

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

Rajawatte Wappa Thero,
Jayashekhararamaya,
Parliament Road,
Rajagiriya.
Plaintiff-Petitioner

SC/CONTEMPT/5/2024

Vs.

Thallale Dhamadeva Thero,
Sri Jayashekhararamaya,
Kuppiyawatta,
Colombo 10.
Defendant-Respondent

Before: Hon. Justice Mahinda Samayawardhena
 Hon. Justice Sampath K.B. Wijeratne
 Hon. Justice K.M.G.H. Kulatunga

Counsel: Ranjan Gooneratne with Supun Jayasinghe for the
 Plaintiff-Petitioner.

Razik Zarook, P.C., with Prabodhinee Nissanka for the
Defendant-Respondent.

Argued on: 26.03.2026

Written submissions:

by the Plaintiff-Petitioner on 28.05.2026 and 23.04.2026

Decided on: 07.09.2026

Samayawardhena, J.

The Plaintiff-Petitioner instituted these contempt proceedings before this Court against the Defendant-Respondent in District Court Case No. DSP/127/2023, alleging that the Respondent had violated the interim injunction issued by the District Court against him.

The violation of an interim injunction constitutes a classic instance of civil contempt. As C.J. Miller explains in *Contempt of Court* (2nd edn, 1989) at pages 409-410:

Just as a contempt may be committed by failing to comply with the terms of an order requiring an act to be done, so also may it be committed where a person disobeys a judgment or order requiring him to desist or abstain from doing an act.

At the very outset, learned President's Counsel appearing for the Respondent raised a preliminary objection that this Court lacks original jurisdiction to punish for contempt committed against other Courts. It is therefore necessary to determine that objection before considering the merits of the application.

According to the Petition, the Petitioner invokes the jurisdiction of this Court under Article 105(3) of the Constitution. In his written submissions dated 22.04.2026, learned counsel for the Petitioner further contends that, by virtue of Article 105(3) of the Constitution read with section 6(1) of the Contempt of a Court, Tribunal or Institution Act, No. 8 of 2024 (the Contempt Act of 2024), only the Supreme Court has jurisdiction to punish for contempt committed against any other court where such contempt is committed outside the presence or hearing of that court.

The correctness of the said competing contentions falls to be determined by an examination of the relevant constitutional and statutory provisions.

The jurisdiction of Courts of First Instance, including the High Courts, to punish for contempt of court was considered by me in *M.B.A. Systems (Pvt) Ltd. v. Virginia Perera* (SC/CHC/APPEAL/18/2018, SC Minutes of 23.07.2025). As the relevant legal principles have already been discussed in that decision, I do not propose to repeat that discussion in this judgment.

Article 105(3) of the Constitution provides:

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.

It is well established that contempt of court may be committed either in the presence or hearing of the Court (*in facie curiae*) or outside its presence or hearing (*ex facie curiae*). Article 105(3) expressly recognises both forms of contempt.

The first limb of Article 105(3) expressly confers upon both the Supreme Court and the Court of Appeal jurisdiction to punish for contempt of themselves, irrespective of whether the contempt is committed *in facie curiae* or *ex facie curiae*. In view of this express constitutional conferment of jurisdiction, it is unnecessary to consider whether the Supreme Court

and the Court of Appeal, as superior courts of record, possess any inherent jurisdiction to punish for contempt of their own authority.

The second limb of Article 105(3), however, is materially different. It expressly provides that “*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*”. Article 105(1)(c), referred to therein, encompasses “*the High Court of the Republic of Sri Lanka and such other Courts of First Instance, tribunals or such institutions as Parliament may from time to time ordain and establish.*”

Significantly, the second limb confers this additional power upon the Court of Appeal alone. It does not provide that the power of both the Supreme Court and the Court of Appeal shall include the power to punish for contempt of any other court, tribunal or institution referred to in Article 105(1)(c), whether committed in the presence of such court or elsewhere. Had the framers intended to confer that jurisdiction upon both Courts, they could readily have employed language to that effect.

Applying the well-established canon of statutory interpretation, *expressio unius est exclusio alterius*—the express mention of one thing implies the exclusion of another—the express conferment of this jurisdiction upon the Court of Appeal indicates that no corresponding jurisdiction was intended to be conferred upon the Supreme Court in the absence of clear constitutional language to that effect.

When Article 105(3) expressly delineates, within the same constitutional provision, the contempt jurisdictions of the Supreme Court and the Court of Appeal, the omission of any corresponding conferment of jurisdiction upon the Supreme Court in the second limb cannot be regarded as accidental. Nor is there any basis for implying such inherent contempt jurisdiction merely because the Supreme Court is the highest and final superior court of record, particularly when Article 105(3)

expressly recognises both the Supreme Court and the Court of Appeal as superior courts of record.

It is also significant that this second limb of Article 105(3), conferring upon the Court of Appeal jurisdiction to punish for contempt of other courts, tribunals and institutions, has no counterpart in the Constitution of India. It is therefore a deliberate constitutional innovation introduced by the framers of the Sri Lankan Constitution and shall be given its full effect according to its plain language.

This conclusion does not mean that the Supreme Court is devoid of jurisdiction in respect of contempts committed against Courts of First Instance, tribunals or institutions. The Supreme Court undoubtedly possesses appellate jurisdiction in relation to such matters where an appeal lies from a conviction or order of the Court of Appeal. What it lacks is original jurisdiction to entertain and punish such contempts in the first instance.

The consistent practice has been for proceedings relating to contempt committed against Courts of First Instance, tribunals and institutions to be instituted in the Court of Appeal under the second limb of Article 105(3) of the Constitution. I am unaware of any instance in which such proceedings have been instituted directly in the Supreme Court. Although such practice cannot determine the meaning of the Constitution, it is nevertheless consistent with the constitutional allocation of jurisdiction discussed above.

The proviso to Article 105(3) preserves the contempt jurisdiction vested by law in Courts of First Instance, tribunals and institutions. As Chief Justice Samarakoon observed in *Merryl Perera v. Abeyesuriya* [1983] 2 Sri LR 293 at 296, the proviso “*saves similar jurisdiction of other courts. In the result the Court of Appeal and the District Court had parallel jurisdiction in respect of the offence of contempt [violation of an interim injunction] as alleged in this case.*”

The Contempt Act of 2024 was enacted to provide for the uniform application of the law relating to contempt of a court, tribunal or institution and to prescribe the procedure governing the exercise of the contempt jurisdiction.

The Contempt Act of 2024 does not substitute the contempt jurisdiction conferred upon the Supreme Court and the Court of Appeal by Article 105(3) of the Constitution. Rather, it complements the constitutional framework by regulating the manner in which that jurisdiction is to be exercised.

Section 6 of the Contempt Act of 2024 confers upon the Supreme Court and the Court of Appeal jurisdiction to punish for contempt committed against themselves. It provides:

6(1) The Supreme Court and the Court of Appeal shall have the power to punish for contempt of itself, whether committed in its presence or hearing or elsewhere.

(2) Where the Supreme Court or the Court of Appeal, as the case may be, in the exercise of its jurisdiction as referred to in subsection (1), takes cognizance—

(a) of contempt of court committed in its presence or hearing, the Supreme Court or the Court of Appeal shall hear and determine such matter in accordance with the procedure set out in section 8; and

(b) of contempt of court committed otherwise than in its presence or hearing, the Supreme Court or the Court of Appeal shall hear and determine such matter in accordance with the procedure set out in section 9.

(3) The Court of Appeal shall have the power to punish for contempt of a Court of First Instance or tribunal or institution, whether committed in its presence or hearing or elsewhere:

Provided however, the provisions of this section shall not prejudice or affect the rights of a Court of First Instance to punish for contempt of itself.

(4) Where the Court of Appeal, in the exercise of its jurisdiction as referred to in subsection (3), takes cognizance of contempt of a Court of First Instance or tribunal or institution referred to in that subsection, the Court of Appeal shall hear and determine such matter in accordance with the procedure set out in section 10.

Section 8 prescribes the procedure to be followed by the Supreme Court or the Court of Appeal in the exercise of its jurisdiction in respect of contempt committed against it in its presence or hearing (*in facie curiae*).

8(1) Where it is alleged, or appears to the Supreme Court or the Court of Appeal, as the case may be, that a person has committed contempt of court in its presence or hearing, the Supreme Court or the Court of Appeal may—

(a) cause such person to be detained in custody;

(b) at any time before the rising of the Supreme Court or the Court of Appeal, on the day on which the contempt of court is alleged to have been committed or as early as possible thereafter, cause a rule to be issued on him signed by the Registrar of the Court, giving particulars in writing of the contempt of court with which he is charged; and

(c) fix a date for the hearing of the charge.

(2) On the date fixed for the hearing of the charge, the person charged with contempt of court shall be afforded an opportunity to make his defence to the charge.

(3) The Supreme Court or the Court of Appeal, as the case may be, shall, after affording the person charged with contempt of court an opportunity to furnish an affidavit in defence and hearing the person

charged with contempt of court and taking such evidence as may be necessary or as may be offered by such person, proceed either forthwith or after such adjournment as the Supreme Court or the Court of Appeal may think fit, to determine the charge and to make order for the punishment or discharge of the person charged.

(4) Notwithstanding anything contained in the preceding provisions of this section, where a person charged with contempt of court under subsection (1) applies, whether orally or in writing, to have the charge against him tried by some Judge or Judges other than the Judge or Judges in whose presence or hearing the contempt of court is alleged to have been committed, the Court shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice or the President of the Court of Appeal as the case may be, for such directions as the Chief Justice or the President of the Court of Appeal, as the case may be, may think fit to issue with respect to the trial of the charge.

(5) Notwithstanding anything contained in any other written law, at the trial of a person charged with contempt of court under subsection (1) which is held, in pursuance of a direction issued under subsection (4), by a Judge or Judges other than the Judge or Judges in whose presence or hearing the contempt of court is alleged to have been committed, the statement of facts placed before the Chief Justice or the President of the Court of Appeal, as the case may be, under subsection (4) by the Judge or Judges in whose presence or hearing the contempt of court is alleged to have been committed shall be received in evidence, but no such Judge or Judges shall be summoned or examined as a witness.

(6) The provisions of subsections (2) and (3) shall, mutatis mutandis but subject to the provisions of subsection (5), apply to the hearing and determination of the charge by the Judge or Judges other than the Judge or Judges in whose presence or hearing the contempt of

court is alleged to have been committed, in pursuance of a direction issued under subsection (4).

(7) The Supreme Court or the Court of Appeal, as the case may be, may, pending the determination of a charge under this section, direct that such person be released on bail subject to such conditions as such Court may deem fit to impose.

Section 9 prescribes the procedure to be followed by the Supreme Court or the Court of Appeal in the exercise of its jurisdiction in respect of contempt committed against it otherwise than in its presence or hearing (*ex facie curiae*).

9(1) The Supreme Court or the Court of Appeal, as the case may be, may take cognizance of contempt of court committed against it, or in disrespect of its authority, other than contempt of court committed in its presence or hearing, on—

(a) its own motion;

(b) a motion filed by the Attorney-General, together with any document or thing in support of the motion; or

(c) a motion filed by any other person, together with an affidavit and any document or thing in support of the motion.

(2) Every motion or affidavit filed under subsection (1) shall set out the particulars of the contempt of court alleged to have been committed by the person alleged to have committed the contempt of court.

(3) The Supreme Court or the Court of Appeal, as the case may be, shall, after perusing the motion, and the affidavit, document or thing filed under subsection (1) and satisfying itself that a prima facie case of contempt of court has been established against the person alleged to have committed such contempt—

(a) cause a rule to be issued on such person signed by the Registrar of the Court, giving particulars in writing of the contempt of court with which he is charged;

(b) direct that such rule, together with a copy of the document filed under subsection (1), be served personally on such person; and

(c) fix a date for the hearing of the charge.

(4) On the date fixed for the hearing of the charge, the Attorney-General may lead the evidence of such witness relevant to the document filed under subsection (1), if necessary, subject to the right of cross-examination of the person charged with contempt of court.

(5) On the date fixed for the hearing of the charge, the person charged with contempt of court shall be afforded an opportunity to make his defence to the charge and shall be entitled to file an affidavit or to adduce evidence in his defence.

(6) The Supreme Court or the Court of Appeal, as the case may be, shall hear and determine the charge after considering the affidavit filed by the person charged with contempt of court or after hearing the evidence adduced by such person, as the case may be.

(7) Pending the determination of a charge under this section, the Supreme Court or the Court of Appeal, as the case may be, may direct that—

(a) the person charged with contempt of court under this section be detained in such custody as it may specify; or

(b) such person be released on bail subject to such conditions as it may deem fit to impose.

Section 10, on the other hand, is of particular significance. It prescribes the procedure to be followed by the Court of Appeal when exercising its

jurisdiction in respect of contempt committed against, or in disrespect of the authority of, a court of first instance, tribunal or institution.

10(1) The Court of Appeal may take cognizance of contempt committed against, or in disrespect of the authority of, a Court of First Instance or tribunal or an institution on—

(a) a reference made to it by such Court of First Instance, tribunal or institution;

(b) a motion filed by the Attorney-General, together with any document or thing in support of the motion; or

(c) a motion filed by any other person, together with an affidavit and any document or thing in support of the motion.

(2) Every reference made, or motion or affidavit filed under subsection (1) shall set out the particulars of the contempt of the court, tribunal or institution, as the case may be, alleged to have been committed by the person alleged to have committed such contempt.

(3) The Court of Appeal shall, after perusing the reference made or the motion or affidavit filed under subsection (1), as the case may be, and satisfying itself that a prima facie case of contempt of a court, tribunal or institution, as the case may be, has been established against the person alleged to have committed such contempt—

(a) cause a rule to be issued on such person signed by the Registrar of the Court, giving particulars in writing of the contempt of court, tribunal or institution, with which he is charged;

(b) direct that such rule, together with a copy of the reference or motion and document made or filed under subsection (1), be served personally on such person; and

(c) fix a date for the hearing of the charge.

(4) On the date fixed for the hearing of the charge, the Attorney-General may lead the evidence of such witness relevant to the document filed under subsection (1), if necessary, subject to the right of cross-examination of the person charged with contempt.

(5) The Court of Appeal shall hear and determine the charge after considering the affidavit filed by the person charged with such contempt or after hearing the evidence adduced by such person, as the case may be.

(6) Pending the determination of a charge under this section, the Court of Appeal may direct that—

(a) the person charged with contempt of a court, tribunal or institution under this section be detained in such custody as it may specify; or

(b) such person be released on bail subject to such conditions as it may deem fit to impose.

There is no corresponding provision prescribing a procedure for the exercise of such jurisdiction by the Supreme Court, for the reason that the Supreme Court has not been conferred with original jurisdiction to punish for contempt committed against other Courts.

Finally, section 16 defines the expressions “Court of First Instance”, “tribunal” and “institution”, thereby identifying the courts and adjudicatory bodies that fall within the scope of the jurisdiction conferred by the Act.

“Court of First Instance” means, the High Court of the Republic of Sri Lanka, the High Court for a Province established by Article 154P of the Constitution, the District Court, the Family Court, the Small Claims Court, the Magistrate’s Court or the Primary Court;

“institution” means, an institution created and established by written law for the administration of justice and for the adjudication and settlement of industrial and other disputes;

“tribunal” means, a tribunal created and established by written law for the administration of justice and for the adjudication and settlement of industrial and other disputes.

In terms of Article 118 of the Constitution, the Supreme Court is the highest and final superior court of record and, *inter alia*, exercises the final appellate jurisdiction of the Republic.

Section 12 of the Contempt Act of 2024 confers appellate jurisdiction upon the Supreme Court in respect of orders or decisions made by the Court of Appeal in the exercise of its contempt jurisdiction, whether in relation to contempt of itself or contempt of any other Court of First Instance, tribunal or institution.

Section 12 of the Contempt Act of 2024 provides:

12(1) An appeal may lie from any order or decision of the Court of Appeal in the exercise of its jurisdiction to punish for contempt of itself and a Court of First Instance, tribunal or institution, as the case may be, to the Supreme Court.

(2) The Supreme Court may, pending any appeal, order that–

(a) the execution of the punishment, or the order or decision appealed against be suspended; or

(b) the appellant, if he is in confinement, be released on bail.

(3) Where any person who is aggrieved by any order or decision of a Court of First Instance, against which an appeal may be filed, indicates to such Court of First Instance that he intends to prefer an appeal against such order or decision to the Court of Appeal, such

Court of First Instance shall, until the expiry of the time limit for the filing of the appeal, order–

(a) the execution of the punishment, or the order or decision appealed against be suspended; or

(b) the appellant, if he is in confinement, be released on bail.

This appellate structure is entirely consistent with the constitutional position of the Supreme Court as the final appellate court of the Republic. Had original jurisdiction to punish for contempt committed against Courts of First Instance, tribunals and institutions been conferred directly upon the Supreme Court, its determination would ordinarily have been final and not subject to appellate review. The constitutional and statutory scheme, by conferring original jurisdiction upon the Court of Appeal and providing a right of appeal to the Supreme Court, ensures that such matters are determined within a coherent appellate hierarchy.

Although no counsel drew the attention of this Court to it, the Supreme Court of India in *Delhi Judicial Service Association v. State of Gujarat* (1991 AIR 2176) has, *inter alia*, taken the view that the contempt jurisdiction of the Supreme Court cannot be circumscribed and that, as an incident of its inherent powers, it possesses jurisdiction to punish for contempt committed against itself or any other court, whether *in facie curiae* or *ex facie curiae*. Given the scheme of our Constitution, the Contempt Act of 2024, and the strong judicial precedents of this Court, such an expansive view cannot be accommodated within our constitutional framework.

As Justice Amarasinghe held in the landmark five-Judge Bench decision of this Court in *Jeyaraj Fernandopulle v. Premachandra De Silva* [1996] 1 Sri LR 70 at 89, “*The Supreme Court is a creature of statute and its powers are statutory.*” Neither Article 105(3) of the Constitution nor the Contempt Act of 2024 expressly confers upon the Supreme Court original

jurisdiction to punish for contempt committed against a Court of First Instance or tribunal or an institution. That jurisdiction has expressly been conferred upon the Court of Appeal.

In the context of the Respondent's contention that only the Supreme Court has jurisdiction to punish for contempt committed *ex facie curiae* against a Court of First Instance, tribunal or institution, I should also refer to section 55 of the Judicature Act, which deals with the contempt jurisdiction of the District Court, the Family Court, the Small Claims Court, the Magistrate's Court and the Primary Court. It provides as follows:

55(1) Every District Court, Family Court, Small Claims Court, Magistrate's Court and Primary Court shall, for the purpose of maintaining its proper authority and efficiency, have a special jurisdiction to take cognizance of, and to punish with the penalties in that behalf as hereinafter provided, every offence of contempt of court committed in the presence of the court itself and all offences which are committed in the course of any act or proceeding in the said court respectively, and which are declared by any law for the time being in force to be punishable as contempt of court.

(2) The following sentences of fines or imprisonment as the case may be, may be imposed on conviction for contempt by the following courts respectively, namely—

(a) by a District Court and Family Court a fine not exceeding two thousand five hundred rupees or imprisonment, either simple or rigorous, for a period not exceeding two years;

(b) by a Small Claims Court and Magistrate's Court a fine not exceeding one thousand five hundred rupees or imprisonment either simple or rigorous, for a period not exceeding eighteen months; and

(c) by a Primary Court a fine not exceeding five hundred rupees or imprisonment, either simple or rigorous, for a period not exceeding three months.

It bears emphasis that, in terms of section 55(1) of the Judicature Act, a District Court is vested with jurisdiction in respect of:

- (a) every offence of contempt of court committed in the presence of the court itself; and
- (b) all offences which are committed in the course of any act or proceeding in the said court respectively, and which are declared by any law for the time being in force to be punishable as contempt of court.

In other words, under section 55 of the Judicature Act, there is no dispute that the District Court, the Family Court, the Small Claims Court, the Magistrate's Court and the Primary Court have jurisdiction to punish for contempt committed *in facie curiae*. However, where the alleged contempt is committed *ex facie curiae*, those courts may assume jurisdiction only if the act in question is one which is declared by any law for the time being in force to be punishable as contempt of court.

Section 663 of the Civil Procedure Code provides:

An injunction or an enjoining order granted by court on any such application may, in case of disobedience, be enforced by the punishment of the offender as for a contempt of court.

Accordingly, even prior to the enactment of the Contempt Act of 2024, a District Court had jurisdiction, by virtue of section 55(1) of the Judicature Act read with section 663 of the Civil Procedure Code, to punish a party who disobeyed an interim injunction, notwithstanding that such disobedience occurred *ex facie curiae*.

However, as I explained in *M.B.A. Systems (Pvt) Ltd v. Virginia Perera* (supra), with the enactment of the Contempt Act of 2024, when sections

7, 11 and 15 of the Contempt Act are read together with the other provisions of the Act as a cohesive whole, it becomes clear that every Court of First Instance, namely, the High Court, the District Court, the Family Court, the Small Claims Court, the Magistrate's Court and the Primary Court, is vested with jurisdiction to punish for contempt of court, whether such contempt is committed *in facie curiae* or *ex facie curiae*, following the procedure stipulated in the Act.

Section 7 of the Contempt Act of 2024, which sets out the contempt jurisdiction of the Courts of First Instance, provides as follows:

7(1) Notwithstanding the provisions of any other written law, the Courts of First Instance shall have the power to punish for contempt of court committed in its presence or hearing or in the course of proceedings in such Courts of First Instance, or any act which is specified in this Act or in any other written law for the time being in force as being punishable as contempt of court, subject to the provisions of this Act.

(2) Where any Court of First Instance takes cognizance of contempt of court referred to in subsection (1), such Court of First Instance shall hear and determine such matter in accordance with the procedure set out in section 11.

According to section 7(1) of the Contempt Act of 2024, notwithstanding the provisions of any other written law, but subject to the provisions of the Act, the High Court, the District Court, the Family Court, the Small Claims Court, the Magistrate's Court, and the Primary Court are vested with jurisdiction to punish for contempt of court committed:

- (a) in its presence; or
- (b) in its hearing; or
- (c) in the course of proceedings in such courts of first instance; or
- (d) by any act which is specified in this Act as being punishable as contempt of court; or

(e) by any act which is specified in any other written law for the time being in force as being punishable as contempt of court.

It therefore follows that a Court of First Instance has jurisdiction to punish for contempt where, *inter alia*, the act complained of is specified in any other written law for the time being in force as being punishable as contempt of court. Since section 663 of the Civil Procedure Code expressly provides that the disobedience of an injunction or enjoining order may be enforced by the punishment of the offender as for a contempt of court, the District Court is competent to deal with the alleged contempt. This conclusion follows from section 7 of the Contempt Act of 2024, read together with section 55 of the Judicature Act and section 663 of the Civil Procedure Code.

In the circumstances, the complaint of contempt in the present case may be entertained and determined either by the District Court or by the Court of Appeal, each exercising concurrent jurisdiction subject to the provisions of the Contempt Act.

Accordingly, I uphold the jurisdictional objection raised by the learned President's Counsel for the Respondent and dismiss the Petitioner's application with costs.

Judge of the Supreme Court

Sampath K.B. Wijeratne, J.

I agree.

Judge of the Supreme Court

K.M.G.H. Kulatunga, J.

I agree.

Judge of the Supreme Court