

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

**CA (Writ) Application No.
590/2023**

Warnakulasuriya Patabendige Priyan
Benildus Fernando
No. 16, St. Silvester Road,
Mount Lavinia.

And now at
P.O. Box 1836,
Honiara, Solomon Islands.

PETITIONER

Vs.

1. Hon. Attorney General
Attorney General's Department,
Colombo 12.
2. C. D. Wickramaratne
Inspector General of Police,
Police Headquarters,
Colombo 01.
3. Kavinda Piyasekara
Senior Superintendent of Police,
Director,
Criminal Investigation Department,
Colombo 01.
4. Asela Indrajith
Inspector of Police,
Former Officer-in-Charge,
Commercial Crimes Investigation

Unit 5,
Criminal Investigation Department,
Colombo 01.

5. Dissanayake
Inspector of Police,
Former Officer-in-Charge,
Commercial Crimes Investigation
Unit 5,
Criminal Investigation Department,
Colombo 01.
6. Lokuralalage Sarath Jayantha
No. 263/8,
Makumbura,
Pannipitiya.
7. Katapodi Kankanamge Pandula
Priyanka
No. 20/5,
N. J. V. Cooray Mawatha,
Rajagiriya.
8. Jayasinghe Arachchige Gamini
Jayasinghe
Muwanhelwatta,
Thalangama North,
Battaramulla.
9. Keshini Theresa Goonetilleke
No. 15D,
Mudliyar Avenue,
Kohuwela.
10. Kahandawa Geegana Arachchige
Sujeewa Ariyaratne
No. 287/A,
Siri Nandajothikarama Road,
Hokandara Road,
Thalawathugoda.
11. Hatton National Bank PLC
No. 479,

T. B. Jayah Mawatha,
Colombo 10.

12. Softcom Solutions (Pvt.) Ltd.
No. 262/4,
Nawala Road,
Nawala, Rajagiriya.

RESPONDENTS

Before: M. T. MOHAMMED LAFFAR, J. (ACT. P/CA)

Counsel:

Saliya Pieris, P.C. with Kaneel Maddumage and Kavindi Weerasena for the Petitioner

Sandow Gamage for the 7th Respondent

Snjeewa Jayawardena, P.C. with Rukshan Senadheera for the 9th and 10th Respondents

Dr. Romesh de Silva, P.C. with Niran Anketel for the 11th Respondent

Shanaka Wijesinghe, P. C. A.S.G. for the 1-5th Respondents

Argument : 09.10.2024, 24.10.2024, 19.11.2024

Written Submissions on : 04.06.2025 (For the Petitioner)

Delivered on : 16.06.2025

MOHAMMED LAFFAR, J.

The Petitioner is a citizen of Sri Lanka, presently residing in the Solomon Islands, who formerly held the position of Branch Manager at the Borella Branch of Hatton National Bank PLC (hereinafter “HNB”) from May 2010 to December 2012. The Petitioner instituted the present application invoking the jurisdiction of this Court under Article 140 of the Constitution, seeking inter alia writs of **certiorari**, **prohibition**, and **mandamus** against the Honourable Attorney General and other Respondents in relation to his indictment in High Court Case No. HC 1998/2020 and the naming of the Petitioner as a suspect in Magistrate’s Court Case No. B/9872/02/11.

The facts giving rise to this application are as follows: the 8th Respondent, a customer of HNB, had previously obtained credit facilities in the name of the 12th Respondent company during the period 2008-2009. These facilities had been secured by a mortgage over the premises bearing No. 562/5, Welikadawatte, Rajagiriya. When the Petitioner assumed duties as Manager of the Borella Branch in May 2010, the said credit facility was already in arrears. Consequently, the Head Office of HNB had scheduled the auction of the mortgaged premises in or around December 2010 in order to recover the outstanding sums.

Shortly prior to the scheduled auction, the 6th Respondent, who at the time was unknown to the Petitioner, visited the Borella Branch in the company of the 8th Respondent and offered to settle the overdue amounts, requesting that the auction be stayed. Acting in accordance with standard banking procedure and under instructions from the Head Office, the Petitioner informed the 6th Respondent that the auction could only be stayed upon full settlement of the arrears. On the following day, the 6th Respondent returned with the 8th Respondent and deposited a sum of Rs. 6.25 million, which the Petitioner handed over to the cashier, and which was thereafter credited to the account of the 12th Respondent company.

Subsequent to this transaction, the 7th Respondent, who was also previously unknown to the Petitioner, appeared at the Borella Branch and claimed ownership of the mortgaged premises. The Assistant Manager of the Branch advised the 7th Respondent to raise his grievance with the Legal Department of HNB, as title disputes were not within the operational purview of branch-level officers. The Petitioner asserts that he was later informed of this visit and was advised that a title search had previously been conducted by the Legal Department prior to execution of the mortgage.

On or about 20th January 2011, the 6th Respondent lodged a complaint with the Criminal Investigation Department (CID), alleging that the 8th, 9th, and 10th Respondents had induced him to deposit the aforementioned sum of Rs. 6.25 million under the promise that the scheduled auction would be stayed and that the land would thereafter be transferred to him. It is further alleged that these Respondents did so while knowing that the said property belonged to a third party. As a result, investigations were initiated under Sections 389 (criminal breach of trust) and 400 (cheating) of the Penal Code.

On 29th June 2011, the 8th Respondent was named as a suspect and produced before the Magistrate's Court of Colombo in Case No. B/9872/02/11. On 21st February 2012, the Petitioner provided a statement to the CID (marked P-15C), wherein he described the sequence of events leading up to and following the deposit of the Rs. 6.25 million by the 6th Respondent. In his statement, the Petitioner reiterated that he had acted in compliance with banking protocols and that no formal complaint or documentation had been addressed to him regarding any dispute over the ownership of the mortgaged property.

The CID thereafter filed a report dated 6th August 2012 (marked P-11), confirming that the matter had been referred to the Honourable Attorney General for opinion on 3rd August 2012. A further report filed by the CID on 19th August 2020 (marked P-12) stated that, pursuant to the Attorney General's opinion dated 17th June 2020, the Petitioner, along with the 9th and 10th Respondents, had also contributed to deceiving the 6th Respondent. As such, the CID was instructed to name the Petitioner as a suspect in Case No. B/9872/02/11.

The Petitioner avers that he was unaware that he had been named as a suspect until he learned of the CID report in August 2020, long after he had left both the employment of HNB and the country. He further states that on 19th August 2020, a travel ban was imposed on him by the Learned Magistrate of Colombo and communicated to the Department of Immigration and Emigration (marked P-14).

In or around late 2022, the Petitioner was informed by his ex-wife that a CID officer had visited her residence seeking his whereabouts in connection with a court case. Upon inquiry, the Petitioner discovered that he had been named as the 4th Accused in High Court Case No. HC 1998/2020. Through his legal representative in Sri Lanka, he obtained a certified copy of the case record and learned that an indictment dated 13th August 2020 (marked P-16) had been filed by the Honourable Attorney General charging him alongside the 8th, 9th, and 10th Respondents for an offence under Section 400 of the Penal Code.

The Petitioner accordingly invokes the jurisdiction of this Court seeking, inter alia, the quashing of the decision of the Honourable Attorney General to indict him; the charge contained in the indictment; the travel ban and warrant issued against him; and the decisions of the 4th and 5th Respondents to name him as a suspect, all of which he alleges to be unlawful, unreasonable, irrational and procedurally flawed.

CA (Writ) Application No. 03/2021 & CA (Writ) Application No. 590/2023

Based on application made by the parties of consent, CA (Writ) Application No. 03/2021 and CA (Writ) Application No. 590/2023 were amalgamated and taken up together. It is apparent that the two cases are founded on materially similar factual and legal assertions. In both applications, the Petitioners assert that they were employed at Hatton National Bank PLC during the material time and acted in accordance with internal banking procedures and under the direction of superiors, without any personal interest or dishonest intent in relation to the mortgage transaction that forms the basis of the indictment. Furthermore, the claims advanced in both cases rest on common grounds of absence of *mens rea*, lack of material evidence, procedural impropriety, and unlawful exercise of prosecutorial discretion.

PETITIONER'S CONTENTION

The Petitioner, asserts that the decision of the Honourable Attorney General to indict him for the offence of criminal breach of trust under section 389 and cheating under Section 400 of the Penal Code, as reflected in High Court Case No. HC 1998/2020, is unlawful, irrational, and devoid of a factual and legal basis. It is his contention that the said indictment constitutes an arbitrary and unreasonable exercise of prosecutorial discretion, warranting judicial intervention by way of the writs sought.

The Petitioner avers that the factual circumstances underlying the indictment pertain to a transaction that took place during his tenure as Manager of the Borella Branch of Hatton National Bank PLC (HNB), wherein a sum of Rs. 6.25 million was deposited by the 6th Respondent into the account of the 12th Respondent company in order to settle a defaulted loan that was already the subject of recovery action by the bank. The Petitioner submits that the said transaction occurred in the normal course of banking operations and that his involvement was limited to receiving the said funds and causing same to be deposited in accordance with internal procedure. He specifically denies having engaged in any conduct capable of giving rise to criminal liability.

It is the Petitioner's position that, at the time of the transaction, there was no intimation or indication of any dispute concerning the ownership of the subject property. Upon the subsequent arrival of the 7th Respondent at the Borella Branch asserting title to the mortgaged premises, the matter was referred to the Legal Department of HNB, which was the competent division to deal with such issues. The Petitioner maintains that he was informed that a title search had been conducted by the said Legal Department prior to the execution of the mortgage, and that the branch-level officers, including himself, had neither the authority nor the capacity to make legal determinations regarding title.

The Petitioner emphasizes that the Criminal Investigation Department (CID), after conducting an extensive inquiry into the complaint lodged by the 6th Respondent on 20th January 2011, did not find sufficient material to name him as a suspect. His statement was recorded on 21st February 2012, but no adverse inference or conclusion was drawn against him at the time. The CID concluded its investigation and forwarded the matter to the Attorney General on 3rd August 2012, but the Petitioner was not included as a suspect in the initial stage of proceedings before the Magistrate's Court. He contends that the decision to later name him as a suspect, after a lapse of over eight years, is unsupported by any new material and is thus unjustified.

The Petitioner further states that he left the country in 2012 and was unaware that he had been named as a suspect in Case No. B/9872/02/11 until August 2020, when he became aware of the CID's further report dated 19th August 2020 (marked P-12), which was based on the Attorney General's opinion dated 17th June 2020. He maintains that the said report offered no new evidence implicating him and merely relied on previously recorded statements.

The Petitioner also challenges the lawfulness of the travel ban imposed on him by the Learned Magistrate of Colombo on 19th August 2020, asserting that the order was made in his absence and without proper service, at a time when he was outside the jurisdiction of Sri Lanka. He avers that the consequent issuance of a warrant by the Learned High Court Judge on 15th March 2022 was similarly flawed and in breach of natural justice.

It is further submitted that the Petitioner first became aware of the High Court indictment only in late 2022, when a CID officer visited the residence of his ex-wife in Sri Lanka. Upon inquiry, he discovered that he had been named as the 4th Accused in High Court Case No. HC 1998/2020. The Petitioner contends that the absence of timely notification or summons, the long delay in instituting proceedings against him, and the lack of fresh or credible material render the indictment procedurally and substantively flawed.

The Petitioner thus contends that the decision of the Honourable Attorney General to indict him is unreasonable, arbitrary, ultra vires and in violation of the principles of natural justice. He asserts that the naming of him as a suspect, the filing of charges, and the issuance of consequential orders including the travel ban and arrest warrant are all legally unsustainable and ought to be quashed. Accordingly, he seeks the reliefs prayed for in the Petition.

RESPONDENTS' CONTENTION

1st to 5th Respondents

The 1st to 5th Respondents, oppose the application and deny all averments of fact and law set out in the Petition of the Petitioner. These Respondents admit that the Petitioner served as the Manager of the Borella Branch of Hatton National Bank PLC (HNB) during the relevant period in which the impugned transaction occurred, and affirm that the alleged fraudulent transaction took place during his tenure at the said branch.

It is the position of the said Respondents that the investigations conducted by the 4th Respondent (CID) revealed that the Petitioner had knowledge of the forged deed and the transaction that formed the subject matter of the complaint made by the 6th Respondent. They assert that the naming of the Petitioner as a suspect was not arbitrary or capricious but was a result of the considered opinion rendered by the Honourable Attorney General on 17th June 2020, which was based on the investigative material available at the time.

The Respondents maintain that the Petitioner was not the only person named as a suspect consequent to the Attorney General's opinion; the 9th and 10th Respondents were also similarly named as suspects. The said naming was thus part of a broader prosecutorial assessment made on the totality of evidence, and not an isolated or selective decision.

The 1st to 5th Respondents further contend that the 6th Respondent was induced to pay a sum of Rs. 6.25 million to the HNB Borella Branch, having been misled by the 8th, 9th, and 10th Respondents into believing that he could purchase the property in question and thereby prevent its auction. It is asserted that the said payment was made by the 6th Respondent under the assurance that the property would be transferred to his name upon payment. According to the 6th Respondent, the 9th and 10th Respondents acted under the directions and instructions of the Petitioner, thereby implicating him in the alleged fraudulent scheme.

The Respondents rely on the statement of the 7th Respondent, the claimed lawful owner of the subject property, who reportedly visited the Borella Branch and made known his ownership to the 9th Respondent and the Assistant Manager, presenting his deeds. It is contended that the Bank's officials, including the 9th Respondent, failed to take appropriate action to escalate this ownership dispute to the Legal Department of HNB in a timely manner, thereby facilitating the continued misrepresentation of the title.

It is the position of the 1st to 5th Respondents that the Attorney General's prosecutorial discretion is a matter within the domain of executive authority and has been exercised lawfully in this instance. They submit that the indictment of the Petitioner was based on credible investigative material and is not amenable to judicial review, save in the narrowest of circumstances where illegality, irrationality, or mala fides is clearly demonstrated, none of which, they argue, has been established by the Petitioner in the present case.

9th and 10th Respondents

9th and 10th Respondents also state that they have been indicted in High Court Case No. HC 1998/2020 alongside the Petitioner and the 8th Respondent, pursuant to the Attorney General's opinion dated 17th June 2020 and also pray that the relief prayed for by the Petitioner is granted.

OBSERVATIONS OF THE COURT

The primary issue for determination in the present application is whether the decision of the Honourable Attorney General to indict the Petitioner in High Court Case No. HC 1998/2020 constitutes an abuse of prosecutorial discretion warranting judicial intervention by way of writs as prayed for.

It is trite law that prosecutorial discretion is not immune from judicial review, though the threshold for such intervention is necessarily high. In *Victor Ivan v. Sarath N. Silva, Attorney General and Others* (2001) 1 SLR 309, the Supreme Court, per Fernando J., reaffirmed that the Attorney General's discretion may be reviewed where there is evidence of illegality, irrationality, procedural impropriety, or mala fides. The exercise of discretion must not only be lawful in form but also fair, reasonable, and proportionate in substance.

Delay and Procedural Irregularity

The Petitioner contends that the indictment against him was initiated nearly a decade after the occurrence of the alleged incident, despite the CID having completed its investigation and not having named him as a suspect in its initial report. This delay is not disputed by the Respondents. The Attorney General's opinion to include the Petitioner as a suspect was rendered only on 17th June 2020, notwithstanding the Petitioner having left the country in 2012, and despite the absence of any new material evidence surfacing during the period.

While delay per se is not fatal to a prosecution, an unexplained and inordinate delay, especially one extending over a span of eight years, when considered alongside the absence of new material implicating the Petitioner, raises legitimate concerns as to procedural fairness and natural justice. The Respondents have failed to justify the prolonged inaction or to establish the emergence of new and compelling evidence justifying the reversal of the original investigative stance.

Moreover, the imposition of a travel ban and the issuance of a warrant for the arrest of the Petitioner, when he had neither been served nor made aware of any summons or charges, further aggravate the procedural deficiencies. The absence of service and the consequent lack of opportunity for the Petitioner to respond undermine the fairness of the process and violate the tenets of natural justice.

Lack of Prima Facie Material and Mens Rea

The core allegation advanced by the Respondents is that the Petitioner, as the Manager of the HNB Borella Branch, was complicit in a fraudulent scheme whereby the 6th Respondent was induced to deposit Rs. 6.25 million under the misrepresentation that the subject property would be transferred to him. However, a close examination of the facts reveals that the said payment was made in the normal course of banking operations for the purpose of settling a non-performing loan. The payment was made by the 6th Respondent voluntarily and was credited to the account of the 12th Respondent company in accordance with established banking procedure.

The Petitioner's statement to the CID, as well as the events contemporaneous with the transaction, suggest that he had no knowledge of any title dispute at the time the payment was received. The 7th Respondent's assertion of ownership only arose subsequently, and the matter was promptly referred to the Legal Department of the Bank, which was the appropriate division to deal with issues of title. The Petitioner did not participate in the mortgage transaction or the evaluation of legal title thereto; such tasks fall within the purview of the Legal Department and not branch-level officers.

Furthermore, no direct allegation was made against the Petitioner in the initial complaint lodged by the 6th Respondent. Neither the CID nor the 6th

Respondent identified the Petitioner as having made any representation or promise to transfer property or to facilitate such a transaction.

In the absence of clear material to support the existence of *mens rea*, the decision to indict the Petitioner for an offence under Section 400 of the Penal Code, which requires intentional deceit and dishonest inducement, is not borne out on a *prima facie* basis.

Limits of Prosecutorial Discretion and Justiciability

While it is conceded that the Attorney General enjoys wide discretion in the institution of criminal proceedings, such discretion is subject to constitutional limits. The rule of law demands that such power be exercised bona fide, upon relevant and cogent material, and in conformity with constitutional safeguards.

In the instant case, the Attorney General's decision to indict the Petitioner after an unexplained delay of eight years, without fresh investigative input and in the absence of direct allegations or evidence of *mens rea*, falls within the sphere of arbitrariness and procedural unfairness. The failure to provide the Petitioner a meaningful opportunity to respond, further aggravates the illegality of the impugned decision.

CONCLUSION

Upon a comprehensive and careful consideration of the pleadings, affidavits, written submissions, and relevant documentary material placed before this Court, it is manifestly evident that the Petitioner has established exceptional circumstances justifying the issuance of prerogative reliefs.

The Court notes with serious concern the inordinate and unexplained delay of nearly eight years between the conclusion of the CID investigation and the subsequent opinion of the Honourable Attorney General dated 17th June 2020, which led to the naming of the Petitioner as a suspect and the filing of an indictment against him. The Respondents have failed to demonstrate the discovery of any new or compelling material during this intervening period to justify such a turnaround. The absence of any stated basis for the renewed decision to prosecute the Petitioner renders the exercise of discretion irrational, arbitrary and procedurally improper.

The evidence adduced before this Court does not disclose any overt act or representation made by the Petitioner amounting to an inducement, nor does it establish that the Petitioner had knowledge of the alleged forged title deed at the time the transaction occurred. The Petitioner's actions, limited to facilitating a deposit into the bank account of a customer in the ordinary course of business, do not reveal any dishonest intention or culpable state of mind as required under the Penal Code.

Furthermore, the failure to serve the Petitioner with summons or any notice of the proceedings, coupled with the ex parte imposition of a travel ban and issuance of a warrant, constitute a serious breach of the principles of natural justice. A person cannot be held criminally accountable, or subjected to punitive orders, without being afforded a meaningful opportunity to be heard. The learned High Court Judge's order dated 15th March 2022, made in the absence of the Petitioner, has thereby occasioned a miscarriage of justice.

The Respondents' argument that the decision of the Attorney General is not amenable to judicial review cannot be sustained in view of the binding authority in *Victor Ivan v. Sarath N. Silva*, wherein the Supreme Court held that prosecutorial discretion, though broad, must be exercised lawfully and may be reviewed where there is arbitrariness, mala fides, unreasonableness or procedural impropriety. In the instant case, the Court finds that the decision to indict the Petitioner bears the grounds of such defects.

Accordingly, this Court is satisfied that the decision of the Honourable Attorney General to indict the Petitioner, the naming of him as a suspect, and the consequential orders made in the Magistrate's Court and High Court are illegal, unreasonable, procedurally flawed and in violation of the rules of natural justice.

For the foregoing reasons, this Court grants the following reliefs:

1. A mandate in the nature of a Writ of Certiorari quashing the decision and/or advice of the Honourable Attorney General issued under reference No. CR/1/195/2012 to indict the Petitioner for the purported offence of cheating the 6th Respondent, as reflected in the further report dated 19.08.2020 marked "P-12" in Magistrate's Court Case No. B/9872/02/11.
2. A mandate in the nature of a Writ of Certiorari quashing the first charge in the indictment dated 13.08.2020 marked "P-16" in High Court Case No. HC 1998/20, in so far as it relates to the Petitioner.
3. A mandate in the nature of a Writ of Certiorari quashing the decision of the 5th Respondent to name the Petitioner as a suspect in Magistrate's Court Case No. B/9872/02/11, as reflected in the further report dated 19.08.2020 marked "P-12" based on the advice of the Honourable Attorney General.
4. A mandate in the nature of a Writ of Certiorari quashing the travel ban imposed on the Petitioner by the Learned Magistrate of Colombo on 19.08.2020 in Case No. B/9872/02/11, as reflected in the letter dated 19.08.2020 marked "P-14."
5. A mandate in the nature of a Writ of Certiorari quashing the warrant issued on the Petitioner by the Learned High Court Judge on

15.03.2022 in High Court Case No. HC 1998/20, as reflected in the proceedings marked “P-19.”

6. A mandate in the nature of a Writ of Prohibition prohibiting and/or preventing the Honourable Attorney General and/or his servants, agents, officers, or successors from indicting the Petitioner for the alleged offence of cheating and/or any other offence as against the 6th Respondent arising from the subject matter of this application and connected with Magistrate’s Court Case No. B/9872/02/11.
7. A mandate in the nature of a Writ of Prohibition prohibiting and/or preventing the 2nd to 5th Respondents and/or their servants, agents, officers, or successors from charging the Petitioner for the alleged offence of cheating and/or any related offence arising from the same facts forming the basis of Magistrate’s Court Case No. B/9872/02/11.
8. A mandate in the nature of a Writ of Mandamus directing the 1st to 5th Respondents and/or their servants, agents, officers, or successors to take all necessary steps to acquit and discharge the Petitioner from the proceedings in Magistrate’s Court Case No. B/9872/02/11 and High Court Case No. HC 1998/20.

Application allowed. No costs.

PRESIDENT OF THE COURT OF APPEAL (ACTG)