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

In a matter of an Application for a mandate in the nature of a Writs of Certiorari and Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No. 211/2022

Awushadayage Ashoka Ariyarathne
No. 204, Paragahaulpatha,
Horowpathana.

PETITIONER

Vs.

1. Rtd. Major General Kamal Gunaratne
   Secretary,
   Ministry of Defence,
   Baladaksha Mawatha,
   Colombo 03.

1A. Air Vice Marshal Sampath
   Thuyacontha (Retd),
   Secretary,
   Ministry of Defence,
   Baladaksha Mawatha,
   Colombo 03.

2. Malika Karavita
   Assistant Secretary (Defence- I)
   Ministry of Defence,
   Baladaksha Mawatha,
   Colombo 03.

3. Vice Admiral Nishantha
   Ulugetenne,
   Commander,
   Sri Lanka Navy,
   Navy Headquarters,
   Colombo 01.

3A. Vice Admiral Priyantha Perera
Commander,
Sri Lanka Navy,
Navy Headquarters,
Colombo 01.

3B. Vice Admiral Kanchana
Banagoda,
Commander,
Sri Lanka Navy,
Navy Headquarters,
Colombo 01.

4. T/ Rear Admiral L. H. S. R. Lelwala
Director Administration,
Sri Lanka Navy,
Navy Headquarters,
Colombo 01.

5. Captain A.D Weerasinghe
Commanding Officer – SLNS
Elara,
Sri Lanka Navy,
Navy Headquarters,
Colombo 01.

6. Captain S. P. N. K. Dowson
Commanding Officer – Special
Investigation Unit,
Sri Lanka Navy,
Navy Headquarters,
Colombo 01.

7. Lieutenant Commander L. S. Dissanayake
Senior Staff Officer – Legal
Sri Lanka Navy,
Navy Headquarters,
Colombo 01.

8. Petty Officer D. M. S.
Madushanka - Special
Investigation Unit,
Sri Lanka Navy,
Navy Headquarters,

Colombo 01.

9. Hon. Attorney General
Attorney General's
Department,
Colombo 12.

RESPONDENTS

Before: Mayadunne Corea, J.
Mahen Gopallawa, J.

Counsel: Shehan de Silva with Nuwan Premadasa and H. Abeywardhena for the Petitioner.

Ms. Nayomi Kahawita, Senior State Counsel for the Respondents.

Argued on: 01.12.2025 and 09.02.2026

Written Submissions: Petitioner on 27.02.2026.
Respondents on 03.03.2026.

Decided on: 15.05.2026

Mahen Gopallawa, J.

Introduction

In the instant application, the Petitioner has impugned the decision taken by the Respondents to dismiss him from the Sri Lanka Navy without disgrace consequent to a Summary Trial. At the time of his dismissal without disgrace from service, the Petitioner, who was serving in the rank of Chief Petty Officer and counted a period of 17 years 08 months of service. The Petitioner has sought the following substantive reliefs in the prayer to the petition;

(c) Issue a mandate in the nature of a Writ of Certiorari quashing the recommendations made through the inquiry report of the 6th Respondent;

(d) Issue a mandate in the nature of a Writ of Certiorari quashing the decision to discharge the Petitioner from the Sri Lanka Navy without disgrace and reinstate in Sri Lanka Navy in the rank of Chief Petty Officer;

(e) Issue a mandate in the nature of a Writ of Mandamus directing the respondents to re-enlist the petitioner to the rank of Petty Officer and to pay him back wages and other allowances for the relevant period;

The Respondents, by their statement of objections dated 17.07.2024, have objected to the grant of the aforesaid reliefs, and, accordingly, the application was taken up for argument.

At the commencement of the argument, the learned Counsel for the Petitioner submitted that the Petitioner would not be pursuing the relief sought in paragraph (e) of the prayer to the petition and would be confining himself to the reliefs sought in paragraphs (c) and (d) thereof.

After the learned Counsel for the Petitioner concluded his oral submissions, the learned Senior State Counsel for the Respondents submitted that, in view of the judgment of this Court in ***W.R.H. Epasinghe v Vice Admiral Nishantha Ulugahatenne, Commander of the Navy and others (Epasinghe's Case)***,[1] she did not wish to make oral submissions and would be tendering written submissions setting out the position of the Respondents.

Factual Background

It would be useful to set out a brief narrative of the circumstances which culminated in the conduct of the Summary Trial and the discharge of the Petitioner from the Sri Lanka Navy (SLN), as presented in the pleadings.

At the time of the incident, the Petitioner was engaged as a Training Instructor at the Special Boat Squadron Training School. According to the petition, pursuant to the arrest of Leading Seaman HMND Herath by the Navy Police for the possession of cannabis, an inquiry had been launched by the Special Investigation Unit of the Sri Lanka Navy and the Petitioner had been summoned to provide a statement. The Petitioner has stated that he had been questioned on 14.10.2018 as to whether he had requested for cannabis from one Chief Petty Officer ASM Adasuriya, to which he responded that he had asked for cannabis "with a scornful intention" and that he had never smoked or possessed cannabis in his entire life.[2] He has alleged that he had been coerced into making a statement according to the instructions given by the investigators.

The Petitioner has stated that he was "subjected to an inquiry" on the following day conducted by Petty Officer Madushanka, who was an officer inferior in rank to the Petitioner.[3] He has further stated that, although he was questioned about the incident and had been instructed to place his signature on the statement made, he had not been allowed to read the final report of the inquiry

[1] CA Writ Application No. 209/2022, decided on 19.12.2025
[2] vide paragraph 22 of the petition
[3] vide paragraph 25 of the petition

before it was presented to the 5th Respondent, who was the Officer-in-Command of the Trincomalee Naval Base.[4]

In their statement of objections, such narration of events has been contested by the Respondents. They have tendered a certified copy of the statement recorded from the Petitioner (R1), wherein he had stated that he had consumed cannabis whilst on leave and to give a demonstration to his trainees in jungle warfare training.[5] They have further stated that the said statement (R1) was the only statement recorded from the Petitioner and that he was afforded an opportunity to read the inquiry proceedings/statement and that he had placed his signature after having done so.[6]

As stated in the petition, the Petitioner had been taken on 19.10.2018 to Trincomalee to face a Summary Trial, and, the suspects, including the Petitioner, had been kept in a tiny room from 7:00 am until 5:00 pm without food or water and that they had been taken to the office of the Officer in Command before the Summary Trial commenced and threatened with discharge from the Navy. Such allegations have been denied by the Respondents in their statement of objections.[7]

It is common ground between the parties that the Summary Trial against the Petitioner had been conducted before the 5th Respondent on 19.10.2018. The proceedings of the said Summary Trial (P1/R3) also bear out that the Petitioner had pleaded guilty to all 03 charges framed against him and the 5th Respondent had found him guilty of same. Consequently, a warrant of punishment "dismissing without disgrace from the Navy" had been issued to such effect.

According to the Petitioner, the Summary Trial had been conducted whilst the Petitioner was not in a condition to face the trial freely and had not been provided with the protection afforded by the law.[8] He has further stated that he was under immense emotional stress and was not given adequate facilities to prepare himself for the trial due to the aforementioned treatment meted out to him beforehand.[9] He has further alleged that he was informed of the charges against him only at the Summary Trial and that no charge sheet was served prior to its commencement.[10]

The Petitioner has therefore contended that the inquiry and the Summary Trial against him has been conducted in violation of the regulations promulgated under the Navy Act and the rules of natural justice. The several grounds upon which such contention has been made will be examined in detail when grounds of review are analyzed in the succeeding section of this judgment.

Thereafter, the Petitioner had submitted an appeal to His Excellency the President dated 21.06.2019 in terms of section 122 of the Navy Act (P2), and, that, upon being informed by the Sri Lanka Navy that such appeal had been duly considered and refused by His Excellency the

[4] vide paragraph 27 of the petition
[5] vide paragraph 8 of the statement of objections
[6] vide paragraphs 11 and 12 of the statement of objections
[7] vide paragraphs 13 and 14 of the statement of objections
[8] vide paragraph 30 of the petition
[9] ibid
[10] vide paragraph 33 of the petition

President, he had been discharged from the Navy without disgrace on 03.10.2020.[11]However, the Petitioner has challenged the legality of such discharge, based on the proceedings held before the Human Rights Commission of Sri Lanka, upon the premise that the discharge had had been authorized not by His Excellency the President but by the Secretary to the Ministry of Defence, contrary to the representations made to the Petitioner.[12] Such position has been rejected by the Respondents.[13] This issue too will be addressed subsequently in this judgment.

Apart from the aforementioned appeal submitted by the Petitioner, the Petitioner had also lodged a complaint at the Human Rights Commission (as evidenced by the document marked P10). It also appears that appeals had been made by the Petitioner's wife named Monica Thilak Karunaratne to His Excellency the President (P7(1)), the 1st Respondent(P7(2)) and the 3rd Respdonent (P7(3)) and she had also lodged complaints at the Human Rights Commission of Sri Lanka (as evidenced by the documents marked P3 and P9) and with the Ombudsman (P7(4)).

Grounds of Review and Analysis

The Petitioner has impugned the conduct of the inquiry, the verdict of the Summary Trial and the decision to discharge him without disgrace from the Navy on the following grounds, which have been set out in his pleadings and the oral and written submissions made;

a. Denial of the right to a Court Martial;
b. Violation of the principles of Natural Justice by the failure to serve a Charge Sheet;
c. Denial of effective legal representation;
d. Irregularities in the Inquiry process;
e. Coercive circumstances surrounding the Summary Trial;
f. Irregularities in the recording of the Petitioner's plea and verdict;
g. Conviction without evidence; and
h. Imposition of excessive and discriminatory punishment.

It is re-iterated that the Petitioner has premised the above grounds on alleged violations of the provisions of the Navy Act, the regulations promulgated under the Navy Act[14] and the principles of Natural Justice.

In so far as regulations promulgated under the Navy Act are concerned, it is observed that the Petitioner has not identified the specific regulations promulgated under the Navy Act that were applicable to the conduct of the Inquiry and the Summary Trial. In their statement of objections, the Respondents have clarified such matter by stating that the Summary Trial was conducted as per Sri Lanka Navy Order (SLNO) 0509 issued by the Commander of the Navy dated 01.10.2021,[15]

[11] vide paragraph 36 of the petition
[12] vide paragraphs 37 to 41 of the petition
[13] vide paragraph 22 of the statement of objections
[14] vide paragraph 43 of the petition
[15] vide paragraph 23 of the statement of objections

and, a copy of the said SLNO 0509 was tendered to Court by the Respondents by motion dated 22.12.2025 marked X1 during the course of the hearing. However, it is observed that the impugned Summary Trial was held on 19.10.2018, which is prior to the date of issuance of SLNO 0509 (X1).

Thus, I wish to clarify that this Court will proceed upon the basis that the procedure to be followed in the conduct of a Summary Trial impugned in this application was set out in the Sri Lanka Navy Order 0501 titled "Boards of Inquiry and Summary Trials" (SLNO 0501) issued by the Commander of the Navy dated 20.04.2005. In their written submissions, the Respondents have, *inter alia,* stated that SLNO 0501 was "similar" SLNO 0509.[16] However, I wish to observe that this Court is handicapped to an extent by the failure on the part of the parties, and the Petitioner in particular, to tender a copy of SLNO 0501 to this Court, although reference has been made to specific provisions thereof in their submissions.

a. Denial of the Right to Court Martial

Section 29 of the Navy Act provides that where a warrant officer or petty officer is charged with a non-capital offence other than a disciplinary offence, the commanding officer shall ask whether he desires to be dealt with summarily or tried by Court Martial.

The Petitioner contends that, holding the rank of Chief Petty Officer, he was entitled to be offered the option of being tried by either a Court Martial or Summary Trial in terms of section 29 of the Navy Act No. 34 of 1950 (as amended), but, that such option was not afforded to him in the instant case. According to the Petitioner, such failure to comply with the provisions of section 29 constituted a fundamental procedural irregularity that vitiated the entire proceedings.[17]

Section 29 of the Navy Act provides as follows;

> *29. Where a warrant officer or petty officer is charged with a non-capital offence other than a disciplinary offence or an offence which is expressly required by this Act to be tried by a court martial his commanding officer shall ask him whether he desires to be dealt with summarily or to be tried by a court martial and if he elects to be tried by a court martial, shall take steps for his trial by a court martial.*

In support of such contention, the learned Counsel for the Petitioner cited the decision of this Court in ***Lalith Deshapriya v Captain Weerakoon and others (Lalith Deshapriya's Case)***[18] wherein it was held that (per Marsoof P/CA (as he then was));

> *A plain reading of section 29 would reveal that an accused charged with a disciplinary offence is entitled to a court martial (except in the situation contemplated by section 148) and cannot*

[16] vide paragraphs 4 to 6 of the Respondents' written submissions
[17] vide paragraphs 49-51 of the petition and paragraphs 13-17 of the Petitioner's written submissions
[18] [2004] 2 Sri L.R 314

be dealt with summarily without being asked whether he desires to be dealt with summarily or by court martial.

Furthermore, citing the decision of this Court in ***C.J. Ranasinghe v Commander of the Sri Lanka Navy and others (C.J. Ranasinghe's Case)***[19] he submitted that such option should have been offered at the appropriate time, not after the accused has already pleaded to charges.

The Respondents have rejected such position and have submitted that, since all the offences contained in the charge sheet issued against the Petitioner (R2)[20] are disciplinary offences punishable under section 104 of the Navy Act, there was no statutory obligation to accord the option of being tried by either a Court Martial or a Summary Trial to the Petitioner. A perusal of the charge sheet (R2) confirms that all 03 charges framed against the Petitioner refer to offences punishable under section 104 of the Navy Act, which provides as follows;

> *104(1) Every person subject to naval law who, by any act, conduct, disorder, or neglect which does not constitute an offence for which special provision is made in any other section of this Act, prejudices good order and naval discipline, shall be guilty of a naval offence and shall be punished with dismissal with disgrace from the Navy or with any less severe punishment in the scale of punishments.*
>
> *Provided, however, that if the act, conduct, disorder or neglect, which constitutes such offence is committed by such person at a guard of honour, parade, or ceremony, or other service function he shall be punished with rigorous imprisonment for a term not exceeding twenty years.*
>
> *(2) Every person subject to Naval law who aids, abets, counsels or procures the commission by another person of an offence under this Act shall be guilty of an offence and shall be tried in the manner specified for the trial of the first-mentioned offence and shall be liable to the same punishment as is specified for the first-mentioned offence.*

On this issue, the Respondents have sought to rely on the findings made by me in ***Epasinghe's Case (supra)***, wherein I held that the Petitioner was only entitled to be tried summarily by virtue of his rank and nature of offences preferred against him, and, as such, offering the option of a Court Martial did not arise.[21]

I am inclined to accept the position taken up by the Respondents and arrive at a similar conclusion in the instant case as well. Although section 29 of the Navy Act is applicable to the Petitioner by virtue of his rank, I am of the view that there is no statutory obligation on the part of the Respondents to offer the Petitioner the option of being tried by a Court Martial or Summary Trial thereunder by virtue of the fact that all offences that he was charged with were in the nature of disciplinary offences.

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[19] CA Writ Application No. 313/2021, decided on 06.12.2023

[20] The charges have also been reproduced in the in the proceedings of the Summary Trial (P1/R3)

[21] vide p 15 of the judgment

In this context, I also wish to observe that in ***Lalith Deshapriya's Case (supra),*** 03 out of the 06 charges related to non-disciplinary offences, unlike in the instant case where all the charges relate to disciplinary offences. In relation to the decision of this Court in ***C.J. Ranasinghe's Case(supra),*** it is observed that section 29 of the Navy Act was not considered. Thus, it is my view that the aforementioned decisions relied upon by the Petitioner cannot be considered as being binding upon this Court or relevant to the facts and circumstances of the instant case.

b. Violation of Natural Justice: Failure to Serve Charge Sheet

The Petitioner has pleaded that he was not given prior notice of the allegations or the charges against him, that no charge sheet was served on him, and, that he was only made aware of the charges against him at the Summary Trial. He contends that such failure on the part of the Respondents constitutes a violation of clause 5(f) of SLNO 501.[22]

Clause 5(f) of SLNO 0501 provides as follows;

> *f. The charge sheet shall be served on the accused giving sufficient time for him to prepare for his defence*.

Although the Respondents had taken up the position that the Sri Lanka Navy had followed the practice of giving prior notice of charges against an accused person without deviation in relation to the Petitioner,[23]the learned Senior State Counsel conceded at the hearing that there was no evidence indicating that the charge sheet had been served on the Petitioner at any time prior to the commencement of the Summary Trial.

In this context, it is observed that, although the Respondents have purported to identify the charge sheet served on the Petitioner as R2 in their statement of objections, a perusal of the said document indicates that it is merely an extract from the proceedings of the Summary Trial containing the 03 charges framed against the Petitioner and is not a distinct document. As observed by me in ***Epasinghe's Case (supra),*** such record of the proceedings of the Summary Trial cannot be equated to a charge sheet or considered as a substitute thereof.[24] Thus, the evidence before this Court does not indicate that a charge sheet has been issued to the Petitioner at all.

Such conclusion is in line with the reasoning in ***Lalith Deshapriya's Case (supra)***, wherein this Court observed as follows;

> *On a perusal of the proceedings marked IR2 it appears that the charges are set out at the commencement thereof, and the absence of a separate charge sheet as an annexure to the affidavit of either the 1st or the 2nd respondent, gives credence to the petitioner's*

[22] vide paragraphs 31-33 of the petition and paragraphs 18-23 of the Petitioner's written submissions
[23] vide paragraph 16 of the statement of objections
[24] vide p 17 of the judgment

position that no charge sheet was in fact served on him prior to the summary proceedings before the 1st respondent.[25]

I am of the view that clause 5(f) of SLNO 0501 contemplates three distinct requirements; firstly, the charge sheet as a distinct document has to be served on the accused; secondly, such service of the charge sheet should be done prior to or in advance of the commencement of the Summary Trial; thirdly, the period between the service of the charge sheet and commencement of the Summary Trial should provide adequate time for the accused to prepare for his/her defence. Considering the evidence available to this Court, none of the aforementioned requirements have been complied with by the Respondents in the instant case, and, I am inclined to accept the Petitioner's contention that the Respondents have acted in blatant violation of clause 5(f) of SLNO 0501.

c. Denial of Effective Legal Representation

The Petitioner also contends that he was denied effective legal representation at the Summary Trial in violation of clause 5(g) of SLNO 0501,[26] which provides as follows;

> *g. Every accused shall have the right to be defended by a defending officer. Every possible step to be taken by the Commanding Officers to provide the services of a defending officer at the will of the accused, subject to service exigencies.*

The learned Counsel for the Petitioner adverted to the decisions of this Court in ***Lalith Deshapriya's Case (supra), Epasinghe's Case (supra)*** and ***C.J. Ranasinghe's Case (supra),*** which have underscored the importance of providing the services of a defending officer to an accused in a Summary Trial in an effective manner. Referring specifically to SLNO 501, in ***C.J. Ranasinghe's Case (supra),*** this Court observed as follows (per Karalliyadde, J.);

> *The law is clear that the Commanding Officer's power to appoint a defending officer is subject to the will of the accused as it is a fundamental requirement in conducting a fair trial. At the same time, a concurrent right lies with the accused to object at the earliest possibility to any such appointment by the Commanding Officer disregarding his will as such conduct would be based on the legal maxim that equity aids the vigilant not the indolent. Although it is observed that the passiveness in requesting a Defence Officer of his choice, the Court cannot condone the Respondents for failing to serve the accused a charge sheet, failure to provide adequate time to prepare his defence and most significantly on the grave violations of the Sri Lanka Navy Order 0501 marked R3 when conducting the Summary Trial.*[27](emphasis added)

In the instant case, the Petitioner has stated that he intended to be represented by a defending officer of his choice but such request was denied by the 5th Respondent, who instead nominated

[25] at p 321
[26] vide paragraphs 24-28 of the Petitioner's written submissions
[27] vide p 18 of the judgment.

a defending officer to represent the Petitioner at the Summary Trial.[28] The position taken up by the Respondents in response is that the Petitioner never made a request to appoint any specific person as his defending officer, and, as such, the 5th Respondent had appointed a defending officer to represent the Petitioner.[29]

I am of the view that the right accorded to an accused to be represented by a defending officer of his choice in terms of the aforementioned clause 5(g) of SLNO 0501 imposes a corresponding duty upon the Respondents to ensure that the services contemplated thereunder are provided to such accused. However, apart from the name of the defending officer being recorded in the proceedings of the Summary Trial (R3), the Respondents have not adduced any documentary proof, such as a letter of appointment, indicating when the appointment of the defending officer was made or when and how the Petitioner was informed of such appointment. Furthermore, there is no reference in the Summary Trial proceedings or elsewhere documenting the fact that the Petitioner had not asked for the appointment of a specific person, and, therefore, the 5th Respondent had appointed a defending officer on his behalf, as contended by the Respondents.

In the aforementioned circumstances, I am inclined to accept the position taken up by the Petitioner that he had been denied effective legal representation at the Summary Trial in violation of clause 5(g) of SLNO 0501. Such denial has significantly impaired the Petitioner's ability to defend himself against the charges preferred against him.

d. Irregularities in the Inquiry Process

The Petitioner has further alleged certain irregularities in the inquiry conducted against him; firstly, that it had been conducted by Petty Officer Madushanka (8th Respondent), who was inferior in rank to him; secondly, that he was not allowed to read the report of the inquiry before placing his signature, and, when a request was made, he was instructed by the inquiry officer instructed him to place his signature on the places where changes had been made; thirdly, that he was never allowed to read the final report of the inquiry before it was presented to the 5th Respondent, who was the Officer in Command of the Trincomalee Naval Base; and fourthly; that the inquiry was conducted according to the wishes of the inquiring officer denying the Petitioner any meaningful participation in the process.[30]

As detailed in the factual narrative, the Respondents have denied the above allegations and tendered a certified copy of the Petitioner's statement (R1). They have stated that the Petitioner was afforded an opportunity to read the inquiry proceedings/statement, and, that, he had placed his signature after having done so.[31]

[28] vide paragraph 47 of the petition
[29] vide paragraph 24 of the statement of objections
[30] vide paragraphs 25-27 of the petition and paragraphs 29-30 of the Petitioner's written submissions
[31] vide paragraphs 11 and 12 of the statement of objections

However, it is observed that, although the Petitioner has sought a writ of *Certiorari* to quash the recommendations made through the inquiry report of the 6th Respondent, neither the Petitioner nor the Respondents have tendered the said inquiry report to this Court. In the absence of such inquiry report, this Court is not in a position to make a considered determination on the legality or otherwise of the recommendations made therein, which the Petitioner has sought to quash.

The fundamental rule of evidence that "he who asserts must prove"(*ei incumbit probation, qui dicit, non qui negat)*,[32]including in writ applications. In this regard, the Supreme Court, in ***Saranguhewage Garvin de Silva v Lankapura Pradeshiya Sabha and others,***[33] observed as follows (per Marsoof J);

> *The burden of proof in any application for prerogative writ including mandamus is on the person who seeks such relief, to prove the facts on which he relies,…*[34]

In this instance, the burden of establishing the irregularities in such inquiry and the entitlement to the relief sought lies with the Petitioner, as the party asserting same. I hold that the Petitioner has failed to establish the alleged irregularities in the inquiry process and decline to issue a writ of *Certiorari* to quash the recommendations made in the inquiry report, as prayed for in paragraph (c) of the prayer to the petition.

e. <u>Coercive Circumstances Surrounding the Trial</u>

Another ground of review urged by the Petitioner is that the coercive circumstances in which the Summary Trial was conducted rendered it fundamentally unfair and that it was conducted when the Petitioner was not in a condition to face the trial freely and was not provided with the protection afforded by law. The Petitioner has characterized the following as "coercive circumstances"; that he was under immense emotional stress and was not given adequate facilities to prepare himself for the trial due to the treatment he received right before the trial; that, upon reaching the Trincomalee Naval Base at around 7:00 am on 19.10.2018, that he and other suspects were maliciously kept inside a tiny room without any food or water until approximately 5:00 pm; that, before the commencement of the Summary Trial, they were taken to the official cubicle of the Officer in Command and intimidated with obscenity, threatening that the suspects including the Petitioner would be discharged from the Navy.[35]

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[32] It is statutorily enshrined in section 101 of the Evidence Ordinance provides as follows; "*Whoever desires any court to give judgment as to any legal right to liability dependent on the existence of facts which he asserts, must prove that those facts exist.*
When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

[33] SC Appeal 10/2009, SC Minutes dated 15.12.2014

[34] vide p 5 of the judgment

[35] vide paragraphs 28-30 of the petition and paragraphs 31-35 of the Petitioner's written submissions

In support of his position, the Petitioner has sought to rely on the finding made in ***Lalith Deshapriya's Case (supra)*** that "the trial was conducted when the petitioner was not in a condition to face the trial freely and benefit from the protection afforded by law."[36]

The Respondents have denied the aforementioned allegations made by the Petitioner in paragraphs 13 and 14 of their statement of objections, without providing a detailed explanation regarding same.

I am of the view that, although it may not be possible to arrive at definitive findings on the aforementioned allegations made by the Petitioner as the facts are in dispute, as done in ***Lalith Deshapriya's Case (supra),*** the Court is nevertheless entitled to consider the said circumstances preceding the conduct of the Summary Trial in determining whether the Petitioner was afforded a fair hearing.

f. Irregularities in Recording the Plea and Verdict

The Petitioner has also sought to impugn the validity of the Summary Trial by contending that there were irregularities in the recording of his plea and the verdict arrived at based thereon by the Court.[37] One such irregularity referred to by the Petitioner is that, although the Summary Trial proceedings (P1/R3) record a plea of guilt, he had in fact never pleaded guilty and had vehemently denied the charges.

A perusal of the Summary Trial proceedings (P1/R3) reveals that the charges have been read over to the Petitioner and that a plea of "guilty" has been recorded in respect of all charges. Considering the fact that the same allegation was made by the petitioner in similar factual circumstances in ***Epasinghe's Case (supra),*** I wish to re-iterate my observations on the said issue;

> *Based on the proceedings ('P14'), there appears to be notional compliance with clauses 6(d) (reading out and explaining of the charges to the accused) and clause 6(e) (plea of the accused to the charges) of SLNO 0501, to the extent that the charges appear to have been read over and a plea of "guilty" from the accused had been recorded.*
>
> *However, that clause 6(f) of SLNO 0501 imposes two further obligations on the officer conducting the trial; firstly, if such officer is not satisfied that the accused understood the consequences of his plea of guilt, he is required to fully explain to the accused such consequences; and secondly, such officer is required to ensure that the accused pleaded guilty without any threat, promise or coercion. In my view, such provisions perform a critical function in ensuring a fair trial, namely, to ascertain whether the plea is made knowingly and voluntarily. It is observed that there is no notation or certification in the proceedings ('P14') made by the 2nd Respondent that he had considered such matters and satisfied himself that the aforementioned twin requirements in clause 6(f) have been met.*

[36] vide p 320

[37] vide paragraphs 32-35 of the petition and paragraphs 36-38 of the Petitioner's written submissions

It is also observed that, although the Petitioner had made a specific and personal allegation against the 2nd Respondent in incorrectly recording his plea, the said Respondent has opted not to respond to such allegation by affidavit evidence, though he had ample opportunity to do so.

Considering the aforementioned matters, and bearing in mind the very serious allegations made by the Petitioner regarding the circumstances in which disciplinary action was initiated against him (which the Respondents have not responded in detail), I am not inclined to accept that the Petitioner's plea of "guilty" recorded in the proceedings of the Summary Trial ('P14') had been validly made and reflects the true intention of the Petitioner regarding the charges preferred against him.[38]

For the reasons set out above, which apply with equal force to the instant case, I am not convinced that the plea of "guilty" recorded from the Petitioner in the Summary Trial proceedings (P1/P3) has been validly made and reflects the true intention of the Petitioner regarding the charges preferred against him. In arriving at this conclusion, I have also taken cognizance of the fact that the Petitioner had not been served with charge sheet in advance and was being notified of the charges for the first time at the Summary Trial just prior his plea being recorded.

In this context, I also wish to advert to the fact that section 32 of the Navy Act requires a naval officer exercising judicial powers under this Act who tries an offender summarily to maintain a record of the proceedings at the trial. Clause 6(s) of SLNO 0501 specifically requires the proceedings of the Summary Trial to be recorded in detail in a manner reflecting that all the procedural steps in clause 6 were followed at the trial and a certification to the correctness of the proceedings from the officer conducting the same. Thus, there also appears to be non-compliance with such provisions in recording the proceedings of the instant Summary Trial.

The Petitioner has further pointed out that, when the charge sheet with the proceedings (P1/R3) was made available to him by the Sri Lanka Navy on 21.06.2019, well after the Summary Trial had been concluded on 19.11.2018, he had discovered that the second charge framed against him was that he, while being a senior seaman and an instructor, had caused an adverse influence on junior seamen by consuming and trafficking cannabis. However, he states that no production was presented before the inquiry to establish that he had consumed or trafficked any cannabis and that no evidence was produced to establish facts relating to the said second charge.

In their statement of objections, the Respondents denied such allegations and have adverted to the following matters. Firstly, they have pointed out that the second charge in the charge sheet had been erroneously described by the Petitioner and that it did not accuse the Petitioner of consuming or trafficking cannabis but rather to the failure on the part of the Petitioner to prevent sailors under him from consuming and trafficking cannabis.[39] Upon perusal of the text of the said charge, I am inclined to accept the position taken up by the Respondents on this matter.

[38] vide page 18 of the judgment

[39] vide paragraph 17 of the statement of objections

On the issue of the failure to lead evidence and to present productions to establish consuming and trafficking of cannabis, the Respondents have pointed out that there were no charges against the Petitioner regarding consuming or trafficking cannabis.[40] They have also pointed out that the Petitioner had pleaded guilty to the charges preferred against him. The issue of adequacy and of the evidence will be further considered the under the next ground of review.

g. Conviction Without Evidence

The Petitioner has further challenged the evidentiary value of his conviction at the Summary Trial on several bases; firstly, he contends that the conviction is not based on any reasonable or substantial evidence and is wholly based on the recommendations of the inquiry headed by the 6th Respondent; secondly, there is a failure on the part of the Court[41] to evaluate the reliability and probability of the evidence, which constitutes an error on the face of the record; thirdly, he claims that the decision to discharge him was prejudged and made even before a formal inquiry was conducted; and fourthly, the Petitioner contends that the Respondents have acted unlawfully and improperly, in breach of principles of natural justice, in complete disregard of the onus of proof and without providing a meaningful hearing for the Petitioner to establish his innocence.[42]

The broad position of the Respondents regarding such allegations is that the Petitioner had pleaded guilty to the charges.[43] The manner in which a conviction based on a plea of guilt by an accused is set out in clause 6(f) of SLNO 0501 in the following manner;

> *f. If the accused pleads guilty, steps from following sub para (g) to (n) herein should be skipped and he should be convicted on his own plea. However, in the event the officer conducting the summary trial is not satisfied that the accused understood the consequences of his plea of guilt the officer conducting the summary trial should fully explain to the accused such consequences. Further, the officer conducting the summary trial should ensure that the accused pleaded guilty without any threat promise or coercion.*

However, it is observed that the findings and the verdict of the Court as recorded in the Summary Trial proceedings (P1/P3) do not refer such plea of guilt by the Petitioner. For purposes of clarity, such findings and verdict of the Tribunal are reproduced below;

> ***උසාවි මතය හා විනිශ්චය***
>
> *තමාට විරුද්ධව ඉදිරිපත් කර ඇති චෝදනාව සඳහා මෙම ගරු උසාවිය වෙත ඉදිරිපත් වූ සාක්ෂි අනුව වැරදිකරු බවට තීරණය කරන අතර, දඩුවම නියම කිරීමට පූර්ව එම දඩුවම ලිහිල් කර ගැනීමට ප්‍රකාශයක් කිරීමට ඇත්නම් ඒ සඳහා ගරු උසාවියෙන් අවස්ථාවක් ලබා දෙනු ඇත.*

[40] vide paragraph 18 of the statement of objections
[41] The term "Court" in this section is used to refer to the "officer exercising judicial powers" conducting the Summary Trial in terms of the Navy Act and SLNO 0501
[42] vide paragraphs 54-58 of the petition and paragraphs 39-42 of the Petitioner's written submissions
[43] vide paragraph 27 of the statement of objections

It is further observed that such findings and the verdict make specific reference the fact that they are based on "the evidence submitted to this Court" (*මෙම ගරු උසාවිය වෙත ඉදිරිපත් වූ සාක්ෂි අනුව*). The manner in which the findings of a Summary Trial should be recorded where the findings are based on "evidence" is set out in clause 6(n) of SLNO 0501 in the following manner;

> n. ***Finding of the Court***. *The Court shall arrive at the finding, indicating reasons, based only upon the evidence led before the court to warrant the finding.*

As per the Summary Trial proceedings, the Prosecuting Officer has sought to lead evidence to prove the charges made against the Petitioner, despite the plea of guilt. It is further evident that the only evidence presented by the Prosecution is the report of the inquiry conducted by the Special Investigation Unit and the said report has been presented in the following manner;

> ***පැමිණිල්ලේ සාක්ෂි උසාවියට ඉදිරිපත් කිරීම***
>
> *2018 නොවැම්බර් මස 09 වන දින පී ආර් ඕ එම් ඒ/ එස් අයි යු/ 24/ 18 දරණ විනයාරක්ෂක විශේෂ විමඟර්ණ ඒකකය මඟින් මෙම සිදුවීම සම්බන්ධයෙන් සිදු කරන ලද විමඟර්ණ වාර්තාවේ මොහු විසින් සිදු කරන ලද වරද මනාව ඔප්පු වන බැවින් එම වාර්තාව උසාවිය වෙත සාක්ෂි ලෙස ඉදිරිපත් කරනවා තුමණි.*

It is evident from the foregoing that the inquiry report had been tendered to the Court by the Prosecuting Officer and not produced through the evidence of a witness. However, it is observed that SLNO 0501 only contemplates the presentation of evidence in a Summary Trial through the testimony of witnesses, who are amenable to cross-examination. It is evident from the Summary Trial proceedings that no witnesses have been called by the Prosecution. As such, I am of the view that the procedure followed by the Prosecution to present the sole item of "evidence" relied upon by the Court to arrive at its findings and verdict are irregular and violative of SLNO 0501. In such circumstances, I am also of the view that the Court has erred in admitting such purported "evidence" and arriving at its findings and verdict based on such purported "evidence."

It is further observed that the obligation to indicate reasons, which is a specific requirement under clause 6(n) of SLNO 0501, has not been complied with by the 5th Respondent considering the manner in which the findings and the verdict are recorded in the Summary Trial proceedings.

In the absence of the aforementioned inquiry report, this Court is not in a position to inquire into the second issue of reliability and probability of the "evidence" upon which the findings against the Petitioner were made. However, in view of my findings on the admissibility of the purported "evidence," I am of the view that such an issue would not arise as there was no "evidence" upon which the Court could have arrived at its findings and verdict.

On the third issue of whether the guilt of the Petitioner had been pre-determined by the Respondents, whilst the hurried manner in which the inquiry and Summary Trial had been conducted are indicative of such a possibility, no definitive findings can be arrived at on this issue,

as the main facts sought to be relied on by the Petitioner to establish his position remain in dispute.

On the fourth issue relating to irregularities in the manner evidence was recorded and considered at the Summary Trial, the Respondents have taken up the position that, although the Petitioner had been given the opportunity to summon witnesses and to give evidence on his behalf and to cross-examine prosecution witnesses, he had chosen to remain silent, as per the Summary Trial proceedings (P1/R3).

Without prejudice to my findings on the admissibility of the purported "evidence" presented at the Summary Trial, I wish to make the following observations regarding such position taken up by the Respondents. In the first instance, considering the fact that the Petitioner was informed of the charges for the first time at the Summary Trial and there was no charge sheet served on him in advance, and, the irregularities in appointing a defending officer, it is highly improbable that the decision to remain silent and not to call evidence on his behalf was a decision that had been made voluntarily by the Petitioner with full knowledge of the consequences thereof. Secondly, the decision of the 5th Respondent to accept such silence as the lack of a defence on the part of the Petitioner, particularly in view of the aforementioned circumstances, without endeavouring to clarify the intention appears to me to be unreasonable and an abdication of the duty of an officer exercising judicial power to provide a fair hearing. Thirdly, in view of the fact that no evidence of any witnesses was led by the Prosecution and that the inquiry report which was the sole item of purported "evidence" was presented by the Prosecuting Officer and not through any witness, the Petitioner could not have exercised his right of cross-examination. In fact, the manner in which the purported "evidence" has been presented had effectively precluded the Petitioner from challenging same. In such circumstances, I am not inclined to accept such position taken up by the Respondents on this issue.

The aforementioned matters set out above clearly indicate that, from beginning to end, the conduct of the Summary Trial has been irregular and not in accordance with the principles and procedural safeguards set out in SLNO 0501, and clauses 5 and 6 thereof in particular. The resultant position is that the Petitioner has been denied a fair hearing in accordance with the principles of natural justice, as contended by the Petitioner. The requirement for officers conducting Summary Trials to adhere to the principles of natural justice has been expressly stated in SLNO 0501 itself, since clause 5 commences with the following *chapeau;*

> 5. *All officers exercising judicial powers are required to draw their attention to the following facts, <u>including rules of natural justice</u>, when exercising their powers.* (emphasis added).

In relation to Summary Trials in the Tri-Forces, the indispensable requirement for decision-makers to give a fair hearing has been by this Court in ***Lalith Deshapriya v. Captain Weerakoon and others (supra)*** in the following terms (per Marsoof, J. P/CA (as he then was);

> *Even more serious is the violation of the two cardinal principles of natural justice embodied in the maxims audi alteram partem and nemo judex in causa suapotest. The first of these principles postulates a fair hearing before the rights of a citizen are affected by a quasi judicial or administrative decision. In this context, it is now recognised that qui aliquid statuerit parte inaudita altera acquum licet discerit, hand acquurn fecerit- which means that he who determines any matter without hearing both sides, though he may have decided right, has not done justice. According to the jurisprudence built around the audi alteram partem principal, there should not only be a hearing of both sides, but the hearing should be more than a pretence. The procedure followed should be fair and conducive to the achievement of justice. In* ***Board of Education v. Rice***[44] *Lord Loreburn, L.C. in his famous dictum laid down that a tribunal was under duty to "act in good faith, and fairly listen to both sides for that is a duty lying upon everyone who decides anything." In* ***De Verteud v. Knaggs***,[45] *it was laid down as follows:*
>
> *"In general, the requirements of natural justice are first, that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and thirdly, that the tribunal should act in good faith."*

h. <u>Imposition of excessive and discriminatory punishment</u>

The Petitioner has also challenged the severity of the punishment imposed on him and also the procedure followed in dismissing him without disgrace from the Navy.

In relation to the severity of the punishment, the Petitioner has stated that trivial punishments have been imposed on many other seamen who had been convicted of similar or more serious offences.[46] However, this issue was neither addressed in the submissions of Counsel or the written submissions on behalf of the Petitioner. Thus, I will refrain from addressing such issue herein.

As detailed in the factual narrative above, the Petitioner has sought to impugn the legality of the dismissal without disgrace from the Navy, based on the proceedings held before the Human Rights Commission of Sri Lanka, upon the premise that the dismissal without disgrace had had been authorized not by His Excellency the President but by the Secretary to the Ministry of Defence, contrary to the representations made to the Petitioner.[47]

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[44] [1911] AC 179 at p 182.

[45] [1918] AC 557 at p 560.

[46] vide paragraph 45 of the petition

[47] vide paragraphs 37 to 41 of the petition

The position taken up by the Petitioner has been rejected by the Respondents.[48] They have stated that, in terms of section 122 of the Navy Act, they have forwarded the appeal made by the Petitioner to His Excellency the President through the Ministry of Defence on 03.07.2020 and that His Excellency had approved the decision to dismiss the Petitioner without disgrace from the Navy on 14.09.2020. Such position is borne out by the set of documents filed by the Respondents with their motion dated 22.12.2025 marked R4. I intend to be guided by the said documents in arriving at the conclusion that the proper procedure has been followed in considering the Petitioner' appeal and approving the decision to dismiss him without disgrace from the Navy.

However, the issue whether the approval by His Excellency the President of the decision to dismiss the Petitioner without disgrace from the Navy precludes this Court from considering the legality or otherwise of the Summary Trial remains to be determined.

The Petitioner contends that such approval by His Excellency the President of the decision to dismiss him without disgrace from the Navy does not preclude this Court from exercising its powers of judicial review in respect of the conviction and sentence imposed at the Summary Trial and to grant the reliefs sought by him.[49]

In response, the Respondents contend that the instant application has been rendered futile by the fact that the Petitioner has exercised his statutory right of appeal under section 122 of the Navy Act and His Excellency has approved to decision to dismiss the Petitioner without disgrace from the Navy and that such decision of the President cannot and has not been impugned in this application.[50] They further contend that such decision of the President would be indirectly and/or circuitously and/or collaterally impacted if the recommendations to dismiss the Petitioner without disgrace from the Navy were to be quashed by this Court.[51]

However, it is observed that such reasoning has not been accepted by our Superior Courts, as reflected in several decisions referred to by learned Counsel for the Petitioner in his submissions and cited in the Petitioner's written submissions. Amongst such decisions, in ***C.J. Ranasinghe's Case (supra)*** and ***Chief Petty Officer Heeni Pellage Harischandra v Vice Admiral Nishantha Ulugetenne and others,[52]*** this Court proceeded to issue writs of *Certiorari* quashing the convictions and sentences imposed in Summary Trials notwithstanding the approval of same by His Excellency the President. The rationale for such an approach has been articulated in ***Chief Petty Officer Heeni Pellage Harischandra's Case (supra)*** in the following terms (per Kulatunga J):

> *However, in this instance, the matter has been forwarded to the President and has been approved. find that Superior Courts have entertained and proceeded to consider such applications even when the matter has been approved on the basis that if there be a finding*

[48] vide paragraph 22 of the statement of objections and paragraphs 16-17 of the Respondent's written submissions
[49] vide paragraphs 46-56 of the Petitioner's written submissions
[50] vide paragraph 19 of the Respondents' written submissions
[51] Ibid
[52] CA Writ Application No. 487/2021, decided on 02.10.2025

in favour of the petitioner, there is a possibility of the President reconsidering his approval if some form of request is made. This was so held in ***Flying Officer Ratnayake vs. Commander of the Air Force and others*** *[2008] 2 Sri L.R. 162, where his Lordship Sisira De Abrew, J. held as follows:*

> *"Since Her Excellency the President has approved the withdrawal of the commission, it is futile to issue a writ of mandamus directing the respondents to hold a Court Martial afresh. This order does not prevent Her Excellency the President from reconsidering the withdrawal of the petitioner's commission, which was based on the reconsideration of the 1st respondent."*[53]

In ***Captain M.B.A. Dissanayake v. General Jagath Jayasooriya and others,***[54]the Supreme Court in appeal quashed the recommendation made to withdraw the commission of the Petitioner based on the findings of a Court of Inquiry, despite the withdrawal of the commission being approved by the President.

I wish to be guided by the reasoning in the aforementioned decisions and hold that this Court is not precluded from considering the legality or otherwise of the Summary Trial by the fact that the decision to dismiss the Petitioner without disgrace from the Navy has been approved by His Excellency the President.

For the sake of completeness, although the Petitioner has further cited the decision of the Supreme Court in ***Captain Nawathna v Major General Sarath Fonseka and others***[55] and the decision of this Court in ***Epasinghe's Case (supra),*** it is observed that the President's approval of the convictions and punishments imposed at the Summary Trials was not in issue.

Conclusions and Orders of Court

For the aforementioned reasons, I hold that the Petitioner has been able to establish that the Summary Trial conducted against him and his consequent dismissal without disgrace from the Sri Lanka Navy were illegal, *ultra vires* the provisions of the Navy Act and the SLNO 0501 and unreasonable. Accordingly, I proceed to issue a writ of *Certiorari* quashing the proceedings of the Summary Trial held against the Petitioner by the 5th Respondent on 19.11.2018 and the verdict and punishment delivered therein, as prayed for in paragraph (d) of the prayer to the petition.

Since the learned Counsel for the Petitioner informed this Court at the commencement of the argument that the Petitioner would not be pursuing the relief sought in paragraph (e) of the prayer to the petition, I have not considered the grant of same. I am not inclined to grant the relief prayed for in paragraph (c) of the prayer to the petition for the reasons set out in section (d) of this judgment relating to Grounds of Review and Analysis.

[53] vide pp 4-5 of the judgment
[54] SC Appeal No. 15/2021, SC Minutes dated 05.09.2023
[55] [2009] 1 Sri L.R 190

Further having regard to the conduct of the Respondents towards the Petitioner, the Respondents are directed to pay a sum of Rs. 25,000/= to the Petitioner as costs within 3 months of the date of this judgment.

Application allowed.

Judge of the Court of Appeal

Mayadunne Corea J.

I agree.

Judge of the Court of Appeal