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

W. A. K. I. P. Prematilake
No 245, North East Park,
Thorayaya,
Kurunegala.

PETITIONER

Court of Appeal Writ Application No:

CA/WRT/733/2025

vs

1. Shani Abeysekara
   Director,
   Criminal Investigations Department,
   Colombo 01.

AND 10 OTHERS

RESPONDENTS

Before: Hon. Justice N. R. Abeysuriya PC (P/CA)

Hon. Justice K. P. Fernando

Counsel: Upul Jayasuriya PC with Laknath Senevirathne for the Petitioner

Shanil Kularathne PC, A. S. G. for the Respondents.

Supported On: 04/08/2025

Decided On: 03/10/2025

N. R. Abeysuriya, PC, J. (P/CA),

The facts of this case briefly, are as follows,

The Petitioner of the instant application is a Police Officer who is currently serving as an Assistant Superintendent of Police (hereinafter sometimes referred to as ASP) in the Colombo Crimes Division.

When applying for the post of ASP in the year 2007, the Petitioner is alleged to have altered the date on the payment receipt from April 2007 to February 2007 to reflect the application to be within time as opposed to been out of time as at the stipulated deadline.

The Petitioner states that following the aforesaid incident, the then DIG after an internal inquiry, imposed a warning on him as a disciplinary punishment and he continued his service thereafter. He further alleges that in 2014, "a B report" was filed in the Magistrate's Court of Fort (B/135/2014) and was "laid by" upon the representations made to the Attorney General by the Petitioner.

Moreover, he contends that in June 2025, it was brought to the Petitioner's notice by CID officers that steps were being taken to arrest him and revive the matter. It is the primary contention of the Petitioner that attempting to resurrect an alleged irregularity that took place in 2007 which was subsequently disposed with a mere warning in 2010 is unreasonable, arbitrary disproportionate, is in abuse of due process and violation of natural justice and legitimate expectation of the Petitioner and would cause grave and irreparable harm to him.

In the instant writ application, the Petitioner *inter alia* has prayed for the following reliefs.

a) Grant and issue a mandate in the nature of a Writ of Certiorari quashing the purported directives/orders of the 1st to 3rd Respondents and/or any

one or more them, whereby directives have been issued for the arrest of the Petitioner;

b) Grant and issue a mandate in the nature of a Writ of Certiorari quashing the any purported decision/direction empowering the 2nd Respondent to take steps and/or initiate proceedings to arrest the Petitioner;
c) Grant and issue a mandate in the nature of a Writ of Prohibition preventing 1st and/or 2nd and/or 3rd Respondents and/or their servants or agents from effecting the arrest of the Petitioner;

In response to the submissions of the Petitioner, the Learned Additional Solicitor General on behalf of the Respondents submitted that even though the Petitioner has prayed for a writ of *certiorari* to quash any decision arrived at by the 1st-3rd Respondents with regard to the arrest of the Petitioner, the Petitioner has failed to adduce any such decision for the review or grant of writ by this Court. The Learned Additional Solicitor General further avers that the Petitioner has not produced any document that reflects the Respondents have reached such impugned decision and that writs cannot be sought on such speculative grounds.

It is the contention of the Respondents that the Petition of the Petitioner is not supported by reliable evidence or material that substantiate his claims and that it is the Attorney General who has advised the police to file charges against the Petitioner under Sec 454 and 459 of the Penal Code for falsification of documents and tendering a false document as genuine. Upon receipt of such advice, the 1st and 2nd Respondents are duty bound to give effect to the said direction.

Primarily, the grievance of the Petitioner is that it is grossly unfair and unjustifiable to institute criminal proceedings in 2025 for alleged acts committed in 2007 which is after the lapse of 17 years. It is further contended on behalf of the Petitioner that the alleged criminal offences were committed in the process of applying for the post of Assistant Superintendent of Police in 2007. Notwithstanding this fact, the Petitioner was in fact subsequently promoted to the said rank unconditionally in 2021.

Disciplinary action was initiated against him and such proceedings were concluded with a warning issued to him by the respective disciplinary authority of the Police. It is further submitted that he in fact pleaded guilty to the charges framed against him at the disciplinary inquiry based on a purported

assurance that further legal action against him would not be pursued. These facts have been disclosed by the Petitioner in paragraph 21 of his Petition.

However, subsequently in 2014, the Police have reported facts against him to the Magistrate's Court of Fort under B Report No. 135/2014. The Attorney General in 2016 has advised the Director, Criminal Investigations Department to institute criminal proceedings against the Petitioner as per the provisions of Criminal Procedure Code, for committing offences under Sections 454 and 459 of the Penal Code.

The Respondents along with their written submissions has tendered to Court, the Letter of Advice of the Attorney General, sent to the CID dated 15.04.2016 marked **R1** and the draft criminal charges marked **R2.**

It appears that although, the aforesaid advice of the Attorney General was sent to the CID in 2016; criminal proceedings have not been instituted against the Petitioner to date as per such advice.

In the instant matter, the Petitioner has prayed for a writ of *certiorari* to quash any purported directives/orders of the 1st – 3rd Respondents with regard to the possibility of "arrest" of the Petitioner.

The Respondents have strenuously contended that in fact there's no such directive/ order given by the said Respondents to "arrest" the Petitioner and therefore, writ of *certiorari* has been prayed for in respect of a non-existent directive. It is the contention of the Respondents that the instant writ application is primarily based on purely speculative grounds and therefore should be dismissed *in limine.*

The Petitioner has further submitted that the "impugned actions" are illegal, *ultra vires*, arbitrary, violative of natural justice and grossly disproportionate, considering that fact that a time period of 17 years has lapsed since the date of the commission of the alleged offences.

The Petitioner has placed reliance and emphasis on the long delay in implementing the advice of the Attorney General which is to the effect that criminal proceedings should be instituted against the Petitioner.

One salient aspect of this writ application is that although the decision to institute criminal proceedings was taken by the Attorney General and communicated to the CID by his letter dated 15.04.2016, the Petitioner has not prayed for writ of *certiorari* to quash the said letter of advice of the Attorney General. I am of the view that this is the fundamental flaw of this writ

application since other than the said letter of advice of the Attorney General who is the 11th Respondent no other decision to arrest the Petitioner exist. As per the provisions of the criminal procedure code, when the Attorney General advises the police or give direction such advice/directions have to be implemented /complied with by the respective police officers.

Under these circumstances what ought to be quashed is not any decision of the 1st to 3rd Respondents as prayed for in the petition but the advice of the Attorney General marked as R1 which relief has not being prayed for by the Petitioner. In effect the Petitioner has not impugned R1 on the grounds of illegality, *ultra vires*, arbitrary, *mala fide* or on any other ground on which this Court would have considered granting writ of *certiorari*.

In the prayer of the Petition of the Petitioner, no relief has been sought against the Attorney General who has issued the document marked R1 which is the document which would have set in motion the process of institution of criminal proceedings. It is an exercise in futility to pray for the quashing of any acts of the 1st to 3rd Respondents. Furthermore, even assuming that 1st to the 3rd Respondents are legally empowered to take decisions in respect of the Petitioner, I am of the view that the Petitioner has not submitted any purported "decision" which may have been taken by any one of the 1st to 3rd Respondents.

The existence of an order or determination is a prerequisite to issue a writ of *certiorari*. A divisional bench of five judges of the Supreme Court in **G. P. A. Silva and Others vs. Sadique and Others**[1] held thus;

> *"From the citations which I have set out, it would appear that a Writ of Certiorari would lie in respect of an order or decision where such order or decision is binding on a person and it either imposes an obligation or involves civil consequences to him or in some way alters his legal position to his disadvantage or where such order or decision is a step in a statutory process which would have such effect."*

Thus, there should be a "decision" for a writ of *certiorari* to lie.

In the instant case, the Petitioner has not alluded to any specific decision/directive which is sought to be quashed. In fact, there's no reference whatsoever to the letter of advice of the Attorney General dated 04.06.2016 (R1). It does appear that the Petitioner was aware of the fact that such advice was given by the Attorney General since in the document marked P8 by the

[1] 1978-79-80 1 Sri L. R. at Page 172

Petitioner which is a written representation of Counsel of the Petitioner to the Attorney General there is specific reference to such letter of advice.

In the case of **R vs. Electricity Commissioners**[2] the basis of the issuance of a writ of *certiorari* was discussed as follows:

> *"Anybody of persons, having legal authority, to determine questions affecting the rights of subjects and having the duty to act judicially, act without authority or exceeding its authority or abusing its authority, the writ may lie."*

As stated elsewhere in this order, the letter marked R1 has not been impugned in any manner. There's no allegation that it was issued *"without authority, exceeding authority or abusing its authority".*

In the instant matter, it is apparent that when advice was sought from the Attorney General, after consideration of the investigative material submitted, advised the Police to institute criminal proceedings against the Petitioner having exercised the prosecutorial discretion of the Attorney General. I am of the view that this Court should not intervene/ interfere with the prosecutorial discretion of the Attorney General unless there exist justifiable grounds for such judicial review/ intervention.

As held by Samayawardhena J in **Attorney General vs. Sandresh Ravindra Karunanayake and Others**[3], such judicial review of the prosecutorial discretion of the Attorney General would only be warranted in instances of dishonesty, bad faith or other exceptional circumstances. In the present case, there's no allegation that the Attorney General has acted in bad faith or has abused his position.

The following passage from the aforecited SC/Appeal/104/2021[4] is of relevance to the instant matter.

> *"It is imperative that the decisions of the Attorney General command the confidence of both the public and the judiciary. If such actions are viewed with suspicion or perceived as arbitrary* ***without compelling and cogent reasons****, it may undermine the credibility of the prosecutorial process and erode public confidence in the integrity of the whole justice system. Public*

[2] (1924) 1 KV 171
[3] SC/Appeal/104/2021 decided on 03.06.2025
[4] supra.

confidence is the foundation upon which the legitimacy of the justice system in any country rests. Once it is eroded, anarchy is not far behind."

In the aforesaid judgment of the Supreme Court, it has been held that, Courts ought to exercise caution in reviewing prosecutorial discretion. It has endorsed the view that the judicial review applications challenging the prosecutorial discretion of the Attorney General has to be examined very carefully and **not as a matter of routine.** Furthermore, it was held in the same case that if every accused upon the filling of an indictment is entitled as of right to invoke the writ jurisdiction to challenge the Attorney General's discretion or the manner in which it was exercised the prosecutorial process would be exposed to repeated collateral attacks, ultimately undermining public confidence in the justice system.

Although there are significantly differences in constitutional structure, powers, and degree of independence the office of the Attorney General in England and Sri Lanka but shares some broad similarities in function. This has been commented on by Samayawardhena J in the previously cited Supreme Court Judgment. His Lordship has cited with approval the following passage from De Smith's Judicial Review, 8th Edition, at 117–118, under the sub-heading "Public functions outside the court's jurisdiction",

"Even where matters are within the court's jurisdiction, there is a marked reluctance to exercise that supervisory jurisdiction over police decisions to investigate, charge, and administer cautions; and decisions of the DPP to prosecute, to continue or discontinue criminal prosecutions. The court will generally do so only if there is a grave abuse of power or a clear breach of the police or prosecuting authority's settled policy."

The Supreme Court of Canada in **R v. Anderson**[5] held thus;

"The many decisions that Crown prosecutors are called upon to make in the exercise of their prosecutorial discretion must not be subjected to routine second-guessing by the courts. The courts have long recognized that decisions involving prosecutorial discretion are unlike other decisions made by the executive.....Judicial noninterference with prosecutorial discretion has been referred to as a "matter of principle based on the doctrine of separation of powers as well as a matter of policy founded on the efficiency of the system of criminal justice" which also recognizes that prosecutorial discretion is "especially ill-suited to judicial review:"

[5] [2014] 2 S.C.R. 167 Para 46

Similarly in, **Sarath de Abrew vs. Chanaka Iddamalgoda, Chief Inspector of Police and Others[6],** Jayawardena J. observed:

> *"Where the legislature has confided the power on the Attorney General to forward indictment with a discretion how it is to be used, it is beyond the power of Court to contest that discretion unless such discretion has been exercised mala fide or an ulterior motive or in excess of his jurisdiction."*

The Supreme Court of Sri Lanka has consistently held that though prosecutorial discretion of the Attorney General is amenable to judicial review extreme caution should be exercised in doing so.

In the case of **Ganeshan Samson Roy vs. M.M. Janaka Marasinghe and Others,**[7] this was succinctly reiterated by Aluwihare J. in the following passage;

> *"Although the discretion of the Attorney General regarding forwarding of indictments is reviewable, the circumstances in which the Court will intervene are rare. Prosecutorial powers are entrusted to identified officers and no other authority can exercise them or make judgments; it is not within the Courts' constitutional function to assess the merits of the polycentric character of official decision-making in such matters. The Court will only intervene when the decision is prima facie, arbitrary, capricious, or unlawful."*

Having considered the aforesaid judicial authorities, I am of the view that no justifiable grounds exist in the instant matter for this Court to review the decision of the Attorney General to advise the Police to institute criminal proceedings although the Petitioner himself has not impugned the aforesaid decision of the Attorney General.

Furthermore, the Petitioner has filed this writ application in 2025, notwithstanding that the facts were reported to the Magistrate's Court way back in 2014 and the advice of the Attorney General was forwarded to the Police in 2016, there has been an inordinate unexplained delay in seeking judicial review on the part of the Petitioner. The Court is of the view that there is delay and laches in this case which this Court ought to take into account.

[6] (SC/FR/424/2015, SC Minutes 11.01.2016 at page 12)
[7] (SC/FR/405/2018, SC Minutes 20.09.2023 at page 25)

In **Gunasekara vs. Abdul Latiff**[8], Ranaraja J. considered the aspect of laches and made the following observations.

> *"The word 'laches' is a derivative of the French verb 'Lacher,' which means to loosen. Laches itself means slackness or negligence or neglect to do something which by law a man is obliged to do. (Stroud's Judicial Dictionary 5th Ed. Pg. 1403.) It also means unreasonable delay in pursuing a legal remedy whereby a party forfeits the benefit upon the principle "vigilantibus non dormientibus jura subveniunt" (the law helps those who are vigilant, not those who sleep on their rights).*
>
> *The neglect to assert one's rights or the acquiescence in the assertion or adverse rights will have the effect of barring a person from the remedy which he might have had if he resorted to it in proper time. (Mozley & Whiteley's Law Dictionary 10th Ed pg. 260)."*

In the case of **P. B. Dissanayake vs. I. O. K. G. Fernando**[9] it was held that,

> *"Where there has been delay in seeking relief by way of Certiorari, it is essential that the reasons for the delay should be set out in the papers filed in court"*

In **Biso Menike vs. Cyril de Alwis and Others**[10]

> *"The proposition that the application for Writ must be sought as soon as 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 chances of his success in a Writ application dwindle and the Court may reject a Writ application on the ground of unexplained delay. An Application for a Writ of Certiorari should be filed within a reasonable time"*

In **Sarath Hulangamuwa vs. Siriwardena, Principal, Visakha Vidyalaya. Colombo 5 and Others**[11]

> *"The laches of the petitioner must necessarily be a determining factor in deciding this application for Writ"*

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[8] 1995 1 Sri L. R Page 235

[9] 71 NLR 356

[10] 1982 1 SLR 368

[11] 1986 1 SLR 275

In the aforesaid circumstances, I do not see any legal basis to issue formal notice of this application on the Respondents. This application is accordingly dismissed without costs.

PRESIDENT OF THE COURT OF APPEAL

K. P. Fernando, J.
I agree.

JUDGE OF THE COURT OF APPEAL