

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

In a matter of an application for Writs of Prohibition and Mandamus, under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Kasthuri Arachchige Cyril Hiroshan Perera,
253/18,
Shanthi Mawatha,
Makola (South),
Makola.

PETITIONER

CA WRIT APPLICATION
NO. CA /WRT /567 /2026

Vs.

1. Tharaka Ruwan Wijesinghe,
Senior Inspector of Police, Officer in Charge, Ragama Police Station,
Ragama.
2. Police Constable 79725 Amila,
Ragama Police Station,
Ragama.
3. Police Sergeant 33489 Amila Nadun
Galapathi,
Ragama Police Station,
Ragama,

4. Prabath Asela Perera,
Senior Inspector of Police,
Officer in Charge (Acting)
Ragama Police Station, Ragama.
5. Nuwan Asanka,
Senior Superintendent of Police,
Kelaniya Division
6. Priyantha Weerasooriya,
Inspector General of Police,
Police Headquarters,
Colombo 01.
7. Hon. Dhammika Uduwavidana,
Hon. (Additional) Magistrate,
Magistrate's Court of Gampaha,
Gampaha (Former Magistrate
Magistrate's Court of Welisara,
Welisara)
8. Hon. (Ms). Nirupa Nanayakkara,
Hon. Magistrate,
Magistrate's Court of Welisara, Welisara.
9. Hon. Prasanna Alwis,
The Secretary of the Judicial Service
Commission of Sri Lanka,
Judicial Service Commission Secretariat,
Colombo 12.
10. Honorable Attorney General,
Attorney General's Department,
Colombo 12

RESPONDENTS

Before: Hon. Justice B. Sasi Mahendran
Hon. Justice Adithya Patabendige

Counsel: Dilan Ratnayake, PC, with Maithree Amarasinghe and Nipun Nawarathna for the
Petitioner
Malik Azeez, SC, for the 10th Respondent

Supported: 06.08.2026

On

Order On: 03.09.2026

ORDER

B. Sasi Mahendran, J.

The Petitioner seeks, *inter alia*, a direction to call for the Record of the Magistrate’s Court of Welisara in Case No. B/1352/25, and a ***Writ of Prohibition*** restraining the 8th Respondent from continuing the Inquiry on the basis of the erroneous and illegal investigations conducted by the 1st and 2nd Respondents.

The Petitioner further seeks ***Writs of Mandamus*** directing the 4th, 5th and 6th Respondents to replace the Investigating Team; directing the 8th Respondent to recommence and proceed with the Inquiry upon the completion of a duly regularized investigation; and directing the 8th Respondent to issue appropriate Orders for the expeditious recording of evidence, conducting of a Post Mortem, and taking of all necessary steps to conclude the investigation and pronounce a verdict in respect of the death under suspicion.

The following facts are relevant to this application.

The Petitioner is a blood relative of Ms. Kanthi Swarnamali Jayakody (hereinafter referred to as “the deceased”). Following the death of the deceased’s husband, the deceased continued to reside at Jayakody Walauwa (hereinafter referred to as “the Walauwa”). The Petitioner states that one Kathriarachchige Don Rohitha (hereinafter referred to as “Rohitha”), who had been the deceased’s long-standing driver, gradually assumed control over the affairs of the Walauwa and over its servants, finances and assets as well as over the deceased.

According to the Petitioner, Rohitha subsequently isolated the deceased from her relatives through manipulation and deceit. The Petitioner relies, in this regard, upon a complaint made by the deceased to the Police on or about 19th May 2021, marked “**PX1**”, and states that thereafter relatives of the deceased’s late husband were prevented from visiting the Walauwa.

The Petitioner further states that information subsequently obtained from servants of the Walauwa indicated that, during the final weeks of her life, the deceased was allegedly deprived of adequate nutrition, sanitation, exercise and medication and was kept in extremely unhygienic conditions.

As a result of concerns regarding the safety and welfare of the deceased, a relative made an emergency complaint on 29th February 2024 to the Bureau for the Prevention of Abuse of Children and Women concerning her alleged unlawful restraint and abuse. The Petitioner states that no meaningful investigation followed and that the complaint was subsequently closed on the basis that the authorities were unable to locate the residence of the deceased.

The Petitioner further states that, owing to continuing concerns regarding the deceased, a further complaint was made through the official hotline in or about July 2024 and was referred to OIC/WIP Thamara of the Women and Children's Unit of the Peliyagoda Police Station. According to the Petitioner, the ensuing investigation was inadequate, as WIP Thamara allegedly recorded only a statement from the deceased at Walauwa on 30th July 2024, which is marked "PX4", in the presence of Rohitha, without recording statements from the complainant or other relevant persons.

The Petitioner further refers to a Last Will bearing No. 2532 dated 17th June 2024, by which the deceased's estate and assets, including her bank accounts, were allegedly bequeathed to Rohitha. It is stated that the validity of the Last Will is presently challenged before the District Court of Welisara in Case No. 379/T and that the Petitioner has reason to believe that the Will may have been forged or obtained through undue influence, pressure or duress.

On 16th March 2025, Rohitha informed the Petitioner that the deceased was unconscious. Although the Petitioner instructed Rohitha to take the deceased to hospital, Rohitha subsequently informed him that the deceased had been pronounced dead by personnel of the '1990 Suwaseriya ambulance' service and that he was at the Police Station.

On the same day, a relative, Rajeev Wallpita, contacted Police Emergency 119 and reported the death as suspicious and questionable, with the expectation that a proper investigation into the death would be conducted upon the complaint, which is marked as "PX(7)". According to the Petitioner, the said information was not reported by the OIC and Acting OIC of the Ragama Police Station (hereinafter referred to as the 1st and 4th Respondents) to the learned Magistrate. Another relative, Suramya Jayasinghe, is also said to have made a complaint to the Ragama Police concerning the suspicious death.

The Petitioner alleges that, despite the reported suspicious circumstances, the Police failed to promptly secure the scene where the body was found and summon Scene of Crime Officers, preserve potential evidence, or take the necessary investigative steps. The Petitioner further alleges that, on 16th March 2025, the scene of death was handed over to Rohitha, notwithstanding the allegations and suspicions

previously raised against him and that the Petitioner was subsequently informed that the scene had been cleaned.

On 17th March 2025, Police Constable Amila, No. 79025, reported to the learned Magistrate that a scene visit or an inquest was unnecessary. The Petitioner challenges the propriety and authority of the officer to make such a determination and relies upon the relevant Journal Entry, marked “**PX11**”. Upon receipt of “**PX(11)**”, the learned Magistrate directed that a post-mortem examination be conducted and that the report thereof be submitted to the Court. The Petitioner contends that the learned Magistrate did not thereafter personally visit the scene of death or make observations thereon and did not record observations concerning the body of the deceased, including any injuries observed thereon.

The Petitioner further alleges that the first B Report dated 17th March 2025, marked “**PX12**”, referred to a dispute concerning the estate and property of the deceased. According to the Petitioner, this matter was extraneous to the principal complaint concerning the suspicious circumstances of the death.

The Petitioner further alleges that the officers of the Ragama Police Station failed to record statements from witnesses other than the complainant, despite the reliance placed on circumstantial evidence. It is also alleged that the 5th Respondent failed to comply with the Orders of the learned Magistrate dated 25th April 2025, which is marked “**PX13**”.

The Petitioner further states that, on 18th March 2025, the learned Magistrate was informed of an escalation of the conflict or dispute surrounding the death. Thereafter, the learned Magistrate ordered that the post-mortem examination be conducted by a panel of three specialist Judicial Medical Officers and revoked the earlier order permitting the body to be handed over to a close relative. The relevant Journal Entry dated 18th March 2025 is marked “**PX14**”.

The Petitioner contends that these subsequent developments demonstrated the need for a more comprehensive inquiry into the circumstances surrounding the death and that the necessary orders were not made promptly, notwithstanding the complaints made by the relatives that the death was suspicious. It is also alleged that the Magisterial Inquiry was thereafter unduly delayed and continued for a period exceeding one year, without adequate justification, and that the cause of death remained unresolved during that period.

Being aggrieved by the aforementioned actions, the Petitioner has invoked the writ jurisdiction of this Court.

The main ground urged by the Petitioner with regard to the inquest proceedings is that the Learned Magistrate failed to visit the scene of the incident. The Petitioner contends that, where a death falls within the circumstances contemplated by Section 370(1) of the Code of Criminal Procedure Act

(hereinafter referred to as the ‘Act’), it is mandatory that an inquest be held in accordance with the prescribed procedure.

At this juncture, I am mindful of Section 370(1) of the Act, which reads as follows,

“(1) Every inquirer on receiving information that a person -

- a. has committed suicide; or*
- b. has been killed by an animal or by machinery or by an accident; or*
- c. has died suddenly or from a cause which is not known,*

shall immediately proceed to the place where the body of such deceased person is and there shall make an inquiry and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body and such marks, objects, and circumstances as in his opinion may relate to the cause of death and stating in what manner such marks appear to have been inflicted.”

According to the above section, it is mandatory for the Inquirer to proceed to the place where the body was found, conduct an inquiry, and examine the body for any wounds, injuries, or other marks. The Inquirer must thereafter form an opinion as to the cause of death. The opinion which the inquirer is required to form under this provision is confined to the apparent cause of death. If the learned Magistrate finds that there is a reasonable suspicion as to whether a crime has been committed, the proceedings under Chapters XIV and XV will follow. Thus far, the learned Magistrate has expressed no opinion regarding the cause of death.

The Petitioner has failed to indicate to this Court the present stage of the inquiry proceedings before the Magistrate’s Court. Under Section 370, the Magistrate has a duty to hold an inquiry and to form an opinion with regard to the cause of the death. The Magistrate has given no power to investigate the crime during the inquest proceedings. According to the Petitioner, the learned Magistrate ordered that the post-mortem examination be conducted by a panel of three specialist Judicial Medical Officers and revoked the earlier order permitting the body to be handed over to a close relative. By doing so, the report will reveal whether the body of the deceased bears any injuries or wounds of a suspicious nature.

It is accepted that the learned Magistrate failed to visit the scene of the incident, notwithstanding that such a visit is contemplated as a mandatory part of the inquest procedure. The post-mortem examination provides an independent means of determining whether the deceased had sustained any suspicious wounds, injuries, or other marks, and will assist in determining the cause of death.

The question that arises for determination before us is whether a *writ of prohibition* is available to the Petitioner to restrain the 8th Respondent.

At this juncture, I am mindful of the dictum of Lord Atkin in the case of **King v. Electricity Commissioner**, which reads as follows,

"Whenever anybody of persons, (firstly) having legal authority, (secondly) to determine questions affecting the rights of subjects, (thirdly) having the duty to act judicially, (fourthly) act in excess of their legal authority, they are subject to the controlling jurisdiction exercised by these writs."

This dictum was considered by H. N. G. Fernando, S.P.J. (as he was then) in the case of **Dias v. Abeywardene**, 68 NLR 409 at pages 410-411, held that,

"Consideration was given in the case of de Mel v. M. W. H. de Silva to the nature of an inquiry ordinarily held in pursuance of a Commission under the Commissions of Inquiry Act. In referring the case to a fuller Bench, Gratiaen J. stated the opinion that the functions of such a Commissioner could not properly be described as judicial or quasi-judicial functions over which the Court could exercise any controlling jurisdiction and that an application for a Writ in the nature of Prohibition would not be appropriate for the purpose of challenging the procedure adopted by such a Commissioner. The reason for this opinion is stated in the judgment of Wijeyewardene C. J., namely, that such a Commission is not expected to make an order affecting the legal rights of persons. What rendered the Commissioner in that particular case amenable to such a Writ was the important additional circumstance that special supplementary legislation enacted by Parliament provided that a finding of the Commissioner that a person had been guilty of bribery would have the effect of depriving such a person of his civic rights. On that ground the Commissioner was held to have "legal authority to determine a question affecting the rights of persons and having the duty to act judicially ". The Court thus adopted the test laid down by Atkin L.J. in King v. Electricity Commissioner"

Seneviratne v. Attorney General, 71 NLR 439 at pages 446-447, Tennekoon J held that

"As to the third ground on which it is contended that certiorari lies, the true test to my mind of whether the writ lies is what kind of function the law has imposed upon the authority when acting within its statutory powers and not what it has actually done acting outside of its powers. If the answer to that question is that the function imposed by law is judicial in character the writ will lie to quash determinations or orders made outside or in excess of its statutory authority, or in breach of the rules of natural justice or where there is error of law on the face of the record. Where the function is not judicial in character, whatever other remedies may be available, the prerogative writs of certiorari or prohibition will not be available to question acts of such authority which are ultra vires of its legal powers."

Further held that

“The more reliable test is to inquire to what end or purpose these powers are given. If the legislature gives such powers in order to facilitate the making of determinations which are intended by the law to affect the rights of subjects, then the writs are available. To my mind the functions of a Magistrate or inquirer holding an inquest of death are of a non-judicial character.

....

It seems to me that the duty to inquire into the ‘cause of death’ is no different from the functions of a commission appointed under the Commissions of Inquiry Act. The Writs of Prohibition and certiorari do not issue to such commissions”

When I consider the instant case in light of the aforesaid judgments, it is apparent that the Petitioner seeks a *writ of Prohibition* to restrain the continuation of the inquest on the ground that the learned Magistrate failed to visit the scene. I am mindful that the purpose of an inquest is to ascertain the cause of death and, upon such inquiry, to form an opinion accordingly. In the instant case, however, the inquiry has not yet been concluded, and the learned Magistrate has not formed any opinion as to the cause of death. However, the learned Magistrate has directed that a post-mortem examination be conducted and that the report thereof be submitted to the Court.

It should be borne in mind that the duty cast upon the Inquirer or the Magistrate is one of fact-finding. That is to say, when information is received in terms of Section 370 (1) of the said Act, the Inquirer or the Magistrate must immediately proceed to the place and conduct an inquiry. If, upon such inquiry, any injuries to the body are found, the Inquirer or Magistrate, after recording the relevant evidence, is required to form an opinion as to the cause of the death.

My understanding is that once the Inquirer or the Magistrate forms an opinion regarding the cause of death, the inquest proceedings are concluded. If, however, the Inquirer or Magistrate forms the opinion that there is a reasonable suspicion that a crime has been committed, an inquiry may thereafter be conducted under Chapters XIV and XV of the said Act. It is true that the learned Magistrate failed to proceed to the scene, as required under Section 370 of the said Act. According to the journal entry, the police officer had informed the learned Magistrate that there was no necessity to visit the scene. Nevertheless, I hold that the learned Magistrate failed to discharge the duty imposed upon him under the said provision.

The question before us is whether, by failing to follow the procedure described by law will the Petitioner is entitled to invoke the writ jurisdiction of this court.

It is pertinent to refer to the following passage from *Wade and Forsyth, Administrative Law*, 11th ed. (2014), at p. 596, under the heading “Discretion and its Consequences”:

*“The most active remedies of administrative law-declaration, injunction, the quashing order (certiorari), the prohibiting order (prohibition), the mandatory order (mandamus) - are discretionary and the court may therefore withhold them if it thinks fit. In other words, the **court may find some act to be unlawful but may nevertheless decline to intervene.**” [emphasis added]*

I am mindful that the Petitioner has alleged that the said Will, bearing No. 2532, is fraudulent and has instituted proceedings before the District Court under Case No. 379/T. If the Petitioner is of the view that there has been any foul play or fraud in relation to the said Will, the Petitioner is at liberty to lodge a complaint with the police in that regard. However, there is no provision in the present inquest proceedings to investigate such an alleged offence. The purpose of an inquest is limited to ascertaining the cause of death.

For the above-mentioned reasons, I decline to issue the *Writs of Prohibition* and *Mandamus* sought by the Petitioner.

The application is therefore dismissed. I make no Order as to costs.

JUDGE OF THE COURT OF APPEAL

Adithya Patabendige, J.

I have had the benefit of reading the Order of my learned brother, Justice Sasi Mahendran. I agree with the reasoning and conclusion of my learned brother. However, considering the circumstances disclosed in this application, I wish to add the following observations.

It is evident from the material before this Court that the inquest proceedings have remained pending for a period exceeding one year without being brought to a conclusion. An inquest into a death, particularly where concerns have been raised regarding the circumstances surrounding the death, cannot be permitted to remain inconclusive for such a prolonged period. In my view, the delay of more than one year in concluding the inquest is highly unsatisfactory.

I am also seriously concerned by the failure of the learned Magistrate to proceed to the place where the body of the deceased was. Section 370(1) of the said Act expressly requires the Inquirer, upon receiving information of a death falling within the circumstances specified therein, to immediately proceed to the place where the body is and conduct the inquiry contemplated by that provision. As my learned brother has correctly observed, the fact that a police officer had expressed the view that a visit to the scene was unnecessary could not relieve the learned Magistrate of the statutory duty imposed upon him by law.

Nevertheless, as the inquest has not yet been concluded, I am of the view that the appropriate course at this stage is not to interfere with the continuation of the proceedings, but to ensure their expeditious conclusion. Accordingly, while agreeing with my learned brother that the relief sought by the Petitioner should be refused, I direct the learned Magistrate to proceed with the inquest without any further delay, record such evidence as may be necessary, and conclude the inquest proceedings in accordance with law within three weeks from the date of receipt of this Order.

The Registrar of this Court is directed to communicate a copy of this Order forthwith to the learned Magistrate concerned. The Registrar is further directed to forward a copy of this Order to the Secretary to the Judicial Service Commission for its information.

Subject to the above observations and directions, I agree with the Order of my learned brother.

JUDGE OF THE COURT OF APPEAL