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

In the matter of an Application for Revision to revise and set aside the order of the Learned High Court Judge of Anuradhapura made in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with the provisions of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990.

CA Case No: CA-CPA-0092/25
HC of Anuradhapura Case No:
HC 94/2021

The Democratic Socialist Republic of
Sri Lanka

Vs

1.Nuwara Gedara Mohammad Jabarulla Sakiyul Hasan

2. Abdul Samad Mohommad Sipnas

Accused

AND THEN

Central Finance Company PLC
No. 84, Raja Vidiya,
Kandy.

Absolute Owner Claimant

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

Respondent

AND NOW

Central Finance Company PLC
No. 84,
Raja Vidiya,
Kandy.

Absolute Owner Claimant Petitioner

Vs

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

Respondent

Before: **B. Sasi Mahendran, J.**
Amal Ranaraja, J

Counsel : Anuja Premaratne, PC with Ishan Gampalage, E. Gunasekara for Absolut Owner Claimant Petitioner
Malik Azeez, SC ,for the Respondents

Supported On: 08.10.2025

Order On: 07.11.2025

ORDER

B. Sasi Mahendran, J.

The Absolute Owner Claimant Petitioner (hereinafter referred to as the Petitioner) has filed this revision application seeking, *inter alia*, to revise and set aside the order dated 05.06.2025 issued by the Learned High Court Judge of the Provincial High Court of North Central Province held in Anuradhapura.

The Petitioner is the lawful owner of the motor vehicle bearing registration number WP CAF-5293. On 20th November 2019, the said vehicle was taken into custody by the Police on the grounds that it was allegedly found to be associated with Cannabis Sativa, commonly known as Kerala Ganja.

According to the petition on 20th February 2019, pursuant to a lease agreement entered into between the Petitioner Company and D.P.P. Pathirana, possession of the vehicle No. WP CAF-5293 was handed over to the said lessee, with the Petitioner retaining absolute ownership thereof. Later, they came to know that suspects, namely, Mohamed Jabdulla Sakyul Hasan and Abdul Samad Mohomad Sipnas, were taken to custody by the Nochchiyagama police for possession and trafficking of 10 kg and 330 g of Cannabis Sativa known as Kerala Ganja. Thereafter, they were produced before the learned magistrate on 21st November 2019 with the said vehicle. Subsequently, the petitioner made an application under section 433 (A) (1) of the Criminal Procedure Code and the Learned Magistrate ordered the release of the said vehicle to the Petitioner on a bond, subject to specified conditions, on the basis that they are the absolute owner. Later, both suspects were indicted before the High Court of Anuradhapura under Sections 54A(b) and 54A(d) of the Poisons, Opium and Dangerous Drugs Act.

At the trial, both the accused pleaded guilty to hold counts preferred against them. Based on their own plea, the Learned High Court judge imposed a fine of Rs. 30000/- each of the accused for the 1st charge and a fine of Rs. 30000/- each on the 2nd charge.

Thereafter, the petitioner made an application under section 425 of the Criminal Procedure Code to release the vehicle to them on the basis that they are the absolute owner of the said vehicle. We are mindful that the said vehicle was detected transporting the said Ganja, which is an offence under the Poisons, Opium and Dangerous Drugs Act No 13 of 1984.

It is pertinent to refer the Section 79 of the Poisons, Opium and Dangerous Drugs Act No 13 of 1984.

> *"(1) Where any person is convicted of an offence against this Ordinance or any regulation made there under the court shall order that all or any articles in respect of which the offence was committed and any boat, vessel, vehicle, aircraft or airborne craft or equipment which has been used for the conveyance*

Although there is no statutory obligation to conduct an inquiry prior to confiscation, the Learned High Court Judge, in the interest of justice, allowed the Petitioner to show cause as to why the vehicle should not be confiscated. Accordingly, an inquiry was held, during which the Petitioner was permitted to demonstrate that he had taken all reasonable precautionary measures to prevent the use of the said vehicle in the commission of the alleged offence

The Learned High Court judge in his order on 05.06.2025 has stated that the petitioner has failed to show that the company has taken all precautionary measures to prevent such an offence, applying the dicta of *Manawadu v Attorney General.*

In the aforementioned judgment, the Court held that the owner of the vehicle, though not a party to the proceedings, is entitled to be heard on the issue of forfeiture. If the owner establishes to the satisfaction of the Court that the offence was committed by the accused without his knowledge or involvement, the vehicle shall not be subject to forfeiture.

In the present case, the following facts emerged during the course of the inquiry.

1. The said lease agreement entered into between the Petitioner and the D.P.P. Pathirana on 20th February 2019.
2. Thereafter, the D.P.P. Pathirana defaulted on paying the lease rental from the inception.
3. According to the petition, the police have come to know that the said vehicle was transferred to several third parties without the knowledge of the Petitioner.

Our courts held that whenever a vehicle is transporting any illegal items, it cannot be confiscated if the owner of the vehicle can establish a balance of probability of one of the following things.

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 the instant case, the Petitioner is the absolute owner.

At the inquiry, where a vehicle has been released to a lessee under a leasing agreement by a finance company, the company is not in a position to establish that the vehicle was used for the commission of an offence without its knowledge, or that the company has taken all the precautions.

In the present case, the Petitioner was unaware of the identity of the individual who had possession of the said vehicle until it was detected by the Police. In such circumstances, the evidence presented by the Petitioner is insufficient to establish the aforementioned assertions on a balance of probabilities.

The learned High Court Judge has rightly concluded that the Petitioner has failed to establish the fact that he had the meaningful control of the vehicle, and he has taken necessary precautions to prevent the commission of an offence being committed on a balance of probabilities. It is pertinent to refer to the order made by the Learned High Court Judge.

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> 'ඒ අනුව මෙම පරම නිමිකාර සමගම හට මෙම වරද සිදු කරන අවස්ථාවේදී මෙම රථයේ සන්තකය හෝ පාලනය තිබී නොමැති බැවින් සහ එකී නීති විරෝධී කාර්යයන්ට යොදා නොගැනීමට වග බලා ගැනීමට කිසිදු ක්‍රමවේදයක් හෝ තිබූ බව තහවුරු කර නොමැති බැවින් රාජසන්තක කිරීම වලක්වා එම සමගම වෙත රථය මුදා හැරීම ප්‍රතික්ෂේප කරමි'

It is a well-established principle in our jurisprudence that, in proceedings concerning the confiscation of a vehicle, the absolute owner cannot be deemed the 'owner' for the purposes of such inquiry.

This proposition was considered in the following judgments.

Orient Financial Services Corporation Ltd. V. Range Forest Officer and Others, CA (PHC) APN 26/2011, Decided on 28.04.2011, Sisira De Abrew J held that;

'Who is the owner of the vehicle? This is the most important question that must be decided in this case. Can it be said that the absolute owner (the finance company committed the offence or it was committed with the knowledge or participation of the absolute owner. The answer is obviously no. Surely a finance company cannot participate in the commission of an offence of this nature when the vehicle is not with it. It cannot be said that

the finance company had the knowledge of the commission of the offence when the vehicle was not with it. The owner envisaged in the law cannot be the absolute owner. In the present case the registered owner is the one who drove the vehicle at the time of the commission of the offence. He was convicted on his own plea. If the court is going to release the vehicle on the basis that the owner of the vehicle is the absolute owner, then after the release, it is possible for the absolute owner to give the vehicle to another person. If this person commits a similar offence, the finance company can take up the same position and the vehicle would be again released. Then where is the end to the commission of the offence?

The Officer in Charge, Pulmoddai v. S.A.K., Subasha Priyankara Aariyasinghe and others, SC Appeal No. 62/2025, Decided On 19.9.2025, K. Priyantha Fernando, J held that;

'In the case of Ceylinco Leasing Corporation Ltd V. M.H. Harison and Others CA (PHC) APN 45/2011 decided on 25.08.2011 His Lordship Justice Sisira de Abrew held that,

> *"If the court is going to release the vehicle on the basis that the owner of the vehicle is the absolute owner, then after the release, it is possible for the absolute owner to give the vehicle to another person. If this person commits a similar offence, the finance company can take up the same position and the vehicle would be again released. Then where is the end to the commission of the offence? Where is the end to the violation of the Forest Ordinance? There will be no end.*
>
> *If the courts of this country take up this attitude purpose of the legislature in enacting the said provisions of the Forest Ordinance would be defeated.*

In my view Courts should not interpret the law to give an absurd meaning to the law. In this connection I would like to consider a passage from 'Interpretation of Statutes by Bindra' 7' edition page 235. "It is a well-known rule of construction that a statute should not be construed so as to impute absurdity to the legislature.

It is therefore clear and settled law that the absolute owner cannot be considered to be the owner as mentioned in S.40 of the Forest Ordinance, as the absolute owner has no control over the vehicle.'

Considering the above judgements and the reason given by the Learned High Court Judge, I hold that there is no reason to interfere with the order of the Learned High Court Judge dated 05.06.2025.

Therefore, I dismiss this application with a cost of Rs. 50 000/=.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.
I AGREE

JUDGE OF THE COURT OF APPEAL