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

*(In a matter of an Application under Section 46
of the Judicature Act No. 2 of 1978 and under
Section 46 and 47 of the Code of Criminal
Procedure Act, No. 15 of 1979. For the transfer
of Magistrate Court of Trincomalee Case No.
R/146/01/PC/26.)*

**1. NANAYAKKARA GODAKANDA
ACHALA SHANIKA SENA VIRATHNA**

Attorney-at-Law

No 215, Cemetery Road, Palanwaththa,
Pannipitiya.

1ST SUSPECT - PETITIONER
--

2. MAJOR BUHARIDEEN ARSATH,

No. 61/63, Annal Street,

Kinniya-03, Trincomalee.

2ND SUSPECT - PETITIONER
--

Application No.

CA/TRF/06/2026

Trincomalee Magistrate's

Court case No-

BR/146/01/PC/26

-Vs

1. HON. M. S. M. SHAMSUDEEN

Magistrate of Magistrate Court

Trincomalee.

2. OFFICER-IN-CHARGE,

Harbor Police Station,
Trincomalee.

**3. POLICE INSPECTOR DASSANAYAKA
ARACHCHILAGE NISHAN ARAVINDA
DASSANAYAKE**

The Division for Assistance and
Protection of Victims of Crime and
witnesses,
Grandpass, Colombo 14.

4. INSPECTOR GENERAL OF POLICE,

Police Headquarters,
Colombo 02.

5. HON. ATTORNEY GENERAL

Attorney General Department,
Colombo 12.

RESPONDENTS

Before : JUSTICE R. GURUSINGHE

JUSTICE ANNALINGAM PREMASHANKER

Counsel: M. A. Sumanthiran, President's counsel, with S. Sivanja, Attorney- at- Law, Dharshika Ariyanayagam, Attorney- at- Law, Atham Lebbe Aazath, Attorney- at- Law, Abraham Prashth Rajaratnam, Attorney- at- Law, Kannadas Isainilavan, Attorney- at- Law, instructed by Nivetha Kulathunga, Attorney- at- Law, for the Petitioners

Sanjeeva Dissanayake, Deputy Solicitor General with Zacky Ismail, State Counsel for the Respondents.

Written Submissions of the Petitioner :- -

Written Submissions of the Respondents :- -

Supported on :- 06.08.2026

Order on :- 31.08.2026

ORDER

ANNALINGAM PREMASHANKER, J.

01. This is an Application designed by Petitioners as a Transfer Application. The application has been commenced as follows;

'In the matter of an application under Section 46 of the Judicature Act No. 2 of 1978 and under Section 46 and

47 of the Code of Criminal Procedure Act, No. 15 of 1979.
For the transfer of Magistrate Court of Trincomalee Case
No. BR/146/01/PC/26.'

02. The Petition of the Petitioners dated 8th day of June 2026, contains fourteen (14) paragraphs and reliefs Sought are as follows;

- a) Issue Notices on the Respondents;**
- b) Make an Order in terms of Section 46 of the Judicature Act, No.02 of 1978, completely transferring Trincomalee Magistrate's Court Case No BR/146/01/PC/26 presently pending before the Magistrate's Court of Trincomalee to any other competent Magistrate's Court located in the western Province (such as Chief Magistrate's Court Colombo)**
- c) Grant urgent Interim Relief to the Petitioner by issuing an interim stay order staying any and all further proceedings in Trincomalee Magistrate's Court Case No. BR/146/PC/26 currently fixed for 19/06/2026, until the final hearing and determination of this Transfer Application.**
- d) Issue an Order directing the 4th Respondents (IGP) to transfer all current and connected police investigations, counter-complains, and inquires away from the Eastern**

Province police units to an independent specialized unit, such as the special Investigation Unit (SIU) or the Criminal Investigation Department (CID).

e) Issue a directive ensuring adequate and immediate police protection for the lives of both Petitioners in view of the imminent threats.

f) Award the Petitioner the costs of this application; and

g) Grant such other and further reliefs as to your Lordships' Court shall seem just, equitable, fit, and proper in the circumstances of this case.

03. The first Petitioner is an Attorney-at-Law of the Supreme Court of Sri Lanka with nineteen (19) years of experience. She is and was the counsel for the second Petitioner, who have several litigations in Trincomalee Courts.

The second Petitioner is a Major of the Sri Lankan Army and also a student at the Sri Lanka Law College. He is a permanent litigant of the Courts of Trincomalee.

The first Respondent is the Hon. Magistrate of Trincomalee, before whom Magistrate Court Case No. BR/146/01/PC/26 was initiated.

The second Respondent is the Officer- in-Charge of the Harbor police station, Trincomalee, who has filed baseless, biased facts report by BR/146/01/PC/26 and the third Respondent is the Inspector of Police attached to the Victims of Crime and witnesses

Assistance and Protection Division of harbor police, who is the main actor of alleged intimidation and etc.

The fourth Respondent is the Inspector General of Police (IGP) of Sri Lanka and the fifth Respondent is the Hon. Attorney General of Sri Lanka.

04. First Paragraph contains subparagraphs (a) to (g) narrates about the parties and their standings. Second paragraph with 2 subparagraphs (a) and (b) narrates the objectives of the Application. The Third, Fourth and Fifth paragraphs narrates history of the cases and the police actions. The sixth paragraph narrates the actions of the Attorney General. Seventh and eighth paragraphs contain subparagraphs (a) to (f) and (a) to (k) respectively, narrate unprecedented incident of 27/01/2026 and further actions of the police and the backgrounds for institution of MC case No. BR/146/01/PC/26. The Ninth paragraph, containing subparagraphs (a) to (i) narrates about the CCTV footage of the court complex. Balance tenth, eleventh, twelfth, thirteenth and fourteenth paragraphs narrates the reasonableness of the Petitioners' Application.

05. Although there were several actions of the police pleaded in the petition, the basic incident is the unprecedented incident of 27/01/2026 which occurred in the open court while Magistrate Court of Trincomalee Case No. BR/0093/PC/01/23 is in progress. The 1st Petitioner, making submissions to the court for the 2nd Petitioners, the 3rd Petitioner, who is appearing for and on behalf of victims of crime and witnesses Assistance Protection Division, positioned himself next to the 1st Petitioner and interrupt the submission and intimidated her by hand signals, thereby obstructing her effective discharge of her professional duties. The first Petitioner acted for and on behalf of the 2nd Petitioner. Above conduct of the police was ignored by the Hon. Magistrate M. S. M. Shamsudeen, who failed to take any disciplinary or judicial actions.

06. Both Petitioners have lodged a complaint with the D.I.G. Trinco Division about the above indecent act of the 3rd Respondent, Inspector of Police. The 2nd Respondent has reported the facts on BR/146/01/26, in which both Petitioners were named as suspects on the complaint of the 3rd Respondent, which was a subsequent complaint. The 2nd Respondent, after lot of persuasion has submitted BR/236/01/PC/26 in respect of initial complaint of the petitioners made to the D.I.G.

07. The Section 46 of the Judicature Act is as follows’;

(1) Whenever it appears to the Court of Appeal-

(a) that a fair and impartial trial cannot be had in any particular court or place; or

(b) that some questions of law of unusual difficulties are likely to arise; or

(c) that a view of the place in or near which any offence is alleged to have been committed may be required for the satisfactory inquiry into or trial of the same ; or

(d) that it is so expedient on any other ground,

*the Court may order upon such terms as to the payment of costs or otherwise as the said Court thinks fit, **for the transfer of any action, prosecution, proceeding or matter pending before any Court to any other Court and accordingly in every such** case, the Court to which any such action, prosecution, proceeding or matter is so transferred*

shall, notwithstanding anything to the contrary in this or any other law, take cognizance of and have the power and jurisdiction to hear, try and determine such action, prosecution, proceeding or matter, as fully and effectually to all intents and purposes as if such Court had an original power and jurisdiction.

(2) Every application for transfer of any action, prosecution, proceeding or matter under this section shall be supported by an affidavit setting out the grounds on which it is based.

(3) The Court of Appeal, in making an order for transfer under this section may. if it thinks fit, direct that the Court to which such action, prosecution, proceeding or matter is transferred shall call all or any of the witnesses who have been examined before the Court from which the transfer is made, and take their evidence afresh.

08. The Sections 46 and 47 of Code of Criminal Procedure Act are as Follows;

46. *When the person to be summoned cannot by the exercise of due diligence be found the summons may be served by leaving one of the duplicates for him with some adult member of his family or with his servant residing with him.*

47. If the service prescribed in sections 45 and 46 cannot by the exercise of due diligence be effected the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides, and in such case the summons, if the court either before or after such affixing so directs, shall be deemed to have been duly served.

This Court is at lost how the above provisions of the Code of Criminal Procedure Act are utilized for the transfer Application.

09. The Petitioners' complaints are all related to police actions and conducts. These activities cannot be the basis for transfer Application. A different Application has to be made, in denoting relevant police as necessary parties. Petitioners' prayers (d) and (e) cannot be made or grant in a transfer Application. The Court will not grant these reliefs without inquiring the police- the necessary party. The provisions of the Judicature Act cannot be utilized in respect of the police conduct/ actions and activities. Thus, the Petitioners' Application fail in limine.

10. Commonly, the provisions of the Judicature Act are utilized for and in respect of judiciary. If the Petitioner gets unfair treatment in the hand of the Court, then the provision of judicature Act will come in to play and grant redress for the victims.

11. In the Petition, Petitioners alleged Hon. Magistrate Tricomalee, M. S. M. Shamsudeen fails to take meaningful actions to avoid indecent activities of the police. The Petition is silent as to whether

the Petitioners complaint to Hon. Magistrate immediately of the incident. The alleged failure of the Hon. Magistrate is not enough for this Court to come to the conclusion of impartiality or unfairness on the part of the Hon. Magistrate. The above non-action on the part of the Hon. Magistrate did not warrant a transfer order.

12. Having considered all the averments of the Petition, the Affidavit and the submissions of the learned counsel for the Petitioners this court comes to the conclusion that this matter is not fit to make a transfer order. Hence, notice refused, Interim Order also refused.

Transfer Application is dismissed in limine.

On this 31st day of August 2026

JUDGE OF THE COURT OF APPEAL

R. GURUSINGHE, J.

I agree.

JUDGE OF THE COURT OF APPEAL