IN THE SUPREME COURT

OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of contempt proceedings in terms of Section 9(1) of the Contempt of a Court, Tribunal or Institution Act, No. 08 of 2024 read with Article 105(3) of the Constitution.

SC / Contempt / 03 / 2025

1. M.A. Sumanthiran, PC
   No. 3/1, Daya Road,
   Colombo 06.
   (The Petitioner in SC FR Application No. 203 / 2024)

2. Hon. Abdul Rauff Hibbathul Hakeem, MP
   No. 23/1, Melford Tower,
   Havelock city,
   Colombo 05.
   (The Petitioner in SC FR Application No. 204 / 2024)

3. Hon. Achchige Patali Champika Ranawaka, MP
   No. 88/1, Jayanthipura,
   Battaramulla.
   (The Petitioner in SC FR Application No. 205 / 2024)

Petitioner - Complainants

v.

Illukpitiyage Srinath Harshadewa Jayasena Illukpitiya
Controller General of Immigration and Emigration
Suhurupaya,
Sri Subuthipura Road,
Battaramulla.
(1st Respondent in SC FR Application Nos. 203, 204, & 205 / 2024)

Accused

Before: **Yasantha Kodagoda, PC, J.**
Janak de Silva, J.
Arjuna Obeyesekere, J.

Appearance: The Petitioner in SC FR 203 / 2024, Mr. M.A. Sumanthiran, PC, appeared in person.

The Petitioner in SC FR 204 / 2024, Hon. A.R.H. Hakeem, MP appeared in person.

The Petitioner in SC FR 205 / 2024, Hon. A.P. Champika Ranawaka, MP appeared in person.

Mr. Saliya Peiris, PC with Mr. Upul Kumarapperuma, PC, Kaneel Maddumage, Minuri Peiris and Duvini Godagama instructed by Praveen Premathilake for the Accused (1st Respondent in SC FR Nos. 203 / 2024, 204 / 2024 and 205 / 2024).

Mr. Uditha Egalahewa, PC with Damitha Karunaratne and Miyuru Egalahewa instructed by Saravanan

Neelakandan Law Associates for the 27th and 28th Respondents in SC FR Nos. 203 / 2024, 204 / 2024 and 205 / 2024.

Mr. Viran Corea, PC instructed by D.L. & F. de Saram for the 29th Respondent in SC FR Nos. 203 / 2024, 204 / 2024 and 205 / 2024.

Mr. Nigel Hatch, PC with Siroshini Illangage instructed by Sudath Perera Associates for the 30th Respondent in SC FR Nos. 203 / 2024, 204 / 2024 and 205 / 2024.

Mr. Suren de Silva with Jivan Goonetilleke and Jehan Samarasinghe instructed by D.L. & F. de Saram for the 31st and 32nd Respondents in SC FR Nos. 203 / 2024, 204 / 2024 and 205 / 2024.

Ms. Viveka Siriwardena, PC, ASG with Sureka Ahmed, SSC instructed by Rizni Firdous, SSA for the 3rd - 6th, 10th and 26th Respondents in SC FR Nos. 203 / 2024, 204 / 2024 and 205 / 2024.

Post-hearing Written Submissions:

For the Petitioner in SC FR 203 / 2024, filed on 20th August 2025.
For the Petitioners in SC FR 204 / 2024 and SC FR 205 / 2024, filed on 15th July 2025.

Dates of Inquiry: 16th of June and 01st July 2025

Date of the Sentencing Order: 23rd September, 2025

JUDGMENT

Yasantha Kodagoda, PC, J.

Background

1. The three Petitioners, Mr. M.A. Sumanthiran, PC, Hon. Abdul Rauff Hibbathul Hakeem, MP, and Hon. Achchige Patali Champika Ranawaka, MP filed three Fundamental Rights Applications, Nos. 203, 204, and 205 / 2024, stating that these Applications were being filed in public interest. They alleged that decisions taken on 11th September 2023 and 11th December 2023 by the Cabinet of Ministers constituted an infringement of Fundamental rights guaranteed under Article 12(1) of the Constitution. The Petitioners complained to this Court that a decision taken to award a contract to a certain company to carry out 'E-visa consular services, visa services, biometric services and tourism promotion' was unlawful, corrupt and therefore, was an infringement of their Fundamental rights. As at the time the three Petitions were filed, the implementation of that contract had commenced and thus, with effect from 16.04.2024, the 'ETA system' that was in force for a considerable period of time had been terminated, and in its place an 'E-visa system' had been introduced and was being implemented. While the Petitioners were not averse in principle to the conversion from one system to the other, they impugned the award of the contract to the implementing party and its terms and conditions. The Petitioners were concerned about the impact of the new scheme on tourism and the loss of revenue to the State.

2. On 2nd August 2024, those three Applications had been taken up for support before a differently constituted Bench. The Petitioners who appeared in person supported their respective Petitions. The Accused above-named (1st Respondent in all three Fundamental Rights Applications), who was the Controller General of Immigration and Emigration, was represented by the Attorney-General and was represented in Court by Additional Solicitor General Ms. Viveka Siriwardena, PC. She appeared for all State party Respondents. Most of the other Respondents (non-State party) were also represented by counsel. Having considered the material placed before Court by the several parties and the submissions of learned counsel, the Supreme Court had issued the following interim orders relating to the three Fundamental Rights Applications:

*"i. An Interim order suspending the operation and the effect of the Cabinet decision dated 11.09.2023 produced, marked **X32**, granting the approval of the Cabinet of Ministers to the project proposal on "e-visa, Consular Services, Visa Services, Bio Metric Services and Tourism Promotion".*

*ii. An Interim order suspending the operation and effect of the "Outsourcing Agreement" dated 21.12.2023 produced, marked **X38**.*

*iii. An Interim order restraining the Respondents and their servants and agents and any other State functionary from proceeding with and/ or operating and/ or taking any further steps under the "Outsourcing Agreement" dated 21.12.2023 produced, marked **X38**.*

An Interim order directing the 1st to 25th Respondents as well as the 27th to 28th Respondents, their servants, agents, successors or assigns or any other relevant State functionary to take all steps to maintain the status quo ante that prevailed as at 16.04.2024, which is the date of discontinuation of the previously prevailed ETA system.

Court further directs that all the above interim orders made by this Court today, must be effective until the final determination of these Petitions."

[Reproduced verbatim with emphasis being added, extracted from the recorded proceedings of Court of 2nd August 2024.]

In addition to the issuing of the afore-stated interim orders, the Court granted *leave to proceed* in respect of the alleged infringement of the Fundamental rights of the Petitioners guaranteed by Article 12(1) of the Constitution. Furthermore, having granted time for the parties to file their Statement of Objections, Counter Affidavits, and Written Submissions in accordance with the Rules of the Supreme Court, hearings of these Applications were fixed for the 07th and 08th of October 2024. [Those dates fixed for hearing have since been rescheduled and hearing has been fixed for 20th November 2025.]

3. Sequel to a Motion dated 13th August 2024, filed by the Attorney-at-Law for the 1st Respondent, on 13th September 2024, the afore-stated Applications had been mentioned in open court. When the matter was taken up for consideration, the afore-

stated Motion had been supported by Additional Solicitor General (ASG) Ms. Viveka Siriwardena. The ASG had submitted to Court that an Affidavit of the 1st Respondent would be filed seeking to explain certain difficulties the 1st Respondent had encountered in implementing the 4th interim order issued by the Supreme Court which required the 1st Respondent to re-activate the *status quo ante* 16.04.2024. The Court had noted that a further Motion dated 15th August 2024 had also been filed by the same Attorney-at-Law on behalf of the 1st Respondent, along with an Affidavit of the 1st Respondent dated 14th August 2024. By that Affidavit, the 1st Respondent had informed Court that he had complied with the first three interim orders issued by the Supreme Court on 2nd August 2024. He had also revealed to Court that, as at that point of time, he (the 1st Respondent) had not been able to give effect to the 4th interim order issued by the Supreme Court. Supporting the position taken up by the 1st Respondent, learned ASG had sought to impress upon the Supreme Court that it is *"legally and practically impossible"* for the 1st Respondent to carry out the 4th interim order issued by the Supreme Court.

4. The Court had also received the benefit of submissions made by the three Petitioners (who appeared in person) and learned President's Counsel Mr. Uditha Egalahewa who appeared for the 27th and 28th Respondents (Mobitel Pvt. Ltd. and Sri Lanka Telecom PLC.). Their position was that the 1st Respondent had willfully disobeyed complying with the 4th interim order issued by the Supreme Court and that it was false that the implementation of that interim order was practically impossible. They had moved the Supreme Court to take cognizance of the *"willful defiance"* by the 1st Respondent to carry out the 4th interim order issued by the Supreme Court, and had accordingly urged the Court to initiate action against the 1st Respondent for having committed contempt of court.

5. The Court had thereafter examined two documents marked "Y1" and "Y2" dated 7th and 13th August 2024 respectively, produced before the Supreme Court by the 27th and 28th Respondents, by their Motion dated 7th September 2024. Upon a consideration of the said two documents, it had become apparent to Court that the 27th and 28th Respondents were positing that was not only possible, but they were also in a position to facilitate compliance with the 4th interim order issued by the Supreme Court, and that they could do so within a brief period, as short as 24 hours. The Court had also questioned the Controller (Information Technology) of the Department of Immigration and Emigration - Herath Mudiyanselage Indika Kumara Herath and the

Manager (Special Business Solutions, Sales and Special Projects) of Mobitel (Pvt.) Ltd. - Hasantha Dodampegama, who had been present in Court. The position taken up by H.M.I.K. Herath was that the 1st Respondent had not issued instructions to him to give effect to the 4th interim order, and that had he received such instructions, he would have promptly implemented the 4th interim order issued by the Supreme Court. The position of Hasantha Dodampegama was that, if instructed by the Department of Immigration and Emigration, his company could have forthwith given effect to the 4th interim order, as it was not a time-consuming exercise.

6. On a consideration of the material placed before the Supreme Court and the oral evidence given by the afore-stated witnesses, the Court having satisfied itself on a *prima facie* basis that the 1st Respondent appeared to have committed 'contempt of court' by willfully neglecting to give effect to the afore-stated 4th interim order, decided to allow the Application of the three Petitioners that proceedings be instituted against the 1st Respondent for having committed contempt of court.

Contempt of Court proceedings

7. In the afore-stated circumstances, the Court directed the Petitioners to submit a draft Rule to be issued against the 1st Respondent in terms of section 9(3)(a) of the Contempt of a Court, Tribunal or Institution Act, No. 08 of 2024. The Court also issued a direction on the Registrar of the Supreme Court to issue Notice on the 1st Respondent, who according to the learned ASG, was overseas at that time engaged in official duty.

8. The matter had been taken up on 25th September 2024. On that day the 1st Respondent was present in Court. The Court noted that a draft Rule to be served on the 1st Respondent had been tendered by the Petitioners. That draft Rule was considered and accepted by the Court. On the direction of the Court, the Registrar signed and issued the Rule on the 1st Respondent - Illukpitiyage Srinath Harshadewa Jayasena Illukpitiya who had been accused in the Rule of having committed contempt of court. (Hereinafter, the said 1st Respondent will be referred to as the 'Accused', as the following Contempt proceedings took place against him. However, it may be noted that in the Rule referred to hereinafter, he has been referred to as the '1st Respondent').

9. On the direction of the Court, the Registrar of the Supreme Court served on the Accused the following charge which had been read over by the Registrar of this Court:

*"**WHEREAS** at all times material to this matter, you the 1st Respondent were the Controller General of Immigration and Emigration of the Democratic Socialist Republic of Sri Lanka and acting for and on behalf of the Democratic Socialist Republic of Sri Lanka in such capacity.*

***AND WHEREAS** on 02nd August 2024, the Supreme Court made four (4) interim Orders in SCFR 203/2024, as set out below.*

I. *An Interim Order suspending the operation and the effect of the cabinet decision dated 11.09.2023 produced, marked X-32, granting the approval of the Cabinet of Ministers to the project proposal on "e-visa, Consular Services Visa Services, Bio Metric Services and Tourism Promotion".*

II. *An Interim Order suspending the operation and effect of the "Outsourcing Agreement" dated 21-12-2023 produced, marked X-38.*

III. *An Interim Order Court restraining the Respondents and their servants and agents and any other State functionaries from proceeding with and/or operating and/or taking any further steps under the "outsourcing Agreement" dated 21-12-2023 produced, marked X-38.*

An Interim Order directing the 1st to 25th Respondents as well as the 27th to 28th Respondents their servants, agents, successors or assigns or any other relevant State functionary to take all steps to maintain the status quo ante that prevailed as at 16-04-2024, which is the date of discontinuation of the previously prevailed ETA system.

***AND WHEREAS** You, as the Controller General of Immigration and Emigration, were responsible and obliged in law to comply with, implement and enforce the aforesaid interim orders, inclusive of the last interim order dated 02nd August 2024, by taking all steps necessary to give effect to same.*

AND WHEREAS** when the aforesaid application was called on 13th September 2024 the Hon. Attorney General informed their Lordships that the first to the third interim orders set out above have been complied with, but the last interim order viz. **"An Interim Order directing the 1st to 25th Respondents as well as the 27th to 28th Respondents their servants, agents, successors or assigns or any other relevant State functionary to

take all steps to maintain the status quo ante that prevailed as at 16-04-2024, which is the date of discontinuation of the previously prevailed ETA system" *has not been complied with.*

WHEREAS *their Lordships, on 13th September 2024, heard the evidence under oath, of Indika Herath, the Deputy Controller (IT) of the Department of Immigration and Emigration and Hasantha Dodampegama, Manager - Business Solutions and Special Projects of the 27th Respondent. The self-evident willful non-compliance on your part and the aforesaid evidence disclosed and/or established that You;*

(a) failed and/or neglected to take all necessary steps to implement the said interim order with immediate effect;

(b) ignored and/or disregarded the legal obligation to take all necessary steps to implement the said interim order with immediate effect;

(c) failed and/or neglected to implement the aforesaid interim order with immediate effect;

(d) ignored and/or disregarded the legal obligation to implement the aforesaid interim order with immediate effect;

(e) failed to comply with and/or give effect to and/or take steps to execute the aforesaid interim order and/or interfered with the compliance of same;

(f) willfully disobeyed the aforesaid interim order;

(g) gravely prejudiced and/or unlawfully interfered with the judicial proceedings;

(h) interfered with and/or obstructs the administration of justice.

AND WHEREAS *their Lordships have taken cognizance that the aforementioned acts and/or omissions has brought the authority of the Supreme Court into disrepute and/or disrespect and/or disregard and/or lowered the judicial authority or dignity of the Supreme Court and/or interfered with the administration of justice of the Supreme Court thereby constituting the offence of Contempt of Court under section 3 of the Contempt of a Court*

Tribunal or Institution Act No. 08 of 2024 read with and punishable under Article 105(3) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

***WHEREAS** their Lordships have been satisfied that a prima facie case of contempt of court exists warranting proceedings to be brought against You as minuted in the case record of 13th September 2024.*

***This** Rule is therefore issued to command You to show cause as to why you should not be found guilty and punished with imprisonment or fine or both as the Court may deem fit under Article 105(3) of the Constitution of the Democratic Socialist Republic of Sri Lanka for committing the offence of Contempt of Court as charged in respect of any one or more and/or all of the aforesaid acts and/or omissions.*

On this 25th day of September 2024"

10. Following the serving of the afore-stated Rule, having fixed the inquiry for 22nd January 2025, the Accused was placed in remand custody until the conclusion of the inquiry into the alleged committing of contempt of court.

11. On 22nd of January 2025, the learned Additional Solicitor General had informed Court that steps had been taken by the Attorney-General to revoke the proxy previously given by the 1st Respondent (Accused) to represent him in the afore-mentioned Fundamental Rights Applications. From that point onwards, in these proceedings President's Counsel Mr. Saliya Pieris appeared for the Accused. It appears from the proceedings of 22nd January 2025 that the matter could not be taken up for inquiry on that day since one Justice who constituted that bench had recused himself from hearing the matter. On 29th January 2025, inquiry had been refixed for 8th May 2025. On 8th May 2025, the matter had not been taken up due to the same reason which prevented the Court from taking up the matter for inquiry on 22nd of January 2025.

12. On 16th June 2025, contempt proceedings were taken up for inquiry before the present bench. Following the charge being read-over to the Accused, he pleaded "*not guilty*" to the charge. Accordingly, the inquiry commenced with the Petitioner – Complainants calling the Registrar of the Supreme Court Mr. Aravinda Gunaratne to give evidence. On behalf of all three Petitioners, he was examined at length by the Petitioner of SC FR / 203 / 2024, Mr. M.A. Sumanthiran, PC. He was subject to

detailed cross-examination by learned President's Counsel Mr. Saliya Peiris who appeared for the Accused. The Court also examined the witness. Thereafter, Hasantha Dodampegama, Manager (Special Business Solutions, Sales and Special Projects) of Mobitel (Pvt.) Ltd. was examined. He too was subjected to cross-examination. Following the recording of evidence, further inquiry was adjourned for 1st July 2025.

13. It is necessary to note that, with the afore-stated two witnesses testifying before this Court, the complainant parties were successful in establishing a strong *prima facie* case against the Accused that he had willfully disobeyed carrying out the 4th interim order which required him to restore the position which prevailed as at 16.04.2024 pertaining to the operation of an online ETA system relating to foreign passport holders who intended to arrive in Sri Lanka. Be that as it may, the Court informed the three complainants that if they wish, they may move Court to issue Summons on the Commissioner (Information Technology) of the Department of Immigration and Emigration (who had prior to the Rule being issued on the Accused, given evidence) and on a representative of Informatics (Pvt.) Ltd. to testify on the next date.

14. On 1st July 2025, when this matter was taken up for resumption of inquiry, President's Counsel Mr. Saliya Peiris submitted that he had received instructions from his client to inform this Court that, his client (the Accused) wishes to withdraw the previous plea of *"not guilty"* and substitute thereof a plea of *"guilty"*. The three Petitioners referred to above and the learned ASG submitted that they had no objection for the withdrawal of the previous plea of *"not guilty"*. For the purpose of ascertaining whether the Accused was fully aware of the consequences arising out of the change of the plea, the Court probed into the matter. Therefore, the Court laid-by the case for a brief period of time enabling learned President's Counsel for the Accused to have a brief consultation with his client outside Court. Upon their return to Court, the matter was taken up, and learned President's Counsel Mr. Peiris submitted that he explained fully the possible consequences arising out of the change of the plea and that the Accused reiterated his desire to plead *"guilty"*. In view of the foregoing, the Court decided to permit the withdrawal of the plea of *"not guilty"* and provided an opportunity to the Accused to address Court. In response, the Accused addressing Court unequivocally informed Court in the vernacular Sinhala language that he is withdrawing the previous plea and is pleading *"guilty"* to the charge of contempt of court.

15. This Court thereafter accepted the plea of *"guilty"* and informed learned President's Counsel for the Accused, that if his client wishes, he may make a statement to Court, provided that statement is made voluntarily. Having accepted that opportunity given by Court, the Accused made a lengthy statement the contents of which were both *ex mero motu* as well as in response to certain questions put to him by Court. The principal points of the statement made by the Accused was to the following effect:

- That on 2nd August 2024, the Attorney-General's Department informed him (verbally) of the interim orders made by Court. Subsequently, it was communicated in writing.
- That there was no confusion regarding the nature of the interim orders made by Court. However, that the interim order relating to the maintenance of the *status quo* (reactivation of the previous 'ETA system') was not clear to him.
- That all interim orders issued by the Court other than the order relating to the maintenance of the *status quo* were implemented.
- That the matter relating to the afore-stated fourth interim order was discussed with the Secretary to the Ministry, Viyani Gunathilaka.
- That his opinion was to make inquiries in this regard from the Attorney-General's Department.
- That the Secretary to the Ministry instructed him both verbally and in writing not to give effect to the order of Court till the opinion of the Attorney-General's Department was received.
- That it was decided to submit a Motion and explain matters to Court.
- Therefore, that he waited till the Court delivered an order regarding this matter in order to take necessary steps.
- That he did not attend Court on 13th September 2024, instead proceeded overseas to attend to an urgent matter relating to the printing of new passports.
- That, as at that time, he was not in a proper state of mind. That he had asked for a transfer from the Department of Immigration and Emigration, as he could not work at that institution any further. That he had also asked for a premature retirement.
- In response to a question put to him by Court, he testified that, as a senior public servant, he knew that when a court of law makes an order, it is necessary to first give effect to it.

16. The Court also heard the views of the Petitioners Hon. Rauff Hakeem, MP and Hon. Patali Champika Ranawaka, MP. Mr. M.A. Sumanthiran, PC was not present in Court, and he had, on the previous day, sought that his absence be excused. Both Hon. Hakeem and Hon. Ranawaka invited the Court to view this matter seriously. They submitted that the approach of the Accused should have been to first comply with all four interim orders, and then, if necessary, complain or seek a variation. They highlighted that, due to the conduct of the Accused, there had been delay in the implementation of the 4th interim order made by Court. Hon. Hakeem submitted that the delay in implementing the 4th interim order had caused a serious impact to the tourism industry of this country. Hon. Ranawaka submitted that the instance of non-compliance with the order of Court cannot be viewed in isolation and should be viewed in the backdrop of the several incidents brought to the attention of Court in the related Fundamental Rights Applications. He stated that the reasons submitted for seeking time to implement the 4th interim order of Court were false, since following the Court having taken action against the Accused, the 4th interim order was promptly given effect to within 24 hours. He submitted that the delay in the implementation of the 4th interim order had cost the State a large sum of money.

17. All three Complainants filing post-hearing written submissions, submitted that the disobedience by the Accused in respect of the interim order of Court, "*paralysed Sri Lanka's lawful ETA regime, jeopardised national data security, and exposed the State to significant revenue loss, thereby eroding public confidence in governance and the judiciary*". They also submitted that the Accused, being a senior public officer occupying a pivotal position to which critical functions had been assigned, disregarding an interim order of Court in his official capacity "*must be marked by enhanced culpability*". Thus, the disobedience with the order of Court compounded the infringement of Fundamental Rights alleged in the three connected Fundamental Rights Applications. The Petitioners further alleged that the 2nd Respondent in SC FR 203, 204 and 205 / 2024 - Secretary to the Ministry of Public Security Viyani Gunathilaka, has instructed the Accused not to comply with the 4th interim order of court. Therefore, the Petitioners urged Court to take cognizance of this disclosure made by the Accused and take appropriate steps to ascertain whether the conduct of the Secretary to the Ministry or the conduct of any other official amounted to abetting the committing of contempt of court by the Accused. They also urged the Court to consider the seriousness of the contempt committed by the Accused and impose an exemplary

sentence and the maximum custodial and pecuniary penalties authorised by law, subject to credit for the time the Accused already served in remand custody.

18. Learned Additional Solicitor General submitted that the Attorney-General did not advise the Accused to stay (withhold) the implementation of the 4th interim order, until a clarification was sought and obtained from the Supreme Court. Her position was that, to the contrary, the Attorney-General informed the 1st Respondent (Accused) in writing to immediately comply with the interim orders issued by Court, and if there were concerns thereafter, to bring them to the attention of the Attorney-General's Department, so that those concerns can be presented to the Supreme Court.

19. President's Counsel Mr. Saliya Peiris, making submissions in mitigation of the sentence, submitted that it appears from the documentation and instructions he has received, that as at the time of this incident, the Accused was under pressure from his superiors and his desire was to leave the Department of Immigration and Emigration. As at the time in issue, the country had faced a crisis with regards to the issuance of new passports and the Accused was focused on securing new passports. Learned President's Counsel conceded that, in an ideal situation, a public servant should be able to say "no" to an illegal order. However, it so happens that ground realities are different. He submitted that his client was an officer of the Sri Lanka Administrative Service and had served the State for 24 years. He further submitted that his client is of 55 years, and that since 25th September 2024 to date, he has been held in remand custody. Learned President's Counsel submitted that the Accused was a person with an unblemished character; he is married and has three children, including one child who is studying in the United Kingdom. He submitted that the Accused had to sell the family vehicle for the purpose of financing that child's overseas education. He is married to a teacher of a leading school in Colombo. She suffers from a heart condition and both she, as well as one child, suffers from a serious allergic condition. In these circumstances, learned President's Counsel submitted that he is seeking the mercy of this Court.

20. Filing written submissions, President's Counsel Mr. Saliya Peiris further submitted that, during the period between the issuance of the interim order and the Rule by this Court, the Accused had been under severe work pressure and pressure from superior political authorities, which had even led him into a state of depression. He submitted that the period of almost a year in remand custody had resulted in the Accused having

to incur grave financial and emotional hardships, and has posed a risk to the medical and physical wellbeing of members of his family. Recalling the unblemished career record of the Accused, learned President's Counsel urged the Court to consider a sentence that would not deprive the Accused of the fruits of his public service career for the past 30 years. He urged the Court to consider the period already expended in remand custody as a mitigating factor when determining the sentence to be imposed on the Accused. Furthermore, he submitted that the intention of the Accused to change his original plea of "*not guilty*" to a plea of "*guilty*" is a significant indicator of genuine remorse and conscious willingness to be held accountable before the law. Therefore, the change of the plea could also be considered as a mitigating factor when determining the sentence to be imposed. Citing comparative jurisprudence, learned President's Counsel submitted that a sentence imposed should be just and proportionate. He also cited the judgment in *SC Contempt 09/2024 (SC Minutes of 25th February 2025)*, as an instance in which the Supreme Court exercised mercy and considered mitigating factors when imposing a non-custodial sentence on an Accused against whom a Rule had been issued for having committed contempt of court. Furthermore, he indicated the importance of considering mercy to temper justice with compassion during the imposition of sentences, and the role of judicial officers in performing their functions with proper regard to kindness, compassion and leniency, as appropriate. In explaining the value of mercy and sincere repentance, he also made references to the *Vinaya Pitakaya* in Lord Buddha's teachings and the words of William Shakespeare in his monumental play *'The Merchant of Venice'*.

Analysis of the evidence

21. Particularly given the position taken up by the Accused pertaining to the reasons for not having complied with the 4th interim order, this Court issued process on both the Controller General of Immigration and Emigration (Acting) and the Secretary to the Ministry of Public Security and Parliamentary Affairs to submit all correspondence sent from and received by their respective offices relating to this matter. This order was made for the purpose of seeking verification of the positions taken up by the Accused. Both officers complied with the orders made and submitted the relevant documentation. This Court had the benefit of examining the said correspondence. It revealed *inter alia* the following:
    a. 7th August 2024 - The Attorney-General (AG) had conveyed to the Accused (1st Respondent - Controller General of Immigration and Emigration) a copy of the interim orders issued by the Supreme Court on 2nd August 2024. The AG had

advised him that he is *"... required to comply with the same immediately."* Furthermore, the said letter stated that, *"If any clarification is required or in the event of any difficulty you may inform this department in writing"*.

b. 7th August 2024 - Mobitel (Pvt.) Ltd. had informed the Accused that further to the discussion held on 5th August 2024, it is ready to honour the order of the Supreme Court and restore the *"ETA front end system prevailed as at 16th April 2024"*.

c. 9th August 2024 - The Accused, writing to the Attorney-General, had sought to provide an explanation regarding the re-activation of the "ETA system" which prevailed prior to 16.04.2024, and regarding the discussion he had with Mobitel (Pvt.) Ltd. on 5th August 2024 pertaining to the implementation of the interim orders of the Supreme Court. He had asserted that Mobitel (Pvt.) Ltd. had informed him that it could not immediately implement the "E-visa system". He had explained to the AG that there were *"practical and regulatory difficulties in giving effect to the interim order issued by the Supreme Court"*. In these circumstances, the Accused had sought advice from the AG regarding further action to be taken in respect of the orders made by the Supreme Court.

d. 14th August 2024 - The Secretary to the Ministry of Public Security Viyani Gunathilaka, writing to the Accused, while referring to a meeting held at the Attorney-General's Department on 12th August 2024 (with both of them participating), had expressed the view that the advice of the AG was essential to resolve the problems that had arisen. Thus, the 1st Respondent had been advised to submit the required documentation and other related details to the AG as soon as possible.

e. 5th September 2024 - The Accused, writing to the Secretary to the Ministry of Public Security, had referred to a meeting said to have been held earlier that day with the Attorney-General, and had informed the Secretary that ASG Siriwardena had advised him to provide recommendations regarding the issuance of tourist visas pending the final determination of the related Fundamental Rights Applications.

22. In view of the foregoing, it is apparent that there is no documentary proof that either the Attorney-General or the Secretary to the Ministry of Public Security had given either advice or instructions to the Accused not to implement the 4th interim order issued by the Supreme Court on 2nd August 2024 (even pending a clarification being sought from the Supreme Court). Should either the Attorney-General or the Secretary

to the Ministry of Public Security have given such advice or instructions in writing, it is highly likely that the corresponding letter would be among the documents contained in the two sets of documents received from the office of the Accused and the Secretary to the Ministry of Public Security. While it is possible that the Secretary to the Ministry gave such instructions, apart from the oral testimony provided by the Accused in that regard, there is no corroborative evidence in support of that position. What is probable is that, for the purpose of seeking a mitigated sentence, the Accused took up a false position before this Court, particularly since he (when addressing this Court) insisted that the Secretary to the Ministry of Public Security gave him both oral and written instructions.

Contempt of Court and non-compliance with orders issued by Court

23. The People who are the collective Sovereigns of this country have, by the Constitution and channeled through Parliament, vested in courts of law (both those established by the Constitution and created by other laws) the judicial component of their sovereignty. That is primarily for the purpose of exercising judicial power and thereby resolving disputes through judicial adjudication. To give effect to that primary responsibility of courts (namely, judicial adjudication), this country as well as other sovereign nations have respective systems in place for the administration of justice, which comprises of legal and logistical infrastructure, human resources and various processes. A key component of judicial adjudication is the ability of courts to enforce its decisions (both final and interim), even if the party in favour of or against whom such decision is pronounced or any other party to whom the decision is conveyed to and is required to implement it, is unable or unwilling to voluntarily give effect to such decision. For such purpose, courts have been vested with power, some of which have been explicitly stated in written law and others being impliedly contained in the unwritten law and recognised as amounting to an inherent feature of the jurisdiction and powers of courts. If this ability of courts to enforce its orders becomes inoperative or ineffective, the entire purpose of the administration of justice becomes frustrated and orders issued by courts become nugatory. Therefore, a key facet of any developed system for the administration of justice is the ability of courts to be able to enforce its decisions.

24. Should courts of law become unable to have its orders enforced, the public will perceive courts as being powerless and will lose confidence in the system of administration of justice. Therefore, disputants will be motivated to have recourse to

alternative mechanisms, including the unilateral use of influence and force for the resolution of disputes. They may also seek to enforce extra-judicial punishment on alleged wrongdoers. Thus, for the preservation of public trust in the judicial system, maintenance of law and order, and to ensure that people have confidence in the Rule of law, it is essential that orders of courts are enforced.

25. An environment in which decisions of courts are not implemented would certainly give rise not only to an unruly society and chaos, but to catastrophic consequences to the society as a whole. Such consequences may not be limited to the development of a climate of impunity; it can result in anarchy leading to the country plummeting into a 'failed State'.

26. For the purpose of giving effect to orders of courts, there exists an enforcement mechanism, which comprises of law enforcement personnel, some of whom such as Fiscals, are an extension of the system of administration of justice, and some others who are personnel of the Executive organ of the State, such as the police, prisons, and probation services. Furthermore, courts have to rely on numerous other public officials who represent the Executive organ of the State for enforcement of its decisions. They would include officials who are disputants (thus, parties to the case). And finally, at times, courts have to rely on private parties (who are mostly disputants themselves) to give effect to orders of courts.

27. Should a party (a private litigant, public official or any other party to whom an order of court is issued) intentionally fails or neglects to give effect to an order of court or acts in a manner that is contrary to an order of court or otherwise obstructs its enforcement, and if it is evident that such non-compliance, failure, disobedience or obstruction is intentional and willful in the backdrop of it having been possible to give effect to such order, comply or otherwise act in conformity with that order, such conduct amounts to an obstruction of the administration of justice, and therefore may be impugned before a court of competent jurisdiction on the basis that such impugned conduct amounts to **contempt of court**. Universally, contempt of court is recognised as an offence for which a person found guilty can be penally sanctioned (punished). [It is necessary to note that there are certain national jurisdictions which recognise the classification of 'civil contempt' and 'criminal contempt'.]

28. While the written law of this country has since 1801 recognised the offence of contempt of court, till the enactment of the Contempt of a Court, Tribunal or Institution Act, No. 8 of 2024, its definition remained in the realm of the common law. Therefore, during the pre-2024 era, it was necessary to have recourse to a series of judgments of superior courts, including ***In the matter of the Application of John Ferguson for a Writ of Prohibition against the District Judge of Colombo*** *[(1874) 1 NLR 181],* ***Kandoluwe Sumangala v. Mapitigama Dharmarakitta et al.*** *[(1908) 11 NLR 195*], ***In the Matter of Armand De Souza, Editor of the Ceylon Morning Leader*** *[(1914) 18 NLR 33],* ***In the matter of a Rule under section 51 of the Courts Ordinance on H.A.J. Hulugalle, Editor, "Ceylon Daily News"*** *[39 NLR 294],* ***Reginald Perera v. The King*** *[52 NLR 293],* ***Regent International Hotels LTD. v. Cyril Gardiner and Others*** *[(1978-79-80) 1 Sri L.R. 278],* ***Hewamanne v. De Silva and Another*** *[(1983) 1 Sri L.R. 1],* ***Dayawathie and Peiris v. Dr. S.D.M. Fernando and Others*** *[(1988) 2 Sri L.R. 314], and* ***Jung Kim and Another v. Jayasinghe*** *[(2021) 3 Sri. L.R. 91]* to determine whether a particular instance of impugned conduct amounted to contempt of court. The need to do so has changed to a considerable extent with the enactment of the Act No. 8 of 2024.

29. It is necessary to note that this Court in the Special Determination on the ***Contempt of a Court, Tribunal or Institution Bill*** *[SC/SD 58 - 62/2023]* has surveyed extensively the law relating to contempt and the jurisdiction vested in courts to deal with instances of contempt of court. That examination of the law from a historical and legal perspective is most illustrative, and was useful in the preparation of this Order.

30. Section 3(1) of Act No. 8 of 2024 contains a definition of contempt of court, which provides that, any "*act or omission with the intent to - (a) bring the authority of a court, tribunal or institution and administration of justice into disrespect or disregard; or (b) interfere with, or cause grave prejudice to the judicial process in relation to any ongoing litigation*" shall amount to the commission of contempt of a court, tribunal or institution.

31. Furthermore, section 3(2) of the Act contains a detailed list of instances which are deemed to amount to different manifestations of contempt of court. One such instance as contained in paragraph '(a)' of section 3(2) is the "*willful disobedience to any judgment, decree, direction,* ***order****, writ or other process of a court, tribunal or institution*".

32. It is thus clear that, willful disobedience of an order issued by this Court with the intention of (a) bringing the authority of court into disrespect or disregard, or (b) interfering with or causing grave prejudice to the judicial process in relation to any ongoing or concluded litigation, amounts to contempt of court.

33. The jurisdiction and power vested in courts to deal with instances of contempt of court is a means of providing a mechanism for courts to themselves maintain the efficacy and the independence of courts. It is important to also note that considerable flexibility has been vested in courts to exercise discretionary authority over the procedure to be followed in the determination of whether an alleged instance of contemptuous behaviour in fact amounts to contempt of court, and should a court arrive at a finding that the accused person has committed contempt of court, the punishment to be imposed.

34. While Article 105(3) of the Constitution has vested in the Supreme Court the jurisdiction and power to punish for contempt of itself, whether committed in the precincts of the Court or elsewhere, the same Article has vested power in the Court of Appeal to punish for contempt of such court or any other court, tribunal or institution referred to in paragraph (1)(c) of Article 105(1) of the Constitution, whether committed in the presence of such court, tribunal or institution, or elsewhere. Section 18 of the Judicature Act has vested jurisdiction in the High Court to deal with instances of contempt of such court committed against or in disrespect of its authority. Similarly, section 55 of the Judicature Act has vested jurisdiction in District Courts, Small Claims Courts and Magistrates courts to punish instances of contempt of court committed in the presence of such court.

35. In this matter, it would not be necessary to determine whether the Accused had in fact committed (proof of commission) the act of disobedience impugned by the three Petitioners (namely, non-compliance with the 4th interim order issued by this Court on 2nd August 2024 in SC FR Nos. 203, 204, and 205 / 2024) and if so, whether such conduct would amount to contempt of court (as defined and provided for in sections 3(1) read with 3(2) of Act No. 8 of 2024). That is because the Accused pleaded "*guilty*" to the charge of contempt of court contained in the Rule served on him.

36. Nevertheless, as it would be seen from the following paragraphs of this Judgment, this Court has, independent of the plea of guilt tendered by the Accused, satisfied itself that his impugned conduct in fact amounts to contempt of court.

Committing of Contempt of Court by the Accused and its seriousness

37. The following attendant circumstances are evident from both the evidence recorded by this Court (up to the point the Accused changed his previous plea of *"not guilty"* and pleaded *"guilty"*) and the position taken up by the Accused following the tendering of the plea of guilt:
    a. That he became aware of the several interim orders (including the 4th interim order) issued by this Court on 2nd August 2024, on that day itself,
    b. that he appreciated its nature and what was required to be done to give effect to the 4th interim order,
    c. that it was within his authority and competence to issue necessary directions to the Controller (Information Technology) to give effect to the 4th interim order,
    d. that he intentionally refrained from giving such instructions,
    e. that he was insisting upon continuing the implementation of the new 'E-visa system', whereas what he was required to do by this Court was to reactivate the 'ETA system', which was in operation *ante* 16.04.2024, and
    f. that notwithstanding the promulgation of the new regulations governing the operation of the 'E-visa system' in November 2023, the Department of Immigration and Emigration had continued to operate the 'ETA system' up to 16.04.2024.

Furthermore, this Court observes that the Accused had, by making certain representations, successfully satisfied the Attorney-General including ASG Ms. Siriwardena that 'implementation of the 4th interim order would be impractical given the regulatory and practical challenges'. This was a false position, due to the following reasons:

(i) Notwithstanding the promulgation of the new Regulations in November 2023 which provided *inter alia* for an "E-Visa system" instead of the "ETA system", the Department of Immigration and Emigration had continued to operate the "ETA system" up until April 2024. Thus, there were no regulatory challenges in implementing the 4th interim order.

(ii) According to the evidence provided by the Commissioner (Information Technology) prior to the Accused being charged for committing contempt of court and the two witnesses who testified during the inquiry, it was not impractical to reactivate the system that prevailed *ante* 16.04.2024, and it would be done (as it was done subsequently) without any delay.

Additionally, this Court has also found that there is no independent proof of either the Attorney-General having advised the Accused not to comply with the 4th interim order or the Secretary to the Ministry of Public Security having instructed him not to comply with such interim order pending the Attorney-General seeking and obtaining a variation of the interim order from the Supreme Court.

In view of the foregoing, this Court concludes that the Accused had taken up a deceptive approach before both this Court and the Attorney-General.

The resulting conclusion from all these factors is the irresistible inference that the Accused entertained an ulterior motive in not issuing necessary instructions to the Controller (Information Technology) that the 4th interim order be forthwith implemented. In these circumstances, this Court finds no excusable reason for the contemptuous conduct of the Accused, while it remains a possibility that he was under pressure from a higher political or administrative authority not to comply with the 4th Interim Order.

The law governing the determination of the punishment to be imposed

42. It is to be noted that section 6(1) of the Contempt of a Court, Tribunal or Institution Act with a marginal note which reads as *"Power of the Supreme Court and the Court of Appeal to punish contempt of a court, tribunal or institution"* does not provide any reference to either the nature of the punishment that may be imposed or a maximum fine.

43. In this regard, it is to be noted that in Clause 11(1) of the *"Bill for the enactment of the Contempt of Court, Tribunal or Institution Act"* (published in the Government *Gazette* of 27th June 2023), the sentence that could be imposed on a person found *"guilty"* for having committed contempt of court had been provided as '*a fine not exceeding rupees five hundred thousand or to simple imprisonment for a period not exceeding one year or both*'. The punishment that could be imposed on a person who has been convicted of having

committed contempt as provided in Clause 6(1) of the said Bill was limited to a fine not exceeding rupees three hundred thousand or to simple imprisonment for a period not exceeding one year or both. In the Special Determination of the Supreme Court with regard to the ***Contempt of a Court, Tribunal or Institution Bill*** *[SC/SD 58 - 62/2023]*, the Supreme Court having considered multiple Constitutional implications arising out of this Clause, determined that Clause 11 as a whole was inconsistent with the provisions of Article 12(1) of the Constitution. In these circumstances, it is apparent that when enacting the Bill, the Parliament had removed that Clause. Therefore, as the law stands today, Act No. 8 of 2024 does not provide for any restriction on the nature or extent of the punishment that may be imposed on a person found *"guilty"* of having committed contempt of court. On a consideration of a multitude of factors, this Court has formed the assumption that additional reasons which justify why there should not be any restriction placed in Court are that; (a) Article 105(3) which concurrently confers jurisdiction on the Supreme Court and the Court of Appeal to deal with instances of contempt of court, does not impose any restriction on the punishment that may be imposed on a person who has been found *"guilty"* of having committed contempt of court, and (b) the very nature of the circumstances that constitutes contempt of court are so varied and its impact and consequences can range from being minor to extremely serious, there can be certain instances of contempt of court which warrants in public interest the imposition of a very high (severe) punishment.

44. Given the attendant circumstances pertaining to the Accused's contemptuous conduct, I have concluded that this is a case which warrants the imposition of a term of imprisonment.

45. For the purpose of exercising judicial discretion in the determination of the punishment to be imposed on a person convicted of having committed contempt of court, it is useful to have in mind the maximum sentence that may be imposed according to law. Given the plethora of situations and manifestations of contempt of court that may be committed in a varying range of situations, the scheme of punishment contained in the Penal Code for various offences, including offences relating to the administration of justice, and previous judgments of this Court relating to instances where persons have been convicted of having committed contempt of court and punished, this Court fixes a hypothetical upper limit of seven (7) years

imprisonment of either description, as being the maximum imprisonment that may be imposed on a person convicted of having committed the offence of contempt of court, together with or without an order for the payment of a fine. In this regard, I have *inter-alia* paid attention to the sentence of 7 years imprisonment imposed in ***Chandradasa Nanayakkara v. Liyanage Cyrill*** *[(1984) 2 Sri L.R. 193]* wherein the Court Appeal had determined that a stiff sentence was necessary so as to ensure that the punishment imposed would serve as a deterrence to others.

46. While it is necessary to observe that the Court at its discretion can impose a fine either as an alternative to a term of imprisonment or in its alterative, the facts attendant to the conduct of the Accused does not warrant the imposition of a fine. Furthermore, it would in my view be appropriate for this Court not to fix a hypothetical maximum limit for the fine.

47. This Court has noted the absence of a 'sentencing policy and guidelines', the existence of which will certainly contribute towards a more consistent approach to be adopted by Judges devoid of subjective variations, when determining the sentence to be imposed on a convicted accused. In the absence of such a policy and guidelines, the approach that the Court can take should be one founded upon general principles relating to sentencing.

48. From the perspective of general principles, this Court notes the compelling need to ensure that the punishment to be imposed should be:
    a. within the range of the punishment prescribed by law,
    b. commensurate with the seriousness of the Accused's contemptuous conduct, including its nature, impact and consequences and therefore, be proportionate to the gravity of the offence,
    c. determined following an objective consideration of all attendant circumstances, including aggravating factors that increase culpability and mitigatory circumstances that lessen the punishment, and
    d. determined following a consideration of the objectives to be achieved in punishing an offender, and thus should include retribution resulting in a punitive measure being imposed, restoration (where relevant), deterrence and should ideally cause the rehabilitation of the convict.

49. Based on the afore-stated hypothetical upper limit, I fix the mid-point of the term of imprisonment at three and a half (3 ½) years. When computing the sentence to be imposed, I propose to use this mid-point as the starting point. Thereafter, I increase the sentence to be imposed from that mid-point in consideration for each of the aggravating factors and reduce from that elevated sentence for the several mitigatory factors. This is done while attaching different weights to each of those factors, as their significance varies from one to the other.

50. It may be noted that, in the absence of statutorily prescribed sentencing upper limits and sentencing bands under the Contempt of a Court, Tribunal or Institution Act, No. 8 of 2024, this Court had to adopt a principled framework to guide the application of general principles pertaining to sentencing including the principle of proportionality. It is hoped that this Judgment is not classified as 'judicial legislation', but as an instance of necessary exercise of judicial discretion grounded on legal principles and reasoning. The mid-point three and a half (3½) years benchmark used anchored to a seven (7) years upper limit is not intended to bind the Supreme Court in the future, but to provide a transparent and reasoned basis for this Court's determination. In doing so, I must emphasise that I was guided by the judicial duty to ensure consistency, fairness, objectivity and reasonableness in the administration of justice. The framework contained herein shall remain provisional pending the promulgation of a set of sentencing principles and guidelines. Until such time, the judiciary must not abdicate its responsibility to articulate principled sentencing in the face of statutory silence.

51. Section 152 of the Powers of Criminal (Sentencing) Act of 2000 of England, provides for the reduction in sentences for *"guilty"* pleas. It provides that "*In determining what sentence to pass on an offender who has pleaded guilty to an offence in proceedings before that or another court, a court shall take into account – (a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty; and (b) the circumstances in which this indication was given.*" [Emphasis added by me.] Section 144(1) of the Criminal Justice Act of 2003 of England also provides the same factors to be considered when reducing sentences for *"guilty"* pleas. The stage in which the *"guilty"* plea was made is considered as the determining factor of the period of reduced sentence. Judicial precedent contained in ***R v. McNally*** *[(2013) 2 Cr. App. R. 28 at p. 294]* has considered the earliest time an accused appears in open courts to enter a plea, as the first opportunity to plead *"guilty"*. This principle is well recognized in the

criminal justice system of this country as well. Nevertheless, it should be noted that while there is a 'possibility' of "*guilty*" pleas leading to the imposition of reduced sentences, it is not a requirement that sentences 'must' always be reduced.

52. It is my view that the Accused did not show any genuine repentance or remorse for having acted in disobedience of the 4th interim order issued by Court. Court arrived at this conclusion firstly because he did not plead "*guilty*" at the first available opportunity and he pleaded "*guilty*" only on the 2nd day of the inquiry, by which time cogent evidence had been led to establish his guilt. Secondly, even in his statement to Court (made after pleading "*guilty*") the Accused sought to justify his contemptuous conduct, as opposed to expressing genuine remorse. His statement partly amounted to a purported exculpatory assertion that he was not responsible for the non-compliance with the 4th interim order. Therefore, the Accused's change of the plea from "*not guilty*" to "*guilty*", rather than being an indication of genuine remorse and repentance as submitted by the learned President's Counsel Mr. Saliya Peiris, in my view is an indication that the Accused adopted a 'strategic maneuvering' in order to avoid facing a stiff sentence and to cause a mitigation of the sentence. In this regard, it must also be noted that the case cited by the learned President's Counsel for the Accused, being ***SC Contempt 09/2024*** *(SC Minutes of 25th February 2025)*, is an instance where the Court mitigated the period of sentence considering the fact that the Respondent '*expressed remorse at the first available opportunity*'. However, the present matter before Court proves otherwise. Therefore, in these circumstances, this Court is of the view that the Accused by not pleading "*guilty*" on the first available opportunity, failed to show genuine remorse and repentance in order to warrant a significant mitigation of the sentence.

53. It is necessary to mention that the learned President's Counsel for the Accused brought to the attention of Court his view that Judges should be merciful when determining the punishment to be imposed on a convicted accused. In support of that submission, he cited from "*The Merchant of Venice*". He followed up that submission by pleading that this Court should show mercy towards the Accused. Learned President's Counsel for the Accused cited the South African judgment in ***S v. Rabie*** *[1975] ZASCA 78* stating that "*the punishment should fit the criminal as well as the crime, be fair to society, and be blended with a measure of mercy according to the circumstances*". Nevertheless, that judgment, while stating the above factors, further provides that the measure of the scope of mercy depends on the circumstances of each case, and that

the degree of emphasis of any relevant factor, including mitigating factors, is ordinarily a matter that falls within the exercise of judicial discretion.

54. I wish to observe that a plea of mercy being tendered to a court of law is not very common in Sri Lanka. It must be noted that mercy is generally considered as an act of divinity, and thus, is to be exercised by an all-mighty divine entity, since in Christianity, mercy is seen as central to God's nature. The sacrifice of Christ is viewed as the ultimate act of divine mercy, offering forgiveness and grace to humanity. In Islam, mercy (*Rahma*) is viewed as one of Allah's most prominent attributes, as evident in the Qur'an in which chapters begin with the phrase *Bismillah ir-Rahman ir-Rahim* (In the name of God, the most gracious and the most merciful). Hinduism portrays mercy through deities like Vishnu and Shiva, who intervene to restore cosmic balance and protect devotees. In contrast with these religions which *inter alia* espouses and venerates the attributes and powers of God(s), Buddhism highlights the need to exercise *Karuṇā* (compassion), *Metta* (loving kindness), *Muditha* (sympathetic joy), and *Upekkha* (equanimity), which are referred to as the four *Brahmaviharas* (divine abodes) as human attributes and not personified as stemming from a deity. These four are a set of divine qualities that should be cultivated by those who seek to end the cycle of rebirth by attaining *Nirvana* (a state of perfect peace, freedom and liberation from suffering).

55. If I were to respond to Mr. Peiris's citation of the monumental work of William Shakespeare (1564 – 1616 AD) "*The Merchant of Venice*", it would be necessary to observe that the plea for mercy by *Portia* (the lady who disguised herself as a young male lawyer) on behalf of *Antonio* (the guarantor) was aimed at not the Judge (the *Duke of Venice*), but at the money lender *Shylock,* who sought his pound of flesh. Furthermore, it appears from the script of "*The Merchant of Venice*" that Shakespeare contrasts the authority of earthly rulers with the higher virtue of mercy. Moreover, he advances this view by linking mercy to the divine by describing mercy as an attribute of God himself. This in my view elevates mercy above human law and conduct. He frames mercy as a reflection of divine grace, with which I find myself in agreement.

56. In the real world, it is seen that mercy is exercised by (i) all-powerful monarchs, (ii) monarchs who do not possess executive power and therefore are called upon by law or convention to act on the recommendations of the Head of the government (in the grant of clemency), and by (iii) human-beings acting in their personal capacities in

respect of harm caused to them. Furthermore, it is my view that it would be necessary for Judges, when exercising judicial functions, not assume to themselves the role of a divine authority, a monarch or act in their personal capacities. A Judge should function as a public officer who in terms of the law is entrusted with the duty of discharging certain judicial functions. For such purpose, Judges have been vested with certain powers, one of which is to determine the punishment to be imposed on a person convicted of having committed an offence. Judges should discharge their functions, mindful that they do so in the exercise of the judicial component of the sovereignty of the People, and be respectful of the public trust conferred on them by law, and act judicially, objectively, fairly and in a just manner, and thereby determine the sentence to be imposed in accordance with the law. Doing so would of course include (a) taking into consideration applicable aggravating and mitigatory factors, (b) being equally empathetic towards both the victim of crime and the Accused, and (c) being acutely conscious of the need to protect public interest even when determining and imposing a sentence on a convicted accused. What would be taboo for a Judge who is called upon to exercise discretion in the determination of a sentence, would be to (a) disregard provisions of the law and judicial precedent governing the sentence, (b) deviate from sentencing policies and guidelines (if any), (c) entertain prejudice, (d) be subjective or partial, (e) disregard aggravating and mitigatory circumstances, (f) act with vengeance, hate, or anger, (g) be callous, subjective, partial, unreasonable or arbitrary, (h) exercise cowardice, or (i) use such instance as a means of earning merit for himself to secure spiritual advancement. In the exercise of judicial functions, I see no room for a Judge to be driven by emotions, religious beliefs and for expression of personal sympathy or compassion. Judges must in the performance of their official duties, at all times, (a) exercise competence, (b) be open to persuasion, (c) act in good faith, (d) be fair, diligent, upright and forthright, and (e) always decide objectively.

Determination of the sentence to be imposed on the Accused

Aggravating factors

57. The Accused is a senior public servant, a head of a government institution and leads a premier law enforcement and regulatory authority relating to immigration and emigration of persons from and to Sri Lanka. He is a person who should be in a position to comprehend the compelling need to comply with orders of courts.

58. In this instance, the Accused has made no attempt to give effect to the 4th interim order issued by Court. Should there have been a genuine difficulty in implementing the interim order, he should have rushed to court and explained the difficulty. If the 4th interim order could have been implemented (as the evidence shows) and he foresaw complications (in the nature of regulatory and practical difficulties) that may arise following the implementation of the order, the Accused was required to first implement the 4th interim order and thereafter seek a variation of that order from this Court by citing valid reasons.

59. Though there is no direct and cogent evidence before Court, this Court must take judicial notice of the consequences that had arisen to the interests of Sri Lanka (including serious financial implications) due to the 1st Accused not having promptly de-activated the 'E-visa system' and restored the *status quo* that prevailed *ante* 16.04.2024 (that being the operation of the 'ETA system') following the issuance of the several interim orders by the Supreme Court on 2nd August 2024. That aspect of the impact of the contemptuous conduct of the Accused adds to the gravity of the situation.

Mitigatory factors

60. This Court must take cognizance of the fact that, according to the submission of Mr. Saliya Pieris, PC, the Accused had served the public service of this country for 24 years, and had rendered dedicated service to the public through his service to the State. He possesses an unblemished character.

61. Members of the family of the Accused will suffer both physically and mentally from the continued incarceration of the Accused, for no fault of theirs.

62. Though the Accused has failed to establish by independent means, it is possible that either the Secretary to the Ministry of Public Security or a person holding superior political office had instructed him not to comply with the 4th interim order issued by the Supreme Court. However, that is merely a possibility as opposed to a proven fact.

63. From the 25th September 2024, the Accused has remained in remand custody for a period of approximately one (1) year.

Sentence

64. The foregoing approach to sentencing practice leads this Court to the conclusion that the appropriate sentence to be imposed on the Accused is three (3) years imprisonment. It is the view of this Court that the period of remand custody of one (1) year the Accused has spent pending the inquiry and delivery of this Order should be used to discount the afore-stated period of sentence. Therefore, the afore-stated term of three (3) years imprisonment is reduced to a period of two (2) years imprisonment. Having considered the gravity of the offence committed by the Accused, this Court decides not to impose a suspended term of imprisonment. It is my view that this punishment will adequately serve to achieve the sentencing objectives I have referred to above and would adequately repair the attack on the authority of this Court caused by the contemptuous conduct of the Accused.

65. Accordingly, **the Accused is hereby sentenced to a period of two (2) years of imprisonment, which period shall commence forthwith**.

Judge of the Supreme Court

Janak De Silva, J.

I agree.

Judge of the Supreme Court

Arjuna Obeyesekere, J.

I agree.

Judge of the Supreme Court