

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

In the matter of an application for a ruling of Contempt of Court under Article 105(3) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Murugesu Thayabaran,  
No. 40, Lily Avenue,  
Colombo 06.

**Petitioner**

**C.A. Contempt No. 07/2017**

**Vs.**

1. Chulananda Perera  
SLAS Officers Pool  
Ministry of Public Administration & Management,  
Independence Square,  
Colombo 07.
2. T.W. Senanayake  
Former Deputy Director General of Customs (Enf)  
49/2, Pangiriwatta Road,  
Nugegoda.
3. Saman de Silva  
Former Director of Customs  
778 D2, 1<sup>st</sup> Lane,  
Asiri Uyana,  
Pelawatta,  
Battaramulla.

4. Heinz Adolf Reuter  
The Chairman/ Managing Director  
Member  
Prestige Automobiles Pvt Ltd  
234-238, Pannipitiya Road,  
Battaramulla.

5. Gihan Siribaddana  
Former General Manager Prestige  
Automobiles  
23/120, Ambalanwatta Road,  
Talangama North,  
Battaramulla.

**Respondents**

**Before** : L.T.B. Dehideniya J, (P/CA)

&

A.L. Shiran Gooneratne J.

**Counsel** : N. Kodituwakku for the Petitioner.

Sanjeewa Jayawardana PC, with Rajeer Amaratunga for the 4<sup>th</sup>  
Respondent.

Ashoka Niwunhella for the 2<sup>nd</sup> Respondent.

**Supported on** : 21/11/2017

**Decided on** : 14/12/2017

**Order**

**A.L. Shiran Gooneratne J.**

By Petition dated 12<sup>th</sup> October 2017, the Petitioner inter alia, is seeking in the first instance to issue a rule nisi on the 4<sup>th</sup> Respondent, to show cause as to why

the 4<sup>th</sup> Respondent should not be punished for committing the offence of contempt of court or in the alternative to, adopt such other procedure as the court may deem fit, to deal with the 3<sup>rd</sup> Respondent in respect of the offence of contempt of court.

As alleged by the Petitioner, the said relief is based on “deception of court” by the 4<sup>th</sup> Respondent with false statements of facts stated in case bearing No. CA/WR/255/2017.

In paragraph 4 of the Petition, the Petitioner states that Application bearing No. CA/ WR/ 255/2017, “filed by the 4<sup>th</sup> Respondent contained complete falsehood to mislead the court and such false statements contained therein amounts to a deliberate suppression of material facts” presented to court by the petitioner in case bearing No. CA/WR/215/2015.

Case bearing No. CA/WR/215 2015, was filed by the same Petitioner, inter alia, seeking a writ of Prohibition against the 3<sup>rd</sup> Respondent (Saman Silva, Deputy Director of Customs) prohibiting him from conducting the customs inquiry CIB/INV/32/2013, and to compel the 1<sup>st</sup> Respondent (Director General of Customs) to appoint an independent inquiring officer to conduct the said inquiry. The said writ application, 215/2015, is yet to be supported for notice on the Respondents. The 4<sup>th</sup> Respondent to this application is Heinz Adolf Reuter, Chairman/Managing Director, M/s Prestige Automobiles (pvt) Ltd. Presently there is an application before court to amend the said Petition and the caption subject to the objections raised by the Respondents, for determination.

Petition bearing No. CA/255/2017, was filed by M/s Prestige Automobile (pvt) Ltd. Under Article 140 of the Constitution, invoking the Writ jurisdiction of this court to impugn the order in the customs inquiry bearing No. CIB/INV/32/2013,

In paragraph 35 to the Petition the Petitioner states,

*“that the evidence presented in court in CA/WR/215/2017 dated 27<sup>th</sup> June 2017, that are reproduced in this contempt petition clearly point to the fact that the sole objective of initiating the writ application No. Writ/255/2017 is manifestly fraudulent with ulterior motives.”*

At present the petitioner has filed papers to intervene in CA application No. 255/2017, which is pending determination, a fact, the 4<sup>th</sup> Respondent submits, has been suppressed to court by the petitioner.

We note the written submissions filed by the 4<sup>th</sup> Respondent, where the 4<sup>th</sup> Respondent has reproduced and answered each of the allegations contained in the petition, inter alia, it is stated that,

1. the 4<sup>th</sup> Respondent named in the contempt application is not the petitioner in CA/Writ/255/2017
2. the facts and legal grounds upon which case bearing No. CA/Writ/255/2017 was presented are matters necessarily to be decided at the hearing into that application which is pending determination.

As pointed out earlier, the petitioner in Writ application No. 255/2017, is M/S Prestige Automobiles (pvt) Ltd. Therefore the 4<sup>th</sup> Respondent (Heinz Adolf Reuter) as an independent legal entity has not initiated the said writ application 215/2017, nor has the 4<sup>th</sup> Respondent a party to the said proceedings. Accordingly, there is no legal or factual basis where the court can issue a rule on the 4<sup>th</sup> Respondent to show cause as to “why it should not be punished for committing the offence of contempt of the court of appeal”. The alternate relief prayed for in the said prayer calling to “adopt some other procedure as the court may deem fit to deal with the 3<sup>rd</sup> Respondent in respect of the offence of contempt of court” is unfounded and misconceived in law.

At present this court has not arrived at a finding in Writ application No. 215/2017, which is yet to be supported for notice on the Respondents. However, the petitioner relies on the facts pleaded in the said case to demonstrate and establish the alleged ulterior motives and the fraudulent manifestation of the 4<sup>th</sup> Respondent in initiating the writ application No. 255/2017.

The law and facts contained in petition CA writ application No. 255/2017 are pending deliberation before this court on its merits. We are mindful that the petitioner has made an application for intervention in the said Writ application No. 255/2017, and that writ application No. 215/2017 is pending support of application. A deliberate suppression or misrepresentation of facts as alleged by the petitioner, or an interference or a perversion of the due administration of

justice, are in the above circumstances, grounds of deliberation in the respective judicial review applications pending before this court. Therefore, we find that the petitioners application for contempt of court in respect of matters pending determination is erroneous.

In the circumstances, we are of the view that this application is misconceived in law and the petitioner has failed to disclose the perpetration of contempt of court by the 3<sup>rd</sup> or the 4<sup>th</sup> Respondents.

Accordingly, we refuse the issuance of notice on the Respondents and dismiss this application in limine.

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya J, (P/CA)

I agree.

PRESIDENT OF THE COURT OF APPEAL