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

*In the matter of an application in the nature
of writ of Certiorari, Prohibition and
Mandamus under and in terms of Article
140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.*

- 1. Saroja Govindasamy Naganathan
alias Maharachchige Sarojani Perera.**

No.87, Shoe Road, Kotahena, Colombo
13.

- 2. Jamaldeen Jeni Fazleen Jenifer
Weerasinghe**

75/12, Maligakanda Road, Maradana,
Colombo 10.

- 3. Don Mervyn Premalal Weerasinghe.**

75/12, Maligakanda Road, Maradana,
Colombo 10.

- 4. Ameenathul Jiffriya Sabreen.**

189/c/2/2 , Wajiragnana Mawatha,
Colombo 09.

CA/WRIT 424/21

PETITIONERS

-Vs-

- 1. Hon. Attorney General**

Attorney General's Department,
Colombo 12.

2. **Wasantha Kumara Jayadewa
Karannagoda.**

No.99/3, Baddegana North Road,
Beddegana, Kotte.

RESPONDENTS

On this day of September 2021

**TO: HIS LORDSHIP THE PRESIDENT AND THE OTHER HONORABLE
JUDGES OF THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

The Petitioners above named appearing through Ms. Achala senevirathna Attorney-at-Law by his petition states as follows;

THE PETITIONERS

1. The Petitioners state that Petitioners are citizens of the Republic and further state as follows,
 - i. The 1st Petitioner is the mother of one late Mr. Rajiv Naganathan who was a victim of the crime which High Court Case bearing No. HC (TAB) 1448/2020 is related to.

- ii. The 2nd and 3rd Petitioners are the parents of one late Mr. Mohammed Dilan who was a victim of the crime which Colombo High Court Case bearing No. HC (TAB) 1448/2020 is related to.
 - iii. The 4th Petitioner is the mother of one late Mr. Mohammed Sajith who was a victim of the crime which Colombo High Court Case bearing No. HC (TAB) 1448/2020 is related to.
2. The Petitioners plead since they are the parents of the deceased children, they have a locus standi to seek the reliefs averred herein under.

THE RESPONDENTS

3. The 1st Respondent is the Honorable Attorney-General and the 2nd Respondent is Former Commander of Sri Lanka Navy, Mr. Wasantha Kumara Jayadewa Karannagoda.

PRESENT APPLICATION BEFORE LORDSHIPS' COURT

4. The Petitioners *inter alia* seek following orders in the nature of writ from Your Lordships' Court
- i. A writ of Certiorari quashing the decision of the 1st Respondent to withdraw the indictment and/or the charges levelled against the 2nd Respondent in the High Court Case bearing No. HC (TAB) 1448/2020.
 - ii. A writ of Mandamus directing the 1st Respondent to proceed against the 2nd Respondent in the High Court Case bearing No. HC (TAB) 1448/2020 based on the indictment already served on him.
 - iii. A writ of Prohibition, prohibiting the 1st Respondent from withdrawing the indictment and/or the charges levelled against the 2nd Respondent in the High Court Case bearing No. HC (TAB) 1448/2020.

BACKGROUND OF THE ISSUE

5. The Petitioners state that five persons including the aforesaid Rajiv Naganathan, Vishwanathan Pradeep, Mohammed Dilan, Mohammed Sajith went missing on or around 17th September 2008 where the Petitioners complained to the Police and Human Rights Commission relating to the said disappearances.

The Petitioners herewith annexed relevant documents marked as X1 to X6 and pleaded as part and parcel hereof.

6. The Petitioners state that during the investigations of the Criminal Investigation Division in respect of another crime it was divulged the fact that there is a direct connection with the above disappearances and some navy personals including the 2nd Respondent.
7. The Petitioners state that following facts were revealed during the investigation,
 - i. Some persons including the aforesaid victims were abducted and illegally detained in a cell called "Pittu Bambuwa" situated near the Colombo port. *(Paragraph 3 of the page 2 of the document marked as X7)*
 - ii. Thereafter they were detained in an illegal prison called "GUN SITE" situated in Sri Lanka Naval and Marine Science Faculty premises of Trincomalee which was under the direct control of the 2nd Respondent. *(Paragraph 4 of the page 2 of the document marked as X7)*
 - iii. Some navy personals have demanded ransoms to release those detainees and the 2nd Respondent was duly informed about the illegal detention of the victims but 2nd Respondent had taken any action. *(Paragraph 11 of the page 4 of the document marked as X7)*

- iv. The 2nd Respondent willfully refrained from taking actions against the group which involved in the abduction (*Paragraph 12 of the page 5 of the document marked as X7*)
- v. The such illegal activities were carrying out with the blessings of the 2nd Respondent. (*Paragraph 13 of the page 5 of the document marked as X7*)
- vi. The 2nd Respondent has been informed by D.K.P Dasanayake and Guruge about the abduction of the victims during the security meeting held in the following day of the abduction. (*Page 6 of the document marked as X8*)
- vii. The black color car which the victims travelling at the time of the abduction was also handed over to a navy officer in Trincomalee and the car was later seen by a witness within the Sri Lanka Naval and Marine Science Faculty premises of Trincomalee. (*Page 10 of the document marked as X8 and page 5 of document marked as X9*)
- viii. Dead bodies of the victims were seen by Mr. Krishan Chinthaka Wedagedara who was an executive officer of Sri Lanka Naval and Marine Science Faculty. (*Page 07 of the document marked as X9*)

The Petitioners herewith annexed B reports dated 22.02.2019, 26.02.2019 and 27.02.2019 in Colombo Port Magistrate Court case B732/09 marked as X7, X8 and X9 and pleaded as part and parcel hereof.

- 8. The Petitioners state statements given by the naval personals of the said Sri Lanka Naval and Marine Science Faculty, confirmed that there were many persons including the aforesaid victims were illegally detained in the premises called "GUN SITE". (*Summery of evidence submitted to the Port Magistrate Court found in document marked as X7*)
- 9. The Petitioners state that Rear Admiral Travis Sinnaiya has given a statement during the investigation saying that even though he was the in charge of Sri

Lanka Naval and Marine Science Faculty premises, the 2nd Respondent clearly gave him orders not to interfere with the affairs of the premises called “GUN SITE” where the 2nd Respondent had the direct control over the affairs of the said premises and illegal prisons thereof and he further stated that 2nd Respondent was aware that the victims were illegally detained in the said premises.(page 4 of the B report marked as X8)

The Petitioners herewith annexed B report dated 10.08.2017 in Colombo Port Magistrate Court case B732/09 marked as X10 and pleaded as part and parcel hereof.

10. The Petitioners state that the then Cabinet Minister Mr. Felix Perera requested 2nd Respondent to take steps to release the victims and it was revealed the fact that he had not taken immediate action to such release.

The Petitioners herewith annexed B report dated 26.09.2018 in Colombo Port Magistrate Court case B732/09 marked as X11 and pleaded as part and parcel hereof.

11. The Petitioners state that there were further evidence that 2nd Respondent had knowledge of the abduction of the victims on or around 28.05.2009 however deliberately refrained from disclosing them in his police complaint. It was further revealed that the 2nd Respondent deliberately attempted to avoid the police and refused to assist the investigations.

The Petitioners herewith annexed B report dated 25.09.2019 in Colombo Port Magistrate Court case B732/09 marked as X12 and pleaded as part and parcel hereof.

12. The Petitioners state that the 2nd Respondent himself admitted the fact that he was aware about the crime.

The Petitioners herewith annexed B report dated 09.10.2019 in Colombo Port Magistrate Court case B732/09 marked as X13 and pleaded as part and parcel hereof.

13. The Petitioners state after a lengthy investigation of more than 10 years 1st Respondent being satisfied about evidence decided to institute action against fourteen accuses including the 2nd Respondent and hence in or around 3rd January 2020 2nd Respondent was served with indictment in the Special High Court Case bearing Number HC(TAB) 1448/2020.

The Petitioners herewith annexed indictment dated 3rd January 2020 together with documents before Colombo High Court case HC(TAB) 1448/2020 marked as X14 and pleaded as part and parcel hereof.

14. The Petitioners state that according to the said indictment the 2nd Respondent was charged for count 66, 164, 190, 191, 192, 218, 219, 220, 246, 247, 248, 274, 275, 276, 302, 304, 305, 358, 474, 500, 501, 502, 528, 529, 556, 557, 584, 585, 586, 612, 613, 614, 667 where he was alleged to have committed offences punishable under section 338 read with 113(b) and/or 102 of the Penal Code and punishable under section 296 read with 113(b) and/or 102 of the Penal Code and punishable under section 373 read with section 372, 113(b) and 102 of the Penal Code.
15. The Petitioners state that after being served with the indictment in the case HC(TAB) 1448/2020 the 2nd Respondent filed the writ application bearing number CA Writ 77/2020 on 12th march 2020 before Your Lordships' Court and Your Lordships' Court granted interim order staying the proceedings of the High Court against the 2nd Respondent.

The Petitioners annexed herewith Petition of the 2nd Respondent marked as X15 and pleaded as part and parcel hereof.

16. The Petitioners state that the 2nd Respondent's position before Your Lordships was that the said indictment was served on him as a political retaliation and he is not liable for any alleged offence.

17. The Petitioners state that after that the Petitioners also made application to Your Lordships Court seeking to intervene in the said application as the Petitioners have interest over the matters averred in the said application and finally that application was fixed to call on 30th August 2021 while directing these Petitioners to submit their submission to 1st Respondent relating to the matter.

The Petitioners annexed herewith letter dated 13.08.2021 send by the attorney at law of the Petitioners marked as X16 and pleaded as part and parcel hereof.

18. The Petitioners state that even though the High Court matter bearing number HC(TAB) 1448/2020 was scheduled to be called on 22.09.2021 the matter was called on 04.08.2021 by the motion filed by the 1st Respondent and informed to the court that the 1st Respondent has decided not to proceed with the action against the 2nd Respondent.

The Petitioners annexed herewith the proceeding dated 04.08.2021 of HC(TAB) 1448/2020 marked as X17 and pleaded as part and parcel hereof.

19. The Petitioners further state that the 1st Respondent has served the indictment to the 2nd Respondent after being satisfied that there is sufficient evidence to frame charges against him by the 1st Respondent as the evidence against him thus the 2nd Respondent has to prove his innocence if he has not committed such offences.

20. The Petitioners state that as stated above at the investigation stage plenty of relevant facts were coming to surface to prove the involvement of the 2nd Respondent to the crime thus time to time several B-reports were filed before the magistrate court.

21. The Petitioners state that in the circumstances the decision to withdraw the indictments and/or charges leveled against the 2nd Respondent is unreasonable, bias, illegal, unlawful and politically motivated with intention to gain undue advantage and against the rules of natural justice hence liable to be quashed by a writ of *certiorari* of Your Lordships' Court.

22. The Petitioners state that decision of 1st Respondent to withdraw the indictment served on the 2nd Respondent is clear abuse of discretionary powers granted by law and liable to be rectified by orders of Your Lordships' Court for the purpose of Administration of Justice.

23. The Petitioners plead that the impugned decision of the 1st Respondent has not submitted to the court thus they requested the said decision and the observation of the Police by way of a Right to Information application.

The Petitioners annexed herewith the said application marked as X18 and pleaded as part and parcel hereof.

24. The Petitioners seek the permission of your Lordships Court to submit the said decision and the police observation respectively marked as X19 and X20 in the event to the 1st Respondent issued it under right to information request or failing which seek an order from the court to issue those documents.

25. The Petitioners have not sought writ Jurisdiction of Your Lordships' Court relating to the matters averred in this application.

26. The Petitioners respectfully seek permission to reserve their rights to amend the petition and/or submit further materials and/or add parties where necessary.

WHEREFORE THE PETITIONERS RESPECTFULLY PRAY FROM YOUR LORDSHIPS' COURT: -

- a) Issue Notice on the Respondents,
- b) Grant a writ of Certiorari quashing the decision of the 1st Respondent to withdraw the indictment and/or the charges levelled against the 2nd Respondent in the High Court Case bearing No. HC (TAB) 1448/2020.

- c) Grant a writ of Mandamus directing the 1st Respondent to proceed against the 2nd Respondent in the High Court Case bearing No. HC (TAB) 1448/2020 based on the indictment dated 3rd January 2020 already served on him.
- d) Grant a writ of Prohibition, prohibiting the 1st Respondent from withdrawing the indictment and/or the charges levelled against the 2nd Respondent in the High Court Case bearing No. HC (TAB) 1448/2020.
- e) Grant an interim order preventing the 1st Respondent from withdrawing the indictment and/or the charges levelled against the 2nd Respondent in the High Court Case bearing No. HC (TAB) 1448/2020 until final determination of this case.
- f) Grant an order directing the 1st Respondent to issues copies of the documents referred to in the Right to information Application marked as X18,
- g) Grant cost and,
- h) Grant such other and further reliefs Your Lordships shall seem meet.

Attorney-at-Law for the Petitioners.