

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

In the matter of an application for mandates in the nature of *Writs of Certiorari, Mandamus and Prohibition* in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No.:
CA/WRT/0411/2024

Murugesu Sothirajah,
No.259, Posonwatta,
Wanawasala Road,
Kelaniya.

Petitioner

Vs

1. H.M.T.N Upuldeniya,
Commissioner General of Prisons,
Prison Headquarters,
No.150, Baseline Road,
Colombo 9.
2. The Superintendent,
Colombo Remand Prison,
Prison Headquarters,
No.150, Baseline Road,
Colombo 9.
3. Prisons Tribunal,
Prison Headquarters,
No.150, Baseline Road,

Colombo 9.

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

Respondents

1. Constine Shavin Sothirajah
No.259, Posonwatta,
Wanawasala Road,
Kelaniya.

Detenu-Respondent

Before : **D. THOTAWATTA, J.**
K. M. S. DISSANAYAKE, J.

Counsel :
Hafeel Farisz with Shannon Tillekeratne
instructed by Shayamali Athukorala for
the Petitioner.

Tharaka Kodagoda, SC for the
Respondents.

Argued on : 27.04.2026

Written Submissions
of the Petitioner tendered on : 04.11.2025

Written Submissions
of the 1st to 4th Respondents
tendered on : 10.11.2025

Decided on : 09.10.2026

K. M. S. DISSANAYAKE, J.

The Petitioner in the instant application made to this Court under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter called and referred to as “the Constitution”), seeks in prayer thereto, a mandate in the nature of a Writ of *Certiorari* quashing the decision of the 3rd Respondent dated 20.06.2024 contained in the document annexed to the petition marked as **A2(R3)**; a mandate in the nature of writ of *Mandamus* compelling the 1st and/or 2nd Respondent and/or their servants, agents and/or any person acting under their authority, the release of Constine Shavin Sothirajah (hereinafter called and referred to as “the Detenu”); and a mandate in the nature of a writ of prohibition prohibiting the 1st and/or 2nd Respondent and/or their servants, agents and/or any person acting under their authority, from detaining the Detenu on the purported authority of the purported inquiry bearing No. 127/23 (**A**). On the other hand, the 1st and 4th Respondents had in their joint statement of objections, prayed for a dismissal of the instant application with costs in view of the matters pleaded therein. However, it is to be observed that, the 1st to 4th Respondents had in their joint written submissions, raised for the first time, a number of preliminary objections as to the maintainability of the instant application, and among them the pivotal one, being that, the Petitioner has no *locus standi* to institute the instant application.

The facts and the circumstances material and relevant to the instant application as averred in the petition of the Petitioner, may briefly, be set out as follows;

The Petitioner being the father of the Detenu seeks in the instant application, to impugn the alleged illegal detention of his son-the Detenu who is currently, held in the custody by the 1st and/or 2nd Respondents and/or their servants and/or their agents and any person acting under their authority at the Colombo Remand Prison; and that according to the Petitioner, the Detenu has been suffering from a long-standing mental illness resulting in him being

suspected of committing certain crimes which were reported to the Magistrate Court of Colombo in two cases bearing Nos. 85465/03/23 (to which he had been admitted to bail) and 79130/05/22, and also to the Magistrate Court of Kesbewa in case bearing No. 20654 for which he had been in judicial custody since on or around 15.02.2023 by virtue of the warrants of committals issued by both the learned Magistrate of Colombo and Kesbewa; and that while, the Detenu had been held in custody, the Petitioner had sought clinical diagnosis of the Detenu's mental health condition from the learned Magistrate of Kesbewa in pursuant to which learned Magistrate had made an order that Detenu be clinically, diagnosed by the National Institute of Mental Health; and that Consultant Forensic Psychiatrist of the National Institute of Mental Health had by his report dated 20.02.2024 (**Y2**) submitted to the Magistrate Court of Kesbewa, stated that Detenu had been diagnosed with a mental disorder; and that he had to ensure regular follow-ups and be treated for his mental illness which warrants continuous treatment; and that the learned Magistrate of Kesbewa had in a detailed order dated 27.05.2024, held that considering the medical report submitted by the National Institute of Mental Health, the Detenu should not be held in prison custody, thus, admitting him to bail by both the Magistrate Court of Kesbewa and Colombo in their respective orders dated 27.05.2024(**Y3**) and 26.04.2023 (**Y1**); and that the Petitioner had fulfilled all the bail conditions as prescribed in the said orders and hence, neither the 1st and/or 2nd Respondents and/or their servants and/or their agents and/or any person acting under their authority nor the 3rd Respondent had any jurisdiction over the Detenu; and that however, the Detenu had also been accused of attempting to escape from prison custody from the officers of the Prison Department on or around 22.11.2023 and a purported inquiry had been initiated before a purported Prison Tribunal; and that it was evident that the purported Prison Tribunal had concluded the evidence of a witness in that inquiry; and that on the 20.06.2024, the day on which the Prison Tribunal had been sitting, Counsel for the Detenu had raised before it a jurisdictional objection on the premise that the Detenu had been held in remand custody on the authority of a warrant of committal issued by

the respective Courts in terms of the provisions of the Code of Criminal Procedure Act No. 15 of 1979 and upon being granted bail, and the authority and/or power granted to them to detain the Detenu in the remand prison by virtue of the said the warrant of committals issued by the respective Courts, had become ceased and hence, neither the Prison Tribunal nor the 1st and/or 2nd Respondents and/or their Servants and/or their agents and/or any person acting under their authority have jurisdiction over the Detenu; and that the Prison Tribunal in his order dated 20.06.2024(**A2/R3**) had while overruling the jurisdictional objection so raised to it, ordered the Detenu to be held in remand custody and directed the trial to be continued which order (**A2/R3**) according to the Petitioner, was unknown to the law; is in breach of both the Petitioner as well as the Detenu's rights; was arbitrary, illegal, unreasonable, irrational and capricious and ultra vires, and hence, the Detenu has currently, been held in illegal custody by the 1st and/or 2nd Respondents and/or their Servants and/or their agents and/or any person acting under their authority on the order of the 3rd Respondent and therefore, neither of them has any authority in law to hold the detenu in remand custody and as such their actions were in violation of every norm of a civilized society and hence, there had been a grave illegality of the action of the Respondents and grave danger to the life and wellbeing of the Petitioner's son-the Detenu hence, the Petitioner was in law, entitled to the relief as prayed for in prayer to his petition.

Hence, the Petitioner seeks to impugn the order (**A2/R3**) on the premise that,

- a) it was *ex facie*, a nullity;
- b) made without jurisdiction;
- c) made with no authority in law;
- d) sans any *vires*.

It is in this context let me, now, closely, examine the order (**A2/R3**) sought to be impugned in the instant application by the Petitioner.

The learned Prison Tribunal in the impugned order (**A2/R3**) had while overruling the jurisdictional objection so raised to it by the learned Counsel for the Detenu, held that the Prison Tribunal had jurisdiction under section 81 of the Prisons Ordinance of No. 16 of 1877 as amended (hereinafter called and referred to as “the Ordinance”) to be read with section 79 thereof, to detain the Detenu until the final conclusion of the trial already commenced against him on the charge of attempting to escape from prison custody which is punishable with an imprisonment and to proceed with the trial towards its conclusion. It is this order that the Petitioner now, seeks to impugn in the instant application.

Hence, the pivotal question that would arise for our determination in the instant application is; **Whether the Prison Tribunal has the power and/or authority and/or jurisdiction vested in it under the Ordinance to remand *ex mero motu* a prisoner whose period of detention in the prison custody determined by a Court of law as envisaged by section 2 of the Ordinance, has become expired and/or extinct by any means recognized by law, for the purpose of holding an inquiry and/or continuing with an inquiry already commenced before the Prison Tribunal into an offence alleged to have been committed by a prisoner in the course of him being detained in the prison custody under section 78 of the Ordinance;**

It may now, be examined.

It is in this backdrop of the case, I would think it pertinent at this juncture to carefully, examine the scheme embodied in the Ordinance in general and the provisions contained therein with regard to the constitution and powers of a Prison Tribunal for punishment of prisoners for the offences stipulated therein insofar as it would be necessary for the determination of the issue at hand before us.

The preamble to the Ordinance states that, “It is an ordinance to amend and consolidate the law relating to Prisons”.

Part I of the Ordinance deals with the establishment and officers of the Prisons and section 2 thereof, enacts thus;

“The prisons situated at the places mentioned in the Schedule shall be or continue to be prisons **for the reception of prisoners of every description committed or remanded under the authority of any court**, having jurisdiction within any part of the districts or limits set opposite the name of such places respectively in the said Schedule:

Provided always that it shall be lawful for the Minister, by Order, at any time or from time to time to close any of the prisons mentioned in the Schedule, or to make any alteration in the districts or limits within which any such prisons are appointed, and also to establish any other prison or prisons for Sri Lanka or for any part thereof, and any such Order to revoke, alter, or amend; and every prison so established shall become subject to the provisions of this Ordinance in the same manner as if such prison had been mentioned in the Schedule.” [Emphasis is mine]

A careful analysis of section 2 of the Ordinance, makes it clear that the primary objective of the establishment of the Prisons is;

- a) **for the reception of prisoners of every description;**
 - b) **committed or remanded under the authority of any court;**
- [Emphasis is mine]

Hence, it becomes manifest that, Prisons are meant **for the reception of prisoners of every description**. [Emphasis is mine]

This brings me to the next question, as to what kind of prisoners are meant to be the prisoners so to be received by the Prisons as provided for by section 2 of the Ordinance?

It is **only**, and **only**, the prisoners who may be **committed or remanded by any Court under its the authority** by way of a warrant of committal or a

warrant of remand as provided for by section 2 of the Ordinance. [Emphasis is mine]

in the light of Section 104 of the Ordinance, prisoners are of two kinds, namely;

- a) Civil prisoner.
- b) Criminal prisoner.

Section 104 of the Ordinance defines “civil prisoner” to mean as follows;

- a) judgment-debtor committed to prison under the Civil Procedure Code; or
- b) a person committed to prison under section 252 of the Code of Criminal Procedure Act, No. 15 of 1979, in default of payment of a fine imposed under that section of that Act; or
- c) a person ordered to be detained in prison under section 390 of the Code of Criminal Procedure Act, No. 15 of 1979; or
- d) a person committed to prison under section 422 (4) of the Code of Criminal Procedure Act, No 15 of 1979.; or
- e) a person committed to prison for contempt of court, not being a person sentenced -
 - i. to rigorous imprisonment for contempt of court;
 - ii. to simple or rigorous imprisonment as for a contempt of court under section 449 (1) of the Code of Criminal Procedure Act, No. 15 of 1979; or
- f) a person committed to prison by order of a civil court under any provision of written law which does not authorize a sentence of rigorous imprisonment to be imposed”

Section 104 of the Ordinance defines “criminal prisoner” to mean as follows;

“criminal prisoner " means any prisoner other than a civil prisoner”

Who then, is a criminal prisoner? Criminal Prisoner is a prisoner that may be committed or remanded to a prison custody, by a Court by way of a warrant of committal or a warrant of remand addressed to the Superintendent of Prisons under the provisions of sections 115, 159, 239, 263, 286, 287, 289 and 290 of the Code of Criminal Procedure Act No. 15 of 1979 as amended etc.

A warrant of committal is mainly, three-fold, namely;

- a) warrant of committal to remand;
- b) warrant of committal to trial;
- c) warrant of committal to sentence;

Hence, it becomes manifest that, a warrant of committal cannot be limited only, to a kind of warrant of committals as stated in the submissions oral and written by the learned Counsel for the Petitioner for; there may be any other mode of warrant of committals too, under the law that may be issued by a Court as enumerated above.

Section 78 of the Ordinance lists out the prison offences as follows;

“A prisoner shall be guilty of an offence against prison discipline if he -

- (i) mutinies or incites another prisoner to mutiny;
- (ii) assaults or uses criminal force on, or causes hurt or grievous hurt to, a prison officer or another prisoner, or incites a fellow prisoner to commit any such offence ;
- (iii) fails or refuses to obey any lawful order of the Superintendent or of any other prison officer or commits a breach of any prison regulation;
- (iv) escapes or conspires to escape from lawful custody;

- (v) swears, curses, or uses any abusive, insulting, threatening or other improper language or gesture;
- (vi) is indecent in language, conduct, or gesture;
- (vii) is impertinent, insubordinate or insolent in demeanor to any prison officer or to any Visitor;
- (viii) creates a disturbance or behaves in a disorderly manner ;
- (ix) refuses to work, or willfully mismanages work, or fails to perform his allotted task, or is idle, careless or negligent at work;
- (x) willfully evades labour by self-disablement or by refusing to take food or by feigning madness or illness or other incapacity for work;
- (xi) willfully damages or disfigures any part of the prison, any prison property or any prison clothing or equipment;
- (xii) is in possession of, or keeps in a cell or any other place any article not permitted by the rules of the prison ;
- (xiii) leaves a cell or other place of work or location without permission;
- (xiv) gives to, or receives from, or exchanges with, any other prisoner any article whatever without the permission of the Superintendent;
- (xv) traffics or has any business dealings with any prison officer or with any other person;
- (xvi) without the authority of a prison officer, communicates whether by writing, speech or gesture with any person who is not connected with the administration of the prison ;
- (xvii) gambles, or possesses any playing cards, dice or other instrument or device for gambling ;

(xviii) prefers a false charge against a prison officer or another prisoner or incites any other prisoner to do so ;

(xix) makes groundless complaints or incites others to do so;

(xx) removes food from the place where meals are consumed, or conceals food;

(xxi) commits any nuisance;

(xxii) bathes or washes at unauthorized places or times;

(xxiii) writes or receives any unauthorized letter or communication;

(xxiv) refuses when called upon to assist a prison officer in quelling a mutiny or disturbance or in capturing any escaped or escaping prisoner, or leaves his seat, working place or other location during a mutiny or disturbance without an order from a prison officer;

(xxv) omits to give a warning or an alarm when it is known that a prisoner is escaping or attempting to escape;

(xxvi) omits to give immediate information to the prison authorities when he is aware of a design to commit an offence against the rules;

(xxvii) files, cuts or tampers with iron bars, locks or doors;

(xxviii) commits a breach of any rule or lawful order ; (xxix) offends in any other way against the good order and discipline of the prison ;

(xxx) aids and abets another prisoner in committing or attempting to commit any of the foregoing offences against prison discipline; or

(xxxi) attempts to commit any of the foregoing offences other than those specified in paragraphs (iii), (v), (vii), (viii), (ix), (xii) (xix), (xxiv), (xxv), and (xxvi).”

A careful analysis of the list of offences makes it manifest that, offences listed in section 78 of the Ordinance, are two-fold, namely;

- a) offences of serious nature;
- b) offences of trivial nature;

Section 81 of the Ordinance provides for the constitution and powers of the tribunal for punishment of prisoners and it enacts thus;

“(1) (a) If any prisoner is charged with mutiny or incitement to mutiny, or with escape or attempt to escape or abetment of escape from lawful custody, or with causing hurt or grievous hurt to a prison officer or with attempt to cause hurt or grievous hurt to a prison officer by means of any instrument for shooting, stabbing or cutting, or any instrument which, when used as a weapon of offence, is likely to cause death; or

(b) if any prisoner is charged with any offence against prison discipline which, in the opinion of the Superintendent or a Visitor acting under section 79, is not adequately punishable by him or is not adequately punishable under that section by reason of the prisoner's record of previous convictions of offences against prison discipline, the Superintendent shall in the former case, and the Superintendent or Visitor may in the latter, cause the offender to be tried by a Magistrate of the Division in which the prison is situated and two Visitors who shall be members of the Local Visiting Committee, unless for any reason no member of that committee is able to serve on that tribunal.

(2) Every inquiry into a prison offence under this section shall be held in the prison on such date not later than seven days after the receipt of information of the offence from the Superintendent, as the Magistrate may appoint:

Provided that no delay beyond the aforesaid period of seven days shall be deemed to invalidate any inquiry held under this section, if the Magistrate certifies that the delay was due to a cause which, in his opinion, is good and sufficient.

(3) Every Visitor summoned for the purpose of acting in a judicial capacity under the provisions of this section shall attend at the prison on the date and at the time specified unless prevented by illness or other sufficient cause :

Provided that in the event of either or both of the Visitors summoned failing so to attend, the Magistrate and the Visitor who is present or the Magistrate alone, as the case may be, may perform all the functions and exercise all the powers of the tribunal.

(4) The tribunal shall have power to inquire into the offence upon oath or affirmation and by a majority verdict to punish the offender -

(a) with confinement in a punishment cell for any time not exceeding one month ; or

(b) with any one of the several punishments a Superintendent is authorized to impose under section 79; or

(c) with imprisonment of either description for a term not exceeding five years in the case of the offence of escaping or attempting to escape from lawful custody or the abetment of any such offence and not exceeding six months in any other case;

(d) with a combination of any two of the above-mentioned punishments.

(5) A term of imprisonment imposed under this section shall not run concurrently with, but shall be in addition to, any term of imprisonment

or of preventive detention which the offender may be undergoing at the time of the inquiry.

(6) Any term of imprisonment imposed under any other written law on an offender at any time while he is serving a term of imprisonment imposed under this section, shall commence on the expiry of the term of imprisonment imposed under this section.”

Upon a careful analysis of section 81 of the Ordinance in its totality, read in conjunction with section 2 thereof, it becomes manifest that a Prison Tribunal constituted thereunder, which consist of the Magistrate of the division in which the prison is situated and two visitors who shall be members of the local visiting committee, is vested with jurisdiction to try and determine any offence as listed in section 78 of the Ordinance, which is committed “**only**”, **by a prisoner** and as referred to it by the Superintendent of Prisons taking into his consideration the gravity of the offence and inflict punishment upon conviction; and that every inquiry into a prison offence as such shall be held in the prison; and that Prison Tribunal shall have the power to inquire into the offence upon oath or affirmation and by a majority verdict to punish the offender *inter-alia*, with imprisonment of either description for a term not exceeding five years in the case of an offence of escaping or attempting to escape from lawful prison custody etc; and that there shall be no appeal from a conviction or sentence under section 79 or section 81 of the Ordinance.

However, section 85 of the Ordinance preserves the jurisdiction of any competent Court to hear and determine any charge in respect of an offence punishable under the penal code or any other written law subject to the exception contained in the proviso thereto and it enacts thus;

“Nothing contained in sections 79, 81, 82, 83, and 84 shall be deemed to deprive any competent court in Sri Lanka, of its jurisdiction to hear and determine any charge in respect of an offence punishable under the Penal Code or any other written law:

Provided, however, that no person shall be punished both under the aforesaid sections and by a court for the same offence.”

In the light of the law enumerated above, it is beyond an iota of doubt that, the Prison Tribunal so constituted under section 81 of the Ordinance has been clothed with jurisdiction and/or power and/or authority so granted to it by the Ordinance, to try **“only” a person who is cloaked in the garb of a prisoner within the definition assigned to it by section 104 of the Ordinance** as quoted above, for an offence listed under section 78 thereof, and **“only”**, inflict punishment on a prisoner as such upon conviction.

This inevitably, follows that, the Prison Tribunal so constituted under section 81 of the Ordinance has not in any manner, been clothed with jurisdiction and/or power and/or authority so granted to it by the Ordinance, to try **a person who is not cloaked in the garb of a prisoner within the definition assigned to it by section 104 of the Ordinance** as quoted above for an offence listed under section 78 thereof, nor does it have any jurisdiction and/or power and/or authority to convict and inflict punishment on a prisoner as such nor does it have any jurisdiction and/or power and/or authority to make an order remanding a person who is not coming within the definition of **“a Prisoner”**, to the prison custody until final conclusion of the inquiry and/or trial to be commenced or already commenced under the provisions of the Ordinance in respect of an offence committed by a prisoner during his detention in the prison custody inasmuch as the Law as it stands today, once a prisoner ceases to be a prisoner by reason of him being admitted to bail by a Court of competent jurisdiction and/or by reason of the Prisoner being released from the prison upon completion of the sentence inflicted upon him by a Court of competent jurisdiction, a Prison Tribunal will lose its jurisdiction and/or power and/or authority over a prisoner as such for; a prisoner as such cannot in law, be in any manner, considered a prisoner any further for the purposes of the exercise of the jurisdiction and/or power and/or authority vested in a Prison Tribunal to try a prisoner and inflict

punishment on him upon conviction as provided for by section 81 of the Ordinance to be read with section 78 thereof.

As observed above, situation as such would in law, arise in any event that the prisoner being admitted to bail by an order of Court or else a prisoner being released from a prison custody upon completion of the sentence imposed upon him by a Court etc; for; both those instances, the warrant of committal issued by Court to the Superintendent of Prisons conferring upon him power or authority to keep the prisoner under physical custody, will become expired and/or extinct and therefore, it would be of no force nor valid in law any longer resulting in **the person who is cloaked in the garb of a prisoner within the definition assigned to it by section 104 of the Ordinance** as quoted above, being no longer a prisoner within the meaning of the Ordinance capable in law, to be detained any further in the prison. [Emphasis is mine]

The resultant position would be that, if a person as such is detained in the prison any further without a warrant of committal so issued by a Court, such detention will no doubt, become illegal and/or unlawful in the eyes of the law as rightly, contended by the learned Counsel for the Petitioner.

Applying the law as enumerated above to the facts of the instant application when the impugned order (**A2/R3**) was made by the learned Prison Tribunal on 20.06.2024 directing the Detenu who had then, been remanded by virtue of the warrant of remand issued both by the learned Magistrate of Kesbewa as well as the learned Magistrate Colombo in respect of the cases filed before them against the Detenu as enumerated above, to be further, remanded until final conclusion of the inquiry and/or trial commenced against the Detenu on the offence of attempting to escape from the lawful custody of the prison as listed under section 78 of the Ordinance, where he had been detained at the relevant and material time, thus, rejecting the preliminary objection so raised thereto, by the learned Counsel for the Detenu, the Detenu had already, been admitted to bail both by the learned Magistrate of Kesbewa in his order dated 27.05.2024 (**Y3**), as well as by the learned Magistrate Colombo in his order

dated 26.04.2023 (**Y1**) and therefore, the warrant of committal issued by the respective Magistrate's Courts remanding the Detenu, had totally, become expired and/or extinct and therefore, no longer valid or in force in the eyes of the law.

In the circumstances, it clearly, appears that, the Detenu could not have been considered any longer, "**a prisoner**" within the meaning of section 104 of the Ordinance since the date when the Detenu had been so admitted to bail by Court as manifest from **Y1** and **Y3**, which resulted in the order of the learned Prison Tribunal (**A2/R3**) remanding the Detenu until final conclusion of the inquiry and/or trial already commenced against him before it under section 81 of the Ordinance to be read with section 78 thereof, being totally, illegal and/or unlawful and thus, a nullity *ab initio* for; it had been made by the learned Prison Tribunal at a time when it had lost its jurisdiction and/or power and/or authority vested in it by the law as morefully, set out above, to make an order as such (**A2/R3**) inasmuch as although, the Detenu-who was at the time of the commencement of the inquiry and/or trial into the offence alleged to have been committed by him under section 81 of the Ordinance, was a person **who was cloaked in the garb of a prisoner within the definition assigned to it by section 104 of the Ordinance**, had upon him being admitted to bail by the respective Magistrate Courts as enumerated above, completely, changed and removed his **cloak from the garb of a prisoner** to the garb of an ordinary citizen of this Country, thus, making himself not amenable to the jurisdiction of the Prison Tribunal any longer as rightly, contended by the learned Counsel for the Petitioner. [Emphasis is mine]

It is in this context, it would be pertinent to quote a passage from **Wade and Forsyth (12th Edition) at page 27** as cited to us by the Petitioner in the written submissions (**WS7**) to the following effect; "The simple proposition that a public authority may not act outside its powers (*ultra vires*) might fitly, be called the central principle of administrative law. The juristic basis of judicial review is the doctrine *ultra vires*...."

It was held by the Supreme Court in the decision in **Patrick Lowe & Sons and Others Vs. Commercial Bank of Ceylon LTD 2001 [1] SLR 280** at page 284, “It is a fundamental principle of law that a person who functions in terms of statutory power vested in him is subject to an implied limitation that he cannot exceed such power or authority. The ultra vires doctrine, now recognized universally, evolved in England on this premise (vide *Ashbury Railway Carriage & Iron Co. Ltd., vs. Hector Riche and the Attorney General vs. The Great Eastern Railway.*’ It follows that what is not permitted by the provisions of the enabling statute should be taken as forbidden and struck down by Court as being in excess of authority.”

Hence, the central principle of administrative law is that, a public authority may not act outside its powers (ultra vires).

In view of the above, the Prison Tribunal had clearly, acted outside its jurisdiction and/or authority and/or powers vested in it by section 81 of the Ordinance to be read with section 78 thereof, when it had proceeded to remand the Detenu and continue with the inquiry and/or trial already commenced by it against the Detenu in respect of the offence alleged to have been committed by him under section 78 of the Ordinance notwithstanding the fact that, the Detenu had already, been admitted to bail by the said Magistrate’s Courts as manifest from **Y1** and **Y3** and therefore, the Detenu had no longer been a prisoner within the meaning of section 104 of the Ordinance and as such, the Detenu was not amenable to the jurisdiction of the Prison Tribunal.

However, under those circumstances, all what the learned Prison Tribunal ought to have done was to forthwith abate the proceedings with regard to the inquiry and/or trial already, commenced against the Detenu and direct the Superintendent of Prisons to forthwith take steps to prosecute the Detenu in a Court of competent jurisdiction for the offence alleged to have been committed by him under section 78 of the Ordinance in terms of the law,

particularly, under section 219 of the Penal Code. However, the Prison Tribunal had failed to do so.

I would therefore, hold the order impugned (**A2/R3**) is one made without jurisdiction and therefore, one made in excess of the powers so vested in the Prison Tribunal (*ultra vires*) and as such, a nullity *ab inito*, as rightly, contended by the learned Counsel for the Petitioner.

Hence, I would hold that, the order impugned (**A2/R3**) is liable to be quashed by a mandate in the nature of a writ of *certiorari*.

In the circumstances, the 1st and/or 2nd Respondent and/or their servants, agents and/or any person acting under their authority had no authority whatsoever, to detain the Detenu any further on the strength of the impugned order of the learned Prison Tribunal (**A2/R3**) from the stage that the Detenu had been admitted to bail as aforesaid, by the Magistrate Court.

Hence, I would hold that, a writ of *mandamus* would lie to compel the 1st and/or 2nd Respondent and/or their servants, agents and/or any person acting under their authority, on the order impugned (**A2/R3**) to release the Detenu forthwith from the Prison Custody together with a writ of *prohibition* prohibiting the 1st and/or 2nd Respondent and/or their servants, agents and/or any person acting under their authority, from detaining the Detenu on the purported authority of the impugned order (**A2/R3**) in the custody of the Prison.

I would now, advert to the preliminary objection so raised by the 1st to 4th Respondents in their joint written submissions that, the Petitioner lacks *locus standi*, to institute the instant application.

The preliminary objection is based on the premise that, in view of the opinion expressed by the Consultant Forensic Psychiatrist in the Medical Report (**Y2**) to the effect that the Detenu is able to understand the nature of the charge and he can understand the difference between pleading guilty and not guilty following treatment; and that he can also instruct counsel and follow court

proceedings; and that therefore, the Detenu is fit to plead & stand trial, the Detenu was a person who is fit to plead and stand trial by himself and therefore, there had been no necessity for the Petitioner to institute the instant application seeking relief for the Detenu.

It may now, be examined.

It was *inter-alia*, held by the Supreme Court in **Wijesiri vs. Siriwardena 1982 [1] SLR 171** that,

“To apply for a Writ of Mandamus, it is not necessary to have a personal interest but it is sufficient if the applicant can show a genuine interest in the matter complained of and that he comes before Court as a Public spirited person, concerned to see that the law is obeyed in the interest of all.”.

It was held by this Court in **A. R. Perera and Others v Central Freight Bureau of Sri Lanka and Another 2006 [1] SLR 83** at Pages 89 and 90,

“As Lord Denning noted in *R v Inland Revenue Commissioners ex p. National Federation of Self Employed and Small Business Ltd.*,⁽⁶⁾ English Courts have orchestrated the generous view that "if there is good ground for supposing that a government department or public authority is transgressing the law, or is about to transgress it, in a way which offends or injures thousands of her Majesty's subjects, then any one of those offended or injured can draw it to the attention of the court of law and seek to have the law enforced". In the course of his judgment in the same case, Lord Diplock observed as follows "It would, in my view, be a grave lacuna in our system of public law if a pressure group, like the federation, or even a single public spirited tax payer, were prevented by outdated technical rules of locus standi from bringing the matter to the attention of court to vindicate the rule of law and get the unlawful conduct stopped."

The rationale for the expanding canvas of locus standi in the context of certiorari and prohibition was explained by H. W. R. Wade - Administrative Law (8th Edition) pages 362 to 363 in the following words;

“The prerogative remedies, being of a 'public' character as emphasized earlier, have always had more liberal rules about standing than the remedies of private law. Prerogative remedies are granted at the suit of the Crown, as the titles of the cases show; and the Crown always has standing to take action against public authorities, including its own ministers, who act or threaten to act unlawfully. As Devlin J said: Orders of certiorari and prohibition are concerned principally with public order, it being the duty of the High Court to see that inferior courts confine themselves to their own limited sphere". In the same sense Brett J had said in an earlier case that the question in granting prohibition "is not whether the individual suitor has or has not suffered damage, but is, whether the royal prerogative has been encroached upon by reason of the prescribed order of administration of justice having been disobeyed". Consequently the court is prepared to act at the instance of a mere stranger, though it retains discretion to refuse to do so if it considers that no good would be done to the public.”

Wade further goes on to observe at page 683 that "...the House of Lords is clearly now determined to prevent technicalities from impeding judicial review so as to protect illegalities and derelictions committed by public authorities".

Sri Lankan Courts too have been quick to recognize standing of any citizen to seek relief against public authorities that stray outside their legitimate bounds.”

It was *inter-alia*, held by this Court in the case in **CA/WRIT/0440/2014- Decided on 17.03.2021** at page 19 that, “Who can file a writ application? The short answer is - any "person" (as defined in section 2(s) of the Interpretation Ordinance) who has "sufficient interest" as opposed to the outdated requirement of "personal interest" because of the element of "public interest".”.

It was *inter-alia*, held by this Court in the decision in **CA/WRIT/338/2009- Decided on 28.05.2025 at page 12** that, “Learned Counsel for the 3rd Respondent submits that the Petitioners have no locus standi to file this application. I cannot agree. High technical objections regarding locus standi have no place in modern administrative law. A writ application can be filed by any person, as defined in section 2(s) of the Interpretation Ordinance, who has "sufficient interest" in the matter, notwithstanding a lack of "personal interest" because of the element of "public interest" involved in the subject matter of controversy. The Petitioner in such an application can even be a stranger. If the Petitioner comes to Court genuinely, as a public-spirited citizen concerned to see that the law is obeyed in the interest of all, his application shall be entertained. (Vide Lanka Viduli Podu Sevaka Sangamaya v. Ceylon Electricity Board.”

Hence, the law as it stands today, with regard to the *locus standi* in an application for a prerogative writ is that, a writ application can be filed by any person, as defined in section 2(s) of the Interpretation Ordinance, who has "sufficient interest" in the matter, notwithstanding a lack of "personal interest" because of the element of "public interest" involved in the subject matter of controversy. The Petitioner in such an application can even be a stranger. If the Petitioner comes to Court genuinely, as a public-spirited citizen concerned to see that the law is obeyed in the interest of all, his application shall be entertained.

It appears from the averments in the Petition of the Petitioner that, he had come to Court genuinely, as a public-spirited citizen concerned to see that the

law is obeyed by the Prison Tribunal and the Prison Officials not only in the interest of his son-the Detenu but also in the interest of all. Besides, it had never been the position adverted to by the Respondents in the statement of objections of the 1st to 4th Respondents or in the joint written submissions of the 1st to 4th Respondents that it was not so.

I would therefore, hold that the Petitioner has come to Court genuinely, as a public-spirited citizen concerned to see that the law is obeyed by the Prison Tribunal and the Prison Officials not only in the interest of his son-the Detenu but also in the interest of all.

Hence I would hold, that the Petitioner has sufficient interest to institute the instant application.

I would therefore, proceed to overrule the preliminary objection so raised by the 1st to 4th Respondents on the premise that, the Petitioner has no *locus standi* to institute the instant application.

In view of all the above circumstances, I would hold that, the Petitioner had established that, he is entitled to the relief as prayed for in prayer 'b', 'c' and 'd' of his petition.

In view of all the above circumstances, I would proceed to grant and issue the mandates in the nature of a writ of *certiorari*, a writ of *mandamus* and a writ of *prohibition* as prayed for in prayer 'b', 'c' and 'd' of the petition, namely;

- b) a mandate in the nature of a Writ of *Certiorari* quashing the decision of the 3rd respondent dated 20th June 2024 marked as 'A2' in purported inquiry bearing reference 127/2023 marked as 'A';
- c) a mandate in the nature of a Writ of *Mandamus* compelling the 1st and/or 2nd Respondents and/or their servants, agents and/or any person acting under their authority the release of Constine Shavin Sothirajah forthwith from custody;
- d) a mandate in the nature of a Writ of *Prohibition* prohibiting the 1st and/or 2nd Respondents and/or their servants, agents and/or any

person acting under their authority prohibiting the detention of Constine Shavin Sothirajah on the purported authority of the purported Inquiry bearing reference 127/2023 marked as 'A'.

In the result, I would allow the instant application however, without costs.

I would direct the 1st and/or 2nd Respondents to forthwith take measures and/or steps to prosecute the Detenu in a Court of competent jurisdiction for the offence alleged to have been committed by him under section 78 of the Ordinance in terms of the law, particularly, under section 219 of the Penal Code as provided for by section 85 of the Ordinance.

JUDGE OF THE COURT OF APPEAL

D. THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL