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

In the matter of an application for mandates in the nature of Writs of Certiorari and Prohibition in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA Case No: CA WRIT Application No:

WRT 354/2022

Pallewaththa Gamaralage Maithreepala Yapa Sirisena,
C79, Hector Kobbekaduwa Mawatha,
Colombo 07

Accused- Petitioner

Vs.

1. Honorable Magistrate,
Fort Magistrate's Court,
Colombo 01.

2. The Registrar, Fort Magistrate's Court,
Colombo 01

Respondent

3. Rev. Cyril Gamini Fernando,
The Residence of His Eminence the Cardinal,
Gnanartha Pradeepaya Mawatha'
Colombo 08

4. Jesuraj Ganeshan
No/75/16 Paramananda Vihara Mawatha,
Colombo 13

Complainant-Respondents

Before: **Dhammika Ganepola, J,**
Mayadunne Corea, J,
P.Kumararatnam, J,
B. Sasi Mahendran, J,
Amal Ranaraja, J.

Counsel: Faisz Musthapha, P.C., with N Bandara, P.C., Faiszer Musthapha, Keerthi
Tilekaratne and Bishran Iqbal for the Petitioner
Suren Gnanaraj with Rashmi Dias Goonewardena for the Intervenient-Petitioner
Rienzie Arsecularatne, P.C., with Thilina Punchihewa for the 3rd Respondent
Raid Ameen with Ra'na Farouk and Vishakan Sarreswaran for the 4th Respondent
Sajith Bandara, S.C. for the State

Written Submissions: 26.11.2025 (by the Petitioner)
On 31.12.2025 (by the 3rd Complainant-Respondent)
19.01.2026 (by the State)

Argued On: 21.05.2025, 27.06.2025, 25.07.2025, 04.08.2025, 28.08.2025, 22.10.2025 and 27.10.2025

Judgment On: 03.02.2026

JUDGMENT

B. Sasi Mahendran, J.

In the instant application, the Petitioner challenges the legality of the Order dated 16.09.2022 marked P4, delivered by the Learned Magistrate of the Magistrate Court, Fort, in the case bearing No. B 23084/22, by issuing process on the petitioner, upon being named the accused in that case. The Petitioner seeks, *inter alia*, a Writ of Certiorari to quash the impugned order made by the 1st Respondent, i.e., the Learned Magistrate of Fort (hereinafter referred to as the 1st Respondent), and a Writ of Prohibition preventing further proceedings in the said case.

The 3rd and 4th Complainant-Respondents (hereinafter referred to as the Complainants) have instituted proceedings before the 1st Respondent by way of a Private Plaint in terms of Section 136(1)(a) of the Criminal Procedure Code Act No. 15 of 1979 as amended (hereinafter referred to as the CCPA). In the above complaint marked as P3, Complainants alleged that the Petitioner has failed to order or supervise the arrest of Zaharan Hashim and his followers and also due to negligence failed to prevent the deaths and injuries of the individuals named in the complaint, thereby committing offences punishable under the sections of the Penal Code and referred to in the complaint.

Upon hearing the submissions of the Complainants, the 1st Respondent, acting under Section 139 (1) of the CCPA, has issued process on the Petitioner requiring his attendance before the Fort Magistrates' Court on 14th October 2022. I hereby reproduce the impugned order of the 1st Respondent, which is challenged by this application.

> "මෙම නඩුවේ 1, 2 පැමිණිලිකරුවන් විසින් "පල්ලෙවත්ත ගමරාළලාගේ මෛත්‍රීපාල යාපා සිරිසේන " යන විත්තිකරුට එරෙහිව අපරාධ නඩු විධාන සංග්‍රහ පනතේ 136(1) (අ) වගන්තිය ප්‍රකාරව මෙම පැමිණිල්ල ඉදිරිපත් කරනු ලබයි. පැමිණිල්ල ඉදිරිපත් කරමින් උගත් ජනාධිපති නීතීඥ රියන්සි අර්සකුලරත්න මහතා අධිකරණය හමුවේ කරුණු දක්වමින් සඳහන් කර සිටියේ පැමිණිල්ල සමඟ ඉදිරිපත් කරනු ලැබූ ලේඛන වලින් ද තහවුරු වන පරිදි මෙම නඩුවට අදාළ ප්‍රස්තුත කරුණ වන පාස්කු ඉරු දින ත්‍රස්ත ප්‍රහාර මාලාව සම්බන්ධයෙන් මෙම නඩුව අසා නිම කිරීම සඳහා මෙම අධිකරණයට අධිකරණ බලය ඇති බවටයි. ඒ අනුව, මෙම නඩුවට අදාළව ත්‍රස්ත ප්‍රහාරයන් සිදු වූ සිනමන් ග්‍රෑන්ඩ් හෝටලය, ෂැන්ග්‍රිලා හෝටලය, කින්ස්න්ස්බරි හෝටලය යන ස්ථානයන් මෙම අධිකරණයේ බල සීමාව තුළට ගැණෙන බවත්, මෙම නඩුවේ චූදිත තැනැත්තා එවකට ජනාධිපති සහ ආරක්ෂක අමාත්‍යවරයා ලෙසට කොළඹ - 01 ජනාධිපති ලේකම් කාර්යාලය තුළ සිටිමින් රාජකාරී සිදු කිරීම කළ බැවින් එකී ජනාධිපති

ලේකම් කාර්යාලයත් මෙම අධිකරණ බල සීමාව තුළට අයත් ස්ථානයක් බවටත් තීරණය කරමි. එසේම මෙම පැමිණිල්ල මඟින් දීර්ඝ ලෙස විස්තර කොට ඇති පරිදි ජනාධිපතිවරයා, ආරක්ෂක අමාත්‍යවරයා සහ නීතිය හා සාමය පිළිබඳව වූ අමාත්‍යවරයා වශයෙන් එකී තීරණයන් ගනු ලැබුවේ සහ හෝ ගනු නොලැබුවේ සහ අදාළ නොකර හැරීම් කරනු ලැබුවේ සහ ආරක්ෂක මණ්ඩලය රැස් කරනු ලැබුවේ පෙර කී ජනාධිපති ලේකම් කාර්යාලය තුළ වන බැවින් ඒ සම්බන්ධයෙන් මෙම නඩුව අසා නිම කිරීමට මෙම අධිකරණයට අධිකරණ බලය ඇති බවට තීරණය කරමි. කෙසේ වෙතත්, මේ ප්‍රහාර මාලාවේදී කොච්චිකඩේ ශාන්ත අන්තෝනි දේවස්ථානය, කටුවාපිටියේ ශාන්ත සෙබස්තියන් දෙවස්ථානය සහ මඩකලපුවේ සියෝන් දේවස්ථානය මෙම අධිකරණ බල ප්‍රදේශයෙන් පිටත පිහිටි ස්ථානයන් වුවත්, මෙම ප්‍රහාරය එකම සිද්ධි මාලාවක සිදු වුණු ක්‍රියාවක් බැවින් එය අපරාධ නඩු විධාන සංග්‍රහ පනතේ 132(1) වගන්තියට අනුව මෙම අධිකරණයට මෙම සමස්ත ක්‍රියාදාමය සම්බන්ධයෙන්ම මෙම නඩුව අසා තීරණය කිරීමට හැකි බවට තීරණය කරමි.

පැමිණිලිකරුවන් වෙනුවෙන් උගත් ජනාධිපති නීතීඥ මහතා විසින් කරුණු දක්වමින් සඳහන් කර සිටියේ චූදිත විසින් ජනාධිපතිවරයා, ආරක්ෂක අමාත්‍යවරයා සහ නීතිය සහ සාමය පිළිබඳ අමාත්‍යවරයා ලෙසට කටයුතු කරමින් සිටිය දී මෙම ප්‍රහාරයට පෙරාතුව ඒ පිළිබඳව බුද්ධි තොරතුරු සහ ප්‍රමාණවත් වාර්තාවන් තිබිය දී එම ප්‍රහාරය වළක්වා ගැනීමට කටයුතු නොකිරීම තුළින් අපරාධමය නොසැලකිලිමත්කමින් ක්‍රියා කිරීම සහ නොකර හැරීම් සිදු කර ඇති බවයි. විශේෂයෙන්ම මෙම ප්‍රහාරක මාලාවේ අදාළ ත්‍රස්ත කණ්ඩායම් පිළිබඳව නම් වශයෙන්ම හඳුනා ගෙන ඔවුන්ගේ තොරතුරු ලබා දී තිබිය දී ඔවුන්ට එරෙහිව නීතිය ක්‍රියාත්මක කිරීමට කටයුතු නොකිරීම පිළිබඳව ද අධිකරණයේ අවධානය යොමු කරන ලදී. එසේම සහරාන් හෂිම් ඇතුළු එකී ත්‍රස්ත සංවිධානය විසින් ත්‍රස්ත ප්‍රහාරයක් දියත් කිරීම සඳහා කටයුතු කරමින් සිටින බවට ප්‍රමාණවත් තරම් කරුණු අනාවරණය වී ඇති අවස්ථාවක සහ එවැනි පිළිගත හැකි කරුණු අනාවරණය වී ඇති අවස්ථාවක චූදිත ඊට දින 5කට පෙරාතුව විදේශගත වී ඇති බවටද අධිකරණයේ අවධානය යොමු කරන ලදී. එසේ විදේශගත වීමේ දී ඔහු විසින් වැඩ බලන ආරක්ෂක අමාත්‍යවරයෙක් හෝ වැඩ බලන මහජන ආරක්ෂාව පිළිබඳ අමාත්‍යවරයෙක් පත් කිරීමක් සිදු නොකර ඇති බවට ද පැමිණිල්ලෙන් කරුණු දක්වයි.

එසේම මේ සම්බන්ධයෙන් එවකට අභියාචනාධිකරණ විනිසුරු ජනක් ද සිල්වා මැතිතුමාගේ සභාපතීත්වයෙන් යුක්ත ජනාධිපති කොමිෂන් සභාවක් පත්කර ඇති අතර එකී කොමිෂන් සභාවේ අවසන් වාර්තාවේ පිටපතක් " පැ. 2 " වශයෙන් සලකුණු කරමින් උගත් ජනාධිපති නීතීඥවරයා සඳහන් කර සිටියේ එකී වාර්තාවේ " පැ. 2 (අ)' හි සඳහන් වන පරිච්ඡේදය යටතේ මෙම චූදිත සම්බන්ධයෙන් වන නිර්දේශයන් සඳහන්ව ඇති එහිදී චූදිතට එරෙහිව දණ්ඩ නීති සංග්‍රහය යටතේ නැඟිය හැකි චෝදනාවන් යටතේ නඩු පවතින ලෙසට නීතිපතිවරයා වෙතට එකී කොමිසම මඟින් නිර්දේශ කර ඇති බවටත් මෙම අධිකරණයේ කරුණු දක්වන ලදී.

ඉහත දක්වන ලද කරුණු අනුව සහ පැමිණිල්ල විසින් ඉදිරිපත් කරන ලද ලේඛන අනුව මේ නඩුවේ චූදිත මේ ප්‍රහාරය සිදු වූ අවස්ථාවේ ශ්‍රී ලංකා ජන රජයේ ජනාධිපතිවරයා ලෙසත්, ආරක්ෂක අමාත්‍යවරයා ලෙසත් නීතිය හා සාමය පිළිබඳව අමාත්‍යවරයා ලෙසත් නොසැලකිලිමත්කමින් සිය වගකීම් ඉටු කිරීම සඳහා අපොහොසත් වී ඇති බවටත්, ඒ හේතුවෙන් මෙම ප්‍රහාර මාලාව සිදු වී ඇති බවටත් එය තුළින් පැමිණිල්ලේ විස්තර කර ඇති දණ්ඩ නීති සංග්‍රහය යටතේ ගැණෙන අපරාධයන් ගණනාවක් සිදු වී ඇති බවටත් වන කරුණ කෙරෙහි සැහීමකට පත් වෙමින් මෙම පැමිණිල්ල භාරගැනීමට තීරණය කරමි. ඒ අනුව, චුදිතට සිතාසි නිකුත් කරමි.

කැඳවන්න :-2022.10.14. "

This application has been filed disputing the impugned order on the basis that the 1st Respondent has failed to form an opinion that there was sufficient ground to proceed against the Petitioner before he issued process on the latter.

The Petitioner submits that the said Order of the 1st Respondent is,

1. It is wholly unsupported by the evidence, as there was no material before the 1st Respondent on which an opinion could have been formed that there existed sufficient ground to proceed against the Petitioner, as required under Section 139(1) of the Code of Criminal Procedure Act No. 15 of 1979.

2. In any event, the 1st Respondent was not entitled to act upon the report submitted by the Commission of Inquiry in the absence of all the material collected by the Commission, as contemplated under Section 24 of the Commission of Inquiry Act No. 17 of 1948, as amended.

3. Furthermore, any material collected in the course of such investigation or inquiry can only be used or tendered by the Attorney General in terms of Section 26 of the said Act.

4. The order is vitiated by misdirection, in that the 1st Respondent acted under a misconception as to the contents of the report.

However, the Complainants contended that,

1. At the stage of issuing summons, the 1st Respondent is only required to determine whether there exists sufficient ground for proceeding in terms of Section 139(1) of

the Code of Criminal Procedure and is not required to evaluate evidence or determine guilt. In the instant case, the 1st Respondent has judicially evaluated the legal requisites and necessary ingredients of the offences and lawfully formed the requisite opinion before issuing process.

2. The 1st Respondent was entitled in law to rely on the report of the Commission of Inquiry, which contains evidence given on oath and is not hearsay. Any determination as to the admissibility or weight of such evidence is a matter to be decided at the trial and not at the process of issuing stage.
3. The Commission of Inquiry appointed by the Petitioner himself has found that the Petitioner failed in the discharge of his duties and responsibilities, that such failure transcends mere civil negligence, and that there is criminal liability arising from his acts and omissions. The Petitioner never challenged or impugned the said report at the time it was issued.
4. If aggrieved by the disputed order of the 1st Respondent, the proper remedy available to the Petitioner was to invoke the revisionary jurisdiction of the Provincial High Court or the Court of Appeal. The present writ application is procedurally improper and has been filed without explaining the failure to seek the remedies referred to before.
5. The criminal proceedings have been properly instituted under Section 136(1)(a) of the Code of Criminal Procedure, and the 1st Respondent was entitled to rely on the affidavit of the complainants and the accompanying material without calling witnesses. In the totality of the circumstances, the issuance of process was lawful, proper, and in accordance with settled principles of criminal procedure, and the instant petition is an attempt to avoid facing a criminal trial before a court of law.

During the stage of argument, the Learned counsel for the Petitioner pointed out that the final report of the Commission of Inquiry to investigate and inquire into and or take necessary action on the bomb attacks on 21st April 2019 (hereinafter referred to as the Commission of Inquiry Report) consists of two volumes, and he emphasized that the 2nd volume, which consists of several parts contains of the record of proceedings of such inquiry i.e. the material collected and evidence of witnesses recorded before the commission, had not been submitted to the 1st Respondent for his consideration. Furthermore, the Petitioner has also contended that, in any event, Sections 24 and Section 24(a) of the COIA only permit the Attorney General and the Director General of the Commission to Investigate Allegations of Bribery or Corruption institute criminal

proceedings in accordance with the law in respect of any offence based on the record of proceedings of such inquiry.

Additionally, the Learned Counsel pointed out that Section 26 (2) of the said COIA enables the Honourable Attorney General to make a request to the commission to furnish the record of proceedings of an inquiry, statements and testimonies recorded at the inquiry in an instance where the Attorney General decides to institute criminal proceedings based on such material.

For easy reference, I reproduce Sections 24, 24(a) and 26 of the COIA (as amended)

Section 24 - Institution of Criminal Proceedings.

> *"Notwithstanding anything to the country in the Code of Criminal procedure Act No. 15 of 1979 or any other law, it shall be lawful for the Attorney- General to institute criminal proceedings in a court of law in respect of any offence, based on material collected in the course of an investigation or inquiry or both an investigation and inquiry, as the case may be, by a Commission of inquiry appointed under this act."*

Section 24 (a)

> *"24A. (1) Notwithstanding anything to the contrary in the Commission to Investigate Allegations of Bribery or Corruption Act or any other written law, where the Commission to Investigate Allegations of Bribery or Corruption, on a consideration of material collected in the course of an investigation or inquiry or both an investigation and inquiry as the case may be a Commission of Inquiry appointed under section 2, is satisfied that an offence under the following laws has been committed, it may direct the Director General to institute criminal proceedings in terms of the*
>
> *a. Bribery Act; or*
> *b. Declaration of Assets and Liabilities Law,*
>
> *(2) The Commission to Investigate Allegations of Bribery or Corruption may prior to the institution of proceedings under subsection (1) -*
>
> *(a) conduct further investigations into the commission of any offence;*

(b) consider material that may have been collected in the course of an investigation conducted by the Commission to Investigate Allegations of Bribery or Corruption prior to the receipt of the material referred to in subsection (1); and

(c) consider material the Commission to Investigate Allegations of Bribery or Corruption may have received from any other law enforcement authority.

Section 26 - Powers of the Attorney General states,

"(1) In the conduct of an inquiry or investigation under the provisions of this Act, the Attorney-General may-

(a) appear before any Commission;

(b) place before the Commission any evidence or other material, which in the opinion of the Attorney-General is relevant to the investigation or inquiry as the case may be;

(c) examine any witness summoned by the Commission if it appears to him that the evidence of such witness is material to, or has disclosed information relevant to, the investigation or inquiry as the case may be.

(2) On a request made by the Attorney-General, the Commission shall make available to the Attorney-General copies of all statements and testimonies recorded and any other material collected or received by such Commission in the course of the conduct of such inquiry or investigation as the case may be."

In response, the Learned State Counsel, appearing as *amicus curiae*, drew the attention to the fact that the report of the commission of inquiry appointed to report or take necessary actions on the bomb attacks on 21st April 2019 has been tabled on 8th April 2021 and preserved in the Parliamentary Library. That such an outcome necessarily makes such a document a public document, privy to the public at large.

Relying on the submissions advanced by the Attorney General, it is my considered view that, should the commission of inquiry report be regarded as a public document, as it in accessible to the public, the record of proceedings contained in such report may be relied upon by any member of the public to institute proceedings by lodging a complaint either orally or in writing to a Magistrate Court, in accordance with Section 136(1)(a) of CCPA, alleging that an offence has been committed within the Court's jurisdiction.

It is indeed the case that the Petitioner, who was the president of the Democratic Socialist Republic of Sri Lanka at that time, directed the relevant commission of inquiry to submit a report setting out the findings of the inquiry, together with their recommendations, with the Petitioner designated as the custodian thereof. In this instance, the report of the Commission of Inquiry was presented to Parliament on or about 23rd February 2021. This fact was highlighted by the Learned State Counsel in the written submission tendered by him on 19th January 2026. Furthermore, in his submissions, the Learned State Counsel informed the Court that, according to the hansard, the said report had been included in the Order Paper and was tabled before Parliament on 8th April 2021 for debate.

Once a report is lawfully released to the public, it enters the public domain.

Following the amendment by Act No 3 of 2019 to the COIA, the Honourable Attorney General and the Director General of the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) were vested with the authority to institute criminal proceedings based solely on the material contained in the record of proceedings of such inquiry, i.e. evidence recorded and conducted by a Commission of Inquiry. Sections 24 and 24(a) of the COIA as such empower both the Attorney General and the Director General of CIABOC to act accordingly.

I also note that the amendment introduced by Section 24(A)(2) of the amending Act No. 3 of 2019 empowers the CIABOC to conduct further investigations into the commission of any offence.

However, when a report is made public and it converts into a public document, the Provision in Section 24 of the said Act cannot be interpreted as precluding anyone from instituting proceedings based on the material in such a report under Section 136 of the CCPA. Section 136 (1) (a) of the CCPA permits any individual to lodge a complaint, either orally or in writing, before a Magistrate regarding the commission of an offence. In the

present case, the complainants have relied on Section 136 (1)(a) of the CCPA in filing their complaint based on the material contained in the said Commission of Inquiry report.

Then, the question arises as to whether the 1st Respondent, before issuing process, examined the material placed before him and considered the essential ingredients of the offences with which the petitioner is to be charged.

The petitioner has also contended that the 1st Respondent has failed to follow the *dictum* considered in the case of ***Malini Gunaratne v Abeysinghe et al*** 1994 3 SLR 196. In the said case court held that Section 139 (1) of the CCPA makes it mandatory for a Magistrate, before issuing any process, to form the requisite opinion that there are "*sufficient grounds*" comprised of two elements, to wit,

1. That the opinion on which the Learned Magistrate acts should be "verifiable"
2. Such material should be assessed objectively

As the Complainants have instituted proceedings against the Petitioner in terms of Section 136 (1) (a) of the CCPA. It is necessary to look into whether the 1st Respondent has taken the steps as set out in Section 139 (1) of the CCPA.

The said Section is as follows:

> *"139.(1) where proceedings have been instituted under paragraph (a) or paragraph (b) or paragraph (c) of section 136 (1) and the Magistrate is of opinion that there is sufficient ground for proceeding against some person who is not in custody-*
>
> *(a) If the case appears to be one in which according to the forth column of the First Schedule a summons should issue in the first instance, he shall, subject to the provisions of section 63, issue a summons for the attendance of such person;*
> *b) If the case appears to be one in which according to that column a warrant should issue in the first instance, he shall issue a warrant for causing such person to be brought or to appear before the court at a certain time.*
>
> *Provided that -*
> *(i) the Magistrate may in any case, if he thinks fit, issue a summons*

in the first instance instead of a warrant;
(ii) in any case under paragraph (a) or paragraph (b) of section 136(1), the Magistrate shall, before issuing a warrant, and may, before issuing a summons, examine on oath the complainant or some material witness or witnesses; and
(iii) in any case under paragraph (c) of section 136(1), the Magistrate shall, before issuing process, record a brief statement of the facts which constitute his means of knowledge or of the grounds of his suspicion, as the case may be.

(2) Where proceedings have been instituted under paragraph (d) of Section 136 (1), the Magistrate shall forthwith examine on oath or affirmation the person who has brought the accused before the court and any other person who may be present in court able to speak to the facts of the case;

Provided that such examination shall not be necessary where the Magistrate has before him a report of the facts of the case or a complaint in writing has been filed.

(3) Where proceedings have been instituted under paragraph (e) or paragraph (f) of section 136 (1), the Magistrate shall issue a summons for the attendance of the person named in the warrant or complaint, or a warrant for causing such person to be brought or to appear before the court at a certain time, according as the fourth column of the First Schedule provides that the case is one in which a summons or a warrant should issue in the first instance."

In my considered view, before issuing a process on a person named an accused, the Learned Magistrate should remain mindful of his duty to ascertain whether sufficient material exists to proceed against such a person. This obligation serves to prevent the harassment of innocent persons through the actions of unscrupulous complainants or the initiation of vexatious proceedings.

Section 139 (1) of the CCPA requires a Magistrate to form an opinion whether there is sufficient ground for proceeding against a person named an accused in a complaint against a person, process is to be issued. What is '*sufficient ground*'? The '*sufficient ground*' was explained by S.N. Silva J (as he was then) (with Dr Ranaraja J agreeing) in ***Malinie Gunaratne, Additional District Judge, Galle v. Abeysinghe and Another*** (Supra):

> *"The words "sufficient ground" embraces both, the ingredients of the offence and the evidence as to its commission."*
>
> *He further held that:*
>
> *"I am of the view that the proper test is to ascertain whether on the material before Court, prima facie, there is sufficient ground on which it may be reasonably inferred that the offence as alleged in the complaint or plaint has been committed by the person who is accused of it. In this case the learned Magistrate has set off on the right track by calling for the record, which is alleged to have been incorrectly framed and recording the evidence of the complainant."*

This dictum was considered by His Lordship Arjuna Obeyesekere J in ***Aruna Iddagoda v. Hon. Magistrate, Magistrates Court No. 04, Colombo 12 and another,*** WRT 211/2020, decided on 14th June 2021, held that;

> *"The primary argument of the learned president's counsel for the petitioner was that the learned magistrate had not considered the material that was before him, nor had he considered the ingredients of the offence that the Petitioner was charged with in the context of the material that was before him, and therefore the decision of the Hon. Magistrate to issue summons on the Petitioner is illegal and unreasonable.*
>
> *Further held that;*
>
> *there must be due consideration to these issues even at the stage the Magistrate is called upon to issue summons. As held by this Court in Malinie Guneratne vs Abeysinghe and another, the decision of the Magistrate must withstand an objective assessment and hence the necessity for the Magistrate to set out the basis for his opinion.*
>
> *Taking into consideration all of the above circumstances, I am of the view that the Hon. Magistrate has acted outside the jurisdiction conferred on him and the*

decision to issue summons is clearly illegal and is therefore liable to be quashed by a Writ of Certiorari."

Recently, His Lordship Sampath B. Abayakoon J the case of ***Taian Lanka Steel Company Private Limited v Weerya Raja,*** CA (PHC) 0035/21, Decided On 06.02.2024, followed the dictum of ***Malini Gunaratne v Abeysinghe*** *(supra)* case.

"'Judge should look before issuing summons based on a private plaint filed in terms of section 136(1)(a) of the Code of Criminal Procedure Act. It appears that the learned Chief Magistrate has considered the reported case of ***Malani Gunaratne, Additional District Judge, Galle Vs. Abeysinghe and Another (1994) 3 SLR 196*** *as guidance for her considerations, and has come to a correct finding that the requirement should be to look whether there are sufficient reasons to issue summons and not to go into deep consideration of the evidence that can be adduced in proving the charges mentioned in a private plaint."*

Further, his lordship held that,

"It is clear that the necessary ingredient to prove a charge in terms of section 25 (1)(b) is to prove that the drawer of the cheque in relation to this case made an order to the banker to pay a sum of money, which payment is not made by reason of there being no obligation on the such banker to make payment.

It is apparent from the copy of the Magistrate's Court case record tendered along with this appeal, that the appellant has tendered along with the plaint, the draft charge sheet and the earlier mentioned affidavit, a list of witnesses and a list of documents, which the appellant would be relying on to prove the charges. He has also tendered to the Court the two cheque return notifications relating to the two cheques issued by the accused.

In the said notifications, the relevant bank has informed the reasons for not honouring the cheques as the relevant account had been closed at the time the cheques were presented. This goes on to show that there had been no obligation to the banker to honour the cheques due to the said fact.

I am of the view that this has provided enough information to the learned Chief Magistrate to satisfy herself as to the necessary consideration that should be looked into in issuing summons to an accused in a case filed as a private plaint. Since the appellant has tendered a list of witnesses that he intends to call at the trial, which includes an official from the relevant bank to prove the details as to the account through which the cheques have been issued, I am of the view that the appellant has provided sufficient information as to the way he intends to prove the charges against the accused."

The principle enunciated in the above judgments, which I acknowledge to be sound, elaborates on the manner in which the Learned Magistrate must first form an opinion prior to issuing summons based on the sufficient material placed before him in a private complaint.

According to the Written Submission filed by the Complainants, they have, with the complaint and the supporting affidavit, forwarded to the Magistrate Court and have averred the following. The Parliamentary Select Committee Report dated 23.10.2019, marked 'පැ 1', (annexed to the Plaint), the Final Report of the Commission to Investigate and Inquire into and Report or Take Necessary Action on the Bomb Attacks on 21.04.2019 Volume-l dated 31.01.2021, marked 'පැ 2' (annexed to the plaint), the Gazettes of the Democratic Socialist Republic of Sri Lanka marked 'පැ 3 (අ), පැ 3 (ආ), පැ 3 (ඇ), පැ 3 (ඈ), පැ 3 (ඉ), පැ 3 (ඊ) and පැ 3 (උ)' (annexed to the Plaint), the report dated 06.05.2019 marked "P4' (annexed to the plaint), the copies of Magistrate Court case records of cases bearing Nos. MC Fort B 13099/19 MC Fort B 13100/19, MC Colombo B 10193/06/19, MC Negombo L and MC Batticaloa 401/2009 marked 'පැ 5 (අ), පැ 5 (ආ), පැ 5 (ඇ), පැ 5 (ඈ), පැ 5 (ඉ) and පැ 5 (ඊ)' respectively.

Among the said documents, particularly Volume 01 of the final report of the Commission of Inquiry has been annexed to the petition marked P2 (where in the Magistrate Court marked as 'පැ 2'). This volume contains solely the recommendations made by the Commission of Inquiry. At page 589 of the document marked as P 2 in the petition, it is indicated that the Commission of Inquiry, based on the evidence placed before it, formed the opinion that there was criminal liability on the part of the Petitioner. Furthermore, the Commission has recommended that the Attorney General institute criminal proceedings against the Petitioner.

As stated before, the Learned Counsel for the Petitioner submitted to the Court that Volume 1 consists of only determinations, whereas Volume 2, Part 1, contains the record of proceedings, i.e. the testimony recorded by the commission. However, part 1 of Volume 2 has not been annexed to the complaint for the consideration of the 1st Respondent. In addition, part 4 of Volume 2 of the report, marked as X, contains intelligence-related information. Thus, the 1st Respondent was armed only with Volume 1 of the Commission of Inquiry report, together with the Parliamentary Select Committee report, which only sets out the following recommendations.

1. Essential reforms in the security and intelligence sector
2. Establishment of an enhanced financial supervisory mechanism
3. The need to control and monitor the rise of religious extremism
4. Addressing delays with justice: reforming the Attorney-General's Department.
5. Wahabism and the need for action.
6. Media reporting, fake news and other areas of concern
7. Holding politicians/ peoples' representatives accountable
8. Reforming the education sector to counter growing extremism.

I am also mindful of Section 182 of the CCPA. Further, Section as per the proviso 2, to section 139(1)(a)(b) empowers a Magistrate to examine witnesses under oath prior to issuing process to a person named an accused. In other words, a Magistrate, if he thinks fit, may form an opinion that there are sufficient grounds to proceed against a person named an accused after recording the evidence of a material witness or witnesses. Moreover, it must be noted that this is a private plaint filed by the complainants under Section 136(1)(a) of the CCPA.

A Magistrate who is called upon to decide whether sufficient grounds exist to proceed against an individual named an accused on a complaint made by a private individual must exercise great caution and diligence. This is because such a complaint is not preceded by an investigation ordinarily conducted by an investigator. Therefore, before issuing process, a Magistrate must take precautions to ascertain whether there is evidence against the individual named as an accused, and whether there is any evidence of the commission of the offence by the person accused of the same and also to establish the ingredients of the offence that such person has been accused of committing.

According to the written submissions filed by the Learned State Counsel, it has been indicated that under Section 7 of the COIA, a Commission of Inquiry is not necessarily

bound by the principles or the provisions of the Evidence Ordinance. Consequently, the Commission may have considered unverified electronic evidence which, under ordinary circumstances, would not be admissible in criminal proceedings. Therefore, it is also dangerous for a Learned Magistrate to act on the mere recommendations of a Commission of Inquiry report. If a Magistrate tends to act in that manner, it would result in him not forming his own opinion but merely acting as a rubber stamp, which is not the intention of the legislature.

In any way, Part 1 of Volume 2 of the Commission of Inquiry report, which consists of the record of proceedings (evidence of witnesses led at the inquiry), has not been tendered to the 1st Respondent for his consideration.

If process is issued to an individual named an accused and he appears in Court under Section 182 of the CCPA, the learned Magistrate is required to frame charges against such an accused. Section 182(1) reads as follows,

> *182. (1) Where the accused is brought or appears before the court the Magistrate shall if there is sufficient ground for proceeding against the accused, frame a charge against the accused.*

The requirements of "*sufficient grounds*" referred to in Section 139(1) must be carefully considered. When forming such an opinion, a Magistrate should bear in mind that he is proceeding to frame charges against a person named an accused and therefore must be satisfied that sufficient material exists to form such an opinion.

In this regard, I also draw my attention to the judgment in ***Pepsi Foods Limited v Special Judicial Magistrate*** (1998) 5 SCC 749, in which it stated as follows,

> *"Duty of magistrate in passing summoning order in complaint case: As regards the duty of a Magistrate while passing summoning order in a complaint case, the Hon'ble Supreme Court has ruled thus: "Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant*

to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

Upon perusal of the impugned order made by the 1st Respondent, it appears that as the Learned Counsel for the complainants has alleged that the petitioner has acted negligently. However, the specific nature of such negligence has not been articulated or described in the impugned order. Moreover, the 1st Respondent has relied entirely on the recommendations of the Commission of Inquiry, which is contained in the report marked P2, merely indicating that charges could be brought against the Petitioner under the Penal Code.

However, in the absence of an objective assessment of the material produced before the court, the mere recommendations of the Commission of Inquiry do not constitute "*sufficient grounds*" for the issuance of process under Section 139(1) of the CCPA as per the interpretation adopted in ***Malini Gunaratne v Abeysinghe*** *(supra)* case.

There is no indication from the 1st Respondent as to what material he has considered, nor how he formed the opinion that the complaint contained material establishing the ingredients of an offence of criminal negligence. Be that as it may, in light of the fact that the 1st Respondent has issued his Order immediately following the oral submissions made by the learned President's Counsel for the Complainants, the question arises before us as to whether the 1st Respondent had sufficient time to consider the plaint, which comprises 380 charges, and the other documents submitted by the Complainants. Furthermore, I am mindful that the 1st Respondent has not specified accurately upon which material he relied on in forming his opinion.

In the foregoing circumstances, this Court issues a Writ of Certiorari quashing the order of the 1st Respondent, marked as P4, as prayed in prayer (c), and I am not inclined to issue the relief sought in prayer (d).

However, the instant order should not be considered a bar to the learned Magistrate in the Magistrate Court of Fort Case No. B 23084/22 from making a fresh order in terms of

Section 139 (1) of CCPA upon the availability of any further material, including proceedings of the Commission of Inquiry that could be submitted by the Complainants.

I make no order with regard to costs.

JUDGE OF THE COURT OF APPEAL

Dhammika Ganepola, J,
I AGREE

JUDGE OF THE COURT OF APPEAL

Mayadunne Corea, J,
I AGREE

JUDGE OF THE COURT OF APPEAL

P.Kumararatnam, J,
I AGREE

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J,
I AGREE

JUDGE OF THE COURT OF APPEAL