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

In the matter of an application for Restitution, in the nature of *Restitutio-In-Integrum* under and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal
Case No: RII/0061/2025

HC of Western Province
Holder in Gampaha
Revision Application
Case No: 226/24

MC Gampaha
Case No. 1738/22

The Officer in Charge,
Police Station,
Gampaha

Complainant

Vs.

Wallabodage Lahiru Navod Perera

4th Suspect

Before the Provincial High Court of Western Province holden in Gampaha

Wallabodage Lal Perera,
No. 115, Dolagana Road, Udugampola
Gampaha

Petitioner

Vs

1. The Officer in Charge,
   Police Station,
   Gampaha

2. The Attorney General,
   The Attorney General's Department,
   Colombo 12.

Respondents

AND NOW BETWEEN

Wallabodage Lal Perera
No. 115, Dolagana Road, Udugampola
Gampaha

Petitioner-Petitioner

Vs.

1. The Officer in Charge,
   Police Station,
   Gampaha

2. The Attorney General,
   The Attorney General's Department,
   Colombo 12.

Respondent-Respondents

Before : R. Gurusinghe, J.
&
Dr. S. Premachandra, J.

Counsel : Hafeel Farisz, AAL, Sanjewa Kodituwakku, AAL,
Ashwin Pragash, AAL instructed by
Shyamali Athukorala, AAL
for the Petitioner

Malik Azeez, SC
for the Respondents

Supported on: 06-02-2026

Decided on: 02-04-2026

ORDER

R. Gurusinghe, J.

The petitioner is the father of the 4th suspect in the Magistrate's Court of Gampaha, bearing Case No. B 1738/22, in which they are suspected of

aiding and abetting the murder of Basnayake Appuhamilage Anuradha Pushpakumara Thisera. The Learned Magistrate of Gampaha issued warrants on the above-named 1st, 2nd, and 4th suspects by Order dated 10-07-2023 and 21-10-2024. The petitioner in this application seeks to set aside the aforesaid orders.

An Inspector of Police, attached to the Crimes Division of Gampaha Police Station, gave evidence before the Learned Magistrate of Gampaha on oaths and sought the abovementioned warrants against the 1st, 2nd and 4th suspects. After considering the evidence led before her and the B-reports filed by the police, the Learned Magistrate issued the abovementioned warrants.

The petitioner made an application before the Magistrate's Court, contending that the warrants had been issued *per incuriam*, and sought their recall. However, the Learned Magistrate refused to recall the warrants against the suspects. Thereafter, the petitioner filed a Revision application before the High Court of Gampaha seeking to set aside the Order of the Learned Magistrate of Gampaha that issued the warrants.

Upon hearing, the learned High Court Judge of the Western Province, Holden in Gampaha, refused to set aside the order of the Magistrate by judgment dated 03-09-2025. Thereafter, the petitioner filed this *Restitutio-in-Integrum* application before this Court.

The petitioner in this application states that the impugned order is

a) A nullity as it does not conform to the express provision of the law;
b) Vitiated by mistake and/or error;
c) *Per incuram*;
d) *Ultra vires*;
e) A result of fraud on Court in so far as the complainant (1st Respondent-Respondent) sought to circumvent the law.

When this application was supported before this Court, the learned State Counsel appearing for the respondent resisted the petitioner's application on several grounds. The Learned State Counsel took up the following preliminary objections.

1. The petitioner, the father of the 4th suspect, has not averred that he received instructions from the suspects to make this application. The suspects have not filed any affidavit along with the petition to support the application. The petitioner has no *locus standi* to maintain this application.

2. Under Article 154 P (6), the petitioner had the right of appeal to the Court of Appeal. Without invoking that right of appeal, the petitioner cannot maintain this application.

3. The petitioner has not pleaded any extraordinary reasons to file this application.

4. According to the decision of the Supreme Court judgment in SC/Appeal/65/2025, the petitioner cannot file a *Restitutio-in-Integrum* application against the decision of the Provincial High Court.

The main argument of the Counsel for the Petitioner is that the Magistrate's Court has no power to issue a warrant of arrest to produce a suspect or accused in the police station. In support of this proposition, they have cited *Mahanama Tilakaratne vs Bandula Wickramasinghe, Senior Superintendent of Police and Others* [1999] 1 Sri LR 372.

In the instant case, the police have reported to the Magistrate's Court by a 'B' report that the persons named as suspects have aided and abetted the murder of Basnayake Appuhamilage Anuradha Pushpakumara Thisera. A Chief Inspector attached to the Crime Branch of the Gampaha Police Station, testified on oath stating that the 1st, 2nd and 4th suspects have aided and abetted the murder. Furthermore, the witness stated that the police were unable to arrest them because the suspects had left the country. The police sought a warrant of arrest in order to make a request for an INTERPOL Red Notice. To make such a request to INTERPOL, there must be an active, valid national arrest warrant against the suspect.

The police did not request an arrest warrant for the suspects to be produced at the police station. The police have named the suspects in the 'B' report filed before the Magistrate's Court. The Order of the learned Magistrate does not state that the warrant was issued to produce the suspects at the police station. Once the suspects were named in the 'B' report, the Magistrate's Court has the jurisdiction to issue a summons or a warrant.

The application itself indicates that the suspects know that they have been named as suspects in the case and are required to appear before the court. On a consideration of the fact that suspects are not in the country, and have not voluntarily surrendered to court, I am of the view that the learned Magistrate had the power under section 63 (1) of the Code of Criminal Procedure Act, to issue a warrant of arrest against the petitioner without issuing summons.
In the case of *Jeyasingham v. Jeyasingham* [1981]2 Sri LR 132, considering the issuance of a warrant without issuing summons against a respondent in a maintenance case, Atukorale, J.(for which Colin Thome J. concurred) stated inter alia as follows;

> There remains for consideration the submission of learned counsel for the petitioner that the failure of the learned Judge to record his reasons in writing before the issue of the warrant renders it invalid. He stated that the provisions of the section must be strictly complied with. He also submitted that the failure to record the reasons has deprived this Court of the opportunity of scrutinising the reasons for the issue of the warrant and of ascertaining whether the learned Judge did exercise his discretion properly. No doubt it is necessary that the Court must specify its reasons for the issue of a warrant of arrest against any person, as required by law. But in my view this will only amount to an irregularity in the exercise of a power which is vested in Court. It is not a jurisdictional defect which would vitiate the subsequent proceedings in Court.

In the above circumstances, there is no illegality in the issuance of warrants against the suspects.

Moreover, as the Learned State Counsel pointed out, the petitioner has not averred that she received instructions from the suspects. The petitioner has not tendered any affidavits from the said suspects along with her petition, stating that they do not have any involvement with the alleged murder.

This is a *Restitutio-in-Integrum* application. In the case of Sri Lanka Insurance Corporation Limited vs Shanmugam and another [1995] 1 Sri LR 55, the Court of Appeal held *inter alia*

"Restitution reinstates a party to his original legal conditions which he has been deprived of by the operation of law. It is an extraordinary remedy and will be granted under exceptional circumstances. The remedy can be availed of only by one who is actually a party to the legal proceeding. He cannot claim damages, but he should have suffered damages. A party seeking

restitution must act with the utmost promptitude. The court will not relieve parties of the consequences of their own folly, negligence or laches…..

Restitution is granted only if no other remedy is available to the party aggrieved."

According to Section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990, if the petitioner is aggrieved by the judgment of the High Court, she has the Right of Appeal to the Supreme Court. Section 9 referred to above is as follows:

Section 9

(a) A final order, judgment, decree or sentence of a High Court established by Article 154P of the Constitution in the exercise of the appellate jurisdiction vested in it by paragraph (3) (b) of Article 154P of the Constitution or section 3 of this Act or any other law, in any matter or proceeding whether civil or criminal which involves a substantial question of law, may appeal there from to the Supreme Court if the High Court grants leave to appeal to the Supreme Court if the High Court grants leave to appeal to the Supreme Court ex mere moue or at the instance of any aggrieved party to such matter or proceedings;

Provided that the Supreme Court may, in its discretion, grant special leave to appeal to the Supreme Court from any final or interlocutory order, judgment, decree or sentence made by such High Court, in the exercise of the appellate jurisdiction vested in it by paragraph (3) (b) of Article 154P of the Constitution or section 3 of this Act, or any other law where such High Court has refused to grant leave to appeal to the Supreme Court, or where in the opinion of the Supreme Court, the ease or matter is fit for review by the Supreme Court.

Provided further that the Supreme Court shall grant leave to appeal in every matter or proceeding in which it is satisfied that the question to be decided is of public or general importance;

And

(b) A final order, judgment or sentence of a High Court established by Article 154P of the Constitution in the exercise of its jurisdiction conferred on it by paragraph (3) (a), or (4) of Article 154P of the Constitution may appeal there from to the Court of Appeal.

In the case of *Nilantha Fernando Vs Nilanthi Perera* SC Appeal/65/2025, decided on 10-10-2025, Justice Mahinda Samayawardhena stated *inter alia* as follows:

> Since section 9 of Act No. 19 of 1990 states that appeals to the Supreme Court lie against judgments and orders made by the Provincial High Court
>
> *"in the exercise of the appellate jurisdiction"*, in cases such as *Gunaratne v. Thambinayagam* [1993] 2 Sri LR 355, *Abeygunasekera v. Setunga*[1997] 1 Sri LR 62, and *Abeywardene v. Ajith De Silva* [1998] 1 Sri LR 134, this Court held that a party aggrieved by a judgment or order of a Provincial High Court in the exercise of its revisionary jurisdiction, as opposed to its appellate jurisdiction, cannot directly appeal to the Supreme Court, and such a party must first invoke the appellate jurisdiction of the Court of Appeal, and only thereafter, if unsuccessful, may appeal to the Supreme Court. In *Abeywardene v. Ajith De Silva,*at page 137, the Supreme Court observed: *"if in the consequence of these decisions there would be an undesirable increase of litigation, that is the matter for the legislature."*

Accordingly, if the petitioner is aggrieved by the judgment of the High Court, her remedy is to file an appeal. Since there is a specific provision for the petitioner to make a Special Leave to Appeal application to the Supreme Court, one cannot argue that the petitioner has no other remedy available.

In the above circumstances, Court refuses to issue notice on the respondents.

Application is dismissed.

Judge of the Court of Appeal.

Dr. S. Premachandra J.
I agree.

Judge of the Court of Appeal.