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

Nadun Chinthaka Wickramaratne
'Erandi'
No. 158, Pitiduwa Road,
Midigama, Weligama.

CA/WRIT/523/2024

(Presently detained at the Old Prison, Tangalle under the custody of the Counter Terrorism and Investigation Division of Sri Lanka Police)

PETITIONER

Vs.

1. Hon. Attorney General
   Attorney General's Department,
   Colombo 12.
2. Kamal Gunaratne Secretary,
   Ministry of Defense,
   Jaya Mawatha,
   Sri Jayawardenapura Kotte.

2A. H.S.Sampath Thuyacontha
Secretary,
Ministry of Defense

Jaya Mawatha,
Sri Jayawardenapura Kotte.

3. Inspector General of Police,
   Police Headquarters,
   Colombo 01.
4. Prasanna Alwis Director,
   Counter Terrorism and Investigation Division,
   02nd Floor, No.149,
   Kirulapana Avenue,
   Colombo 05.
5. H. M. T. N. Upuldeniya
   Commissioner General of Prisons,
   Prisons Headquarters,
   No.150, Baseline Road,
   Colombo 09.

RESPONDENTS

Before: Sobhitha Rajakaruna J.

Mahen Gopallawa J.

Counsel: Amila Palliyage with Sanjaya Ariyadasa, Sandeepani Wijesooriya Savani Udugampola, Lakitha Wakishta Arachchi and Subaj de Silva for the Petitioners.

Suharshi Herath, DSG with Ishara Madarasinghe, SC for the Respondents

Supported on: 16.10.2024, 25.10.2024, 30.10.2024

Written submissions: Petitioners - 05.11.2024

Respondents - 05.11.2024

Decided on: 20.11.2024

Sobhitha Rajakaruna J.

The Attorney General served the indictment marked 'P1' to Nadun Chinthaka Wickramaratne alias *Harakkata* who is the Petitioner of the instant Application and two others. The Petitioner is being kept in the custody of the authorities of the Counter Terrorism and Investigation Division ('CTID') at the old prison in Tangalle in terms of an order under section 15A (1) of the Prevention of Terrorism (Temporary Provisions) Act No.48 of 1979 ('PTA'), marked 'P2', issued by the 2nd Respondent - Secretary to the Ministry of Defence. The Petitioner primarily seeks a mandate in the nature of a writ of Certiorari quashing the said indictment 'P1' and the said detention order marked 'P2'.

The Petitioner primarily argues that the Attorney General has issued an indictment prematurely, based on incomplete investigations, and therefore, no valid indictment exists before the relevant High Court. The Petitioner points out that when the indictment was filed, 12 suspects were involved in the Magistrate's Court Case No. B/27181/23, but only three, including the Petitioner, were named in the impugned indictment. Citing the 'B Report' dated 28.02.2024, the Petitioner highlights that investigations into several telephone numbers were still ongoing at the time. Additionally, the Attorney General, through a letter dated 22.03.2024, discharged the 2nd, 6th, 8th, 9th, 11th and 12th suspects from the Magistrate's Court Case. The Petitioner expresses concerns about the lack of reference to the remaining four suspects from the Magistrate's Court Case, arguing that the status of investigations concerning these suspects is crucial to the validity of the impugned indictment. The Petitioner contends that the failure to include these suspects undermines and invalidates the indictment and the related proceedings.

The Petitioner further highlights that during proceedings before the High Court, the State Counsel informed the Court that all investigations have been concluded. However, on 03.07.2024, the High Court Judge noted difficulties in getting the main docket of the Magistrate's Court Case forwarded due to the purported ongoing investigations. The Petitioner contends that once an indictment is filed in the High Court, the Magistrate's Court

no longer has jurisdiction to investigate the same matter. Furthermore, the Petitioner asserts that a High Court case can only be initiated through an indictment after the prosecution has fully completed its investigations. The Petitioner points to paragraph 18 of the 1st Respondent's Limited Statement of Objections which state that two additional suspects may be included based on further investigations. The Petitioner contends that it is the Prosecution's responsibility to identify the accused, clear any relevant suspects, and prepare a complete list of witnesses before filing an indictment.

In response, the Respondents, citing Sections 173 and 180 of the Code of Criminal Procedure Act No. 15 of 1979 ('CCPA'), argue that the Attorney General has the discretion to either try the accused jointly or conduct separate trials for each accused. They assert that the three accused currently facing trial under the impugned indictment will be prosecuted based solely on the investigative material available at the time the indictment was filed. Furthermore, the Respondents maintain that such material was deemed sufficient and admissible to substantiate the charges against those three accused.

The Respondents argue that the impugned indictment is founded on the premise that the three accused named therein acted in collusion as part of a conspiracy on the date of the incident, justifying their joint inclusion in the indictment. They assert that any new evidence that has since emerged does not impact the Attorney General's decision to indict the three accused under the existing charges. Furthermore, the Respondents contend that the involvement of another individual aiding or abetting the offenses committed by the current accused does not invalidate the impugned indictment.

Contemporaneously, the Petitioner argues that the charges outlined in the indictment fall under Section 315 of the Penal Code and do not meet the criteria for applying the provisions of the PTA, which require a minimum punishment of no less than 7 years imprisonment. The Petitioner reiterates that they have not committed any act falling under the PTA's preamble, rendering its application against them a violation of the law. In response, the Respondents maintain that this claim should be examined during the trial in the High Court. The Respondents further allege that the Petitioner attempted to murder an STF guard by attacking him, which they argue qualifies as an act of violence falling within the scope of the PTA.

Contrary to the Petitioner's submissions regarding the applicability of the PTA to the charges of "hurt" ('පහරදීම'), the Respondents argue that the term "පහරදීම" has been used in the impugned indictment in compliance with Section 164 of the CCPA. Under Section 164(2) of the CCPA, if the law defining an offense assigns it a specific name, the offense may be referred to by that name alone in the charge.

Prosecutorial Discretion

On an overall conspectus of the submissions made on behalf of the Petitioner, it appears that the arguments of the Petitioner seem to center on challenging the prosecutorial discretion exercised by the Attorney General in filing the impugned indictment against him. The learned Counsel for the Petitioner, relying heavily on the guidelines formulated in the judgment of this Court in ***Sandresh Ravindra Karunanayake v. Hon. Attorney General and Others CA/WRIT/441/2021 decided on 28.02.2023,*** submitted that the Attorney General has failed to exercise his prosecutorial discretion lawfully. It is important to note that the learned Deputy Solicitor General who appears for the Respondents also relied on the aforesaid judgement.

When arriving at the final determination in the said ***Sandresh Ravindra Karunanayake*** case, I have examined, among several other cases, the judgements in the cases of ***B. Sirisena Cooray v. Tissa Dias Bandaranayake and Two others 1999 1 Sri. L.R. 1***, ***Land Reform Commission v. Grand Central Limited (1981) 1 Sri. L.R. 250, The Attorney General v. Sivapragasam et al, 60 NLR 468, Victor Ivon v. Sarath N. Silva, Attorney General and others (1998) 1 Sri. L.R. 340***; ***Victor Ivan and others v. Hon. Sarath N. Silva and others (2001) 1 Sri. L.R. 309***, ***Centre for Policy Alternatives v. B. N. Jayarathne and others, SC/FR Application/23/2013, SC minutes 24.03.2014, Kaluhath Ananda Sarath De Abrew v. Chanaka Iddamalgoda and others, SC/FR No. 424/2015, SC minutes of 11.01.2015, Janaka Bandara Tennakoon v. Attorney General, CA/Writ/335/2016 decided on 20.11.2020 (CA),*** and ***Dassanayake Mudiyanselage Deepal Pushpa Kumara v. Hon. Attorney General and others, CA/WRIT/291/2022 dated 27.01.2023.*** Moreover, I have followed the principles enunciated in the above judgments in subsequent decisions of this Court, such as in ***Saroja Govindasamy Naganathan alias Maharachchige Sarojani Perera and others v. Hon. Attorney General and Wasantha Kumara Jayadewa Karannagoda, CA/WRIT/424/21 decided on 10.11.2021;*** and ***Ranjith Keerthi Tennakoon v.***

Even the learned Deputy Solicitor General placing reliance on the judgment of the said ***Sandresh Ravindra Karunanayake*** case submitted that none of the grounds of the Petitioner that challenge the prosecutorial discretion of the Attorney General would fall within the guidelines enunciated in the said ***Sandresh Ravindra Karunanayake*** case. Thus, I take the view that the issues in the instant Application on the said indictment can be effectively addressed by applying the guidelines established by the Court of Appeal in the referenced case to assess whether the Attorney General exercised prosecutorial discretion lawfully and without malice. A party could challenge the decision of the Attorney General to forward an indictment if such decision falls within any of the limbs of the criteria enunciated therein.

Therefore, the following guidelines formulated in the said ***Sandresh Ravindra Karunanayake*** case, in my view, are fit and proper to be applied in assessing such prosecutorial discretion of the Attorney General in the instant Application;

1. Whether mere objective of leading evidence for the prosecution in the trial court is not for the purpose of establishing the ingredients of the charge against the accused

2. Whether leading evidence for the prosecution in the trial court;

    i. cannot establish the ingredients of the charge due to any restrictions of a written law,

    ii. will not be sufficient for the Trial Judge to efficaciously and adequately determine any primary issue with mixed facts and law or an issue of law.

3. Applicability of the 'No Evidence Rule' in exceptional circumstances.

4. If the Attorney General has taken a decision assuming a jurisdiction which he doesn't have or exceeding his jurisdiction.

5. If the Attorney General has taken a decision exercising his prosecutorial discretion in bad faith/ mala fide or with ulterior motive or with political motivation.

6. The decision would amount to an abuse of process.

7. Procedural irregularity or existence of any illegality during the decision-making process.

8. If there is a clear miscarriage of justice.

The above first guideline deals with the purpose of prosecution evidence and accordingly, the evidence presented in court by the Attorney General should aim to establish the elements of the charge against the accused. There is no allegation by the Petitioner against evidence led by the prosecution. It is observed that the trial in the High Court is still at its pre-trial stage. Secondly, the guidelines assess whether any limitations of prosecution evidence exist. Evidence may fail to establish the charge if a.) such evidence is restricted by written law and b.) insufficient for the trial judge to determine key legal or factual issues effectively. However, the Petitioner has not raised any such objection against the evidence to render this Court to consider the applicability of the second guideline.

The above third guideline deals with the 'No Evidence Rule' which needs to be applied only under specific, exceptional circumstances. No submissions either orally or in writing have been made on behalf of the Petitioner upon the non-availability of evidence on the aforesaid Rule, vitiating the institution of proceedings in the High Court against the Petitioner.

The decisions of the Attorney General may be challenged if he exceeds his jurisdiction or lacks authority according to the fourth guideline set out above. I am convinced with the stand taken by the Respondents that the Attorney General's discretion under Sections 173 and 180 of the CCPA to determine the structure of the trial, whether jointly or separately, is based on the evidence available at the time of the indictment. I am inclined to accept the submissions of the Respondents that the charges against the three accused are substantiated by admissible investigative material that supports the allegations of acting in collusion as part of a conspiracy on the date of the incident. I am of the view that the subsequent emergence of new evidence or the involvement of additional accused does not undermine the validity of the impugned indictment or its basis. This position reinforces the submissions made on behalf of

the Respondents and eventually, the Petitioner's argument on a premature indictment cannot be sustained.

The mentioned fifth guideline concerns the decisions influenced by bad faith/mala fide, ulterior motives, or political bias. It is well observed that the Petitioner has submitted to Court only a mere plea of mala fide against the Attorney General without a clear legal basis. I have decided in ***S. H. S. Padmini v. Sri Lanka Ports Authority and Others CA/WRIT/478/2021 decided on 09.11.2022*** that 'the plea of mala fides should be substantiated with adequate proof to the satisfaction of Court and merely raising a doubt would not be sufficient. The assertions on mala fide should be specific, direct and precise in order to sustain the plea of mala fides.' In this regard, Sripavan J. in ***Bandaranayake vs. Judicial Service Commission (2003) 3 Sri. L.R. 101*** has followed the following contents in 'Principles of Administrative Law' by Jain & Jain, 4th Edition 1988 (at p. 564);

> *"The plea of mala fides is raised often but it is only rarely it can be substantiated to the satisfaction of Court. Merely raising doubt is not enough. There should be something specific, direct and precise to sustain the plea of mala fides. The burden of proving mala fides is on the individual making allegation as the order is regular on its face and there is a presumption in favour of the administration that it exercises its power in good faith and for the public benefit."*

If the Attorney General's decision amounts to an abuse of due process of court, then such a decision is unacceptable according to the above sixth guideline. Maintaining fairness, equality, and impartiality in legal proceedings is vital to preserving the integrity of the legal system and safeguarding individual rights. The misuse of judicial processes has far-reaching consequences extending beyond legal contexts to undermine societal trust and the foundations of justice. Additionally, it exacerbates inequalities by privileging those with power or resources while marginalizing vulnerable groups, deepening societal disparities and undermining the principles of Natural Justice. Anyhow, the Petitioner has not addressed any of the main elements of the said concept of the abuse of the process of the court to benefit from such a notion.

The seventh and the eighth guidelines focus on the procedural or legal flaws and the miscarriage of justice. The decisions made by the Attorney General with procedural

irregularities or illegality can be contested whilst any decision resulting in a clear injustice warrants intervention. It is noted that the Petitioner has not substantiated his assertions on the miscarriage of justice to the satisfaction of this Court. I am reluctant to accept the submissions of the Petitioner on the charges outlined in the indictment, that such charges do not meet the threshold for invoking the PTA, emphasizing that the alleged actions of the accused fall under Section 315 of the Penal Code and do not align with the PTA's requirements or its preamble. When assaying the totality of the submissions of the Respondents, I am inclined to accept the position that the Petitioner's claims regarding the PTA's applicability should be addressed during the High Court trial. The Respondents' have justified that the use of the term "සහරදීම" in the indictment, complies with Section 164 of the CCPA, which permits offenses to be referred to by their specifically assigned legal names. The issues relating to the applicability of the PTA need to be subjected to judicial scrutiny during the trial in the High Court as this Review Court, based on the circumstances of this case, should not act as a trial judge. This is due to the reason that I am unable to find any ground which is eminently unreasonable or is guilty of an illegality in challenging the related decisions of the Attorney General.

I take the view that applying these guidelines established in the instant case will facilitate a fair and just assessment of the impugned indictment. For the reasons set forth above, I take the view that the Petitioner has failed to convince this Court with sufficient material that the decisions or actions of the Attorney General have not aligned with the Rule of Law; not remained within the bounds of his jurisdiction; and are not free from mala fide, ulterior motives or political influence. No substantive evidence was tendered to Court by the Petitioner to demonstrate that the decision of the Attorney General to serve the impugned indictment amounts to procedural irregularities, abuse of process and any miscarriage of justice. In conclusion, I have no reason to disregard the submissions made by the learned Deputy Solicitor General made contrary to the submissions of the Petitioner.

Detention Order

In addition to challenging the indictment, the Petitioner seeks an order in the nature of a writ of Certiorari quashing the detention order marked 'P2'. The said relief sought by the Petitioner

is only supported by a mere assertion that the detention orders under section 15A of PTA are permitted only when there is a valid indictment. The contention of the Petitioner is that no valid detention order can be issued under the said section if the respective indictment is void ab initio. Thus, based on the reasons given above to disregard the arguments of the Petitioners challenging the indictment, no further examination is required to consider whether the impugned detention order is invalid.

Anyhow, the submissions of the Petitioner in this regard suffer from several flaws. This Court has constantly decided that judicial review should only be sought where there is a clear and blatant error in the discretion of the impugned decision including the decision-making process or when the authorities have acted beyond their jurisdiction. The term 'blatant' should be interpreted according to Rules of the Court and other written laws. Such interpretation cannot be confined to a meaning given in a linguistics Dictionary. Hence, the Petitioner has not satisfied this Court that there exists a blatant error in law in respect of the impugned detention order.

Res Judicata/ Estoppel

The Respondents urge that the instant Application of the Petitioner be dismissed in limine because a previous application bearing No. CA/WRIT/225/2024 seeking the same reliefs was withdrawn. The said writ Application No. CA/WRIT/225/2024 has been filed by the father of the Petitioner of the instant Application. The Respondents contend that the conduct of the Petitioner amounts to an abuse of process as he had his father file the earlier Application and subsequently withdraw it.

Now I must examine the reliefs sought in the instant Application as well as in the said Application No. CA/WRIT/225/2024. It is observed that the primary reliefs in the said case CA/WRIT/225/2024 set out in paragraph '(c)', '(d)', '(e)', in its prayer are as follows;

> *"c.) For a mandate in the nature of a writ of certiorari quashing the indictment "P1" and/or the decisions contained therein and/or the proceedings commenced thereupon in HC/4834/24;*
>
> *d.) For a mandate in the nature of a writ of certiorari quashing the Order "P2" and/or the decisions contained therein;*

e.) For a mandate in the nature of a writ of mandamus directing the 3rd and/or 4th Respondent to cause to produce the Petitioner's son Nadun Chinthaka Wickramaratne in a competent court of law for further steps to be taken according to law and to enable a judicial order to be made according to law concerning his custody;"

The Petitioner in the instant Application in paragraph '(g)','(h)','(i)','(j)' in the prayer of the Petition seeks the following primary reliefs;

"g) Grant a mandate in the nature of a Writ of Certiorari quashing the Indictment marked "P1" dated 06-03-2024 filled by the 1st Respondent for offenses purportedly committed under the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 (as amended) and/or the decisions contained therein and/or the proceedings commenced thereupon in the Case bearing No. HC/4834/24 in the High Court of Colombo;

h) Grant a mandate in the nature of a Writ of Certiorari quashing the Detention Order marked "P2" dated 11-03-2024 issued by the 2nd Respondent and/or the decisions contained therein;

i) Grant a mandate in the nature of a Writ of Prohibition prohibiting the 1st and/or 3rd and/or 4th Respondents from bringing charges under and in terms of the provisions of the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 (as amended) against the Petitioner;

j) Grant a mandate in the nature of a Writ of Mandamus directing the 3rd and/or 4th and/or 5th Respondents to cause to produce the Petitioner in a competent court of law for further steps to be taken according to law and to enable a judicial order to be made according to law concerning his custody;"

The documents mentioned in paragraphs '(c)' and '(d)' of the prayer in CA/WRIT/225/2024, marked as 'P1' and 'P2,' are the same as those referenced in paragraphs '(c),' '(d),' and '(e)' of the prayer in the current Application. These documents, namely the indictment and the detention order, are the contested items attached to both Applications. It is undisputed that CA/WRIT/225/2024 was filed by the father of the current Petitioner on his behalf, as explicitly stated in paragraph 4 of the earlier Petition. Similarly, in paragraph 44 of the current Petition, the Petitioner acknowledges that his father previously invoked the writ jurisdiction of this Court on the same matter. Both Applications were filed

during the period of detention under the detention order marked 'P2' and after the filing of the contested indictment marked 'P1.' The earlier Application, CA/WRIT/225/2024, was unconditionally withdrawn by the respective Petitioner on 25.07.2024, citing a change in circumstances as the reason for withdrawal.

On a careful perusal of the contents of the two Petitions stated above, I have no doubt that the main reliefs prayed for in both the Applications are identical. Therefore, I need to examine whether the doctrine of Res Judicata should be applied in the instant Application. Applicability of the said doctrine, even to Review Applications, has been warranted by Review Judges in many previous judgements. The Respondents argue that the withdrawal of the previous Application was entirely free of any condition and as such the conduct of the Petitioner amounts to an abuse of process of court upon which the instant Application should be dismissed.

The Respondents relied on the judgement in ***Jayawardena and Five Others v. Dehiattakandiya Multi Purpose Co-Operative Society Ltd. and Fifty Others [1995] 2 Sri L.R 276*** which was a writ application dismissed by the Court of Appeal, considering the withdrawal of a previous application filed by one of the Petitioners**.** Sarath N. Silva J. (P/CA) (as he was then) has held in the said case that the contents of Rule 47 of the Supreme Court Rules 1978 and Rule 3(2) of Court of Appeal (Appellate Procedure) Rules 1990 appear to be based on the doctrine of Res Judicata. He further held that Rule 3(2), which requires a petition to include an assertion that the jurisdiction of this Court has not previously been invoked regarding the same matter, clearly implies that a party may not institute fresh proceedings on the same matter once a prior application has been concluded. However, Silva J. has examined whether the withdrawal of the first application was done based on an arrangement or an agreement that was intimated to Court at the time of withdrawal. Finally, the Court has dismissed the said Application of the 1st Petitioner assuming that the withdrawal was unconditional as the court was not apprised of any arrangement or agreement based on which the previous application was withdrawn.

In ***Nigamuni Piyuji Rasanja Mendis Supipi v. The University of Kelaniya CA/WRIT/90/2021 decided on 02.08.2023,*** I have observed that;

"Res judicata takes two distinct forms: issue estoppel and cause of action estoppel. In brief terms, issue estoppel prevents a litigant from raising an issue that has already been decided in a previous proceeding.[1] Cause of action estoppel prevents a litigant from pursuing a matter that was or should have been the subject of a previous proceeding.[2] If the technical requirements of issue estoppel or cause of action estoppel are not met, it may be possible to invoke the doctrine of abuse of process to prevent relitigation of matters[3]" (Vide- 'What is Settled is Settled: the Doctrine of Res Judicata' by Maurice Mirosolin, Pacific Law Group, <https://pacificlaw.ca/cased-closed-doctrine-of-res-judicata/> (accessed 31 July 2023))

I wish to borrow the information illustrated by the author in the said Law Blog by the Pacific Law Group in arriving at a conclusion in the instant Application. The said author discussed further the aspects on abuse of process of court stating that; 'Judges have an inherent and residual discretion to prevent an abuse of the court's process.'"

The concept of abuse of the process of court including 'Res Judicata', 'Estoppel', 'Rule Against Collateral Attack' and 'Waiver' can be identified as vital elements of the umbrella concept known as Functus Officio. In dealing with the concept of Functus Officio it should be noted that it aims to achieve finality whilst ensuring the conclusion of judicial proceedings.

Although I am inclined to adopt, in the instant case, the dicta advanced by Sarath N. Silva J. (P/CA) (as he was then) in the above case of ***Jayawardena and Five Others,*** I strongly believe that the modernized version of the doctrine of Functus Officio should be followed to address, particularly, the gross injustices caused to a party in a case when it is necessary. This is because of the enduring tension in the legal system: the need for finality vs. the imperative of fairness. As such, this commitment to fairness continues to shape the evolution of Functus Officio in modern legal frameworks. The review Courts should adopt the doctrine of Functus Officio based on the circumstances of each case, bearing in mind the importance of fostering a legal system that responds to the changing demands of justice, avoiding strict adherence to

[1] Toronto (City) v. C.U.P.E., Local 79 2—3 SCC 63.
[2] Erschbamer v. Wallster, 2013 BCCA 76. See also Henderson v. Henderson (1843), 3 Hare 100, 67 E.R. 313 at 319.
[3] R. v. Power, 1994 CanLII 126 (SCC), [1994] 1 S.C.R. 601, at p. 616), and as "oppressive treatment": R. v. Conway, 1989 CanLII 66 (SCC), [1989] 1 S.C.R. 1659, at p. 1667.

procedural formalities that could lead to unfair outcomes. As Lord Atkin[4] aptly stated, "finality is a good thing, but justice is better." Therefore, the pursuit of finality may sometimes need to give way to the higher goal of achieving justice.

Nevertheless, I take the view that, filling a fresh writ application by the Petitioner soon after withdrawing the earlier application on the same issues or the cause of action is a clear instance of issue estoppel or cause of action estoppel. Likewise, the Petitioner's conduct in twice invoking the inherent jurisdiction of this Court cannot be justified as the Court is fully aware of the specific circumstances surrounding the withdrawal of the previous application and the submission of the new application to this same Court. In my view, such conduct of the Petitioner amounts to abuse of process. In light of the reasons given above and based on the circumstances of this case, I am unable to ascertain any gross injustice caused to the Petitioner for this Court to uphold the imperative of fairness while disregarding the need for finality.

Conclusion

For the reasons adduced above, this case does not bear the ideal magnitude to overlook the doctrine of Functus Officio as the Petitioner has failed to establish that a gross injustice will be caused to him if the second writ application is not allowed. Implementing measures to prevent practices like forum shopping and bench hunting is essential for maintaining the rule of law and sustaining public confidence in the judiciary. Furthermore, exploiting the judicial system for ulterior motives threatens the integrity of justice and democracy, weakening public trust and jeopardizing the judiciary's role as a cornerstone of society. The instant Application could have been refused solely by adopting the umbrella concept of Functus Officio. However, this Court has taken an additional burden for completeness to consider the element of prosecutorial discretion.

The judicial process concerning judicial review must be approached with responsibility and should not be misused by filing Review Applications without merit. Judicial review, especially in respect to challenging the prosecutorial discretion of the Attorney General, should only be sought where there is a clear and blatant error in the discretion of the decision-

[4] In Ras Behari Lal v King Emperor, [1933] ALL ER Rep 723 at 726, 50 TLR 1.

making process or when the Attorney General has acted beyond his jurisdiction. This should be assayed and evaluated while giving due consideration to the guidelines discussed above.

In the circumstances, I am unable to hold that the Attorney General in exercising his discretion acted in bad faith or with an ulterior motive or in excess of his powers. Thus, I take the view that there is no reason to interfere with the prosecutorial discretion exercised by the Attorney General in relation to the impugned indictment or the detention order issued by the 2nd Respondent. I strongly believe that all the purported allegations raised against the Attorney General by the Petitioner can be easily dealt with during the proceedings in the High Court, if the Petitioner so wishes, as no intervention of a Review Court is required at this stage to review any such contentions of the Petitioner.

This Court has consistently dealt with arguability principles in applications for judicial review and held that the vitiating ground must be arguably material to the impugned decision and such decision must be arguably amenable to judicial review. Thus, I hold that there is no arguable case or a prima facie case which warrants this Court to issue formal notice of the instant Application on the Respondents. Therefore, I refuse the instant Application.

Application is refused.

Judge of the Court of Appeal

Mahen Gopallawa J.

I agree.

Judge of the Court of Appeal