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

In the matter of an application for revision under and in terms of Article 138 of the Constitution read together with Section 364 and 368 of the Criminal Procedure Code.

Officer-in-charge,
Special Criminal Investigation Unit
Police Station,
Ratnapura.

Complainant

Vs.

Court of Appeal Application
No: **MCR/001/2022**

Magistrate's Court of
Balangoda
No:**84150**
BR/295/20

1. Lasantha Pradeep Kumara Wijesinghe,
   No. 168,
   St. Andrews Road,
   Colombo 15

2. Hegodagamage Kamali Sulochana Kariyawasam
   No. 29/01, Colonel T.D. Jayawardhana Mawatha,
   Colombo 03.

Suspects

AND NOW BETWEEN

Lasantha Pradeep Kumara Wijesinghe,
No. 168,
St. Andrews Road,
Colombo 15

Suspect-Petitioner

Vs.

1. Officer-in-charge,
Special Criminal Investigation Unit
Police Station,
Ratnapura.

Complainant-Respondent

2. Hegodagamage Kamali Sulochana
Kariyawasam
No. 29/01, Colonel T.D.
Jayawardhana Mawatha,
Colombo 03.

Suspect-Respondent

3. Heenbalage Priyantha Kumara
Hemachandra,
Welekumbura,
Rassagala,
Balangoda.

Virtual Complainant-Respondent

4. The Hon. Attorney General
Attorney General's Department,
Hulftsdorp
Colombo 12.

Respondent

BEFORE	:	Menaka Wijesundera J Neil Iddawala J
COUNSEL	:	J.M.Wijebandara with Chamodi Dayananda and Kaushalya Kuruvita for the Suspect-Petitioner. Yuhan Abeywickrama DSG for the State.
Argued on	:	01.11.2022
Decided on	:	14.12.2022

Iddawala – J

This is a revision application filed by the suspect-petitioner (*hereinafter the petitioner*) to set aside the order of the Magistrate Court of Balangoda dated 22.12.2021 which refused to discharge the suspect under Section 120(3) of the Criminal Procedure Code (*hereinafter the CPC*) based on a preliminary objection raised by the petitioner The parties agreed to proceed with one judgment for both MCR 01/22 and MCR 02/22, therefore the present judgment is applicable to both the cases.

The facts of the case are briefly as follows. The petitioner along with the suspect respondent, his wife are Directors of the Horamulla Tea Plantation (Pvt) Ltd. The virtual complainant is a tea supplier. He lodged a complaint on 17.03.2020 before the Special Crime Investigation Unit of Rathnapura Police on the failure of the said company to pay him the money in arrears for the tea leaves he has supplied them. The virtual complainant has supplied tea to the said company since 2018, January. However, this case is concerned with regard to the most recent transaction in a consistent chain of

transactions, where the company has failed to pay a due amount of Rs. 3,771,890/= for the supplied tea leaves. Consequentially, the police reports suggested that there exists a criminal liability punishable under Sections 403, 386 and 389 of the Penal Code against the petitioner and the suspect respondent.

The petitioner invoked the revisionary jurisdiction under Article 138 of the Constitution read together with Sections 364 and 368 of the CPC to set aside the said order and grant lawful relief based on the grounds that the learned Magistrate has misconceived the law under Section 120(3) and Section 186 of the CPC by refusing to discharge the petitioner. Therefore, Counsel for the petitioner avers the following exceptional circumstances to invoke the extraordinary jurisdiction of this Court by way of revision to set aside the Magistrate's Court order.

1. The order of the learned Magistrate is a miscarriage of justice detrimental to the freedom and liberties of the petitioner as the learned Magistrate has not judiciously exercised the judicial discretion bestowed under Section 120 (3).
2. The Court is misdirected in understanding the difference between civil liability and criminal liability.
3. The investigation is tainted with illegality as the police has failed to report the petitioner's statement to the Magistrate and the learned Magistrate has overlooked this fact.

Hence, the instant application pivots on the interpretation of Section 120(3) of the CPC and assessing whether the learned Magistrate's refusal to discharge the suspects is misconceived in law.

Impugned order

The impugned order contends that by reason of a charge sheet been framed (which was later amended), the petitioner is prevented from invoking Section 120(3) of the CPC:

> "අපරාධ නඩු විධාන සංග්‍රහයේ 120(3) වගන්තිය යටතේ ඉල්ලීමක් සිදු කිරීමට මෙම අවස්ථාවේදී හැකියාවක් නොමැත. මන්දයත් විමර්ෂණ කටයුතු අවසානයේ චුදිතයින්ට එරෙහිව චෝදනාවක් ගොනු

කිරීමට ප්‍රමාණවත් කරුණු පවතින බවට තහවුරු කරමින් මේ වන විට පැමිණිල්ලක් සහ සංශෝධිත පැමිණිල්ලක්ද ගොනු කොට ඇති හෙයිනි." (Page 8 of the order at page 119 of the Appeal Brief)

Similarly, the learned Magistrate contends as follows:

"ඒ අනුව පැමිණිල්ල ගොනු කිරීමට ක්‍රියා කොට ඇත්තේ චුදිතයින්ට එරෙහිව නඩු කටයුතු පවත්වා ගෙන යාමට ප්‍රමාණවත් සාක්ෂි තිබෙන බවට බැලුබැල්මට පෙනීයාම මත බවට කාරුණු වාර්තා කරමින් ලිඛිත දේශනයක් ආකාරයෙන් ඉදිරිපත් කොට ඇත. ඒ අනුව පවතින සාක්ෂි මත චෝදනා පවත්වා ගෙන යාමට හැකි බව පැමිණිල්ලේ ස්ථාවරයා වේ.

චුදිතයින්ට එරෙහිව පවතින සාක්ෂි ප්‍රමාණවත් වන්නේද? එසේ නොවන්නේද? යන්න පිළිබඳව නඩුව ආරම්භයේදීම පූර්ණ විශ්ලේෂණයක් සිදු කිරීමේ අවකාශයක් නොමැත. එය සිදු කළ යුත්තේ නඩු කටයුතු පවත්වා ගෙන යන අතරතුරදීය. පැ.ස. 1 අධිකරණයේ සාක්ෂි ලබාදෙන අවස්ථාවේදී චුදිතයින් වරදට දක්වන දායකත්වය, ඔවුන්ගේ මානසික අංගය, ශාරීරික අංගය ආදී සියල්ල පිළිබඳව අවධානය යොමු කරමින් අපරාධ නඩු විධාන සංග්‍රහයේ 186 වගන්තිය යටතේ ක්‍රියා කිරීමේ හැකියාව පවතී. **ඒ අනුව බැලුබැල්මට චුදිතයින්ට එරෙහිව ප්‍රමාණවත් සාක්ෂි පවතින බවට පැමිණිල්ල වෙනුවෙන් කරුණු දක්වා ඇති අවස්ථාවකදී සහ මේ වන විටත් පැමිණිල්ලක් ගොනු කොට සංශෝධිත පැමිණිල්ලක් සඳහාද පියවර ගෙන ඇති අවස්ථාවකදී අපරාද නඩුවිධාන සංග්‍රහයේ 120(3) උපවගන්තිය යටතේ කටයුතු කිරීමේ කිසිදු නෛතික හැකියාවක් නොමැත.** ඒ අනුව චුදිතයින් වෙනුවෙන් ඔවුන් මුදාහරින ලෙසට අපරාධ නඩු විධාන සංග්‍රහයේ 120(3) වගන්තිය යටතේ සිදු කොට ඇති ඉල්ලීම ප්‍රතික්ෂේප කළ යුතු වේ." (Page 4 of the Order at page 115 of the Appeal Brief) (Emphasis added)

Hence the main reason for the learned Magistrate to refuse the discharge of the petitioner is the fact that the complainant has framed charges in light of the investigation conducted into the complaint. Therefore, it is the contention of the learned Magistrate that Section 120(3) of the CPC cannot be triggered in the instant case. At this juncture, it is pertinent to examine Section 120(3) of the CPC.

Section 120(3) of the CPC

Section 120(3) of the CPC empowers the Magistrate to discharge a suspect based on the completed investigation into a complaint. The Section reads as follows:

"As soon as the investigation is completed the officer in charge of the police station

shall forward to such court a report in the prescribed form. If in the report there is no allegation that the suspect has committed or been concerned in the committing of any offence the Magistrate ***shall discharge*** *him. If the report alleges that the suspect has committed or been concerned in committing an offence he shall be prosecuted in accordance with the provisions of this Code."*

It must be noted that the application of Section 120(3) is informed by its preceding Sections which reflects the continuous sequence of formulations within the CPC. Hence Section 120(3) must be read within its context where it is placed under Chapter XI of the CPC titled "Information to Police Officers and Inquiries and Their Powers to Investigate" contained in Part V of the CPC titled "Investigation of Offences". It is significant to note that, with the exception of Section 115 which deals with a specific circumstance, Section 120(3) is the first time the CPC recognizes the power of a Magistrate to intervene during or at the conclusion of an investigation under Chapter IX. This further reinforces the contemplation by drafters that Section 120(3) ought not to be read in a vacuum.

As such, it must be noted that prior to a Magistrate discharging a suspect under Section 120(3) of the CPC, Section 114 of the CPC provides for the release of a person under investigation from custody (upon a bond) on the basis of deficient evidence. As such, the threshold for such release is stipulated as *"it appears……that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate's Court…".* While such release is not akin to a discharge by the Magistrate as envisioned in Section 120(3) (under Section 114, the person is released upon executing a bond or released under the direction to appear when so required before a Magistrate), the threshold requirement of "sufficient evidence or reasonable ground of suspicion" points to the context in which Section 120 of the CPC must be evaluated. This contention is further reinforced by Section 116 of the CPC which stipulates another threshold requirement for an officer or inquirer to forward a case to a Magistrate's Court if sufficient information is well founded or if further investigation is necessary. Therefore, even before a completed investigation arrives at Section 120, the CPC delineate a criterion of sufficiency. Bearing this context in mind, we now turn to examine Section 120(3) of the CPC.

The wording of Section 120(3) clearly points to the role of the presiding judge in assessing a threshold question on whether the material placed before him warrants the discharge of the suspect against whom an investigation has been completed pursuant to a complaint. This would serve the dual purpose of ensuring the rights of the suspect (yet to be named as an accused) as well as filtering out those cases which have a lower likelihood of conviction at the very preliminary stage of a would-be prosecution. Within the ambit of such a 'filtering purpose', is the notion that while a Magistrate is not expected to conduct a trial before a trial, he must nevertheless assess the existence of sufficient evidence in determining whether a suspect ought to be discharged or not. In doing so, the presiding judge must apply their mind to the material revealed during the investigation and make a reasonable, independent assessment on whether or not the threshold requirement is met within the context of Section 120(3), bearing in mind the implications of Sections 114 and 116 of the CPC. This is ever so important as Section 120(3) of the CPC is the first time a Magistrate is called upon to evaluate the assessment of the investigating officer that the complaint against the suspect warrants the case to proceed before the Magistrate's Court.

This assessment does not include, as rightly pointed out in the above quote, an evaluation of the elements of the crime, the *actus reus* and the *mens rea* of the suspect. That is a task reserved for the trial judge. What it does include is an exercise of discretion in deciding whether a prima facie case has been presented, which involves an independent assessment of the material divulged during the investigation. This requirement cannot be relegated to a mechanical act of rubber stamping the investigator's conclusion. It involves the use of discretion by a Magistrate, independent of what the investigator contends. If not, a Magistrate will be diminishing their own discretion to a mere mechanical assent of what the investigators have concluded.

Application of Section 120(3) of the CPC

As quoted above, the learned Magistrate in his impugned Order places a heavy reliance on the conclusion made by the complainant-respondent (*hereinafter the complainant*). He concludes that based on the material disclosed during the investigation, charges can be maintained against the petitioners and that charges have been framed accordingly.

However, what is absent in the analysis is any independent reference to the materials thus disclosed during the investigation. Reiterating the submissions made by both parties is the first step in the exercise of the judicial discretion, but a judge should not stop there. There must be some evidence that the judicial mind was applied to the facts and law, independent of the submissions made by the parties.

Nevertheless, it must be borne in mind that when applying the judicial mind to the facts and circumstances, the degree of evaluation during the Section 120(3) stage of a case is not the same as the degree of evaluation at a later stage- such as the trial. At the stage where Section 120(3) of the CPC, the discretion is utilized to assess a threshold of "sufficiency" and not the threshold of beyond reasonable doubt. The minimum standard of discretion to be used at Section 120(3) stage must be accompanied by evidence of an independent assessment which goes beyond the restatement of what the parties' submissions. Framing of a charge does not, ipso facto, prevent the triggering of Section 120(3). The contrary would mean that the discretion of a Magistrate to discharge the suspects under Section 120(3) of the CPC is disallowed the moment a charge sheet has been framed. Ordinarily, a Magistrate does not frame the charges. Instead, the draft charges tendered by the prosecution will be accepted by the Magistrate and the same will be perceived as the charges framed by the Magistrate himself. This view has been endorsed in **CA PHC 108/2010 CA** minute dated 26.08.2014. However, the acceptance by the Magistrate in the said instance is not a mechanical act of rubber stamping the prosecution's draft, it involves a judicious exercise of discretion. After such an exercise and the charge sheet framed, by reason of it being considered as framed by the Magistrate, then an option of discharge under Section 120(3) of the CPC will no longer be available. Therefore the reference in Section 120(3) to "*If in the report there is no allegation that the suspect has committed or been concerned in the committing of any offence"* and *"If the report alleges that the suspect has committed or been concerned in committing an offence he shall be prosecuted in accordance with the provisions of this Code*" is a reference to the threshold of whether the Magistrate is satisfied with the commission of an offence with a prima facie prospect of securing a conviction. To that end, the Magistrate must make an independent assessment whether the draft charges presented by the prosecution has any merit in it. He ought not to act as a mere rubber stamp.

The unacceptability of a contrary interpretation of Section 120(3) of the CPC is further reinforced by the later formulation of Section 186 in the CPC which empowers the Magistrate to discharge a suspect at any time. This section in furtherance to an individual's right to personal liberty and freedom. Every individual is entitled to be free from arbitrary detention or prosecution in any instance where the commission of a crime cannot be sufficiently ascertained through investigations. Thus, it is within the power of a Magistrate to discharge such suspects, in order to uphold their rights.

In this regard, this Court would like to echo the words of his Lordship Justice Gunawardana in **Abdul Sameem v The Bribery Commissioner** (1991) 1 S.L.R. *"Furthermore, whilst appreciating the pressures on time and the large volume of work the Magistrate's Courts are called upon to handle, it is nevertheless important, that rights of an accused person are safeguarded and that he be brought to trial according to accepted fundamental principles of criminal procedure"*

As discussed at the outset, under Chapter XI of the CPC, there are several threshold requirements for a complaint to proceed within the stipulated sequence of investigation. For instance, the investigating officer must be satisfied of "sufficient evidence or reasonable grounds of suspicion" to justify the forwarding of a suspect to the Magistrate's Court (Section 114 and 116 of the CPC). When such a suspect is brought before a Magistrate to consider whether he or she ought to be discharged under section 120(3) of the CPC, it is implied that the Magistrate should use his discretion in a judicious manner to assess whether the threshold requirement has been met and whether there is prima facie case against the suspect.

In light of this, it is the considered view of this Court that the impugned order of the learned Magistrate has failed to satisfy this burden envisioned under Section 120(3) of the CPC. A mere statement such as "*ඒ අනුව බැලුබැල්මට චුදිතයින්ට එරෙහිව ප්‍රමාණවත් සාක්ෂි පවතින බවට පැමිණිල්ල වෙනුවෙන් කරුණු දක්වා ඇති අවස්ථාවකදී සහ මේ වන විටත් පැමිණිල්ලක් ගොනු කොට සංශෝධිත පැමිණිල්ලක් සඳහාද පියවර ගෙන ඇති අවස්ථාවකදී අපරාද නඩුවිධාන සංග්‍රහයේ 120(3) උපවගන්තිය යටතේ කටයුතු කිරීමේ කිසිදු නෛතික හැකියාවක් නොමැත.*" (supra), without an independent review of the material divulged by the completed investigation, amounts to relegation of the discretion envisioned by the framers of the CPC. On the other hand, the framing of the charge/s and amending it as necessary is a duty of a Magistrate. As His Lordship

Justice Salam (P/CA) echoed in **CA/PHC/108/2010** (Supra) at page 6 of the judgment- *'It is a magisterial duty which cannot be delegated to the police. Whether there is sufficient ground to proceed against the suspect in the hands of a judicial officer who is expected to address his mind judiciously. If the duty of framing the charge is to be entrusted others the purposive approach to Section 182 will be rendered nugatory'*.

Hence, this Court opines that the impugned order is misconceived in law as the learned Magistrate has failed to take into consideration the lack of material in the submitted reports supporting the commission of the alleged crime by the suspect. This will be discussed in detail in the next segment.

Threshold requirement unmet

It must be noted that Magistrates are not routinely required to evaluate material divulged at the completion of an investigation against the threshold of sufficiency and reasonableness. The special circumstance of the instant case is that the petitioner has raised a preliminary objection based on Section 120(3) of the CPC. In such an instance, it is the duty of the Magistrate to employ his discretion and make an inquiry into the threshold criterion. It is within the interest of justice to conduct such an inquiry before the charges are formally read against the suspect. Therefore, it can be noted that the petitioner has raised the preliminary objections well within the correct time period, before charges are formally read against him. In this instant case charges have not been formally read over against the petitioner and the summons have not yet been served on the suspect-respondent. Hence, the Magistrate shall at this juncture entertain such preliminary objections and inquire into the threshold criterion.

Upon a perusal of the facts and circumstances of the instant case, it is evident that the virtual complainant refers to a commercial transaction between himself and the incorporated entity named Horamulla Tea Plantation (Pvt) Ltd. The petitioner is one of the Directors of the tea company. The complainant has not conducted any individual transactions of a personal nature with the said director. (R1 the complaint to the Police dated 17.03.2020 by the virtual complainant-respondent) The agreement of sale of goods transpired between the Horamulla Tea Factory and the complainant, and, as such the transactions therein transpired between the company and the complainant in the

ordinary course of business, which makes it irregular in law to hold an individual, of the company liable, in his personal capacity, for the arrears of payment.

In the celebrated case of **Saloman v A. Saloman & Co Ltd** [1897] AC 22, HL, the *Saloman Principle* was introduced which distinguished between the rights and duties of the company from that of its stakeholders and directors. Therefore, the company attains the status of a legal person while its directors or stakeholders gain the status of natural persons, where the liability of one does not cross through to the other, which is also termed as the corporate veil.

Thus, in this instant matter, as the course of this agreement of sale of tea leaves was conducted by the company and not individually by the petitioner (as admitted by the complainant himself in the complaint to the Police dated 17.03.2020- "R1" -Document marked as "R1" by the complainant respondents with his objections), it is the company that is liable for the breach (if any) of the business transaction. Therefore, corporate liability of the Horamulla Tea Factory does not transfer to the petitioner, unless there is evidence to prove the petitioner's direct engagement in fraud, misappropriation or the intention to engage in such fraudulent conduct. In which case the corporate veil will be shifted to hold an individual liable for such offences. Therefore, unless the completed investigation divulged a piercing in the veil of incorporation afforded to the Horamulla Tea Plantation (Pvt) Ltd, by virtue of its incorporation, individual criminal liability cannot be presumed to be attributed to the petitioner. It is pertinent to note that the caption of the case application does not include Horamulla Tea Plantation (Pvt) Ltd, as a suspect.

At page 5 of the impugned order (page 117of the Appeal Brief), the Magistrate refers to "vicarious liability" in the following manner:

> "චුදිතයින් විසින් දීර්ඝ වශයෙන් කරුණු ඉදිරිපත් කරමින් එක් එක් චෝදනාවන්හි සංඝටකයන් ඔප්පු කිරීමට සමත් නොවන බවට සහ චුදිතයින් සමාගමක් වශයෙන් අධිකරණය හමුවට ඉදිරිපත් කිරීම වෙනුවට ඔවුන්ට ප්‍රතිපුරුෂ වගකීමක් පැවරීමට කටයුතු කරන ලද බවට කරුණු ඉදිරිපත් කරයි. කෙසේ වුවද මෙම නඩුවේ දැනට ඉදිරිපත් කර ඇති සාක්ෂි පිළිබඳව පොලිසිය විසින් වාර්තා කොට ඇති කරුණු සැලකිල්ලට ගැනීමේදී එබඳු ප්‍රතිපුරුෂ වගකීමක් උද්ගත වන අවස්ථාවක් නොවන බවට පැහැදිළිව පෙනී යයි. ඒ අනුව අධ්‍යක්ෂකවරුන්ට එරෙහිව අපරාධ වගකීම පැවරීම උදෙසා අපරාධ නඩු විධාන සංග්‍රහයේ 261 වගන්තිය පරිදි අවකාශය සැළසෙන බව පැහැදිලිය."

This is erroneous for two reasons. Firstly, as explained above, the commercial transaction that is central to the investigation was not of a personal character between the virtual complainant and the petitioner. Therefore, the entire complaint is premised upon a transaction between a person and a business entity. This nuance cannot be brushed aside.

Secondly, the reference to Section 261 of the CPC is a pertinent consideration in this regard, however the Magistrate cannot rely on it since the complainant has not named the corporation as the suspect. The suspects in the instant case are the petitioner and suspect respondent (his wife) in their personal capacity as individual persons as opposed to their professional capacity as representatives of Horamulla Tea Plantation (Pvt) Ltd. If the complainant purports that the petitioner is criminally liable for the alleged default of payment, thus characterizing the transaction as a personal exchange, it cannot be said in the same breath that the petitioner's wife is also a suspect. It is paradoxical to attach any individual liability to the wife because the husband has been alleged to have committed a crime under the Penal Code. This absurd outcome is a manifestation of the requirement to clearly delineate the separate legal personality of the Horamulla Tea Plantation (Pvt) Ltd from its employers and the dismissal of the Magistrate of any notion of "vicarious liability" is in complete disregard of this essential element in the investigation.

None of these matters have been considered by the learned Magistrate in the impugned order. The attribution of the purported criminality has a direct impact on the threshold of sufficiency and reasonableness as contemplated by Section 120(3) read within its context, and it is the considered view of this Court that in the absence such consideration, the matter warrants this Court to invoke its revisionary jurisdiction in setting aside the impugned order. This Court is of the observation that the learned Magistrate has erred in distinguishing the liability of the company and that of the natural persons involved in the course of business, thus misdirecting the proceedings towards criminal liability of the petitioner whereas, it is a matter of corporate liability.

Thus, it is evident that there is no clear allegation against the petitioner in his individual capacity. The Magistrate has erroneously held the petitioner criminally liable to the extent of framing charges against him, even in the absence of any personal transactions

between the petitioner and the virtual complainant, thus failing to allude corporate liability in its stead. While it may be argued that criminal liability may be attached to the petitioner's official capacity, it is clear that the completed investigation failed to divulge any such link.

Conclusion

In line with the above observations, the Magistrate has a duty to ensure correct application of the law set out in Section 120(3) of the CPC with an eye to the individual's freedom and liberty. Magistrate must thoroughly peruse the reports of the investigation to firmly ascertain the grounds for suspicion of the suspect, thereby properly discharging and preventing the accumulation of cases which do not seemingly establish suspicion. Although, it is recognized that, given the workload of a Magistrate Court, it is impractical to expect to have all the cases thoroughly perused, however, when such objections are brought to the attention of the Magistrate at the very outset of a proceeding, as was seen in the present case, due regard must be had and inquired into the matter with a precise application of the legal provisions. That way, the Court's resources won't be wasted and they can be diverted to a more deserving case.

Section 120(3) of the CPC clearly enumerates the duty of the OIC in the police station to submit a report to the Magistrate and in that report, if **there is no allegation** that:

1) The suspect has committed an offence OR

2) Been concerned in the committing of any offence,

the Magistrate shall discharge him.

Therefore, the learned Magistrate has a duty to examine the report forwarded by the complainant before making a determination, without merely endorsing the contents of the report of completed investigation. Section 120(3) of the CPC awards such judicial discretion in order to cater towards the protection of an individual's rights to liberty and freedom, thus such discretion must be exercised judiciously. In doing so, the Magistrate must clearly record his reasoning, independent to the submissions by the parties. As highlighted above, the role of the Magistrate in the event Section 120(3) CPC is invoked is to exercise his discretion to assess whether the threshold requirement of sufficiency

and reasonableness has been met to satisfy the existence of a *prima facie* case to proceed to the formal charging of the suspect.

Therefore, this Court holds that the impugned order has erred in several issues. Thus, this Court affirms that there exists an irregularity and an illegality in the impugned order. Hence, this Court sets aside the order of the learned Magistrate dated 22.12.2021 and discharge the petitioner and the suspect respondent.

The application is hereby allowed.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL

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