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

In the matter of an Appeal in terms of Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC Appeal No: 56/2024

SC. SPL. LA No: 262/2023

CA (PHC) No: 143/2017

PHC Awissawella
Application No: Rev-15/2015

M.C. Awissawella Case No: 80769

Officer-in-Charge,
Police Station,
Eheliyagoda.

Complainant

Vs.

Ranbandaraghe Hasitha Sulochana Priyaratne
No. 264/A/3, Wijeneyake Mawatha,
Eheliyagoda

Claimant

AND

Ranbandaraghe Hasitha Sulochana Priyaratne
No. 264/A/3, Wijeneyake Mawatha,
Eheliyagoda

Claimant-Petitioner

Vs.

1. Officer-in-Charge,
   Police Station,
   Eheliyagoda.

Complainant-Respondent

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

Respondent

AND

Ranbandaraghe Hasitha Sulochana Priyaratne
No. 264/A/3, Wijeneyake Mawatha,
Eheliyagoda

Claimant-Petitioner-Appellant

Vs.

1. Officer-in-Charge,
Police Station,
Eheliyagoda.

Complainant-Respondent-Respondent

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

Respondent-Respondent

AND NOW BETWEEN

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

Respondent-Respondent-Appellant

Vs.

Ranbandaraghe Hasitha Sulochana Priyaratne
No. 264/A/3, Wijeneyake Mawatha,
Eheliyagoda

Claimant-Petitioner-Appellant-Respondent

BEFORE: **HON: P. PADMAN SURASENA, CJ.**
HON: K. KUMUDINI WICKREMASINGHE, J.
HON: K. PRIYANTHA FERNANDO, J.

COUNSEL: Ms. Maheshika Silva, DSG, for the Respondent-Respondent-Appellant.

Ranjan Mendis with Kavinda Priyankarage for the Claimant-Petitioner-Appellant-Respondent.

WRITTEN SUBMISSIONS: By the Plaintiff-Respondent-Appellant on 16.09.2025.

ARGUED ON: 06.05.2024

DECIDED ON: 16.01.2026

K. KUMUDINI WICKREMASINGHE, J.

This is an appeal from a judgment of the Court of Appeal, dated 02.08.2023 setting aside the order of the Learned High Court Judge of Awissawella case bearing No: Rev/15/2015 dated 24.08.2017 and the order of the Learned Magistrate of Awissawella case bearing No: 80769 dated 04.11.2015.

Facts of the Case

The Claimant-Petitioner-Appellant-Respondent (hereinafter referred to as the "Respondent") is the registered owner of the motor vehicle bearing No. SG LD 0856. The Respondent had given the vehicle to the driver, Wijesundara

Ranasinghe Pabaluwe Mohottalage Chanaka Sanjeeva (hereinafter referred to as the "Accused") for the purpose of engaging in the business of transportation (not specified what type of transportation). The said vehicle was detained by the officers of Eheliyagoda police for allegedly transporting timber (Jak and Nadun) without a valid permit which is an offence punishable in terms of Section 40 of the Forest Ordinance as amended by the Forest (Amendment) Act No. 65 of 2009. The accused had pleaded guilty to the said offence on 25.02.2015 and the Learned Magistrate of Awissawella had ordered a fine of Rs. 20,000/- with a default sentence of two months simple imprisonment.

Thereafter a vehicle inquiry was held on 03.06.2015 regarding the confiscation of the vehicle. In conclusion of the inquiry, the Learned Magistrate of Awissawella had ordered the confiscation of the vehicle. Being aggrieved by the said order, the Respondent filed a revision application in the High Court of Awissawella challenging the order of confiscation by the Learned Magistrate. The Learned High Court judge of Awissawella had affirmed the decision of the Learned Magistrate of Awissawella and dismissed the said revision application. Being distressed by this decision, the Respondent appealed to the Court of Appeal where the Hon. Justices of the Court of Appeal set aside the order made by the Learned High Court Judge of Awissawella and the Learned Magistrate of Awissawella. Aggrieved by this decision, the Appellant had made an application of Special Leave to Appeal to the Supreme Court.

This Court by Order dated 06.05.2024, granted Leave to Appeal on the questions of law stated in paragraph 26 (ii), (iv), (v), (vi) and (viii) the Petition dated 13.09.2023, as set out below.

1. Did the Court of Appeal misdirect itself by considering the extraneous issue of omissions in a charge sheet in considering the legality of a confiscation order?
2. Did the Court of Appeal err in law by failing to consider that any error or omission in the charge cannot be considered as material as the case

record establishes that neither the accused who tendered an unqualified plea of guilt to the charge nor the Petitioner who gave evidence at the vehicle inquiry were misled by such error or omission?

3. Did the Court of Appeal err in law by failing to consider that any objection to a defect in a charge should be taken by the accused at the very inception and that no such objection was taken by the accused in the Magistrates Court or before a higher forum?
4. Did the Court of Appeal err in law by failing to consider relevant judicial pronouncements on confiscation?
5. Did the Court of Appeal err in law by failing to consider that consideration of defects in a charge sheet at the belated stage of appeal on an application made by a third party will be illogical as the conviction also is indirectly canvassed by such course of action?

My analysis hereafter will be confined to examining the aforesaid questions of law based on which leave was granted.

The first and the second questions of law will be considered together, **that is whether the Court of Appeal misdirected itself by considering the extraneous issue of omissions in a charge sheet in considering the legality of a confiscation order and if this omission misled the error or omissions in the charge cannot be considered as the case record establishes that neither the accused who tendered an unqualified plea of guilt to the charge nor the Respondent who gave evidence at the vehicle inquiry were misled by such error or omission.**

Section 40(1) of the Forest ordinance as amended by the Forest (Amendment) Act No. 65 of 2009 reads as follows;

40. (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.'.

The charge dated 25-02-2015, filed of record in the Magistrate Court case reads as follows;

"ඉහත නම සඳහන් චූදිත විත නුඹ විසින් මෙම අධිකරණයේ බල ප්‍රදේශය ඇතුළත වූ ඇහැළියගොඩ, අමුහේන්කන්ද පාරේදී 2015.02.10 දින හෝ ඊට ආසන්න දිනයක බලපත්‍ර නොමැතිව අංක SGLD -0856 දරණ ලොරි රථයෙන් රුපියල් 34458/27 ක් වටිනා කොස් දැව කඳන් 03ක් සහ රුපියල් 10982/76 ක් වටිනා නැදුන් දැව කඳන් 07ක් ප්‍රවාහනය කිරීමෙන් 1966 අංක 13, 1979 අංක 56, 1982 අංක 13, 1988 අංක 84, 1995 අංක 23, 2009 අංක 65, දරන කැළෑ සංශෝධන පනත් වලින් සංශෝධිත ශ්‍රී.ල.නි.ප්‍ර.සං 451 වන අධිකාරය වූ කැළෑ ආඥා පනතේ 24(1) වගන්තිය ප්‍රකාර අමාත්‍යවරයා විසින් 1986.11.26 වන දින අංක 429/08 දරණ අති විශේෂ ගැසට් පත්‍රයේ ප්‍රසිද්ධ කරන ලද හා 1979.12.26 වන දින අංක 68/14 දරන අති විශේෂ ගැසට් පත්‍රයෙන් ප්‍රසිද්ධ කල 1979 අංක 02 දරණ කැළෑ නියෝග මාලාවේ 09(1) නියෝගය සමඟ කියවිය යුතු 25 වන නියෝගය උල්ලංඝණය කිරීමෙන් දඬුවම් ලැබිය හැකි වරදක් කළ බවට මෙයින් චෝදනා කරමි."

The charge set out that an offence under the Forest Ordinance has been committed as amended by the Forest Amendment Acts No. 13 of 1966, No. 56 of 1979, No. 13 of 1982, No. 84 of 1988, No. 23 of 1995, No. 65 of 2009. It further stated that the offence was punishable in terms of regulation 25 read with regulation 9(1) of the Forest Regulations promulgated by the subject minister under the power vested in him in terms of the Forest Ordinance as

amended and published in the Extraordinary Government Gazette No-68/14 dated 26.12.1979 and No-429/08 dated 26.11.1986.

It must be noted that the charge did not state that if the accused is found guilty then the vehicle will be confiscated under Section 40(1) of the Forest Ordinance as amended by the Forest (Amendment) Act No. 65 of 2009.

The Court of Appeal has considered that "*It is therefore clear that when the Accused was charged before the Magistrate Court for the alleged offence committed by him, he had been informed that he would be punished under and in terms of the Forest Regulations mentioned in the "Charge". He has not been informed of any punishable section under the Forest Ordinance, which attracts the provisions of section 40 of the Forest Ordinance, if found Guilty"*.

It is the Appellant's position that the charge specifies the actus reus in words namely that the Accused on a specific date and time transported without a permit certain specified timbers (Jack and Nadun) of a specified value in lorry bearing number SGLD 0856. The nature of the offence is clearly mentioned by the aforementioned charge. The Appellant contends that the only issue raised in the Judgment of the Court of Appeal is that a specific section of the Forest Ordinance has not been mentioned in the charge.

The Appellant contends that section 24(1) of the Forest Ordinance by which power is granted to make regulations is specifically mentioned in the charge. In addition to that, the Forest Regulation No. 02 of 1979 published in gazette extraordinary No 68/14 dated 26.12.1979 is specifically mentioned in the charge. In terms of this gazette the transportation of such timber without a permit is expressly prohibited. The Appellant contends that the violation of any regulation made under Section 24(1) of the Forest Ordinance will attract the penal provision of section 25 of the Forest Ordinance and will constitute a Forest Offence which attracts section 40 of the Forest Ordinance dealing with confiscation. The Appellant contended that the only defect in the charge is that instead of referring to Regulation 5 the charge instead refers to

Regulation 9 which also relates to transportation of timber, but in a situation where a permit has in fact been issued and the same permit had expired prior to transportation. Regulation 25 which has been mentioned in the charge in this case has a cross reference to section 25 of the Forest Ordinance.

The Appellant contend that although regulation 9 and 25 are strictly not applicable in a situation where no permit has been issued, the Appellant contended that the clear description of the actus reus in the body of the charge in words, the reference to Section 24(1) of the Forest Ordinance in the body of the charge and the automatic application of Section 25 which makes the contravention of any Forest Regulation and offence under the Forest Ordinance is sufficient to comply with section 165 of the Code of Criminal Procedure Act on the necessary particulars of the charge. It is the Appellants position that the failure to cite regulation 5 and instead citing regulation 9 read with regulation 25 is not a material omission as neither the accused driver nor the Claimant Respondent were misled by such an omission.

Furthermore it is the Appellant position that the failure to cite Regulation No 5 and instead citing regulation No 9 read with regulation 25 is not a material omission as neither the accused driver nor the Respondent were misled by such omission.

Now turning to the established law.

In the case of **Jayaratne Banda V. Attorney General (1997) 3 SLR 210**, it was held that,

> *" ... The defence the accused-appellant had taken was a simple denial of the commission of the crime. There is nothing in the petition of appeal to indicate that due to the mistake in the indictment the accused-appellant was misled and thereby caused prejudice to his defence. In the circumstances it is not difficult for us to conclude that the presence or absence of the 'error' could not have made any difference to the general*

conduct of the defence and therefore cannot be regarded as a material error in terms of Section 166 of the Code …"

*In **Molagoda v. Gunaratne (39 NLR 226)** Counsel for the accused-appellant sought to elevate the question of the wrong Gazette in the charge to a fundamental defect of procedure. He contended that an omission to frame a charge in accordance with the provisions of the Criminal Procedure Code was an omission to frame a charge at all. This argument was rejected by the Supreme Court which held that a breach of a specific rule of law in the Code was curable by the application of Section 425 of the Old Criminal Procedure Code (which is equivalent to section 436 of the present Code) if the breach had not caused a failure of justice … "*

In the case of **H.P.D. Nimal Ranasinghe V. OIC, Police, Hettipola [SC Appeal 149/2017)**, it was held that:

*"The question that must be decided is whether any prejudice was caused to the accused-appellant as a result of the said defect in the charge sheet or whether he was misled by the said defect. It has to be noted here that the accused-appellant, at the trial, had not taken up an objection to the charge sheet on the basis of the said defect. In this connection judicial decision in the case of **Wickramasinghe Vs Chandradasa 67 NLR 550** is important. Justice Sri Skanda Rajah in the said case observed the following facts.*

> *"Where in a report made to Court under Section 148(l)(b) of the Criminal Procedure Code, the Penal Provision was mentioned but, in the charge sheet from which the accused was charged, the penal section was not mentioned."*

His Lordship held as follows;

"The omission to mention in a charge sheet the penal section is not a fatal irregularity if the accused has not been misled by such omission. In such a case Section 171 of the Criminal Procedure Code is applicable."

In the case of **H. G. Sujith Priyantha V. OIC, Police station, Poddala and others [CA (PHC) 157/2012],** it was held that,

"In this instance, the claim of the appellant who is not an accused in the case had been made after the two accused were found guilty on their own plea. Therefore, it is understood that the Court was not in a position to consider the validity of the charge sheet at that belated point of time. Indeed, an application under the aforesaid proviso to Section 40 in the Forest Ordinance could only be made when confiscation has taken place under the main Section 40 of the Forest Ordinance. Aforesaid main Section 40 of the Forest Ordinance imposes a duty upon the Magistrate who convicted the accused under the Forest Ordinance to confiscate the vehicle used in committing such an offence. Furthermore, the word "shall" is used in that main section and therefore the confiscation of the vehicle is automatic when the accused is found guilty. Accordingly, it is clear that the law referred to in the proviso to Section 40 is applicable only thereafter. Therefore, I conclude that the appellant who made the application relying upon the proviso to Section 40 is not entitled to raise an issue as to the defects in the charge after the accused have pleaded guilty to the charge under Section 40 of the Forest Ordinance. Furthermore, the person who makes a claim under the proviso to the said Section 40 could not have made such an application unless and until the accused found guilty to a charge framed under the Forest Ordinance. Hence, it is clear that he is making such a claim, knowing that the accused were already been convicted for a particular charge under the Forest Ordinance. Therefore, the appellant is stopped from claiming the cover relying on the defects in the charge sheet, in his application made under the proviso to Section 40 of the Forest Ordinance…."

I am of the view that the omission of the penal section in the charge sheet does not, in any manner, prejudice the accused. The charge sheet, though referring to the wrong section in the regulations, nevertheless contains all material particulars necessary to inform the accused of the nature of the offence. It clearly sets out the name of the offence, the date on which it was committed, the vehicle number involved, the species of timber that was unlawfully transported without a permit, the assessed value of such timber, as well as the relevant Gazette notification and its subsequent amendments. These particulars are sufficient to afford the accused reasonable notice of the charge he was required to answer.

It is evident, therefore, that the error or omission in the charge sheet did not mislead or otherwise cause any injustice to the accused. The record reflects that the charges were duly explained to him, and he voluntarily entered a plea of guilty. During the vehicle inquiry, the Respondent was fully aware of the nature of the charge against the accused and was also cognizant of the fact that the accused had admitted to the offence. Accordingly, neither party can be said to have been misled by the omission complained of.

In these circumstances, such an omission cannot be regarded as a material defect capable of vitiating the proceedings, as discussed in the authorities referred to above. Once the accused had unequivocally pleaded guilty to the offence, it is not open to either the accused or the Respondent to subsequently rely on a technical defect or omission in the charge sheet as a ground of defence. The alleged deficiency is, therefore, immaterial and does not affect the validity or legality of the confiscation order made by the learned Magistrate.

A similar view was expressed by the Court of Appeal in ***Range Forest Officer v. Kottasha Arachchige Ubhayaweera and Ramachandran Gnaneshwaran*** **[2012] CA (PHC) 95/2012,** and reaffirmed in ***Cadar Bawa Jennathul Farida v. Range Forest Officer and the Attorney General*** **[2017] CA (PHC) 94/2017,** where it was held that the absence or omission of

a penal provision in the charge sheet, in the absence of demonstrable prejudice, does not render the proceedings invalid.

For matters of convenience the third and fifth questions of law will be dealt together. Namely **that any objection to a defect in a charge should be taken by the accused at the very inception, and that no such objection can thereafter be taken by the accused either in the Magistrate's Court or before a higher forum**. The 5th question of law being "**Did the Court of Appeal err in law by failing to consider that consideration of defects in a charge sheet at the belated stage of appeal on an application made by a third party will be illogical as the conviction also is indirectly canvassed by such course of action?**"

In terms of section 40 of the Forest Ordinance, a vehicle becomes liable to confiscation only when the Accused is found guilty of committing a forest offence.

The Appellant contends that no appeal or revision was ever lodged by the Accused Driver against his conviction. Furthermore, the B Report marked P2A of the brief sets out a detailed description of how the Accused Driver had committed the offence of transportation of timber without a valid permit. Furthermore, the Appellant contends that the Respondent submitted himself to the vehicle inquiry knowing very well that the offence of transportation of timber without a permit for which the Accused driver was arrested for.

In the aforesaid case of Jayaratne Banda it was further held that,

> *"…Had the objection to the indictment been taken at the trial it would have been open to the Court to have acted under Section 167 of the Code of Criminal Procedure Act to amend the indictment. Senior Counsel for the appellant too conceded that it was open for the prosecution to have amended the indictment at any stage before the close of the prosecution case … "*

In the case of **Lionel V. Officer-In-Charge, Meetiyagoda Police Station [1987] 1 SLR 210**, it was held that,

> *"that the time at which it falls to be determined that the conditions that the offences alleged had been committed in the course of the same transaction had been fulfilled, is the time when the accusation is made, and not when the trial is concluded and the result is known"*

In the case of **A.K.K. Rasika Amarasinghe V. Attorney General and another [SC Appeal 140/2010)**, it was held that,

> *"The Accused-Appellant has not raised an objection to the charge at the trial. In the first place we note that at page 97, the Accused-Appellant has admitted that he knows about the charge. As I pointed out earlier the Accused-Appellant has failed to raise any objections to the charge at the trial. In this regard I rely on the* ***judgment of the Court of Criminal Appeal in 45 NLR page 82 in King V. Kitchilan*** *wherein the Court of Criminal appeal held as follows:*
>
> > *"The proper time at which an objection of the nature should be taken is before the accused has pleaded"*
>
> *"It is well settled law that if a charge sheet is defective, objection to the charge sheet must be raised at the very inception."*

In the aforesaid case of H. G. Sujith Priyantha it was further held that,

> *"Moreover, in the event this court makes a determination the issue as to the defects in the charge sheet at this late stage, it may lead to raise questions as the conviction of the accused as well. Such a position is illogical and certainly it will lead to absurdity. Such an absurdity should not be allowed to prevail before the eyes of the law……"*

Accordingly, it is my considered view that any objection pertaining to a defect in the charge sheet ought properly to have been raised at the earliest possible stage, namely, before the accused entered his plea of guilt. The law is well settled that any defect or irregularity in a charge sheet must be taken up during the trial before the learned Magistrate, thereby affording the court an opportunity to rectify such error without occasioning prejudice to either party.

As observed in the authorities cited above, an accused who, with full knowledge of the charge, voluntarily and unequivocally pleads guilty, cannot thereafter challenge the validity of the proceedings on the basis of an alleged defect in the charge sheet. Once such a plea has been entered, the accused is deemed to have accepted the charge as framed, together with all its particulars.

While the Respondent has a right to his property, namely his vehicle, it is incumbent upon him to establish that he had no knowledge of, and had taken all reasonable precautions to prevent, the commission of the offence. The Respondent has failed to discharge this burden. The Respondent claims that he had given verbal instructions to the Accused Driver not to transport timber without a permit. I am of the view that merely giving verbal instructions is not sufficient to discharge the burden cast upon him by law to take all necessary precautions to prevent the commission of the offence. Moreover, he cannot now seek to rely upon an alleged defect in the charge sheet as a defence at the appellate stage.

In ***Somawathie v. Wilson and Others*** **[2010] 1 Sri L.R. 128**, it was held that a new ground cannot be raised for the first time on appeal if it was not taken up at the trial under the issues so framed. The Court, however, may consider such a ground if:

1. it raises a pure question of law and not a mixed question of law and fact;
2. the question was in substance put forward in the lower court under one of the issues raised; and

3. the appellate court has before it all the material necessary to decide the question.

The Respondent has failed to satisfy these requirements, particularly the second criterion, and therefore cannot raise a new ground at this stage of appeal. To permit such a contention would be contrary to established appellate principles and would indirectly render the conviction and confiscation order defective. It is therefore the view of this Court that the belated challenge to the charge sheet cannot be sustained.

The next and final question of law **is the failure in considering the relevant judicial pronouncements in confiscation.**

In the case of **Sinnetamby v Ramalingam 26 NLR 371, it was held that,**

> *"... before an order of confiscation is made, the owner should be given an opportunity of being heard, and that an order of confiscation should not be made, unless the owner is in some way implicated in the offence which renders the thing liable to confiscation."*

In the case of **Rasiah v Thambiraj** [1951] 53 NLR 574, Nagalingam, J stated that:

> *"It is one of the fundamentals of administration of justice that a person should not be deprived either of his liberty or of his property without an opportunity being given to him to show cause against such an order being made. To take a case, which cannot be regarded as an extreme one, where an owner lends or hires his cart without knowing that the borrower or hirer intends to use it for the purpose of committing an offence, would it be right to confiscate the cart merely because it has been so used. I think that if the owner can show that the offence was committed without his knowledge and without his participation in the slightest degree, justice would seem to demand that he should be restored his property."*

In the case of **Manawadu v the Attorney General [1987] 2 SLR 30, Sharvananda CJ**, said that:

> *"But if the owner had no role to play in the commission of the offence and is innocent, then forfeiture of his vehicle will not be penalty but would amount to arbitrary expropriation since he was not a party to the commission of any offence. Among the important rights which individuals traditionally have enjoyed is the right to own property. This right is recognised in the Universal Declaration of Human Rights (1948). Article 17(1) of which states that everyone has the right to own property and Article 17(2) guarantees that 'no one shall be arbitrarily deprived of his property.'"*

In the case of **Mary Matilda Silva v Inspector of Police, Habarana, Sisira de Abrew J.** held that:

> *"In my view, for the owner of the vehicle to discharge the burden (1) that he/she had taken all precautions to prevent the use of the vehicle for the commission of the offence (2) that the vehicle had been used for the commission of the offence without his/her knowledge, mere giving instructions is not sufficient. In order to discharge the burden embodied in the proviso to section 3A of the Animals Act is it sufficient for the owner to say that instructions not to use the vehicle for illegal purpose had been given to the driver? If the Courts of this country is going to say that it is sufficient, then all what the owner in a case of this nature has to say is that he gave said instructions. Even for the second offence, this is all that he has to say. Then there is no end to the commission of the offence and to the use of the vehicle for the commission of the offence. Every time when the vehicle is detected with cattle all what he has to say is that he had given instructions to the driver. Then the purpose of the legislature in enacting the proviso to section 3A of the Animals Act is frustrated."*

In the case of **Orient Financial Services Corporation Ltd. v Range forest Officer, Ampara, /SC Appeal 120/2011**, it was held that;

> *"The Supreme Court has consistently followed the case of Manawadu V. Attorney General. Therefore, it is settled law that before an order for forfeiture is made the owner should be given an opportunity to show cause. If the owner on balance of probability satisfies the Court that he has taken precautions to prevent the commission of the offence or the offence was committed without his knowledge, nor he was privy to the commission of the offence then the vehicle has to be released to the owner."*

In the case of **The Finance Company PLC v Priyantha Chandana and Others (2010) 2 Sri L R 220** it was held that;

> *"On a consideration of the ratio decidendi of all the aforementioned decisions, it is abundantly clear that in terms of section 40 of the Forest Ordinance, as amended, if the owner of the vehicle in question was third party, no order of confiscation shall be made if that owner had proved to the satisfaction of the Court that he had taken all precautions to prevent the use of the said vehicle for the commission of the offence. The ratio decidendi of all the aforementioned decisions also show that the owner has to establish the said matter on a balance of probability. "*

Section 40(1) of the Forest Ordinance as amended by the Forest (Amendment) Act No. 65 of 2009 provides exceptions to a confiscation of a vehicle if the owner of the vehicle proves that he had taken all precautions to prevent the commission of the offence. The judicial precedents in confiscation of the vehicle had been that if the owner can prove that the offence was committed without his knowledge or if he had taken all precautions to prevent the commission of offence then the vehicle cannot be confiscated.

In the aforementioned case of **The Finance Company PLC,** Dr. Shirani A. Bandaranayake, J. held that;

"Several measures could have been taken in this regard. For instance, there could have been a clause to that effect in the agreement between the appellant and the 1st respondent. Similarly if the 1st respondent had authorized others to use the said vehicle, he too could have had a written agreement inclusive of specified conditions."

In the aforementioned case of **Mary Matilda Silva, it was held that;**

"*…mere giving instructions is not sufficient"*

It is evident from the authorities that the mere issuance of instructions by a vehicle owner is not, in itself, sufficient to discharge the burden of proving that all necessary precautions were taken to prevent the commission of an offence. The law requires that the owner demonstrate that he exercised due diligence and took every reasonable step to ensure that the vehicle was not used for any unlawful purpose.

In the present case, the Respondent has only established that he issued certain oral instructions to the driver. However, such instructions, by themselves, cannot be regarded as constituting all the precautions that a prudent owner ought to have taken. In his testimony before the learned Magistrate, the Respondent stated that he had instructed the driver not to transport sand or wood but made no mention of issuing any direction with regard to the transportation of timber without a valid permit. This omission is significant. The testimony of the accused driver corroborates this position, as he too confirmed that the Respondent had not given any specific instructions regarding the transport of timber. The driver further stated that the Respondent had no knowledge of the incident and that his employment was terminated following the incident in question.

It is also noteworthy that the Respondent admitted that he had never personally inspected or visited the locations to verify the movements of his vehicle and had relied solely on telephone communication for this purpose. Such a method cannot be regarded as a sufficient precautionary measure. It is neither reasonable nor realistic to expect that a driver engaged in unlawful activities would voluntarily disclose such conduct to the vehicle owner during routine telephone calls.

Furthermore, the Respondent is engaged in operating a sawmill, and he has failed to produce any evidence to establish that the timber in question was not intended for, or transported to his sawmill. The learned Magistrate, upon a careful evaluation of the evidence, was not satisfied that the Respondent lacked knowledge of the commission of the offence. In the absence of credible proof of due diligence or precautionary measures, the Respondent has failed to discharge the burden required of him under the law.

In the case of **Kumara de Silva & Others V Attorney General (2010) 2 Sri L.R. 169**, it was held that;

> *"Credibility is a question of fact, not of law. Appeal Court Judges repeatedly stress the importance of the trial judge's observations of the demeanour of witnesses in deciding questions of fact. The acceptance or rejection of evidence of witnesses is therefore a question of fact for the trial Judge, since he or she is in the best position to hear and observe witnesses. In such a situation the Appellate courts will be slow to interfere with the findings of the trial Judge unless such evidence could be shown to be totally inconsistent or perverse and lacking credibility."*

As observed in the aforementioned case, this Court is not entitled to interfere with the findings of fact and conclusions arrived at by the learned Magistrate upon a proper consideration of the evidence placed before the Court unless it is perverse. Accordingly, this Court is in agreement with the learned Magistrate's finding that the Respondent has failed to establish that the timber in question was not transported to his sawmill.

The Respondent has also failed to discharge the burden of proving that he exercised all reasonable precautions to prevent the commission of the offence, or that he lacked knowledge thereof. In the absence of such proof, the statutory requirements under Section 40(1) are clearly satisfied. Therefore, upon the accused being found guilty of the offence, the confiscation of the vehicle was lawfully ordered in accordance with the said provision.

When considering all the above discussed circumstances, it is evident that the error or omissions in a charge sheet did not mislead the accused or the Respondent, therefore when the accused pleaded guilty and convicted, the vehicle is liable to be confiscated. The error or omission in the charge must have been brought at the trial stage in the Magistrate Court and not at an appeal stage. If the defects of a charge are considered at the appeal stage, then the conviction would be incorrect. Even though the Respondent had a proprietary right over the vehicle, he had failed to establish that he had no knowledge of the commission of the offence or that he had taken all necessary precautionary measures to prevent the commission of the offence.

Having examined the facts of the case, the material placed before this court and due to the reasons mentioned above, the questions of law on which leave has been granted are answered in the affirmative.

Therefore, I allow the appeal of the Appellant by upholding the orders of the Magistrate Court of Awissawella and the High Court of Awissawella and set aside the judgment of the Court of Appeal.

Appeal Allowed.

JUDGE OF THE SUPREME COURT

P. Padman Surasena, CJ.
I agree.

CHIEF JUSTICE

K. Priyantha Fernando, J.

I agree.

JUDGE OF THE SUPREME COURT