

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

**CA 25/2016**

MC-Kanthalai-49688

L.G.D.S.S. Kanthi Menike  
No 114/3 B, Kulugammana,  
Kandy.

**Petitioner**

**Vs.**

The Commissioner of Co-Operative  
Development and Registrar of Co-Operative  
Societies (Eastern Province),  
Health Ministry Office Complex,  
Courts Road,  
Trincomalee.

And others

**Respondents**

CA 25/2016

MC-Kanthalai-49688

Before : **Vijith K. Malalgoda, P.C.J. (P/CA) &  
P. Padman Surasena, J.**

Counsel : Mahanama de Silva for the Petitioner  
Nayomi Kahawita, SC for the Respondent

Decided on : 16.05.2016

**Vijith K. Malalgoda, P.C.J. (P/CA)**

Learned counsel for the petitioner has come before this court seeking a Writ of Certiorari to quash the impugn decision P10 and seeking a Writ of Prohibition prohibiting the learned Magistrate from imposing the decision P10.

When going through the material placed before us by the counsel for the petitioner, we observe that the impugn order had been delivered on 17.05.2013. Petitioner has not taken steps to come before this court once the order was delivered by the 6<sup>th</sup> Respondent. By the time he has come before this court, the 1<sup>st</sup> Respondent who is the incumbent of the 6<sup>th</sup> Respondent has filed action before the Magistrate and the Magistrate has already made order enforcing the

findings of the 6<sup>th</sup> Respondent. We were further informed by the learned State Counsel who represented the Attorney General that the petitioners have now appealed against the said order made by the learned Magistrate to the provincial High Court. When going through the material, we observe that the petitioner is guilty of lashes because he had failed to come before this court in the first instance.

We further observe that the Magistrate has already enforce the order of the 6<sup>th</sup> Respondent and therefore, the purpose of issuing a Writ of Prohibition prohibiting the learned Magistrate from enforcing said P10 will not arise. The petitioner has gone before the provincial High Court against the said order of the Magistrate. This fact had not been revealed by the papers submitted by the petitioner. We observe that the petitioner is guilty of concealing material facts before this court as well.

Petitioner has used an alternative which was available to him that is by going before the provincial High Court against the order made by the learned Magistrate. When considering all these material, we are of the view that this is not a fit and proper case to issue notices on the Respondents.

Notices are therefore refused. No cost is ordered.

**PRESIDENT OF THE COURT OF APPEAL**

**P. Padman Surasena, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**

LA/-