

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

*In the matter of an application for a
mandate in the nature of a Writ of
Prohibition in terms of Article 140 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka*

C A (Writ) Application No. 09/ 2018

Daladagama Dhammasiddi

Thero,

Sri Naagala Rajamaha

Viharaya,

Polpithigama.

PETITIONER

-Vs-

1. Pujith Jayasundara,
Inspector General of Police,
Police Headquarters,
Colombo 01.

2. Shani Abeysekera,
Director,
Criminal Investigation
Department,
Colombo 01.

3. I M T Bandara,
Inspector of Police,
Criminal Investigation
Department,
Colombo 01.

4. Upul Ranjith,
Sub Inspector of Police,

Criminal Investigation

Department, (CID)

Colombo 01.

5. Fernando,
Officer-in-Charge,
Crime Investigation Division,
Police Station,
Polpithigama.

6. Dharmasiri,
Sub Inspector of Police,
Special Raid Unit,
Walana.

7. Officer in Charge,
Special Raid Unit,
Walana.

8. Hon. Attorney General,

Attorney General's

Department,

Colombo 12.

RESPONDENTS

Before: P. Padman Surasena J (P/CA)

A. L. Shiran Gooneratne J

Counsel: Faiz Musthapha PC for the Petitioner.

Manohara Jayasinghe SC for the Attorney General.

Supported on : 2018 - 01 - 26

Decided on : 2018 - 02 - 16

ORDER**P Padman Surasena J (P/CA)**

The Petitioner in this application, who claims¹ to be the chief incumbent of the Sri Naagala Rajamaha Viharaya Temple situated in Kurunegala District has prayed inter alia for a writ of prohibition to restrain the 1st to 7th Respondents and / or anyone or more of them from arresting him on an allegation of having committed any offence under the Fauna and Flora Ordinance and / or being concerned with in any offence referred to in the reports filed in the said case bearing No. B 1052 / 17.

Learned President's Counsel appearing for the Petitioner submitted that there is no evidence transpired against the Petitioner from the contents of the B reports he had annexed to the Petition.

The averment setting out the apprehension of the Petitioner that the said Respondents would arrest him is in paragraph 10 of his petition. The relevant part in that averment is as follows;

¹ Paragraph 2 of the petition

"... the Petitioner has become aware of rumors that the Petitioner is to be arrested and has credible reason to believe that he may be so arrested by the 1st to 7th Respondents in as much as Mr. Dileepa Peiris DSG who appeared on behalf of the prosecution on the 12th of December 2017 is reported to have stated that the Petitioner may be arrested. The Petitioner applied for a certified copy of the proceedings of the said dated 12th December 2017 and the Petitioner tenders herewith marked "Y" proof of such application. The Petitioner states that the Petitioner has not been provided with the said certified copy but has credible information that Mr. Dileepa Peiris did in fact make such a statement and the Petitioner has become aware that several newspaper report that the Petitioner is due to be arrested. ..."

At the outset, it is the observation of this Court that the previously mentioned apprehension of the Petitioner is based on hearsay evidence. This Court cannot act upon such evidence.

Learned President's Counsel for the Petitioner referred to Section 32 of the Code of Criminal Procedure Act No. 15 of 1979. According to the said section it is lawful for any peace officer to arrest without an order from a Magistrate and without a warrant any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible

information has been received or a reasonable suspicion exists of his having been so concerned.

The main prayer is for a writ of prohibition to restrain the Police from arresting the Petitioner on an allegation of having committed any offence under the Fauna and Flora Ordinance and / or being concerned with in any offence.

It is the observation of this Court that the issuance of the writ of prohibition prayed for by the Petitioner, would amount to a situation where it would not be possible to arrest the Petitioner in respect of any offence described in his Petition even when there is ample evidence unearthed by the investigators against the petitioner. This is particularly so because the writ sought is for an indefinite period.

It is the view of this Court that the Petitioner has not established any legal basis for this court to issue notices on the Respondents.

The writ jurisdiction vested in this Court by virtue of article 140 of the constitution is a jurisdiction, which this Court should exercise in its discretion only in a fit case. This is not a fit case in which this Court should exercise its writ jurisdiction.

In these circumstances, this Court decides to refuse to issue notices on the Respondents.

This Application must therefore stand dismissed.

PRESIDENT OF THE COURT OF APPEAL

A.L Shiran Gooneratne J

I agree,

JUDGE OF THE COURT OF APPEAL