

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

*In the matter of an application for punishment for contempt of court made under sections 6(3) and 10 (1)(c) of the Contempt of a Court Tribunal or Institution Act No. 8 of 2024 as read with Article 105(3) of the Constitution of the Democratic Socialist Republic of Sri Lanka.*

**Case No. CA/COC/19/2025**

Tholka Mudiyansele Marius Roshan William  
Dissanayake,  
No. 21,  
Simon Hewavitharana Mawatha,  
Colombo 03.

**Petitioner**

**Vs**

Megha Dashini Weerasekara,  
No. 696, Havelock Road,  
Colombo 06.

**Respondent**

Before : **Hon. Rohantha Abeysuriya PC, J.(P/CA)**  
: **Hon. K. Priyantha Fernando, J.(CA)**

Counsel : Ali Sabry, PC with Shamir Zarahir, Akila Alutwatte, Minul Muhamdiramge and Manul Rajapakshe instructed by Diani C. Millavithanachchi for the Petitioner.

Saliya Peris, PC with Niranjan Arulpragasam, Lasika  
Udayangani and Ashenka De Silva instructed by Niroshi  
Paranagama for the Respondent.

Written Submissions on : 14.11.2025 for the Petitioner.  
14.11.2025 for the Respondent.

Supported on : 01.10.2025 & 22.10.2025

Decided on : 06.02.2026

**K. Priyantha Fernando, J.(CA)**

The Petitioner instituted this action by Petition dated 27.06.2025 against the Respondent, primarily on the basis of acts amounting to contempt of Court. The Petitioner alleged that the Respondent made false and misleading statements and unjustly criticized the Judiciary of Sri Lanka in documents filed before a foreign court.

The matter centers on a Sworn Affidavit dated 22.05.2025, which the Respondent filed in proceedings before the Canadian Court (File No. 46469 dated 23.05.2025) while residing in Sri Lanka. In this affidavit, together with the accompanying Priority Parenting Application, the Respondent sought orders compelling the Petitioner to hand over the minor child's passport and to consent to the child's return to Canada.

The Petitioner contended that the Respondent's acts constituted multiple instances of contempt under Section 3 of the Contempt of a Court, Tribunal or Institution Act, No. 08 of 2024. The most serious allegation of contempt arose from the Respondent's claims in her affidavit that the Sri Lankan judicial system was ineffective, failed to protect the rights of women and children, and

offered her limited recourse or protection, particularly in relation to domestic violence and parental abduction.

The Petitioner asserted that these remarks were demonstrably false, undermined the authority and integrity of the Courts, and brought the judicial system into disrepute internationally. The Petitioner further submitted that the Respondent committed contempt by lying to and misleading the Canadian Courts. Specifically, the Respondent falsely claimed in her application that no ongoing court proceedings existed in Sri Lanka regarding guardianship, parenting arrangements, or child support. The Petitioner emphasized that several judicial proceedings concerning those very matters were actively ongoing before various Sri Lankan Courts, including:

- Principal Divorce Action (Case No. 922/2024) before the District Court of Colombo.
- Appeals arising from interim orders (Case Nos. WP/HCCA/COL/220/2024 and WP/HCCA/COL/82/2025).
- A concluded appeal (WP/HCCA/COL/222/2024) with a currently applicable order regarding temporary custody.
- Maintenance Application (MC Case No. 36960/08/2025) and its related Appeal (HC Rev Case No. 33/2025).

The Petitioner argued that the Respondent's actions amounted to blatant forum shopping and an attempt to circumvent the Sri Lankan judicial process, while overriding existing orders such as the Travel Ban issued against the minor child leaving Sri Lanka. The reliefs sought in Canada were substantially similar to applications already pending in Sri Lanka. Both the Petitioner and the Respondent, Sri Lankan citizens and permanent residents of Canada, were engaged in heavily contested divorce and custody proceedings in Sri Lanka. The District Court had previously issued key interim orders, including granting temporary custody to the Respondent and imposing a travel ban on the minor child.

The Petitioner detailed a series of events where the Respondent's counsel repeatedly filed urgent motions in the District Court without notice to the Petitioner, causing prejudice. The Petitioner highlighted that the Respondent's counsel misrepresented facts to the Court, alleging that the child

was suffering from malnutrition, which led the District Court to initially grant temporary custody to the mother on 08.11.2024. The High Court of Civil Appeal, by its Order dated 27.03.2025, subsequently set aside the District Court's order of 12.11.2024, finding that the District Court had failed to follow principles of natural justice. However, considering that the child had been with the mother for five months, the High Court of Civil Appeal allowed the mother to continue physical custody until a proper inquiry was conducted.

The Petitioner further noted that the Respondent had unilaterally sought and obtained an *ex parte* order to lift the travel ban on the minor child in March 2025, a decision which the Petitioner had to urgently reinstate. It was during the pendency of these multiple, conflicting applications (including inquiries into the travel ban and the minor child's passport) that the Respondent filed her application and affidavit in the Canadian Courts, which the Petitioner alleged to be contemptuous.

The Petitioner prayed that the Court issue a Rule on the Respondent for committing the offence of Contempt of Court, including for making scandalizing and defamatory statements regarding the Sri Lankan court system. The Petitioner also sought an order restricting the Respondent from leaving Sri Lanka pending the hearing and determination of the instant application, citing a real risk of her absconding from the jurisdiction.

The Petitioner's submissions filed on 14.11.2025 focused on establishing the mandatory requirement of a *prima facie* case for the issuance of a Rule against the Respondent under the Contempt of a Court, Tribunal or Institution Act, No. 08 of 2024. The Petitioner asserted that the law, particularly Section 10(3) of the Act, mandated the Court of Appeal to issue a Rule if it was satisfied that a *prima facie* case of contempt had been established. Citing judicial precedents such as *Media Image Ltd v. Dissanayake and Malinie Gunaratne, Additional District Judge, Galle v. Abeysinghe and Another*, the Petitioner argued that the Court's duty at this threshold stage was to determine whether the material, if accepted as true, would constitute the offence of contempt and whether there were "sufficient grounds" on which it might reasonably be inferred that the offence had been committed.

The Petitioner contended that the material placed before the Court unequivocally established a strong *prima facie* case, specifically by documenting the Respondent’s deliberate submission of false evidence, suppression of material facts, and scandalous allegations in proceedings before the Provincial Court of British Columbia, Canada. The submissions highlighted several specific falsehoods in the Respondent’s Canadian court documents (P1, P2, and P3).

The first notable falsehood was the averment that the Petitioner would threaten the Respondent and child if notice of the Canadian proceedings were given. Secondly, the Respondent claimed that the Petitioner had abducted the child and that the Magistrate’s Court had awarded custody to the mother. This was directly contradicted by the official order of the Chief Magistrate’s Court, Mount Lavinia, in Case No. 47647/2024, which explicitly stated: “මෙම නඩුවට අදාළව අපරාධමය නඩු නිමිත්තක් හෙළිදරව් වී නොමැති බැවින් මෙම නඩුව නිශ්චයා කරමි” (This case is dismissed as no criminal charge is revealed in the matter).

The third major alleged contemptuous act was the Respondent’s sworn statement that the Sri Lankan legal system did “not adequately protect women and children from domestic abuse or parental abduction” and that she had “limited recourse and safety as a non-resident.” The Petitioner asserted that this was a baseless and scandalous attack designed to lower the dignity of the Sri Lankan Courts in the eyes of a foreign jurisdiction. Fourthly, the Petitioner demonstrated that the Respondent had deliberately suppressed the existence of ongoing Sri Lankan orders. Specifically, the Respondent claimed there was “no court order concerning the parenting arrangements, child support,” despite a Judgment from the Civil Appellate High Court of the Western Province in Case No. WP/HCCA/COL/222/2024/LA dated 27.03.2025 existing regarding custody and access, and an Order from the Chief Magistrate’s Court of Colombo in Case No. 36960/08/25 dated 30.01.2025 granting child support. Finally, the Respondent was said to have made a calculated and deceptive move by answering a question about proceedings in “any jurisdiction” with the limiting phrase “There is no pending or ongoing court proceedings in BC.”

The Petitioner argued that this conduct constituted contempt under multiple sections of the Act, including Section 3(1)(a) and (b) for bringing the authority of the administration of justice into disrespect and for interfering with the judicial process in ongoing litigation, and Section 3(2)(c)

and (e) for expressing false matter that scandalized the judiciary and gravely prejudiced the due course of judicial proceedings. Citing the Supreme Court's dicta in *Sri Lanka v. Hewa Aluth Sahal Arachchige Ajith*, the Petitioner emphasized that such statements, aimed at creating an impression that the administration of justice was unreliable, demanded a prompt and deterrent sentence.

The Petitioner further submitted that the Respondent's asserted defences under Section 4 of the Act were only relevant at the full inquiry stage, and not at the *prima facie* stage, where the primary issue was whether the material itself disclosed the commission of an offence. Having established the *prima facie* case, the Petitioner therefore prayed that the Court issue a Rule on the Respondent. The Respondent sought dismissal of the Petitioner's application, arguing that the Petitioner had failed to establish the *prima facie* case required for the issuance of a Rule and that the Court of Appeal lacked jurisdiction over the matter. The Respondent contended that the offence of contempt was criminal in nature and therefore required proof of willful conduct and intent (*mens rea*) beyond a reasonable doubt, a standard the Petitioner had not met. Citing *R. M. B. Maharroof and 15 Others v. Central Provincial Council and 10 Others*, the Respondent maintained that the standard for establishing a *prima facie* case of contempt was to demonstrate a "willful and deliberate failure" on the part of the Respondent.

The Respondent's primary argument regarding jurisdiction was that the alleged contemptuous acts arose from proceedings in a Canadian Court, and that the Contempt of a Court, Tribunal or Institution Act, No. 08 of 2024, was operative only within the territorial jurisdiction of Sri Lanka. The Respondent submitted that the Petitioner's reliance on the word "elsewhere" in Section 6(3) of the Contempt Act, which granted the Court of Appeal power to punish for contempt of a Court of First Instance committed "elsewhere," was a misapprehension. The Respondent argued that "elsewhere" must necessarily be interpreted to mean "elsewhere within the territorial jurisdiction of Sri Lanka."

Without prejudice to the jurisdictional argument, the Respondent addressed the four allegations of contempt raised by the Petitioner. Regarding the allegation of making false and defamatory statements against the Judiciary, specifically the Respondent's statement that the "local legal system does not adequately protect women and children from domestic abuse or parental

abduction,” the Respondent asserted that this was a general critique of the “local legal system” as a whole and not directed at any specific court, tribunal, or the judiciary. The Respondent contended that the statement was a direct result of her traumatic experiences, including the Petitioner unlawfully separating her from her child. Citing the principle in *Ambard v. Attorney General of Trinidad and Tobago*, the Respondent argued that “justice is not a cloistered virtue,” and respectful criticism was permitted. The Respondent therefore submitted that the statement did not constitute willful conduct or intent to undermine the Judiciary.

In response to the allegation of lying about the non-existence of multiple proceedings, the Respondent submitted that the Priority Parenting Application (P3), which supposedly contained the omission, was prepared by her Canadian Attorney-at-Law and not by the Respondent herself. Crucially, the Respondent’s supporting affidavit (P2) clearly set out the background of the case and disclosed the pending and concluded litigation in Sri Lanka. The Respondent further argued that any alleged failure to disclose litigation in a Canadian Court should be addressed to the Canadian Court, and did not constitute contempt under the Sri Lankan Act.

Concerning the allegation of threatening the Petitioner to withdraw the impugned affidavit, the Respondent explained that the Letter of Demand (P6) was a formal instrument issued by her Canadian legal counsel asserting the legal grounds of “litigation privilege” and the “implied undertaking of confidentiality” under Canadian law. The Respondent submitted that a Letter of Demand, issued by a lawyer in the ordinary course of asserting a client’s rights, and substantiated by legal authorities such as *AM Gold Inc. v. Kaizen Discovery Inc. and Blank v. Canada (Minister of Justice)*, could not be construed as a “threat” amounting to contempt of court.

Finally, regarding the allegation of moving for an Order in Canadian Courts to override Sri Lankan Court Orders, the Respondent asserted that she was merely exercising her legal right to institute the Priority Parenting Application in the Provincial Court of British Columbia, which was the habitual residence of both parties. The Respondent maintained that this action, instituted under the Canadian Family Law Act and the Hague Convention on the Civil Aspects of International Child Abduction, was to seek the protection of Canadian law and facilitate her return home, and therefore did not constitute willful conduct or interference with ongoing litigation under Section 3(1)(b) of

the Contempt Act. The Respondent ultimately concluded that the Petitioner's action was vexatious, constituted a gross abuse of process, and was intended to weaponize the Contempt Act to instill fear and prevent the mother and child from returning to Canada.

ANALYSIS:

HAS THE RESPONDENT COMMITTED THE OFFENCE OF CONTEMPT OF COURT BY MAKING FALSE AND DEFAMATORY STATEMENTS AGAINST THE SRI LANKAN COURT SYSTEM AND JUDICIARY?

The exact statement of the Respondent marked P2(a) reads: “*The local legal system does not adequately protect women and children from domestic abuse or parental abduction, and I have limited recourse and safety as a non-resident.*” [vide paragraph 40 of the Affidavit marked P2]

This statement is a general critique of the “local legal system” of Sri Lanka, arising from the traumatic encounters experienced by the Respondent soon after her arrival in the country, including being separated from her four-month-old child by her husband, who effected such separation by abusing the process of court.

The statement refers to the “local legal system” as a whole and was not directed at any specific court, tribunal, institution, or the judiciary. It was drawn to the attention of this Court by learned Counsel for the Respondent that the Sri Lankan legal system has been subjected to adverse comments and criticism over time by academics, politicians, international organizations, and legal professionals:

- i. Prof. Dinesha Samararatne in *Re-framing Feminist Imperatives in Adjudication Through a Reading of Sri Lankan Jurisprudence* stated: “The performance of the judiciary in recent years does not reflect an understanding of issues connected with Violence Against Women.”

- ii. Former Minister of Foreign Affairs Mr. M.U.M. Ali Sabri at Cambridge Union on 23<sup>rd</sup> January 2024 stated: “Sri Lanka has a vibrant and independent judiciary, but much cannot be said of its efficacy and efficiency. As a citizen and lawyer, I have been troubled by the perennial issues of laws’ delays, which have plagued the efficient and equitable administration of justice.”

Accordingly, it is not uncommon for the judiciary or the legal system of a country to be subject to criticism or commentary. As Lord James Richard Atkin held in *Ambard v. Attorney General of Trinidad and Tobago* [1936 AIR PC 141], “Justice is not a cloistered virtue and she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men.” Therefore, the statements made by the Respondent in her affidavit to a Canadian Court do not constitute willful conduct nor were they made with intent (*mens rea*) to undermine, disrespect, or scandalize the “Sri Lankan Court System and Judiciary” as claimed by the Petitioner.

It is evident that the Respondent’s critique of the “local legal system,” which is permissible in law, was a direct result of circumstances created by the Petitioner, whom as it was perceived by the Respondent, abused the process of court to (i) separate a four-month-old child from her mother, (ii) retain travel documents to prevent their return to Canada, (iii) institute multiple litigations against the Respondent, denying her any opportunity to return to her habitual residence in Canada, and (iv) prevent the Respondent from resuming her permanent employment in Canada at the end of her maternity leave by obtaining *ex parte* travel bans against her and the minor child. In these circumstances, there is no willful or deliberate act of contempt and the Petitioner has failed to establish a *prima facie* case that the statement constitutes contempt under Section 3(2)(c) and Section 3(2)(e) of the Contempt Act.

HAS THE RESPONDENT COMMITTED THE OFFENCE OF CONTEMPT OF COURT BY LYING ABOUT THE NON-EXISTENCE OF MULTIPLE PROCEEDINGS BEFORE THE SRI LANKAN COURTS?

The Respondent's application in the Priority Parenting case before the Provincial Court of British Columbia (File No. 46469) is marked as P3. The Petitioner's position is that in sections 9 and 10 of P3, the Respondent misrepresented facts by failing to disclose all pending litigation in Sri Lanka. However, it is evident that P3 was prepared by the Respondent's Attorney-at-Law in Canada for the purpose of instituting the Priority Parenting case (File No. 46469) and not by the Respondent herself.

More importantly, the Application P3 was supported by the Respondent's Affidavit P2 dated 22.05.2025, which clearly sets out the background of the case and disclosed the pending and/or concluded litigation in Sri Lanka at the time the Canadian case was filed [vide paragraphs 20, 21 and 30 in P2].

In any event, if the Respondent failed to disclose all Sri Lankan cases pending in P3, the appropriate course of action would be to move the Canadian Court to dismiss the Priority Parenting Application on the basis of suppression of material facts.

In these circumstances, the failure to disclose litigation between the Petitioner and the Respondent in a Canadian Court does not constitute an act of contempt of court under Section 3 of the Contempt Act.

HAS THE RESPONDENT COMMITTED THE OFFENCE OF CONTEMPT OF COURT BY THREATENING THE PETITIONER TO WITHDRAW THE IMPUGNED AFFIDAVIT FROM THE SRI LANKAN JUDICIAL SYSTEM?

The Letter of Demand dated 03.06.2025 is marked as P6. It was issued by the Respondent's legal counsel in Canada, demanding that the Petitioner refrain from using the Respondent's affidavit made for the Canadian Court (marked P2) in a prejudicial manner in Sri Lankan Courts, on the legal grounds of "litigation privilege" and the "implied undertaking of confidentiality."

The learned Counsel for the Respondent substantiated the legal reasoning in P6 with Canadian legal authorities, reproduced as follows:

'Implied Undertaking of Confidentiality' -

*AM Gold Inc. v. Kaizen Discovery Inc.*, 2021 BCCA 70 (CanLII):

*“[24] In the first place, pre-trial discovery is an invasion of a private right to be left alone with your thoughts and papers, however embarrassing, defamatory or scandalous. At least one side in every lawsuit is a reluctant participant. Yet a proper pre-trial discovery is essential to prevent surprise or ‘litigation by ambush,’ to encourage settlement once the facts are known, and to narrow issues even where settlement proves unachievable.... Thus, for the out-of-pocket cost of issuing a statement of claim or other process, the gate is swung open to investigate the private information and perhaps highly confidential documents of the examinee in pursuit of allegations that might in the end be found to be without any merit at all.*

*[25] The public interest in getting at the truth in a civil action outweighs the examinee’s privacy interest, but the latter is nevertheless entitled to a measure of protection. The answers and documents are compelled by statute solely for the purpose of the civil action and the law thus requires that the invasion of privacy should generally be limited to the level of disclosure necessary to satisfy that purpose and that purpose alone. Although the present case involves the issue of self-incrimination of the appellant, that element is not a necessary requirement for protection. Indeed, the disclosed information need not even satisfy the legal requirements of confidentiality set out in *Slavutych v. Baker*, 1975 CanLII 5 (SCC), [1976] 1 S.C.R. 254. The general idea, metaphorically speaking, is that whatever is disclosed in the discovery room stays in the discovery room unless eventually revealed in the courtroom or disclosed by judicial order.*

*[26] There is a second rationale supporting the existence of an implied undertaking. A litigant who has some assurance that the documents and answers will not be used for a purpose collateral or ulterior to the proceedings in which they are demanded will be encouraged to provide a more complete and candid discovery. This is a particular interest in an era where documentary production is of a magnitude (‘litigation by avalanche’) as often to preclude careful pre-screening by the individuals or corporations making production. See *Kyuquot Logging Ltd. v. British Columbia Forest Products Ltd.* (1986), 1986 CanLII 167 (BC CA), 5 B.C.L.R. (2d) 1 (C.A.), per *Esson J.A. dissenting*, at pp. 10-11.*

[27] For good reason, therefore, the law imposes on the parties to civil litigation an undertaking to the court not to use the documents or answers for any purpose other than securing justice in the civil proceedings in which the answers were compelled (whether or not such documents or answers were in their origin confidential or incriminatory in nature).”

‘Litigation Privilege’ -

“*Canada is Blank v. Canada (Minister of Justice)*, 2006 SCC 39, recently restated in *Lizotte v. Aviva Insurance Company Canada*, 2016 SCC 52;

Blank confirmed the two-part test for determining whether a particular fact is covered by litigation privilege. Namely, a document must have been created:

- in contemplation of litigation which is “in reasonable prospect”; and
- for the “dominant purpose” of use in litigation.”

It is the view of this Court that a Letter of Demand, being a formal instrument issued by legal counsel in the ordinary course of asserting a client’s rights, cannot be construed as a “threat” amounting to contempt of court, particularly when the Letter of Demand contains legal reasoning supported by Canadian case law.

Furthermore, the Letter of Demand P6, being a legal document sent from one lawyer to another, does not and cannot constitute an act deemed contempt of court under Section 3 of the Contempt Act. Thus, the allegation of contempt relating to P6 is untenable as there is no willful conduct on the part of the Respondent.

HAS THE RESPONDENT MOVED FOR AN ORDER IN CANADIAN COURTS TO OVERRIDE SRI LANKAN COURT ORDERS?

It is common ground that the Petitioner and Respondent are husband and wife and were living in their matrimonial home in Vancouver, British Columbia, Canada, prior to arriving in Sri Lanka on

07.10.2024. Both are permanent residents of Canada and were employed there. It is also common ground that their infant daughter was born in Canada and is a Canadian citizen.

In these circumstances, when the Petitioner retained the Respondent's and child's travel documents and filed cases in Sri Lanka to prevent their return home to Canada, it is evident that the Respondent exercised her legal right to institute a Priority Parenting Application in the Provincial Court of British Columbia (File No. F-46469). This action was instituted under the Canadian Family Law Act, S.B.C. 2011, Chapter 25, and also under the Hague Convention on the Civil Aspects of International Child Abduction, Can.T.S. 1983 No. 35.

It is therefore seen that the Respondent, as the mother of an infant child, did not engage in forum shopping but rather acted promptly to vindicate her rights and those of her child through the Canadian legal system, with the objective of returning home to Canada at the earliest opportunity.

HAS THE PETITIONER PROVED A PRIMA FACIE CASE OF CONTEMPT TO WARRANT THE ISSUING OF A RULE AGAINST THE RESPONDENT?

This court wishes to specifically address the argument put forth by the Petitioner in relation to the duty of the judge at the *prima facie* stage of a case. The Petitioner submitted that at the stage of deciding whether a prima facie case exists or not, it is only necessary for the judge to consider the strength of the petitioner's claim and disregard the defence. However, it is my view that this argument falls short in light of the observations made by Lord Denning MR in *Hubbard v Vosper* 1972 2 QB 84, 96. The same was referred to by Amerasinghe J. in *Amerasekera V. Mitsui and Company Ltd., and Others* (1993) 1 SLR 22.

*"In considering whether to grant an interlocutory injunction, the right course for the judge is to look at the whole case. He must have regard not only to the strength of the claim but also to the strength of the defence, and then decide the best to be done."*

The observations of Lord Denning MR underscore the importance of looking at the whole at the preliminary stages of a case. The strength of the defence must be considered in tandem with the claim of the Petitioner.

Moreover, the Petitioner has already appeared by Counsel and resisted the action filed by the Respondents in the Canadian Courts.

CONCLUSION:

It is revealed that there is no willful intention on the part of the Respondent to commit contempt. In totality of the circumstances, it is my considered view that the Petitioner has not established a *prima facie* case, and this matter should accordingly be dismissed.

This application is therefore dismissed without costs.

**Judge of the Court of Appeal**

**Hon. Rohantha Abeyesuriya PC, J.(P/CA)**

I agree.

**President of the Court of Appeal**