# IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for Contempt of Court under and in terms of Article 105 (3) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**The Hon. Attorney-General,**

The Attorney General's Department,

Colombo 12.

**SC Contempt No: 01 / 2021**

**Vs.**

**Nagananda Kodituwakku,**
99, Subhadrama Road,
Nugegoda.

**RESPONDENT**

**Before:** E.A.G.R. Amarasekara, J,

Yasantha Kodagoda, PC, J &

A.H.M.D. Nawaz, J

**Counsel:** Parinda Ranasinghe, PC, ASG with Madhushika Kannangara SC for The Hon. Attorney General.

Nagananda Kodituwakku appears in person.

**Inquiry into the preliminary objection:** 01.09.2022

**Decided on :** 16.06.2025

**JUDGEMENT OF THE COURT**

1. When the Charge Sheet in these proceedings was initially read out to the Respondent on 10.11.2022, he raised objections and requested that a copy thereof be furnished to him in the Sinhala language.

2. Upon receipt of the Charge Sheet in Sinhala, the Respondent proceeded to file what he termed as "preliminary objections" to the said Charge Sheet. Thereafter, the Hon. Attorney General was afforded an opportunity to file counter-objections in response.

3. When the matter was taken up for inquiry on 01.09.2022, the Charge Sheet in Sinhala was formally read out to the Respondent. At that stage, both the learned Additional Solicitor General and the Respondent made oral submissions on the preliminary objections raised. Time was thereafter granted to both parties to file written submissions in support of their respective positions.

4. The essence of the Respondent's written submissions regarding the maintainability of the Charge Sheet issued against him may be succinctly summarized under the following principal grounds:

I. That the offence of *Contempt of Court* is not expressly defined in any statute, nor under Article 105(3) of the Constitution;

II. That the applicable law in respect of the alleged offence is derived from the law of England;

III. That no procedural rules have been promulgated under Article 136 of the Constitution to govern the institution or prosecution of contempt proceedings; and

IV. That, in consequence, the Charge preferred against him lacks lawful foundation and is therefore unsustainable in law.

5. For the sake of clarity, the power of the Supreme Court to punish for contempt as found in Article 105(3) of the Constitution reads;

"(3) *The Supreme Court of the Republic of Sri Lanka and the Court of Appeal of the Republic of Sri Lanka shall each be a superior court of record and shall have all the powers of such court including the power to punish for contempt of itself, whether committed in the court itself or elsewhere, with imprisonment or fine or both as the court may deem fit. The power of the Court of Appeal shall include the power to punish for contempt of any other court, tribunal or institution referred to in paragraph (1)(c) of this Article, whether committed in the presence of such court or elsewhere:*

*Provided that the preceding provisions of this Article shall not prejudice or affect the rights now or hereafter vested by any law in such other court, tribunal or institution to punish for contempt of itself."*

6. It must be observed at the outset that, at the time the Respondent raised the aforementioned objections, the *Contempt of a Court, Tribunal or Institution Act, No. 8 of 2024* had not yet come into force. In any event, the present Rule issued against the Respondent has been framed independently of the provisions contained in the said 2024 enactment.

7. En passant, it must be underscored at the very threshold that the *Contempt of a Court, Tribunal or Institution Act, No. 8 of 2024* could not have been intended to derogate from or affect the powers of the Supreme Court under Article 105(3) of the Constitution, which remains extant and unamended. Unlike other constitutional provisions—such as Article 138 —which is expressly made subject to law, Article 105(3) stands unqualified by such limitation.

8. As such, any attempt to alter or curtail the jurisdiction conferred by Article 105(3) would necessarily require a constitutional amendment—one that would be both express and apparent, including in the long title of the Act. No such express amendment was made by the *Contempt of a Court, Tribunal or Institution Act, No. 8 of 2024*, which is, moreover, not declared to have retrospective effect.

9. In the circumstances, and on the facts of the present case, it is appropriate to reflect on the Respondent's objection to the very jurisdiction conferred upon this Court under Article 105(3).

10. The gravamen of the Respondent's submission appears to be that, absent a definitional clause within the Article itself or in a law, the Court is thereby rendered bereft of jurisdiction.

11. The objections raised by the Respondent have been traversed by the Attorney General and the Court would now proceed to deal with them.

**No definition of contempt in any law or Article 105 (3) of the Constitution**

12. The argument premised on the absence of a statutory definition of contempt is misconceived. From time immemorial, the inherent power of superior courts to

punish for contempt has not been contingent upon a codified definition, but has instead derived from the common law. The absence of an express constitutional or statutory definition does not abrogate or diminish this long-recognized judicial authority.

13. The existence of a body of common law governing contempt of court has been judicially recognised in Sri Lanka. In ***Hewamanne v. De Silva and Another***[1] the Supreme Court expressly affirmed that the law of contempt in this jurisdiction is rooted in and regulated by the principles of common law. The Court made clear that;

> *"Our Constitution has a chapter on fundamental rights, including freedom of speech and expression.* ***Those provisions, if applicable, may have modified probably to some degree the existing law of contempt of court, but in view of the provisions of Article 16, it is not necessary to go into that question in detail.*** *Article 16, which is one of the Articles contained in the Chapter of Fundamental Rights, states that-*
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> *"All existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of this Chapter."*
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> ***The short answer, therefore, to Mr. Choksy's first submission is that the law of contempt of court which had hitherto existed would operate untrammeled by the fundamental right of freedom of speech and expression contained in Article 14.***

[1] (1983) 1 Sri.LR 1 at pages 12-13.

14. The formulation articulated by Lord Radcliffe in ***Reginald Perera v. The King,***[2] which defined contempt as conduct *'calculated to bring a court … into contempt or to obstruct the due course of justice,* was commented upon by Amerasinghe J in ***Dayawathie and Peiris v Dr. S. D. M. Fernando and Others.***[3] At page 368 et seq Amerasinghe J. said,

"*I am unable to accept without qualification the submission of the learned President's Counsel appearing for the Petitioner.*

*In order to establish Contempt of-Court, in the words of Lord Radcliffe in Reginald Perera v. The King*

*'There must be involved some act done or writing published calculated bring a Court or a Judge of the Court into contempt or to lower his authority or something calculated to obstruct or interfere- with the due course of justice or the lawful- process of the Courts. See Reg. v. Gray.*

*This does not necessarily happen where a person has failed to or refused to obey an ordinary, non-coercive order of court.*

*Bertram, CJ. in Ismail v. Ismail said that "non-compliance with the judgment of a Court is not, in ordinary circumstances, a Contempt of Court."*

*Where the Order of Court is declaratory, i.e., where it is a decision merely expressing publicly, in formal and explicit terms, the rights and obligations of the parties concerned, a failure to abide by such an order would not, in my opinion without more, amount to a Contempt of Court……. Indeed, even if the Order of the Court is more than merely declaratory, the failure, or even refusal, to comply with it does not necessarily, itself constitute a Contempt of Court……*

[2] 52 NLR 293
[3] (1988) 2 Sri.LR 315.

15. The long catena of Sri Lankan case law reflects the evolving embellishments of the common law definition of contempt, with its contours shaped by a spectrum of public considerations that benignly guide the courts in exercising contempt jurisdiction.

16. Apart from the definitional aspects of contempt, the core of the Respondent's first preliminary objection to the charge sheet rests on the proposition that the offence of contempt of court must be grounded upon express statutory authority in order to be rendered actionable.

17. However, such a contention fails to appreciate the constitutional foundation upon which this jurisdiction rests. It is Article 105(3) of the Constitution that constitutes the normative basis for the exercise of contempt powers by the Supreme Court. The validity and enforceability of a constitutional dictate do not hinge upon the prior existence or subsequent enactment of a statutory provision.

18. At this stage, a brief historical overview of the provenance and development of the Supreme Court's contempt jurisdiction becomes apposite.

19. The trajectory of the reception and evolution of this jurisdiction in Sri Lanka unambiguously reveals that the Supreme Court has consistently exercised the power to punish for contempt independent of statutory codification. From its inception, this power has been understood as inherent in the Court's constitutional mandate, and it has not required the imprimatur of Parliament for its validity or enforcement.

20. A Collective Court of the Supreme Court, comprising three Judges, in the matter of ***in re John Ferguson, Application for a Writ of Prohibition against the District Court,***[4] delivered on 3rd November 1874, undertook a comprehensive summation of the law as it then stood with respect to the jurisdiction in contempt. The decision stands as an early judicial exposition of the provenance and scope of this jurisdiction, and it is instructive to revisit the reasoning therein.

**The Ferguson Case (1874)**

21. *John Ferguson* was an application brought before the Supreme Court by the petitioner, Ferguson, seeking a Writ of Prohibition to restrain the District Judge of Colombo, Mr. Thomas Berwick, from taking any further steps in respect of a certain *rule nisi* issued by him. That *rule nisi* had called upon one of the editors of the *Observer* newspaper to show cause why he should not be attached for contempt, arising from the publication of an allegedly false and defamatory libel concerning the administration of justice and the conduct of judicial proceedings in the District Court of Colombo.
22. The headnote to the report, *inter alia*, records the following observations:

> "*A District Court is a Court of Record, and has power to punish summarily contempts committed in the face of the Court, such as insult to the Judge, interruption of the proceedings of the Court, disobedience to its lawful orders or process, obstruction to its officers in the execution of its processes or orders.*
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> *District Courts cannot be viewed as representing in this Colony the Superior Courts of Law and Equity in England, and they have not the powers vested in*

[4] (1874) 1 N.L.R 181.

*these Courts as to summary attachment*[5] *for contempts in respect of acts done out of Court.*

***The Supreme Court of Ceylon has all the powers for punishing for contempt, wherever committed in this Island, possessed by the Superior Courts of Westminster.***

*Semble*[6]*, there is no distinct recognition in Roman-Dutch law authorities of the right of a Judge to deal summarily with contempts not committed in the face of the Court, nor committed by way of obstruction to its orders, or with reference to any suit or proceeding pending in the Court.*"

23. The judgment of the Court in the *Ferguson* case, delivered by Morgan A.C.J., held as follows:

"……*A Court empowered like our District Courts to fine and imprison and to keep a record of its proceedings is a Court of Record (Hawkins'' Pleas of the Crown, cap. 1, section 14), and Courts of Record have undoubtedly the power to punish summarily contempts committed in the face of the Court. Such power is inherent in such Courts, and rests on the necessity of preserving for them that decent respect, without which they cannot carry on their proceedings or maintain their just authority.*

*It would be difficult to give a specific enumeration of such acts of contempt, but they may be referred to generally as including any insult to the Judge while in the discharge of his duties, such as interruption of the proceedings of the Court, disobedience to its lawful orders or process, obstruction to its officers in the*

[5] Attachment and committal were two forms of summary process in English Law. In the case of attachment, the contemnor was arrested and brought before the court by the Sheriff acting under a writ of attachment issued by leave of court. In the case of committal, a less formal procedure, the contemnor is seized by the tipstaff acting under the orders of the judge – Halsbury – 4th Ed. Volume 9, page 53.

[6] The Semble is reflected in the abolition of the Roman Dutch Criminal Law by Section 3 of the Penal Code of 1883, which read "So much of the Criminal Law heretofore administered in Ceylon as is known as the 'Criminal Law of the United Provinces' or as 'the Roman-Dutch Law' is hereby abolished."

*execution of its process or orders, and other acts of a like nature..... It is laid down in Hawkins (Pleas of the Crown) and other writers of authority that the power of committing for contempts committed in the face of the Court is given to Inferior Courts, but it is nowhere said that they have power so to punish contempts committed out of Court. There is an obvious distinction between Inferior Courts created by statute, and Superior Courts of Law and Equity. In these Superior Courts the power of committing for contempt is inherent in their constitution, has been coeval with their original institution, and has been always exercised. The origin can be traced to the time when all the Courts were divisions of the Great Curia Regis-the Supreme Court of the Sovereign-in which he personally, or by his immediate representative, sat to administer justice. The power of the Courts in this respect was therefore an emanation from the royal authority, which, when exercised personally or in the presence of the Sovereign, made a contempt of the Crown punishable summarily, and this power passed to the Superior Courts when they were created.*

*It is a very different thing when we come to the Inferior Courts, which have never exercised this power, or have never been recognized as possessing it, and I should be prepared to hold that it does not exist.....*

*..... Brodie's case, on the other hand (2 Lorenz, 85), drew the distinction between Superior and Inferior Courts, and pointed out that in the former alone is vested the power of punishing contempts committed not in the face of the Court or in obstruction of its order or process.*

*"A contempt thus promptly punishable" (by Courts of Record generally), said Chief Justice Rowe, "consists for the most part " in contumelious or contumacious behaviour by words or acts in the " face or in the immediate precincts of the Court." " Further, upon "the same principle, in the Superior Courts of Record is vested the "power to fine and imprison, not only for contempts committed in "the face or in the precincts of the Court, but for*

*contempt of or " disobedience to the process and judgments of such Courts wherever "within the realm, and whenever committed, for defamatory or " libellous matter touching the Court itself, or any of its Judges, when "acting in their judicial capacity." " It is in the Judges of the " Supreme Court only, as in men whose education, experience, and habitual self-control exercised daily in the face of the public, the " Bar, and the Press, may be presumed to qualify them to be safe " depositories of such power, that this large discretion in committing "for contempt is vested. To Inferior Courts the common law has "conceded a more restricted jurisdiction." Two other instances (ex parte Staples and ex parte Patterson) may be cited to show instances of the Supreme Court having taken cognizance and dealt with contempts committed not in the face of the Court or in obstruction of its process. Having thus considered the general law bearing on the subject, the Charter and local enactments on the constitution and jurisdiction of the Supreme and the District Courts, and the precedents to be gathered from our records, we have come to the conclusion that the District Courts, though discharging important functions, and exercising unlimited civil jurisdiction, each within its district, cannot be viewed as representing in this Colony the Supreme Courts of Law and Equity in England; and that they have not the powers, vested in those Courts, as to summary attachment for contempts such as the one charged in this case. It is not material for the purposes of this case to consider whether or not the Supreme Court has those powers; but as the question has been submitted and argued, we have no hesitation in declaring that we are quite prepared to hold and maintain that this Court, as the Supreme judicial tribunal in and throughout this Island, vested with all the high prerogative powers conferred on it by the Crown, has all the power of punishing for contempt, wherever committed in this Island, possessed by the Superior Courts of Westminster.*

*It was further contended that, whatever the English law may be, the Roman-Dutch law gives District Judges the power claimed by the respondent in this*

*case. We are not prepared to admit, without qualification, the authority of that law in matters purely of procedure, and in Courts constituted and regulated, like ours, under very different circumstances from the Courts of the United Provinces. The proceeding adopted in this instance was entirely under the English law, and in accordance with its forms, and our decision is based on the English decisions, which have always been recognized and acted upon in our Courts in matters of contempt. We fail to find, however, in the authorities quoted, and in those we have referred to, any distinct recognition of the right of a Judge to deal summarily with contempts against his authority such as the one charged in this case, i.e., contempts committed not in the face of the Court nor by way of obstruction to its orders, nor with reference to any suit or proceeding pending in the Court……*

*We may here notice some of the reasons for the distinction between the powers of Superior and Inferior Courts in dealing with contempts, restricting the powers of the latter Courts to cases of actual contempt, i.e., cases of direct insult to or attack on the Court itself, disobedience of its orders, or obstruction of its process ; while to the former is given the right to take cognizance, not only of actual, but of constructive contempts, such as attacks on Judges, suitors, or witnesses, tending indirectly to interfere with the course of Justice.*

*The reason for such distinction, given by Chief Justice Rowe in the judgment in Brodie's case, may be inapplicable to the Judges of the Provincial towns, whose age and experience will guard them against the danger to which large and uncontrolled powers may expose them.*

*But we have to deal with systems, not men, and we cannot shut our eyes to the danger of confiding such a power as the one claimed in this case to young men in remote stations; a power which, as Lord Abinger has observed in the case of Rex v. Faulkner (2 C. M. and R., p. 535), is a very important one, and requires the greatest nicety in its exercise……*

*…….We consider, for the reasons given, thacompetent to the District Judge of Colombo to take the proceedings he did in this case; and the order of the Court is that the rule for prohibition allowed on the 6th ultimo should be, and the same is hereby made absolute ; and the said District Judge is hereby directed to refrain from further proceeding in the matter of the rule nisi issued by him against the Editor of the Observer newspaper, referred to in the first paragraph of this judgment.*"

24. Morgan, A.C.J., authoritatively held that the power to punish for contempt is inherent in the very constitution of Superior Courts such as the Supreme Court. This jurisdiction is not derived from statute but is coeval with the origin of such Courts and emanates from royal authority. It extends beyond acts committed in the face of the Court to include contempts committed outside its precincts, including libels upon the Court or its Judges.

25. Unlike Inferior Courts, whose powers are limited to direct and immediate contempts, the Supreme Court retains the full extent of prerogative powers historically vested in the Superior Courts of Westminster.

26. One could clearly discern how this very notion of inherent jurisdiction is constitutionally embodied in Article 105(3) of the Sri Lankan Constitution—untrammeled by the necessity to have on the statute books any specific legislation on contempt.

27. For a very long time, continuously the Supreme Court has been vested with jurisdiction to determine matters relating to Contempt of Court and has been exercising that jurisdiction.

28. Till the advent of the Contempt of a Court, Tribunal or Institution Act, the offence of 'Contempt of Court' was exclusively a 'common law offence', and due

to the enactment of the 2023 Act, is now both a common law offence as well as an offence contained in the written law.

29. In the SC SD on the Contempt of Court, Tribunal or Institution Bill, this Court has held that the jurisdiction vested in the Supreme Court by Article 105 relating to adjudication of matters relating to contempt of court shall remain in force notwithstanding the enactment of that law.

30. The seminal decision of *Ferguson* also brings out the following aspects of contempt law. First, it is settled law that our indigenous legal system recognizes the distinction and authority of Courts of Record. Secondly, the framework contemplates both Superior Courts of Record and Inferior Courts of Record. Thirdly, Superior Courts of Record possess inherent jurisdiction to punish for contempt of court, whether the contempt occurs *in facie curiae* (in the face of the court) or *ex facie curiae* (outside the presence of the court). Fourthly, in contrast, the contempt jurisdiction of Inferior Courts of Record is limited: they may only punish for contempt committed *in facie curiae*, and have no authority to address contempts occurring *ex facie*, unless such power is conferred by express statutory provision.

31. The *sui generis* character of this Court's contempt jurisdiction was reaffirmed as recently as 2021. In ***Hee Jung Kim alias Kim Hee Jung and Another v. Don Bandumali Jayasinghe [née Welikala]***[7], this Court, with reference to Article 105(3) of the Constitution, reiterated its constitutional mandate to exercise the power to punish for contempt. It was underscored that this jurisdiction is not derived merely from statutory enactment but emanates from the inherent powers of this Court, embedded in the constitutional architecture itself.

[7] SC Contempt No 03/2018, SC minutes of 15.07.2021

*Hence the jurisdiction to punish as contempt, any act of interference with the administration of justice is vested with the Supreme Court as a Superior Court of Record. <u>It is part of the inherent jurisdiction of the Supreme Court and an essential adjunct for safeguarding the rule of law.</u>*

32. It then boils down that independently and apart from the *Contempt of a Court, Tribunal or Institution Act, No. 8 of 2024* or any other statutory law relating to contempt (e.g. Penal Code or Code of Criminal Procedure Act), the Supreme Court and the Court of Appeal (by reason of Article 105 (3)) will continue to exercise this inherent power to punish for contempt of the Supreme Court and the Court of Appeal respectively.

33. When the Indian Supreme Court was confronted with an analogous constitutional power to punish for contempt vis-a-vis the power bestowed by Contempt of Courts Act, 1971, the Court pointed out in ***RL Kapur v State of Madras***[8] that such inherent power or jurisdiction was not derived from the statutory law relating to contempt nor did such statutory law affect such inherent power nor confer a new power or jurisdiction.

34. Accordingly, we overrule the Respondent's objections premised on the alleged absence of a statutory definition and the purported want of legislative underpinning. This Court is vested with the inherent jurisdiction to punish for contempt summarily and retains the authority to determine the nature and character of conduct that amounts to contempt**.** A statutory enumeration of contemptuous acts must be construed as illustrative, not exhaustive.

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[8] (1972) 1 SCC 651; SC 858: 1972 Cri LJ 643: 1972 SCC (Cr) 380. See also ***State of AP v S Tulasidas***, (2002) 2 ALT 461, 471— [Supreme Court's and High Court's rower to punish for contempt is not delimited by the 1971 Act, but stems from being a court of record and also from Article 215 of the Constitution.]

35. We reiterate that through a series of judgments of the Supreme Court culminating in Re Ranjan Ramanayake, the Supreme Court has clearly defined and set out what contempt of court means, and thus the absence of a statutorily definition of contempt of court does not affect the legitimacy of the exercise of the jurisdiction under Article 105 of the Constitution.

36. We now proceed to consider the remaining objections, namely, that no specific procedure has been set out for the inquiry, and that, consequently, the charges against the Respondent are said to lack foundation.

**Procedural Objections**

37. In the exercise of this jurisdiction, Superior Courts of Record are entitled to adopt their own procedures, subject only to the requirement that such procedures do not contravene the fundamental safeguards enshrined in the fair trial guarantees—namely, the obligation to frame a definite charge, the right of the alleged contemnor to be heard, and the right to mount a defence.

38. It is in the Judges of the Supreme Court only as in men whose education, experience, and habitual self-control exercised daily in the face of the public, the Bar, and the Press, may be presumed to qualify them to be safe depositories of such power.

39. It is instructive to bear in mind the illustrative procedure set out in the Contempt of a Court, Tribunal or Institution Act, No. 8 of 2024, though the substantive provisions of the Act have no relevancy to the case at bar.

40. The practices of the Supreme Court relating to the hearing of contempt of court matters have by now hardened into rules of court, and ensures the conduct of a fair trial against the person accused of having committed contempt of court.

41. Moreover, the inherent power to punish for contempt is exercised subject to the overarching constitutional guarantees of fair procedure and natural justice.

42. The Respondent in the present case has been afforded the opportunity to raise objections, to file written submissions, and the liberty to engage the counsel. The charge sheet outlines the specific acts said to constitute contempt. Thus, the Respondent is neither in doubt as to the nature of the allegation nor deprived of procedural safeguards.

43. The suggestion that the Court's discretion is unregulated fails to acknowledge the discipline imposed by constitutionalism, judicial ethics, and precedent.

44. In regard to punishment, Article 105(3) expressly limits the range to "imprisonment or fine or both as the court may deem fit." This discretion, while broad, is not unfettered. It is exercised judicially, taking into account the gravity of the contempt, the context of the act, any mitigating circumstances, and the need to uphold the integrity of the judiciary.

45. Having given careful consideration to the preliminary objections raised by the Respondent, this Court finds no merit in the challenge to its jurisdiction under Article 105(3) of the Constitution. The contention that the absence of a statutory definition of contempt or a legislated procedure renders this Court powerless to entertain or punish acts of contempt is inconsistent with both the express language of the Constitution and the long-standing judicial understanding of contempt jurisdiction.

46. For the foregoing reasons, the preliminary objections raised by the Respondent are hereby overruled. The Court will now proceed to fix the matter for inquiry.

E.A.G.R. Amarasekara, J

**Judge of the Supreme Court**

Yasantha Kodagoda, PC, J

**Judge of the Supreme Court**

A.H.M.D. Nawaz, J

**Judge of the Supreme Court**