

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

*In the matter of an application for
revision under Article 138 of the
Constitution of the Democratic
Socialist Republic of Sri Lanka.*

Court of Appeal Case No:

CA (PHC) APN:

**HC Colombo Case No:
HCRA/75/2023**

MC Fort Case No: B/25774/23

S.M.U. Subasinha,
Sub Inspector of Police,
Officer in Charge,
Cyber Intrusion and Intelligence Unit,
Computer Crime Investigation Division,
Colombo 01.

COMPLAINANT

Vs

1. Edirisuriya Arachchige Jayani Natasha
Edirisuriya,
No. 418/4,
Arangala,
Kaduwela.
2. Vedamulla Madinage Bruno Divakara,
86/1,
Dawasa Mawatha,
Church Road,
Marawila.

SUSPECTS

AND BETWEEN

Tharindu Iranga Jayavadhana,
176/3A,
Oruthota,
Gampaha.

PETITIONER

Vs

1. Director
Criminal Investigation Department,
Colombo 12.

1st RESPONDENT

2. Director
Computer Crime Investigation
Division,
Colombo 12.

2nd RESPONDENT

3. S.M.U. Subasinha,
Sub Inspector of Police,
Officer in Charge,
Cyber Intrusion and Intelligence Unit,
Computer Crime Investigation
Division,
Colombo 01.

COMPLAINANT - 3rd RESPONDENT

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

4th RESPONDENT

5. Edirisuriya Arachchige Jayani Natasha
Edirisuriya,
No. 418/4,
Arangala,
Kaduwela.

1st SUSPECT - RESPONDENT

6. Vedamulla Madinage Bruno Divakara,
86/1,
Dawasa Mawatha,
Church Road,
Marawila.

2nd SUSPECT - RESPONDENT

AND NOW BETWEEN

Tharindu Iranga Jayavadhana,
176/3A,
Oruthota,
Gampaha.

PETITIONER - PETITIONER

Vs

1. Director
Criminal Investigation Department,
Colombo 12.

1st RESPONDENT – RESPONDENT

2. Director
Computer Crime Investigation Division,
Colombo 12.

2nd RESPONDENT - RESPONDENT

3. S.M.U. Subasinha,
Sub Inspector of Police,
Officer in Charge,
Cyber Intrusion and Intelligence Unit,
Computer Crime Investigation Division,
Colombo 01.

COMPLAINANT - 3rd RESPONDENT -
RESPONDENT

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

4th RESPONDENT- RESPONDENT

5. Edirisuriya Arachchige Jayani Natasha
Edirisuriya,
No. 418/4,
Arangala,
Kaduwela.

1st SUSPECT - RESPONDENT-
RESPONDENT

6. Vedamulla Madinage Bruno Divakara,
86/1,
Dawasa
Mawatha,
Church Road,
Marawila.

2nd SUSPECT - RESPONDENT-
RESPONDENT

On this the 24th day of July 2023.

**TO: HIS LORDSHIP THE PRESIDENT OF THE COURT OF APPEAL AND THE
OTHER HONOURABLE JUDGES OF THE COURT OF APPEAL OF THE
DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA.**

The petition of the above-named Petitioner appearing by M. Manushika Kasuni Cooray his Attorney-at-Law states as follows;

1. The Petitioner states that the 1st Respondent-Respondent (Hereinafter referred to as the “**1st Respondent**”) above named is the Director of the Criminal Investigation Department. In the Fort Magistrate’s Court Case No. B/25774/23, on 07th June 2023, the learned Magistrate has given an order to the Director of the Criminal Investigation Department to investigate regarding the alleged contempt of court committed by the Petitioner and a group of others on an application by an Attorney-at-Law purporting to appear for the aggrieved party.
2. The Petitioner states that the 2nd Respondent – Respondent (Hereinafter referred to as the “**2nd Respondent**”) above named is the Director of the Computer Crime Investigation Division. In the Fort Magistrate’s Court Case No. B/25774/23, on 21st June 2023, the learned Magistrate directed the Director of the Computer Crime Investigation Division to investigate regarding the alleged contempt of court committed by the Petitioner and four others.
3. The Petitioner states that at all times material to this application the Complainant 3rd Respondent – Respondent (Hereinafter referred to as the “**3rd Respondent**”) is the Complainant in the Fort Magistrate’s Court Case No. B/25774/23 and the Officer in Charge of the Cyber Intrusion and Intelligence Unit of the Computer Crime Investigation Division.
4. The Petitioner states that the 4th Respondent-Respondent (Hereinafter referred to as the “**4th Respondent**”) above named is the Hon. Attorney General of the Democratic Socialist Republic of Sri Lanka, and he is made a party in terms of the law.

5. The Petitioner states that the above-named 1st and 2nd Suspect – Respondent - Respondents (Hereinafter referred to as the “**1st and 2nd Suspects**”) are suspects in the Fort Magistrate Court Case No. B/25774/23.
6. The Petitioner states that a Buddhist monk, Venerable Attaragama Panjjalankara Thero has made a complaint to the Computer Crime Investigation Division on 27th May 2023 claiming that the company ‘Colombo Comedy Central’ has disseminated a video on the internet through social media containing defamatory and hateful statements, affecting religious harmony, and defaming the Lord Buddha and the Buddhism. The Petitioner further states that the original Complainant has mentioned the 1st Suspect as the one who performed in the said video.
7. The Petitioner states that the 3rd Respondent reported facts to the Fort Magistrate Court under Case No. B/25774/23 regarding the 1st Suspect making defamatory and hateful statements over the internet to disturb religious harmony as per the said complaint and arrested the 1st Suspect under Section 3 of the International Covenant on Civil and Political Rights (ICCPR) Act No. 56 of 2007 and Section 120, 291(a), 291(b) of the Penal Code and Section 6 of the Computer Crime Act No. 24 of 2007. The Petitioner further states that the 1st Suspect was arrested and remanded after being produced before the Fort Magistrate on 28th May 2023 and released on bail on 6th of July 2023 on the order of the High Court of Colombo.

*The Petitioner appends hereto certified copies of the entire case records of the Colombo High Court cases No. **HCRA/75/2023** marked as ‘**PI**’ and pleads that the same be considered as part and parcel of this Petition.*

8. The Petitioner states that on 29th May 2023, a group of journalists, lawyers, lecturers, and civil activists including the Petitioner who is a journalist held a press conference at the ‘Center for Society and Religion’ at No. 281, Deans Road, Colombo 10 regarding the arrest of the 1st Suspect. The Petitioner states that he commented on the ‘International Covenant on Civil and Political Rights (ICCPR) Act No. 56 of 2007’ and the violation by the police of the directions given by the Human Rights Commission dated 29th August 2019 regarding the said Act, and answered few questions raised by a journalist.

The Petitioner does not have access to the unedited video clips containing the views expressed by the Petitioner at the relevant press conference and a compact disc containing

the edited video clips uploaded to the internet by 'Don Maya' You Tube channel and 'The Life Traveler' You Tube channel are attached herewith marked as "P2" and the two videos are marked as "P2A" and "P2B" respectively and pleads that the same be considered as part and parcel of this Petition.

9. The Petitioner states that as per the above complaint of Venerable Attaragama Panjjalankara Thero, the 3rd Respondent reported facts to the Fort Magistrate Court under the same Case No. B/25774/23 against the 2nd Suspect for managing the You Tube channel 'Colombo Comedy Central' that published the video clip on the internet through social media containing defamatory and hateful statements affecting the religious harmony and defaming Lord Buddha and Buddhism. The Petitioner states that the facts reported by the 3rd Respondent against the 2nd Suspect are under Section 3 of the 'International Covenant on Civil and Political Rights (ICCPR) Act No. 56 of 2007' and Section 120, 291(a), 291(b) read with Section 101 of the Penal Code and Section 6 of the 'Computer Crime Act No. 24 of 2007'. The Petitioner further states that the 2nd Suspect was arrested and remanded after producing before the Fort Magistrate on 01st June 2023 and released on bail on 21st June 2023.
10. The Petitioner states that on 07th June 2023, in the Fort Magistrate Court Case No. B/25774/23, the name of the Petitioner was mentioned in the Court by an Attorney-at-Law appearing for a party who he claimed was an aggrieved party as someone who insulted the court in the press conference held on 29th May 2023 at the 'Center for Society and Religion' at No. 281, Deans Road, Colombo 10 regarding the arrest of the 1st Suspect. Accordingly, the Honorable Magistrate has given the 1st Respondent an order to investigate in this regard.
11. The Petitioner states that on 21st June 2023, when the matter was taken up in the court, the Attorney - at - Law concerned informed the court that the court order dated 07th June 2023 on the alleged contempt of court by the Petitioner and others in the press conference held on 29th May 2023 was not carried out by the 1st Respondent. Accordingly, the Honorable Magistrate ordered the 2nd Respondent to investigate the said contempt of court allegedly committed by the Petitioner and others.
12. The Petitioner states that dissatisfied with the orders issued by the Honorable Magistrate on 07th June 2023 and 21st June 2023 in the case bearing the Fort Magistrate Court Case No. B/25774/23, Counsel for the Petitioner in the *Colombo High Court case No. HCRA/75/2023* made submissions in the High Court on the following grounds;

- a) That the Honorable Magistrate has no jurisdiction under Section 55 (1) of the Judicature Act No. 2 of 1978 to take cognizance of contempt of court committed outside his Magistrate's Court, and the Magistrate has jurisdiction only to take cognizance of every offense of contempt of court committed in the presence of the court itself and all offenses which are committed in the course of any act or proceeding in each Magistrate court.
- b) Therefore, the learned Magistrate acted in ignorance of the law by ordering an investigation into an offense in which the Honorable Magistrate's Court has no jurisdiction to take cognizance of.
- c) That according to Sub-Article 105(3) of the 1978 Constitution of the Democratic Socialist Republic of Sri Lanka, it is the Court of Appeal that has the exclusive power to punish for contempt of the Magistrate's Courts committed outside the court, and therefore the Honorable Fort Magistrate has no power to take cognizance of a purported offence of contempt committed outside the jurisdiction of the Fort Magistrate Court. Thus, it is a breach of the legal procedure for the Honorable Magistrate to give orders in a case where only the Court of Appeal has the power to punish.
- d) That in any event the learned Magistrate has breached the legal procedure by ordering the Director of the Criminal Investigation Department and the Director of the Computer Crime Investigation Division to investigate regarding an alleged offense committed in the jurisdiction of the Maligakanda Magistrate Court and the jurisdiction of the Maradana Police which does not belong to the jurisdiction of the Fort Magistrate Court.
- e) That for the Honorable Magistrate to order an investigation, a complaint must be received through one of the methods mentioned in Section 136(1) of the Code of Criminal Procedure, and there is no provision for him to act of submissions or statements of an Attorney-at-Law purporting to appear for the aggrieved party, without an affidavit or other material.
- f) The party that appeared through a lawyer and informed the learned Magistrate that the Petitioner has committed contempt of court is neither the original

complainant nor a party that has a connection to the case or the alleged offense. Therefore, that party has no *locus standi* to report facts to the court, and giving an order based on facts reported by such a party is a breach of legal procedure.

- g) That the Sri Lanka Police has no power to investigate the contempt of court and also that the Sri Lanka Police and/or the learned Magistrate has no power to decide according to the facts of this case whether there has been contempt.

13. The Petitioner states that the learned High Court Judge delivered the Order dated **06th July 2023** and dismissed the revision application without issuing notices to the Respondents reasoning *inter alia*, that the Petitioner has not presented any exceptional circumstances. The learned Magistrate has erroneously held that the Petitioner has not been referred to by name in the order and that therefore he has no standing.

The Petitioner appends here for the Order of the High Court Judge dismissed the revision dated 06th July 2023 marked as ‘P3’ and pleads that the same be considered as part and parcel of this application.

14. The Petitioner further states that upon being aggrieved by the said order, he has now filed this revision application before Your Lordships’ Court under Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

15. The Petitioner states that the order of the learned High Court Judge dated 6th July 2023 is erroneous in fact and in law and he seeks to have the said order set aside by way of revision on the following exceptional grounds among such other grounds that may be urged by his Counsel at the hearing of this application;

- a) The learned High Court Judge has erroneously held that the Petitioner’s name is not mentioned in the order of the learned Magistrate and failed to notice that the name of the Petitioner is in fact contained in the order dated 07th June 2023 in the Magistrate Court case record which was filed along with the Revision Application **No. HCRA/75/2023**, marked as “**X1**”;

...අද දින අගතියට පත් පාර්ශවය වෙනුවෙන් කරුණු දක්වමින් නීතිඥ සුසන්ත කුමාර මහතා දන්වා සිටින්නේ මෙම සිද්ධිය මුල්කරගෙන විවිධ පාර්ශවයන් විසින් මෙම අධිකරණයට ද අපහාසයක් හා බලපෑමක් වන ආකාරයේ යම් යම් ප්‍රකාශ නිකුත් කර ඇති

බවයි. විශේෂයෙන් විදර්ශන කන්නන්ගර, තරිඳු ජයවර්ධන, තරිඳු උඩුවරගෙදර, ලක්මාලි හේමචන්ද්‍ර, විටෝ ප්‍රණාන්ද්‍ර යන අය විසින් මෙම ප්‍රකාශ සිදුකර ඇති බවට ඡායාරූප හා සී.ඩී තැටියක් අධිකරණයේ අවධානයට යොමු කරයි. එකී සියලු පිටපත් අපරාධ පරීක්ෂණ දෙපාර්තමේන්තුවට අද දිනම භාර දීමට දැනුම් දෙමි. මේ සම්බන්ධයෙන් පුළුල් විමර්ශනයක් සිදු කොට මෙම අධිකරණයට කරුණු වාර්තා කරන ලෙසට අධ්‍යක්ෂක අපරාධ පරීක්ෂණ දෙපාර්තමේන්තුවට මෙයින් නියම කරමි...

කැඳවන්න :-2023.06.21

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නිලිණ ගමගේ,

මහේස්ත්‍රාත් - මහේස්ත්‍රාත් අධිකරණය,

කොටුව - කොළඹ.

2023.06.07

(Page 169 para 01 at the Order dated 07th June 2023 of the Magistrate Court case No. B/25774/23 marked as “**X1**”)

- b) The learned High Court judge has erred in law by concluding after analyzing Section 9(b)(i) that the Fort Magistrate has the power to order an investigation regarding the alleged offense. The Honorable Magistrate has no jurisdiction under Section 55 (1) of the Judicature Act No. 2 of 1978 to take cognizance of contempt of court committed outside his Magistrate's Court.
 - c) Without prejudice to the above, since the impugned press conference took place within the jurisdiction of the Maligakanda Magistrate's Court and the jurisdiction of the Maradana Police that the Fort Magistrate's Court has no territorial jurisdiction in view of Section 9(b)(i) of the Criminal Procedure Code,
 - d) The learned High Court Judge has erred in law by failing to consider that exceptional circumstances are not required in the circumstances of this case as there is no right to appeal from the impugned order of the learned Magistrate.
16. The Petitioner states that under the aforesaid circumstances, he is compelled to invoke the revisionary jurisdiction conferred to Your Lordships' Court in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka to seek to revise and set aside the order of the learned High Court Judge dated 6th July 2023.

17. The Petitioner has not previously invoked the revisionary jurisdiction of Your Lordships' Court in connection with this matter.

WHEREFORE the Petitioner prays that Your Lordships' Court be pleased to,

- a. Issue a notice of this application to the Respondents,
- b. Issue an interim order prohibiting the investigation by the 1st and 2nd Respondents regarding the Petitioner's alleged contempt of court as per the orders made by the learned Magistrate on 07.06.2023 and 21.06.2023 in Fort Magistrate's Court Case No. B/25774/23.
- c. Revise/set aside the Order of the learned Judge of the High Court of Colombo dated **06th July 2023** marked '**P3**',
- d. Revise and set aside the orders made by the by the learned Magistrate on 07.06.2023 and 21.06.2023 in the Fort Magistrate Court Case No. B/25774/23 directing investigations to be conducted regarding the alleged contempt of court;
- e. Grant costs, and
- f. Grant such other and further relief as to Your Lordships' court shall seem meet.

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Attorney-at-Law for the Petitioner - Petitioner