

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRI LANKA**

In the matter of an application for Special Leave to Appeal under and in terms of Section 9(a) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 read with Section 63B (3) of the Mines and Minerals Act No. 33 of 1992 as amended by Act No. 66 of 2009.

SC/APPEAL/103/2021

SC SPL LA No. 375/2018

HC Kuliyaipitiya Case No. HCA 14/17

MC Kuliyaipitiya Case No. 15742

Officer in Charge,
Police Station, Pannala.

Complainant

Vs.

D.G. Aruna Priyashantha
Dangollawatta, Pahala Muruthenge,
Wewegama.

Accused

Karunadhipathi Mudiyansele,
Karunathilaka, Kawudumunna,
Ihala katugampala.

Claimant

AND BETWEEN

Karunadhipathi Mudiyansele,
Karunathilaka, Kawudumunna,
Ihala katugampala.

Claimant-Appellant

Vs.

1. Officer in Charge,
Police Station, Pannala.

Complainant-Respondent

2. Honourable Attorney General,
Department of the Attorney General,
Colombo 12.

Respondent

AND NOW BETWEEN

Karunadhipathi Mudiyansele,
Karunathilaka, Kawudumunna,
Ihala katugampala.

Claimant-Appellant-Petitioner

-Appellant

Vs.

1. Officer in Charge,
Police Station, Pannala.

Complainant-Respondent

-Respondent

2. Honourable Attorney General,
Department of the Attorney General,
Colombo 12.

Respondent-Respondent

Before : Achala Wengappuli, J.
Menaka Wijesundera, J.
Sampath B. Abayakoon, J.

Counsel : Saliya Pieris PC with Anjana Rathnasiri instructed by
Manjula Balasooriya for the Claimant-Appellant-
Petitioner-Appellant.
Sajith Bandara SC, for the Respondent-Respondent-
Respondent.

Written
Submissions : Written submissions on behalf of the 1st and the 2nd
Respondents on 15th of February 2022.
Further written submissions on behalf of the Claimant-
Appellant-Petitioner-Appellant on 7th of November 2025.

Argued on : 07.10.2025

Decided on : 31.03.2026

MENAKA WIJESUNDERA J.

In the instant matter, the Petitioner-Appellant ("Appellant") is the proprietor of *K. M. K. Food Products*, a food manufacturing business. He also engages in lending vehicles for hire, including heavy machinery. Among his fleet is a *Kobelco SK210-6 Bucket Excavator*, purchased on 03.11.2010 for Rs. 7.9 million from JR Enterprises. This Bucket excavator is the subject of the current dispute and was used for commercial hire, particularly for excavation works.

In 2015, the Appellant states he was approached by Sarath Kumara, who requested the Bucket excavator for gravel excavation. The Appellant asserts he took reasonable precautions by inspecting a valid industrial mining license and the leased mining site situated at Mohoththawa. The area was verified through a survey plan prepared by Licensed Surveyor L. W. I. Jayasekara (Plot No. 2060/15 dated 01.03.2015), and the lease agreement between Sarath Kumara and the landowner was duly examined by the Appellant prior to releasing the Bucket excavator.

On 13.02.2016, the Appellant became aware that the Bucket excavator had been seized by the Pannala Police, on allegations that it was used to excavate gravel beyond the approved mining boundaries. A report was filed on 18.02.2016 by the Complainant-Respondent (OIC of Pannala Police) before the Magistrate's Court of Kuliyaipitiya in Case No. 15742, alleging an offence under Section 63(1) of the Mines and Minerals Act, No. 33 of 1992. The operator of the Bucket excavator, Aruna Priyantha 'Accused' was charged, pleaded guilty, and was convicted.

Despite the operator's conviction, the Appellant contended that he had no knowledge that the Bucket excavator was being used unlawfully. He submitted that the license was still valid and the offence was only a technical violation of exceeding the demarcated boundaries. The Magistrate released the vehicle on a Rs. 2 million bond and fixed the matter for inquiry into the forfeiture.

At the inquiry, the Appellant and a witness by the name of Palitha Ranathunga Silva, gave evidence. The Appellant testified that the boundaries of the land were not visibly fenced, largely due to hilly terrain; the mining license was still valid for approximately two weeks and had no knowledge of any illegal excavation;

The Appellant testified that he had taken reasonable steps, including instructing the operator and visiting the site four to five times during the operation. He stated that he relied on the documents and on the representations made by Sarath Kumara. He further testified that he was

informed of the issue by the operator only after the vehicle had been seized, and that the operator himself claimed to be unaware that any boundary had been crossed.

In cross-examination, the Appellant admitted that while the boundaries were shown to him, they were not physically marked. He also admitted that he had visited the site two weeks prior to the seizure, but at that time excavation was not completed.

The second witness, namely Palitha Silva, corroborated much of the Appellant's testimony. He stated that the land had no clear fencing and that there was no objection from villagers or landowners at the time of excavation. He further stated that the Appellant checked the vehicle regularly, visited once in two weeks, and called the operator too. He also stated that the Appellant provided logistical support like fuel and repairs, showing involvement in the management of the excavation process.

The Appellant argued that under **Section 63B (1)** of the Mines and Minerals Act, forfeiture is discretionary ("may" be forfeited), and unlike other statutes, the Act does not impose a strict obligation to prove that precautionary measures should be taken. He relied on precedent to suggest that the standard is whether the owner had knowledge or not, and that he had no such knowledge.

The Respondents submitted that even under a discretionary scheme, the Appellant bore the burden of proving, on a balance of probability, that he had no knowledge of the commission of the offence; The Appellant's failure to ascertain and enforce boundaries, coupled with regular visits, showed implied negligence; and the evidence did not indicate any effort to monitor boundaries or prevent misuse, and therefore the Appellant did not act as a reasonable and prudent owner would.

The Respondents argued that the test is objective, whether a reasonable person in the Appellant's position would have acted differently to prevent the offence. On this basis, it was submitted that forfeiture was proper.

Following the inquiry, the **learned Magistrate ordered the forfeiture of the Bucket excavator to the State on 20.07.2017, holding that the Appellant had failed to establish, on a balance of probability, that he took all necessary precautions to prevent the offence or that he lacked knowledge of the unlawful activity.**

There is no clear understanding regarding the license or the land in question.

The Magistrate stated that while ownership was not disputed, the Appellant had failed to satisfy the court that there were reasons not to confiscate the vehicle. The Magistrate order that the vehicle should be confiscated is in accordance with the provisions and that that it be handed over by the owner to Court in its previous condition.

Being aggrieved by this decision, the Appellant filed an appeal to the High Court of the North Western Province (Kuliyapitiya). On 04.10.2018, the High Court affirmed the Magistrate's decision, on the basis that,

- The Magistrate erred in placing an undue burden of proving precautionary measures on the Appellant, as such a requirement does not exist under the Mines and Minerals Act.
- Nevertheless, the Appellant had not failed to satisfy the court that he had no knowledge pertaining to the commission of the offence.

Being aggrieved by the order of the High Court dated 04.10.2018, the instant application has been filed to this court. When the matter was supported for leave, the following questions of law have been framed,

c) Did the learned High Court Judge fail to consider that the misdirection of the learned Magistrate on the requirement of the existence of precautionary measures under the Mines and Minerals Act, No. 33 of 1992 as amended by Act, No. 66 of 2009, had unfairly prejudiced the Petitioner?

e) Did the learned High Court Judge and the learned Magistrate err in failing to consider that the Petitioner had satisfied the evidential burden that he had no knowledge as to the commission of the alleged offence?

In the instant matter, the Petitioner-Appellant is the registered owner of an excavator used by a third party (with the Appellant's knowledge) for license mining activities. However, it was later found that the excavation extended beyond the licensed boundaries, rendering it to be an offence under Mines and Minerals Act.

The Appellant had contended that he inspected the license, visited the site, maintained regular contact with the operator, had no knowledge of the illegal act, and took reasonable precautions.

The law pertaining to the instant matter is set out under **Mines and Minerals Act No. 33 of 1992 (as amended by Act No. 66 of 2009) under section 63A and 63B**. The said sections read as follows:

63A: (1) A police officer who has reasonable grounds to believe that an offence has been committed under this Act may, with or without a warrant, seize any mined mineral quantity of mineral which has been mined, or any machinery, equipment or material used in or in connection with, the commission of that offence.

63B: (1) Where any person is convicted of an offence under this Act, the Magistrate may make order that any mineral, machinery, equipment or material used in, or in connection with the commission of that offence or the proceeds of the sale of any such mineral, or material deposited in court under the proviso to section 63A, be forfeited to the State.

Under section 63B (1) the use of the word 'may' indicates that forfeiture of the machinery any mineral equipment used in connection with the commission of the offence is discretionary and not mandatory. But the said judicial discretion must be exercised reasonably specially to avoid penalizing non-culpable parties. There is also no expressed provision laid down exempting non guilty 3rd party owners unlike in other statutes, but this discretion of forfeiture has to be exercised after a proper inquiry has been held to ascertain whether the parties claiming the vehicles or the machinery had any knowledge of the offences that were going to be committed.

Law similar to the provisions laid down in Mines and Minerals Act had been enacted in the Forest Ordinance (as Amendment by Act No. 65 of 2009) under section 40(1), where the forfeiture of tools and machinery is mandatory upon conviction. **Section 40 (1) of the Forest Ordinance Act No. 65 of 2009** reads as follows:

(1) Where any person is convicted of a forest offence-

(a) all timber or forest produce which is not the property of the State in respect of which such offence has been committed; and

(b) all tools, vehicles, implements, cattle and machines used in committing such offence,

shall in addition to any other punishment specified for such offence, be confiscated by Order of the convicting Magistrate: Provided that in any case where the owner of such tools, vehicles, implements and machines used in the commission of such offence, is a third party, no Order of Confiscation shall be made if such owner proves to the satisfaction of the Court that he had taken all

precautions to prevent the use of such tools, vehicles, implements, cattle and machines, as the case may be, for the commission of the offence.

Other similar provisions are in,

Section 54(2) of the Excise Ordinance;

Any excisable article lawfully imported, transported, manufactured, had in possession, or sold along with, or in addition to, any excisable article liable to confiscation under this section, and the receptacles, packages, and coverings in which any such excisable article, materials, still, utensil, implement, or apparatus as aforesaid is found, and the other contents, if any, of the receptacles or packages in which the same is found, and the animals, carts, vessels, or other conveyance used in carrying the same, shall likewise be liable to confiscation.

Section (3A) Animals Act No. 29 of 1958;

Where any person is convicted of an offence under this Part or any regulations made thereunder, any vehicle used in the commission of such offence shall, in addition to any other punishment prescribed for such offence, be liable, by order of the convicting Magistrate, to confiscation : Provided, however, that in any case where the owner of the vehicle is a third party, no order of confiscation shall be made, if the owner proves to the satisfaction of the Court that he has taken all precautions to prevent the use of such vehicle or that the vehicle has been used without his knowledge for the commission of the offence.

Section 79 of the Poisons, Opium and Dangerous Drugs Ordinance;

The latest amendment made was by way of Act No.41 of 2022. The last amendment that was made to section 79 of the said Ordinance has been by way of Act No. 13 of 1984:

Section 79(1) Where any person is convicted of an offence against this Ordinance or any regulation made thereunder the court shall order that all or any articles in respect of which the offence was committed and any boat, vessel, vehicle, aircraft or air-borne craft or equipment which has been used for the conveyance of such article shall, by reason of such conviction, be forfeited to the State.

79(2) Any property forfeited to the State under subsection (1) shall –

- (a) if no appeal has been preferred to the Court of Appeal against the relevant conviction, vest absolutely in the State with effect from the date on which the period prescribed for preferring an appeal against such conviction expires;
- (b) if an appeal has been preferred to the Court of Appeal against the relevant conviction, vest absolutely in the State with effect from the date on which such conviction is affirmed on appeal. In this subsection "relevant conviction" means the conviction in consequence of which any property is forfeited to the State under subsection (1).

Therefore, under the Excise Ordinance, Animals Act and the Poisons, Opium and Dangerous Drugs ordinance, the confiscation is mandatory. But firstly, an inquiry has to be held and it has to be ascertained whether the owner or the person claiming the vehicle has any knowledge on the commission of the offence and whether he/she has taken all the precautionary measures to prevent the said commission of the offence. This has been stated with regard to the above Acts in many of our legal literature.

The knowledge on the commission of the offence and taking necessary precautions to prevent the commission of the offence, stated by His Lordship S.N. Silva as he was then, in the case of ***Faris v The Officer-In-Charge, Police Station, Galenbindunuwewa and Another [1992] 1 SLR 167.***

"... Furthermore, there is the evidence of the Petitioner that he had warned the driver not to transport anything that requires a permit without such permit. In the light of these contradicted items of evidence it would be not possible to infer that the petitioner has 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..."

A person's knowledge is contained within their mind and must be inferred based on the specific circumstances of each case. This includes situations where someone deliberately ignores the truth.

Under the **Mines and Minerals Act**, forfeiture is not mandatory, as the provision employs the permissive term "may". This wording indicates that the court retains judicial discretion in determining whether forfeiture should be ordered. Although the Act does not explicitly provide for an exemption in favour

of third parties, the discretionary nature of the provision enables the court to take such interests into account where appropriate.

In contrast, the **Forest Ordinance**, particularly section 40(1), adopts a more stringent approach. The provision states that the property involved “shall be confiscated..”, thereby indicating a mandatory form of forfeiture. Nevertheless, the Ordinance recognises a limited safeguard for third parties through the application of a precautionary test, although the scope for judicial discretion remains relatively limited. Similarly, **section 3A of the Animals Act** provides that property is “liable to confiscation..”, the court retains discretion in deciding whether such an order should be made. Significantly, the Act expressly recognises exemption for third parties.

By comparison, the **Excise Ordinance**, particularly section 54(2), reflects a strict legislative approach. The provision states that property “shall likewise be liable...” and does not provide for any exemption in favour of third parties, thereby limiting the limiting the judicial discretion. A similarly approach can be observed in **section 79 of the Poisons, Opium and Dangerous Drugs Act**, which provides that the “court shall order..” Although the provision does not explicitly recognise an exemption for third parties, the wording suggests that forfeiture may extend to any such property (vehicle/equipment) used in the offence, leaving only limited scope for judicial discretion.

Therefore, as per the above analysis, the forfeiture of a machinery or an equipment or a vehicle used for an offence under Mines and Minerals Act gives a discretion for the Magistrate to confiscate the same upon conviction for the offence. But that confiscation, according to laws of natural justice, has to be done upon inquiry as to whether the party claiming the vehicle/machinery had knowledge with regard to the commission of the machinery.

As such, upon the consideration of the materials submitted above, the mater in issue is whether the Magistrate and the learned High Court Judge were correct in confiscating the excavator under section 63B (1) of the Mines and Minerals Act.

The law above stated has clearly laid down that section 63B (1) of the said Act gives a discretion for the magistrate to decide whether machinery used in the commission of the offence should be confiscated. In the instant matter, there was an offense committed and a man was convicted. Then the question arose whether the Appellant, who claimed to be the owner of the excavator, should be confiscated or not, after the inquiry was held. At the inquiry, the Appellant and his assistant had given evidence. Both the witnesses have testified that the

Appellant came to see the excavator when diesel was needed for the same and that was maybe once a week.

Therefore, the magistrate had concluded that Appellant that not acted responsibly but had only provided fuel to the machinery. But the Appellant had stated that he checked on the relevant document marked as X1, X2 and X3 which were the mining license, the deed and the plan pertaining to the relevant land.

The Appellant had also stated in evidence that the boundaries were not demarcated because it was a hilly area. His assistant had also said so. Therefore, they said that they had exceeded the boundaries of the land.

It has also been led in evidence that the matter was investigated not on a complaint lodged but on a raid conducted by the relevant authorities.

Therefore, it is the opinion of this Court that if the Appellant undertook to give over his machinery to excavate the said land, he must also be mindful to excavate only the land pertaining to the license and not beyond.

The Appellant by stating that he took the trouble to go through the documents himself, shows his awareness as to the importance of confining to the boundaries of the land to be excavated.

However, the Appellant had neglected to supervise the excavating process other than providing fuel to the machinery involved.

Therefore, in the circumstances of the case at hand, I'm of the opinion that confiscation of the Magistrate later affirmed by the learned High Court judge is not contrary to law, because the relevant section of the Mines and Minerals Act, which is section 63B (1), has conferred power on the magistrate to forfeit to the state any mineral, machinery, equipment or material used in or in connection with the commission of an offence under the Act.

As such, I answer the two questions of law stated above in the negative and the instant appeal is dismissed.

JUDGE OF THE SUPREME COURT

Achala Wengappuli, J.

I agree.

JUDGE OF THE SUPREME COURT

Sampath B. Abayakoon, J.

I agree.

JUDGE OF THE SUPREME COURT