

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

CA Writ No. 39/2014

K.M. Jagath Wasantha Konara, ,
51, Ward Place,
Colombo 7

PETITIONER

Vs.

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

2. D.R.L Ranaweera,
Director,
Criminal Investigation Department,
Colombo 01

3. Watte Gedera Yasawathie Menike,
17/14 F, Walagamba Place,
Matale

RESPONDENTS

CA(Writ)39/2014

Before : **Vijith K. Malalgoda, PC,J(P/CA)**
A.H.M.D. Nawaz,J

Counsel : N.Ladduwahetti PC with L.L. de Silva
for the Petitioner
Shavidra Fernando, ASG for the
1st & 2nd Respondent.

Decided on : **14.10.2014**

Vijith K. Malalgoda, PC. J (P/CA)

At this stage the Counsel for the petitioner states that his client, the petitioner has expressed concerns about the judges comprising this bench on account of our recent elevation to this Court from the Attorney General's Department.

Additional Solicitor General Mr. Shavindra Fernando PC states in reply that none of the judges who comprise this bench have had any kind of association with the facts forming the subject matter of this petition when they were serving in the Attorney General's Department.

In the circumstances, we are of the view that no impediment exist as to us proceeding to hear this case and determine the merits of this matter objectively.

The Petitioner in this case has come before this Court seeking relief prayed for in his petition namely, a writ of certiorari quashing the decision in P12 not to prosecute or not to take any further legal action against the 3rd respondent and to discharge the 3rd respondent from the proceedings in case No B3447/01/13 in the Chief Magistrate's court of Colombo. A writ of mandamus directing the 1st respondent, Attorney General to direct the CID to resume and thereafter properly conclude the said investigation in its normal course or a writ of mandamus directing the 2nd respondent, Director, CID, to resume and thereafter properly conclude the said investigation in its normal course. He has sought connected views which are referred to in the prayers as well. During his submission, Counsel for the petitioner submits that his client, petitioner lodged a complaint at the CID against the 3rd respondent Yasawathie Manike for the cheating of a gem worth few hundreds of millions. According to the Counsel, when the CID was progressing the investigation and before concluding this investigation, the 1st respondent, the Attorney General has called for the extracts from the CID and the 1st respondent hurriedly discharged the 3rd respondent by order which is produced

marked P12. Counsel for the petitioner brings to our notice the document marked X3 dated 05.11.2013 the B report filed by Officer in Charge, Commercial Crimes Division No.2, Criminal Investigation Department, Colombo 01 to the effect that before they record the statement of one Janaka Sandaruwan Rajapaksha on the advice of the Hon. Attorney General the extracts were forwarded to the Attorney General's Department on 26th August 2013.

In reply to the submissions made by the Counsel for the petitioner, the Additional Solicitor General Mr. Shavindra Fernando, President's Counsel submits to this Court that the original complaint was first made at the Laggala Police Station on 06th February 2013 against one Sandaruwan Rajapakshe and Athula Ratnanayke of cheating some gems in November 2012 by the petitioner. Thereafter, another complaint was made at the CID by the same petitioner on 11th March 2013 against the 3rd respondent. Subsequently the Hon. Attorney General had received representations from both parties that is a representation from the 3rd respondent dated 4th June 2013 and the representation from the petitioner dated 28th June 2013. The Hon. Attorney General has decided to call for a report on these representation and accordingly a report was called from the CID. The Attorney General has received a report from the CID director, dated 28th June 2013. According to Mr. Shavindra

Fernando, ASG the Attorney General has not called for the extracts thereafter but the Director CID on his own submitted the extracts to the Attorney General's Department with the final report dated 26th August 2013. Mr. Fernando confirms that in the final report submitted by CID there is no reference to the effect that the investigations are incomplete and CID moves further time to continue with the investigation. According to Mr. Fernando by looking at the covering letter, final report and the extracts it is clear that the CID has submitted extracts after completing the investigations. The file was allocated to the Senior State Counsel on 18.07.2013. The Senior State Counsel to whom this file was allocated has submitted his recommendation to the Additional Solicitor General in charge of CID investigations on 14.10.2013 and the said Additional Solicitor General has submitted his recommendation to the officer in charge of the criminal division, the Senior Additional Solicitor General on 15.10.2013. The said Senior Additional Solicitor General had agreed with the said recommendation and decided to discharge the 3rd respondent on 06.11.2013 and accordingly the discharge paper were sent to the respective Magistrate's Court on the 26.11.2013.

We will no doubt the manner in which the records had been maintained in the Attorney General's Department. Mr. Fernando ASG appears in court with the relevant files but we will no doubt the

submissions made by Mr. Fernando from the bar table because he represents the right functionary with whom the discretion to prosecute or not to prosecute is rested. This court has no doubt that the discretion has been correctly and properly exercised and we see no reason to issue notice in this matter. Accordingly, notice is refused.

President of the Court of Appeal

A.H.M.D. Nawaz, J

I agree

Judge of the Court of Appeal

Na/-