

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

In the matter of an application under
Article 105(3) of the Constitution of the
Republic of Sri Lanka.

CA/COC/19/2023

Muthukuda Arachchilage Don Suranga
Dilruk
No. 147/155, Golden Terrance,
Kadirana,
Negombo.

Petitioner

-Vs-

Rajawasala Liyana Mohottalalage Harini
Amali Cabral Wijethunga
No. 62/3 A,
National Housing Scheme,
Kiribathgoda.

Respondent

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

Counsel : Lakshan Dias with Maneesha Kumarasinghe for
the Petitioner.

Ronald Perera, PC with Ashiq Hassim
instructed by Tharushika Fernando for the
Respondents.

Written Submissions : Petitioner filed on 18.11.2024
Respondent filed on 23.07.2025

Supported on : 24.07.2025

Decided on : 23.09.2025

ORDER ON ISSUING OF SUMMONS/RULE

K. P. Fernando, J. (CA)

The Petitioner filed the present application by way of a petition dated 16th October 2023 invoking the jurisdiction of this Court under Article 105(3) of the Constitution, seeking to charge the Respondent with the offence of contempt of Court.

The factual background to this application relates to a pending civil action in the District Court of Kuliyaipitiya (Case No. 1147/L), wherein the Petitioner has sought a declaration of title to a land identified as “*Atambahamulla bim vasiya*,” and other reliefs, against Gamma International (Pvt) Ltd. and its directors, including the Respondent.

It is the Petitioner’s position that during the pendency of that action, the Respondent participated in a televised interview aired on 20th September 2023 in a programme titled “Truth with Chamuditha,” wherein she made a series of statements that were false, malicious, and prejudicial to the due administration of justice.

In the said petition, the Petitioner pleads that the Respondent made grave allegations including that the Petitioner had colluded with an acting judge and multiple lawyers to execute forged deeds, that a government minister engaged in illicit activities was orchestrating the proceedings against her, and that the

Petitioner was associated with underworld figures, including one "Ganemulle Sanjeewa". The Petitioner further alleges that the Respondent suggested that Attorneys who had formerly represented her, and even her own parents, were engaged in improper and unethical practices, thereby casting a shadow over the legal profession as a whole. The Petitioner claims that these utterances, made publicly and with knowledge of the ongoing proceedings, have caused real and measurable prejudice: Attorneys-at-Law have declined to appear on his behalf, and key witnesses have refused to testify. Consequently, the Petitioner submits that his ability to fairly present his case has been significantly obstructed.

PRELIMINARY OBJECTIONS OF THE RESPONDENT:

The Respondent filed her limited objections on 17th November 2023, taking up a series of preliminary objections to the maintainability of the application. The Respondent denies all material allegations of contempt and contends that the Petition is frivolous, vexatious, and instituted with *mala fide* intent.

It is her position that the Petitioner has failed to provide a complete and accurate transcript of the impugned interview and that the extracts cited in the Petition are misleading and distorted. The Respondent further states that the interview was an exercise of her right to respond to the threats she claims to have received and was not directed at the Court or intended to influence judicial proceedings. She argues that if the Petitioner considered any part of the interview defamatory, his remedy lies in instituting a civil action for defamation and not in invoking contempt jurisdiction. In any event, the Respondent contends that no utterance made by her rises to the threshold required to constitute contempt, as contemplated by law.

THE PETITIONER'S SUBMISSIONS:

Elaborating his position that the conduct of the Respondent falls squarely within the scope of contempt of court. He submits that the Respondent, by making public remarks on the merits of a pending case, has violated the principle that justice must be administered in courtrooms, not in the media. Citing Attorney

General v. Times Newspapers Ltd. [1973] 3 All ER 54, the Petitioner refers to Lord Reid's observation that;

“anything in the nature of prejudgement of a case or of specific issues in it is objectionable not only because of its possible effect on that particular case but also because of its side effects which may be far-reaching.”

The Petitioner also refers to Re Garumunige Tilakaratne **(1991 1 SLR 134)**, where the Supreme Court reaffirmed that attempting to prejudge matters pending before a court amounts to contempt.

Further reliance is placed on Croos and Another v. Dabrera **(1999 1 SLR 205)**, wherein Hon. Justice Shiranee Tilakawardena, quoting Johnson v. Grant **(1923 SC 787)**, held that the true nature of contempt lies not in affronting the dignity of the court but in interfering with the administration of justice itself.

In support of the contention that the Respondent's statements caused tangible disruption, the Petitioner submits that attorneys who previously represented him have refused to continue due to fears of reputational damage, and key witnesses have communicated their unwillingness to testify.

Thus, it is argued that the Respondent's conduct has resulted in denying the Petitioner his statutory and constitutional right to a fair trial, and has obstructed the legal process at its core.

The Petitioner also draws attention to the recognition of Attorneys-at-Law as officers of court, citing the decision in In the Matter of Proceedings Against an Attorney-at-law for Contempt of Court **(1993 1 SLR 243)**, wherein it was held that legal practitioners have a duty to uphold the dignity of the legal process and that interference with their functioning can constitute contempt.

SUBMISSIONS OF THE RESPONDENT:

The central argument raised is that this Court lacks jurisdiction in view of the proviso to Article 105(3) of the Constitution read with Section 55(1) of the Judicature Act No. 2 of 1978. It is her submission that the District Court of Kuliyaipitiya, where the primary action is pending, is statutorily empowered to deal with contempt that interferes with its own proceedings.

In this regard, the Respondent cites the judgment in Mary Jean Varma v. Dr. Chrisantha Nicholas Anthony Nonis and Others (CA Contempt Application No. 11/2016), where His Lordship Justice Surasena (as His Lordship then was), interpreting Article 105(3), held that **when contempt arises from matters directly connected to a case pending in an original court, such court is the proper forum for redress. The decision further emphasised that it would be impractical and contrary to legislative intent for the Court of Appeal to be inundated with contempt matters arising from courts of first instance.**

In addition, the Respondent relies on Metthananda v. Kushan Fernando (2006 1 SLR 290), where the Court of Appeal reaffirmed that the power to deal with contempt must be exercised with restraint and only in circumstances where the statutory procedure is inadequate or unavailable. The Respondent contends that in the instant matter, no such necessity has been demonstrated and the Petition is therefore an abuse of process.

She further argues that the Petitioner has failed to establish a prima facie case of contempt, referring to Jayaratne v. Sirimavo Bandaranaike (69 NLR 184), where it was held that

“a rule nisi for contempt of Court will not be issued unless there is available evidence which can lead the Court to conclude that an offence of contempt appears to have been committed.”

The same principle was echoed in Media Image Ltd. v. Dissanayake (2006 3 SLR 215), in which it was held that before issuing summons in contempt

proceedings, the court must be satisfied that sufficient grounds have been established.

The Respondent concludes by asserting that the interview, when viewed in its entirety, reveals no contemptuous intention or effect. On the contrary, it is submitted that she expressed confidence in the justice system and gratitude to her legal counsel. The failure of the Petitioner to annex the interviewer, Mr. Chamuditha Samarawickrama, as a party to the proceedings is cited as further indication that the application lacks *bona fides* and was brought with ulterior motives.

CONCLUSION:

In light of these competing positions, the matter before this Court centres on whether the conduct of the Respondent, in the context of a pending civil action, constitutes a deliberate interference with the course of justice sufficient to warrant the exercise of contempt jurisdiction under Article 105(3), and whether such jurisdiction is properly vested in this Court given the procedural and constitutional framework.

Whether the Petitioner has satisfied any of the grounds which permit him to invoke the Contempt of Court power vested in this Court under Article 105(3) of the Constitution?

Article 105(3) reads as follows:

“The Supreme Court of the Republic of Sri Lanka and the Court of Appeal of the Republic of Sri Lanka shall each be a superior court of record and shall have all the powers of such court including the power to punish for contempt of itself, whether committed in the court itself or elsewhere, with imprisonment or fine or both as the court may deem fit. The power of the Court of Appeal shall include the power to punish for contempt of any other court, tribunal or institution referred to in paragraph (1)(c) of this Article, whether committed in the presence of such court or elsewhere:

Provided that the preceding provisions of this Article shall not prejudice or affect the rights now or hereafter vested by any law in such other court, tribunal or institution to punish for contempt of itself.”

In the present case, it is common ground that DC Kuliypitiya Case No. 1147/L is still pending, and the alleged acts of contempt are referable to the said case. Thus, the right forum to decide on the contempt seems to be the District Court of Kuliypitiya, where admittedly case No. 1147/L is still pending adjudication.

Section 55(1) of the Judicature reads as follows:

“Every District Courtshall, for the purpose of maintaining its proper authority and efficiency, have a special jurisdiction to take cognizance of, and to punish with the penalties in that behalf as hereinafter provided, every offence of contempt of court committed in the presence of the court itself and all offences which are committed in the course of any act or proceeding in the said court respectively...”

The Petitioner has instituted the present application before this Court without adducing any reasons whatsoever for his failure to initiate such proceedings before the District Court of Kuliypitiya, before which the matter is pending and which said Court is possessed of all the facts.

In this regard, it apt to refer to the Judgment of this Court in the case of Mary Jean Varma v. Dr. Chrisantha Nicholas Anthony Nonis and others – CA (COC) Application No. 11/2016, decided on 24.01.2017, where his Lordship Justice Surasena (as he then was) *inter alia*, held thus:

“According to the caption of the petition, the Petitioner has filed this application to invoke the jurisdiction vested in this court by virtue of Article 105(3) of the Constitution of the Democratic Socialist Republic of Sri Lanka read together with chapter LXV of the Civil Procedure Code for the punishment of the 1st to 4th Respondents for contempt of court.”

Then His Lordship has reproduced the Article 105(3) and stated that since paragraph 1(c) has been referred to above, it is necessary to have a look at Article 105(1) which reads as follows:

“Subject to the provisions of the Constitution, the institution for the administration of justice which protect, vindicate and enforce the rights of people shall be:

- a. The Supreme Court of the Republic of Sri Lanka*
- b. The Court of Appeal of the Republic of Sri Lanka,*
- c. The High Court of the Republic of Sri Lanka and such other Courts of First Instance, tribunals or such institutions as parliament may from time to time ordain and establish.”*

It is to be noted that section 18 of the Judicature Act has specifically provided the High Court with the jurisdiction to deal with instances where contempt of court and has also specified the sentence that it could impose on such accused.”

Accordingly, His Lordship Surasena J. (as His Lordship then was) citing the proviso to Article 105(3) observed thus:

- a. Section 18 of the Judicature Act must operate independently;
- b. Therefore, the High Court shall have power to take cognizance of summarily try the offence of contempt, as the matter in dispute was still pending before the High Court;
- c. Pragmatic considerations such as the function of the ‘Court of Appeal’, which as the name suggests, deals with appeals;
- d. If litigants throughout the country opt to file in this Court, the twelve judges of this Court (at that time), would be inundated;
- e. As the matter was before the High Court, the High Court Judge would be well versed and better appraised of the facts, and thus in a better position to deal with the offence of contempt [vide Methananda v. Kushan Fernando (2006) 1 SLR 290]

The *Metthananda's* Case is related to a case where this Court in upholding the preliminary objection raised regarding the exercise of jurisdiction under Article 105(3), inter alia held that:

“....section 55(1) of the Judicature Act confers specific jurisdiction to every District Court, Magistrate’s Court and Primary Court to deal with every offence of Contempt of Court committed in the presence of the Court or committed in the proceedings in the said court...

Thus, when the legislature has laid down a specific provision to deal with Contempt of Court arising out of giving false evidence in the course of any of its proceedings, the Petitioner should proceed under Section 55(1) of the Judicature Act read with Section 183 of the Civil Procedure Code rather than seek redress from this Court....”

Therefore, it is clear that the rationale in empowering courts such as the District Court to hear and determine cases of contempt committed in the face of the court (in facie curiae) is to preserve the respect of that Court whilst enabling that Court to maintain its just authority in carrying on with its proceedings.

The subject matter of the present contempt application relates to DC Kuliypitiya Case No. 1147/L. Article 105 (3) of the Constitution read together with Section 55(1) of the Judicature Act empowers the District Court to exercise such contempt jurisdiction. Since related action No. 1147/L is pending before the District Court of Kuliypitiya, the legal context highlighted in Mary Jean Varma’s Case is applicable to the present case.

Furthermore, the Petitioner has failed to adduce any reason as to why it is the Court of Appeal which should deal with this case, when in fact, interpreting the proviso to Article 105 (3), there is absolutely no bar for the Petitioner to file this case in the very District Court.

The Respondent has drawn the attention of this Court to a portion of the ‘transcript of the said interview’ which is annexed as A4 by the Petitioner, stating

that no offence of contempt of court has been committed by the Respondent. In fact, on the contrary, the Respondent has stated that despite the Petitioner acting in excess of the power conferred upon him by a valid Power of Attorney given to him, the District Court of Kuliyaipitiya in Case No. 1147/L has done justice to her, to wit:

හරිනි : ' ඔව් ඉතින් අපි ළඟ මේ පවර් ඔෆ් ඇටෝරිනි එකක් දීලා අපේ මේ වැඩ කරගන්න හිටපු අපේ සේවකයෙක්නේ ඔය'.

වමුදින : 'හොර පවර් ඔෆ් ඇටෝරිනි. එකක්?'

හරිනි : 'අපි ව්‍යාජ එකක් නොවේනේ දීලා තියෙනේ, නමුත් ඔහුට දුන්නු පවර් ඔෆ් ඇටෝරිනි එකේ තියෙනවා මේක කන්ස්ට්‍රක්ට් කරන්න. නමුත් ඔහු ඒක අවභාවිතා කරලා මේකේ කඩ විකුනනවා'.

[Vide, at page 7 of Petition dated 16.10.2023]

හරිනි : ' පවර් ඔෆ් ඇටෝරිනි එකේ කොහෙවත් සඳහන් කරලා නෑ වමුදින එකෙන් එයාට විකුනුම්කර කරන්න පුළුවන් කියලා'.

[Vide, at page 14 of Petition dated 16.10.2023]

හරිනි : 'වමුදින ඔයා ඇත්ත කතාව දන්නේ නැතුව කතා කරන්නේ, මාර්තු 16 ඉන්ටේරිම් තහනම මට මේ ඩිල් වලට සම්බන්ධ මේ දේශපාලකයා එකතු වෙලා දාපු නඩුවේ ඉන්ටේරිම් තහනම ඉවත් කරනවා මට පක්ෂව මම මේ ගරු අධිකරණයට හිස නමා අවාර කරනවා. මට පක්ෂව තීන්දුව දෙන්න යන්නේ ස්ථානයට කියලා, එක දිගට අපි ගියා යන්න බෑ වන්ඩ්'.

[Vide, at page 19 of Petition dated 16.10.2023]

හරිනි: '... උසාවි අධිකරණයේ සම්පූර්ණ සාධාරණය මට ඉෂ්ට වෙලා තියෙනවා '

[Vide, at page 20 of Petition dated 16.10.2023]

It is seen that contrary to the assertion of the Petitioner, the Respondent has in fact expressed her respect and confidence in the judicial system and due process, as clearly evinced by the transcript A4 in pages 19 and 20 of Petition dated 16.10.2023. However, neither praise nor blame directed towards courts, especially when a case is pending has to be taken seriously since it can lead to prejudicial discussion of the merits or the facts of his case, before they have been determined by the Court.

It appears from paragraphs 9 and 10 of the petition, that the Petitioner is more concerned with alleged allegations levelled against the Attorneys of the Petitioner. No documentary proof of same has been presented to court as at the time of filing this Petition on 16.10.2023.

With regard to issuing of rule nisi, it is apt to refer to the dicta in Jayaratne v. Sirimavo Bandaranaike, 69 NLR 184 where His Lordship H.N.G. Fernando J. (as he was then) held that:

“A rule nisi for contempt of Court will not be issued unless there is available evidence which can lead the Court to conclude that an offence of contempt appears to have been committed.”

It was reiterated and followed by His Lordship Justice Wimalachandra in Media Image Ltd v. Dissanayake – 2006 (3) SLR 215 where the Court of Appeal held that in contempt proceedings, as in any other criminal case instituted in a Magistrate Court, before issuing summons, the Court has to be satisfied that the Petitioner has disclosed sufficient grounds to proceed against the Respondents.

The Petitioner has very much relied on the English case of Attorney General vs. Times Newspapers Limited-(1973) 3 All ER 54, which is a 5 bench House of Lords decision, where contempt of court is identified to be of three different sorts. It reads as follows:

*“There are three different sorts of contempt. One kind of contempt is scandalizing the court itself. There may be likewise a contempt of this court, in abusing parties who are concerned in causes here. There may be a contempt of this court **in prejudicing mankind against persons before the cause is heard**. There cannot be anything of greater consequence, than to keep the stream of justice clear and pure, “that parties may proceed with safety both to themselves and their characters”. (the emphasis added)*

In the instant case, the Respondent has made statements in her interview regarding forged deeds executed in relation to the property/subject matter of the

pending case at the District Court of Kuliyaipitiya. So that, whether her statements amount to prejudging or not should be considered by the very Court where the case is being heard, i.e. the District Court of Kuliyaipitiya.

The outcome pre-judging was elaborated by His Lordship Justice Morris at page 10 of the Times Newspaper Judgment:

*“Even if some expressions of opinion were the result of honestly attempted sound reasoning how easy it would be for later statements by others to amount simply to advocacy inspired by partisan motives for the cause of one party, and how difficult it would be then to stem the tide of public clamour for the victory of one side or the other. Though a judge would hope to be resistant any pre-trial soundings of the trumpet it must surely be contrary to public policy to allow them full blast. Furthermore, not only is it from the public point of view unseemly that in respect of a cause awaiting the determination of a Court there should be public advocacy in favour of one particular side or some points of view but also the Courts, I think, owe it to the parties to protect them either from the prejudices of pre-judgment or from the necessity of having themselves to participate in the flurries of pre-trial publicity. In this connection, I agree with Lord Denning M.R. when he said **“We must not allow ‘trial by newspaper’ or ‘trial by television’ or ‘trial by any medium other than the courts of law’.**” (the emphasis added)*

Lord Morris at page 11 cites Justice Maugham from, In re William Thomas Shipping Co. Limited (1930 2 Ch. 368) and states that,

*“I think that to punish injurious misrepresentations directed against ‘a party to the action, especially when they are holding up that party ‘to hatred or contempt, is liable to affect the course of justice, because ‘it may, in the case of a plaintiff, **cause him to discontinue the action ‘from fear of public dislike, or it may cause the defendant to come to ‘a compromise which he otherwise would not come to, for a like ‘reason.’**” (the emphasis added)*

Lord Diplock at page 15 of the Times Newspaper case has stated as follows:
“Contempt of court, except the rare offence of scandalising the court after judgment, is committed before the trial is concluded. Whether in the result the publication will have had any influence upon jurors or witnesses is not known when the proceedings for committal for contempt of court are heard. The mischief against which the summary remedy for contempt of court is directed is not merely that justice will not be done but that it will not be manifestly seen to be done. Contempt of court is punishable because it undermines the confidence not only of the parties to the particular litigation but also of the public as potential suitors, in the due administration of justice by the established courts of law”.

“My Lords, to hold a party up to public obloquy for exercising his constitutional right to have recourse to a court of law for the ascertainment and enforcement of his legal rights and obligations is calculated to prejudice the first requirement for the due administration of justice; the unhindered access of all citizens to the established courts of law.”

“If to have recourse to civil litigation were to expose a litigant to the risk of public obloquy or to public and prejudicial discussion of the facts or merits of the case before they have been determined by the court, potential suitors would be inhibited from availing themselves of courts of law for the purpose for which they are established.”

His Lordship states that conduct in the likes of the Respondents should not be considered as isolated situations that only affects one singular incident, but rather to treat actions like such to affect the whole society. This is because such actions not only prevent the Petitioner of the present action, but it prevents the behemoth of the general public as potential litigants from approaching courts. This is because other litigants would too be scared of having to facing similar circumstances as of the Petitioner.

Lord Diplock at page 16, goes into state as follows:

*“In my view, these cases support the proposition I have already stated: that contempt of court in relation to a civil action is not restricted to conduct which is calculated (whether intentionally or not) to prejudice the fair trial of that action by influencing, in favour of one party or against him, either the tribunal by which the action may be tried or witnesses who may give evidence in it; it extends also to conduct that is calculated to inhibit suitors generally from availing themselves of their constitutional right to have their legal rights and obligations ascertained and enforced in courts of law, **by holding up any suitor to public obloquy for doing so or by exposing him to public and prejudicial discussion of the merits or the facts of his case before they have been determined by the court** or the action has been otherwise disposed of in due course of law”.*(the emphasis added)

In light of the above cited House of Lords decision, it appears that the Petitioner has established a prima facie case which is sufficient to issue summons regarding contempt of court. Albeit, the proper forum or the correct jurisdiction to have these proceedings is not the Court of Appeal but the District Court of Kuliyaipitiya where the connected case is pending.

Accordingly, the preliminary objection is upheld and this application is dismissed. No costs.

Judge of the Court of Appeal

Hon. Rohantha Abeysuriya PC, J.(P/CA)

I agree.

President of the Court of Appeal