
**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*

HON. ATTORNEY GENERAL,
Attorney General's Department,
Hulftsdorp Street,
Colombo 12.

COMPLAINANT

**Application No.
CA/TRF/4/2026
HC Colombo case No.
3868/2022**

-Vs-

**JOSEPH BERNARD SHANTHI
PERERA,**
NO. 05, Stock place,
Colombo 10.

ACCUSED

AND NOW BETWEEN,

**JOSEPH BERNARD SHANTHI
PERERA,**
NO. 05, Stock place,
Colombo 10

ACCUSED- PETITIONER

-Vs-

- 1. HON. ATTORNEY GENERAL,**
Attorney General's Department,
Hulftsdorp Street,
Colombo 12.

High Court Judge,
High Court No.05,
Hulftsdorp
Colombo 12.

Before : JUSTICE R. GURUSINGHE
JUSTICE ANNALINGAM PREMASHANKER

**Dileepa Peiris, Additional Solicitor General for
the State**

Order on :- 10.07.2026

ORDER

ANNALINGAM PREMASHANKER, J.

01. This is a Transfer Application under Section 24 of the Judicature Act made by **Joseph Bernard Shanthi Perera** as an **Accused Petitioner. Respondents** are **Hon. Attorney General** and **Hon. Nayomi Wickramasekara, High Court Judge, Court No.05.** The Petitioner sought the following reliefs in the petition dated 29th May 2026;

- a) **Issue notice** on the Respondent.
- b) **To transfer the above case from High Court no.05 to High Court No.01, or to nominate another court to hear and determine High Court Case No.3868/2022.**
- c) **Grant an interim order, pending the final hearing and determination of this Application, staying the trial in the High Court in the said case.**
- d) **Grant an interim order, pending the final hearing and determination of this Application, staying all further proceedings in case No.3868/2022 of the High Court of Colombo.**
- e) **Grant costs;** and
- f) **Grant such other and further relief as to Your Lordships' Court shall seem meet and proper.**

The Application was supported by Learned Counsel Shavindra Fernando, President's Counsel on 22nd June 2026 for notices and interim Orders (c) and (d). This Court views that the interim orders

(c), (d), although the contents are different, ultimately have the same effect.

02. The Petitioner claims that he is an Attorney –at- Law of the Supreme Court of Sri Lanka and has been in lucrative practice in Colombo Courts and was appointed as the President’s Counsel in the year 2019. He is a Sri Lankan and is 70 year of age.

03. The Petitioner alleges that he is the Accused in High Court Colombo case No.3868/2022, in which a charge of forgery was leveled against him. The said case was before the High Court judge, Court No.05 Hon. Nayomi Wickramasekara. His counsel is Rienzie Arseculeratne, President’s Counsel.

04. The Complaints of the Petitioner are that his counsel Rienzie Arseculeratne, President’s Counsel is at odds with the Hon. Nayomi Wickramasekara, High Court Judge, Court No. 05 and his counsel Rienzie Arseculeratne, would not get fair hearing at the trial. In the said circumstances **transfer the case from High Court No. 05 to High Court No.01 or Nominate another Court to hear and determine the High Court Colombo case No. 3368/2022.**

05. The Petitioner alleges that there was a MC Chilaw Case bearing No. 808/25 based on the complaint made by the Hon. Nayomi Wickramasekara to the Criminal Investigation Department (CID), in that the suspect is Sumudu Jayamanne, Attorney-at Law for whom Rienzie Arseculeratne, President’s Counsel appears as the Counsel. The said case is going on in parallel and as Rienzie Arseculeratne,

President's Counsel is appearing against the Honorable High court judge, the Petitioner doubts that he would receive justice before the said High Court Judge. There is a great doubts about the impartiality of the Judge and the reasonable suspicion of bias against the Petitioner.

06. The Petitioner had filed a motion dated 11.05.2026 to seek to have the case referred to High Court No.01 for the nomination of another court and the said matter was taken up before High Court No.05 and the Honorable High Court Judge refused the application. The Petitioner filed a transfer application TRF 03/2026 and withdrew the same. The trial in the said case commenced on 18.05.2026 by the said High Court Judge, the first witness, the Registrar of the District Court, Colombo gave evidence and was cross-examined by the Petitioner's counsel Rienzie Arseculeratne, President's Counsel and further the trial was fixed for 26.06.2026.

07. The Petitioner alleges that the said High Court Judge is taking undue interest in taking up the trial early without regard to Rienzie Arseculeratne's convenience, thus, the Petitioner will not have fair hearing and justice will not prevail. The mere allegation is not enough, it should be that the judge has departed from the requirement of Natural Justice.

08. The learned Additional Solicitor General, Dileepa Peiris appearing for the Honorable Attorney General vehemently objects to the transfer application. He asserts that the main idea behind the

Petitioner's application is to delay the case or prosecution. The original complaint was made in the year of 2013 to the CID.

09. The Petitioner has filed a fundamental rights application bearing No. FR/388/2019 in the Supreme Court against the arrest of the Petitioner, and finally withdrew the said Fundamental Rights Application. Thereafter, an indictment was filed in the High Court, Colombo in the year 2022.

10. The Petitioner has filed CA/WRIT/485/2022 challenging the indictment and the said writ case was dismissed. The learned Additional Solicitor General argues that the Petitioner had the tendency of seeking relief by way of several causes of Action, and the Petitioner's task is to delay the prosecution case. The witnesses of the High Court case are elderly people and they might leave their lives in the near future. The Petitioner might get victory due to the absence of witnesses.

11. The Learned Additional Solicitor General asserts that the Petitioner has several ways and means to overcome her fear of unfair trial by changing her counsel. It is more incumbent on the Petitioner to change the counsel rather than seeking to change the Judge. The Petitioner's application is not to transfer the case from one Court to another but merely to nominate another judge.

12. This Court of the view that generally the transfer applications are made to the Court of Appeal to transfer of the case from one Court to another. That is to transfer from one jurisdiction to

another jurisdiction. But nominating another judge to hear and determine the case is not within the power of Court of Appeal. His Lordship the Chief Justice decides the nomination. A particular judge is nominated as the High Court Judge, Colombo. The allocation of works for the convenience of the divisions of Courts also decides by His Lordship Chief Justice. There were ten divisions of the High Court in Colombo and each division has allocated their works as bail, bribery, PTA, criminal and etc. This Court has no power to allocate a case to a Court to hear and determine the said case.

13. 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.

14. Accordingly, whenever it appears to the Court of Appeal, that a fair and impartial trial cannot be had in a particular Court, that is a fit ground to make a transfer order. Moreover, if it appears to the Court of Appeal that it is so expedient only the Court will grant the order.

15. When this Court assess the proceedings of the trial Court, this Court must be mindful that the Court is presided by a well-trained

judicial officer who has a trained legal mind. It is a very serious matter to make an allegation against such a judicial officer, and this Court will not take it lightly or entertain it without substantial materials before the Court. The practice is that any person who comes to Courts must come with clean hands.

16. In *Manatunga Vs Amarasinghe (2004) Sri L R 303*

The principle governing transfer application is the legal presumption that a judge act with absolute integrity, independence and impartiality. Therefore a party seeking a transfer order bears a heavy burden of proof. They must present clear credible and objective evidence to overcome this baseline presumption. Break complaints minor slights or unverified claims cannot shake this structural foundation. Transfer orders are exceptional remedies and must be supported by evidence rather than suspicion. A lawyer/ litigant is expected to know that calendar conflict cannot be transform into a claim of Judicial bias and review in Courts view these tactical application with extreme caution.

17. In *Perera and five others V Hasheeb and three others (1982) Sriskantha's Law* Report Pg. 133, at Pg. 143

*Lord Hewart, C.J. in **R. Vs. Sussex JJ ex parte McCarthy**, that it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done' is being urged as a warrant for quashing*

convictions or invalidating orders on quite unsubstantial grounds and, indeed, in some cases, on the flimsiest pretexts of bias. While endorsing and fully maintaining the integrity of the principle reasserted by Lord Hewart, C.J., this Court feels that the continued citation of it in cases to which it is not applicable may lead to the erroneous impression that it is more important that justice should appear to be done than that it should in fact be done. [Sic]

18. In ***Sivasubramaniam v. Sivasubramaniam* 1980) 2 Sri LR 58** the Court held that

"a party who seeks the transfer of a pending action in Court must adduce sufficient grounds to satisfy the Court of Appeal and that a transfer would not be ordered on light grounds on a careful consideration of all the relevant material placed before Court."

19. We take all the averments of the petition and affidavit and materials placed at the time of support, this Court is of the view that there was no iota of evidences to say that the said High Court Judge was and is acting in bias and in detrimental manner to the Petitioner. Hence this Court considers that it is not expedient to grant the Petitioner's Application. Considering the merits of this Application we did not find that the Court should consider favorably the transfer of the Application. Therefore, the transfer Application is refused.

20. The final relief asked for by the Petitioner is to transfer the case 3868/2022 from High Court No.05 to High Court No. 01 or nominate another Court to hear and determine the case, which this Court has no power to grant such reliefs. For the reasons adumbrated above, this Court decline to grant the interim reliefs sought by the Petitioner. This Court is also compel to refuse the Petitioner's Application for issuance of notices on the Respondents.

Interim reliefs refused.

Notices refused.

The Application is dismissed inlimine

On this 10th day of July 2026

JUDGE OF THE COURT OF APPEAL

R. GURUSINGHE, J.

I agree.

JUDGE OF THE COURT OF APPEAL