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 Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No: 517/2025

D.M.S.C.K. Piyadasa
No. 605/04, Daranagama,
Delgoda.

PETITIONER

Vs.

1. P.S.K. de Silva
   Chief Inspector of Police
   Peliyagoda Special Crimes
   Investigation Unit,
   Kandy-Colombo Road,
   Peliyagoda.

2. A.J.Y.B. Krishantha
   Senior Superintendent of Police
   Kelaniya Police Division
   Kelaniya

3. National Police Commission of Sri Lanka
   Block No. 9, BMICH Premises,
   Bauddhaloka Mawatha,
   Colombo 07.

4. E.W.M. Lalith Ekanayake
   Chairman

National Police Commission of Sri Lanka
Block No. 9, BMICH Premises,
Bauddhaloka Mawatha,
Colombo 07.

5. R. Ekanayake
Member
National Police Commission of Sri Lanka
Block No. 9, BMICH Premises,
Bauddhaloka Mawatha,
Colombo 07.

6. K. Karunaharan
Member
National Police Commission of Sri Lanka
Block No. 9, BMICH Premises,
Bauddhaloka Mawatha,
Colombo 07.

7. D. Jayasuriya
Member
National Police Commission of Sri Lanka
Block No. 9, BMICH Premises,
Bauddhaloka Mawatha,
Colombo 07.

8. A.A.M. Illiyas
Member
National Police Commission of Sri Lanka
Block No. 9, BMICH Premises,
Bauddhaloka Mawatha,
Colombo 07.

9. J. Jayasinghe
   Member
   National Police Commission of Sri Lanka
   Block No. 9, BMICH Premises,
   Bauddhaloka Mawatha,
   Colombo 07.

10. T. Fernando
    Member
    National Police Commission of Sri Lanka
    Block No. 9, BMICH Premises,
    Bauddhaloka Mawatha,
    Colombo 07.

11. Priyantha Weerasooriya
    Inspector General of Police
    (Acting)
    Police Headquarters,
    Colombo 01.

RESPONDENTS

Before	:	**Hon. Rohantha Abeysuriya PC, J.(P/CA)**
	:	**Hon. K. Priyantha Fernando, J. (CA)**
Counsel	:	Laknath Senarathne, AAL for the Petitioner.
		Shanil Kularatne ASG for the Respondent.
Written Submissions on :		27.03.2026 for the Respondents.
		27.05.2026 for the Petitioner.

Supported on : 10.02.2026

Decided on : 07.07.2026

K. Priyantha Fernando, J. (CA)

1. The Petitioner, a retired police officer who joined the department in or about 1992, filed this application seeking intervention of the Court against the imminent risk of arrest, detention, and the deprivation of his pensionary and salary benefits. He has sought *inter alia* mandates in the nature of Writs of:

   (1) *Certiorari* quashing B report bearing No. B-5020/24 (P6) in Mahara magistrate's Court;
   (2) *Mandamus* directing the 4th to 10th Respondents and/or the 11th Respondent to direct the relevant authorities to pay the Petitioner his wages/compensation and arrears in wages and any payments due under the public administration circulars 21/88 and 22/93.

2. The Petitioner sought **three interim orders:** <u>preventing the 2nd respondent</u> (Senior Superintendent of Police-Kelaniya Police Division-Kelaniya) f<u>rom taking steps to arrest or detain the petitioner</u>; **interim order suspending further proceedings in the Magistrate's Court of Mahara** in case No. B 5020/24; and directing the 1st and/or 2nd Respondent to furnish to the Court all investigation reports.

<u>THE POSITION OF THE PETITIONER</u>:

3. The impugned B Report, bearing No. B-5020/24 and filed in the Mahara Magistrate's Court, alleges that the Petitioner forged or tampered with documents to claim benefits under Public Administration Circulars Nos. 21/1988 and 22/1993. The Petitioner has averred that he **sustained injuries in June 1993 during active service in an operational environment, which were connected to a terrorist or mortar attack**, resulting in a substantial loss of serving capacity. It was stated that this was corroborated by a medical board report dated 21.10.2002. However, the Petitioner <u>in July 2023, was informed that his financial</u>

benefits would be halted due to an inquiry into the allegedly falsified documents. Despite pending appeals to the National Police Commission and the Ministry of Public Security, and having appeared before the Special Crimes Investigation Unit at Peliyagoda, the Petitioner apprehends imminent coercive action. Consequently, the Petitioner argued that the central issue is whether the State's coercive actions are just, reasonable, and lawful when founded on untested, disputed, and incomplete material.

4. The Petitioner argued that the State's case, which relies on an alleged discrepancy between earlier documents citing a "fall from a tree" and later documents citing a "terrorist attack," is legally insufficient and artificial. He contended that these descriptions are not mutually exclusive, **as he may have climbed a tree at an observation point and fallen as a direct consequence of a mortar attack**. Furthermore, the Petitioner submitted that the B Report lacks a proper evidentiary foundation. He stated that the State has failed to produce the original documents or establish a proper chain of custody, relying instead on disputed copies; he had no ordinary access to these official administrative files and that any alleged tampering by an unknown third party **requires a full investigation rather than an automatic presumption of his guilt.**

5. Additionally, the Petitioner pointed out that the State has not submitted the disputed documents to the Government Analyst or a handwriting expert for scientific evaluation, nor has it named the original recording police officers or the medical board doctors as material witnesses in the B Report.

6. It was further contended that the State failed to conduct a fair and complete preliminary investigation prior to filing the impugned B Report; His statement was only recorded on the 28.02.2025, well after the B Report had already been filed, rendering the State's actions procedurally improper, arbitrary, and premature; a fair investigation must minimally include tracing original documents, establishing chain of custody, recording statements from material witnesses, obtaining expert forensic evaluations, and affording him a meaningful opportunity to explain any discrepancies.

7. Moreover, the Petitioner emphasized the **extraordinary delay of over three decades since the 1993 incident**. The Petitioner argued that over this extensive period, the possibility of administrative mishandling, misfiling, or alteration by others cannot be excluded. Therefore,

the Petitioner contended that resurrecting these allegations to arrest a retired officer without a completed forensic and witness-based investigation is grossly unreasonable, oppressive, and disproportionate.

8. Finally, the Petitioner argued that the balance of convenience heavily favors preserving the *status quo* through the granting of interim relief. The Petitioner stated that an arrest would cause irreversible harm to his liberty, dignity, reputation, livelihood, and peace of mind, whereas granting interim protection would cause no prejudice to the State, allowing it to continue a lawful and fair investigation under the Court's supervision.

9. The Petitioner contended that the State's invitation to dismiss the matter *in limine* is highly inappropriate, as the application raises **serious triable issues** regarding the sufficiency of the material, the existence of original documents, the opportunity for tampering, the plausibility of an innocent explanation, and the oppressive nature of the decades-long delay. Consequently, the Petitioner sought protection from coercive action and requested the formal production of the relevant investigation material and records.

<u>POSITION OF THE RESPONDENTS:</u>

10. The Respondents stated that the Petitioner seeks a mandate in the nature of a Writ of *Certiorari* to quash the B report (No. B 5020/2024) filed in the Mahara Magistrate's Court, alongside a Writ of *Mandamus* directing the relevant Respondents to pay wages, compensation, and arrears under Public Administration Circulars 21/1988 and 22/1993. It was argued that the Petitioner's request demonstrates a clear intention to unlawfully obtain two different types of benefits under distinct circulars.

11. The Circular 22/1993 (**R5**) is a general provision for public servants claiming compensation for injuries sustained on active duty, whereas Circular 21/1988 (**R13**) exclusively covers injuries resulting directly from terrorist attacks. The Circular R13 contains provisions to provide both compensation and salaries until retirement age for public servants who sustain permanent disabilities from such attacks. Consequently, the Respondents argued that a public servant cannot claim compensation under both circulars, as R13 is strictly reserved for incidents of terrorism.

12. The Petitioner has originally claimed and accepted compensation under the general circular (R5) in February 2005 solely on the premise of an injury caused by falling from a tree. Numerous contemporaneous documents support this initial claim, including the Petitioner's own request for compensation (R1), a senior officer's note (R2), a request for a medical board (R3), a medical board form completed by the Petitioner (R4), a Board of Inquiry report (R6), an application form for compensation (R7), and notes recorded by fellow officers stating he fell while attempting to climb a tree (R14). The Respondents argued that none of these original documents contained any reference to a terrorist attack, and it was upon this factual basis of a fall that the Public Administration Ministry determined (R8) and the Petitioner accepted (R9) the compensation.

13. After serving in the Police Department for over 29 years following the incident, the Petitioner deceitfully altered his claim in January 2022 to state that he sustained injuries due to a terrorist attack. The Petitioner has submitted a letter (R10) requesting premature retirement at the age of 49 and the appointment of a fresh medical board based on this new assertion. The officials, unaware of his prior claim, facilitated this request, allowing the Petitioner to submit a new medical form (R12) wherein he falsely inserted that his injuries were consequent to a terrorist attack. The SSP Roshan Dias of the Kelaniya Division relied on this false history, leading the Petitioner to commit an offense under Section 403 of the Code by persuading a superior officer to recommend his medical board request under a false belief.

14. Furthermore, the Respondents contended that there is clear evidence that the Petitioner conspired with an unknown party to fraudulently alter documents to secure the lucrative benefits outlined in Circular R13. The newly introduced notes (R14A, R15A, R16A, and R17A) inexplicably reference gunshot injuries and a terrorist attack, completely contradicting the original police notes (R14, R15, R16, and R17) which solely reflected a fall from a tree.

15. The Respondents argued that the Petitioner is entirely ineligible to invoke Part B of Circular R13, as that provision is intended to compensate public servants who are forced to give up their jobs due to serious physical injuries from acts of violence. Since the Petitioner successfully worked for an additional 29 years post-incident, his surreptitious attempt to use Part B to receive a salary until the age of 55 upon his premature retirement is unlawful.

16. Finally, the Respondents stated that the Petitioner's *modus operandi* was uncovered when the Police Welfare Division compared the two separate files opened for his contradicting claims: one for slipping from a tree and another for being shot in a terrorist attack.

<u>WHETHER A CRIME WAS COMMITTED OR NOT:</u>

17. The comprehensive report compiled by the Police Welfare Division (R18) has exposed discrepancies and underlying fraud. The Respondents contended that the Petitioner's fraudulent actions have caused financial loss to the State, as he managed to claim a salary for four months upon his retirement under the false pretense of Circular R13. It was Respondents position that the B report (P1) and the Welfare Division's report (R18) provide ample evidence that documents were forged to unlawfully extract financial benefits, thereby justifying the actions taken against the Petitioner.

18. The Circular No. 22/1993 (R5) is a general circular that allows all public servants to claim compensation for injuries resulted whilst on duty. On the other hand, the Circular No. 21/1988 (R13) deals with payment of compensation to public servants who sustained injuries due to terrorist attacks.

19. <u>The Petitioner had at the inception claimed compensation under circular R5 submitting following documents</u>:

    R1- Requested for compensation for an injury caused due to falling from a tree

    R2- Note entered by the immediate senior officer claiming that RPC 34778 Kumara has slipped from a tree whilst being on duty-there is no reference to a terrorist attack

    R3- Request **dated 10.07.1999** made by the Petitioner to appoint a medical board to decide the nature of his injuries sustained due to fall from a tree-<u>here too no reference to a terrorist attack</u>.

    R4- Medical board form completed by the Petitioner where he has expressly stated that he slipped whilst being on duty in a observatory post-<u>no reference to a terrorist attack</u>.

R6- Board of Inquiry report submitted by the senior officers who looked into the request made by the Petitioner through R1. The Board has specifically decided that the Petitioner has sustained injuries due to a fall from a tree.

R7- Undated application form submitted by the Petitioner to get compensation. It is specifically stated that he slipped whilst being in the duty in a observatory post.

R8- Payment of compensation on 02.02.2005 (Rs. 10,170/-) in terms of Circular No. 22/93 by the Establishment Division of the Ministry of Public Administration.

R9- Letter dated 16.02.2005 addressed to Director of Central Welfare Division accepting compensation of Rs. 10,170/-

R14- Notes made by fellow officers who had been with the Petitioner stating that the petitioner fell from a tree where he attempted to climb the tree.

20. Having accepted compensation way back in February 2005, the Petitioner was serving in the Police Department until year 2022. **It was only in 2022**, that he claimed (for the first time) he sustained injuries due to a terrorist attack. By letter dated **11.01.2022 (R10)** he claimed that he sustained injuries on 01.05.1993 due to a terrorist attack and requested to retire per-maturely at the age of 49. Consequent to the request R10 seeking for a fresh medical board to be appointed, officials have facilitated a medical board to be appointed. The Petitioner has submitted R12 dated 24.02.2022 to the Medical Examination Board claiming that he sustained injuries due to a terrorist attack on 01.05.1993. The SSP of the Kelaniya Division who had completed the part ii of R12 has reproduced the history provided to him by the Petitioner. **It was respondents' position that the Petitioner has committed an offence under Section 403 of the Penal Code**.

21. Almost all the documents disclose that the injuries had been caused due to a fall from a tree. Nevertheless, notes attached as R14A, R15A, R16A, R17A had been introduced subsequently reflecting a contrary position to R14, R15, R16 and R17. The comparison of R14 with R14A, R15 with R15A, R16 with R16A and R17 with R17A clearly establishes that documents have been subsequently altered to show that the Petitioner had sustained injuries upon a "terrorist attack" which is contrary to the initial story narrated by the Petitioner. The alleged altered

documents disclose that the Petitioner has sustained gunshot injuries which is contrary to the previous position taken soon after the incident.

22. It was contended by the Learned Additional Solicitor General that the Petitioner had surreptitiously tried to use the provisions of Circular R13 **so that he could get his salary until he completes 55 years upon retiring at the age of 49**.

23. The Petitioner cannot invoke the provisions of R13 circular since it deals with the persons who have to give up their jobs consequent to serious physical injuries sustained directly due to an act of violence. It is for the public servants who cannot perform duties due to injuries sustained allowing them to receive the salary until they attain their age of retirement.

24. The Petitioner, on the other hand, had served 29 years in the Police Department after the alleged incident and then tried to receive a salary to which he is not entitled. The *modus operandi* of the Petitioner had come to light only when the Police Welfare Division had gone through the two files opened on behalf of the Petitioner for the two claims he had made under the provisions of two unrelated government circulars (R5 and R13). The report (**R18**) which has been compiled by the Police Welfare Division clearly explained the alleged fraud where two distinct requests made by the Petitioner to the Police Department claiming that:

    (a) He injured himself due to slipping off from a tree.
    (b) He got shot due to a terrorist attack.

    P18 report clearly explains the discrepancies observed by the officials attached to the Police Welfare Division. The Petitioner has claimed the salary for four months upon his retirement under the provisions of the circular P13 on the basis that he sustained gunshot injuries consequent to a terrorist attack. <u>It is explained in the B report marked as P6 dated 20th November 2024 that the manner the payments have been made to the Petitioner causing financial loss to the State</u>.

25. <u>The cause of the injury has been heavily disputed by the Petitioner</u>**. <u>It was submitted by the Petitioner</u>** that: he was on duty in an operational environment and had climbed a tree to observe the surroundings; **if a mortar attack or terrorist incident occurred in that context, and he fell from the tree as a consequence thereof, both descriptions may form part of the same**

event; therefore, the alleged differences in language across documents does not prove fraud, forgery or falsification without more evidence; material produced by the State may disclose an ambiguity or discrepancy requiring proper investigation; it does not justify arrest, detention, or deprivation of pensionary benefits without forensic and testimonial foundation. All these major facts are being disputed by the Respondents.

26. When facts are in dispute, writ will not lie. In the case of <u>*Thajudeen Vs. Sri Lanka Tea Board and Another*</u> [1981] 2 SLR 471, Ranasinghe, J cited *Law of Writs and Fundamental Rights (2nd Edn.) Vol 2 by* CHOUDRI, wherein the relevant portion reads as follows:

> *"Where facts are in dispute and in order to get at the truth it is necessary that the* ***questions should be canvased in a suit where parties would have ample opportunity of examining their witnesses*** *and the Court would be able to judge which version is correct,* ***a writ will not issue****."*

27. <u>It was further submitted by the Petitioner</u> that since the alleged incident occurred in 1993, the impugned allegations are being pursued after more than three decades; during that period, the Petitioner continued in service, retired and has depended upon his lawful benefits; the delay directly affects the fairness of the process; original records may have moved between numerous departments and offices; the possibility of administrative mishandling, misfiling, or alteration by persons other than the Petitioner cannot be excluded. This factor of delay will be considered below when dealing with whether criminal acts get prescribed with the passing of time.

28. It was contended that in such circumstances, it is manifestly disproportionate to expose the Petitioner to arrest and detention without first completing a proper investigation.

29. It is also worth noting that, the B report has revealed offences under Section 5(1) of the Public Property Act No. 12 of 1982 and offences under Sections 163, 403, 457, 459 of the Penal Code and offences under Section 55 of the Police Ordinance.

30. Furthermore, in the instant matter only a single question of law has been formulated on behalf of the Petitioner. The Petition has disclosed the following alleged triable issues:

(a) Whether the impugned B report is founded on sufficient material;

(b) Whether the allegation of falsification is supported by originals, chain of custody, and expert opinions;
(c) Whether the Petitioner had access or opportunity to tamper with official records;
(d) Whether the alleged discrepancy is in fact capable of an innocent explanation;
(e) Whether statements were recorded from material witnesses prior to filing the B report;
(f) Whether the material witnesses have been named in the B report;
(g) Whether the delay of more than three decades renders coercive action unreasonable and oppressive;
(h) **Whether the stoppage or withholding of pensionary/salary benefits is lawful**; and
(i) Whether interim relief is necessary to prevent the application being rendered nugatory.

31. All the alleged triable issues suggested are questions of fact except (h) which can only be answered after the resolution of issues (a) to (g) which need to be tested in a trial after leading evidence subject to cross examination. Without factual issues (a) to (g) being tried in a trial court before a Magistrate, it is premature to try the question of law (h).

WHETHER CRIMINAL OFFENCES GET PRESCRIBED WITH THE PASSING OF TIME?

Section 456 of the Code of Criminal Procedure Act reads as follows,

> *"456. The right of prosecution for murder or treason shall not be barred by any length of time, but the* ***right of prosecution for any other crime or offence (save and except those as to which special provision is or shall be made by law) shall be barred by the lapse of twenty years from the time when the crime or offence shall have been committed."***

32. The main alleged offence of Cheating under Section 403 of the Penal Code does not seem to be time barred as it was seemingly committed in 2023 upon furnishment and use of the tampered documents. Furthermore, it was subsequently revealed to the authorities only in 2024

and the B report was then filed in 2025. Thus, *prima facie,* twenty years has not lapsed from the date which the offence was committed.

33. However, a concrete finding can only be made in a trial court after the proper leading of evidence and cross examination. It is trite law that the trial judge is best suited to evaluate the evidence led before them and come to a finding based on the facts of a case. As such, this Court is only able to speculate on the true facts of the case and is not able or constitutionally empowered to come to a finding in the manner a court of first instance could. However, in consideration of the legal issues of the Petitioner which have been placed before this Court, I will endeavor to address the "delay" and prescription alluded to by the Petitioner in the prosecution of this offence.

34. In doing so, the judgment delivered by Justice Janak De Silva in *Siriweera and Another Vs. Officer-In-Charge, Special Crimes Division, Tangalle Police and Another* [2019] 2 Sri L. R. 152 considered the Penal Codes of France and India wherein a broader interpretation is given to the time bar in instances where the accused has concealed the commission of the offence. Having considered that fact it was still held that Sri Lankan courts are inclined to give effect to a stricter interpretation of the time bar so as to protect the Article 13(3) right to a fair trial. The judgment reads as follows:

> *"Furthermore, section 473 of the Code of Criminal Procedure Code of India (1973) provides for an extension of the period of limitation in certain cases and reads:*
>
> > *notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice*
>
> *A similar approach is there in the French Code of Criminal Procedure which provides that the statute of limitations for the prosecution of hidden or concealed offenses starts running from the date on which the offense has been discovered and established in the conditions that allow public prosecution to be initiated and exercised. A hidden offense is defined in Article 9(1)(4) of the French Code of Criminal Procedure as an offense*

which, because of its constituent elements, cannot be known to the victim or to the judicial authority while a concealed offense is an offense of which the perpetrator deliberately performs any characteristic maneuver aimed at preventing its discovery as per Article 9(1)(5) therein.

***However, in Sri Lanka there is a statutory bar without any such extension of time which this Court must take cognizance. The Court must also take cognizance that the limitation of time for crimes serves a dual purpose**. On one hand the interest of the State and society as a whole and on the other the interest of the accused.*

…

*The impugned deed was executed on 08. 04. 1989. The first complaint was made to the Police on 03. 10. 2008 more than 6 months prior to the time bar. But the report under section 136(1)(b) of Code of Criminal Procedure was filed on 12. 10. 2009 more than six months after the time bar. The learned Senior State Counsel invited Court to take cognizance that the offence was concealed by the Appellants until very close to the time bar and therefore to give an extended meaning to the time bar. **However, the legislature has in clear and unambiguous words laid down a time limit and to give an extended or strained meaning to those words would be, in the words of Lord Simonds in Magar & St. Mellons Rural District Council v. Newport Corporation, a naked usurpation of the legislative function under the thin guise of interpretation** . . . If a gap is disclosed, the remedy lies in an amending Act." Article 13(3) of the Constitution guarantees to every person charged with an offence a fair trial by a competent Court which includes giving full effect to statutory restrictions on prosecution including the time bar in section 456 of the Code of Criminal Procedure. Therefore, the prosecution of the Appellants is time barred in terms of section 456 of the Code of Criminal Procedure.*

For the foregoing reasons, both the learned Magistrate and the High Court Judge erred in overruling the preliminary objection."

35. Thus, it is clear that it is first the Learned Magistrate who is tasked with answering and adjudicating the factual issues of this matter. It is only after that, in the event of an appeal that

the appeal court will decide on the legal issues placed before it (in relation to the time bar) depending on the initial findings of the Magistrate Court (when the offence was committed). Therefore, the issue is premature to bring before this Court, at this stage of the matter, and must first be heard before the Learned Magistrate.

36. For all the above reasons, this Court is of the view that the Petitioner has not made out a *prima facie* case which warrants issuing of formal notice to the respondents. Thus, the application is dismissed without costs.

Judge of the Court of Appeal

Hon. Rohantha Abeysuriya PC, J.(P/CA)

I agree.

President of the Court of Appeal