

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

In the matter of an application for Revision in  
terms of Article 145 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka

**Court of Appeal case no. CA/PC/APN / 150/2016**

**H.C. Kalmunai case no. EP /HCK/WRIT /168/2016**

Abdul Carim Mohamed Rizvi

54/1A, U.K. Valavvu

Samanthutri.

**Petitioner**

**Vs.**

1. The Learned Magistrate,

Magistrate Court,

Samanthurai.

2. Magistrate Court,

Samanthurai

3. The Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Respondents

**Substituted Petitioner Petitioner**

**Respondent.**

**AND NOW**

Abdul Carim Mohamed Rizvi  
54/1A, U.K. Valavvu  
Samanthutri.

**Petitioner Petitioner**

**Vs.**

1. The Learned Magistrate,  
Magistrate Court,  
Samanthurai.
2. Magistrate Court,  
Samanthurai
3. The Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**Respondents Respondents**

**Before** : H.C.J. Madawala J.  
: L.T.B. Dehideniya J.

**Counsel** : A. Mohamed for the Petitioner Petitioner.

**Supported on** : 21.02.2017

**Decided on** : 18.05.2017

**L.T.B. Dehideniya J.**

This is a revision application from the High Court of Kalmunai.

The facts of this case are briefly as follows. The Petitioner Petitioner (hereinafter sometimes called and referred to as the Petitioner) states that the private plaint he has submitted to the Samanthurai

Magistrate Court has been refused to accept by the learned Magistrate. Thereafter he filed an application for a mandate in the nature of a writ of *mandamus* in the Provincial High Court of Eastern Province holden at Kamunai against the learned Magistrate of Samanthurai to compel him to accept the private plaint. The learned High Court Judge refused notice and dismissed the application. Being aggrieved by the said order, the petitioner presented this revision application to this Court to revise the said order.

With the 13<sup>th</sup> Amendment of the Constitution, the Provincial High Courts were established and certain powers exercised by the Court of Appeal prior to the amendment were vested with the said High Courts. One of such powers vested with the Provincial High Court is the writ jurisdiction under Article 154(P)(4) of the Constitution. The Article reads thus;

*154P (1) There shall be a High Court for each Province with effect from the date on which this Chapter comes into force. Each such High Court shall be designated as the High Court of the relevant Province.*

*(2) The Chief Justice shall nominate, from among Judges of the High Court of Sri Lanka, such number of Judges as may be necessary to each such High Court. Every such Judge shall be transferable by the Chief Justice.*

*(3) Every such High Court shall*

*(a) exercise according to law, the original criminal jurisdiction of the High Court of Sri Lanka in respect of offences committed within the Province;*

*(b) notwithstanding anything in Article 138 and subject to any law, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province;*

*(c) exercise such other jurisdiction and powers as Parliament may, by law, provide.*

*(4) Every such High Court shall have jurisdiction to issue, according to law*

*(a) orders in the nature of habeas corpus, in respect of persons illegally detained within the Province; and*

*(b) order in the nature of writs of certiorari, prohibition, procedendo, mandamus and quo warranto against any person exercising, within the Province, any power under*

*(i) any law; or*

*(ii) any statutes made by the Provincial Council established for that Province,*

*in respect of any matter set out in the Provincial Council List.*

*(5) The Judicial Service Commission may delegate to such High Court, the power to inspect and report on, the administration of any Court of First Instance within the Province.*

*(6) Subject to the provisions of the Constitution and any law, any person aggrieved by a final order, judgment or sentence of any such Court, in the exercise of its jurisdiction under paragraphs (3)(b) or (3)(c) or (4), may appeal therefrom to*

*the Court of Appeal in accordance with Article 138. Functions, powers, elections amp;c of Provincial Councils.*

The writ jurisdiction conferred on the Provincial High Court is not without a limit. The limitations are clearly expressed in the Article. It says that “*Every such High Court shall have jurisdiction to issue, according to law .....in respect of any matter set out in the Provincial Council List.*” The basic limitation is that the High Court can issue writs in respect of any matter set out in the Provincial Council List.

In the instant case the Petitioner is seeking a writ of *mandamus* against the Magistrate of Samanthurai to compel him to accept a privet plaint. The judiciary is not a subject set out in the Provincial Council list. It is listed in the second list of the ninth schedule which is the reserved list. Therefore the Provincial High Court has no Jurisdiction to issue writ against a judicial officer.

The Petitioner is seeking a writ of *mandamus* against a *nomine officii*. A writ of *mandamus* cannot be issued against a *nomine officii*. It can be issued only against a natural or juristic person.

In the unreported case of *Mohideen and others v. Director General of Customs* (CA 784/1998, CA minutes of 12.12.2011) where Goonaratne J. held that *an order cannot be enforced unless it is directed to a natural or juristic person* and further held that *no Court should make orders which cannot be enforced*. In *Haniffa v. Chairman Urban Council Nawalapitiya* 66 NLR 48, Thambiah J. held that *a mandamus can only issue against a natural person, who holds a public office*. In *Samarasinghe v. De Mel and another* [1982] 1 Sri LR 123 at 128 it was held that *a mandamus can only issue against a natural person who holds a public office. If such person fails to perform the duty after he has been ordered by Court, he can be punished for contempt of Court*. In

Dayarathne v. Rajitha Senarathne [2006] 1 Sri LR 11 at 17 Marsoof J. held that *this being an application for mandamus, relief can only be obtained against a natural person who holds a public office as was decided by the Supreme Court in Haniffa v. Chairman Urban Council, Nawalapitiya.*

The application for a writ of mandamus against a nomine officii cannot be maintained.

Under these circumstances, I refuse notice and dismiss the application.

Judge of the Court of Appeal

**H.C.J. Madawala J.**

I agree.

Judge of the Court of Appeal