

**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.*

Don Duminda Roshan Mayadunna,
No. 207/24,2/1, Dharmapala Mawatha,
Colombo 07.

At present temporary residing at:
3 Bilios Road,
Singapore 219924

CA (Writ) App. No. 87/2024

PETITIONER

Vs.

1. L.R. Dushmantha,
Chief Inspector of Police,
Officer-in-charge,
Police Station, Kollupitiya.
2. Yasas Keerthisinghe,
Assistant Superintendent of Police,
Colombo South.
3. Neranjan Abeywardena,
Senior Superintendent of Police,
Colombo South, Olcott Mawatha,

- Colombo 11.
4. Deshabandu Tennakoone,
Acting Inspector General of Police,
Police Headquarters, Colombo 01.
 5. Hon. Thilina Gamage,
Magistrate, Magistrate's Court of Fort.
 6. Victor Nerious Shavantha Johnpulle,
No. 120/1, Old Negombo Road,
Wattala.
 7. Hon. Attorney General,
Attorney General's Department,
Hulfsdorp,
Colombo 12.

RESPONDENTS

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

Counsel:

Ronald C. Perera, P.C. with Sanjeewa Anthony and Dilini Rajapaksha for the Petitioner.

Neville Abeyratne, PC with Kaushalya Abeyratne Dias instructed by Imasha Kavindi for the 6th Respondent.

Anoopa De Silva, DSG for the 1st to 5th and 7th Respondents.

Argued on: 17.02.2026

Delivered on: 02.06.2026

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

Judgement

Introduction

The Petitioner asserts that he entered into a sales agreement to purchase a property described in the said agreement marked as **P1** and; thereafter, he was placed in possession by the vendor. He further argued that in the meantime, the 6th Respondent instituted an application under Section 66 of the Primary Courts' Procedure Act, No. 44 of 1979 (hereinafter referred to as the "Primary Courts' Procedure Act") in the Fort Magistrate's Court on the basis that he had been dispossessed of the property concerned, and the learned Magistrate thereupon issued an interim order placing the 6th Respondent in possession of the property in suit.

Thereafter, the Petitioner alleges that the Magistrate initiated criminal investigations, and the 4th Respondent filed a B report against the Petitioner, implicating him and his agent, who was in possession of the property in suit on behalf of the Petitioner as caretaker, in terms of the Penal Code. Thereafter, the Magistrate issued notice on the Petitioner, and upon the Petitioner's appearance, a travel ban was imposed on him. The Petitioner seeks to quash the said three orders, namely; the order placing the 6th Respondent in possession, the Magistrate's proceedings initiated upon the B report filed by the police, and the order imposing the travel ban, which are respectively marked as **P2**, **P3**, and **P4**. The Petitioner seeks to quash the same by way of a *Writ of Certiorari*.

After issuance of notice, the Respondents have filed their respective objections; thus, the 1st to 5th and 7th Respondents filed their respective Statement of Objections, while the 6th Respondent filed separate Statement of Objections.

The following arguments were advanced by Counsel at the hearing before me on 17.02.2026; hence, this judgement.

Arguments

The first contention advanced by Mr. Ronald Perera, President's Counsel, is that the Magistrate himself had instigated the initiation of proceedings by directing the Police to arrest and produce the Petitioner and his caretaker, which is an illegal act on the part of the 5th Respondent, the Magistrate. Therefore, the Petitioner contends that the entire proceeding of the case bearing No. B29053/24 is illegal and liable to be quashed.

The second argument advanced is that the affidavits filed by the Respondents in this case are defective, and therefore cannot be taken into consideration.

On the other hand, Mr. Neville Abeyratne, the President's Counsel for the 6th Respondent, argued that the Magistrate had not instigated or initiated any proceedings. He submitted that it was the Police who, upon the first complaint made by his client, the 6th Respondent, filed a B Report on 17.01.2024 after arresting and producing the agent (the caretaker) of the Petitioner before the Magistrate. Therefore, the criminal proceedings were initiated on the complaint of the 6th Respondent and not by any act of the Magistrate.

He further submitted that only thereafter was the Section 66 matter commenced on a private plaint filed by his client, the 6th Respondent. Accordingly, the Petitioner cannot maintain this Application as it is presently formulated.

Further, he argued that whatever orders were made by the Magistrate, there exists an alternative remedy available to the Petitioner which he could have pursued, and therefore, this Court does not have jurisdiction to entertain this Application.

Mrs. Silva informed Court that she would associate herself with the submissions made on behalf of the 6th Respondent and accordingly, filed her Written Submissions.

Thereafter, the counsel were directed to file their Written Submissions.

The Petitioner's position

The Petitioner asserts that he had entered into a sales agreement to purchase property situated at No. 540, Galle Road, Colombo 3, and pursuant to the said agreement, he came into possession of the land, as the vendor to the said sales agreement had placed him in such possession. On his behalf, a caretaker had thereafter been placed in charge of the property; the said sales agreement is marked as **P1**.

The Petitioner asserts that thereafter, the 6th Respondent filed an application in the Magistrate's Court in terms of Section 66 of the Primary Courts' Procedure Act, as a private plaint. On the very first day the application was supported for notice, the Magistrate made an order placing the 6th Respondent in possession and ejecting the Petitioner and his caretaker from the said premises.

Thereafter, the Petitioner alleges that the Magistrate, by his order, directed the police to initiate investigations. Pursuant thereto, the 4th Respondent, having conducted investigations, filed a B report in the Fort Magistrate's Court, where the 5th Respondent was the Magistrate. The Magistrate, having first remanded the Petitioner's caretaker, Naufer, subsequently ordered the Petitioner to be arrested. However, upon appearing before Court, a travel ban was imposed on him. In addition to that, the Petitioner states that he made a bail application before the Magistrate's Court; however, the same was later withdrawn.

Therefore, the Petitioner's position is that the initial order made in case bearing No. 29017/24, namely the order made by the 5th Respondent (the Magistrate) dated 16.01.2024, was erroneous and the same is marked as **P2**, which the Petitioner seeks to have quashed.

In addition to that, the Petitioner seeks to quash the order made by the Magistrate in case bearing No. B29053/24, directing the filing of the B report marked as **P3**, and in addition to that, the order dated 01.02.2024 imposing a travel ban, which is marked as **P4**, is sought to be quashed in this case.

Objections

The 1st to 5th and 7th Respondents, by way of a separate Statement of Objections, have raised a preliminary issue of not citing the necessary parties to this Application, contending that the Officer-in-Charge (hereinafter referred to as 'OIC') of the MO Branch, who investigated into the complaint made by the 6th Respondent and initially filed the B report before the Fort Magistrate's Court in the case bearing No. B29053/24; the said OIC of the MO Branch has not been made a party to this Application. Therefore, it is contended that without citing the said necessary party and having cited only the OIC as the 1st Respondent, the Petitioner cannot maintain this Application.

In addition, it is the position of the said Respondents that the learned Magistrate (5th Respondent) acted in accordance with the law.

It is the position of the 6th Respondent that the case No. 29017/24 was filed by the 6th Respondent as a private complaint under Section 66 of the Primary Courts' Procedure Act. It is his position that the said 6th Respondent made a complaint prior to the 66 matter was instituted by the 6th

Respondent against the Petitioner and his caretaker, and on the basis of the said complaint, the police filed a B report.

Accordingly, it is submitted that all parties acted within the scope of the law, and the Magistrate made orders according to law.

In addition to that, it is the position of the 1st to 7th Respondents that the Petitioner has failed to exhaust alternative remedies, and therefore this Application cannot be maintained. On that basis, dismissal of this Application is sought.

Accordingly, it is contended that the Petitioner cannot maintain this Application. It is further submitted that the Petitioner has not approached this Court with clean hands.

In view of the above arguments and also the matters pleaded by way of the Petition, Objections, Counter-affidavits, and the Written Submissions made, it is my view that the following questions arise for my consideration;

- (i) Can this Court go into the question of title and possession of the Petitioner in the instant Application?
- (ii) Was the 5th Respondent (the Magistrate) instrumental in initiating police investigations or was it the police who initiated the investigation on the complaint of the 6th Respondent?
- (iii) Should this Court go into the proceedings in the Magistrate Court bearing No. B29053/24.

66 Application

Initially, the Petitioner had entered into an agreement in respect of a land situated at No. 540, Galle Road, Colombo 3. However, the said land is claimed to be owned by the 6th Respondent, who has sought to establish title by producing certain decree obtained from a competent court along with his Objections.

However, after the Petitioner entered into the said sales agreement marked as **P1**, the vendor to the said agreement had placed the Petitioner in possession of the said land. The Petitioner asserts this position in his Petition, stating that such possession was pending the final transfer.

Nevertheless, the Petitioner was not the owner at that time. In the meantime, the 6th Respondent, having become aware that the Petitioner's caretaker was in possession, had filed a complaint under Section 66(1)(b) of the Primary Courts' Procedure Act in the Fort Magistrate's Court seeking the intervention of Court. On the support of the very first day, the learned Magistrate made a temporary order placing the 6th Respondent in possession and ejecting the Petitioner and the caretaker who was in possession of the premises on behalf of the Petitioner.

Upon further perusal of the documents, I found that prior to the filing of **P2**, on a complaint made by the 6th Respondent to the police, the OIC of the MO Branch, have investigated the matter, and filed a B Report under the case bearing No. B29053/24. Initially, pursuant to the said B Report, the Petitioner's caretaker, one Naufer, having been produced before Court, was remanded by the Magistrate and notices were issued on the Petitioner.

Thereafter, the Petitioner, having filed a bail application, withdrew the same but later surrendered to Court. Thereafter, the Magistrate ordered bail; however, a travel ban was also imposed by the Magistrate. These proceedings are what the Petitioner seeks to quash in the instant Application.

It is to be noted that the proceedings in the Section 66 matter had already been challenged by the Petitioner before the High Court, and there is an order made by the learned High Court Judge. The Petitioner, by way of a motion after the conclusion of arguments and pending the order of this Court, had filed the said order of the learned High Court Judge.

The learned High Court Judge had set aside the Magistrate's order and directed the Magistrate to inquire into the matter further and make an appropriate order. Therefore, this Court cannot go into that application now because the Petitioner has already resorted to alternative remedies and obtained relief. Therefore, relief sought in prayer (b) of the Petition is superfluous.

Respondents acted within the law

In addition to that, the Petitioner seeks to quash the entire proceedings of the Magistrate's Court in case bearing No. B29053/24, which has commenced upon the filing of the B Report by the OIC of the Kollupitiya Police (the 4th Respondent).

According to **P2**, it has been filed on 30.01.2024. However, on a perusal of **P3** (the Petitioner's own document), the B report has been filed on 17.01.2024, which is a few days prior to the filing of the 66 Application by the Petitioner. The said B report was filed by the 4th Respondent, and according to it, Naufer, the so-called caretaker of the Petitioner, has also been produced as a suspect. Additionally, the 6th Respondent has complained on 26.12.2023, that the said Naufer has been placed in possession of the property in suit. Therefore, the Petitioner's contention that the 6th

Respondent initiated criminal proceedings against the Petitioner and Naufer after the filing of the 66 Application, is erroneous because the B report has been filed on 17.01.2024 whereas the 66 matter has been filed on the 30.01.2024, and the complaint to the police has been made even prior to 17th January, 2024.

Thus, it is the 4th Respondent who had filed the B Report on the basis of the complaint made by the 6th Respondent, who claims to be the owner of the land. The said Naufer had been placed in possession by the Petitioner as his caretaker, and the said complaint had also been made on the basis of alleged trespass. The Police, having investigated the matter, produced the said Naufer before Court, whereupon he was remanded and thereafter released on bail. In addition, there is an order imposing travel restrictions on the Petitioner, which the Petitioner also seeks to quash.

However, it should be noted that the Petitioner has instituted the above-styled application before this Court without adequately pursuing alternative remedies. The Petitioner could have challenged the travel restriction imposed by the Magistrate by order dated 01.02.2024, which the Petitioner has failed to do. Alternatively, the Petitioner had successfully challenged the Magistrate's order in the Section 66 application. Therefore, it is my view that the Petitioner ought to have resorted to the available alternative remedies, which he has failed to do appropriately.

Therefore, as argued by the Respondents, the Petitioner's Application is a futile exercise, and this Court is not inclined to grant the reliefs sought, as the Petitioner has failed to properly follow alternative remedies.

In addition to that, I must state that the learned Magistrate has acted not on his own accord but upon reliance on the B Report filed by the Police, which was filed after investigations conducted pursuant to the complaint made by the 6th Respondent.

Therefore, the law had been set in motion not by the Magistrate but by the 6th Respondent. If the Petitioner has suffered any damage, he is entitled to seek redress in an appropriate forum following due process. Therefore, it is my view that the Petitioner is not entitled to any relief under this Petition.

In fact, further, I wish to state that the Petitioner has already obtained relief in respect of prayer (b), in which the Petitioner sought to quash the order made by the Magistrate initially placing the 6th Respondent in possession and ejecting the Petitioner. Therefore, this is a futile exercise.

Conclusion

For the reasons adumbrated above, I am compelled to dismiss this Application, without cost.

JUDGE OF THE COURT OF APPEAL