

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

In the matter of an application for intervention as 'Respondent' in Writ application CA Writ 306/2023.

In the matter of an application for mandates in the nature of Writs of Mandamus and Certiorari in terms of Article 140 of the Constitution

Upali De Silva
No. 06, Ediriweera Avenue
Dehiwala

Petitioner

Vs

Case No: CA Writ 306/2023

1. SI Pathiraja,
Officer-in-Charge
Special Crimes Investigation Bureau
Batticaloa
2. Hon. Attorney General
Attorney General's Department
Colombo-12
3. Balasingham Saranaraj,
Registrar
District Court of Batticaloa
Batticaloa

Respondent

AND NOW BETWEEN

Mr. Mahathevan Muralitharan
No. 07-4/3, Collinwood Place
Colombo-06

Intervenient-Petitioner

Upali De Silva
No. 06, Ediriweera Avenue
Dehiwala

Petitioner-Respondent

1. SI Pathiraja,
Officer-in-Charge
Special Crimes Investigation Bureau
Batticaloa
2. Hon. Attorney General
Attorney General's Department
Colombo-12
3. Balasingham Saranaraj,
Registrar
District Court of Batticaloa
Batticaloa

Respondent-Respondents

Before:	Dhammadika Ganepola, J. Damith Thotawatte, J.
Counsel	Upul Jayasooriya, PC with P. Radhakrishnan and Dilshi Wickramasinghe instructed by Sarath Walgamage for the Petitioner. Azard Navavi, SDSG for the 1 st -3 rd Respondents. Heijaaz Hizbulah with Piyumi Senevirathne for the Intervenient-Petitioner.
Written submissions tendered on:	08-05-2025 By the Intervenient-Petitioner 20-05-2025 By the Petitioner
Order Delivered on:	30-05-2025

D. Thotawatte, J.

The Petitioner-Respondent, hereinafter mentioned as the Petitioner, had been the defendant in D.C. Batticaloa Case No. M/9736/2013. The trial has proceeded *ex parte* against the Petitioner due to his nonappearance, and at the conclusion, an *ex parte* decree had been served on the Petitioner.

The Petitioner had thereafter filed an application to vacate the said order, and during that inquiry the Hon. District Judge being of the view that an averment in an affidavit tendered by the Petitioner is false, had ordered Registrar of the court to make a complaint to the Police.

The Police thereafter instituted action in the Magistrate Court of Batticaloa, against the Petitioner on a charge of contempt of Court under Case No. B/646/2022. The Petitioner has filed case No. CA Writ 306/2023 challenging the legality of an investigation initiated on the basis of alleged contempt of the District Court.

The Intervenient-Petitioner, being the Plaintiff in the civil action, asserts that the issue of the false statement by the Petitioner, if unaddressed, may prejudice his legal position and, as such that he should be allowed to intervene in case No. CA Writ 306/2023.

The Intervenient-Petitioner seeks to intervene, asserting *inter alia*:

- That he is a “victim of crime” under the Assistance to and Protection of Victims and Witnesses of Crime Act No. 10 of 2023;
- That his rights and reputation will be directly affected by the outcome of this writ application;
- That principles of natural justice entitle him to be heard.

It is observed that the relief sought in the writ application is against the institution and continuation of criminal proceedings before the Magistrate’s Court of Batticaloa. The challenge in case No. CA Writ 306/2023 is based on a jurisdictional objection that the Magistrate’s Court lacks competence to entertain a charge of contempt of a District Court. It is argued that under the Judicature Act. As such, this issue lies entirely within the domain of statutory interpretation and of judicial power.

The Intervenient-Petitioner is not a complainant or a witness in the case before the Magistrate’s Court of Batticaloa. No material has been placed before this Court to establish that the Intervenient-Petitioner is a necessary party in those proceedings.

The writ application does not seek any relief against the District Court decree obtained by the Intervenient-Petitioner. That decree remains unchallenged and unaffected by the present proceedings. Thus, the Intervenient-Petitioner’s assertion of prejudice is speculative and not based on direct legal consequences flowing from the grant or refusal of relief in this case.

The Intervenient-Petitioner’s reliance on the Assistance to and Protection of Victims of Crime and Witnesses Act is also misplaced. While the Act recognizes certain participatory rights in criminal proceedings, it does not confer a right to intervene in a judicial review

proceeding before this Court, initiated to challenge the legality of police or prosecutorial conduct.

In *Rawaya Publishers and Others v. Wijedasa Rajapakse*¹, it was held that, “in the context of writ applications, a necessary party is one without whom no order can be effectively made.” On the material submitted, the Intervenient-Petitioner does not meet this threshold.

In *Abayadeera And 162 Others V. Dr, Stanley Wijesundera, Vice Chancellor University of Colombo and Another*² and in subsequent cases, it has been affirmed that a necessary party would be a party whose rights are directly impacted by an order in that particular case. However, the Intervenient-Petitioner has failed to establish any direct legal impact from an order in case No. CA Writ 306/2023 on his civil claim or rights.

The application to intervene is without sufficient legal foundation, and accordingly, the application for intervention is refused without costs.

Judge of the Court of Appeal

Dhammadika Ganepola, J.

I agree

Judge of the Court of Appeal

¹(2001) 3 Sri.LR 213

² (1983) 2 Sri. LR 267