

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

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

Edith Doreen Hyacinth Corea

No.23

Ridgeway Place

Colombo 4.

**CA WRIT APPLICATION  
CA (WRIT) 407/2023**

**PETITIONER**

**VS.**

1. Officer in Charge

Special Investigations – Unit 01

Criminal Investigations Department

Colombo -1.

2. Kavinda Piyasekera

Senion Superintendent of Police

Director

Criminal Investigations Department

York Street

Colombo 1.

3. The Hon. Magistrate of Kuliypitiya  
Magistrate Court of Kuliypitiya  
Kuliypitiya.

4. Hon. Attorney General  
Attorney General's Department  
Colombo 12.

**RESPONDENTS**

**Before:** **N. Bandula Karunarathna J. (P/CA)**

**&**

**Wickum A. Kaluarachchi, J**

**Counsel:** Faiszer Musthapha PC with Hafeel Faris for the Petitioner.

Jehan Gunasekera SC for the Respondents.

**Written Submissions:** By the Petitioner – 27.11.2023.

By the Respondents – 28.11.2023.

**Argued on** : 08.02.2024

**Delivered on** : **27.03.2024.**

The petitioner works as a professional consultant for Wagururuwela Oil Mills (Pvt) Ltd, located in Pannala, primarily focused on the manufacturing, and refining of virgin coconut oil which was thereafter sold to buyers both local and foreign. The petitioner states that her main role in the said position as consultant was to introduce clients for the purchase of virgin coconut oil and she was to be paid a commission in lieu of the purchase.

The 1<sup>st</sup> respondent is the Officer in Charge of the Special Investigations – Unit 01 of the Criminal Investigation Department and the complainant in the Magistrate's Court proceedings bearing No. B 52644/18 before the Kuliyaipitiya Magistrate's Court. The 2<sup>nd</sup> respondent is the director of the Criminal Investigations Department. The 3<sup>rd</sup> respondent is the Magistrate of Kuliyaipitiya. The 4<sup>th</sup> respondent is the Attorney General and is made party in terms of the law.

The matter pertains to the alleged cheating, criminal misappropriation, or criminal breach of trust of Rs. 39,959,001/- and the petitioner has been arrested on 12. 12. 2018 in connection with the same, and was granted a strict bail by the learned Magistrate of Kuliyaipitiya on 30.01.2019. The petitioner asserts that apart from a single electronic mail sent to one buyer Mr. Gaston Perera of No. 796, 4 Winds Way, Mississauga on L5R3W8, Canada, introduced by the petitioner herself to the company in her capacity as a consultant, which specified instructions for funds to be deposited into the account of the Project Manager, Mr. K. H. S. Vipula Kumara, there is no evidence demonstrating any criminal intentions. Furthermore, the petitioner states that she was not made aware and/or informed during the course of the said investigations that she had been named a suspect in the Kuliyaipitiya Magistrate's Court until three officers of the Criminal Investigation Department arrested her on the 12<sup>th</sup> of December 2018.

In light of the said arguments, the petitioner seeks the following reliefs:

- i. Issue notices on the respondents.
- ii. Call for an inspection of records.
- iii. Grant a mandate in the nature of a writ of prohibition prohibiting the respondents from taking further steps regarding the petitioner based on the facts contained in report No B 52644/18 of the Kuliyaipitiya Magistrate's Court marked as 'X2'.

- iv. Grant a mandate in the nature of a writ of prohibition preventing naming the petitioner as an accused in respect of facts contained in report No B 52644/18 of the Kuliypitiya Magistrate's Court marked as 'X2'.
- v. Grant a mandate in the nature of a writ of certiorari quashing the decision of the 3<sup>rd</sup> respondent contained in X3, banning foreign travels of the petitioner.
- vi. Grant an interim order requiring the release of the petitioner's passport by the 3<sup>rd</sup> respondent, the Magistrate of Kuliypitiya and permitting overseas travel.
- vii. Grant an interim order restraining the respondents from taking any action in consequence of the facts contained in No B 52644/18 of the Kuliypitiya Magistrate's Court marked as 'X2' regarding the petitioner.
- viii. Seek a declaration that the petitioner is not guilty of any offense or wrongdoing in respect of the case bearing B 52644/18 marked as 'X2' from the Kuliypitiya Magistrate's Court.
- ix. Grant costs.
- x. Grant any other further reliefs as deemed appropriate by the Court.

On September 20, 2023, the Court of Appeal granted an interim order, deeming an important matter to be decided in this case. Prayer (f) was granted with restrictions, resulting in an interim order to release the passport of the petitioner. The travel ban has been lifted, allowing travel for a short period, when necessary, subject to prior approval of the Magistrate of Kuliypitiya. However, the petitioner further applies for the following:

- i. The removal of the restrictions imposed on the said travel ban as prayed for in prayer (f) and to grant prayer (f) in full.
- ii. A writ of certiorari and a writ of prohibition against continued criminal proceedings.

Respondents contend that, the petitioner has been remanded, but not for a period of 5 weeks as initially stated, rather for 3 weeks. Over a span of 2 years and 1 month, the petitioner has made 4 applications to vary bail conditions, all of which were granted by the Magistrate's Court of Kuliyaipitiya. It is noted that the petitioner has not made an application to the Magistrate of Kuliyaipitiya to lift the travel ban. Furthermore, the petitioner has not provided any medical reason that would prevent her from traveling to the Kuliyaipitiya Magistrate's Court to hand over the passport. Additionally, the petitioner erroneously submitted her age as 79 instead of 72 according to her National Identity Card. It is important to clarify that it is not the duty and the responsibility of the Court of Appeal but rather that of the Magistrate's Court to keep a record of the petitioner's whereabouts. In light of these arguments, the respondents are seeking to dismiss the application and maintain the original order.

The Court is of the view that, the core issue of the case and potential charges against the petitioner remains under investigation. Upon careful consideration of the petitioner's plea for mandates in the nature of writs of certiorari and prohibition against the continuation of criminal proceedings, this Court finds no grounds to grant such relief. While the petitioner asserts being a victim of circumstance and alleges a lack of fair investigation, it is essential to note that the determination of innocence or guilt is within the purview of the legal process. Therefore, the Court finds no justification to intervene and therefore dismisses the plea for mandates in the nature of writs of certiorari and prohibition. The legal process shall proceed accordingly, and the petitioner shall be afforded the opportunity to present their case within the established framework of law and justice.

The Court acknowledges that an interim order was previously granted, partially granting relief as per prayer f. This interim order allowed the lifting of the travel ban but imposed the condition that the petitioner obtains prior approval from the Magistrate of Kuliyaipitiya before traveling overseas. This condition was imposed to ensure that the interests of justice are upheld and to maintain awareness of the petitioner's whereabouts, given that the case is still pending before the Magistrate's Court. Unrestricted travel at this stage could potentially hinder the ongoing proceedings. The current interim order, allowing travel with prior approval, provides a reasonable balance between the petitioner's travel needs and the need to ensure the integrity of the investigation.

In light of the circumstances surrounding the case at hand, this Court dismisses the petitioner's application seeking full relief as per prayer f of the petitioner. The interim order remains in effect with the condition that the petitioner must obtain prior approval from the Kuliypitiya Magistrate before traveling overseas.

Once the approval is granted it is valid for 6 months. When 6 months expires the petitioner should go before the Learned Magistrate of Kuliypitiya, and get permission to travel abroad.

The judgment is made in the interest of fairness and practicality, ensuring that the individual's rights are upheld while also maintaining the necessary oversight of the legal process.

Application dismissed, subject to the abovementioned alterations on travel ban.

No order for costs.

**President of the Court of Appeal**

**Wickum A. Kaluarachchi, J**

**I agree.**

**Judge of the Court of Appeal**