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

In the matter of an application under and in terms of Section 46 of the Judicature Act No 2 of 1978 (as amended) for transfer of Panadura Magistrates Court Case B775/23.

Court of Appeal Case No.
CA/TRF/0005/2025

Ronald Michael Stanley,
Permanently Residing at
4 Natalie Court Cranbourne Victoria 3977
Australia

Temporarily Residing at
49 Lionel Edirisinghe Mw
Colombo 5

Petitioner

Vs.

1. OIC,
   Hirana Police,
   Hirana.

2. Honourable Attorney General,
   Attorney General's Department,
   Colombo -12.

Respondents

Before : **M. T. MOHAMMED LAFFAR, J (ACT.P/CA).**
K. M. S. DISSANAYAKE, J.

Counsel : Petitioner is appearing in person.
Yohan Abeywikrama, DSG for the Respondents.

Supported on	:	11.03.2025
Written Submissions of the Petitioner tendered on	:	Not tendered.
Written Submissions of the Respondents tendered on	:	22.04.2025.
Decided on	:	09.05.2025

K. M. S. DISSANAYAKE, J.

This is an application made to this Court under and in terms of section 46 of the Judicature Act (as amended) (hereinafter called and referred to as 'the Act') by the Petitioner appearing in person for the transfer of a case pending in the Magistrate Court of Panadura bearing No. B775/23(hereinafter called and referred to as the 'criminal case'), where the Petitioner is the virtual complainant, to any other appropriate Court that this Court shall deem fit.

When this matter came on before us on 11.03.2025 for support for notice of the instant application for transfer, the Petitioner submitted to Court that matter would of consent, be disposed of by way of written submissions. It was further submitted to Court by the Petitioner that he would however, rely on the petition already, submitted to Court in support of the same and therefore not willing to tender written submissions in support thereof, whereas, learned DSG appearing for the Respondents moved to file synopsis in this regard and filed the same in Court though belated. Hence, we are proceeding to hear and determine the application of the Petitioner for notice of the instant application for transfer on the merits on the strength of the material available on the record.

The Petitioner in his petition and affidavit, had averred several facts and circumstances which according to him warrant a transfer of the criminal case pending before the Magistrate Court of Panadura where he is the virtual complainant.

According to the facts and circumstances averred in the petition and affidavit, Mr. Senaka Kumara who wielded connections to the political hierarchy in the area and the local police, Ms. Mangalika-wife of Mr. Senaka Kumara and their associates had caused acts of intimidation and harassment on the Petitioner who holds a dual citizenship of Sri Lanka and Australia and who in the year 2000, bought an island named, Kokduwa located in the Bolgoda Lake, Panadura with intention of building the first island golf course in Asia in collaboration with, and incorporating substantial foreign investment and partnership, Ms. Cleo Muller who was the Petitioner's business partner and who had purchased Tuduwe Waththa from one Mr. Perera as being access road to the said island named Kokduwa in the year 2009, and the Petitioner's staff as a direct result of refusal by the Petitioner and Ms. Muller to succumb to extortion of Rs. 2,000,000/- demanded by Mr. Senaka Kumara for a peaceful passage to the proposed project land; that since then, there had been constant conflicts between the Petitioner, Ms. Muller on the one hand and Mr. Senaka Kumara and his wife Ms. Mangalika and their associates on the other, as a result of which a significant number of complaints and counter complaints had been lodged to Panadura and Hirana Police stations, by both the Petitioner, Ms. Muller and Mr. Senaka Kumara and his wife Ms. Mangalika as a result of which a number of cases had been filed before Magistrate Court of Panadura, by Police against the Petitioner and Mr. Senaka Kumara as well which are still, pending in Court; that the criminal case in respect of which the instant application for transfer from Magistrate Court of Panadura to any other appropriate Court had been now, made to this Court by the Petitioner in the

instant application for transfer, was filed by Hirana Police on a complaint made to therein by the Petitioner.

In those circumstances, the Petitioner specifically, states in paragraphs 37 and 48 of his petition that considering the unlawful malicious actions of Mr. Fernando, his political connections in Panadura, the death threats against him and his employees, the narcissistic, psychopathic, predatory behavior of the officers concerned of the Panadura/Hirana Police, the intense pain and suffering that he had been put through wasting 15 years of his life in view of his inability to attend to his mother's funeral and also his inability to get back to Australia due to impound of his passport by Court, he truly, believes that there is a risk to his life due to the criminal case being heard any further by the Magistrate Court of Panadura thereby, warranting transfer of the same therefrom to any other appropriate Court for early disposal of the same.

It is in this backdrop of the instant application, I would now, propose to examine the provisions of law governing an application of this kind.

It is Section 46(1) of the Act which lays down the grounds of transfer of a case from one Court to another and it enacts thus;

> "46. (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
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> (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."

Upon a careful reading of the averments in the petition of the Petitioner in its totality, it becomes manifestly clear that, the Petitioner does not in any manner, state therein under which limb of Section 46(1) of the Act, namely; (a), (b), (c) or (d) he makes the instant application for transfer of the criminal case from Panadura Magistrate Court to any other appropriate Court.

It is in this context, I would think it necessary and expedient at this juncture to precisely, ascertain in the first instance from the facts and circumstances averred in the petition of the Petitioner, under which limb of Section 46(1) of the Act namely; (a), (b), (c) or (d), the Petitioner seeks transfer of the aforesaid criminal case.

Upon a careful reading of the averments in the petition in its entirety, it becomes manifestly, clear that as a basis of his application for transfer under section 46(1) of the Act, it was not in any manner, alleged therein by the Petitioner that (a) a fair and impartial trial cannot be had in the Magistrate Court of Panadura; or, that (b) some questions of law of unusual difficulties are likely to arise before the Magistrate Court of Panadura; or, that (c) 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;

However, as can be deducible from the averments in paragraphs 37 and 48 of his petition in particular, the pivotal basis of the instant application for transfer of the aforesaid criminal case being "**a risk to his life due to unlawful, malicious actions of Mr. Senaka Fernando, his political connections in Panadura, the death threats against him and his employees, the narcissistic, psychopathic, predatory behavior of the officers concerned of the Panadura/Hirana Police, the intense pain and suffering he had been put through wasting 15 years of his life**" in view of the facts and circumstances as more fully elaborated in his petition by the Petitioner. [Emphasis is mine]

In view of the matters specifically, averred in paragraphs 37 and 48 of the petition as enumerated above, the instant application for the transfer of the criminal case clearly, appears to me to be one falling under limb (d) of section 46(1) of the Act, **namely; that it is so expedient on any other ground.** [Emphasis is mine]

The pivotal question that would next, arise before us is; **On whom does the burden of proof lay in an application of this kind and the scope and or the nature of it?**

It was *inter-alia,* held by this Court in **Sivasubramaniam Vs. Sivasubramaniam [1980] 2 SLR 58,** at Page 64, that "A party to an action who seeks a transfer of a pending action from the Court in which it is pending to another Court must adduce 'sufficient grounds' to satisfy us that it is expedient to make an order for its transfer. 'Expedient" in this context, in my view, means fit or proper. A transfer would not be ordered on light grounds."

It was *inter-alia,* held by this Court in **Abdul Hasheeb vs. Mendis Perera and Others [1991] 1 SLR 243** at pages 257 and 258 that, ".....the expression 'expedient' in the context means, advisable in the interests of the justice indeed, the purpose of conferring the power of transfer as provided for in section 46 of the Judicature Act, is to ensure the due administration of justice.".

It was *inter-alia,* held by this Court in **Karunaratne Vs. Simon Singho and Others [2011] 2 SLR 22**, at page 25 that ".....expedient would mean advisable in the interest of justice".

In order to succeed in his application for transfer of the criminal case, the Petitioner is bound to discharge the burden of proof so rested upon him. Now the pivotal question is whether the Petitioner was successful in discharging the same.

It may now, be examined.

In view of the above, in order to succeed in his application for transfer of the said case from Magistrate Court of Panadura to any other appropriate Court under Section 46 of the Act, it is incumbent upon the Petitioner to establish the pivotal ground adverted to by him in paragraphs 37 and 48 of his petition in that, the Petitioner is bound to prove to the satisfaction of this Court that the facts and circumstances so alleged thereby, namely; that **"Considering the unlawful malicious actions of Mr. Fernando, his political connections in Panadura, the death threats against him and his employees, the narcissistic, psychopathic, predatory behavior of the officers concerned of the Panadura Police, the intense pain and suffering that he had been put through wasting 15 years of his life he truly, believes that there is a risk to his life due to the criminal case being heard any further by the Magistrate Court of Panadura thereby, warranting transfer of the same**

therefrom to any other appropriate Court for early disposal of the same", do really, exist, warranting this Court to exercise its discretionary powers vested in it by section 46(1) of the Act in granting the instant application for transfer of the criminal case from Magistrate Court of Panadura to any other appropriate Court as urged by the Petitioner in prayer (c) of his petition. [Emphasis is mine]

In support of the instant application, the Petitioner, has annexed to his petition a number of documents marked as '**X**' and "**A1 to A4**".

Document annexed to the petition marked '**X**' is a duly, certified copy of the entire proceedings of the Magistrate Court of Panadura pertaining to the criminal case bearing No. B775/23-the subject matter of the instant application for transfer.

And, it clearly, shows that the criminal case had come before Court on 17.02.2023 on a motion filed in Court by one D. Wijepala-Attorney-At-Law apparently on the instructions of the Petitioner, praying for a order directing Police to take next step of the criminal case and Court had consequent thereto, made order on that day directing to move Court with a certificate of non-settlement while, directing notice to be issued on the relevant officer in charge of Police.

However, it is significant to observe upon a careful perusal of the record (**X**) that, the Petitioner had at no stage of the criminal case, brought it to the notice of the learned Magistrate of Pandaura that his life would be at risk if, the criminal case is to be heard any further by the Magistrate Court of Pandaura, **in view of the unlawful malicious actions of Mr. Fernando, his political connections in Panadura, the death threats against him and his employees, the narcissistic, psychopathic, predatory behavior of the officers concerned of the Panadura Police, the intense pain and suffering**

that he had been put through wasting 15 years of his life he truly, believes that there is a risk to his life due to the criminal case being heard any further by the Magistrate Court of Panadura thereby, warranting transfer of the same therefrom to any other appropriate Court for early disposal of the same as alleged by paragraphs 37 and 48 of the petition of the Petitioner which would in my opinion, totally, militate against his assertion so made by the said paragraphs 37 and 48 of his petition as enumerated above as being the sole basis urged by the Petitioner in the instant application for transfer of the criminal case from the Magistrate Court of Panadura to any other appropriate Court for; nowhere had it been averred in his petition by the Petitioner that, he had ever, adverted to a position as such before the learned Magistrate of Panadura or before any other competent forum at any stage of the criminal case from its very inception to the stage of making this application before this Court for transfer of the same under section 46(1) of the Act that **there would be a risk to his life if, the criminal case is to be heard any further by the Magistrate Court of Panadura thereby, warranting transfer of the same therefrom to any other appropriate Court for early disposal of the same** for the reasons stated in by paragraphs 37 and 48 of the petition of the Petitioner as enumerated above, instead the Petitioner himself had opted and elected to remain silent until the stage of making this application before this Court for transfer of the same under section 46(1) of the Act at the later stage of the criminal case. [Emphasis is mine]

I would therefore, hold that, the instant application for transfer of the criminal case under section 46(1) of the Act, cannot sustain both in fact and law and therefore, not entitled to succeed both in fact and law, on this ground alone.

Hence, I would hold that, the instant application for transfer of the criminal case under section 46(1) of the Act bears no merit and therefore, it ought to be dismissed on this ground alone.

Moreover, upon a careful scrutiny of documents annexed to his petition marked as '**A1**', **'A2', 'A3'** and **'A4'** in its totality, it clearly, and manifestly, shows that no complaint to the effect that, **"Considering the unlawful malicious actions of Mr. Fernando, his political connections in Panadura, the death threats against him and his employees, the narcissistic, psychopathic, predatory behavior of the officers concerned of the Panadura Police, the intense pain and suffering that he had been put through wasting 15 years of his life he truly, believes that there is a risk to his life due to the criminal case being heard any further by the Magistrate Court of Panadura thereby, warranting transfer of the same therefrom to any other appropriate Court for early disposal of the same",** being lodged by the petitioner to the Magistrate Court of Panadura and or any other competent forum at any stage of the criminal case from its very inception to the stage of making this application before this Court for transfer of the same under section 46(1) of the Act as alleged by paragraphs 37 and 48 of the petition of the Petitioner which would in my opinion, totally, militate against his assertion so made by the said paragraphs 37 and 48 of his petition as enumerated above as being the sole basis urged by the Petitioner in the instant application for transfer of the criminal case from the Magistrate Court of Panadura to any other appropriate Court **for; nowhere had it been averred in his petition by the Petitioner that, he had ever, adverted to a position as such before the learned Magistrate of Panadura or before any other competent forum** at any stage of the criminal case from its very inception to the stage of making this application before this Court for transfer of the same under section 46(1) of the Act that "**there is a risk to his life due to the criminal case being heard any further by the Magistrate Court of Panadura thereby, warranting transfer of the same therefrom to any other appropriate Court for early disposal of the same**" for the reasons stated in by paragraphs 37 and 48 of the petition of the Petitioner as enumerated above, instead the Petitioner himself had opted and elected to remain silent from its

very inception until the stage of making this application before this Court for transfer of the same under section 46(1) of the Act at the later stage of the criminal case.[Emphasis is mine]

In view of the above, It would clearly, appear to me that except for the mere assertion so made by the Petitioner in the petition that, his life would be at risk if the criminal case is to be heard any further by the Magistrate Court of Panadura in view of the facts and circumstances so averred by him in his petition as enumerated above as being the apparent ground for his application for transfer of the criminal case, the Petitioner had not through cogent, convincing and compelling evidence, made out a strong case for transfer of the criminal case. Hence, the said assertion of the Petitioner remains a mere assertion not proved by cogent, convincing and compelling evidence.

I would therefore, hold that, the instant application for transfer of the criminal case under section 46(1) of the Act, cannot sustain both in fact and law and therefore, not entitled to succeed both in fact and law on this ground too.

Besides, even, if, it is to be assumed for the sake of the argument for a moment that, the facts and circumstances alleged by the Petitioner in paragraphs 37 and 48 of his petition do really, exist, the Petitioner would in such circumstances, be entitled to the protection afforded to him by “Assistance to and Protection of Victims of Crime and Witnesses Act No. 10. of 2023” upon proof of the eligibility criteria laid down therein, and therefore, the Petitioner is not without a remedy.

Hence, I would hold that, the instant application for transfer of the criminal case under section 46(1) of the Act bears no merit and therefore, it ought to be dismissed on this ground too.

In view of all the above circumstances, I would hold that the Petitioner has failed to establish to the satisfaction of this Court such facts and

circumstances as urged by him in paragraphs 37 and 48 of his petition as the basis for his application under section 46(1) of the Act for transfer of the criminal case from the Magistrate Court of Panadura to any appropriate Court.

In the result, the assertion of the Petitioner that there could be a risk to his life, clearly, appears to me to be only a mere assertion, having not being proved by compelling, credible and strong evidence satisfactory to this Court.

On a careful consideration of all the relevant material placed before us, I would hold that the Petitioner has failed to adduce sufficient grounds to satisfy us that it would be expedient to make order for the transfer of the criminal case from the Magistrate Court of Panadura to any other appropriate Court under any of the limbs of section 46(1) of the Act, namely; (a), (b),(c) or (d).

Hence, I would hold that, the Petitioner has failed to adduce sufficient grounds for a transfer of the criminal case from the Magistrate Court of Panadura to any other appropriate Court even under section 46(1)(d) of the Act.

I would therefore, hold that this is not a fit and proper case for us to make order issuing notices on the Respondents.

I would thus, refuse to issue notices on the Respondents.

Hence, I would, dismiss the instant application *in limine* with costs.

JUDGE OF THE COURT OF APPEAL

MOHAMMED LAFFAR, J (ACT.P/CA).

I agree.

PRESIDENT (ACTING) OF THE COURT OF APPEAL