

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

*In the matter of an application under and in terms of Article
140 of the Constitution of the Democratic Socialist Republic
of Sri Lanka.*

Dilith Susantha Jayaweera
No 4/6, Jeswell Place, Mirihana, Nugegoda.

CA Writ Application No:
CA/WRT/0683/2026

PETITIONER

vs

1. Priyantha Weerasooriya,
Inspector General of Police
Police Headquarters, Colombo 02
2. Madhawa Gunawardena,
Officer in Charge, Special Investigations Unit,
Criminal Investigations Department,
Criminal Investigations Department,
Colombo 01.
3. Hon. Magistrate,
Magistrate's Court, Fort.
4. The Registrar,
Magistrate's Court, Fort.
5. Hon. Attorney General,
The Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: Hon. Justice N. R. Abeyesuriya PC, (P/CA)

Hon. Justice M. C. B. S. Moraes

Hon. Justice Adithya Patabendige

Counsel: M. U. M. Ali Sabry PC with Ruwantha Cooray instructed by Thushara Samanpali
Amarasiri for the Petitioner

Janaka Bandara, DSG with Sajith Bandara SC for all the Respondents

Supported on: 18.09.2026

Written Submissions Tendered On: 25.09.2026

Decided On: 30.09.2026

ORDER

N. R. Abeyesuriya, PC, J. (P/CA),

The Petitioner, Dilith Susantha Jayaweera, has filed this application invoking the writ jurisdiction of this Court under Article 140 of the Constitution. The Petitioner states that he is an Attorney-at-Law, a businessman and media entrepreneur, and presently serves as a Member of Parliament. The present application arises from proceedings in Fort Magistrate's Court, case number B/35882/24 marked **P1**, concerning the investigation relating to Major General (retd.) Suresh Salley and the Easter Sunday attacks.

The Petitioner in the instant matter instituted the afore-captioned writ application seeking, *inter alia*, mandates in the nature of writs of certiorari to quash the following:

1. *The impugned decision/ order dated 05.08.2025 of the 3rd Respondent to make prima facie finding of contempt of court*
2. *The impugned reference depicted and/or reflected in the document marked P11*

The instant writ application pertains to a contempt of court matter referred to this Court by the learned Magistrate of Fort. The reference stems from certain statements alleged to have been made by several individuals concerning a matter which was then pending determination before the Magistrate's Court.

I am of the view that it is essential to place on record the contentions of the Learned President's Counsel for the Petitioner and the Learned Deputy Solicitor General appearing for all the Respondents.

The principal contention of the Petitioner was that the CID when facts were reported to the Learned Magistrate, misled the Learned Magistrate by producing only an excerpt of the said piece of evidence and that the Learned Magistrate accepted the said excerpt devoid of any context referred the same to this Court as contemptuous.

The Learned President's Counsel submission was that the purported reference is bad in law due to the following grounds;

- I. It is procedurally bad
- II. There is a grave and prejudicial violation of natural justice
- III. The excess of jurisdiction in arrogating the jurisdiction of this Court

The Learned President's Counsel submitted that the reference is procedurally bad in law owing to the Petitioner been made "prima facie" guilty of contempt of court based on a portion of statement made by the Petitioner.

The Learned President's Counsel for the Petitioner while citing Chief Justice Hewart in **R vs. Sussex Justices, ex parte McCarthy (1924) 1 KB 256** submitted that

Justice should not only be done but, should manifestly and undoubtedly be seen to be done.

Following the same, it was the contention of the Learned President's Counsel that the protection of rules of natural justice ought to have been afforded to the Petitioner

even when the statute is silent regarding the same where justice may have been seen to be done.

Regarding the arrogation and usurpation of the jurisdiction of this Court, the primary contention of the Learned President's Counsel was that, as per Section 10(3) of the Contempt of Court, Tribunals, and Institutions Act No 08 of 2024 (hereinafter sometimes referred to as the Contempt of Court Act), the Court of Appeal 'may' take cognizance of prior to satisfying itself of a prima facie case where the Court of Appeal is not bound to take cognizance of a reference.

In reply, citing **Sri Lanka Telecom Ltd vs Human Rights Commission of Sri Lanka (2020) 1 SLR 212** and **David Raja vs. Minister of Fisheries and Aquatic Resources Development and Others (2020) 1 SLR 310**, the Learned DSG submitted that writ of certiorari does not lie against a person unless he has legal authority to determine a question affecting the rights of subjects and, at the same time, has the duty to act judicially when he determines such questions. He further submitted that the reference of the Magistrate is a mere recommendation similar to the complaint made by a lay person to a law enforcement authority where he reasonably believes an offence has been committed.

It was further contended that as per Sec 10(1) (a), a reference of the Magistrate is a mere recommendation, which is a prescribed step in a statutory process which leads to a decision.

The Learned DSG thereafter submitted that the expansion of the writ jurisdiction of the Court of Appeal to references of the Magistrate relating to contempt of court would defeat the intention of the legislature whereby any determination which would permit a Petitioner to invoke the writ jurisdiction of the Court of Appeal in respect of such references in terms of Sec 10(1) would indirectly be an avenue to prevent this Court from exercising its jurisdiction.

This Court is appreciative of the comprehensive synopsis of submissions of parties, which would be of immense assistance in determining contempt of court matters as a whole.

The controversy before this Court essentially gives rise to two interrelated questions:

1. Whether the learned Magistrate acted in excess of his powers in referring the alleged contempt to the Court of Appeal; and
2. Whether the learned Magistrate was required to afford the Petitioner an opportunity of being heard before making such reference.

Before addressing these questions, it is useful to briefly examine the law governing contempt of court.

Article 105(3) of the Constitution reads as follows:

The Supreme Court of the Republic of Sri Lanka and the Court of Appeal of the Republic of Sri Lanka shall each be a superior court of record and shall have all the powers of such court including the power to punish for contempt of itself, whether committed in the court itself or elsewhere, with imprisonment or fine or both as the court may deem fit. The power of the Court of Appeal shall include the power to punish for contempt of any other court, tribunal or institution referred to in paragraph (1)(c) of this Article, whether committed in the presence of such court or elsewhere:

Provided that the preceding provisions of this Article shall not prejudice or affect the rights now or hereafter vested by any law in such other court, tribunal or institution to punish for contempt of itself.

It is well established that contempt of court may be committed either in the presence or hearing of Court (*in facie curiae*) or outside its presence or hearing (*ex facie curiae*). Article 105(3) expressly recognizes both forms of contempt.

Samayawardhana J., in **Rajawatte Wappa Thero v. Thallale Dhamadeva Thero (SC/Contempt/05/2025, decided on 07.09.2026)**, analysed Article 105(3) in the following terms:

The first limb of Article 105(3) expressly confers upon both the Supreme Court and the Court of Appeal jurisdiction to punish for contempt of themselves, irrespective of whether the contempt is committed in facie curiae or ex facie curiae. In view of this express constitutional conferment of jurisdiction, it is unnecessary to consider whether the Supreme Court and the Court of Appeal, as superior courts of record, possess any inherent jurisdiction to punish for contempt of their own authority.

The second limb of Article 105(3), however, is materially different. It expressly provides that “The power of the Court of Appeal shall include the power to punish for contempt of any other court, tribunal or institution referred to in paragraph (1)(c) of this Article, whether committed in the presence of such court or elsewhere”. Article 105(1)(c), referred to therein, encompasses “the High Court of the Republic of Sri Lanka and such other Courts of First Instance, tribunals or such institutions as Parliament may from time to time ordain and establish.”

*Significantly, the second limb confers this additional power upon the Court of Appeal alone. It does not provide that the power of both the Supreme Court and the Court of Appeal shall include the power to punish for contempt of any other court, tribunal or institution referred to in Article 105(1)(c), whether committed in the presence of such court or elsewhere. **Had the framers intended to confer that jurisdiction upon both Courts, they could readily have employed language to that effect.***

*Applying the well-established canon of statutory interpretation, *expressio unius est exclusio alterius* – the express mention of one thing implies the exclusion of another – the express conferment of this jurisdiction upon the Court of Appeal indicates that no corresponding jurisdiction was intended to be conferred upon the Supreme Court in the absence of clear constitutional language to that effect.*

When Article 105(3) expressly delineates, within the same constitutional provision, the contempt jurisdictions of the Supreme Court and the Court of Appeal, the omission of any corresponding conferment of jurisdiction upon the Supreme Court in the second limb cannot be regarded as accidental. Nor is there any basis for implying such inherent contempt jurisdiction merely because the Supreme Court is the highest and final superior court of record, particularly when Article 105(3) expressly recognises both the Supreme Court and the Court of Appeal as superior courts of record.

*It is also significant that this second limb of Article 105(3), conferring upon the Court of Appeal jurisdiction to punish for contempt of other courts, tribunals and institutions, has no counterpart in the Constitution of India. It is therefore **a deliberate constitutional innovation introduced by the framers of the Sri Lankan Constitution and shall be given its full effect according to its plain language.***

[Emphasis Added]

The constitutional position is therefore clear. While both the Supreme Court and the Court of Appeal possess jurisdiction to punish contempt of themselves, Article 105(3) specifically vests in the Court of Appeal the jurisdiction to punish contempt of other courts, tribunals and institutions falling within Article 105(1)(c).

The principal contention of the Petitioner is that the learned Magistrate acted *ultra vires* in concluding that there existed a *prima facie* case of contempt and thereafter referring the matter to this Court. It is further alleged that the material placed before the learned Magistrate consisted only of selected portions of the relevant statements and that the Magistrate was thereby misdirected as to their true context.

In considering that submission, I wish to place reliance on Section 10 of the Contempt of Court, Tribunals and Institutions Act, No. 8 of 2024.

Section 10 provides:

10. (1) *The Court of Appeal may take cognizance of contempt committed against, or in disrespect of the authority of, a Court of First Instance or tribunal or an institution on –*

(a) a reference made to it by such Court of First Instance, tribunal or institution;

(b) a motion filed by the Attorney-General, together with any document or thing in support of the motion; or

(c) a motion filed by any other person, together with an affidavit and any document or thing in support of the motion.

(2) Every reference made, or motion or affidavit filed under subsection (1) shall set out the particulars of the contempt of the court, tribunal or institution as the case may be, alleged to have been committed by the person alleged to have committed such contempt.

(3) The Court of Appeal shall, after perusing the reference made or the motion or affidavit filed under subsection (1), as the case may be, and satisfying itself that a prima facie case of contempt of a court, tribunal or institution, as the case may be, has been established against the person alleged to have committed such contempt –

(a) cause a rule to be issued on such person signed by the Registrar of the Court, giving particulars in writing of the contempt of court, tribunal or institution, with which he is charged;

(b) direct that such rule, together with a copy of the reference or motion and document made or filed under subsection (1), be served personally on such person; and

(c) fix a date for the hearing of the charge.

The statutory scheme leaves little room for doubt.

A Court of First Instance is empowered to place before the Court of Appeal the facts and circumstances which, in its view, disclose an alleged contempt of its authority. That is the function of a reference under section 10(1)(a).

Such reference should be in compliance with Section 10 (2).

The determination whether those materials disclose a *prima facie* case of contempt is, however, expressly entrusted to the Court of Appeal.

Section 10(3) requires this Court, upon perusing the reference, to satisfy **itself** that a *prima facie* case has been established against the person alleged to have committed the contempt. It is only upon this Court reaching that satisfaction that a rule may be issued and the subsequent procedure contemplated by section 10(3) is set in motion.

Thus, the opinion expressed by the learned Magistrate as to whether the material before him disclosed contempt does not bind this Court. Nor can such an observation assume the character of an adjudication against the Petitioner. The statutory responsibility of determining whether a *prima facie* case exists remains exclusively with the Court of Appeal.

It is also important to emphasize that the Petitioner is only one of several persons referred to this Court by the learned Magistrate. The material attributed to each person is not necessarily identical. Therefore, the existence or otherwise of a *prima facie* case against the Petitioner must be considered independently on the material pertaining to him. The reference itself cannot predetermine that question.

Whether the learned Magistrate described those facts as constituting contempt, as disclosing a *prima facie* case of contempt, or merely as facts warranting the attention of this Court does not alter the statutory position. Such a characterization is of no determinative consequence. This Court is required to arrive at its own conclusion under section 10(3).

The Petitioner nevertheless seeks to challenge the reference by way of certiorari.

In this regard, I would advert to the observations of Rajakaruna J. in **Courtaulds Trading Company (Pvt) Ltd v. Hon. President of the Labour Tribunal (CA/WRT/196/2022, decided on 29.07.2022)**:

The writ court does not sit as an appellate court to scrutinize the decision of the lower authority on merits. The writ court does not substitute its own decision for that of the authority concerned in which the statute has vested discretion. Discretion means that more than one choice is available to the authority. The authority has the right to choose between more than one possible course of action and there may be difference of opinion among reasonable persons as to which option to follow. So, the court gives freedom of choice to the authority having discretion. Only when the exercise of discretion is flawed by a vitiating factor, the court would quash the decision. Judicial review is concerned with the legality of a decision and not its merits. The courts often assert that it is not their function as review courts to substitute their wisdom and discretion for that of the persons to whose judgement the matter in question is entrusted by law. The principle has been stated firmly by the House of Lords in Chief Constable of the North Wales Police vs. Evans (1982) 1 WLR 1155, that judicial review is concerned not with the decision, as such, but with the process of decision making.

Certiorari is directed towards reviewing the legality of the exercise of public power. It is not available merely because a party disagrees with an opinion expressed by the decision-maker, particularly where that opinion does not itself determine the rights or liabilities of the person concerned.

A writ of *certiorari* lies only in respect of a decision or determination that has the effect of affecting a person's legal rights or obligations. This principle was affirmed by a five-Judge Divisional Bench of the Supreme Court in **G.P.A. Silva & Others v. Sadique & Others (1978–1980) 1 Sri LR 166**, where the Court held as follows:

*“Writ of Certiorari would lie in respect of an order or decision **where such order or decision is binding on a person** and it either imposes an obligation or involve civil consequences to him or in some way alters his legal position to his disadvantage or where such order or decision is step in a statutory process which would have such effect”*

[Emphasis Added]

In the present case, the learned Magistrate acted upon the material reported before him and referred the matter to the Court of Appeal in terms of the statutory procedure. By doing so, he did no more than invoke the jurisdiction which section 10 expressly recognizes.

There has been no assumption by the learned Magistrate of the jurisdiction reserved to the Court of Appeal under section 10(3). The learned Magistrate has neither tried nor punished the Petitioner for contempt. Nor has he made any determination capable of binding this Court on the existence of a *prima facie* case.

Accordingly, I am unable to accept the contention that the learned Magistrate acted *ultra vires* or in excess of the powers vested in him.

Right to be heard prior to the reference

The second grievance of the Petitioner is that he ought to have been afforded an opportunity of being heard before the learned Magistrate made the reference to this Court.

I see no statutory basis for such a requirement.

Section 10 does not impose a duty upon a Court of First Instance to conduct an inquiry or afford the person concerned a hearing before making a reference to the Court of Appeal.

This is understandable when the statutory scheme is considered as a whole.

A reference under section 10(1)(a) is not a finding of guilt. It is not even a final determination that a *prima facie* case of contempt exists. It is the means by which the facts relating to the alleged contempt are placed before the Court constitutionally and statutorily vested with jurisdiction to deal with the matter.

The learned Magistrate could not, by hearing the Petitioner prior to the reference, finally determine the very question which the statute reserves for the Court of Appeal.

Once the reference reaches this Court, section 10(3) requires this Court independently to examine the material and first satisfy itself that a *prima facie* case has been established. If this Court is not so satisfied, the matter proceeds no further.

If this Court is satisfied that a *prima facie* case exists, a rule must be issued specifying the alleged contempt and served upon the person concerned together with the relevant material. A date is thereafter fixed for the hearing of the charge. It is at that stage that the person against whom the rule is issued is called upon to answer the allegation in proceedings before the Court vested with jurisdiction to determine it.

The reference itself therefore neither imposes liability nor finally affects the rights of the Petitioner. It merely initiates the statutory process by placing the relevant material before this Court.

In those circumstances, the failure to afford a hearing before making the reference cannot, in my view, amount to a breach of natural justice or constitute a ground upon which certiorari may issue.

To hold otherwise would effectively introduce into section 10 a preliminary inquiry which the legislature has not provided for and which would, to a considerable extent, duplicate the inquiry expressly entrusted to this Court.

For the foregoing reasons, I am satisfied that the learned Magistrate acted within the powers vested in him in referring the matter to the Court of Appeal and that no legal obligation arose to afford the Petitioner a hearing prior to making such reference.

The Petitioner has therefore failed to establish any ground warranting the intervention of this Court in the exercise of its writ jurisdiction.

For the avoidance of doubt, this dismissal shall not be understood as expressing any opinion as to whether a *prima facie* case of contempt has or has not been established against the Petitioner. That question remains entirely for determination by this Court upon consideration of the reference and the material placed before it, in terms of Section 10(3) of Act No. 8 of 2024.

Accordingly, this application is dismissed. No order with regard to costs.

PRESIDENT OF THE COURT OF APPEAL

M. C. B. S. Morais, J.

I agree.

JUDGE OF THE COURT OF APPEAL

Adithya Patabendige, J.

I agree.

JUDGE OF THE COURT OF APPEAL