

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

In the matter of an Application for a  
Mandate in the nature of a Writ of  
Prohibition under and in terms of Article  
140 of the Constitution of the Democratic  
Socialist Republic of Sri Lanka.

CA WRIT Application No: CA Writ 611/24

Embilipitiya MC Case No: B1294/24

Sedara Hettige Chaminda Prabath Sedara  
Hettige  
No.666, Hospital Road,  
Embilipitiya.

Petitioner

Vs.

1. Chief Inspector Rangajeewa  
Officer In Charge,  
Miscellaneous Unit,  
Police Station,  
Embilipitiya.
2. S. K. C. S. Dayawansa  
Headquarters Inspector,  
Police Station,  
Embilipitiya.
3. Assistant Superintendent of Police

Office of the Assistant Superintendent of  
Police,  
Embilipitiya.

4. Senior Superintendent of Police  
Office of the Superintendent of Police,  
Embilipitiya.
5. Senior Deputy Inspector General of Police  
Sabaragamuwa Province,  
Office of the Senior Deputy Inspector  
General of Police,  
Rathnapura.
6. Inspector General of Police  
Office of the Inspector General of Police,  
Police Headquarters,  
Colombo 01.
7. Hon. Attorney General  
The Attorney Generals' Department,  
Colombo 12.

**Respondents**

**Before** : Dhammika Ganepola, J.  
Damith Thotawatta, J.

**Counsel** : Anuja Premaratne, P.C. with Vivendra  
Ratnayake for the Petitioner.  
Wishwa Wijesooriya, S.C. for the  
Respondents.

**Supported on** : 18.11.2024

Written Submissions : Petitioner : 31.01.2025  
tendered on

Decided on : 25.02.2025

**Dhammika Ganepola, J.**

In the instant application, the Petitioner seeks intervention of this Court by way of Writ of Prohibition prohibiting the arrest of the Petitioner pursuant to the investigation conducted by the Respondents. Further, the Petitioner seeks interim relief prohibiting the arrest of the Petitioner until final determination of the instant application. When this matter was taken up for support on 18.11.2024 before this Court, the submissions made on behalf of both parties were heard and the Court by its Order dated 21.11.2024 decided to call for a complete report from the 6<sup>th</sup> Respondent specifying whether any material has been revealed as of date, against the Petitioner with regards to his involvements in the alleged incident, before making any order on issuance of notice and interim relief. This Order is delivered in consideration of issuance of notice and grant of interim relief.

Accordingly, the 6<sup>th</sup> Respondent has submitted a report marked 'R' with the file marked 'R1' consisting of the report of the 5<sup>th</sup> Respondent, the certified copy of the relevant Information Book Extract, and a further statement of the victim recorded on 15.10.2024. The above investigation report further signifies that there exists substantial amount of material against the Petitioner in relation to the alleged incident. Further, it is observed that such materials provide a foundation for further examination and consideration of the case.

However, as per the reports filed in case no. B 1294/2024 in the Magistrate Court of Embilipitiya, the facts were reported alleging that the offences have been committed under Section 346 and Section 486 of the Penal Code which are non-cognizable offences. In terms of Section 32(1)(b) of the Code of Criminal Procedure Act, a police officer can arrest anyone who has committed a cognizable offence without a warrant.

However, in case of a non-cognizable offence, a police officer needs the prior authorization of a Magistrate as per Section 118(1) of the Code which has been obtained in the instant application. [see **Wijesiri v. AG (1980) 2 SLR 317** at 340-341]. In **T.N. Fernando v. Nelum Gamage (1994) 3 SLR 192**, Kulatunga J. opined that mere suspicion is not sufficient for an arrest and that a reasonable suspicion or credible information is required. This Court is of the view that as per the above report marked 'R', the materials disclosed in the investigation are credible and sufficient to formulate a reasonable suspicion to the satisfaction of the investigating officer that the Petitioner was involved in the commission of any of the offences that were reported to the Magistrate. Accordingly, this Court is not inclined to accept the position advanced on behalf of the Petitioner that the Respondents are in the process of arresting the Petitioner without sufficient material to formulate a reasonable suspicion that the Petitioner was involved in the commission of any of the offences that were reported to the Magistrate.

In the circumstances, we take the view that the Petitioner has failed to make out a *prima facie* or arguable case which warrants this Court to issue formal notices on the Respondents. Accordingly, this Court decides to refuse the issuance of notice on the Respondents of this application. Hence, the application is dismissed.

Judge of the Court of Appeal

Damith Thotawatta, J.

I agree.

Judge of the Court of Appeal