

**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 and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Mohamed Althaf Nazeer,
8/1, Rich Tower,
No. 19, Jaya Road,
Colombo 04.

PETITIONER

C.A. Case No. WRT/0624/24

Vs.

1. P.B.S.C. Nonis,
Director General of Customs,
Sri Lanka Customs, No. 40,
Main Street, Colombo 11.
2. Gunawardana Jayathungage Vimukthi
Rukantha,
No. 60/9/17,
Sahaspura Straight Line Road,
Colombo 08.
3. Manchanayaka Arachchige Dinesh Nimantha
Lakmal,
No. J/03, 05th Lane,
Avarakotuwa, Hendala, Wattala.
4. Mohammed Iqbal Mohamed Irfan,
No. 198/01, Maradana, Beruwala.

5. Warnakulasuriya Patabandige Ravindra
Rukman Perera,
No. 08, Munhena Road, Makgona.
6. M. Anton Gnanapragasm,
363, Pathirana Place, Pethiyagoda,
Kelaniya.
7. M.A. Dinesh Nimantha Lakmal,
8. Mary Sanjeevani Silva,
No. 07, Diyalagoda, Akuburugoda,
Maggonna.

RESPONDENTS

BEFORE : K. M. G. H. KULATUNGA, J.

COUNSEL : Shanaka Ranasinghe, PC, with Nisith Abeysuriya and Anushika Ranasinghe, instructed by Sanjeeva Kaluarachchi for the Petitioner.

Vikum De Abrew, PC, ASG, with Dilantha Sampath for the 1st Respondent.

ARGUED ON : 27.11.2025

DECIDED ON : 05.12.2025

JUDGEMENT

K. M. G. H. KULATUNGA, J.

1. The petitioner, along with several others, was arrested by a team of STF Officers, somewhere around the Peliyagoda Market on suspicion. The petitioner was, in the first instance, produced before the Magistrate of the Magistrate's Court of Colombo by the Police. As it transpired that the circumstances of the arrest of the petitioner, along with others, were

connected to a possible illegal release of a quantity of cigarettes, which appears to have been taken out of the Customs fraudulently, the matter was also inquired and investigated by the Director General of Customs. In the course of which, the Director General of Customs moved to summon the petitioner as a suspect in respect of the Customs Inquiry (*vide* P-6). The petitioner, at this juncture, filed this application, seeking as substantive relief a writ of *certiorari* to quash the decision to name the petitioner as a suspect in the Customs Inquiry No. PREV/2022/079/CCR/0772, by prayer (c). The other relief sought are in the nature of consequential relief of prohibitions to prevent the respondents from conducting any further inquiries against the petitioner in respect of the consignment of cigarettes found on 31.03.2022.

2. The facts in brief that led to the initial arrest of the petitioner are as follows. A division of the Special Task Force (“STF”) of the Sri Lanka Police, acting on information received from a private informant, has conducted a raid. The initial information alleged to have been received is in respect of explosives or narcotics. Acting on this information, the officers of the STF have taken into custody a lorry with a 20-foot container, in which a stock of 200,000 cigarettes suspected to have been illegally imported was found and recovered. The petitioners, along with several other suspects, have been arrested, and the Police have reported the facts to the Magistrate’s Court of Colombo under the case bearing No. B/68379/06/22. It is the position of the petitioner that there were attempts to falsely incriminate the petitioner in respect of the said matter pending before the Magistrate’s Court.
3. The main ground urged on behalf of the petitioner is that there isn’t sufficient material to name the petitioner as a suspect in the Customs Inquiry. According to the initial B Report filed, the Police have reported that the petitioner himself was found in one of the lorries involved in the attempted fraudulent release of the said consignment of cigarettes.

As opposed to this, the petitioner claims that he was not in a lorry but was arrested whilst being in his vehicle nearby. That being so, the petitioner's position is that there is absolutely no evidence to justify naming him as a suspect. However, according to the further reports and the objections, it is apparent that the Customs as well as the Police have recorded a statement of the local agent of the shipping company that was involved in the importation of this consignment, in the course of which they have identified the actual importer, who is alleged to be living abroad. The said clearing agent or wharf clerk has informed the Customs that the person who negotiated and was instrumental in processing the importation at this end is the petitioner.

4. A Customs inquiry is conducted primarily for the purposes of ascertaining if there is sufficient material to proceed against a person under the Customs Ordinance. The said Investigation will be initially conducted under Section 8 of the Customs Ordinance. Primarily, the aforementioned material, to my mind, is sufficient and justified, conducting further investigations under a Customs Investigation which precedes the formal Inquiry. This process was clearly explained by Sriskandarajah, J., in **Anton Clement Thomas Dawson and another vs. Neville Gunawardene** (CA Writ Application No. 77/2012, C.A.M. 16.03.2012). His Lordship held that,

“It appears that the inquiry is to ascertain what are the charges that could be framed in the given circumstances. So it is left to the Customs Officials to ascertain facts either from any witness or from suspects to frame a charge and thereafter to explain the charge to the suspect and to give him an opportunity to call for evidence. But at the end of leading evidence if the Customs find, that there cannot be charge framed, the inquiry will come to an end at that point.”

5. Accordingly, the petitioner is making a pre-emptive attempt to prevent the matter being investigated against the petitioner. This investigation will certainly include recording statements, even from suspects in the course of the initial investigation. Then, it is upon such initial

investigation that charges may be determined and framed, if there be evidence to support such charges. It is at this point one could determine and ascertain what the probable charges could be. To this end, an investigation should necessarily precede, and such investigation may also be in respect of a particular person; the Customs is entitled to name such person as a suspect in respect of such investigation or inquiry. In the present instance, there is material which indicates that the petitioner was present when the consignment of cigarettes was detected, be it in the lorry or in the vicinity. That, coupled with the revelation by the clearing agent or wharf clerk, to my mind, is sufficient to name the petitioner as a suspect in the Customs Investigation and Inquiry. To that extent, this application is baseless and is also premature, as the formal charges are to be determined only upon a due investigation.

6. An application for a writ being premature is a basis to reject the same. This principle was considered in ***Ceylon Mineral Waters Ltd. vs. The District Judge of Anuradhapura*** (70 NLR 312), where Abeyesundere, J., held that if there is no order to be quashed at the time a certiorari is applied for, that remedy will be refused for that reason alone. This decision was cited with approval in ***U. A. Nissanka vs. Chulananda Perera, Director General of Customs and others*** (CA Writ Application No. 377/2016, CAM 15.07.2022). As explained in Wade & Forsyth on Administrative Law (9th Ed., at page 518),

“If confusion and complication are to be avoided judicial review must be accurately focused upon the actual existence of power and not upon the mere preliminaries. The House of Lords perhaps appreciated this point in [citing R vs. Secretary of State for Employment ex p Equal Opportunities Commission [1995] 1 AC 1] ... a case of prematurity, where the issue was not ripe for review.”

7. In the above circumstances, as there is sufficient material to name the petitioner as a suspect, as well as this application being premature, I hold that the petitioner has failed to establish any basis in law or

otherwise which warrants this Court or entitles the petitioner to the relief as sought.

8. The petitioner by this application is challenging and seeking to quash his naming as a suspect in the Customs Inquiry. The petitioner has filed the second amended petition dated 04.10.2024. Along with the said petition, he has annexed P-6, which is the summons served on him requiring his presence for the said inquiry. The summons is dated 02.10.2023. The initial application has been filed in this Court on 02.10.2024. That is one year after the receipt of the said summons. The said summons clearly has informed that the petitioner is required. At that point, the petitioner did have notice of the fact that he would be named or was named as a suspect in respect of the said inquiry. Accordingly, the petitioner is guilty of laches, and it remains unexplained. Unexplained delay is reason for a Court to refuse the granting of the discretionary relief of writs and to reject an application. Sharvananda, J. (as His Lordship then was), in ***Bisomenike vs. C. R. de Alwis*** (1982) 1 SLR 368, observed as follows:

“A Writ of Certiorari is issued at the discretion of the Court. It cannot be held to be a Writ of right or one issued as a matter of course. The exercise of this discretion by Court is governed by certain well-accepted principles. The Court is bound to issue it at the instance of a party aggrieved by the order of an inferior tribunal except in cases where he has disintitiled himself to the discretionary relief by reason of his own conduct, submitting to jurisdiction, laches, undue delay or waiver. The proposition that the Application for Writ must be sought as soon as the injury is caused is merely an Application of the equitable doctrine that delay defeats equity and the longer the injured person sleeps over his rights without any reasonable excuse the chance of his success in Writ Application dwindles and the Court may reject a Writ Application on the ground of unexplained delay. An Application for a Writ of Certiorari should be filled within a reasonable time.”

His Lordship further went on to quote from Ferris, ‘Extraordinary Legal Remedies’, at para 176, as follows:

“Laches is such negligence or omission to assert a right and taken in conjunction with the lapse of time, more or less great, and other circumstances causing prejudice to an adverse party operate as a bar in a Court of equity.”

Accordingly, the petitioner, being guilty of undue and unexplained delay disentitled himself to obtain relief by way of a writ in the exercise of the discretionary power of this Court.

9. Accordingly, this application is rejected and dismissed. However, I make no order as to costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL