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 and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka

Deshabandu Tennakoon
Inspector General of Police
No. 76/A, Gangani Gardens,
7th Lane, Hokandara East,
Hokandara.

CA Writ Application:
168/25

PETITIONER

Vs

1. Hon. B. A. Aruna Indrajith Buddhadasa
   Learned Magistrate
   Magistrate's Court,
   Matara.

2. Priyantha Weerasooriya
   Acting Inspector General of Police
   Police Headquarters,
   Colombo 02.

3. P. Ampawila
   Deputy Inspector General
   Criminal Investigation Department,
   4th Floor, New Secretariat Building,
   Colombo 01.

4. D. R. Wijekoon
   Assistant Superintendent of Police
   Criminal Investigation Department,
   4th floor, New Secretariat Building,
   Colombo 01.

5. Hon. Ananda Wijayapala
   Minister of Public Security
   Ministry of Public Security,
   1st Floor, 'Suhurupaya',
   Battaramulla.

6. D. W. R. B. Seneviratne
   Secretary
   Ministry of Public Security,
   18th Floor, 'Suhurupaya',
   Battaramulla.

7. Shani Abeysekara
   Director
   Central Criminal Intelligence Analysis Bureau,
   Battaramulla.

8. Hon. Attorney General
   Attorney General's Department
   Hulftsdorp,
   Colombo 12.

9. Nuwan Wedisinghe
   Former Deputy Inspector General of Police in Charge of the Criminal Investigation Department
   No. 1271, Biyagama Road,
   Kelaniya.

10. Prasanna De Alwis
    Former Senior Superintendent of Police and Former Director of the Criminal Investigation Department
    No. 6/A, Samulu Niwasa,
    Keppitipola Mawatha,
    Colombo 05.

11. G. J. Nandana
    Senior Superintendent of Police
    Former Director of the Colombo Crimes Division
    Presently,
    Director of Kalutara Crimes Division,
    Aluthgama.

12. Upul Kumara
    Chief Inspector of Police
    Headquarters Inspector,
    Weligama Police Station,
    Weligama.

13. W. A. R. Bandara
    Superintendent of Police
    Director of Special Investigation Unit,
    No. 97, 3rd Floor, Maradana Road,
    Colombo 10.

14. P. V. A. S. Karunatilleke
    Chief Inspector of Police
    OIC - Commercial Crimes Investigation Unit1,
    4th Floor, New Secretariat Building,
    Colombo 01.

RESPONDENTS

Before: **M. T. Mohammed Laffar, J. (P/CA- Actg).**
K. M. S. Dissanayake, J.

Counsel: Dr. Romesh De Silva, P.C. with Sugath Caldera and Niran Anketell for the Petitioner, instructed by Sanath Wijewardena.

Dileepa Peiris, A.S.G., with Maheshika Silva, D.S.G. for the Respondents.

Supported on: 12.03.2025

Decided on: 17.03.2025

MOHAMMED LAFFAR, J, PRESIDENT OF THE COURT OF APPEAL (Actg.)

The Petitioner who is the Inspector General of Police of Sri Lanka, under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka invokes the Writ jurisdiction of this Court seeking the reliefs as prayed for in prayers to the Petition dated 07/03/2025. When the matter was mentioned on 10/03/2025 in open Court, the President's Counsel appearing for the Petitioner made submissions *ex parte* and sought an interim order, *inter alia,* preventing the Petitioner from being arrested by the Respondents, pursuant to the order, marked **P19,** made by the 1st Respondent, the learned Magistrate of Matara, in case bearing No. B/6314/23 in respect of the Weligama incident that took place during the period 29th to 31st of December 2023.

This Court ordered to support the matter with notices on the Respondents. On 12/03/2025 we heard Dr. Romesh de Silva PC who appeared for the Petitioner in support of this application and Dileepa Peiris, Additional Solicitor General, who appeared for the Respondents. This inquiry is confined to the issuance of formal notices on the Respondents and in respect of the grant of interim reliefs.

FACTUAL MATRIX IN A NUTSHELL

The Petitioner states that on 29/12/2023, on his instructions, the Acting Director of the Colombo Crime Division (hereinafter referred to as 'CCD'), along with other police officers, were sent to the Matara area on the night of 30/12/2023. This action was taken in response to certain information collected during an investigation involving associates of a notorious underworld drug kingpin suspect who had attempted to escape from police custody. The Petitioner further states that while the said CCD team was patrolling the Weligama area at around 2:30 a.m. on 31/12/2023,

an incident occurred where the CCD team reportedly came under fire. The CCD team retaliated with fire and moved their vehicle along the road to escape the shooting. During this incident, two officers of the CCD sustained injuries, and one Police Sergeant, Upali (57241), attached to the CCD, succumbed to his injuries. According to the affidavit filed by the Petitioner, it is stated that he had taken necessary steps to investigate the incident and to report the relevant information to the learned Magistrate.

However, the Petitioner further states that the 6th Respondent, D.W.R.B. Senevirathne, Secretary of the Ministry of Public Security and the 7th Respondent, Shani Abeysekara, Director of Central Criminal Intelligence Analysis, motivated by personal animosity, have initiated fresh investigations and legal proceedings against the Petitioner. The Petitioner contends that the said investigation against him is malicious, politically motivated, targeted, biased and aimed at framing the Petitioner at any cost. As such, the order issued by the learned Magistrate on 27/02/2025, directing the arrest of the Petitioner and his production before the Magistrate on the basis that the said incident was initiated by the Petitioner unlawfully, is illegal.

In those circumstances, the Petitioner in the instant application is seeking, *inter alia,* Writs of Mandamus directing the 2nd to 7th Respondents to conduct a fair, independent and impartial investigation by a division of the Sri Lankan Police other than the 6th and 7th Respondents. Moreover, the Petitioner is seeking an interim order, *inter alia,* preventing the 2nd to 7th and the 14th Respondent from conducting any further investigation against the Petitioner in this regard and also preventing the arrest of the Petitioner pursuant to the said order of the learned Magistrate.

THE CONTENTION OF THE LEARNED PRESIDENT'S COUNSEL FOR THE PETITIONER IN A NUTSHELL

The learned President's Counsel for the Petitioner contends that the impugned order of the learned Magistrate is bad in law on the basis that,

1. Under Section 136(1)(b) of the Criminal Procedure Code No. 15 of 1976 (as amended) the Magistrate is not empowered to issue a warrant at the first instance.
2. The report submitted before the learned Magistrate by the OIC Weligama, marked as **P20,** dated 31/12/2023 is incomplete and there is no mention of the Petitioner therein, and therefore, making an order to arrest the Petitioner based on **P20** is premature.
3. Under Article 13(1) of the Constitution of the Republic of Sri Lanka, arbitrary arrest is prohibited.
4. There is a duty cast upon the learned Magistrate to issue summons to the Petitioner before issuing a warrant under proviso 1 of Section 139(1)(b) of the Criminal Procedure code, whereas the learned Magistrate failed to do so.
5. The investigation officers or the learned Magistrate has not taken steps to record the statement of the Petitioner before issuing the impugned order to arrest.

THE CONTENTION OF THE LEARNED ADDITIONAL SOLICITOR GENERAL FOR THE RESPONDENTS, IN A NUTSHELL

1. The Petitioner has suppressed material facts to this Court and therefore, he is not entitled to invoke the discretionary remedy of the Writ jurisdiction of this Court.
2. As an alternative remedy has been provided for by law to the Petitioner to challenge the impugned order of the learned Magistrate, he is barred from invoking the writ jurisdiction of this Court
3. Having considered the totality of the evidence, reports and the provisions of the Criminal Procedure Code, the learned Magistrate has every right to issue a warrant against the Petitioner based on the facts and circumstances of this case.

SUPPRESSION OF MATERIAL FACTS

It is established law that discretionary relief will be refused by Court without going into the merits if there has been suppression and/or misrepresentation of material

facts. It is necessary in this context to refer to the following passage from the judgment of Pathirana J in **W. S. Alphonso Appuhamy v. Hettiarachchi**[1]

> *"The necessity of a full and fair disclosure of all the material facts to be placed before the Court when an application for a writ or injunction is made and the process of the Court is invoked is laid down in the case of The King v. The General Commissioner for the Purpose of the Income Tax Acts for the District of Kensington - Ex-parte Princess Edmond de Poignac – (1917)*[2] *Kings Bench Division 486. Although this case deals with a writ of prohibition the principles enunciated are applicable to all cases of writs or injunctions. In this case a Divisional Court without dealing with the merits of the case discharged the rule on the ground that the applicant had suppressed or misrepresented the facts material to her application. The Court of Appeal affirmed the decision of the Divisional Court that there had been a suppression of material facts by the applicant in her affidavit and therefore it was justified in refusing a writ of prohibition without going into the merits of the case. In other words, so rigorous is the necessity for a full and truthful disclosure of all material facts that the Court would not go into the merits of the application, but will dismiss it without further examination".*

Furthermore, in **Walker Sons & CO. LTD. v. Wijayasena**[3] Ismail, J stated that,

> *"A party cannot plead that the misrepresentation was due to inadvertence or misinformation or that the Applicants was not aware of the importance of certain facts which he omitted to place before Court."*

And in **Dahanayake and Others v. Sri Lanka Insurance Corporation Ltd. and Others**[4] the Court held that if there is no full and truthful disclosure of all material facts, the Court would not go into the merits of the application but will dismiss it without further examination. Therein, Marsoof J in Dahanayake's case held as follows:

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[1] [77 N.L.R. 131 135,6].
[2] (1917) 1 K.B. 486.
[3] [(1997) 1 SLR 293].
[4] [(2005) 1 SLR 67].

"The 1st respondent has also taken up a preliminary objection on the basis that the Petitioners have suppressed or misrepresented material facts. This by itself is a serious obstacle for the maintenance of the Petitioners' case. Our Courts have time and again emphasized the importance of full disclosure of all material facts at the time a Petitioner seeks to invoke the jurisdiction this court, by way of writ of certiorari, mandamus or any other remedies referred to in Article 140 of the Constitution."

This view was also held in **S.J.S. Business Enterprises (P) Ltd. v. State of Bihar and Ors**[5] where Ruma Pal J. held thus;

"As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the Courts to deter a litigant from abusing the process of Court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the Court, whatever view the Court may have taken."

Further, Makgoba JP, in the South African High Court case of **Hlahledi Frank Moropa v. Kinesh Sachiadanadan Pather**[6] held,

"The omission of material facts may be either willful or negligent. Regardless, the Court may on this ground alone dismiss an ex parte application In Schlesinger v Schlesinger 1979(4) SA 342 (W) an order obtained ex parte was set aside with costs on an attorney and client scale because the applicant had displayed a reckless disregard of his duty in making full and frank disclosure of all known facts that might influence the Court in reaching a just conclusion."

In the case at hand, it is submitted that the learned Magistrate made the impugned order not only based on the report marked **P20**, but also on the facts revealed during the inquest and the B report. Therefore, the B report, inquest report, and corresponding journal entries are material documents necessary to determine whether the impugned order complies with the law. Strictly speaking, the entire

[5] AIR 2004 SC 2421.
[6] 2987/2020) [2020] ZALMPPHC 42 (29 June 2020).

Magistrate's Court proceedings are required to conclude whether the impugned order is erroneous.

It is pertinent to note that although the Petitioner, in paragraph 34 of the Petition, reserved the right to tender the entire case record of the Magistrate's Court proceedings, he failed to do so. Furthermore, the learned President's Counsel for the Petitioner, in open Court, did not disclose this fact and did not seek permission from this Court to support the matter after tendering those documents. In these circumstances, under Section 114(f) of the Evidence Ordinance, this Court can presume that if the said documents were produced, they would adversely affect the Petitioner's case. Section 114(f) of the Evidence Ordinance reads as follows:

> *"(f) that evidence which could be and is not produced would if produced, be unfavourable to the person who withholds it;"*

As such, it is the opinion of this Court that this application could be dismissed on this ground alone. At this juncture, the attention of this Court is drawn to the observation made by Jayasuriya J in **Jayaweera vs Commissioner of Agrarian Services**[7] in this regard, which reads thus;

> *"A Petitioner who is seeking relief in an application for the issue of a Writ of Certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, still the Court has a discretion to deny him relief having regard to his conduct, delay, laches, waiver, submission to jurisdiction - are all valid impediments which stand against the grant of relief."*

ORDER OF THE LEARNED MAGISTRATE

It is a globally recognized legal principle that all reports, observations, recommendations, decisions, determinations, judgments and orders made by heads of departments, heads of corporations, heads of statutory bodies or even the head of the judiciary (whether judicial or quasi-judicial) are bad in law and liable to be

[7] 1996 2 SLR 73.

quashed *in limine* if they are made without providing an adequate opportunity for the concerned party to be heard (*ex parte*), without sufficient reasoning, or based on baseless presumptions. Such arbitrary decisions lack legal value as they adversely affect the legal rights of the concerned party.

In this regard, I refer to the case of **Choolanie vs Peoples Bank**[8] where the Supreme Court observed that,

> *"Satisfactory reasons should be given for administrative decisions. A decision not supported by adequate reasons is liable to be quashed by Court."*

> Per Shirani Bandaranaike J *"……giving reasons to an administrative decision is an important feature in today's context which cannot be lightly disregarded. Furthermore, in a situation, where giving reasons have been ignored, such a body would run the risk of having acted arbitrarily in coming to their conclusion"*

Moreover, it is appropriate for this Court to draw the attention of the observation made by the Supreme Court in **Piyasena De Silva And Others Vs Ven. Wimalawansa Thero And Another**[9] where Shirani Bandaranaike J (as she then was) held;

> *"A fair administrative procedure, which would be comparable to 'due process of law' embedded in the Constitution of the United States, is based on the principles of granting a fair hearing to both sides. The Courts therefore are bound to exercise the rules of natural justice, as the decisions would not be valid if ordered without first hearing the party who was going to suffer owing to the decision of the Court. Although the applicability and thereby the interest in the development of the well known rule "audi alteram partem" to a wider category succeeded recently, giving a hearing to an aggrieved party had begun arguably at the beginning of the human kind. As pointed out by Fortescue, J. In R v University of Cambridge the first hearing in human history was given in the Garden of Eden.*

[8] 2008 2 SLR 93.
[9] 2006 1 SLR 219.

In his words "I remember to have heard it observed by a very learned man upon such an occasion, that even God himself did not pass sentence upon Adam, before he was called upon to make his defence. 'Adam, says God, where art thou? Hast thou not eaten of the tree, whereof I commanded thee that thou shouldst not eat? And the same question was put to Eve also."

Having taken into consideration the above legal literature, it is necessary to ascertain whether the learned Magistrate had adequate material to make the impugned order. Generally, when a special police team is dispatched from Colombo to Matara for a special raid, it is the duty of the Petitioner to inform the relevant police authorities in the Matara area and ensure appropriate entries are made in the relevant records. However, it is revealed that the CCD team was sent by the Petitioner to Matara without adhering to the provisions of the Police Ordinance and regulations.

The CCD team were in civilian attire and even the deceased police constable, who sustained injuries from gunfire, was not rushed to the closest hospital for treatment. Instead, he was brought to Karapitiya hospital, which raises a reasonable suspicion regarding the Petitioner's actions. Had the injured officer been admitted to the nearest hospital, there might have been an opportunity to save his life. At this point, this Court appreciates the conduct of the learned Magistrate, who took considerable care in exercising his judicial powers to ensure justice was served.

According to the inquest report, it is revealed and rightly observed by the learned Magistrate, that the Petitioner sent an illegal, para-military team to carry out this task to fulfill needs that were of a personal nature. The observation of the learned Magistrate is reproduced as follows:

"ඒ අනුව නඩුවට අදාලව ඉදිරිපත්ව ඇති සියලුම කරුණු සලකා බැලීමෙන් අනතුරුව අධිකරණයට සිද්දීමය කරුණු සම්බන්දයෙන් එලෙම්බිය හැකි නිගමනය වන්නේ, වැඩ බලන පොලිස්පතිවරයා ලෙස සිටි දේශබන්දු තෙන්නකෝන් යන අය විසින් "W15" හෝටලයට අදාලව අනර්ථය, සපදාරි බලහත්කාර පෑම ආදී සහ හෝ වෙනත් ක්‍රියාමාර්ගයක් එකී අය්තිකරුවන්ට, රැඳී සිටිටිනන්ට හෝ සේවකයන්ට එරෙහිව සිදු කිරීම සඳහා තමාගේ යටතේ සිටින පොලිස් නිලධාරින් අට දෙනෙකුගෙන් යුතු

කණ්ඩායමක් නීති විරෝධී ආකාරයෙන් රජය සතු නිල වාහන, ගිනි අවි, උන්ඩ ආදියද සමග යොදවා ඇති බවයි."

Moreover, the learned Magistrates observed that,

"දේශබන්දු තෙන්නකෝන් යන අය සහ කොළඹ අපරාද කොට්ටාශයේ නිලධාරීන් එක්ව නිර්මාණය කරන ලද එක අසත්‍ය සාක්ෂි නිර්මාණය කිරීමට චේතනාත්මිකව දයකතවය දක්වමින්, අධිකරණය විසින් පවත්වන ලද විමර්ශනයට ඉදිරිපත් කිරීම සඳහා පොලිස් පරීක්ෂක මදුරංග නිලදාරිය විසින් වෙඩි තබන ලද උණ්ඩ සංඛය පිළිබඳව වැරදි සංඛ්‍යන්මක ඇතුලත් කර වෙඩි නැබීමෙන් ඉතිරි උණ්ඩ සංඛ්‍යාව සම්බන්දයෙන් සහ හිස් පතුරම් කොපු සංඛ්‍යාව සම්බන්ධයෙන් දෝෂ සහගත සටහන් යෙදීමෙන් වැලිගම පොලිස් ස්ථානයේ ස්ථානදිපති වන උපුල් නිලධාරියා බොරු සාක්ෂි ගැනීමේ ක්‍රියාවෙන් සහ නිත්‍යානුකූලව විමර්ශන නිලදාරිය ලෙස තමන් බැඳී සිටින පොලිස් දෙපාර්තමේන්තු වගකීමට පටහැනිව අකීකරුව ක්‍රියා කිරීමෙන් කර ඇති වැරදි පිළිබඳව එම අයට විරුද්දව නඩු කටයුතු පැවැත්වීමට ප්‍රමාණවත් හේතු පවතින බවටද වැඩි දුරටත් නිගමනය කරමි."

Having scrutinized the impugned order of the learned Magistrate, it is abundantly clear that the impugned determination is based not only on the report marked **P20**, but also on the inquest report conducted by him, the B report filed in Court and other relevant testimonies. In these circumstances, this Court can be satisfied with the basis upon which the learned Magistrate concluded to issue the impugned arrest warrant against the Petitioner. In **Victor Ivan vs Sarath N. Silva**[10] it was observed by Fernando J that,

> *"A citizen is entitled to a proper investigation - one which is fair, competent, timely and appropriate - of a criminal complaint, whether it be by him or against him. The criminal law exists for the protection of his rights - of person, property and reputation - and lack of a due investigation will deprive him of the protection of the law"*

Furthermore, it is my observation that in criminal proceedings, the Magistrate should not act as a mere rubber stamp. He is not expected to act according to the whims and fancies of the police or the officers of the Attorney General's Department. There is a

[10] 1998 1SLR 340.

duty cast upon the Magistrate to ascertain the truth of the incidents, as he is, at times, part of the investigation as well. He is empowered to decide whether or not to comply with the directions and orders made by the prosecution, provided he gives acceptable and adequate reasons in the interest of justice and is satisfied that the application is justified. In this regard I refer to the case of **Dayananda v. Weerasinghe and Others**[11] where His Lordship Ratwatte, J stated,

> *"It must be remembered that when a person is remanded he is deprived of his personal liberty during the duration of the remand period and a person who is remanded is entitled to know the reasons why he is so remanded. Magistrates should be more vigilant and comply with the requirements of the law when making remand orders and not act as mere rubber stamps.".*

In the above context, Article 4(c) of the Constitution reads as follows;

> *"4. The Sovereignty of the People shall be exercised and enjoyed in the following manner:-*
>
> *….*
>
> *c) the judicial power of the People shall be exercised by Parliament through courts, tribunals and institutions created and established, or recognized, by the Constitution, or created and established by law, except in regard to matters relating to the privileges, immunities and powers of Parliament and of its Members, wherein the judicial power of the People may be exercised directly by Parliament according to law;"*

Very often, when bail applications are brought before the Magistrate, bail is either permitted or refused based solely on whether the prosecution objects to the application or has no objection. Similarly, judges often permit the prosecution to withdraw indictments merely because the prosecution wishes to do so. This is not the judicial power endowed by law or the Constitution to a Magistrate or a judge

[11] 1983 2 SLR 84.

exercising the judicial power of the people. It is rightly observed by the learned Magistrate that:

> "*A Criminal investigation is Crucial before prosecuting a case. Investigators, part of the executive branch, are given extensive power by law and judicial interpretation. In Sri Lanka's adversarial system, the trial Judge acts as an umpire. However, during the course of an investigation, the magistrate should not act as a mere Umpire or silent observer, but is duty-bound to see that a fair, efficient and independent investigation is conducted in a timely manner, though he is not in charge of the investigation*"

In these respects, it appears to this Court that before making the impugned order of arrest, the learned Magistrate applied his judicial mind to the report marked **P20**, the B report, reports related to the inquest, evidence recorded, and all relevant provisions of the law pertaining to this matter.

THE PROVISIONS OF LAW APPLICABLE TO THIS APPLICATION

The contention of the learned President's Counsel for the Petitioner is that issuing a warrant before issuing summons under Section 136(1)(b) is bad in law. The said section reads as follows:

> *"136(1) Proceedings in a Magistrate's Court shall be instituted in one of the following ways: -……..*
>
> *(b) on a written report to the like effect being made to a Magistrate of such Court by an inquirer appointed under Chapter XI or by a peace officer or a public servant or a servant of a Municipal Council or of an Urban Council or of a Town Council; or"*

In terms of Section 9(b) read with Section 139(1) of the Criminal Procedure Code, the Magistrate is empowered to issue a warrant against the suspect. As such, Section 136 should not be considered in isolation. Having scrutinized the totality of the provisions relating to the issuance of a warrant against a suspect, there is no impediment for the Magistrate to issue a warrant in the first instance, based on the facts, circumstances, and gravity of the offence. In these circumstances, as already

observed by this Court, the instant incident was committed by a para-military team using illegal weapons and vehicles, ultimately leading to the loss of a life. Accordingly, issuing a warrant in the first instance is justifiable and within the purview of the powers of the Magistrate.

AVAILABILITY OF ALTERNATIVE REMEDIES

Prerogative Writs are discretionary remedies, and therefore, the Petitioner is not entitled to invoke the Writ jurisdiction of this Court when an alternative remedy is available to him. In **Linus Silva Vs. The University Council of the Vidyodaya University**[12] it was observed that,

> *"the rule that the remedy by way of certiorari is not available where an alternative remedy is open to the petitioner is subject to the limitation that the alternative remedy must be an adequate remedy."*

The Court of Appeal in **Tennakoon Vs. Director-General of Customs**[13] held that,

> *"The petitioner has an alternate remedy, as the Customs Ordinance itself provides for such a course of action under section 154. In the circumstances the petitioner is not entitled to invoke writ jurisdiction."*

In the instant case, in terms of the law, the Petitioner has every right to challenge the impugned order of the learned Magistrate before the High Court. As observed in *Linus Silva's Case (supra)*, the Petitioner can obtain adequate remedies before the High Court by way of appeal or revision. Instead of invoking the alternative remedy provided by law, that is invoking the High Court's jurisdiction, the Petitioner has chosen to invoke the discretionary Writ jurisdiction of this Court, which is not justifiable. Where the law provides a right to appeal or revisionary jurisdiction to an aggrieved party, that party is precluded from invoking the discretionary jurisdiction without first exhausting the available remedies. In the instant application, the

[12] 164 NLR 104.
[13] 2004 (1) SLR 53.

Petitioner has entirely failed to satisfy this Court as to why he opted to not invoke the High Court's jurisdiction as provided by law. Thus, it is the view of this Court that, on this basis as well, this application cannot be maintained and is liable to be dismissed.

THE RULE OF LAW

The Rule of Law is a fundamental principle that ensures a state is governed by laws rather than by the arbitrary decisions of rulers or government officials. Its origins can be traced back to Ancient Rome and were later developed by medieval European thinkers such as Hobbes, Locke, and Rousseau through the social contract theory. Indian philosophers such as Chanakya, the chief advisor to Mauryan emperor Chandragupta, emphasized the importance of the rule of law by advocating that a just and stable state could only be maintained if the king himself was subject to legal principles. In his treatise *Arthashastra*, Chanakya outlined a framework for governance in which no individual was above the law, believing that laws should be applied impartially and that the king's power should be exercised within the boundaries of *dharma* and established legal norms.

According to British jurist, A.V. Dicey, the rule of law upholds the absolute supremacy of regular law, eliminating arbitrary power and wide discretionary authority by the government, where he states as follows;

> "*the rule of law means the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power and excludes the existence of arbitrariness, of prerogative or even of wide discretionary authority on the part of the government.*"

A historic affirmation of this principle was seen in the case of **Prohibitions del Roy** (1607), where Lord Edward Coke ruled that even the monarch was subject to the law and that legal disputes should be resolved by independent Courts, while highlighting the central tenet of the rule of law: no one, including those in power, is above the law. With this background, by analyzing the case at hand, we see that the Petitioner is not an ordinary citizen. He holds the highest rank within the Police force, serving as the

Inspector General of Police (IGP), a position that casts upon him the duty to maintain law and order within the country. During his tenure as a Police Officer, the Petitioner may have produced numerous suspects and/or wrongdoers before Courts, adhering to Court orders. Unlike an ordinary citizen, he possesses a heightened awareness of the rule of law in this country.

It is deeply concerning and regrettable that the head of the Police Department, who possesses extensive knowledge of the law and holds a position of great responsibility, is involved in a grievous offense and is actively evading arrest. His failure to cooperate with the Court order and his attempts to remain in hiding not only undermine the principles of justice but also tarnish the reputation of the Police Department. Such actions are unacceptable and diminish public trust in the very institution entrusted with upholding law and order. The Petitioner, who is entrusted with enforcing the law and tasked with setting an example for society, cannot be permitted to act as though he is above the law.

It is pertinent to note that the Police Department and the judiciary must operate with impartiality, free from any influence based on race, caste, religion, language, position, political beliefs or any ulterior motive. If these institutions fail to uphold fairness and equality in their actions, it will inevitably erode public confidence in the justice system and the administration of justice as a whole. Thus, maintaining integrity and impartiality is essential to preserving trust in these fundamental pillars of society. In my view, if these two institutions function without fear or favour and strictly adhere to the law of the land, it would significantly reduce crime by as much as 90% and thereby uphold the democratic process.

I further observe that if these two institutions fail to function effectively, the general public will inevitably lose confidence in them. As a result, people may resort to resolving disputes on their own, leading to a rise in lawlessness, thuggery, and the breakdown of law and order. This deterioration will give way to vigilantism, where individuals will take justice onto their own hands, ultimately undermining the very foundation of a lawful and democratic society.

Furthermore, it is a well-established legal principle that when Courts exercise their writ jurisdiction, they do not consider only the legal aspects of a case but also the broader impact of their judgment on society. In ***Inasitamby v. Government Agent, Northern Province***[14], the Court held that:

> "*A Court before issuing a writ of mandamus, is entitled to take into consideration the consequences which the issue of the writ will entail.*"

In light of this legal precedent, it is crucial to recognize the difference in treatment when minor offenders are swiftly arrested, produced before Court, remanded and punished in accordance with the law, while the head of the Police Department is attempting to shield his arrest through invocation of writs. An imbalance of this nature in the administration of justice will undoubtedly erode public confidence in the legal system that could be the catalyst of a social unrest similar to the 'අරගලය' against these institutions. Historically, it has been actions like these that have fuelled public outrage and unrest. If Courts deliver haphazard judgments without considering the prevailing social conditions, they risk further intensifying public discontent and instability, ultimately undermining the rule of law and democratic governance. Courts, before issuing writs, must take into consideration the effects the writs will have on society, ensuring that their decisions align with justice, fairness, and the broader social context.

INTERFERENCE OF POWERS OF THE MINOR JUDICIARY BY THE APEX COURT

When the Magistrate or the minor judiciary exercises their powers with due diligence and in accordance with the law, the higher judiciary should not interfere with their functions and decision making. They must be allowed to perform their judicial duties freely and independently, as prescribed by law. Unnecessary and baseless interference by the apex Courts in the functioning of the minor judiciary can hinder their ability to discharge their duties effectively.

[14] 34 NLR 33.

However, if it is revealed that the minor judiciary is not functioning in accordance with the law and has made *ex facie* errors in fact and law, it becomes the duty of the apex Court to intervene in the interest of justice. When Magistrates issue warrants while exercising their criminal jurisdiction against a suspect based on adequate reasoning, allowing the Petitioner to invoke writ jurisdiction to prevent the Magistrate from performing their duties would render the minor judiciary ineffective. This in turn, would indirectly open the floodgates to unwarranted interference by the apex Court in matters where the minor judiciary is properly exercising its jurisdiction.

Indeed, there are situations where a Magistrate's order may be palpably erroneous, *mala fide*, or bad in law, thereby causing material prejudice to the parties involved. In such instances, intervention by the writ Courts becomes inevitable to uphold justice. However, in the present case, based on the facts and circumstances of these proceedings, no such situation has arisen that would warrant interference by the apex Court.

CLEAN HANDS

It is settled law that a party seeking prerogative relief should come to Court with clean hands. The expression is derived from one of Equity's maxims 'He who comes to Equity must come with clean hands.' Clean hands denote a clean record with respect to the transaction with the Respondent. In **Perera vs. National Housing Development Authority**[15]**,** the Court of Appeal observed that,

> *"It is also relevant to note that the petitioner has submitted to this Court a privileged document which he is not entitled to have in his possession. He has not explained the circumstances under which he came to possess this document. Writ being a discretionary remedy the conduct of the applicant is also very relevant. The conduct of the applicant may disentitle him to the remedy."*

[15] 2002 3SLR 50.

The Supreme Court of India in **S.P. Chengalvaraya Naidu Vs. Jagannath**[16] observed that,

"One who comes to court, must come with clean hands."

If the Petitioner truly believes that he is innocent and has nothing to fear, he should present himself before the Magistrate instead of evading the legal process. By doing so, he can seek the relief he desires through proper legal channels, rather than resorting to avoidance or non-compliance with the Court's order.

It is pertinent to note that with the available documents and evidence, without any ambiguity the learned magistrate observed that,

1. The Petitioner maintained a para military group within the police force.
2. The CCD was illegally dispatched to the Southern Province for his personal task.
3. There are no police entries within the books pertaining to this raid.
4. There was no information given to area OIC with regards to this raid.
5. The weapons used by the CCD were obtained illegally and without authority.
6. All official cellular devices of the CCD officers were suspiciously disconnected during this raid.
7. The CCD team member, Police Sergeant Upali (57241), upon receiving gunshot injuries was not rushed to the closest hospital in the area, and thereafter succumbed to his injuries.
8. Attempts were made to manipulate entries and evidence in this regard in order to mislead the investigation.
9. The Petitioner has not obeyed the Court order and is in hiding from 27/02/2025.

   Etc….

All of the above facts clearly establish that the Petitioner has not come to Court with clean hands and is therefore not entitled to invoke the writ jurisdiction of the Court.

[16] AIR 1994 (1) SCC.

COMPLY AND COMPLAIN

The principle of *comply and complain* is a well-established and globally recognized doctrine that upholds the integrity of the judicial system. It mandates that individuals must first comply with a Court order, even if they believe it to be unjust and then seek redress through proper legal avenues if they wish to challenge it.

In this case, the Petitioner, as the head of the Police Department, is expected to set an example by adhering to the law. If he believes that the Magistrate's order is erroneous or unfair, the proper course of action is not to evade it but to challenge it through legal mechanisms. By refusing to comply and instead going into hiding, he undermines the very legal system he is duty bound to uphold. Such actions not only weaken public confidence in the judiciary but also set a dangerous precedent where individuals selectively follow Court orders based on their own interests.

It is contended by the learned President's Counsel for the Petitioner, that before issuing the arrest order, no statement was recorded from the Petitioner. However, it is evident that when the Petitioner is actively evading arrest and remaining in hiding, it becomes impossible for the authorities to obtain such a statement from him. His deliberate absence obstructs the due process of law and he cannot now rely on this argument to challenge the arrest order while simultaneously avoiding lawful procedures.

For the foregoing reasons I hold;

1. The impugned order of the learned Magistrate directing the arrest of the Petitioner is in accordance with the law. Therefore, I find no basis to interfere with the order by way of writ.
2. I direct the 2nd to 14th Respondents to take all necessary measures to execute the learned Magistrate's order and ensure that the Petitioner is arrested and produced before the Magistrate's Court, strictly within the purview of the law, to uphold the rule of law.

3. I further direct the learned Magistrate to take appropriate action against individuals aiding and abetting the Petitioner in evading arrest and remaining in hiding.

Thus, the application for interim orders is refused, formal notices are refused and the application is dismissed with cost fixed at Rs. 10,525.00.

Notice refused. Application dismissed with cost.

PRESIDENT OF THE COURT OF APPEAL
(Actg.)

K. M. S. Dissanayake, J.

I agree.

JUDGE OF THE COURT OF APPEAL