

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

In the matter of an application under Article 140 of the
Constitution for mandates in the nature of writs of
certiorari and prohibition.

Ceylon Newspapers (Private) Limited
No. 101, Rosmead Place,
Colombo 07.

PETITIONER

**CA WRIT APPLICATION
NO. CA /WRT /07 /2025**

Vs.

1. Inspector General of Police,
Police Headquarters, Colombo 01.
2. Acting Inspector General of Police,
Police Headquarters, Colombo 01.
3. Director,
Criminal Investigation Department,
CID Headquarters,
York Street, Colombo 1.
4. Officer in Charge
Commercial Crimes Investigation Unit 1,
Criminal Investigations Department,
York Street, Colombo 1.
5. LPL Kesara Lanka (Pvt) Limited
41/2, W A D Ramanayake Mawatha,
Colombo 02.
6. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: B. Sasi Mahendran, J.

R.P. Pradeep Hettiarachchi, J.

Counsel: Dr. Romesh de Silva, PC, with Sugath Caldera and Niran for the Petitioner.

O. Perera, SC for the State.

Viran Corea, PC with Shantha Jayawardene and Thilini Vidanagamage for the 5th Respondent.

Written 31.08.2026 (by the Petitioner)

Submission 31.08.2026 (by the 5th Respondent)

On:

Supported 30.07.2026

On:

Order On: 30.09.2026

JUDGEMENT

B. Sasi Mahendran, J.

The Petitioner, *inter alia*, seeks a *writ of prohibition* preventing the 1st to 4th Respondents from arresting and/or taking into custody the directors, including Mr. Tiran Alles, and employees of the Petitioner in connection with the issuance of the cheques referred to in Schedule “A”. The Petitioner further seeks a *writ of certiorari* quashing any decision taken by the 1st to 4th Respondents to arrest and/or take into custody such persons, together with an interim order preventing such arrest pending the final determination of this application.

The following facts are relevant to this application

The Petitioner, Ceylon Newspapers (Private) Limited, is a company engaged in the publication of newspapers including *Ceylon Today* and *Mawbima*. The 5th Respondent, LPL Kesara Lanka (Pvt) Limited, is engaged in the importation and supply of newsprint and has been supplying newsprint to the Petitioner for several years. According to the Petitioner, payments for such supplies were made through cash payments, inward letters of credit, and selected cheques, while numerous post-dated cheques issued by the Petitioner were intended merely as security and not for presentation.

The Petitioner states that the arrangement continued until September 2024, when, after Tiran Alles ceased to be a Minister, the 5th Respondent allegedly breached the agreement by presenting several post-dated cheques for payment. The Petitioner states that several cheques were dishonoured and others had payment stopped, maintaining that their presentation was wrongful and malicious and that the dispute concerns only a civil claim for payment for newsprint supplied, with no criminal offence arising from the transaction.

The Petitioner states that following a CID investigation into the 5th Respondent's complaint, several employees were questioned, and two employees, namely Stanley Mahesh Lakruwan and Gayan Devathanthriarachchi, who had signed the cheques, were arrested on 7th of January 2025 and remanded by the Colombo Fort Magistrate's Court until 15th of January 2025.

The Petitioner states that, during the proceedings before the learned Magistrate, submissions were made on behalf of the complainant seeking the arrest of Tiran Alles. In those circumstances, the Petitioner formed the apprehension that the investigating authorities intended to arrest and/or take into custody Tiran Alles, together with certain directors, officers and employees of the Petitioner, in connection with the issuance of the cheques forming the subject matter of the investigation.

The material placed before this Court further discloses that investigations were conducted under B Report No. 36364/24 before the Fort Magistrate's Court. On 15th January 2025, upon consideration of the facts reported by the investigating officers, the learned Magistrate directed that the Chairman of the Petitioner Company be produced before the Court. Thereafter, by proceedings marked 5R60 and 5R61, Tiran Alles was named as the 3rd suspect in the said proceedings on 29th January 2025.

The Petitioner's contention is that such arrest is unwarranted, unlawful and without any authority as there is no material whatsoever incriminating the Petitioner in any criminal offence.

In the circumstances, the Petitioner has invoked the writ jurisdiction of this Court seeking, *inter alia*, a writ of Prohibition preventing the 1st to 4th Respondents from arresting and/or taking into custody the directors, including Mr. Tiran Alles, and/or officers and employees of the Petitioner in connection with the issuance of the cheques referred to in Schedule "A" annexed to the Petition.

On the other hand, the Respondents have raised preliminary objections that the Petitioner has an alternative remedy and that the Petitioner has failed to disclose material facts to this Court.

The question that arises for determination is whether the transaction between the Petitioner and the 5th Respondent was a commercial transaction arising from the supply of newsprint and the agreed mode of payment, or whether the circumstances surrounding the issuance and dishonour of the cheques disclose the commission of a criminal offence.

The principal contention of the Petitioner is that the post-dated cheques referred to in Schedule “A” were issued as security in respect of the amounts due for the supply of newsprint and, pursuant to the understanding between the parties, were not to be presented for payment unless otherwise authorised. The Petitioner further contends that the dispute regarding the presentation and dishonour of the said cheques is essentially a commercial and civil dispute and does not, by itself, disclose any dishonest or criminal intention on the part of the Petitioner, its directors or employees.

According to the 1st to 4th Respondents, investigations have been conducted into the complaint made by the 5th Respondent in relation to the issuance and dishonour of the cheques referred to in Schedule “A”. The purpose of this application is to prevent the arrest of the directors, officers and employees of the Petitioner on the basis that the dispute is essentially a commercial transaction and that the issuance of the said cheques does not disclose any dishonest intention or the commission of a criminal offence.

This Court notes that the transactions between the Petitioner and the 5th Respondent extended over a considerable period of time and involved the supply of newsprint and payments made by cash, letters of credit and cheques. The material placed before this Court indicates that a substantial number of cheques were issued in respect of the amounts due to the 5th Respondent. The Petitioner, however, maintains that only a limited number of the cheques were authorised to be presented and that the remaining cheques were issued merely as security, with an understanding that fresh post-dated cheques would be issued where the amounts remained unpaid.

It is observed that a number of cheques issued by the Petitioner were subsequently taken back and reissued at a later date. In the schedule filed by the Petitioner, particularly in items (a) and (b), it is stated that the cheques issued in respect of the transactions were subsequently replaced by cash payments.

According to the Petitioner, the cheques referred to in Schedule “A” were not issued with the intention of obtaining goods or services without making payment. They were issued in the course of an ongoing commercial relationship between the parties and pursuant to an arrangement relating to payment for newsprint supplied by the 5th Respondent. The Petitioner further states that, where payment could not be made on the date appearing on a cheque, the parties had an understanding that a fresh post-dated cheque would be issued.

The material before this Court also discloses that the employees of the Petitioner were questioned by the Police in connection with the said transactions and that two employees, namely Mahesh Stanley and Gayan Dewathanthriarachchi, were arrested.

The Police have referred this transaction under the following Sections of the Penal Code.

Section 386,

“Whoever dishonestly misappropriates or converts to his own use any movable property shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both”

Section 389,

“Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

Section 400,

Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Section 403,

“Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter, or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

For all four offences, the prosecution needs to prove that there was a mental element of dishonesty and fraudulence. What is meant by ‘dishonestly’ and ‘fraudulently’ is defined in the following Sections of the Penal Code.

Section 22

“Whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing “dishonestly”.”

Section 23

“A person is said to do a thing fraudulently if he does that thing with intent to defraud, but not otherwise.”

In the instant case, there is no material placed before this Court to establish that the Petitioner, its directors or employees had a dishonest intention in relation to the said transaction. The material indicates that the cheques were issued in the course of an ongoing commercial relationship between the Petitioner and the 5th Respondent and in accordance with the agreed arrangement between the parties. The mere fact that certain cheques were subsequently dishonoured does not, by itself, establish a dishonest intention at the time they were issued. In the circumstances, this Court is unable to conclude that the material disclosed before it establishes the necessary dishonest intention to justify the proposed arrest.

The gravamen of the submission of the counsel for the Petitioner is that there is no evidence to show that the Petitioner has the mental element to dishonestly deprive the Respondents. This was considered by His Lordship S.N. Silva J (as he was then) in **Attorney-General V. Dewapriya Walgamage and another (1990) 2 Sri LR 212 at 222**, it was held that;

“Dishonest intention is the element of mens rea of the offence of criminal misappropriation as defined in Section 386 of the Penal Code. The commission of the offence should be accompanied by such intention”

Further held that;

“Furthermore, dishonesty is the element of mens rea in relation to all three offences of theft, cheating and criminal misappropriation. Lines of demarcation cannot be drawn in respect of these offences only with reference to the element of mens rea.”

(His Lordship has further held that there should be initial innocence taken for the purpose of constituting the offence of criminal misappropriation. The requirement of initial innocence was overruled by Mark Fernando J in **Walgamage V. The Attorney General (2000) 3 SLR 1** and held that “initial innocence taking was not necessary for the purpose of constituting the offence of criminal misappropriation of property.”)

This was followed by L.T.B. Dehideniya J. (P.CA) (as he then was) in **Gotabaya Nandasena Rajapaksa V. Pujith Jayasundara and others, Court of Appeal case No. 391/2017, decided on 29.11.2017** and held that:

“The Petitioner’s contention is that there is no misappropriation of any money in the transaction. It is only a commercial transaction. Further the certificate on the face of it is wrong.”

In the instant case, I observe that there is no dispute that the cheques in question were issued by the Petitioner in the course of its commercial dealings with the 5th Respondent in respect of the supply of newsprint. The material placed before this Court indicates that the parties had an ongoing commercial

relationship and that payments were made through various modes, including cash, letters of credit and cheques. There is no sufficient material before this Court to establish that the Petitioner issued the said cheques with a dishonest intention to deceive the 5th Respondent or to fraudulently or dishonestly induce the 5th Respondent to supply the newsprint.

The question is whether the Petitioner has deceived the 5th Respondent.

According to Black's Law Dictionary, 11th edition

deception. (15c) 1. The act of deliberately causing someone to believe that something is true when the actor knows it to be false. 2. A trick intended to make a person believe something untrue.

Deceiving was explained in the book of Dr Sir Hari Singh Gour's *Penal Law of India*, 10th edn, Volume A, at page 3641,

"10. "Deceiving."—To constitute an offence of cheating there must be a deception which must precede and induce, under the first part of this section, the delivery or retention of property or the act or omission referred to in the second part. The deception may be by words or conduct. As to what is sufficient to constitute a deception must be decided in each case on its own facts."

According to the B report, one of the main charges is cheating. Ingredients of cheating were discussed in the book of Dr Sir Hari Singh Gour's *Penal Law of India*, 10th edn, Volume at page 3636,

"7. Ingredients. —To constitute cheating under this section, there must be-

(1) deception of any person and thereby,

(2) (a) fraudulently or dishonestly inducing that person—

(i) to deliver any property to any person, or

ii) to consent that any person shall retain any property, or

(2) (b) intentionally inducing that person to do or omit to do anything which if he were not so deceived and which act or omission causes or is likely to cause harm to that person in body, mind, reputation or property."

Further, he describes as follows,

“Firstly, there has to be practice of deception by the offender. Than on account of the deception there must be fraudulent or dishonest inducement so as to make the person deceived to deliver any property or to do something, or omit to do something etc.”

At page 3637,

“The first element necessary for constituting an offence of cheating is a deception of the complainant by the accused. Unless there is deception the offence of cheating cannot be made out. After deception has been practised, the person deceived should get induced to do or omit to do something. Deception has in it the element of misleading, of making a person believe something which is not real”

I am mindful that the essential ingredient to constitute the offence of cheating was considered in the following judgments.

In S.W. Palanitkar and Ors vs State of Bihar and Anr., 2001 (4) Suppl. SCR 397, Decided On 18/10/2001, Shivaraj V. Paul, J. Held That,

The ingredients of the offence of cheating are: (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) in cases covered by (ii) (b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

One of us (D.P. Mohapatra J.) speaking for the Bench, in Hridaya Ranjan Prasad Verma & Ors. v. State of Bihar & Anr., [2000] 4 SCC 168, on facts of that case, has expressed thus :

"In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the

promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

[emphasis supplied] Finding that ingredients of the offence of cheating and its allied offences had not been made out, this Court interfered with the order of the High Court and quashed the criminal proceedings.

In G.V. Rao v. L.H.V. Prasad & Ors., [2000] 3 SCC 693, this Court in para 7 has stated thus :-

"As mentioned above, Section 415 has two parts. While in the first part, the person must "dishonestly" or "fraudulently" induce the complainant to deliver any property; in the second part; the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. As observed by this Court in Jaswantrao Manilal Akhaney v. State of Bombay, AIR (1956) SC 575 a guilty intention is an essential ingredient of the offence of cheating. In order, therefore, to secure conviction of a person for the offence of cheating, "mens rea" on the part of that person, must be established. It was also observed in Mahadeo Prasad v. State of W.B., AIR (1954) SC 724 that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered"

In Ganesan vs State Rep By The Sub Inspector of Police, decided on 19th March, 2026, Pamidighantam Sri Narasimha, J, held that,

13. In order to constitute an offence of cheating the intention to deceive should be in existence when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise. Mere failure to keep the promise subsequently cannot be the sole basis to presume that dishonest intention existed from the very beginning.

14. In Vesa Holdings Private Limited and Another v. State of Kerala and others⁷, this court held that every breach of contract would not give rise to an offence of cheating. Only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later, the same cannot amount to cheating. In other words, for the purpose of constituting an offence of cheating, the complaint is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are (2015) 8 SCC 293, paragraph 12 made about failure on part of the accused to keep his promise, in absence of a dishonest intention at the time of making the initial promise, no offence under Section 420 of IPC is made out."

In **Kapila Nishshanka Kumarage Vs. Officer in Charge, Special Crimes Investigation Bureau, Police Station, Ratnapura and another, SC Appeal No. 51/18, decided on 4th May 2021**, His Lordship Yasantha Kodagoda, PC,J held that,

“In my view, these circumstances by themselves are insufficient to arrive at an inference that at the time the Appellant solicited the loan and subsequently tendered the cheque, he entertained a dishonest intention. That is in view of the reasonable possibility that at the time the cheque was tendered the Appellant may have in good faith intended to repay the loan when the loan money was due, either by tendering cash or by depositing sufficient money in the bank account so that the cheque when tendered would be honoured. Thus, in my view, it cannot be unequivocally concluded that the Appellant had by the tendering of the cheque to the virtual complainant, engaged in deception of the virtual complainant by the dishonest concealment of certain relevant facts pertaining to the cheque and by asserting facts that gave the virtual complainant a false impression.

In any event, it is important to note that, even if this Court were to arrive at a finding that the tendering of the cheque and assertions made associated with the tendering of the cheque amounts to deception, that by itself does not convert the character of the Appellant's conduct to the offence of 'cheating'. As pointed out earlier, the prosecution has failed to prove that it was the deception if any practiced by the Appellant that thereby caused the virtual complainant to give the solicited sum of money to the Appellant.

As the virtual complainant herself has admitted, the transaction between herself and the Appellant was one relating to a loan. From the perspective of the law of contracts, there has certainly been a breach of contract by the Appellant. According to Dr. Gour, 'a mere breach of contract cannot give rise to a criminal prosecution. The distinction between a case of mere breach of contract and one of cheating, depends upon the intention of the accused at the time of the alleged inducement, which must be judged by his subsequent act but of which the subsequent act is not the sole criterion'. (page 3634, supra) Dr. Gour has also pointed out that, "if the terms of the agreement are not carried out, it may attract civil as well as criminal consequences. The vital factor to be considered is whether at the time of the agreement, there was an intention to carry out the terms of the agreement or not. If at its inception there was no intention to carry out the terms, it would constitute the offence of 'cheating'. Not otherwise". (page 3635, supra) In view of the attendant facts and circumstances of this case, it cannot be concluded beyond a reasonable doubt that at the time of the making the request to the virtual complainant and when receiving the eight hundred thousand rupees, the Appellant entertained the intention of not re-paying the amount as per the undertaking he gave to the virtual complainant.”

When I consider all three judgments, there is no evidence to show that the Petitioner obtained the newsprint from the 5th Respondent by deception or with a dishonest intention. The material before the Court indicates that the cheques were issued in the course of an ongoing commercial transaction and were, according to the Petitioner, given as security. The subsequent dishonour of the cheques, by itself, does not establish dishonest intention at the time they were issued.

Thus, this Court is of the view that there is insufficient material to establish criminal liability against the Petitioner, its directors or employees merely on the basis of the said commercial dispute.

I am mindful of the principle of the *Writ of Prohibition* as discussed in the following authorities.

MP Jain and S N Jain, *Principles of Administrative Law*, 7th edition 2011, Volume 02, at page 2388;

“Similar is the case with prohibition. As Lord Denning observed in R v. Grater London Council;

“Just as the scope of Certiorari has been extended to administrative authorities, so also with prohibition. It is available to prohibit administrative authorities from exceeding their powers, r misusing them. In particular, it can prohibit a licencing authority from making rules or granting licences which permit conduct that is contrary to law.”

Further,

“On the other hand, the object of prohibition is prevention rather than cure. Prohibition is issued when the proceedings before the concerned body are still pending and the matter has not been disposed of but is still being considered by the concerned decision-making body. The function of prohibition is to prohibit the body concerned from proceeding with the matter further. If proceedings before the concerned body have come to an end then only certiorari can be issued as there remains nothing to prohibit.

For example, if a tribunal takes up for hearing a matter which lies outside its jurisdiction, the concerned person can seek a writ of prohibition from the High Court to prohibit the tribunal from continuing the proceedings further. If, on the other hand, the tribunal has already rendered its decision, then the party concerned seeks a certiorari to quash the decision of the tribunal. There may be a proceeding before an inferior body where both certiorari and prohibition may lie. If the tribunal has decided something without finally disposing of the matter, then the interested person can seek certiorari to quash what has been decided and prohibition to stop the tribunal from proceeding further in the matter. Thus, certiorari and prohibition differ from each other from a functional point of view.”

C.F. Forsyth and I.J. Ghosh, *Wade and Forsyth's Administrative Law*, twelfth Edition, page 483

“Although a prohibiting order was originally used to prevent tribunals from meddling with cases over which they had no jurisdiction, it was equally effective (and equally often used) to prohibit the execution of an already-taken, ultra-vires decision. As long as the tribunal or administrative authority still had some power to exercise as a consequence of the wrongful decision, the exercise of that power could be restrained by a prohibiting order.”

In view of the reasoning set out above, I hold that the transaction involved in this application is essentially a commercial transaction and that there is insufficient evidence to incriminate the Petitioner, its directors or employees in respect of the offences alleged. Accordingly, this Court is of the view that the Petitioner has established the grounds set out in the Petition.

Therefore, this Court issues a writ of Prohibition as prayed for in prayer (c), prohibiting the 1st to 4th Respondents from arresting and/or taking into custody the directors, including Mr Tiran Alles, and/or officers and employees of the Petitioner in connection with the issuance of the cheques referred to in Schedule “A”.

For the avoidance of doubt, this order shall not prevent the Respondents from investigating the matter further and, if any new material is discovered in relation to the disputed transaction, from taking such further action necessary in accordance with law.

JUDGE OF THE COURT OF APPEAL

R.P. Pradeep Hettiarachchi, J.

I AGREE

JUDGE OF THE COURT OF APPEAL