrate Court, where his employees were fined, and in which the said lorry was involved in the transport of cattle, without a permit. The Naula Magistrate Court numbers of the said two cases are, 7219 and 12892.

It is interesting to note that, the Learned Magistrate has pointed out that in one of the cases cited before him, viz. *Nizar v. Inspector of Police, Wattegama*, reported in (1978-79) 2 SLR 304, the name of the petitioner before the Court of Appeal, is the same as the present petitioner in this case. Furthermore, the registered number of the lorry

is also the same. More pertinently, it was a Revision Application, made to the Court of Appeal, to set aside an order of confiscation of the said lorry, made by the learned Magistrate of Kandy, as the said lorry had been involved in the transport of cattle, without a permit. The learned State Counsel submitted that, it is apparent that, it is the same petitioner and the same lorry that related to the said Revision Application.

Having considered the above stated facts and circumstances the learned Magistrate has come to the finding that the vehicle had been used for the transport of cattle, without a permit, with the knowledge of the petitioner. After carefully examining the reasons given by the learned Magistrate and the evidence in the case, I see no reason to disturb the said finding.

The learned Counsel for the petitioner submitted that, the learned Primary Court Judge had no jurisdiction to make an order of confiscation, under the Animals Act, and that such an order can be made only by a Magistrate. He pointed that Section 3A of the Animals Act states that, "...Any vehicle used in the commission of such offence shall, be liable, by order of the convicting Magistrate, to confiscation". He further stated that under Section 37 of the Animals Act, any person who commits an offence under that Act, is liable to a fine not exceeding Rs. 50/- or to simple imprisonment for a term not exceeding one month, and for a second or subsequent offence, to a fine not exceeding Rs. 100/- or to simple imprisonment, for a term not exceeding 2 months.

It must be noted that under Section 33(1) of the Judicature Act, the Primary Court has been given exclusive original criminal jurisdiction, in respect of offences prescribed by the Minister, by regulation. In addition, Section 33(2) of the Judicature Act states that, the Primary Court shall have sole and exclusive jurisdiction in respect of all offences, alleged to have been committed in violation of the provisions of any enactment or any subsidiary legislation made there under, in respect of which jurisdiction is vested in the Primary Court.

In terms of the said provision the Minister by Gazette notification No. 43/4 of 02.7.1979, has designated all offences under Section 37 of the Animals Act No. 29 of 1958, to be within the exclusive jurisdiction of the Primary Court. Thus the Court that is exclusively vested with the jurisdiction to try offences under 37 of the Animals Act is the Primary Court.

It is specifically stated in Section 3A of the Animals Act that in addition to the punishment prescribed for such offence, the vehicle used in the commission of such offence, "be liable, by order of **the convicting Magistrate** to confiscation". Hence in terms of the said provision the order of confiscation is required to be made by **the convicting Magistrate**.

Being vested with the exclusive jurisdiction to try offences under the Animals Act, the Primary Court is the Court which has the power to convict persons accused of offences under the said Act. Therefore, the Primary Court which convicted the accused in this case, is the proper Court to make an Order of confiscation of the vehicle, used for commission of the offence.

The learned Counsel for the petitioner conceded that the Primary Court had the jurisdiction to try the offences under the Animals Act, with which the accused were charged with. In my view, if Section 3A of the Animals Act is interpreted to mean that, the trial for offences under the Animals Act can be held in the Primary Court, but the inquiry into the disposal of the vehicle used in the commission of an offence, under that Act must be held by a Magistrate, would not only be contrary to the provisions of law, I have enumerated above, but would also negate the intention of the legislature. Therefore, I hold that Primary Court had the jurisdiction to order the confiscation of the petitioner's lorry, used in the commission of the offences, for which the accused have been convicted. Accordingly, the said Order of the learned Primary Court Judge, dated 11.6.1985, is hereby upheld, and the application for Revision is dismissed.

Application dismissed.