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

In the matter of an Application for Orders in the nature of Writs of Certiorari, Prohibition and Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No. 589/2024

Herath Mudiyanselage Nihal Devapriya,

264 B, Negombo Road,

Dandugama,

Ja-Ela.

PETITIONER

Vs.

1. Chief Inspector of Headquarters,
   Headquarters of Police,
   Chilaw.

2. Officer-in-Charge,
   Homicide and Organized Crimes Investigation Division,

Criminal Investigation Department,
No. 429, Butani Capital Building,
Narahenpita,
Kirulapone.

3. Hon. Magistrate,
Magistrate's Court,
Chilaw.

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

RESPONDENTS

Before: S. U. B. Karalliyadde, J.

Dr. D. F. H. Gunawardhana, J.

Counsel:

Mr. Amilla Palliyage with Sandeepani Wijessoriya, Savani Udugampola, Subaj De Silva and Lakitha Wakishta Arachchi for the Petitioner.

Mr. Azard Navavi, Senior Deputy Solicitor General for the Respondents.

Supported on: 09.07.2025

Order delivered on: 17.07.2025

Dr. D. H. F. Gunawardena, J.

Background facts

The Petitioner is the nephew of one Saman Wijesiri who is reported to have disappeared since the 13th October 2018, which had been reported to the Chilaw Headquarters Police Station by a person who is carrying on a business in the premises belonging to the said disappeared person. Consequently, the Headquarters' Inspector of the Chilaw Police Station had reported the same by a B-report (marked as **P1** annexed to the Petition to this Court) to the Magistrate's Court of Chilaw. Subsequently, in the course of the investigation the Petitioner and two more suspects had been arrested and incarcerated, pending investigation.

In the meantime, an application had been made to the Magistrate's Court for and on behalf of the Petitioner to have him discharged from proceedings on the basis that lack of evidence, which the learned Magistrate's has refused. Consequently, the Petitioner has made this application to this court seeking *inter alia* following reliefs against the 1st, 2nd and 3rd Respondents.

> "(D) Grant and issue a mandate in the nature of a Writ of Certiorari quashing the B-report and any further reports filled by the 1st and 2nd Respondents under case bearing No. B/1442/2018 of the Magistrate's Court of Chilaw in respect of the Petitioner of this application,
>
> (E) Grant and issue a mandate in the nature of a Writ of Prohibition preventing further proceeding being conducted or charged framed against the Petitioner, by the 1st and 2nd Respondents and/or

any other officer acting under the orders and/or directions of the said 1st and 2nd Respondents in the case bearing No. B/1442/2018 of the Magistrate's Court of Chilaw,

(F) Grant and issue a mandate in the nature of a Writ of Mandamus, directing the 3rd Respondent, learned Magistrate of the Magistrate's Court of Chilaw to discharge the Petitioner in terms of Section 115(2) of the Code of Criminal Procedure Act, No. 15 of the 1979 from the case bearing No. B/1442/2018."

The 1st Respondent is the Officer in Charge of Chilaw Headquarters Police Station, 2nd Respondent is the Officer in Charge of Homicide and Organized Crimes Investigation Division, 3rd Respondent is the learned Magistrate of the Magistrate's Court of Chilaw and the 4th Respondent is the Honorable Attorney General.

Mr Palliyage was heard in support of application for formal notice; and the Senior Deputy Solicitor General, Mr. Azard Navavi was also heard in opposition thereof, and the following arguments were heard on either side.

Arguments

The thrust of the main arguments advanced by Mr. Amila Palliyage, the Counsel for the Petitioner, is that the 1st Respondent to the application has initiated investigation against the Petitioner, on an alleged allegation of kidnapping and murdering of his own uncle, whose disappearance is an issue in a case before the Magistrate's Court of Chilaw bearing No. B/1442/2018 without sufficient evidence.

He further argued that the 1st Respondent conducted an investigation merely on the suspicion of certain words uttered by the Petitioner. The 1st Respondent has conducted the initial investigation which was later taken over by the 2nd Respondent, therefore; he is also responsible for the same irresponsible investigations initiated.

The next argument by Mr. Palliyage is that the Writ of *Certiorari* lies against the 3rd Respondent who is the learned Magistrate of Chilaw, since he refused to discharge the Petitioner from proceedings before whom an application was made citing the Petitioner as a suspect in the case where the kidnapping and disappearance of his own maternal uncle is involved, and the said application was made to discharge him on lack of evidence.

However, on questioning, he conceded that once the investigations are over, the record should be sent to the Attorney General's Department and that the record is currently with the Attorney General. Therefore, a decision has to be taken by the Attorney General either to indict the Petitioner of this application for kidnapping and disappearance of his uncle or enter *nolle-prosequi*.

Further when questioned, he conceded that therefore, there is an alternative avenue for the Petitioner to make representation to the Attorney General to take a decision on that. In addition, upon questioning, he further admitted that the Court has to examine the evidence properly in a trial to ascertain whether there is sufficient evidence against the Petitioner.

However, on the other hand, Senior Deputy Solicitor General, Mr. Azard Navavi has admitted that the file is now with the Attorney General, and argued that since there is sufficient evidence and

material against the Petitioner for murder and disappearance of the body of his uncle, the Attorney General has taken a decision on that and as such, the application cannot be made in this manner; therefore, no Writ of *Certiorari* lies on this matter.

On questioning, Mr. Azard Navavi also conceded that the Petitioner could have easily made representation to the Attorney General without coming to this Court, to make a suitable decision in respect of the Petitioner, either to indict him expeditiously or to enter *nolle-prosequi*. However, he further argued that there no Writ lies in favor of the Petitioner.

My Decision

In this case, the Petitioner has sought to invoke the writ jurisdiction of this Court to obtain a Writ of *Certiorari* to quash the initiative taken by the 1st Respondent and later the investigation taken over by the 2nd Respondent; and also to quash the decision of the 3rd Respondent refusing the discharge of the Petitioner when the application was made in that behalf. In addition to that, it is revealed in the course of submissions by the Petitioner's counsel and the learned Deputy Solicitor General that the record had already reached the Attorney General's Department, and that the Attorney General, the 4th Respondent to this application, has already decided to indict the Petitioner along with the other two accused for the kidnapping, murder, and disappearance of the body of the victim, Saman Wijesiri. Therefore, it is clear that the issuing of Writs of *Certiorari* and *Mandamus* compelling the 3rd Respondent to discharge the Petitioner from the proceedings, that will amount to pre-empting the 'prosecutorial discretion' of the 4th Respondent, the Attorney

General. In addition to that, it would subvert and scuttle the whole process of criminal procedure in a criminal prosecution of grave nature, similar to the offence said to have been committed by the Petitioner and the other two suspects. As such, the view of the Court is that, what the Petitioner is seeking to do is to challenge the 'prosecutorial discretion' of the 4th Respondent, the Attorney General of this country, indirectly in seeking to obtain a Writ of *Certiorari* against the 1st, 2nd, and 3rd Respondents; and in addition to that, a *Mandamus* against the 3rd Respondent. Therefore, I wish to advert to certain matters as to how this prosecutorial discretion of the 4th Respondent, the Attorney General, evolved historically, and thereafter I wish to discuss as to how he exercises his prosecutorial discretion; in addition to that, within what limitations, and whether, in fact, in this case, the Petitioner is entitled to obtain the relief as claimed. For that purpose, I wish to first advert to the historical evolution of the 4th Respondent's role as the Attorney General of this country.

The Attorney General has powers of several fold. One is Constitutional powers conferred on him to advise the Government as the Chief Advisor on constitutional matters. In addition to that, the Attorney General in civil cases, is the main representative of the Government.[1] Therefore, when a civil action is instituted against the Government or any officer of the Government, such an action

[1] Constitution of Democratic Socialist Republic of Sri Lanka 1978, Article 77

can be filed in the name of the Attorney General (against him) as well.[2] Any action by the Government can also be filed by the Attorney General in a civil case.[3]

Historical evolution of the role of Attorney-General

The Supreme Court was first established in Sri Lanka by the Royal Charter of 1801, under which even the Governor's post was first established: and Sir Frederick North, as the first Governor, was appointed. However, it must be noted that the British occupation of the Island of Ceylon was limited to the Maritime Provinces at that time.

In the same Charter, the Supreme Court was first established in Sri Lanka, where the jurisdiction to try grave crimes were also conferred. The said grave crimes could be prosecuted in the name of the Advocate Fiscal. Therefore, the Advocate Fiscal was recognized in the Royal Charter—the Sri Lankan Constitution – by which the Supreme Court was established.

In addition to that, by the same Charter, the admission of the people as Advocates and Proctors of the Supreme Court was also provided for. Therefore, it is very important to understand that, as when the Supreme Court was established, the Advocate Fiscal's office was also recognized as the Chief Prosecuting Officer on behalf of the Government, which is provided in the following manner.

[2] The Attorney General vs. G. N. Russel [1955], 57 N.L.R. 364
[3] The Civil Procedure Code, Section 25 (a) and Chapter XXXI

*"XIVI. ..... **and We will, ordain, and direct that such Libel or Accusation shall have been and be previously prepared, by such Registrar or Person acting as such, and allowed and signed by Our Advocate Fiscal, to be appointed by Us, or in his Absence by the Person acting as such to be appointed by Our Governor of the said Settlements for them Time being,..**"*[4] *(Emphasis is mine)*

Even after the cession of the Kandyan Provinces to the British Crown, administration of the justice system in the Kandyan Provinces, continued under the pre-existing system (prior to the cession)[5], till the Royal Charter was promulgated in 1833, by which the Kandyan Provinces were also annexed to the Maritime Provinces for the purpose of administrating justice, and thereafter the whole Island was governed as one entity. The jurisdiction of the Supreme Court was also extended to the whole Island, and the Advocate Fiscal or the Chief Prosecutor on behalf of the Government handling criminal matters, thereafter continued to be called 'King's Advocate' (or 'Queen's Advocate' as the case may be), which is provided in this manner.

*"40. And We do further direct ordain and appoint that at every Criminal Sessions of the said Supreme Court so to be holden as aforesaid on every such Circuit the said Supreme Court shall inquire of all Crimes and Offences committed within the Limits of any such Circuit for the Trial of which such original Jurisdiction as aforesaid is by this Our Charter vested in the said Supreme Court, and which the **King's Advocate or Deputy King's Advocate shall elect to prosecute before***

[4] Royal Charter of Justice (Ceylon) of 1801 (18th April 1801)
[5] Colvin R de Silva, Ceylon under the British Occupation (Colombo People's Publishing House 1953) Chapter IX - X

such Supreme Court and shall hear try and determine all Prosecutions which shall be commenced by the said King's Advocate or Deputy King's Advocate against any Person or Persons for or in respect of any such Crimes or Offences or alleged Crimes or Offences.

41. ***..... shall be sued for and recovered in the Name of Our Advocate Fiscal of Our said Island and by him or by some Deputy Advocate Fiscal by an Information to be exhibited without the previous finding of any Inquest by any Grand Jury or otherwise.*** *Provided nevertheless that it shall be competent to the said Supreme Court by such Rules and Orders of Court as after mentioned to make any other and more convenient Provision for the prosecuting before the said District Courts Breaches of the Peace, Petty Assaults and other Minor Offences of the like nature."*[6] *(Emphasis is mine)*

The Legislative Council responsible for the promulgation of laws for the good governance of the Island; in 1883, changed the designation of the King's Advocate and the Deputy King's Advocate (at that time, the office was referred to as 'Queen's Advocate,' since the British Empire was governed by Queen Victoria). Thus, the Queen's Advocate and Deputy Queen's Advocate was renamed or redesignated as ' the Attorney General' and 'the Solicitor General', which is provided this way, and he is the Chief Law Officer of the Island of Ceylon at that time, and the Chief Prosecutor who undertook the prosecution of grave crimes for and on behalf of the Crown of the Island of Ceylon, which is provided this way.

[6] Royal Charter of Justice (Ceylon) of 1833 (3rd June 1833)

"The law officers of the Crown now designated as the ***"Queen's Advocate" and the "Deputy Queen's Advocate for the Island" shall, after the passing of the Ordinance be designated, respectively, the "Attorney-General" and the "Solicitor-General," any law or usage in this colony to the contrary notwithstanding.***[7] *" (Emphasis is mine)*

In addition to that, I must also mention, Chief Justice, Neville Samarakoon, Queen's Counsel, expressed the following view in the famous case of ***Grand Central Company Limited vs. Land Reforms Commission***[8] about the function of the Attorney General as the Chief Law Officer for and on behalf of the Government in the following manner.

"The Attorney-General of this Country is the leader of the Bar and the highest Legal Officer of the State. As Attorney-General he has a duty to Court, to the State and to the subject to be wholly detached, wholly independent and to act impartially with the sole object of establishing the truth. It is for that reason that all Courts in this Island request the appearance of the Attorney- General as amicus curiae when the Court requires assistance, which assistance has in the past been readily given."[9]

Therefore, the Attorney General's role as Chief Prosecutor or the Chief Law Officer who undertakes prosecution for and on behalf of the people of this country is very important in criminal matters.

[7] Ordinance No. 1 of 1883, (Ordinance of the Government of Ceylon, Vol II) pages 1 & 2
[8] [1981], 1 S.L.R. 250
[9] [1981] 1 S.L.R. 250, page 261

Prosecutorial discretion is *quasi-judicial*

Under the criminal procedure, the Attorney General has different powers. All the criminal indictments are filed and served in the name of the Attorney General. In addition to that, in grave crimes, the Attorney General has the power to decide whether he should indict any accused for any indictable offences. In addition to that, the Attorney General in criminal matters can advise the investigating officers on how to conduct investigations and what sort of evidence has to be ascertained to establish the charge, and also if the evidence available is sufficient to prosecute a person either in the Magistrate's Court, or in the High Court or in any other court according to the offence committed, or whether it is an indictable offence. At the same time even if somebody is suspected or accused of a grave crime, the Attorney General can enter *nolle prosequai* or not to prosecute against anybody or drop the charges against anybody.[10] At the same time, the Attorney General in criminal cases can direct the Magistrate who has undertaken or initiated proceedings against a person not to prosecute that person or suspect or any accused.

Therefore, the Attorney General in that sense has powers of a *quasi-judicial* officer, and his decisions in such capacity, particularly in criminal matters, affect the parties or affect different people (including the victims) because he takes decisions which are of *quasi-judicial* nature. Suffice it to say that has been enunciated and deduced in many judgements in Sri Lanka[11].

[10] Code of Criminal Procedure Act No.15 of 1979, Section 393

[11] *Nadun Chinthaka Wickramaratne vs. Attorney General & Others (*2024) [CA Minutes 20th November 2024] *Sandresh Ravindra Karunanayake vs. Attorney General & Others (*2023) [CA Minutes 28th February 2023]

As far as this matter is concerned, it is the Attorney General's powers in criminal investigations and criminal prosecutions of an offence which is an indictable offence if sufficient evidence is available, since a person (victim) who is said to have been abducted and then killed and caused disappearance of his body. Therefore, the Attorney General has a great role in performing his duties in prosecuting charges against the accused person including the Petitioner in this case, and investigations are conducted under the guidance of the Attorney General, and once the investigations are completed, if there is no Magisterial inquiry which is known as "Non-Summary Inquiry", the file has to be forwarded to the Attorney General; or if there is a Non-Summary Inquiry, after the conclusion of the Non-Summary Inquiry, if the Magistrate decides that there is a case that should be indicted by the Attorney General against the accused who should stand their trial before a High Court, the record should be sent to the Attorney General for the preparation of an indictment.[12]

The Attorney General's power in preparation of indictments on the evidence available was the moot point of several judgments. Recently, Justice Yasantha Kodagoda P.C., in the case of ***Patali Champika Ranawaka vs. Attorney-General and several others***[13]**,** was considered, where His Lordship analysed the *quasi-judicial* powers as follows;

*Duminda Lanka Liyanage vs. Attorney General & Others (*2022) [CA Minutes 21st October 2022]

[12] Criminal Procedure Code (Act No. 15 of 1979, Sri Lanka), Chapter XV

[13] SC Appeal No. 116/2022 [SC Minutes 8th May 2025]

"153) It is necessary to observe that in terms of the Rule of Law, criminal law enforcement which includes investigation of crime (offences), and taking criminal justice measures against suspected perpetrators of crime such as the identification, location, apprehension and arrest of suspected perpetrators, holding them in police custody, conducting their interview and recording their statements, producing them before a Magistrate, placing them in remand custody, grant of bail, and initiation of criminal proceedings, are all actions which should be founded upon objective decisions which are implemented strictly according to law. Furthermore, prosecutorial action such as (a) the consideration of the institution of criminal proceedings, (b) exercise of prosecutorial discretion, (c) institution of criminal proceedings, and (d) prosecution of accused, must also be carried out objectively and strictly according to law. In fact, the latter category (prosecutorial functions) are quasi-judicial functions which must be implemented with caution. Both law enforcement and prosecutorial authorities must entertain good faith, due diligence, objectivity and transparency. They must also maintain the highest degree of integrity."[14]

In addition to that, Justice Priyantha Jayawardena, P.C. in the case of ***K. A. Sarath De Abrew vs Attorney General and several others***[15], considered whether evidence placed by the counsel of the accused (Sarath De Abrew) before the Attorney General was considered and evaluated as against the evidence available and provided by the investigators before preparation of an indictment as a part of exercising his prosecutorial discretionary power. In the said case, His Lordship was of the

[14] SC Appeal No. 116/2022
[15] [2010], 2 S.L.R. 169

view that, since the post of Attorney General is a creation of statute, he has to exercise the power within the four corners of the statute; His Lordship has held,

> *"The Statutory framework seems to envisage a significant role for the Attorney-General during the pre-trial investigation stages. Section 393(5) of the Code of Criminal Procedure Act as amended imposed upon the Superintendent or the Assistant Superintendent in charge of any Police division the duty to report to the Attorney-General. The Attorney-General's advice can be given ex mero motu or an application. The Attorney-General has the right, by virtue of Section 393(2) and 393(3) to summon any officer of the State or of an Corporation or of the Police to attend his office with the relevant books and documents to facilitate the exercise of his powers to advise State Departments, Public Officers in any criminal matter of importance or difficulty. It is a fundamental principle of law that a person who function in terms of statutory power vested in him is subject to an implied limitation that cannot exceed such power or authority. What is not permitted by Section 393 should be taken as forbidden and struck down by Court"* [16]

Right of audience of an accused

Representation of the accused by a counsel or a lawyer is an integral part of the system within which the Attorney General exercises *quasi-judicial* powers vested in him. Therefore, there is a right of audience to be extended to the counsel or a lawyer for and on behalf of the accused before preparation of any indictment.[17] Thirdly, His Lordship Jayawardena J was of the view that if the

[16] S.C. F/R No. 424/2015 [SC Minutes 11th Jan 2016]
[17] Constitution of Democratic Socialist Republic of Sri Lanka 1978, Article 13

Attorney General has exercised his prosecutorial discretion unreasonably, arbitrarily, and capriciously, otherwise, his decisions are amenable for review in the following terms.

> *"The Attorney-General acts as the sentinel professional Code of Conduct and is required to protect the rights and privileges of the lawyers as well as the purity and dignity of the profession. He is the "keeper of the conscience" and the guardian of the interests of the members of the public.* ***Where the legislature has confided the power of the Attorney-General to forward indictment with a discretion how it is to be used, it is beyond the power of the Court to contest that discretion unless such discretion has been exercised mala fide or with an ulterior motive or in excess of his jurisdiction. Upon the available material the Court is unable to conclude that the Attorney-General has exercised his discretion upon unreasonable grounds and in an arbitrary and capricious manner****." [18]* (*Emphasis is mine)*

Application in hand

In this application, as the learned Senior Deputy Solicitor General indicated to us, such a recorded file has already been received by the Attorney General. Since, sufficient evidence is available to the Attorney General, the Attorney General has decided to indict the three accused including the Petitioner to this Application.

[18] S.C. F/R No. 424/2015, page 12 [SC Minutes 11th January 2016]

The 2nd Respondent to this application had submitted report dated 18.05.2023 to the Magistrate Court which is a further report wherein he had prepared a summary of statements of the witnesses, notes and observations of investigation.

In fact, the evidence so recorded, revealing the Petitioner's involvement in the kidnapping, murder, and disappearance of the body of the deceased Wijesiri had been spoken to by some of the witnesses. The Petitioner (the 3rd Accused in the case) had made an attempt to prevail over the witnesses, particularly V. B. R. Somawathi, R. P. Sri Rohitha Siriwardena, V. B. R. Dharmarchari, and V. R. Gunawathie not to make any statement to the Police regarding the disappearance of said Wijesiri by saying that he had gone abroad with his mistress (to Italy). In fact, the 2nd Respondent to this application had mentioned in the report as to how the Petitioner benefited by the disappearance of the said Saman Wijesiri.

In addition, on the perusal of the said report, it can be observed that T. Nalaka De Silva had given a statement saying how he was approached by a friend to fabricate certain documents including the entries in the Department of Immigration & Emigration to establish that Saman Wijesiri (disappeared person) had left the country. Therefore, the Petitioner's involvement in the preparation of the fabricated documents, and in addition to that, his involvement in persuading the relatives of the said Saman Wijesiri preventing them from making a statement was also revealed. As such, the learned Magistrate has decided to commit him to stand for trial along with the other two accused in the High Court, and along with the said order, the record has been forwarded to the Attorney General, on which the Attorney General has to decide upon to indict him. If the Petitioner's version was to be acted upon, he should have persuaded the Honorable Attorney General to take a decision on that with the available evidence in his favor which as I mentioned, has not been done so far.

In those circumstances, this Court cannot arrogate the prosecutorial discretion vested in the Attorney General or step into the shoes of the Attorney General to exercise such discretion. Therefore, this Court has to refuse this application.

Decision of the Attorney General q*uasi-judicial* or administrative

Therefore, if the Attorney General has decided to indict a suspect, then that can be described as a *quasi-judicial* power that has been exercised by the Attorney General in that respect. In some cases it has been described as an administrative act since it is a part of the investigating process, and once when the investigation process is completed if the material evidence is sufficient, then the Attorney General has no choice but to indict the person as a matter of fact, which is similar to a ministerial act. However, in the same manner, when there is sufficient evidence to establish that there is any reasonable doubt of the commission of the offence which may operate in favour of the accused or any of the accused, including the Petitioner, then the Attorney General can decide not to prosecute or not to indict such a person or to enter *nolle prosequai* in favour of such a person. Therefore, if the Attorney General decides to enter *nolle prosequai* or not to prosecute or to drop the charges against an accused, such a decision can fall into the category of *quasi-judicial* power of the Attorney General. Therefore, the line to decide whether the Attorney General's power falls within *quasi-judicial* power or administrative power in respect of indictments and criminal prosecutions in that sense is a very thin line. However, suffice it to say that in this case the Attorney General has decided to indict the Petitioner as the 3rd Accused along with the other two accused in the said criminal prosecution.

This Court cannot step into the shoes of the Attorney General

As such, if this Court issues a writ in the nature of a Certiorari quashing the order of the Magistrate refusing to discharge the 3rd Accused who is the Petitioner in this case, that will amount to stalling or pre-stalling the *quasi-judicial* power that is to be exercised by the Attorney General in this case which only the Attorney General is expected to exercise.

Therefore, it is my view that this court cannot supplant the powers of the Attorney General or that this court cannot step into the shoes of the Attorney General and decide not to prosecute against the Petitioner as the 3rd Accused in the said indictment.

Certiorari against the Attorney-General

In addition to that, although there are suitable cases where writ (Certiorari or Mandamus) lie against the Attorney General to quash his decision or to compel him to take a decision, this is a case which according to the facts, is not a fit case to issue a notice on the Attorney General. In addition to that, to support my view there are two additional factors that need to be considered.

Alternative remedies not utilized

One is, as I mentioned above, that there are two alternative remedies that the Petitioner in this case can take up is if the Petitioner thinks or desires to make representation to the Attorney General to establish his innocence of the said offence that had been committed against his uncle Mr. Wijesiri. He could have made arrangements or instructed his lawyers to make representation which he has

not done: and it was conceded by the learned Counsel who supported this Application for notice. The second matter that should have been considered is, when in a trial proper, namely once the indictments are served on the accused, including the Petitioner in this case, before the High Court, he can establish his innocence or create a reasonable doubt and get himself acquitted from the proceedings. This has to be done only after considering evidence after a full-blown trial.

Therefore, in a case of this nature, where writs are issued only on the material based on affidavits, such full-blown trials cannot be held. As such I refuse to issue formal notice on Respondents and dismiss this application.

In this case, the 1st Respondent having received information-initiated investigations under the directions of the 2nd Respondent. Then from time to time, as revealed he has filed or caused to file report of the progress of his investigations other than the B-report he filed at the Magistrate Court. Thereafter having recorded statements from various witnesses, 1st and 2nd Respondents have proceeded with the investigation. In the course, they have cause and caused to arrest three accused which includes the Petitioner and have them remanded. In addition, they have also found various other evidence against the suspected.

In these circumstances, it is the view of the court that the learned Magistrate has justifiably refused the application to discharge the Petitioner and thereafter forwarded the file to the Attorney General

to file the indictments. This is similar to ***Jayasinghe vs Attorney-General***[19] (infamous Turf Club Robbery) where Magistrate's order to extend the remand from time to time was challenged in the Supreme Court based on so called irregularities for arresting the accused without warrant, no summary of statement of witnesses were recorded before remand and irregularities and prejudices against the suspects. However, His Lordship F. R. Dias held thus.

In this matter, on the perusal of the report I found the information has been filed by the 1st Respondent on 06.12.2018. Thereafter, due to the constant progress of the investigations, several further reports had been filed even after carrying out all the investigations, the 2nd Respondent also had filed further reports. In the course, several separate applications have been made by the accused including the Petitioner to have them discharged. On further perusal of the record, it can be noted that, the summary of statements made by various witnesses are also filed of record. Accordingly, the learned Magistrate has refused to discharge the Petitioner on the reports and summary of statements filed by the investigating officers. Therefore, it is justified in refusing to discharge the Petitioner from the proceedings before the learned Magistrate at that stage in terms of Section 153 of the Criminal Procedure Code; instead, all the accused have been committed to stand their trial before the High Court in terms of Section 154 of the Criminal Procedure Code.

[19] 50 N.L.R 202

Conclusion

For the reasons adumbrated by me above, I refuse to issue formal notice on the Respondents. In those circumstances, this application is *performa* dismissed.

Dr. D. F. H. Gunawardhana, J.

JUDGE OF THE COURT OF APPEAL

S. U. B. Karalliyadde, J.

I agree.

JUDGE OF THE COURT OF APPEAL