

**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, Prohibition, and Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA WRIT 167/26

1. Tharanga Sanjeewani Liyanage
No 07, Karadiyana Road, Wewala
Piliyandala
2. Nimesha Chinthana Gunawickrama
No 04/08B, Pasal Mawatha
Boralesgamuwa

Petitioners

Vs.

1. SI Gamini U Gamage
Commercial Crime Investigation Unit,
Criminal Investigation Department
Colombo 01

2. WCI Ms Nilushi Priyanthika
Commercial Crime
Investigation/Special
Investigation Unit 2
Criminal Investigation Department
Colombo 01
3. WCI Ms Nalini Dissanayake
Special Investigation Unit 03
Criminal Investigation Department
Colombo 01
4. CI Kelum Karunarathne
Special Investigation Unit 03
Criminal Investigations Department
Colombo 01
5. Mr G S Abeysekara
Director
Criminal Investigation Department
Colombo 01.
6. Mr Manoj Dushyantha Rajarathnam
No. 7, Balerno Circle
Gowanbrae, Victoria, 3043
Melbourne, Australia.
7. Hon Magistrate
Magistrate's Court No (1)
Hulftsdorp
Colombo 01

8. Registrar
Magistrate's Court Colombo
Hulftsdorp
Colombo 12
9. Mr I Chaminda Pathiraja
Controller-General of Immigration and
Emigration
Department of Immigration and
Emigration, Suhurupaya,
Sri Subhuthipura
Battaramulla
10. Hon Attorney-General
Attorney-General's Department
Colombo 12
Respondents

Respondents

Before: B. Sasi Mahendran, J.
Amal Ranaraja, J

Counsel: Priyantha Nawana, PC with R.Y.D. Jayasekara and Ravihansa Wijesekara for
the Petitioner
A.S.G. Shanil Kularatne, PC for the State

Order On: 30.04.2026

ORDER

B. Sasi Mahendran, J.

This order pertains to the question of whether notice should be issued to the Respondents. According to the Petition, the 6th Respondent lodged a complaint with the Criminal Investigation Department on 23 November 2022, alleging that Grain Life Australia (Pvt) Ltd. had committed offences of cheating and misappropriation against him. It is further stated that the 2nd Respondent is one of the Directors of the said company.

Thereafter, on 01 December 2022, the 1st Respondent reported facts to the Magistrate's Court in Case No. B 81341/01/22. Subsequently, on 31 July 2025, the police sought legal advice from the Honourable Attorney General. As stated in paragraph 54 of the Petition, the Attorney General informed the Petitioners that he had decided to close the file at the Department and directed the CID to conduct further investigation. In the meantime, the 1st Petitioner departed for Australia on 13 January 2026. Thereafter, on 21 January 2026, the 2nd Respondent informed the 1st Petitioner that the CID required a further statement from her in relation to the investigation.

According to paragraph 60 of the Petition, the 2nd Respondent, without formally concluding the investigation, filed a further report on 03 February 2026 naming the 1st and 2nd Petitioners as suspects in respect of the offences of Criminal Misappropriation, Criminal Breach of Trust, and Cheating. Subsequently, it transpired that the 2nd Respondent had applied for a travel ban against the 1st and 2nd Petitioners. The Petitioners contend that the learned Magistrate (hereinafter referred to as the 7th Respondent), without due consideration of the relevant facts, proceeded to impose the said travel ban.

The principal ground advanced by the Petitioner is that there was no basis for the 7th Respondent to impose a travel ban against the Petitioners. It is further contended that there exists no legal foundation for the application of such a travel ban.

The issue arises as to whether the learned Magistrate had the authority to impound the Petitioner's passport, or whether such an order is ultra vires. The Petitioners accordingly seek a writ of *certiorari* to quash the decision of the 7th Respondent insofar as it relates to the impounding of the said passport.

The issue before us is whether such an action of the 7th Respondent could be quashed by way of writ of *certiorari*.

In this juncture, it is pertinent to refer to the dictum of Lord Atkin.

“The dictum [of Lord Atkin] has been analyzed as laying down four conditions which must be satisfied for certiorari or prohibition to issue:-

‘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.’

(In Sunil F.A. Coorey’s, ‘Principles of Administrative Law in Sri Lanka’ (supra) at page 911, the learned author notes,)

It is necessary to ascertain under which law the 7th Respondent impounded the Petitioners’ passports. The stated purpose of such impounding is to secure the attendance of an accused, suspect, or witness in any legal proceeding. This authority is derived from Section 51c (1) of the Immigration and Emigration (Amendment) Act No. 16 of 1993.

Section 51 c reads as follows,

(1) Whenever in any proceeding in respect of any offence under any law it appears to the court that the attendance of an accused or suspect or the examination of a witness is necessary, it may, impound any travel document issued to such accused, suspect or witness, as the case may be, and for the time being in force, for such period as it may deem necessary to procure the attendance of such accused, or suspect or the examination of such witness. A court making an order under this section impounding a travel document issued to any person shall cause a copy of such order to be transmitted to the Controller.

(2) In this section, the expression "travel document" means a Sri Lankan passport, or an emergency certificate or identity certificate issued under the Immigrants and Emigrants Regulations, 1956.

It is admitted by the Petitioners that they were made suspects on 03 February 2026. Thereafter, the 2nd Respondent alone made an application under Section 51c (1) of the said Act seeking to impound the passports. Pursuant to that application, the 7th Respondent issued an order impounding the passports. The present writ application has been filed by the Petitioners to quash the said decision of the 7th Respondent.

A writ of *certiorari* is ordinarily issued where an authority acts without jurisdiction in the exercise of its powers. In the present case, the 7th Respondent, upon the application of the police officers, ordered the impounding of the passport. Section 51c of the said Act provides that the Magistrate ‘may’ make such an order. Our courts have consistently interpreted the term ‘may’ as conferring discretion. Such discretion may be set aside if it is shown to have been exercised mala fide, with bias, or without adherence to proper procedure. In the instant matter, the Petitioners have failed to establish any such grounds. Accordingly, there is no basis to issue notice to the Respondents.

Furthermore, the order impounding the passports could have been vacated had the Petitioners made an application before the same Magistrate and explained the reasons.

I hold that the impounding of a passport is an act within the jurisdiction of the learned Magistrate, and such an order may be vacated upon a proper application made before the same court. In the event the 7th Respondent fails to grant relief, the Petitioners have a remedy under Article 154P(3)(b) of the Constitution by way of a revision application before the Provincial High Court. Revision, in general, is intended to secure the due administration of justice.

For the foregoing reasons, I am disinclined to issue notice to the Respondents.

The application is accordingly dismissed, with no order as to costs.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL