

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

In the matter of an Application for Orders in the nature of Writs of Certiorari, Mandamus and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA (Writ) Application No. 232/2018**

1. P.A. Rohini Mangalika,  
438/1, Neelammahara Road,  
Godigamuwa, Maharagama.
2. Kalatuwawa Lekamge Dinesha  
Niroshini  
34/2, Samaja Road,  
Pathiragoda, Maharagama.
3. Wickramasinghe Arachilage Malith  
Ishanka,  
34/2, Samaja Road, Pathiragoda,  
Maharagama.
4. M.K. Nandawathi,  
No. 191, 2<sup>nd</sup> Lane, Egodawatha,  
Boralesgamuwa

**Petitioners**

Vs.

1. 532C, Wattegedara Thrift and Credit  
Co-operative Society Limited,

No. 129, Wattegedara Road,  
Maharagama.

2. Commissioner of Co-operative  
Development and Registrar of Co-  
operative Societies,  
Department of Co-operative  
Development,  
No. 330, Union Place, Colombo 2.
3. Commissioner of Co-operative  
Development,  
Western Province,  
P.O. Box 444, Duke Street,  
Colombo 1.
4. Officer in charge,  
Special Crimes Investigation Bureau,  
SCIB, Mirihana.

**Respondents**

**Before:** Kumudini Wickremasinghe, J  
Arjuna Obeyesekere, J

**Counsel:** Ian Fernando with Varuna Nanayakkara for the Petitioners

Sulari Gamage for the 1<sup>st</sup> Respondent

Ms. Maithri Amerasinghe Jayatilake, State Counsel for the 2<sup>nd</sup> – 4<sup>th</sup>  
Respondents

**Supported on:** 26<sup>th</sup> March 2019

**Decided on:** 3<sup>rd</sup> May 2019

**Arjuna Obeyesekere, J**

The Petitioners filed this application on 12<sup>th</sup> July 2018 seeking *inter alia* a Writ of Certiorari to quash the decision of the 1<sup>st</sup> – 4<sup>th</sup> Respondents to prosecute the Petitioners in Case Nos. 24786, 24787 and 24917 in the Magistrate's Court of Nugegoda and a Writ of Prohibition preventing the 1<sup>st</sup> – 4<sup>th</sup> Respondents taking any further steps to prosecute the Petitioners in the aforementioned cases.

The facts of this matter very briefly are as follows.

The Petitioners admit that they have borrowed sums of money ranging from Rs. 550,000 to Rs. 3,300,000 from the 1<sup>st</sup> Respondent, the Wattegedara Thrift and Co-operative Society Limited. The Petitioners have not produced any documentary proof to establish that they re-paid the said sum of money or at least a part thereof or the interest due on the capital. Nor have the Petitioners submitted any material to substantiate their contention that there are discrepancies between the records of the 1<sup>st</sup> Respondent and the passbooks of the Petitioners.

As the Petitioners have failed to re-pay the said sums of money borrowed by them and/or the interest due thereon, the 1<sup>st</sup> Respondent had referred the said dispute of non-payment to the 3<sup>rd</sup> Respondent, the Co-operative Commissioner of the Western Province for resolution under Section 58(1) of the Co-operative Societies Statute No. 3 of 1998 of the Western Province Provincial Council. The Assistant Commissioner of Co-operative Development, who had heard the said disputes, had made an award directing the Petitioners

to pay the capital and the interest outstanding on the said loans taken by them.

It appears that the Petitioners have disregarded the said award and have failed to appeal against the said award to the 2<sup>nd</sup> Respondent, the Commissioner of Co-operative Development, which is the remedy provided to any person who is dissatisfied with an award made in terms of the said Statute. Proceedings have thereafter been instituted in the Nugegoda Magistrate's Court under Section 59(1)(c) read together with Section 59(4) of the said Statute to recover the sum of money specified in the award.

The Petitioners have annexed to the petition marked 'P3', the proceedings in Case No. 24787 in the Magistrate's Court of Nugegoda filed against the 3<sup>rd</sup> Petitioner. This Court has examined 'P3' and observes that the learned Magistrate has made an order for the sum of money specified in the Certificate filed by the Respondents, to be recovered as a fine. The learned Magistrate had however allowed the application made by the 3<sup>rd</sup> Petitioner for the said sum of money to be paid in 60 monthly instalments.

In Case No. 24917 filed against the 4<sup>th</sup> Petitioner, the learned Magistrate had rejected the cause shown by the 4<sup>th</sup> Petitioner as to why the money should not be recovered. By an Order dated 16<sup>th</sup> January 2018 annexed to the petition marked 'P6', the learned Magistrate had directed that the sum of money specified in the certificate be recovered as a fine from the 4<sup>th</sup> Petitioner. A similar order has been delivered by the learned Magistrate of Nugegoda in Case No. 24786 against the 4<sup>th</sup> Petitioner. It is therefore clear that proceedings instituted in the Magistrate's Court of Nugegoda in Case Nos. 24786, 24917

and 24787 have been concluded, rendering this application nugatory. The necessity for this Court to consider the granting of the relief prayed for does not therefore arise.

In any event, the Petitioners have not complained of any illegality, irrationality or procedural impropriety on the part of the Respondents in filing proceedings in the Magistrate's Court. In the above circumstances, this Court does not see any legal basis to issue notices on the Respondents. This application is accordingly dismissed, without costs.

**Judge of the Court of Appeal**

**Kumudini Wickremasinghe, J**

I agree

**Judge of the Court of Appeal**