

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*, and *Prohibition* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA/WRT/0435/2026

Gulamhusein Ali Asger Shabbir,
No: 980/4, Wickremasinghe Place,
Ethul Kotte, Kotte.

PETITIONER

Vs.

1. Hon. K. P. S. Harshan,
Former Additional Magistrate of Colombo,
Magistrate's Court No 04,
Chief Magistrate's Court Complex,
Hulftsdorp, Colombo 12.

Presently

District Judge of Embilipitiya,
District Court of Embilipitiya,
Hospital Rd, Embilipitiya.

2. Hon. Nuwan Kaushalya,
Additional Magistrate of Colombo,
Magistrate's Court No 04,
Chief Magistrate's Court Complex,
Hulftsdorp, Colombo 12.

3. S. M. G. A. Polwatta,
Officer-in-Charge,
Homicide Investigation Unit,
Criminal Investigation Department,
Colombo 01.
4. Shani Abeysekara,
Director,
Criminal Investigation Department,
Colombo 01.
5. Asanka Karawita,
Senior Deputy Inspector General of Police,
Criminal Investigation Department,
Colombo 01.
6. Priyantha Weerasooriya,
Inspector General of Police,
Police Headquarters,
Colombo 02.
7. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before : B. Sasi Mahendran, J.
Adithya Patabendige, J.

Counsel : Dappula De Livera, PC with D. Abeysekara instructed by
S. Edirisinghe for the Petitioner.
Shanil Kularatne, ASG, PC for the State.

Supported on : 07.08.2026

Decided on : 24.08.2026

Adithya Patabendige, J.

The Petitioner is the youngest son of the deceased, Mr. Shabbir Abbas Gulamhusein (hereinafter referred to as the deceased). The deceased was admitted to Lanka Hospitals following a collapse at his business premises around 11.30 am on 09th June 2017, and his death was declared around 12.20 pm on the same date.

After an inquest, the inquirer into sudden death pronounced the apparent cause of death as myocardial infarction in a diagnosed patient with hypertension on 09th June 2017.

According to the case record bearing No. B3200/04/2018 of the Chief Magistrate's Court, filed with the Petition of this Application, the eldest son of the deceased had sent a written complaint to the Senior Deputy Inspector General of the Criminal Investigation Department (hereinafter referred to as the CID) on 16th August 2018, alleging that the death of the deceased father was suspicious. Thereafter, the CID informed the Magistrate and requested an order to exhume the deceased's body. Upon allowing the application, the exhumation was carried out on 10th January 2019 under the supervision of the learned Additional Magistrate, with the assistance of Dr Ajith Thennakoon and two other Consultant Judicial Medical Officers.

Meanwhile, the Petitioner was arrested by the CID and produced before the learned Magistrate as a suspect in the death of the deceased. When the above case was called before the learned Magistrate on 07th January 2022, the learned Additional Magistrate *inter alia* ordered the CID to lead evidence of the inquest. The learned President's Counsel appearing for the Petitioner made a submission before the succeeding Additional Magistrate on 19th July 2022, challenging the Order of the previous Additional Magistrate dated 07th January 2022, and it was rejected.

When the said case was called for recording evidence of inquest before the learned Additional Magistrate on 20th January 2023, the learned President's Counsel for the suspect recorded his

objection to record evidence, and the learned Magistrate rejected the objection on 17th March 2023.

The said Order was thereafter challenged by way of revision before the Provincial High Court, which dismissed the revision application by Order dated 11th May 2023. The Petitioner thereafter invoked the jurisdiction of the Supreme Court by way of an application for special leave to appeal. The said application was subsequently withdrawn on 19th July 2023, thereby leaving the Order of the Provincial High Court undisturbed.

Thereafter, the revisionary jurisdiction of the Court of Appeal was invoked in respect of the same underlying proceedings. The Court dismissed that revision application on 03rd June 2026. Within seven days of the dismissal of the said revision application, the Petitioner instituted the present application on 10th June 2026, invoking the writ jurisdiction of this Court and seeking, *inter alia*, a writ of *certiorari* to quash the impugned Order marked **X1** and a writ of *prohibition* restraining the continuation of the inquest proceedings.

Thus, the impugned Order cannot properly be considered in isolation. It falls to be examined against the background of the original inquest, the subsequent complaint giving rise to suspicion concerning the death, the ensuing criminal investigation, the exhumation and forensic examination of the body, the subsequent discovery of injuries, the repeated objections raised on behalf of the suspect against the recording of further evidence, and the successive proceedings instituted before the Provincial High Court, the Supreme Court and the Court of Appeal.

The nature and purpose of an inquest

The principal contention advanced on behalf of the Petitioner is that, an inquest having already been concluded by the Inquirer into Sudden Deaths and the apparent cause of death having been recorded as myocardial infarction, the learned Additional Magistrate had no jurisdiction to embark upon a further inquest or to continue recording evidence relating to the cause of death.

In considering this submission, it is necessary at the outset to identify the nature and scope of an inquest contemplated by Chapter XXX of the Code of Criminal Procedure Act.

In *G. A. D. Seneviratne v. Attorney-General and Others*, 71 NLR 439, *Tennekoon J.*, having examined the corresponding provisions of the former Criminal Procedure Code, explained

that the principal purpose of an inquest is to secure promptly the material relating to the cause of a death. The provisions are intended to ensure that wounds, fractures, bruises, other marks of injury and circumstances relevant to the cause of death are identified and preserved at the earliest possible opportunity.

Justice Tennakoon made an important distinction that is directly relevant to the present application. The function of a Magistrate or an Inquirer conducting an inquest is not to investigate an alleged crime or offence. The inquiry proceeds upon the basis that the cause of death is yet to be ascertained. The duty of the Magistrate or Inquirer is to inquire into the cause of death, record the relevant evidence and state, as a finding, what in his or her opinion was the cause of death. Recording that finding concludes the inquest. If the material thereafter gives rise to a reasonable suspicion that a crime has been committed, criminal proceedings may be initiated according to law. That subsequent criminal process does not alter the nature and purpose of the inquest.

The inquest and the criminal investigation are distinct processes

It is therefore necessary to maintain a clear distinction between an inquiry into the cause of death and a criminal investigation into whether an offence has been committed and, if so, by whom.

The former is the statutory responsibility of the Magistrate or Inquirer conducting the inquest. The latter is principally the responsibility of the investigating authorities, acting under the provisions governing criminal investigations. Although information obtained during one process may become relevant to the other, the two functions should not be mixed up.

This distinction appears not to have been sufficiently addressed in the proceedings before the Magistrate's Court.

Following the complaint made by the eldest son of the deceased, the CID was entitled to investigate the allegation that the death was suspicious. The existence of the earlier finding of myocardial infarction did not prevent the police from investigating subsequently disclosed material suggesting the possible commission of an offence. Equally, the learned Magistrate was empowered, where the statutory requirements were satisfied, to make such orders as were necessary for the lawful investigation, including the exhumation of the body.

However, once the body was exhumed on 10th January 2019 under judicial supervision and examined by the Consultant Judicial Medical Officers, the Magistrate conducting the inquest was required to assume control of the inquest proceedings, record the medical evidence and such other evidence as the Magistrate independently considered necessary for determining the cause of death, and thereafter bring the inquest to its lawful conclusion within a reasonable period.

The inability of the medical experts, owing to decomposition of the remains, to determine the precise cause of death did not justify leaving the inquest open indefinitely. If the evidence ultimately available was insufficient to identify a definite cause of death, the Magistrate was nevertheless required to record such finding as the evidence permitted and conclude the inquest according to law.

Control of the inquest rests with the Magistrate

A further principle appearing clearly from the judgment of *Seneviratne v AG* is that an inquest must remain under the control of the Magistrate or Inquirer conducting it.

Tennekoon J. was critical of the manner in which the Magistrate in that case had permitted the selection of witnesses and the course of the inquiry to be effectively determined, initially by the police and subsequently by counsel interested in establishing a particular version concerning the death. The judgment emphasised the responsibility of the judicial officer conducting the inquiry to pursue relevant lines of inquiry independently and to ensure that the cause of death is found.

The judgment further cautions against permitting lawyers representing particular interests to direct the course of an inquest. Counsel may declare an interest and may suggest questions or lines of inquiry, but whether those matters should be pursued remains within the discretion and responsibility of the Magistrate or Inquirer conducting the inquiry.

For ease of reference, the following paragraphs by *Tennakoon J.* should be highlighted.

“It is fairly obvious that when section 363 (1) enacted in effect that where “ any person dies while in the custody of the police or in a mental or leprosy hospital or prison ” the inquest shall be held by “the Magistrate or an inquirer authorised by him ” the legislature was taking special care that the inquest should be carried out by a person of responsibility and experience because the opportunities for concealing the real cause of death, if the

persons in charge of and employed at these institutions were so disposed, are greater than in the ordinary case. It is therefore somewhat regrettable that when the Magistrate first held his inquest in the present case, he did little or nothing towards making this inquiry as searching and thorough as possible; instead, he seems to have surrendered his functions to 'Crown Counsel assisted by the Police'.

The selection of persons to be questioned was thus left entirely to the police; the Magistrate himself seems to have sensed the dangers of this procedure when he, at one stage, said he would like to examine at least one non-police witness. But even here he left the selection of that person to the police. In the result the finding of suicide made by the Magistrate leaves the impression that he remained a passive instrument in the hands of the police anxiously-though perhaps honestly-wanting such a finding. When in August 1967 the inquiry was re-opened the Magistrate again repeated his performance; he adopted a procedure which resulted in his reaching a finding devoutly to be wished for by those agitating for a re-opening of the inquiry. At this stage the Magistrate left the selection of persons to be examined in the hands of the advocate watching the interests of L. V. Stephen and briefed to establish the allegation made by certain coup suspects that Dodampe Mudalali was assaulted by the police in the course of an interrogation and thrown out of the 4th floor window to his death. There was no attempt, particularly in the face of his own previous finding of suicide, to probe the evidence of the witnesses who were paraded before him; the Magistrate did not even think it fit in the face of this new material to recall and re-examine the police witnesses who had made statements at the earlier stages of the inquest. The whole inquiry was at this stage channelled for him by the Advocate who called the witnesses and was intent on establishing a case against the police. Here again his finding was a foregone conclusion.

The appearance of lawyers peddling a case for some client and directing the course of the inquiry is something which no inquirer should permit."

In the present case, therefore, the Order dated 07th January 2022 directing the CID to "lead evidence of the inquest" does not, in our view, accurately reflect the respective statutory functions of the Magistrate and the investigating agency. It was for the learned Additional Magistrate, rather than the CID, to determine what witnesses and what evidence were necessary for the limited purpose of ascertaining the cause of death.

The CID remained free to conduct its criminal investigation, record statements, investigate telephone communications, and pursue any other lawful line of inquiry. Evidence gathered for that criminal investigation could undoubtedly be placed before the Magistrate where relevant. However, the inquest itself should not have been permitted to become an indefinite extension of, or to be controlled by, the criminal investigation.

Effect of the judgment of *Seneviratne v AG* upon the relief sought

The observations of *Seneviratne v AG*, however, do not necessarily assist the Petitioner in obtaining the prerogative relief sought in the present application. On the contrary, it presents a substantial difficulty to the very foundation upon which the Petitioner seeks *writs of certiorari* and *prohibition*.

In *Seneviratne v AG*, the Supreme Court was invited, both in revision and by way of *certiorari*, to quash a finding made by a Magistrate at the conclusion of an inquest. *Tennekoon J.* held unequivocally that neither *certiorari* nor revision lies to quash a finding made by a Magistrate or an Inquirer at the conclusion of an inquest of death. The Supreme Court held that the functions performed by a Magistrate or Inquirer in conducting an inquest are of a non-judicial character.

The reasoning underlying that conclusion is of particular importance. A Magistrate or Inquirer conducting an inquest is not called upon to adjudicate upon competing rights or liabilities of parties. The inquiry was described by *Tennekoon J.* as a “voyage of discovery”. There are, in the strict sense, no parties before the Inquirer asserting rights which require definitive adjudication. The object of the proceedings is the ascertainment of the cause of death.

It further held that the true character of the statutory function, rather than the office held by the person exercising it, determines whether *certiorari* is available. The fact that a Magistrate conducts the inquiry does not convert an essentially investigative function into a judicial one. Accordingly, the Supreme Court concluded that the *writs of certiorari* and *prohibition* do not issue in respect of proceedings of a Magistrate or Inquirer conducting an inquest into a death.

Significantly, the Supreme Court reached that conclusion notwithstanding its serious criticism of the manner in which the inquest before it had been conducted. *Tennekoon J.* considered both findings in that case unreliable and unconvincing. Nevertheless, His Lordship expressly

stated that the law did not permit the Court to quash either finding, and both the revision application and the application for *certiorari* were dismissed.

That distinction is directly applicable to the present case. This Court may identify irregularities in the manner in which the inquest has been allowed to proceed and may consider it necessary, in the exercise of its supervisory jurisdiction over the administration of justice, to ensure that the proceedings are brought to an expeditious and lawful conclusion. It does not decide, however, that the Petitioner thereby becomes entitled to the writs sought in the Petition.

The position of the suspect at an inquest

Another aspect of the judgment in *Seneviratne v AG* is particularly important in the circumstances of this case.

An inquest into a death is not a trial of the suspect. Nor is it an adversarial proceeding between the investigating agency and the person suspected of having committed an offence. *Tennekoon J.* observed that there are no parties before the Magistrate or Inquirer claiming rights or liberties for adjudication, and that a person examined at an inquest cannot be regarded as a party propounding a question which the Inquirer is required definitively to determine.

It follows that a person identified as a suspect in a parallel criminal investigation cannot be permitted to transform the inquest into an adversarial proceeding and thereby assume a right to interrupt the recording of evidence whenever evidence which may be adverse to his interests is sought to be placed before the Magistrate.

This does not mean that a person whose interests may be affected is to be denied the protection afforded by law. Counsel may appear, declare the interest represented, and suggest questions or relevant lines of inquiry. However, as *Seneviratne v AG* makes clear, the Magistrate conducting the inquest decides whether to pursue such questions or lines of inquiry.

The Magistrate must therefore remain in control of the inquiry. Neither the CID nor the suspect, through counsel, should be permitted to dictate its course.

Repeated attempts to prevent the recording of evidence

The procedural history of the present matter demonstrates why the above distinction is important.

When the learned Additional Magistrate made the Order dated 07th January 2022 permitting evidence to be led, an application was made on behalf of the Petitioner challenging that course. The matter was thereafter raised before the succeeding Additional Magistrate, who rejected the application by Order dated 19th July 2022.

When the matter subsequently came up on 20th January 2023 for recording evidence, learned President's Counsel appearing for the Petitioner once again objected to its recording. The Court considered and rejected that objection by Order dated 17th March 2023.

The Petitioner thereafter invoked the revisionary jurisdiction of the Provincial High Court. The Provincial High Court dismissed the revision application on 11th May 2023. The Petitioner then sought special leave to appeal to the Supreme Court but withdrew that application on 19th July 2023, leaving the Provincial High Court's Order undisturbed.

Thereafter, the revisionary jurisdiction of the Court of Appeal was invoked in relation to the same underlying proceedings. The Court dismissed that application on 03rd June 2026.

The present writ application was filed on 10th June 2026, merely seven days thereafter.

This is therefore not a case where a litigant, having been confronted for the first time with an allegedly unlawful Order, has promptly invoked the extraordinary jurisdiction of this Court. The objection to the recording of evidence and to the continuation of the inquest has been repeatedly raised and has generated a succession of proceedings extending over several years.

Abuse of the process of Court

The extraordinary writ jurisdiction of this Court is discretionary. It cannot be converted into an additional appellate or revisionary jurisdiction enabling a litigant, dissatisfied with the result obtained in one proceeding, to present substantially the same grievance repeatedly under different procedural forms.

A distinction must undoubtedly be drawn between the legitimate pursuit of remedies available in law and the repeated invocation of judicial processes for the purpose of preventing proceedings before a trial court from reaching their lawful conclusion.

Having regard to the entirety of the procedural history before us, we are of the view that the present application has crossed that boundary.

The Petitioner challenged the relevant course adopted by the Magistrates' Court before the Magistrates' Court itself. He thereafter invoked the revisionary jurisdiction of the Provincial High Court. Upon dismissal of that application, he invoked the jurisdiction of the Supreme Court by seeking special leave to appeal and subsequently withdrew that application. He thereafter invoked the revisionary jurisdiction of the Court of Appeal. Upon the dismissal of that application, he instituted the present writ application within seven days seeking, in substance, once again to prevent the recording of evidence and continuation of the inquest.

The administration of justice cannot permit litigation to proceed in an endless cycle whereby substantially the same grievance is repeatedly presented before different courts or under different heads of jurisdiction. Interlocutory litigation must be final so that the substantive proceedings can eventually be concluded.

We consider the repeated invocation of judicial proceedings in the circumstances disclosed by the record to constitute an abuse of the process of Court and a compelling reason for refusing the discretionary relief sought by the Petitioner.

The broader supervisory responsibility of this Court to prevent misuse of its process is sufficient to decline relief where the extraordinary jurisdiction of this Court is invoked as yet another means of preventing the continuation of proceedings which have already been the subject of repeated judicial challenges.

Whether notice should issue

At the stage of considering notice, the Petitioner must disclose a sufficient basis warranting the exercise of the extraordinary and discretionary jurisdiction of this Court.

For the reasons set out above, we are not satisfied that such a basis has been established.

The authority principally relevant to the nature of the proceedings, *Seneviratne v. AG*, does not support the proposition that *certiorari* or *prohibition* should issue against the conduct or finding of an inquest. On the contrary, the Supreme Court expressly held that the functions of a Magistrate or Inquirer conducting an inquest are non-judicial in character and that *certiorari* and *prohibition* are not available in respect of such proceedings.

Furthermore, the Petitioner has repeatedly challenged the continuation of the proceedings through the avenues described above. The discretionary jurisdiction of this Court should not now be exercised to provide a further opportunity to pursue substantially the same objective.

Accordingly, we decline to issue notice on the Respondents and dismiss the application *in limine*.

The inquest should nevertheless be concluded without further delay.

The dismissal of this application cannot, however, be regarded as an endorsement of the manner in which the inquest has been permitted to remain pending for a prolonged period.

The death occurred on 09th June 2017. The body was exhumed on 10th January 2019. The very purpose of an inquest, as explained in the above judgment, is the prompt preservation and consideration of material relating to the cause of death.

More than seven years have elapsed since the exhumation. An inquest cannot be permitted to remain open indefinitely merely because the criminal investigation continues.

The learned Magistrate conducting the inquest must now independently determine what further evidence, if any, is genuinely necessary for the limited statutory purpose of ascertaining the cause of death. Such evidence should be recorded without unnecessary interruption, and the inquiry brought to its conclusion.

The learned Magistrate shall not merely record, as part of the inquest, every witness whom the CID may wish to produce for the purposes of its criminal investigation. The Magistrate must independently determine whether the evidence of a proposed witness is relevant and necessary to the determination of the cause of death. The selection and examination of witnesses for the purposes of the inquest must remain under the control of the Magistrate.

Directions concerning further applications

We are also mindful that repeated applications during these proceedings have substantially contributed to the delay in bringing the inquest to a conclusion.

An inquest must not be converted into an adversarial proceeding in which the suspect or any other interested person is permitted repeatedly to challenge the recording of evidence and thereby prevent the Magistrate from performing the statutory duty entrusted to the Court.

Accordingly, the learned Magistrate is directed not to entertain any further application which seeks, directly or indirectly, to prevent the recording of evidence necessary for the conclusion of the inquest, or to reopen any question already determined concerning the continuation of the inquest.

The Petitioner, the suspect, or any other person appearing or represented in the proceedings shall similarly not be permitted to make repetitive applications having the object or effect of obstructing, postponing or preventing the recording of such evidence.

Time within which the inquest is to be concluded

Having regard to the exceptional delay which has already occurred, we consider it necessary to impose a definite time frame.

The learned Chief Magistrate is accordingly directed to give priority to this matter and to record, without unnecessary interruption, such further evidence as the Magistrate independently considers necessary for the purpose of determining the cause of death.

The inquest shall thereafter be concluded, and the finding required by law shall be recorded within three weeks from the date of receipt of this Order.

In reaching such finding, the learned Magistrate must be guided exclusively by the evidence. If the medical and other evidence permits an apparent cause of death to be identified, the Magistrate shall record the appropriate finding. If, owing to decomposition of the remains or insufficiency of the available evidence, the precise cause of death cannot reasonably be determined, the Magistrate shall record such finding and terminate the inquest proceedings. Upon recording the finding and concluding the inquest, the learned Chief Magistrate shall not entertain any application seeking to reopen the inquest or to record further evidence as part of the concluded inquest. This shall be without prejudice to the continuation of any criminal investigation according to law.

Criminal investigation to remain unaffected

We finally emphasise that the conclusion of the inquest does not end the criminal investigation.

Accordingly, nothing contained in this Order shall be construed as preventing or restricting the CID from continuing its investigation into the circumstances surrounding the death of the deceased. The CID shall remain at liberty to record statements, investigate telephone

communications, obtain expert or other evidence and pursue any other lawful line of investigation which the material before it may warrant.

Such investigation must, however, proceed as a criminal investigation according to law and independently of the conclusion of the inquest. The inquest need not, and shall not, be kept open merely to facilitate the continuing criminal investigation.

The learned Chief Magistrate is directed to proceed in accordance with the directions contained in this Order.

Communication and Compliance

The Registrar of this Court is directed to communicate this Order forthwith to the learned Chief Magistrate today itself for immediate implementation.

The learned Chief Magistrate or any other Additional Magistrate nominated by the Chief Magistrate shall proceed in accordance with the directions contained in this Order and shall conclude the inquest and record the finding required by law **within three weeks from the date of receipt of this Order**, unless the proceedings are stayed by the Supreme Court.

The learned Chief Magistrate shall report compliance with the above directions to this Court on or before 24th September 2026.

The Registrar is directed to place the compliance report before this Court upon receipt.

For the foregoing reasons, notice is refused, and the application is dismissed *in limine*.

I make no Order as to costs of this Application.

JUDGE OF THE COURT OF APPEAL

B. Sasi Mahendran, J

I agree.

JUDGE OF THE COURT OF APPEAL