

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

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

Kolonne Appuhamilage Don Jagath  
Rajitha Aman Kumara Premarathna,  
No. 424/F, Kahathuduwa Road,  
Kirivaththuduwa.

**CA (Writ) App. No. 422/2024**

**PETITIONER**

**Vs.**

1. Hon. Justice N. E. Dissanayake,  
Chairman,  
Administrative Appeals Tribunal,  
No. 35, Silva Lane,  
Dharmapala Place,  
Rajagiriya.
2. Ganathan, P.C.,  
Member,  
Administrative Appeals Tribunal,  
No. 35, Silva Lane,  
Dharmapala Place,  
Rajagiriya.

3. G.P. Abeykeerthi,  
Member,  
Administrative Appeals Tribunal,  
No. 35, Silva Lane,  
Dharmapala Place,  
Rajagiriya.
4. E.W.M. Lalith Ekanayake,  
Chairman,  
National Police Commission,  
Building No. 9,  
Bandaranavake Memorial International  
Conference Hall,  
Buddhaloka Mawatha,  
Colombo 07.
5. D.K. Renuka Ekanayake,  
Member,  
National Police Commission,  
Building No. 9,  
Bandaranayake Memorial International  
Conference Hall,  
Buddhaloka Mawatha,  
Colombo 07.
6. K. Karunaharan,  
Member,  
National Police Commission,  
Building No. 9,  
Bandaranayake Memorial International  
Conference Hall,  
Buddhaloka Mawatha,  
Colombo 07.
7. P.G.S. Gamini De Silva,  
Member,  
National Police Commission,  
Building No. 9,  
Bandaranayake Memorial International  
Conference Hall,

Buddhaloka Mawatha,  
Colombo 07.

8. A.A.M. Illiyas PC,  
Member,  
National Police Commission,  
Building No. 9,  
Bandaranayake Memorial International  
Conference Hall,  
Buddhaloka Mawatha,  
Colombo 07.
9. Dilshan Kapila Jayasuriya,  
Member,  
National Police Commission,  
Building No. 9,  
Bandaranayake Memorial International  
Conference Hall,  
Buddhaloka Mawatha,  
Colombo 07.
10. Member,  
(yet to be appointed)  
National Police Commission,  
Building No. 9,  
Bandaranayake Memorial International  
Conference Hall,  
Buddhaloka Mawatha,  
Colombo 07.
11. Thamara D. Perera,  
Secretary,  
National Police Commission,  
Building No. 9,  
Bandaranayake Memorial International  
Conference Hall,  
Buddhaloka Mawatha,  
Colombo 07.
12. Sanath J. Ediriweera,  
Chairman,  
Public Service Commission,

No. 1200/9, Rajamalwatta Road,  
Battaramulla.

13. N.H.M. Chithrananda,  
Member,  
Public Service Commission,  
No. 1200/9, Rajamalwatta Road,  
Battaramulla.

14. G.S.A. De Silva, P.C.,  
Member,  
Public Service Commission,  
No. 1200/9, Rajamalwatta Road,  
Battaramulla.

15. A.D.N. De Zoysa,  
Member,  
Public Service Commission,  
No. 1200/9, Rajamalwatta Road,  
Battaramulla.

16. S.M. Mohamed,  
Member,  
Public Service Commission,  
No. 1200/9, Rajamalwatta Road,  
Battaramulla.

17. Ranjani Nadarajapillai,  
Member,  
Public Service Commission,  
No. 1200/9, Rajamalwatta Road,  
Battaramulla.

18. C. Pallegama,  
Member,  
Public Service Commission,  
No. 1200/9, Rajamalwatta Road,  
Battaramulla.

19. M.B.R. Pushpakumara,  
Member,  
Public Service Commission,

No. 1200/9, Rajamalwatta Road,  
Battaramulla.

20. N. Selvakkumaran,  
Member,  
Public Service Commission,  
No. 1200/9, Rajamalwatta Road,  
Battaramulla.

21. Inspector General of Police,  
Police Head Quarters,  
Colombo 01.

22. Hon. Attorney General,  
Attorney General's Department,  
Hulfsdorp,  
Colombo 12.

**RESPONDENTS**

**Before:** Dr. D. F. H. Gunawardhana, J.

**Counsel:**

Krishan Fernandopulle with Tharika Ruvanpura instructed by Legal Aid Commission for  
the Petitioner.

Mihiri de Alwis, S.S.C for the Respondents.

**Argued on:** 27.11.2025

**Delivered on:** 27.03.2026

**Dr. D. F. H. Gunawardhana, J.**

## **Judgement**

### **Introduction**

The counsel on all sides agreed that both Applications can be disposed by one judgement; therefore, the judgement given in this Application applies to the connected Writ Application bearing No. 423/2024.

The Petitioner was a Sargeant attached to the Udawalwa Police Station. On the fateful night of 19.05.2010, the Petitioner, along with the Petitioner in Writ Application No. 423/24, had gone on a surveillance patrolling and detected four hundred grams (400g) of cannabis in the possession of a certain person named Chaminda Harshapriya. Having arrested the said person, they caused to produce him before the learned Magistrate on the charge of having possession of cannabis. However, the following day, the officer-in-charge of the police station had arrested the two Petitioners in both Applications, namely Writ Application Nos. 422/2024 and 423/2024, on the charges of bribery as well as disposal of certain seized property, a quantity of ten kilograms of cannabis, from two people and release of one of them, on accepting the bribe. However, thereafter, they were interdicted, and later a disciplinary inquiry was held.

After the disciplinary inquiry, they were found guilty, and on appeal to the Police Commission, their appeal was rejected, and later another appeal to the Public Service Commission (PSC) was also dismissed; the appeal made to the Administrative Appeal Tribunal (AAT) was also rejected. Based on that, they have come before this Court seeking relief under Article 140 of the Constitution and obtained formal notice; thereafter, the Respondents have filed their Objections.

This was argued on 27.11.2025, and the following arguments were advanced by the Counsel; hence, this judgement.

## **Arguments**

The first argument by Mr. Fernandopulle, the Counsel for the Petitioner is that the charge sheet framed against the two Petitioners in the two applications is flawed, as it was signed by a retired Assistant Superintendent of Police (ASP) after his retirement; therefore, it bears no validity.

In addition to that, the Counsel contended that there are contradictions with regard to the investigations, whereas no alleged quantity of cannabis, namely ten kilograms (10kg) of cannabis, was found anywhere, and there was no production of 10kg of cannabis either in the Magistrate's Court or disciplinary panel. In addition to that, when it comes to the weightage of the cannabis, it is alleged before the disciplinary panel that it is ten kilograms (10kg).

The third argument is that no statements were recorded from the original accused who was found and arrested by the two Petitioners on suspicion with the four hundred grams (400g) of cannabis and were charged, and who having pleaded guilty, paid the fine.

The fourth argument is that the bribery charges have not been proved in the evidence. Therefore, **P16**, the order of the AAT, is irrational, and there are contradictions per se within it, whereas according to the panel, the bribery charge was for soliciting Rs. 100,000/- (One Hundred Thousand Rupees); the AAT's decision was only Rs. 10,000/- (Ten Thousand Rupees).

On the other hand, Ms. Mihiri De Alwis, S.S.C, argues that the Petitioner has in fact challenged the decision of the Public Service Commission marked as **P14** which cannot be done in view of Article 61A of the Constitution.

In addition to that, it is her argument that two lay witnesses have given evidence (who are husband and wife), to the effect that the Petitioners had hidden a certain bag in their compound which they

believed was cannabis, establishes that they had disposed certain amount of cannabis. Therefore, the dismissal of the appeal made by the Petitioner is justified.

Now, I will deal with the factual matrix.

### **Factual matrix**

The Petitioner was recruited as a Constable with effect from 01.05.1990. He underwent training in the Transport Division, Anti-Narcotic training, as well as in VIP Security training. Thus, in the course of his service, he had taken the Oath of Honour on the 08.03.2003; and thereafter, was absorbed and promoted as a Sargeant. There are letters commending his service by his superiors, and also, he has been awarded with monetary awards for his gallantry and other exceptional service. He is involved in nabbing underworld kingpins, narcotic peddlers, and gangsters in the course of his service.

By May 2010, he was attached to the Udawalawa Police Station. He was assigned to go on a surveillance patrol by his superior, the Officer-in-charge (OIC). In the course, he and another Police Sargeant named Piyasiri, who is the Petitioner in the connected Writ Application bearing No. 423/24, had gone on about carrying out their duty on a motorbike ridden by the Petitioner to this Application. As they were on surveillance patrol, on suspicion, they have searched a certain person named Chaminda Harshapriya, and they have found 400 grams of cannabis in his possession, which is a punishable offence under the Poisons, Opium, and Dangerous Drugs Ordinance. Accordingly, the said suspect had been arrested by the Petitioner and his colleague, and was brought to the police station, and thereafter, weighed the property seized and tagged as 'production', and then caused him to be produced before the Magistrate.

However, the following day, to their surprise, they were alleged by the OIC that they, having solicited a bribe, had taken a part thereof from the said suspect. Further, it was alleged that though they had seized 10kg on the arrest of the said suspect and another, they had released one suspect and a quantity of 9kg and 600 grams and only produced the balance of 400g of cannabis. Consequently, steps were taken against them to charge them and pending that they were interdicted.

After the said disciplinary inquiry, the Petitioner and his said colleague were found guilty of wilfully giving false statements and reports to the Police in producing certain accused in the said case and was recommended to be terminated from the police service. On that, the Petitioner and his colleague, appealed to the PSC, and the members thereof also affirmed the said conviction of guilt by the Inquiring Panel. Thereafter, against the said order of the PSC, the Petitioner and his colleague had appealed to the AAT; by their order, the members of the AAT had also affirmed the findings, and no relief was granted to the Petitioner or his colleague.

In the circumstances, the Petitioner along with the other officer, has instituted the above-styled Application seeking a *Writ of Certiorari* to quash the decision of the AAT which affirmed the decision of the PSC, which confirmed the findings of the Inquiring Panel.

Now I will consider the evidence adduced before the Panel of Inquiry to ascertain whether the Petitioner is guilty of misconduct.

### **Some relevant evidence in a nutshell as adduced before the panel of inquiry**

The first witness called was the Officer-in-charge (OIC) of the Police Station of Udawalawa at the time this alleged incident took place, Chief Inspector Karunasena. According to him, Sargeant Premarathna and Sargeant Piyasiri (the Petitioners) were assigned certain duties of the evening of 19.05.2010, by him as the OIC of the Police Station of Udawalawa. They had been given oral

instructions by him to engage in surveillance patrol; accordingly, having entered the relevant entries in the relevant information book, they had gone on their official duty. Later that night, they had returned with a suspect with a certain production of four hundred grams (400g) of cannabis. Having weighed the production, they caused the arrested suspects to be produced before the Magistrate's Court; his name was Chaminda Harshapriya.

However, according to him, by that time, he had received certain information that the Petitioners had arrested two suspects in a three-wheeler on their surveillance duty, and in that three-wheel, they had found about ten kilograms (10kg) of cannabis in the possession of the two suspects; Asela Sanjaya and Harshapriya; later, the Petitioners have released the three-wheeler and one suspect (Asela Sanjaya) on the promise of a bribe of Rs. 100,000/- (One Hundred Thousand Rupees), and they had gone to some other house (belonging to a man named Jayalath) and tried to hide the production of the 10kg of cannabis that they had seized from the possession of the said Asela Sanjaya there. However, since the wife of the owner of the house had resisted, they had hidden it in a shrub. The said cannabis was inside a gunny bag, and they had later taken it and disposed of the property without producing the same. The person from whose custody the said cannabis was taken into along with the three-wheeler were released with the promise of accepting Rs 50,0000/-, the half of the total sum of Rs. 100,000/- bribe.

The relevant part of the evidence is reproduced below;

*“මෙම වැටලීමේ ස්ථානයට ඉදිරිපත් කර සිටි වමන්ද හර්ෂප්‍රිය නැමති සැකකරු සම්බන්දව මාහට ලද තොරතුරු අනුව මෙම සැකකරු වැටලීමට ලක්වන අවස්ථාවේදී ඉදිරිපත් කළ ගංජා ප්‍රවාහනයට වඩා වැඩිපුර ත්‍රිරෝද රථයකින් ගංජා ප්‍රවාහනය කරමින් සිටියදී තවත් සැකකරුවෙකු සමඟ ඉහත නිලධාරීන් හසු වූ බවත් මෙම නිලධාරීන් දෙදෙනා විසින් එම සැකකරු ස්ථානයට ඉදිරිපත් නොකර මුදාහැර ඇති බවත්ය.*

ඒ අනුව මා විසින් ප්‍රශ්න කර අත්අඩංගුවට ගෙන ඇති සැකකරුගෙන් මාගේ නියෝග පරිදි පොසැ 28997 ගාමිනි යන නිලධාරිනුමා යොදවා ප්‍රකාශයක් සටහන් කරවා ගත්තා. එම ප්‍රකාශය මූලික විමර්ශනය ගොවුච්චි පිටු අංක 17 සිට 19 දක්වා පි 06 වශයෙන් සලකුණු කර ඉදිරිපත් කිරීමට අවසර දෙමි. එම සැකකරුගේ වැඩිදුර ප්‍රකාශයන් සටහන් කිරීමෙන් අනතුරුව මා පොසැ 28997 ගාමිනි හා පොසැ 40055 වසන්ත විසින් පදවන ලද අංක එඩ්ඩ් 9308 දරන රථයෙන් සැකකරුන් රැගෙන සැකකරුගේ මග පෙන්වීම ඔස්සේ සැකකරුගේ ප්‍රකාශයක් අනාවරනය වූ වැටලීම් කළ අවස්ථාවේදි අත්අඩංගුවට ගැනීමෙන් පසු ස්ථානයට ඉදිරිපත් නොකර ගංජා ප්‍රමාණයක් සභවා තැබූ ස්ථානයට ගමන් කළා. එම ස්ථානය උඩවලව පොලිස් වසමේ අංක 979/2 අබේ ගුනවර්ධන සමන්ත ජයලත් නැමති උඩවලව උන් පර්යේෂණ ආයතනයේ සේවය කරන තැනැත්තාගේ නිවසයි. එහිදි මා එම නිවසේ පදිංචි සමන්ත ජයලත් යන අයගෙන් ප්‍රශ්න කළා.

විනිශ්චය සභාවෙන්: මොනවද ප්‍රශ්න කළේ? පෙරදිග 2010.05.19 වන දින සවස ගංජා වගයන් පියසිරි සාජන් මහතා ගෙනාවද කියලා ඇසුවා. ඒ අවස්ථාවේදි සමන්ත ජයලත් කිවවා, 'ඔහු හොඳින් දන්නා හඳුනන උඩවලව පොලිසියේ වැඩ කරන පියසිරි සාජන් මහත්තයා තවත් කිහිප දෙනෙකුත් සමඟ ගංජා වගයක් ගෙනවිත් ටික වේලාවකට කියලා ඒ ටික තියලා යන්න ඉල්ලීමක් කළ බව'. ඉන්පසු ඔහුගේ බිරිඳ ගංජා ඔවුන්ගේ වත්තේ තබායාම සම්බන්ධව විරුද්ධවීම නිසා බිරිඳ ඒ අවස්ථාවේදි කියා සිටියා,

'ඔවා ගේ ඇතුලට ගන්න එපා' කියූ බවත් ඉන්පසු ඔහු එම ගංජා පාර්සල් නිවස පිහිටි වත්තේ ඉළක් මත්ඛියක සභවා තැබූ බවත් ඉන්පසුව ඊට පැය බාගයකට පමණ පසු පෙර මෙම පියසිරි සාජන් මහතා පැමිණ වෙනත් ත්‍රිරෝද රථයකින් එම ගංජා දැමීමට පොහොර උභරයක්ද ඉල්ලාගෙන ඒවා පියසිරි සාජන් මහතා විසින්ම රැගෙන ගිය බව පියසිරි සාජන් මහතා සමඟ පොලිසියේ තවත් අයෙක් සිටි සභ කිහිප දෙනෙක් සිටි බවත් කියා සිටියා.'<sup>1</sup>

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<sup>1</sup> Page 6-7 of P10.

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In cross-examination, he admitted that when he had later seized the said three-wheeler, though with his experience he smelled a strong scent of cannabis coming from a specially designed storage unit inside the three-wheeler underneath the two subwoofers but, he could not find any cannabis. The said three-wheeler had also not been sent to the Government analysts for any report. In addition to that, it was also admitted that they could not find any amount of cannabis, other than the 400g of cannabis that had already been produced before Court.

However, in addition to that, he failed to identify the name of the informant, and notably, the said informant was never called to testify as a witness before court. Further, his pocket notebook was not produced; according to his own evidence, it has been lost, and to date, he has failed to obtain or maintain a new one.

According to his testimony, he was in prior possession of information relating to the seizure of 10 kilograms of cannabis from the suspect, the arrest of a three-wheeler, the release of one suspect, and the alleged disposal of 9 kilograms and 600 grams of cannabis. Notwithstanding such prior knowledge, and before signing the ‘B’ report, by which Harshapriya was produced before court with only 400 grams of cannabis, he proceeded to sign the said report and caused the accused to be produced before court. The following evidence, elicited in cross-examination, is reproduced below:

*“පිළිතුර- මට පොලීසියෙන් ආරංචි වුණේ මේ සිද්ධිය සිදුවූ දින ගණ කිලෝ 10ක් වුදින නිලධාරීන් විසින් අත්අඩංගුවට ගෙන, ගැමි 400ක් පමණක් ඉදිරිපත් කළ බවයි. පුද්ගලික ඔත්තුකරු කවුද කියා මට පැවසිය නොහැක. ගණ අඩුවෙන් ඉදිරිපත් කළ බවට ලැබුණු ආරංචිය මගේ සටහන් පොතේ සටහන් කළෙමි. එය අද ඉදිරිපත් කළ නොහැක්කේ, එය අස්ථානගත වී ඇති බැවිනි. එම කරුණ*

පිළිබඳ තොරතුරු පොතේ සටහන් කළේද යන්න මට මතක නැත. නව සක්ෂි සටහන් පොතක් ලබාගෙන නොමැත. අද මට රාජකාරියක් සඳහා ආවට සක්ෂි සටහන් පොතක් ගෙනාවේ නැහැ.

ප්‍රශ්නය – ඒ අනුව මම ඔබතුමා විශ්වාස කළ නොහැකි සක්ෂිකරුවෙකු බව යෝජනා කරමි.

පිළිතුර – එය මම තරයේ ප්‍රතික්ෂේප කරමි. ගංඡා ග්‍රෑම් 400ක් පමණ මෙම වූදින නිලධාරීන් විසින් අත්අඩංගුවට ගත් සැකකරුවන් මෙම අධිකරණයට ඉදිරිපත් කළහ. මම එම 'B' වාර්තාව අධිකරණයට අත්සන් කර ඉදිරිපත් කළෙමි. එසේ කිරීමට පෙර මට ආරංචි වූයේ ගංඡා කිලෝ 10ක් අත්අඩංගුවට ගෙන, අඩුවෙන් ඉදිරිපත් කළ බවයි. ඉන්පසුව අධිකරණයට සැකකරුවන් හා සිද්ධිය වාර්තා කළත්, ගංඡා කිලෝ 10ක් අත්අඩංගුවට ගෙන අඩුවෙන් ඉදිරිපත් කළ බව මම සඳහන් කළේ නැත.

ප්‍රශ්නය – ඔබ මුල් 'B' වාර්තාවේ එම සිද්ධිය සඳහන් නොකළේ ඇයි?

පිළිතුර – එම අවස්ථාවේ විමර්ශනය අවසන් වී නොතිබූ නිසාය. එම 'B' වාර්තාව මෙම වූදිනයන්ට එරෙහිව සක්ෂි සංවිණිධනයක් ලෙස යොදාගන්නේද යන්න මට මතක නැත.”

The next person called to give evidence was Jayalath, whose evidence in chief was not led before the panel, and instead, what was recorded as a statement recorded on the directions of the OIC of Udawalawa by an Officer named Gamini, was put to him. He admitted to signing it, having made the statement. However, in cross-examination, he admitted that though the bag was brought to him, he never saw or smelled any cannabis or anything like cannabis inside the said bag. As his wife refused to accept the said bag, they had hidden it in a shrub area and later removed it.

The relevant part of the evidence is reproduced below;

“හරස් ප්‍රශ්න:

මහ අධිකරණයෙන් ඇප ලැබුණු පසු, දික්වැල්ල පොලීසියට වාර්තා කිරීම සඳහා ඇප කොන්දේසි ලබාදුන්නා. මම පියසිරි සාපන් මැතිතුමාගෙන් ගෙනදුන්නා පාර්සලය ලිහා බැලුවේ නැහැ. ඒ පාර්සලය ඇතුළේ රෙදි ගංජා තිබේ කියලා මම දැක්කේ නැහැ. එදින රැ 12ට විතර උඩවලවේ ස්ථානාධිපතිතුමා මගින් ගෙදරදී ප්‍රකාශයක් සටහන් කළා. මට එදින කිසිම අවස්ථාවක පොලීසියට ගියේ නැහැ. පසුදා පොලීස් ස්ථානාධිපතිතුමා මගේ ආයතනයට අවිලා එකරගෙන ගියා.

මමයි මගේ බබාලා දෙන්නයි, නෝනයි මගේ නිවසේ ඉද්දි වැරන්ඩා එකේ වාඩිවෙලා ඉන්නකොට මේ සිද්ධිය වුණේ. පාර්සල් වල මොනවාද තිබුණේ කියලා මම දැක්කේ නැහැ. සිමෙන්ති කවර් වගේ ඒවාවල තමා ඔතලා තිබුණේ. පැය හාගයක් පමණ තමා තිබුණේ, මගේ වැට මායිමේ.”<sup>2</sup>

The wife of the said Jayalath had also given similar evidence in the same line, and she had also not seen what was inside the bag. She also had admitted that she resisted to have the bag inside their house.

The relevant part of the evidence is reproduced below;

“හරස් ප්‍රශ්න:

මට වූදින පියසිරි සාපන් මහත්තයා අපේ ගමේ පදිංචිකරුවන් නිසා, අසල්වැසියන් වගේ හඳුනනවා, මට පියසිරි සාපන් මහත්තයා, මගේ පුරුෂයාට යහළුවා වගේ ඇවිදින්න ඉන්නවා, මස් කිලෝ දෙකක් හොයලා දෙන්න කියලා ඇසුණා, ගංජා වගයක් කියලා ඇසුණේ නැහැ ”

Thereafter, another police officer named Gamini was called to give evidence, and it was his evidence that on 20.05.2010, on the orders of the OIC, he also accompanied the OIC to the said house of the witness Jayalath, where Sargeant Piyasiri was alleged to have hidden the nine kilograms and six hundred grams (9 kg 600g) of cannabis. However, he only admitted that he had

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<sup>2</sup> Page 12-13 of P10.

recorded the statements of the said Jayalath and his wife, and in addition to that, he had never arrested anybody or saw any cannabis or found any evidence with regard to the allegations against the Petitioners.

The relevant part of the evidence is reproduced below;

“මේ චෝදනා පත්‍රයේ වූදින නිලධාරීන් ගංජා ග්‍රෑම් 400ක් වූදිනයිත් සමඟ ඉදිරිපත් කර තිබුණා. තිබුණ නිසා මා එය ගංජා ප්‍රමාණයේ ග්‍රෑම් 100ක් ද කියලා මම විශ්වාස කළා. සාක්ෂිකරුවන්ගේ ප්‍රකාශය කියවා කිලෝ 10ක් ගෙනාවා කියලා සාක්ෂිකරුවන්ගේ ප්‍රකාශයේ තියෙනවා. ඒ සාක්ෂිකරුවෝ නම් මේ වූදින විත්තිකාරයන් ඉදිරිපත්, මට විශ්වාසයි ඒ විත්තිකාරයා කිව්වේ ඇත්ත කියලා. මට විශ්වාසයි වූදිනයන් ඉදිරිපත් කර ගංජා ග්‍රෑම් 400ක් කියලා විශ්වාසයි.”

ප්‍රශ්නය - ගංජා සමඟ අත්අඩංගුවට ගෙන මෙම වූදින නිලධාරීන් පොලීසියට ඉදිරිපත් කළ ගංජා ප්‍රමාණය නිවැරදිව ගත්තාද? ගංජා ළඟ තැබීමේ වරදට හොඳින් කුඩුවේ සිටි විත්තිකාරයා දුන් උත්තරය විශ්වාසද?

උත්තරය - මට ඒක කියන්න බැහැ, වූදින නිලධාරීන් පොලීසියට ඉදිරිපත් නොකළ ගංජා ප්‍රමාණයක් කිලෝ 9යි ග්‍රෑම් 600ක් බව මම කොහේවත් කියලා නැහැ. මම දැක්කේ නැති නිසා කියන්න බැහැ. ත්‍රි රෝද රථයේ තිබුණා කියන කොච්චර ලොකුද කියලා මට බලුවත් මතක නැහැ. මෙහි ගංජා තද කළා දන්න පුළුවන්ද කියන්න පුළුවන් බව සිතන්න බැහැ. ත්‍රි වීල් රථය පරීක්ෂා කරලා, සිටි එක පිටුපස තිබූ කුටියේ හොයාගන්න ගංජා වලට ස්ථානාධිපතිතුමා මොකද කළේ කියා මම දන්නේ නැහැ. නඩු බඩු සේ ඇතුළත් කළේ නැහැ”<sup>3</sup>

The next important witness called by the prosecution was the ASP, Mr. Samarasekara, who conducted the initial preliminary inquiry to prepare the charge-sheet to serve on the Petitioners;

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<sup>3</sup> Page 21 of P10.

and on whose orders that they were interdicted. According to him, when he had received the information that the two Petitioners (Sargeant Piyasiri and Sargeant Premarathna) were involved in the scandalous conduct of having arrested two suspects with 10kg of cannabis being transported in a three-wheeler, accepted Rs. 50,000/- (Fifty Thousand Rupees) as part of the bribe of Rs. 100,000/-, released one suspect with the three-wheeler and later taken steps to dispose of the 9kg and 600g separately, without producing the same in courts, while producing only one person (suspect) with 400g of cannabis, and thus, created a way for the said suspect to escape with a minor punishment.

However, in cross examination, he admitted that he had never seen the cannabis nor found any witness to say that the Petitioners had accepted such a bribe or solicited the bribe, except for the information provided by the OIC and the statement of the two witnesses whom the OIC caused to have recorded.

The relevant part of the evidence in the cross examination is reproduced below;

“මගේ පරීක්ෂණයේදී ගංජා කිලෝ 10ක් ගත්තේ කොහෙන්ද, ගත්තේ කාගෙන්ද කියලා අනාවරණය වුණේ නැහැ. අනාවරණය වුණේ නැති කරුණක් සම්බන්ධයෙන් හරියටම ගංජා කිලෝ 10ක් කියලා කියන්න බැහැ. මෙම වූදින නිලධාරීන් කණ්ඩායම ඉදිරිපත් කරලා තියෙන්නේ ගංජා ග්‍රෑම් 400ක් බව අනාවරණය වුණා. ඒ ග්‍රෑම් 400ක් කියලා අනාවරණය කරලා තියෙන්නේ පොතේ සටහන් කරලා, මේ වූදින නිලධාරීන්ම තමයි.

ඒ ගංජා 400 කිරලා බලලා ඉදිරිපත් කරලා තියෙන්නේ මේ වූදින නිලධාරීන් විසින් බවත්, මගේ පරීක්ෂණයේ නිලධාරියෙක් ගංජා කිරලා නැති බවත්, සටහන් වල තිබුණ නිසා මෙම ගංජා ග්‍රෑම් 400ක් කියලා වූදින නිලධාරීන්ගේ ප්‍රකාශ මඟින් හා සටහන් වලින් විශ්වාස කලා. අදටත් මෙම කරුණු විශ්වාස කරනවා, වූදිනයන් විසින් යොදපු සටහන් බොරුවක් නෙවෙයි. ඉන් පස්සේ

අත්අඩංගුවට ගත් ත්‍රීරෝද රථයේ තිබීලා ගංජා ස්වල්පයක් හෝ අත්අඩංගුවට ගත් බවක්  
අනාවරණය වුණේ නැහැ”

### **Weak evidence regarding the seizure of cannabis**

Now, I will consider the arguments in light of the evidence that has been mentioned above. The petitioner in this application has been found guilty by the panel of inquiry based on the above-mentioned evidence adduced before the said panel. Other than the Officer-in-Charge (OIC) of the police station at that time, the two lay witnesses called were Jayalath and his wife, who were called to give evidence, have clearly stated that they did not see any cannabis or even did not smell cannabis inside the bag. In fact, Jayalath and his wife have categorically mentioned during their cross-examination that they did not see what was inside the bag, whether it was clothes or cannabis.

In addition to that, no other witness has been called to give evidence to establish that the petitioner, along with the other petitioner in the connected matter, Sargeant Piyasiri, had accepted Rs. 50,000 and, as part of the bribe of Rs. 100,000/- solicited for the release of the suspect and the three-wheeler. Further, no other witness has been called to give evidence to that effect. Therefore, it is my view that, on such flimsy evidence, the Petitioners in both applications could not have been found guilty.

### **Contradictions on every material point**

Further, the evidence of the Officer-in-Charge (OIC) (Karunasena) is, not only very vague, but also very weak. In fact, although he had received certain information by the time, the two sergeants, Piyasiri and Premaratne, brought the accused Harshapriya along with 400g of cannabis. According to him, he had earlier received information from an informant that the two police officers, having

arrested two suspects along with the three-wheeler and 10 kg of cannabis, had released one accused with 9 kg and 600 grams of cannabis, and had only allowed one person to be charged to plead guilty to a minor offence.

However, it is unbelievable for two reasons; one is that as to why the two officers had not released both accused, Harshapriya and the other suspect, after allegedly accepting part of the bribe and expecting the balance, instead of bringing one before the court and causing him to plead guilty to the charge. In fact, if such a bribe had been solicited and part of it was accepted, they could have easily released both suspects.

In addition to that, the OIC himself admitted in his cross-examination that, having received information about the disposal of the three-wheeler, which should have been produced, along with 9kg and 600 grams of cannabis with the other suspect, the two police officers, the sergeants, caused the production to be weighed and produced, and only the accused Harshapriya before the magistrate. Further, having received this information, the OIC himself signed the B-report submitted to the Magistrate's Court which stated that 400 grams of cannabis was seized from the said accused. Therefore, without investigating further at that stage, the OIC had derelicted his duty and effectively allowed the other suspect to escape. In fact, the OIC should also have been charge-sheeted along with the two officers, if the allegations were in fact true. Therefore, the OIC, Karunasena, on the question of whether 10kg of cannabis was seized, contradicted in his evidence *per se*.

In the course of the evidence, the OIC attempted to maintain the position that the two officers, Sergeants Piyasiri and Premaratne, had taken the 9kg 600 grams of cannabis and hidden it in a shrub near Jayalath's house. In the same breath, he claimed that the two police officers had allowed the other suspect to leave with his three-wheeler along with the said quantity of cannabis. However,

Jayalath and his wife had not seen the said cannabis, though the OIC Karunasena maintained that they had seen the 10kg bag of cannabis. Therefore, with regard to the 10kg bag of cannabis which was alleged to have been seized by the two police officers and taken to Jayalath's house, the OIC contradicted on that point with the evidence given by Jayalath and his wife *inter se*.

However, there is another contradiction on this point, as neither the OIC nor the ASP are certain whether the two officers actually allowed the other suspect to leave with the 9 kg 600 grams of cannabis after accepting part of the bribe, or whether the officers had taken the cannabis and disposed of it in some other manner. Therefore, on this point, the two police officers contradict the evidence of the lay witnesses *inter-se*.

Additionally, the ASP, Mr. Samarasekara, stated in his evidence that it was not revealed whether the Petitioner had seized the said 10kg of cannabis or not. Therefore, on that point, the two police officers contradicted *inter-se*.

Further, other than the two lay witnesses, no other person, including Harshapriya who had been arrested by the two police officers and produced before the court, was called to give evidence. Although the OIC stated in his evidence in chief that, based on Harshapriya's statement, he subsequently found the three-wheeler in which the other suspect was transporting the cannabis, he did not send the three-wheeler to the government analysts to verify whether any traces or smell of cannabis remained there. There again the OIC has derelicted his duty; therefore, he should have been charge-sheeted.

In addition to that, in fact, the OIC who initially inquired into the matter, had lost his notebook and appeared before the inquiry panel without a new one, and no new notebook was obtained or

produced. Therefore, these defects and weaknesses in the prosecution's case could not be remedied to establish or prove the Petitioners' guilt.

Therefore, in view of the said evidence, it is my view that no reasonable person could believe that the two officers were involved in such a scandalous act, or that they produced a false report to the police, or disposed of production or evidence that should have been submitted to the court along with the suspects. Further, it should also be noted that no other suspect was arrested or apprehended by the OIC, or on the directions of the ASP, during their investigation. Thus, this is one of the defects in the prosecution's case.

In fact, on the basis of this flimsy evidence, the ASP, Mr. Samarasekara, had recommended to charge sheet the two Petitioners; consequently, they were charge sheeted after appointing a panel. Therefore, based on this flimsy evidence, he should not have recommended such a course of action.

However, despite all these weaknesses, the two suspects were found guilty by the inquiry panel by **P12**. In addition, the same conviction was upheld by the Police Commission, PSC by **P14**, and the AAT by **P16**. Therefore, the conclusion arrived at by the Panel of Inquiry is irrational and illegal based on the evidence adduced. Therefore, the rejection of the appeals by the PSC, including the AAT Appeal is also considered illegal, irrational, and against the evidence to the standards as enunciated in the case of *GCHQ case*<sup>4</sup> by Lord Diplock.

### **Failure of AAT to consider evidence**

On a perusal of the order of the AAT, the evidence that I have analysed above has not been analysed at all. The Honourable Members thereof have merely relied on the evidence in chief of

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<sup>4</sup>*Council of Civil Service Unions & Others v. Minister for the Civil Service (GCHQ case)* [1985] 1 A.C 374.

the OIC, (Karunasena), of the Udawalawa Police Station at that time. In addition to that, there are certain defects in the said order with regard to the alleged solicited amount of the bribe; the Honourable Members have referred to it as Rs. 10,000/-.

Further, the mere reproduction of evidence in chief, without any analysis, particularly that of an investigating officer who is also the Officer-in-Charge, cannot be taken as proper consideration of evidence. In fact, although the civil rights of parties are determined in inquiries of this nature, the effect of such decisions may sometimes be of a criminal nature. Thus, the imposition and piling of punishment upon punishment would also amount to degrading and inhuman treatment<sup>5</sup>.

Such inhuman treatment has been meted out not only against the Petitioners, but also against their family members who have lost their livelihood, as asserted by the Petitioners in their Petitions and not denied by the Respondents.

As such, it is my view that the impugned order of the AAT by the document marked as **P16**, has not met the required standards; accordingly, it is not tenable in law and is liable to be set aside.

Accordingly, it is my view that their conviction or finding of guilt, based on the evidence referred to above, is unsustainable. Therefore, I am compelled to issue the writs sought. In addition, I must note that these two police officers have suffered greatly since 2010. They were interdicted from the Police Department, denied their jobs, and their promotions were withheld. In my view, they should be substantially compensated.

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<sup>5</sup> Supreme Court Determination on the Essential Public Services Bill 1978-1983, vol. I, 63 (SC Application No. 58/79).

In this Application, the Petitioner is Premaratne. However, Premaratne's name is not mentioned by any of the lay witnesses, who only identified Piyasiri. Even at the inquiry, though they were present, none of these witnesses, including Jayalath or his wife, was asked or directed to identify the two police officers, except for Piyasiri, who happened to be a neighbour living in their village. Therefore, it is my view that, if at all, only Piyasiri was identified by name, and the other person, Premaratne, who is the Petitioner to this Application was not identified at all. This constitutes an additional ground in favour of the Petitioner to this Application.

In this case, both in the oral submissions and written submissions, an argument was advanced on the question of the validity of the charge sheet that was served on the Petitioners before the panel; however, for the reasons adumbrated above, it is my view that I do not have to go into such preliminary matter in this case because evidence that I discussed is totally against any conviction.

### **Conclusion**

Based on the reasons adumbrated above, it is my view that the Petitioner in this Application, as well as the Petitioner in the connected Writ Application bearing No. 423/2024, are entitled to a *Writs of Certiorari* quashing the decisions contained in documents **P12**, **P14**, and **P16**.

Further, since they have been deprived of their promotions and salary increments from the time they were interdicted, they are entitled to the relief as prayed for in prayers (b), (c), (d), and (e) of the Petition, and further order Rs. 21,000/- (Twenty-One Thousand Rupees) be paid as cost of litigation in each case separately.

**JUDGE OF THE COURT OF APPEAL**