

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

Court of Appeal Case No: TR/12/2017

Magistrates Court Mallakam No: 44680/PC/2017

Officer In-Charge,
Police Station, Thellippalai.

Complainant

Vs.

Sharminie Sribreindran,
No. 25, Arasady Road,
Kantharmadam, Jaffna.

Accused

AND

Sharminie Sribreindran,
No. 25, Arasady Road,
Kantharmadam, Jaffna.

Presently at, No. 33/3, Muthaliyar Lane,
Naavalur Road, Ariyalai, Jaffna.

Accused - Petitioner

Vs.

1. Officer In - Charge,
Police Station,
Thellippalai.

Complainant - Respondent

2. Anandarajah Nanthinidevi,
Nanthavanam, Araly West, Vaddukoddai.

3. Hon. Attorney General
Attorney General's Department,
Colombo 12.

Respondents

C.A. Transfer Appln. No. 12/2017

Before : M.M.A. Gaffoor, J &
S. Thurairaja, P.C., J.

Counsel : Anil Silva, P.C., with Nandana Perera appears
for the Petitioner.

Nayana Seneviratne, S.S.C., for A.G.

Argued &
Decided on : 18.08.2017.

S. Thurairaja, P.C. J.

Learned Counsel heard in submissions. Counsel for the Petitioner Mr. Anil Silva, P.C. submits that he is seeking relief under Section 46(1) d of the Judicature Act. Counsel submits that the Petitioner is practicing as an Attorney-at-Law and there is alleged charge against her that she has made threatening call to the Registrar of the Magistrate's Court of Mallakam. Considering the facts and submissions of the Counsel for the Petitioner, the Petitioner claims that she is "feared" that she will not get a fair trial at the Magistrate Court of Mallakam because the Complainant is the Registrar of the

said Court. The Senior State Counsel appearing for the State, submits that she has no objections.

Considering available facts, the Petitioner was asked to come to the Police Station by the O.I.C. and she refused to present herself to make a statement. Even though the Police could have proceeded under Section 109 of the Criminal Procedure Code to issue a warrant, they were respectful for the Petitioner because she is an Attorney-at-Law practicing in the Northern province. The Police had to seek the assistance of the Court to record the statement of the Petitioner and she made a statement, next Court appearance date was informed and she was made aware of the next date but she was not present in Court. We do not find any notice or summons. The Magistrate on the request of the Investigating Officer issued a warrant. On the following date, i.e 13.09.2016 the Petitioner presented herself through a President's Counsel and the warrant was recalled. She was bailed out and asked to be present on the next date namely 11.10.2016. On that day, she was absent and unrepresented and there was no explanation for absence for that date. Warrant issued again and she presented her self on a subsequent date and the warrant was recalled. Absent on the second date was not explained in the petition

and affidavit. Considering all available materials, we find that there is no allegation against the judicial officer. This application does not qualify under Section 46 of the judicature act. Therefore this Court is not inclined to transfer the matter. If the Petitioner wishes they can inform the Judicial Services Commission of the allegations.

The Registrar is directed to send a copy of this proceedings to the Secretary of the Judicial Services Commission. The application is dismissed. No costs.

JUDGE OF THE COURT OF APPEAL

M.M.A. Gaffoor, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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