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

In the matter of an application for a Writ of Habeas Corpus in terms of section 11 of the Extradition Law No. 08 of 1977 read with Article 141 of the Constitution of the Democratic Socialist Republic of Sri Lanka in respect of an order made by the Honorable High Court of Colombo for extradition in High Court of Colombo Application No. HC 47/2017.

CA Writ (Habeas Corpus): 01/2025
High Court - Colombo
Case No. HC 47/2017

Hon. The Attorney General,
The Attorney General's Department,
Colombo 12.

Applicant

Vs.

P.M. Tharmasuthan,
No. 37, Mary's Road, Bambalapitiya.

of;
No. 237/3, Hampton Residence,
Hampton Lane, Colombo 06.

Corpus/Respondent

AND NOW BETWEEN

P.M. Tharmasuthan,
No. 37, Mary's Road, Bambalapitiya.

Presently in custody at the Immigration Detention Centre, Welisara.

Corpus/Respondent - Petitioner

Vs.

1. Hon. The Attorney General,
   The Attorney General's Department,
   Colombo 12.

Applicant - Respondent

2. Officer in Charge,
   Sri Lanka Immigration,
   Detention Camp, Welisara.

Respondent

Before: **R. Gurusinghe J.**

&

M.C.B.S. Morais J.

Counsel: Faisz Musthapha, PC with Keerthi Thilakarathne and Niroshan Mihindukulasuriya instructed by Sanath Wijewardena Associates for the Corpus/Respondent - Petitioner.

Jehan Gunasekara, SC for the Applicant- Respondent and Respondent.

Written Submissions: By the Corpus/Respondent - Petitioner – on 11.02.2025

Supported on: 06.02.2025

Decided On: **20.02.2025**

ORDER

M.C.B.S. Morais J.

This is an application for a writ of Habeas Corpus in terms of section 11 of the Extradition Law No. 08 of 1977 read with Article 141 of the constitution of Democratic Socialist Republic of Sri Lanka in respect of an order made by the Honorable High Court Judge of Colombo for extradition in the Application No. HC 47/2017. Accordingly, the Petitioner has prayed for the following;

I. To make order directing the issue of notice on the Respondents.
II. Directing the 2nd Respondent to produce the Petition before your Lordships Court to be dealt with according to the law,
III. To make an interim order directing the 2nd Respondent to release the Petitioner pending the hearing and determination of this application subject to such conditions as your Lordship may think direct including the furnishing of Bail,
IV. In the alternative to make order granting Bail,
V. To make an interim order staying the operation of the High Court order dated 23rd January 2025 (Vide A7), until the final determination of this application
VI. To set aside the order of the Learned High Court Judge dated 23rd January 2025
VII. To make order issuing a writ of Habeas Corpus directing that the Petitioner be discharged from custody forthwith,
VIII. For costs and such further relief as Your Lordships Court may think fit and meet.

The Corpus/Respondent-Petitioner P.M. Tharmasuthan (hereinafter sometimes will be referred as the Petitioner) has been subject to complaints concerning defrauding the Australian Postal Corporation and dishonestly causing a loss to another person, namely Australian Post in respect of Australian Dollars 757,309.25(Australian Dollars seven hundred and fifty seven thousand three hundred and nine and twenty five cents), while she was serving as an employee of the Australian Post from1990-2006. Accordingly, the criminal case No.2383/09 has been filed in the Magistrate's Court of Victoria in the Commonwealth of Australia. The Petitioner has been charged with 71 offences of defrauding the Australian Postal Corporation contrary to section 29D of the Crimes Act 1914(commonwealth) and 156 counts of dishonesty causing a loss to another person, namely Australian Post, which is a

Commonwealth entity, contrary to section 135(1)(5) of the Criminal Code 1995 Act commonwealth).

However on 2006, the Petitioner has returned to Sri Lanka after her services in the Australian Postal Corporation from 1990-2006, and a request has been made by the commonwealth of Australia in compliance with the provisions of the Extradition Law No.8 of 1977 in order to extradite the Petitioner to Australia to deal with the above charges against her. Accordingly, the authority to proceed has been issued by the Minister of Defense of Sri Lanka under section 8(3) of the aforesaid law. Considering the application made by the Attorney General, a warrant has been issued in terms of the section 9(1) of the Extradition Law, to arrest the Petitioner and the Petitioner was arrested and produced before the Court on the 9th of March 2017.

Prior to the commencement of the inquiry, the Petitioner has made three preliminary objections. However, the learned High Court Judge has overruled the objections made by the Petitioner and proceed with the matter and finally delivered the order dated 23rd of August 2019. Being aggrieved by the said order, the Petitioner has made an application before the Court of Appeal case No. CA/PHC/APN/124/2019. However, the revision petition submitted by the Respondent has been dismissed as per the order dated 16th of December 2019. Dissatisfied with the order, the Petitioner has made an application before the Supreme Court in the case No.SC/SPL/LA 25/20. Accordingly, the order dated 23rd of August 2019 and the order dated 16th of December 2019 were set aside by the order dated 18th of November 2022 and the preliminary objections raised by the Petitioner were fixed to reconsider by the learned High Court Judge of Colombo. Accordingly, the learned High Court Judge has reconsidered the three preliminary objections made by the Petitioner and decided to overrule the said objection in the order dated 23rd of January 2025, and allowed the request of extradition of the Petitioner under section 10 of the Extradition Law. Being aggrieved by the said order the Petitioner has made an application under Article 141 of the Constitution of Democratic Socialist Republic of Sri Lanka.

The said Preliminary Objections directed by the Supreme Court to reconsider are as follows;

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a) *There is patent illegality attendant upon the issuance and service of the warrant of arrest allegedly issued by the Magistrate's Court of Victoria Melbourne.*

b) *The alleged offences are preferable to a repealed law*

c) *The lack of authenticity of the document*

d) *There is lack of precision and clarity with regard to the case pending against the Respondent before the Australian Court.*

e) *The principal against double jeopardy prevents the lawful issuance of an order of committal to custody of the Respondent for extradition, as sought by the Applicant in these proceedings*.

f) *The application for the extradition being based on a repealed/non-existent law in Australia.* "

It is the first contention of the Petitioner that the arrest warrant issued by the Magistrate's Court of Victoria are not in accordance with the law. However, the learned High Court Judge has considered that the documents presented regarding the commission of the crime and the issuance of the arrest warrant are under the Australian law and it cannot be questioned under the law of this state. However, the court has considered the fact the warrant was sought without the serving of summons or an attempt to do so, meanwhile it need to be noted that the action against the Petitioner has been taken by a court outside the country and the Petitioner has not appeared for the proceedings as she was not in the country. Therefore, it is considered that the serving of summons are not necessary at this instance.

The Petitioner also contends the lack of authenticity of the documents presented. However, there have not been evidence adduced from the Petitioner to support the claim. Furthermore, the matters related to issuance of the warrant and the documents presented, have been considered under the relevant laws of another state and this court has no jurisdiction to make a decision on their authenticity.

Additionally, it is the view of the learned High Court Judge that the principle of 'double jeopardy' cannot be applied in this situation. According to this principle, an individual cannot be convicted or punished for the same offence twice. The proceedings related to the subject matter of this case is under the jurisdiction of the Magistrate Court of Victoria case No.2383/09, however the case No.CI-10-06126 is a procedural proceeding under the country

court of Victoria. Therefore, there is no double conviction for the same charges. Moreover, the learned High Court Judge has decided that the issue in relation to the principle of double jeopardy exist, it should be challenged under the Australian law and not this Court.

Further, it is the Petitioner's contention that the Petitioner has been charged under Section 29D of the Crimes Act 1914 of commonwealth of Australia. However, the particular section has been removed on November 2000. Therefore, it is the Petitioner's stand that she has been charged under a repealed/non-existent law in Australia. The learned High Court Judge has decided that legal situation relating to this law should be discussed in an appropriate Jurisdiction of the Australian State and not before this court.

Accordingly, the learned High Court Judge has decided that, the objections of the Petitioner under element a, b, c, d, e, and f are related to actions taken by the Magistrate Court of Victoria. Accordingly, the High Court of Colombo has no Jurisdiction to analyze those laws.

Furthermore, section 7 (1) of Extradition Law No. 08 of 1977, states the reasons why an application for extradition cannot be granted. However, the Petitioner has not presented any reasons or evidence why she should not be extradited. Therefore, the learned High Court Judge has relied on section 10(4) of the Extradition law and decided against the Petitioner.

> "*10 (4) Where an authority to proceed has been issued in respect of the person arrested and the court of committal is satisfied, after hearing any evidence tendered in support of the request for the extradition of that person or on behalf of that person, that the offence to which the authority relates is an extraditable offence, and is further satisfied,-*
> *(a) where that person is accused of the offence, that the evidence would be sufficient to warrant his trial for that offence if it had been committed within the jurisdiction of the court; or*
> *(b) where that person is alleged to be unlawfully at large after the conviction of the offence, that he has been so convicted and appears to be so at large,*
> *the court shall, unless his committal is prohibited by any other provision of this Law, commit him to custody to await his extradition thereunder but if the court is not so satisfied, or if the committal of that person is so prohibited, the court shall discharge him from custody.*"

By considering all the facts presented to this Court, it is apparent that the learned High Court Judge has duly considered the preliminary objections made by the Petitioner and decided otherwise. In careful perusal of all the materials submitted, it is evident that when the Applicant has adduced sufficient evidence in support of the extradition of the Petitioner, the Petitioner has failed in this court as well as in the court below to adduce any materials or evidence to not to grant the extradition order sought by the Applicant-Respondent.

Hence, I do not see any basis to set aside or interfere with the order dated 23rd of January 2025 by the learned High Court Judge of Colombo in the Case No. 47/2017.

Therefore, this application is dismissed.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree

Judge of the Court of Appeal