

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

Attorney-General,
Attorney-General's Department,
Colombo 12.
Complainant-Respondent-Appellant

SC/APPEAL/158/2025

CA/WRIT/335/2016

HC KANDY 81/2016

Vs.

Thennakoon Mudiyansele Janaka
Bandara Thennakoon,
Member of Parliament,
Matale Road, Dambulla.
Accused-Petitioner-Respondent.

Before: Mahinda Samayawardhena, J.
K Priyantha Fernando, J.
Sampath B. Abayakoon, J.

Counsel: Janaka Bandara, D.S.G., for the Complainant-Respondent-Appellant.

Navin Marapana, P.C., with Uchitha Wickremasinghe and Saumya Hettiarachchi for the Accused-Petitioner-Respondent.

Argued on: 21.10.2025

Written submissions:

by the Complainant-Respondent-Appellant on 16.10.2025.

by the Accused-Petitioner-Respondent on 17.10.2025.

Decided on: 31.03.2026

Samayawardhena, J.**Background**

Janaka Bandara Tennakoon, a former Minister and a Member of Parliament (hereinafter “the Respondent”), filed this writ application (CA/WRIT/335/2016) in the Court of Appeal against the Attorney-General, seeking to quash by way of *certiorari* the non-summary proceedings before the Magistrate’s Court of Matale dated 24.11.2015 and the decision to indict the Respondent in the High Court of Kandy in Case No. HC/81/2016. The Court of Appeal, by its Judgment dated 20.11.2020, allowed the application and quashed both by *certiorari*. This appeal, with leave obtained by the Attorney-General, is against the said Judgment.

This Court granted leave to appeal on the following question of law raised by the Attorney-General:

- (1) *Did the Court of Appeal err in law by holding that verbal consent of the counsel representing the Respondent to commence a non-summary inquiry in the absence of the Respondent is insufficient for the Magistrate to commence a non-summary inquiry under section 148(4)(a)(ii) of the Code of Criminal Procedure Act No. 15 of 1979?*

On behalf of the Respondent, the following two questions of law were raised:

- (2) *When granting relief to the Respondent, did the Court of Appeal rely on a multitude of grounds which are not covered by the scope of the single question of law raised by the Attorney General?*
- (3) *If the answer to the above question is in the affirmative, even if the question of law raised by the Attorney General is answered in his favour, should the relief granted to the Respondent by the Court of Appeal remain unchallenged?*

This case has a chequered history. However, for the purpose of this appeal, it is unnecessary to set out the entire factual background in detail.

The Presidential Election of 1999 was held on 21.12.1999. The incident connected to this appeal, in which one person, namely Samantha Thilak Kumara, died and another, namely Chaminda Sampath Kumara, sustained injuries, occurred on 14.12.1999 during the election campaign. The death and the injuries were caused by gunshot wounds. According to the Post-Mortem Report, the deceased was 20 years of age at the time of death, and according to the Medico-Legal Report, Chaminda Sampath Kumara was 19 years of age. Investigations were conducted separately by the Mahawela Police and the Criminal Investigation Department.

By letter dated 31.01.2006, the Attorney-General advised the Director, Criminal Investigation Department to initiate a non-summary inquiry against both the Respondent and another person, namely Herath Mudiyansele Rupasinghe *alias* Thatta Rupe. This was the first advice given by the Attorney-General. This was disregarded by the Criminal Investigation Department.

Thereafter, by letter dated 04.04.2008, the Attorney-General advised the Superintendent of Police, Matale to initiate a non-summary inquiry only against Rupasinghe. Strangely, this letter makes no reference to the earlier advice given to the Criminal Investigation Department. As seen from the Journal Entry dated 05.05.2009 in the Magistrate's Court case, appearing at page 731 of the Court of Appeal brief, the Attorney-General had sent an amended letter dated 25.04.2009.

නීතිපතිතුමාගේ අංක CM/2/29/2002 හා 2009/4/25 දිනැති ලිපියෙන් 2008/4/4 දින එවන ලද ලිපිය නිවැරදි කර එවා ඇත.
ලිපිය ගොනුකලා.

However, neither Counsel made any reference to this amended letter, and I am unable to find it in the Court of Appeal brief. The nature of the amendments made to the original letter remains unknown.

Acting on the second advice, the Police proceeded with the non-summary inquiry, which concluded in 2011, and an indictment was filed only against Rupasinghe in the High Court of Kandy in Case No. HC/164/13 on counts of murder of Samantha Thilak Kumara and attempted murder of Chaminda Sampath Kumara. To date, the trial has not commenced even against Rupasinghe.

Thereupon, by letter dated 29.09.2015, the Attorney-General inquired from the Director of the Criminal Investigation Department why his earlier advice dated 31.01.2006 had not been acted upon, called for an explanation for such non-compliance, and directed that a non-summary inquiry be initiated against the Respondent without further delay. This letter makes no reference to the letter dated 04.04.2008 or the amended letter dated 25.04.2009.

Then, a separate non-summary inquiry was conducted by the Magistrate of Matale on 24.11.2015, and a fresh indictment was issued against both Rupasinghe and the Respondent, as the two non-summary inquiries conducted in the same case related to the same incident. The Attorney-General informed the High Court that the earlier indictment would be withdrawn, since the second indictment named both accused.

It is this second non-summary inquiry and the resultant indictment that were quashed by the Court of Appeal.

The second non-summary inquiry

I shall first consider the quashing of the second non-summary proceedings.

Section 148(4) of the Code of Criminal Procedure Act No. 15 of 1979 and section 6(11) of the Code of Criminal Procedure (Special Provisions) Act

No. 2 of 2013 are similar in content and provide for the conduct of a non-summary inquiry in the absence of the accused. Section 6(11)(a) and (b) of the Code of Criminal Procedure (Special Provisions) Act No. 2 of 2013 provides as follows:

6(11)(a). Where the accused—

- (i) is absconding or has left the island; or*
- (ii) is unable to attend or remain in Court by reason of illness and has consented either to the commencement or continuance of the inquiry in his absence, such inquiry may commence or continue without prejudice to him; or*
- (iii) by reason of his conduct in Court is obstructing or impeding the progress of the inquiry,*

the Magistrate may, if satisfied of these facts, commence and proceed or continue with the inquiry in the absence of the accused.

(b) An Attorney-at-Law may appear for such absent accused.

The Respondent was undergoing treatment at Lanka Hospital, Colombo at the time the non-summary inquiry was held in the Magistrate's Court of Matale on 24.11.2015 and was therefore absent. However, he was represented by senior Attorney-at-Law Mr. N.M. Shahid, together with three other Attorneys-at-Law, and Mr. Shahid consented to proceed with the non-summary inquiry in the absence of the Respondent. This has been duly recorded in the Magistrate's Court proceedings:

මෙම අවස්ථාවේදී නීතිඥ සහිඩ් මහතා සැකකරු වෙනුවෙන් පවසා සිටින්නේ ඔහු විසින් අධිකරණය වෙත කරනු ලැබූ විරෝධතාවයට යටත්ව, සැකකරුගේ අයිතිවාසිකම්වලට අගති රහිතව සැකකරු වෙනුවෙන් ලඝු නොවන පරීක්ෂණය සඳහා 148(4) ඒ 2 යටතේ කැමැත්ත ලබා දෙන බවයි. ඒ අනුව ලඝු නොවන සාක්ෂි කැඳවීමට අපරාධ පරීක්ෂණ දෙපාර්තමේන්තුවට නියෝග කරමි.

තවද මෙම නඩුවේ නීතිඥ සහිඩ් මහතා සැකකරු වෙනුවෙන් පෙනී සිටීමට 148(4) ඒ 2 යටතේ ලබාදෙන කැමැත්ත මත හා එසේම මෙම නඩුවට මුල් අවස්ථාවේදී ඉදිරිපත් කර ඇති අධිකරණ වෛද්‍ය අපීත් තෙන්නකෝන් මහතාගේ වෛද්‍ය වාර්තාවෙහි කරුණුත්

අද දින අපීන් තෙන්නකෝන් මහතා ඉදිරිපත් කර ඇති වෛද්‍ය වාර්තාවේ කරුණුත් සලකා බලා සැකකරුට ප්‍රතිකාරගත යුතු රෝගයක් තිබෙන බවට සැහීමකට පත් වන අතර, සැකකරුට මෙම අධිකරණයට ගමන් කිරීමට හැකි බවට සහතික කර ඇති නමුත් මහාධිකරණයේ ඇප මත සිටිමින් නීතිඥ සහාය මත සැකකරුගේ කැමැත්ත ලබා දීම මත ලඝු නොවන පරීක්ෂණයක් පැවැත්වීමට නියෝග කරමි.

The Court of Appeal held that, for section 6(11)(a)(ii) to apply, the accused must first be unable to attend Court by reason of illness and thereafter consent to the commencement or continuance of the inquiry in his absence. Based on the material before the Magistrate, the Court stated that the Respondent was able to attend Court (although he was receiving treatment as an indoor patient in the hospital) and therefore the Magistrate should have issued process (warrant) to secure his attendance instead of acting on the verbal consent of the Attorney-at-Law. The Court of Appeal further held that such consent must be in writing and that a verbal expression by an Attorney-at-Law is insufficient. On that basis, it was concluded that the Magistrate lacked jurisdiction to commence the inquiry and that all subsequent proceedings were a nullity. The Court of Appeal concluded the Judgment as follows:

In the circumstances, there was an illegal committal and the resultant indictment dated 01.08.2016 becomes null and void. Accordingly, this Court proceeds to quash and set aside by certiorari the decision of the 1st respondent to forward an indictment against the Petitioner.

It is on this final conclusion that the learned Deputy Solicitor General formulated a single question of law before this Court in challenging the Judgment of the Court of Appeal.

When the Respondent did not attend Court on the basis that he was receiving treatment as an indoor patient in a hospital and consented through his Attorney-at-Law to proceed with the non-summary inquiry in his absence, the Magistrate acted well within his jurisdiction in

proceeding with the inquiry. Section 6(11)(b) expressly permits an Attorney-at-Law to appear for such absent accused, and the section does not require such consent to be in writing. I therefore hold that the Court of Appeal gravely misdirected itself on this matter.

The second indictment and unreliability of witnesses

I now turn to the questions of law formulated by learned President's Counsel for the Respondent. These questions proceed on the basis that the decision of the Court of Appeal rested not only on the above finding but also on several other factors.

It appears that the witnesses had given multiple statements in respect of the same incident to various agencies, including the Mahawela Police and the Criminal Investigation Department, as well as by way of affidavits to the Magistrate and in the course of giving evidence at the Magisterial inquest and the non-summary inquiries. Some of these statements are contradictory, but they have their own explanations for such inconsistencies.

The full brief of the Magistrate's Court proceedings was not before the Court of Appeal; only selected portions had been tendered, and even those were not properly arranged. It is that case record which was transmitted to this Court by the Court of Appeal after the grant of leave to appeal. It is therefore difficult to ascertain the correct sequence of events from the material placed before this Court.

The Court of Appeal proceeded on the basis that the witnesses who had implicated Rupasinghe in their first statements subsequently made a volt-face and went on to implicate the Respondent as well in their second statements made to the Criminal Investigation Department. The Court of Appeal then, *inter alia*, states:

The question is whether these selfsame witnesses could be put through a second non-summary inquiry. Their silence at the first

non-summary as to their second statement would make their version highly improbable when they ascended the witness box to depose to the correctness of their second statements.

The Court of Appeal further states:

The culpable omission to make use of the first available opportunity to refer to their second assertion to the effect that the petitioner was involved in the incident manifests the fact that it was their first statement that was being relied upon by the witnesses.

In reference to reliability and creditworthiness of the prosecution witnesses, the Court of Appeal states that “*it is as plain as the pikestaff that it is unsafe to pin this prosecution on these witnesses.*”

The Writ Court cannot adjudicate upon the probability or improbability of events, nor upon the reliability or creditworthiness of witnesses. Those are matters for the Trial Court. As Wade and Forsyth state in *Administrative Law*, 11th Edition, page 20:

The system of judicial review is radically different from the system of appeals. When hearing an appeal, the court is concerned with the merits of a decision: is it correct? When subjecting some administrative act or order to judicial review, the court is concerned with its legality: is it within the limits of the powers granted? On an appeal, the question is ‘right or wrong’. On review, the question is ‘lawful or unlawful’?

I shall refer to certain pages of the Court of Appeal brief (original case record) to demonstrate that the police investigation had not been satisfactory and that the non-summary proceedings had been unnecessarily complicated. I must place on record that I am not satisfied with the manner in which the Police and the Attorney-General assisted the Magistrate in conducting the inquest and the first non-summary inquiry.

Let me refer to a few pages of the Court of Appeal brief at random.

The proceedings of the Magistrate's Court dated 12.01.2000 are available at pages 416–424 of the Court of Appeal brief. On that day, an Attorney-at-Law looking after the interests of the deceased party stated, *inter alia*, to the Magistrate that the Mahawela Police had refused to record statements from certain witnesses and that affidavits of such witnesses had already been tendered to the Magistrate. However, I am unable to find such affidavits in the Court of Appeal brief.

A portion of the proceedings of the Magistrate's Court dated 09.02.2000 appears at pages 431–435 of the Court of Appeal brief. On that day as well, the same Attorney-at-Law reiterated the above position and requested the Magistrate to record the evidence of those witnesses, stating that they were in fear due to threats.

ගරු මැතිතුමනි, මෙම නඩුවේ සිද්ධිය සිදුවූ 99.12.14 වන දින එම ස්ථානයෙහි සිටි සාක්ෂිකරුවන් 4 දෙනෙකු තමන්ගේ ප්‍රකාශන පොලීසිය විසින් සටහන් කරගැනීම ප්‍රතික්ෂේප කල නිසා, මෙම ගරු අධිකරණයෙහි දින 6කින් අනතුරුව එනම් 99.12.20 වැනි දින ඉල්ලීමක් කර සිටියා, ඔවුන්ගේ සාක්ෂි සටහන් කර ගන්නා ලෙසට. එවකට සිටි මහේස්ත්‍රාත්තුමා විසින් ඔවුන්ගේ දිවුරුම් ප්‍රකාශ ගරු අධිකරණයට ලබා දීමට නියෝග කර, මහවෙල පොලීසියට නියෝග කලා සාක්ෂි සටහන් කිරීමට පියවර ගන්නා ලෙසට. ඒ අනුව එම සාක්ෂිකරුවන් 4 දෙනාගේ දිවුරුම් ප්‍රකාශ දැනට මෙම අධිකරණයට ඉදිරිපත් කර ඇති අතර, ඔවුන් නිරන්තරයෙන්ම නිර්නාමික තර්ජන වලට භාජනය වන බැවින්, මා ගෞරවයෙන් අයදා සිටින්නේ අද දින අධිකරණයට පැමිණ සිටින සාක්ෂිකරුවන් 4 දෙනාගෙන් සාක්ෂි වාර්තා කරන ලෙසයි.

I now draw my attention to the Journal Entry dated 19.03.2004 at page 712 of the Court of Appeal brief. According to that Journal Entry, there had been 12 suspects at that stage, and the 1st to 11th suspects were discharged on that date. Rupasinghe was the 12th suspect.

The proceedings of that day appear at pages 442–444 of the Court of Appeal brief. According to those proceedings, the Criminal Investigation Department had filed a further report, and the Magistrate has placed on

record his dissatisfaction with the manner in which the Officer-in-Charge of the Mahawela Police Station had conducted the inquest and the non-summary inquiry. On that basis, the Magistrate had decided to hold a fresh inquest and a fresh non-summary inquiry.

අපරාධ පරීක්ෂණ දෙපාර්තමේන්තුව දිවුරුම් ප්‍රකාශයක් මගින් තවත් සාක්ෂිකරුවන් සිටින බව අධිකරණයට දන්වා තිබේ. ඒ අනුව එම අයට මේ අනුව මෙම නඩුවේ සාක්ෂිකරුවන් විය හැකිය. නීතිපති උපදෙස් ලබා ගෙන එම කටයුතු කරන ලෙසට නැවත මහවෙල පොලීසියේ ස්ථානාධිපතිට නියෝග කරමි. දැනට විධිමත් සහ සම්පූර්ණ නොවන ආකාරයට කටයුතු කර ඇති මෙම දීර්ඝ ලඝු නොවන නඩු විභාගයේ සාක්ෂි අධිකරණය සෑහීමට පත් නොවන නිසා ඒ සම්බන්ධයෙන් මහේස්ත්‍රාත් පරීක්ෂණය පැවැත්වීමෙන් අනතුරුව නැවත ලඝු නොවන නඩු විභාගයක් පැවැත්විය යුතු බවට අධිකරණය තවදුරටත් තීරණය කරයි.

I now draw my attention to the proceedings of the Magistrate’s Court dated 06.08.2004, which appear at pages 457–460 of the Court of Appeal brief. The proceedings are titled “මරණ පරීක්ෂණ සාක්ෂි”. The Magisterial inquest precedes the non-summary inquiry. On that day, Chaminda Sampath Kumara, who had sustained gunshot injuries, gave evidence before the Magistrate and clearly implicated the Respondent in the incident. His evidence reads as follows:

මගේ නම වමින්ද සම්පත් කුමාර. මම අද දින පැමිණියේ සමන්ත නිලක් කුමාර යන අයගේ මරණය සම්බන්ධයෙන් සාක්ෂි දීමට. ඒ දිනය මතකයි. ඒ දිනය 1999.12.14 වෙනි දින. සිද්දිය වුනේ දිඹුල්ල මුව නගරය අසලදී. මේ මරණය සිදුවූ අවස්ථාවේ මම ඒ ස්ථානයේ සිටියා. තව කට්ටියක් සිටියා. ඒ අයගේ නම් මතකයි. සිද්ධිය වෙන වෙලාවේ 04 දෙනයි සිටියේ. 08 දෙනෙක් විතර ජීප් එකේ සිටියා. එදා 1999.12.14 වන දින සිද්ධිය වූ අවස්ථාවේ අපේ වාහනය පිටිපස්සේ නවත්තලා අපේ අනිත් අය එන තුරු පාර අයිනේ නතර වී සිටියා. මා සමඟ ගමේ දෙන්නෙක් සිටියා. එක්කෙනෙක් රත්තොට ඩ්‍රයිවර් කෙනෙක්. එක්කෙනෙක් මිය ගිය අය. අනිත් කෙනා රණසිංහ. අපි පාරේ ඉන්නවිට වාහනවලින් කැඟහගෙන වාහන ජේලියක් ආවා. ඒ වාහන ජේලිය ආවේ දඹුල්ල පැත්තේ සිට මාතලේ පැත්තට. මේ වාහන ජේලිය යම්කිසි කාර්යයක යෙදී සිටි වාහන ජේලියක්. ජන්ද ප්‍රචාරක කටයුතුවල යෙදී සිටි වාහන ජේලියක්. මේ දිනවල මහමැතිවරණයක් තිබුණා. හරියටම මතක නැහැ. අපි හිටියට පස්සේ වාහන ජේලිය අපේ ජීප් එක දැකලා නැවැත්තුවා. ඊට පස්සේ වාහන ජේලියෙන් ආව 3වෙනි වාහනය අපේ ජීප් එක ගාව

නැවැත්කුවා. ඒක සුදු පාට කාර් එකක්. එකෙන් සුදු නැණලේ ඇඳගත්ත ජනක බණ්ඩාර ඇමතිතුමා වාහනයෙන් බැස්සා. ඊට පස්සේ අපි දිහා බලලා තට්ට රූපෙ, වෙඩි තියපියව් ගහපියව් කියල කිව්වා. ඊට පස්සේ ඒ වාහනවල ආපු කෙනෙක් මම ළඟ සිටිය සමන්ත කුමාරට වෙඩි තිබ්බා. කොට මිටි එක් කොට තුවක්කුවකින් වෙඩි තිබ්බා. ඒ වෙලාවේ සමන්ත තිලක් කුමාර මාතලේ පැත්තට දුවමි සිටියා. සමන් තිලක් කුමාර සිටියේ ජීප් එක ඉස්සරහින්. මම හිටියේ පිටිපස්සෙන්. වෙඩි ති පස්සේ සමන්ත තිලක් කුමාර බිම වැටුනා. මට වෙඩි තියයි කියල බය හිතුනා. මම සමන්ත වැටුණු දිහාට දුවන්නට ගියාට පස්සේ මටත් වෙඩි තිබ්බා. මටත් වෙඩි වැදුනා. මගේ දකුණු තට්ටමට වෙඩි වැදුනා. ඒ වෙඩි වැදීමෙන් පස්සේ මම බිම වැටුණා. ඊට පස්සේ අපි දෙන්නාට වෙඩි තිබ්බට පස්සේ වාහනවල අනිත් අය අපේ ජීප් එකට පහර දුන්නා. ඊටපස්සේ ඒ අය ගියා. ඊට පස්සේ අපේ අනිත් වාහනේ ආපු ගුන්තැපාන මිස් එහෙම ඇවිල් වාහනයක් නතර කරලා, ලොරියක් නතර කරලා, මමයි සමන්තවයි රෝහල් ගත කළා. පළමුවෙන්ම මාතලේ රෝහලට ඇතුලත් කළා. මාතලේ රෝහලෙන් අපිට ප්‍රතිකාර කලේ නැහැ. ඉන් පස්සේ නුවර රෝහලට අරන් ගියා. නුවර ඉස්පිරිතාලේදී ඉස්සෙල්ලම සමන්තට ප්‍රතිකාර කළා. ඒ රෝහලේදී සමන්ත තිලක් කුමාර යන අයට වෙඩි වැදිලා මිය ගියා කියලා දැන ගත්තා. ඔහු මිය ගියේ වෙඩි වැදීමෙන් කියලා මම දැනගත්තා. දිඹුල්ගමුවේදී සිදුවුණු වෙඩි තැබීම නිසා මිය ගියා කියල දැනගත්තා. මහවෙල පොලීසියට ප්‍රකාශයක් ලබා දුන්නා. ගරු අධිකරණයට දිවුරුම් පෙත්සමක් ඉදිරිපත් කළා. ගරු අධිකරණයට දිවුරුම් පෙත්සමක් මා විසින් ඉදිරිපත් කළා.

As seen from the Medico-Legal Report relating to this witness, he had mentioned the name of the Respondent to the doctor on 20.12.1999 while receiving treatment in hospital.

At the Magisterial inquest, several other witnesses may have given evidence implicating the Respondent, including those who had tendered affidavits to the Magistrate. This witness, who had sustained gunshot injuries but survived, appears to have been the last witness at the Magisterial inquest. At the conclusion of the inquest, the Magistrate pronounced the following order on the same date:

නියෝගය:-

අක්මිමනගේ දොන් සමන්ත තිලක් කුමාර යන අයගේ මරණය පසුවට සහ බඩ පෙදෙසට වැදුණු වෙඩි වැදීම් නිසා ඇති වූ තුවාල හේතුවෙන් සිදු වූ බවට වෛද්‍ය වාර්තාවෙන්

සනාථ වේ. ඔහුට වෙඩි තැබූ බවටද සඳහන් කර ඇත. මේ අනුව ඔහුගේ මරණය සම්බන්දයෙන් අපරාධයක් සිදු වී ඇති බවට සාධාරණ සැකයක් ඇතිවන බැවින් ඒ සම්බන්ධයෙන් සැකකරුවන්ට එරෙහිව නඩු පැවරීමට කටයුතු කල යුතුව ඇත.

සියලුම සාක්ෂි සටහන්වල පිටපත් නීතිපති තුමා වෙත යොමු කිරීම සඳහා ගාස්තු නොමැතිව නිකුත් කරන්න.

දැනට සිටින සැකකරුට නැවත දැන්වීමක් ලදහොත් අධිකරණයේ පෙනී සිටින ලෙසට අවවාද කරමි. දැනට සිටින ඇප මතම සිටින ලෙසද සැකකරුට දන්වමි.

It may have been on this basis that the Attorney-General recommended, by letter dated 31.01.2006, that a non-summary inquiry be initiated against both the Respondent and Rupasinghe. It is a matter of serious concern that the Police failed to act upon the advice of the Attorney-General.

Section 393(2) and (3) of the Code of Criminal Procedure Act provides:

(2) The Attorney-General shall give advice, whether on application or on his own initiative to State Departments, public officers, officers of the police and officers in corporations in any criminal matter of importance or difficulty.

(3) The Attorney-General shall be entitled to summon any officer of the State or of a corporation or of the police to attend his office with any books or documents and there interview him for the purpose of—

(a) initiating or prosecuting any criminal proceeding, or

(b) giving advice in any criminal matter of importance or difficulty.

The officer concerned shall comply with such summons and attend at the office of the Attorney-General with such books and documents as he may have been summoned to bring.

The Attorney-General must be independent

It is also a matter of serious concern that the Attorney-General, after a lapse of two years and two months from the first advice and without any reference to it, gave fresh advice to initiate a non-summary inquiry only against Rupasinghe. This, in my view, is wholly unacceptable. On the facts of this case, I am unable to accept that this occurred due to any confusion, even if more than one file had been opened in the Attorney-General's Department in respect of this incident.

As Samarakoon C.J. stated in *Land Reform Commission v. Grand Central Ltd.* [1981] 1 Sri LR 250 at 261:

The Attorney-General of this Country is the leader of the Bar and the highest Legal Officer of the State. As Attorney-General he has a duty to Court, to the State and to the subject to be wholly detached, wholly independent and to act impartially with the sole object of establishing the truth. It is for that reason that all Courts in this Island request the appearance of the Attorney General as amicus curiae when the Court requires assistance, which assistance has in the past been readily given.

As I emphasised in *Attorney-General v. Sandresh Ravindra Karunanayake and Others* (SC/APPEAL/104/2024, SC Minutes of 03.06.2025), the Attorney-General performs a vital role in the administration of justice. As the principal legal officer of the State, the Attorney-General occupies a unique position, entrusted, *inter alia*, with the responsibility of ensuring that the criminal justice process is conducted fairly, impartially, and in strict conformity with the law. In discharging that responsibility, the Attorney-General exercises what is commonly termed “prosecutorial discretion”, and Courts ought not to interfere with that discretion lightly.

However, in the exercise of such discretion, the Attorney-General must act independently and be wholly free from extraneous influence or

political pressure. Public confidence constitutes the bedrock upon which the legitimacy of the office of the Attorney-General rests. The same holds true for the judiciary. Once such confidence is eroded, the authority of these institutions is inevitably diminished, and their decisions risk losing public acceptance. If this occurs, anarchy is the inevitable consequence. A loss of public confidence in the administration of justice cannot be restored by coercive means.

As seen from the Journal Entry dated 19.07.2011, which appears at pages 749–750 of the Court of Appeal brief, upon the conclusion of the non-summary inquiry, the Magistrate committed Rupasinghe for trial before the High Court.

It is against this backdrop that the Attorney-General, by letter dated 29.09.2015, directed the Criminal Investigation Department to take steps to initiate a non-summary inquiry against the Respondent in the same case, as earlier advised by letter dated 31.01.2006.

Upon the conclusion of that non-summary inquiry in the same case, the Magistrate committed the Respondent as well for trial before the High Court.

The Attorney-General thereafter filed a second indictment naming both Rupasinghe and the Respondent as co-accused and informed the High Court Judge that the indictment previously filed only against Rupasinghe would be withdrawn. The decision in *Piyadasa v. The Queen* (1962) 66 NLR 342, relied upon by the Court of Appeal, is inapplicable to the facts of this case.

Conclusion

On the facts and circumstances of this case, the Court of Appeal erred in quashing, by way of *certiorari*, the second non-summary inquiry and the resultant indictment.

I answer the 1st and 2nd questions of law on which leave to appeal was granted in the affirmative, and the 3rd question of law in the negative.

Accordingly, the Judgment of the Court of Appeal is set aside, and the appeal is allowed with costs.

Judge of the Supreme Court

K Priyantha Fernando, J.

I agree.

Judge of the Supreme Court

Sampath B. Abayakoon, J.

I agree.

Judge of the Supreme Court