

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

Virgina Perera,  
No. 22/1, Albert Crescent,  
Colombo 7.  
Petitioner

**SC/CHC/APPEAL/18/2018**  
**HC/CIVIL/44/2014/CO**

Vs.

1. M.B.A. Systems (Pvt) Ltd.,  
No. 41, Kanatta Road,  
Thalapathpitiya,  
Nugegoda.
2. A.P. Bogollagama,  
No. 441/1, Thimbirigasyaya Road,  
Longdon Place, Colombo 7.
3. S.M. Wijesinghe,  
M.B.A. Systems (Pvt) Ltd.,  
No. 41, Kanatta Road,  
Thalapathpitiya, Nugegoda.
4. Company Secretaries (Pvt) Ltd.,  
2<sup>nd</sup> Floor, No. 810, Maradana Road,  
Colombo 10.
5. Vajira Kalinga Wijayawardena,  
No. 21/4, Buller's Lane,  
Colombo 7.

Respondents

AND

**In the matter of an application for  
punishment of the offence of Contempt  
of Court**

Virgina Perera,  
No. 22/1, Albert Crescent,  
Colombo 7.  
Petitioner-Petitioner

Vs.

1. M.B.A. Systems (Pvt) Ltd.,  
No. 41, Kanatta Road,  
Thalapathpitiya,  
Nugegoda.
2. A.P. Bogollagama,  
No. 441/1, Thimbirigasyaya Road,  
Longdon Place,  
Colombo 7.  
Respondents-Respondents

AND NOW

M.B.A. Systems (Pvt) Ltd.,  
No. 41, Kanatta Road,  
Thalapathpitiya, Nugegoda.  
1<sup>st</sup> Respondent-Respondent-Appellant

Vs.

Virgina Perera,  
No. 22/1, Albert Crescent,  
Colombo 7.  
Petitioner-Petitioner-Respondent

A.P. Bogollagama,  
No. 441/1, Thimbirigasyaya Road,  
Longdon Place,  
Colombo 7.  
2nd Respondent-Respondent-Respondent

Before: Hon. Justice P. Padman Surasena  
Hon. Justice Mahinda Samayawardhena  
Hon. Justice Arjuna Obeyesekere

Counsel: Uditha Egalahewa, P.C. with Damitha Karunaratne and  
Miyuru Egalahewa for the 1<sup>st</sup> Respondent-Respondent-  
Appellant.

Upul Jayasuriya, P.C. with Sandamal Rajapakshe for the  
Petitioner-Petitioner-Respondent.

Kamran Aziz with Fahama Lathiff for the 2<sup>nd</sup> Respondent-  
Respondent-Respondent.

Argued on: 05.11.2024

Written submissions:

By the Appellant on 29.01.2025.

By the 2<sup>nd</sup> Respondent-Respondent-Respondent on  
15.01.2025.

By the Petitioner-Petitioner-Respondent on 07.02.2025.

Decided on: 23.07.2025

**Samayawardhena, J.****Background**

The original petitioner instituted this action in the High Court of the Western Province holden in Colombo in the exercise of its civil jurisdiction (conveniently known as “Commercial High Court in Colombo”) on 13.10.2014 against five respondents seeking substantive reliefs on oppression (section 224 of the Companies Act, No. 7 of 2007) and mismanagement of the affairs of the 1<sup>st</sup> respondent company (section 225 of the same Act). Pending determination of the substantive reliefs, the petitioner sought several interim reliefs.

After inquiry, the High Court by its order dated 22.04.2015 issued an interim order against the 1<sup>st</sup> to 4<sup>th</sup> respondents “*restraining them from preventing the petitioner from acting as a director of the 1<sup>st</sup> respondent company as prayed for in paragraph (l) of the prayer to the petition upon depositing a sum of Rs. 500,000 as security.*” The petitioner complained to the High Court by petition and affidavit dated 07.07.2015 together with summons, charge sheet and annexures that the 1<sup>st</sup> and 2<sup>nd</sup> respondents violated the said interim order and therefore they shall be punished for contempt of court.

Upon service of process, the 1<sup>st</sup> respondent moved to have the application dismissed *in limine*, contending that the High Court lacked jurisdiction to entertain the matter, as the alleged contempt was *ex facie curiae* (committed out of court) and the Companies Act contains no provision conferring jurisdiction to punish for such contempt. In essence, the argument advanced by the 1<sup>st</sup> respondent was that the contempt jurisdiction of the Commercial High Court is limited to contempts committed *in facie curiae* (in the face of the court), and does not extend to contempts committed out of

court, unless a statutory provision expressly provides that such act is punishable as contempt of court.

The High Court, by its order dated 08.12.2015, overruled the preliminary objection raised by the 1<sup>st</sup> respondent and decided to proceed with the contempt application. Dissatisfied with this order, the 1<sup>st</sup> respondent invoked the appellate jurisdiction of this court by way of a leave to appeal application. This court granted leave to appeal on the following question of law:

*Has the High Court exercising civil jurisdiction in terms of Act No. 10 of 1996 power to hear and determine an application for contempt in relation to an alleged violation of an interim order issued by that court?*

As the impugned order was delivered on 08.12.2015, this question must be examined in light of the law relating to contempt of court as it stood on that date.

“Contempt of court” may broadly be defined as any act or omission that interferes with or obstructs the due administration of justice, impairs or diminishes the authority and dignity of the court, or tends to undermine public confidence in the judicial process. It encompasses conduct committed both in the face of the court (*in facie curiae*) and out of court (*ex facie curiae*). The object of the contempt jurisdiction is not the vindication of the personal dignity of judges, but the preservation of judicial authority for the protection of the general public and the integrity of the administration of justice.

I must state that the law relating to contempt of court has historically been a complex area, lacking a clear definition in both substantive and procedural aspects, with relevant provisions dispersed across multiple legal instruments, including the Constitution, the Judicature Act, the Penal Code, the Civil Procedure Code, and the Code of Criminal Procedure Act.

Several statutes recognise specific acts and omissions as being punishable “as contempt of court”. For instance, several provisions of the Civil Procedure Code expressly identify certain acts and omissions as constituting offences of contempt. These include sections 103(4), 103(12), 109(2), 137(2), 140, 183B, 295, 330, 358, 372, 663, 713(3), 717(1), 718(3), and 724A(3). Reference may also be made to Chapter X of the Penal Code, titled “Of Contempts of the Lawful Authority of Public Servants”, which comprises sections 170 to 187 and sets out a series of offences that may, in appropriate cases, amount to contempt of court. In terms of section 19 of the Penal Code, the term “public servant” includes every judge. As another example, section 53 of the Partition Law, No. 21 of 1977, confers contempt jurisdiction on the District Court in the context of partition actions.

Before the enactment of such statutory provisions, the subject of contempt of court was largely governed by English common law principles. The complexity of the law has been compounded by the differing interpretations given by the courts to the relevant statutory provisions, and further complicated by the varying ways in which those judicial dicta have been understood and applied by members of the legal profession. With the enactment of the Contempt of a Court, Tribunal or Institution Act, No. 8 of 2024 (hereinafter sometimes “Contempt of Court Act of 2024”), the law governing contempt of court has now been consolidated and streamlined, thereby bringing greater clarity, consistency and coherence to this area of the law. This does not mean that there is no room or need for further improvement.

However, there remain numerous pending cases that must be addressed in accordance with the law as it stood prior to the passage of the Contempt of Court Act of 2024. Accordingly, it is not a futile exercise to set out the law as it existed prior to the enactment of the Act, as it remains pertinent to the resolution of the pending matters, including the instant appeal.

The specific question that arises for determination in this appeal is whether the Commercial High Court has jurisdiction to punish for contempt arising from the alleged violation of interim orders issued under the Companies Act. In order to answer this question, it is necessary to consider the source from which the Commercial High Court derives its contempt jurisdiction.

I must make it clear that in this judgment, I do not propose to address the contempt jurisdiction of the Supreme Court and the Court of Appeal, except where it becomes necessary to elucidate a point concerning the contempt jurisdiction of courts of first instance, including the High Courts.

### **Source of contempt jurisdiction of the High Court**

Article 105(3) of the Constitution reads as follows:

*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.*

Article 105(3)(1)(c) mentioned therein refers to “*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.*”

Article 111(1) of the Constitution, as originally stood, read as follows:

*The highest Court of First Instance exercising criminal jurisdiction and created by law shall be called and known as “The High Court of the Republic of Sri Lanka” and shall exercise such jurisdiction and powers as Parliament may by law vest or ordain.*

At that time, the High Court of the Republic of Sri Lanka exercised only criminal jurisdiction.

Article 111(1) was amended by the 11<sup>th</sup> Amendment to the Constitution to read as follows:

*There shall be a High Court of Sri Lanka, which shall exercise such jurisdiction and powers as Parliament may by law vest or ordain.*

Article 111 was further amended by the 17<sup>th</sup> Amendment to the Constitution. Article 111 now reads as follows:

*111(1) There shall be a High Court of Sri Lanka, which shall exercise such jurisdiction and powers as Parliament may by law vest or ordain.*

*(2) The Judges of the High Court shall—*

*(a) on the recommendation of the Judicial Service Commission, be appointed by the President by warrant under his hand and such recommendation shall be made after consultation with the Attorney-General;*

*(b) be removable and be subject to the disciplinary control of the President on the recommendation of the Judicial Service Commission.*

*(3) Subject to the provisions of paragraph (2) of this Article, Parliament may by law provide for matters relating to the retirement of the Judge of such High Court.*



*(4) Any Judge of the High Court may resign his office by writing under his hand addressed to the President.*

Article 154P of the Constitution introduced by the 13<sup>th</sup> Amendment to the Constitution provided for the establishment of a High Court for each Province, commonly known as the “Provincial High Court”, to exercise jurisdiction within the Province.

Article 154P of the Constitution reads as follows:

*154P (1) There shall be a High Court for each Province with effect from the date on which this Chapter comes into force. Each such High Court shall be designated as the High Court of the relevant Province.*

*(2) The Chief Justice shall nominate from among Judges of the High Court of Sri Lanka such number of Judges as may be necessary to each such High Court. Every such Judge shall be transferable by the Chief Justice.*

*(3) Every such High Court shall—*

*(a) exercise according to law, the original criminal jurisdiction of the High Court of Sri Lanka in respect of offences committed within the Province;*

*(b) notwithstanding anything in Article 138 and subject to any law, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province;*

*(c) exercise such other jurisdiction and powers as Parliament may, by law, provide.*

*(4) Every such High Court shall have jurisdiction to issue, according to law—*

*(a) orders in the nature of habeas corpus, in respect of persons illegally detained within the Province; and*

*(b) order in the nature of writs of certiorari, prohibition, procedendo, mandamus and quo warranto against any person exercising, within the Province, any power under—*

*(i) any law; or*

*(ii) any statutes made by the Provincial Council established for that Province, in respect or any matter set out in the Provincial Council List.*

*(5) The Judicial Service Commission may delegate to such High Court, the power to inspect and report on, the administration of any Court of First Instance within the Province.*

*(6) Subject to the provisions of the Constitution and any law, any person aggrieved by a final order, judgment or sentence of any such Court in the exercise of its jurisdiction under paragraphs (3)(b) or (3)(c) or (4), may appeal therefrom to the Court of Appeal in accordance with Article 138.*

Section 2 of the Judicature Act, No. 2 of 1978, as amended by Judicature (Amendment) Act, No. 34 of 2022, reads as follows:

*2. The Courts of First Instance for the administration of justice in the Republic of Sri Lanka shall be—*

*(a) the High Court of the Republic of Sri Lanka;*

- (b) the High Courts for the Provinces established by Article 154P of the Constitution;*
- (c) the District Courts;*
- (d) the Family Courts;*
- (e) the Small Claims Courts;*
- (f) the Magistrates' Courts; and*
- (g) the Primary Courts.*

It may be noted that although the 11<sup>th</sup> Amendment to the Constitution amended Article 111(1) by substituting the term “*High Court of Sri Lanka*” for “*High Court of the Republic of Sri Lanka*”, there is no distinct court referred to as the “*High Court of Sri Lanka*” in section 2 of the Judicature Act.

It is important to note that, in terms of Article 111(2) of the Constitution, Judges are appointed by the President as Judges of the High Court of Sri Lanka. The Constitution does not contain a separate provision for the appointment of Judges specifically as Judges of the High Court of the Republic of Sri Lanka or as Judges of the Provincial High Courts established under Article 154P.

Under Article 154P(2) of the Constitution, the Chief Justice shall nominate from among the Judges of the High Court of Sri Lanka such number of Judges as may be necessary to each High Court of the Province. In other words, Provincial High Court Judges are Judges of the High Court of Sri Lanka, and they have been nominated to the Provinces by the Chief Justice for administrative purposes.

At present, there are no High Courts sitting under the designation “High Court of the Republic of Sri Lanka” or “High Court of Sri Lanka”. All High Court Judges—whether exercising criminal, civil, commercial jurisdiction,

or sitting at the Permanent High Court at Bar—function as Judges of the High Courts of the Provinces.

Although the Permanent High Court at Bar, introduced by the Judicature (Amendment) Act, No. 9 of 2018 by amending section 12 of the Judicature Act, is also a Provincial High Court established under Article 154P of the Constitution, section 12A(1)(a) of the Judicature Act provides that such a Permanent High Court at Bar shall consist of three Judges sitting together, “*nominated by the Chief Justice from among the Judges of the High Court of the Republic of Sri Lanka*”.

*12A(1)(a) Notwithstanding anything in any other written law, the High Court established by Article 154P of the Constitution for a Province shall, in terms of sub-paragraph (c) of paragraph (3) of Article 154P of the Constitution hear, try and determine in the manner provided for by written law and subject to the provisions of subsection (4), prosecutions on indictment against any person, in respect of financial and economic offences specified in the Sixth Schedule to this Act, and any other offence committed in the course of the same transaction of any such offence, with three Judges sitting together nominated by the Chief Justice from among the Judges of the High Court of the Republic of Sri Lanka (hereinafter referred to as the “Permanent High Court at Bar”).*

According to section 16 of the Contempt of Court Act of 2024:

*“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.*

It is quite evident that the terms “High Court of Sri Lanka” and “High Court of the Republic of Sri Lanka” are used interchangeably to refer to the same judicial body.

Article 154P(3) of the Constitution states:

*Every Provincial High Court shall—*

*(a) exercise according to law, the original criminal jurisdiction of the High Court of Sri Lanka in respect of offences committed within the Province;*

*(b) notwithstanding anything in Article 138 and subject to any law, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province;*

*(c) exercise such other jurisdiction and powers as Parliament may, by law, provide.*

It is by virtue of the enabling provision contained in Article 154P(3)(c) of the Constitution that different types of Provincial High Courts, including the Permanent High Court at Bar, have been established.

The first category of High Court of the Provinces established under Article 154P of the Constitution was created by the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990. The preamble to this Act states: “*An Act to make provision regarding the procedure to be followed in, and the right to appeal to, and from, the High Court established under Article 154P of the Constitution; and for matters connected therewith or incidental thereto.*” This Provincial High Court primarily exercises criminal jurisdiction.

By the High Court of the Provinces (Special Provisions) (Amendment) Act, No. 54 of 2006, section 5 of Act, No. 19 of 1990 was amended by the insertion of subsections 5A to 5D, whereby appellate and revisionary jurisdiction in respect of judgments and orders delivered by any District Court or Family Court within such Province was conferred on the Provincial

High Court. This category of Provincial High Court primarily exercises civil appellate jurisdiction.

The High Courts of the Provinces (Special Provisions) Act, No. 10 of 1996 introduced High Courts to exercise original civil jurisdiction in specific commercial matters, commonly referred to as Commercial High Courts.

The preamble of the High Courts of the Provinces (Special Provisions) Act, No. 10 of 1996 reads as follows: *“An Act to provide for the exercise, by High Courts established by Article 154P of the Constitution, of jurisdiction to hear and determine certain civil actions and matters.”*

Section 2(1) of Act, No. 10 of 1996 reads as follows:

*Every High Court established by Article 154P of the Constitution for a Province shall, with effect from such date as the Minister may, by Order published in the Gazette appoint, in respect of such High Court have exclusive jurisdiction and shall have cognizance of and full power to hear and determine, in the manner provided for by written law, all actions, applications and proceedings specified in the First Schedule to this Act, if the party or parties defendant to such action resides or reside, or the cause of action has arisen, or the contract sought to be enforced was made, or in the case of applications or proceedings under the Companies Act, No. 17 of 1982 the registered office of the Company is situated, within the province for which such High Court is established.*

In terms of section 2(1) of Act No. 10 of 1996, read with the First Schedule thereto, the High Courts established under this Act have exclusive jurisdiction, *inter alia*, to entertain applications instituted under the Companies Act.

Section 529 of the Companies Act, No. 7 of 2007 states:

*“the court” means a High Court established under Article 154P of the Constitution for a Province, empowered with civil jurisdiction by Order published in the Gazette under section 2 of the High Court of the Provinces (Special Provisions) Act, No. 10 of 1996, within the Province for which such High Court is established, or where no such High Court vested with such civil jurisdiction is established for any Province, the High Court established for the Western Province.*

There can be no dispute that the High Courts established under Act No. 10 of 1996 are a species of Provincial High Courts established under Article 154P of the Constitution.

On behalf of the 1<sup>st</sup> respondent, it was submitted that the Companies Act contains no provision analogous to section 663 of the Civil Procedure Code in respect of violations of interim orders issued by the Commercial High Court under the Companies Act, and therefore, the Commercial High Court lacks jurisdiction to deal with such violations by way of contempt. Although the Commercial High Court is a court of first instance, it is not a District Court, but a Provincial High Court. As I shall explain below, it is not necessary for the Companies Act to expressly declare particular acts or omissions as constituting contempt of court in order for a Provincial High Court established under Act No. 10 of 1996 to exercise its contempt jurisdiction in respect of such violations. Even prior to the Contempt of Court Act of 2024, all Provincial High Courts were vested with jurisdiction to punish for contempt committed both *in facie curiae* and *ex facie curiae*.

I have already made it clear by quoting section 12A(1)(a) of the Judicature Act that Permanent High Court at Bar is also a species of Provincial High Courts established under Article 154P of the Constitution.

Section 2(3) of Act No. 19 of 1990, the first Act that set out the procedure to be followed in the High Courts established under Article 154P of the Constitution, states:

*The provisions of the Judicature Act shall, mutatis mutandis, apply to offences of contempt committed against, or in disrespect of the authority of a High Court established by Article 154P of the Constitution.*

The provisions of the Judicature Act that apply to offences of contempt committed against, or in disrespect of, the authority of a High Court are contained in section 18, which reads as follows:

*The High Court shall have power and authority to take cognizance of and try in a summary manner any offence of contempt committed against or in disrespect of its authority, and on conviction to commit the offender to jail for a period not exceeding five years. Such imprisonment shall be simple or rigorous as the court shall direct and the offender may, in addition thereto, or in lieu thereof, in the discretion of the court be sentenced to pay a fine not exceeding five thousand rupees.*

According to section 18 of the Judicature Act, the High Court is vested with jurisdiction to try in a summary manner “any offence of contempt committed against or in disrespect of its authority”. The phrase “*any offence of contempt committed against or in disrespect of its authority*” is couched in broad terms and encompasses both forms of contempt: *in facie curiae* and *ex facie curiae*.

This interpretation becomes clearer when one considers (a) the legislative history of the provision and (b) contrasts the contempt jurisdiction conferred on the High Court with that of the District Court, the Family Court, the Small Claims Court, the Magistrate’s Court and the Primary Court.



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, reads 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.*

Unlike the jurisdiction of the High Court, the jurisdiction of the District Court, the Family Court, the Small Claims Court, the Magistrate's Court and the Primary Court in contempt matters was limited, except where the

contempt was committed *in facie curiae*. In order for the District Court, the Family Court, the Small Claims Court, the Magistrate's Court and the Primary Court to assume jurisdiction in cases of contempt *ex facie curiae*, the act in question must have constituted an offence declared by any law for the time being in force to be punishable as contempt of court. There was no such limitation to the High Court.

According to section 55(1) of the Judicature Act, the District Court, the Family Court, the Small Claims Court, the Magistrate's Court and the Primary Court have 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*".

All other offences of contempt of court, falling outside the scope of section 55(1), was to be dealt with by the Court of Appeal in the exercise of its jurisdiction under Article 105(3) of the Constitution.

### **Legislative history**

Let me now trace, to some extent, the legislative history of the contempt jurisdiction to further underscore that the High Courts were empowered to punish for contempt committed both *in facie curiae* and *ex facie curiae*.

Section 47 of the Courts Ordinance, No. 1 of 1889, as amended, read as follows:

*The Supreme Court or any Judge thereof, whether at Colombo or elsewhere, shall have full power and authority to take cognizance of and to try in a summary manner any offence of contempt committed against or in disrespect of the authority of itself or offence of contempt*

*committed against or in disrespect of the authority of any other court, and which such court has not jurisdiction under section 57 to take cognizance of and punish, and on conviction to commit the offender to jail until he shall have purged his contempt or for such period as to the court or Judge shall seem meet; and such imprisonment shall be simple or rigorous as such court or Judge shall direct, and the offender may in addition thereto or in lieu thereof, in the discretion of such court or Judge, be sentenced to pay a fine not exceeding five thousand rupees.*

Section 57 of the Courts Ordinance read as follows:

*Every District Court, Court of Requests, and Magistrate's Court shall, for the purpose of maintaining its proper authority and efficiency, have a special jurisdiction to take cognizance of, and to punish by the procedure and with the penalties in that behalf by law 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 courts respectively, and which are declared by any law for the time being in force to be punishable as contempts of court.*

It may be observed that the language used in section 47 of the Courts Ordinance, which delineated the contempt jurisdiction of the Supreme Court, is similar to that used in section 18 of the Judicature Act, which delineates the contempt jurisdiction of the High Court. Likewise, section 57 of the Courts Ordinance corresponds to section 55(1) of the Judicature Act.

It is relevant to note that at the time these provisions were enacted:

- (a) in terms of section 19 of the Courts Ordinance, the Supreme Court was exercising original jurisdiction as well as appellate jurisdiction;
- (b) in terms of section 2 of the Courts Ordinance, Supreme Court was also an “original court” when sitting in its original jurisdiction;

- (c) according to section 7 of the Courts Ordinance, the Supreme Court was the only superior court of record;
- (d) the Supreme Court was not the final appellate court in the judicial hierarchy, the ultimate appellate authority being the Judicial Committee of the Privy Council in England.

There is no dispute that the Supreme Court referred to above had all the powers for punishing for contempt committed both *in facie curiae* and *ex facie curiae*.

In the case of *In Re R.C.O. De La Motte* (1959) 61 NLR 121, a licensed surveyor who was a member of the panel of surveyors in the District Court of Kandy, in disobedience of the court's order, returned the commission issued to him unexecuted, stating that "*the Judges have not found it possible to accede to the requests made in the joint letters dated 25<sup>th</sup> November and 13<sup>th</sup> December 1957 signed by all the surveyors of Kandy Courts*". The District Judge brought the matter to the notice of the Supreme Court and the Supreme Court issued a rule nisi on the respondent surveyor requiring him to show cause, if any, why he should not be punished for the offence of contempt of court. The argument advanced on behalf of the respondent that, on the facts of that case, the Supreme Court did not have jurisdiction to punish for contempt of court was rejected by Chief Justice Basnayake stating at page 125 as follows:

*The main submission of respondent's counsel is that the act of the respondent does not fall within the ambit of section 47 [of the Courts Ordinance]. That section is a provision of wide import. The legislature in its wisdom did not attempt to define the offence of contempt because it would have been unwise to do so. A definition in the statute itself would have had the effect of restricting the scope of the unfettered jurisdiction now vested in this Court in the interests of the efficient administration of justice. The scope of the section is to be found in the*

*words “any offence of contempt committed against or in disrespect of the authority of itself or any offence of contempt committed against or in disrespect of the authority of any other court.” The expression contempt of court is one derived from English law and in that system of law it is contempt for any person to do any act which may tend to hinder the course of justice or show disrespect to the Court’s authority (Sweet’s Law Dictionary).*

As held by the Full Bench of the Supreme Court in *The King v. Samarawira* (1917) 19 NLR 433 at 437, even before the enactment of the Courts Ordinance in 1889, the Supreme Court, as the superior court of record, had jurisdiction to punish for contempts committed *in facie curiae* and *ex facie curiae*.

*The District Courts established under the Charter of 1883 have always been regarded as Courts of Record, and notwithstanding the absence of direct authority in the charters and rules to deal with cases of contempt, such a jurisdiction was frequently exercised by them as being an inherent power, and in the case In the Matter of the Application of John Ferguson for a Writ of Prohibition against the District Judge of Colombo (1874) 1 NLR 181 the Full Court held that, although the District Courts, being Courts of Record, had an inherent power to punish summarily contempts in the face of the Court, which included “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 execution of its process or orders, and other acts of a like nature.” Yet, being Inferior Courts of Record, they had not the full jurisdiction to punish all descriptions of contempt such as is possessed by the Superior Courts in England and the Supreme Court in Ceylon.*

The Courts Ordinance was repealed by section 3(1) of the Administration of Justice Law, No. 44 of 1973.

Section 41 of the Administration of Justice Law governed the law relating to contempt of court applicable to all courts.

*41(1) Every District Court and Magistrate's Court may, for the purpose of maintaining its proper authority and efficiency, take cognizance of, and punish in accordance with law, every offence of contempt of court committed in the presence of the court itself, and any offence which is committed in the course of any act or proceeding in such court and which is declared by any law to be punishable as a contempt of court.*

*(2) Every High Court may take cognizance of and try in a summary manner any offence of contempt committed against or in disrespect of its authority or any offence of contempt committed within its jurisdiction against or in disrespect of the authority of any other court or other institution established by law which such court or institution has not the jurisdiction to take cognizance of and punish, and on conviction impose a sentence of imprisonment not exceeding five years or a fine not exceeding five thousand rupees or both such imprisonment and fine.*

*(3) The Supreme Court may take cognizance of and try in a summary manner any offence of contempt committed against or in disrespect of its authority and on conviction may impose a sentence of imprisonment not exceeding seven years or a fine not exceeding seven thousand rupees or both such imprisonment and fine.*

Section 41(1) of the Administration of Justice Law, which set out the contempt jurisdiction of the District Court and the Magistrate's Court, employed language that was virtually identical to section 55(1) of the Judicature Act. In the same vein, sections 41(2) and 41(3), which addressed

the contempt powers of the High Court and the Supreme Court, respectively, were framed in terms almost identical to those of section 18 of the Judicature Act.

### **Superior and inferior courts of record and contempt jurisdiction**

Dr. K. Kanag-Isvaran, P.C. in his well-researched and illuminating article, *The Reception and Growth of Contempt Jurisdiction in the Law of Sri Lanka*, [2008] Vol. XIV, Part I, BASL Law Journal, page 1, expresses the view that:

*The power of punishment for contempt thus conferred on the Provincial High Court in my view is no different to the similar powers conferred on all Inferior Courts of Record established under the previous regimes, as opposed to the powers of contempt recognized in respect of Superior Courts of Record.*

While the article commands respect and offers invaluable insights into the historical development of the contempt jurisdiction in Sri Lanka, I regret my inability to subscribe to the view advanced therein, namely, that only superior courts of record are vested with jurisdiction to punish for contempt committed both *in facie curiae* and *ex facie curiae*, whereas Provincial High Courts, being inferior courts of record, are empowered to punish only for contempt committed *in facie curiae*, unless expressly authorised by statute to deal with contempts committed *ex facie curiae*. According to this analysis, this distinction is based on whether the court is a superior court or an inferior court.

*It therefore seems quite clear that from [the Charter of] 1801, to date the distinction between Superior Courts of Record and Inferior Courts of Record has been maintained, with the concomitant consequences in respect of their respective contempt jurisdiction.*

(...)

*The High Courts established under the 13<sup>th</sup> Amendment for the provinces, themselves were inferior Courts of Record.*

*(...)*

*The power of the Inferior Courts of Record to punish for contempt was limited to contempts in facie Court and did not extend to such as those committed out of Court, unless express statutory power was given for that purpose.*

Tracing the historical development of contempt jurisdiction in this island, and referring *inter alia* to two leading local authorities—*In Re Ferguson* (1874) 1 NLR 181 and *The King v. Samarawira* (1917) 19 NLR 433—the learned author repeats the same:

*Firstly, that our law recognizes the concept of Courts of Record. Secondly, that it constituted the Superior Courts of Record and Inferior Courts of Record. Thirdly, Superior Courts of Record were recognized as having the power to punish contempts, whether it be in facie or ex facie curiae. Fourthly, the power of inferior Courts of Record to punish for contempt was limited to those committed in facie curiae. They were not vested with the power to punish for contempts in respects of acts done out of court, unless expressly authorized by law in that behalf.*

Then the learned author states:

*These propositions of law have been carried over into subsequent legislation in Sri Lanka (then Ceylon) in respect of the powers of court to punish acts which are in contempt of court.*

I find myself unable to agree that the aforesaid propositions of law have been carried over into subsequent legislation in Sri Lanka, beginning with the Courts Ordinance of 1889.



The learned author adopts this view—while acknowledging both the similarity in the language used in the relevant provisions of the Courts Ordinance, the Administration of Justice Law, and the Judicature Act, and the dissimilarity in the language governing the contempt jurisdiction of the High Court and the District Court, as quoted above—on the basis that this has been the consistent approach adopted by the Supreme Court since its decision in *Ferguson* (supra) decided in 1874.

*Can it then be argued in view of the similarity of language used, in section 18 of the Judicature Act and section 51 of the Courts Ordinance, in contradistinction to the words of section 55(1) of the Judicature Act in respect of District Courts, Small Claims Courts and Magistrate's Courts that, the High Courts have been conferred a contempt jurisdiction similar to those of the Judges of the Supreme Court and the Court of Appeal? I think not, for the reason that legal enactments and judicial decisions since 1874 to date do recognize and emphasize the distinction between Superior Courts and Inferior Courts and their powers of contempt.*

I accept that legal enactments since 1874 have recognised the traditional distinction between superior courts and inferior courts, or more accurately, superior courts of record and courts of first instance. However, having regard to the legislative history which I quoted previously, I am unable to accept that the legislature intended to confer contempt jurisdiction solely on the basis whether the court is a superior court or inferior court. It is not possible to follow the dicta or observations made in *Ferguson*, decided primarily on English common law principles, without closely examining or giving due weight to the statutory provisions that were enacted thereafter.

The Courts Ordinance, the Administration of Justice Law, and the Judicature Act all contain provisions relating to the exercise of contempt jurisdiction. There can be no doubt that these enactments are statutes *in*

*pari materia* insofar as the law of contempt is concerned. The relevant provisions are couched in language that is virtually identical, and, in the absence of a clear and unambiguous legislative intent to the contrary, they must be construed harmoniously and consistently. A failure to do so would offend well-established canons of statutory interpretation, which require that statutes dealing with the same subject matter be read together to give coherent effect to legislative intent.

It is observed that the following dicta of Chief Justice Samarakoon in *Regent International Hotels Ltd v. Cyril Gardiner and Others* [1978-79-80] 1 Sri LR 278 at 288 is often erroneously cited in support of the proposition that the contempt jurisdiction of the High Court is limited only to contempts committed *in facie curiae*, on the basis that it is a court of first instance.

*The jurisdiction of an inferior Court to punish for contempt is confined to such contempts as are perpetrated in facie curiae and does not extend to such as those committed out of Court unless express statutory power is given for that purpose. When such power is given, the offence would be assimilated to contempt proceedings and regarded as a contempt. But generally speaking the power to punish for contempt for acts committed not in facie curiae of an inferior tribunal, is given to a superior court.*

This is the principal argument of the 1<sup>st</sup> respondent appellant in the instant appeal as well.

In *Regent International Hotels Ltd* case, Chief Justice Samarakoon was concerned with the contempt jurisdiction of the District Court in relation to a violation of an enjoining order issued by the District Court. The Supreme Court did not have occasion to consider the application of section 18 of the Judicature Act, nor the contempt jurisdiction of the High Court—whether the High Court of the Republic of Sri Lanka, the High Court of Sri Lanka,

or a High Court established under Article 154P of the Constitution. It must be noted that Article 154P of the Constitution was introduced by the 13<sup>th</sup> Amendment more than seven years after the decision in *Regent International Hotels Ltd* was delivered. As I pointed out earlier, the decision, *In Re Ferguson* cited by Chief Justice Samarakoon was decided on English common law principles governing contempt, as that case was decided in 1874, even before the enactment of the Courts Ordinance.

In *Merryl Perera v. Abeysuriya* [1983] 2 Sri LR 293 at 294–295, the contempt in question arose from a violation of an interim injunction issued by the District Court. In delivering judgment, Chief Justice Samarakoon *inter alia* drew a distinction between the contempt jurisdiction of the High Court and that of the District Court, and observed that the High Court—although an inferior court of record and a court of first instance—exercised the contempt jurisdiction that had previously been vested in the Supreme Court.

*The history of this power in the Superior Courts to deal with offences of contempt of other Courts is relevant. Section 47 of the Courts Ordinance (Cap.6) gave the Supreme Court or any Judge thereof power to take cognisance of and try in a summary manner any offence of contempt committed against or in disrespect of the authority of itself or in disrespect of the authority of any other Court and which such Court has no jurisdiction under Section 57 to take cognisance of and punish... This power was conferred on the High Court by the provisions of the Administration of Justice Law No. 44 of 1973. Section 41(2) reads thus—*

*“(2) Every High Court may take cognizance of and try in a summary manner any offence of contempt committed against or in disrespect of its authority or any offence of contempt committed within its jurisdiction against or in disrespect of the authority of any other court or other institution established by law which such court or institution has not*

*the jurisdiction to take cognizance of and punish, and on conviction impose a sentence of imprisonment not exceeding five years or a fine not exceeding five thousand rupees or both such imprisonment and fine.”*

*These two provisions impose a limit on the power conferred by stating that in respect of the offence of contempt of any other Court, the power can be exercised only if that other Court has no jurisdiction to take cognizance of such contempt. The Constitution of 1978 conferred this power on the Court of Appeal but placed no limitation as in the Courts Ordinance and the Administration of Justice Law.*

Whilst interpreting the proviso to Article 105 of the Constitution—which states that “*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*”—His Lordship rightly observed at page 296 as follows:

*The proviso is significant. It 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.*

### **Uniform contempt jurisdiction under the Contempt of Court Act**

With the enactment of the Contempt of a Court, Tribunal or Institution Act, No. 8 of 2024, all courts of first instance—namely, the High Court of the Republic of Sri Lanka, the High Court for a Province established under Article 154P of the Constitution, the District Court, the Family Court, the Small Claims Court, the Magistrate’s Court, and the Primary Court—have been vested with jurisdiction to punish for contempt of court, whether such contempt is committed *in facie curiae* or *ex facie curiae*. This position is

evident from the overall scheme of the Act, and particularly from sections 7(1), 11(1) and 15.

*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.*

According to section 7(1) of the Contempt of a Court, Tribunal or Institution Act, No. 8 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.

As previously stated, in terms of section 55(1) of the Judicature Act, the 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.

However, under the new Contempt of Court Act of 2024, this formulation has been altered. The clause “*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 section 55(1) of the Judicature Act has been separated into distinct limbs with the word “or”, which is a coordinating conjunction that introduces alternatives.

In other words, under the new Contempt of Court Act of 2024, in order for the District Court, the Family Court, the Small Claims Court, the Magistrate’s Court and the Primary Court to assume jurisdiction in cases of contempt *ex facie curiae*, the act need not necessarily be declared by any other law for the time being in force to be punishable as contempt of court. No doubt, it remains as one of the avenues for assuming jurisdiction, but it is no longer the only avenue.

In addition to the acts which are declared by provisions of other statutes to be punishable as contempts of court, section 3 of the Contempt of Court Act of 2024 enumerates the acts deemed to be contempt of court. It is undisputed that these acts set out in section 3 encompass both contempt committed *in facie curiae* and *ex facie curiae*. Section 7(1) of the Act vests all courts of first instance with the power to punish for contempt of court, *inter alia*, in respect of “*any act which is specified in this Act*” as being punishable as contempt of court.

Section 3 is couched in broad terms, reflecting a wide ambit of application, but its scope is circumscribed by adequate safeguards intended to prevent the arbitrary or excessive exercise of contempt powers.

*3(1) Save as provided for in any other written law and subject to the provisions of the Constitution, any person who commits an act or omission with 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,*

*commits contempt of a court, tribunal or institution, as the case may be.*

*(2) Save as provided for in any other written law and subject to the provisions of the Constitution, any person who does any of the following acts commits contempt of a court, tribunal or institution, as the case may be—*

- (a) willful disobedience to any judgment, decree, direction, order, writ or other process of a court, tribunal or institution;*
- (b) willful breach of an undertaking given to a court, tribunal or institution;*
- (c) expressing, pronouncing or publishing any matter that is false which, or doing any other act which—*

- (i) scandalizes or lowers the judicial authority or dignity of a court, tribunal or institution;*
  - (ii) gravely prejudices, or unlawfully interferes with, the due course of any judicial proceeding; or*
  - (iii) interferes with, or obstructs the administration of justice;*
- (d)*
  - (i) use of any electronic device or other instrument for audio or visual recording or both, in a court, tribunal or institution, or bringing into a court, tribunal or institution any such device*

*or instrument for the purpose of audio or visual recording or both, without the leave of the court, tribunal or institution already obtained;*

*(ii) publication or transmission of an audio or a visual recording or both, of a proceeding or part of a proceeding of a court, tribunal or institution made by means of any electronic device or other instrument, or any such recording derived directly or indirectly from such device or instrument without the leave of the court, tribunal or institution already obtained;*

*(iii) use of any electronic device or other instrument, or publication or transmission of an audio or a visual recording or both, of a proceeding of a court, tribunal or institution, in contravention of any leave granted under sub-paragraph (i) or sub-paragraph (ii); or*

*(iv) tampering, altering or falsifying any audio or visual recording or both, of a proceeding of a court, tribunal or institution; or*

*(e)*

*(i) interfere with the due administration of justice;*

*(ii) excite dissatisfaction in the minds of the public in regard to a court, tribunal or institution; or*

*(iii) cast public suspicion on the administration of justice.*

Section 11(1) of the Contempt of Court Act of 2024 reaffirms the position that all courts of first instance are now vested with jurisdiction to deal with contempts committed both *in facie curiae* and *ex facie curiae*.

*11(1) Where a Court of First Instance takes cognizance of contempt of court committed against, or in disrespect of the authority of, such Court of First Instance, such Court of First Instance shall, subject to the provisions of subsections (2) and (3), hear and determine such matter*



*in accordance with the procedure set out in Chapter LXV of the Civil Procedure Code.*

### **Uniform procedural framework for contempt of court**

The Contempt of a Court, Tribunal or Institution Act, No. 8 of 2024 introduces not only a uniform contempt jurisdiction but also a uniform procedural framework for the exercise of such jurisdiction. This framework applies to all courts of first instance, namely: the High Court of the Republic of Sri Lanka, the High Court established under Article 154P of the Constitution, the District Court, the Family Court, the Small Claims Court, the Magistrate's Court, and the Primary Court.

I have already referred to section 7(1) of the Act, which applies to contempt committed both *in facie curiae* and *ex facie curiae*, subject to the provisions of the Act. I reproduce it again here for convenience and emphasis:

*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.*

Section 7(2) of the Contempt of Court Act of 2024 states:

*7(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.*

Section 11 of the Contempt of Court Act of 2024 reads as follows:

11(1) Where a Court of First Instance takes cognizance of contempt of court committed against, or in disrespect of the authority of such Court of First Instance, such Court of First Instance shall, subject to the provisions of subsections (2) and (3), hear and determine such matter in accordance with the procedure set out in Chapter LXV of the Civil Procedure Code.

(2) Where the Judge of a Court of First Instance referred to in subsection (1) acts under section 795 of the Civil Procedure Code, such Judge shall inquire from the accused whether he wishes to be tried by a Judge other than the Judge in whose presence or hearing the contempt of court is alleged to have been committed.

(3) If the accused indicates to the Judge of such Court of First Instance, in response to the inquiry under subsection (2), orally or in writing, that he wishes to be tried by a Judge other than the Judge in whose presence or hearing the contempt of court is alleged to have been committed, such Judge shall cause the matter to be placed, together with the minutes of the facts recorded by such Judge, before the Chief Justice for such directions as the Chief Justice may think fit to issue with regard to the hearing of the charge.

The procedure applicable to contempt of court, as set out in sections 792 to 800 of Chapter LXV of the Civil Procedure Code, titled “Of Summary Procedure in Respect of Contempts of Court”, is as follows:

*792. In all courts the summary procedure to be followed for the exercise of the special jurisdiction to take cognizance of and to punish summarily offences of contempt of court, and offences declared by this Ordinance to be punishable as contempts of court, shall be that which is prescribed in the sections next immediately following.*

*793. The court shall issue a summons to the accused person in the form No. 132 in the First Schedule or to the like effect, which summons shall state shortly the nature of the alleged offence and the information or grounds upon which the summons is issued, and shall require the accused person to appear before the court on a day named in the summons to answer the charge.*

*794. It shall be competent to the court simultaneously with issuing such summons, or at any time after such summons has been issued, if it has reason to believe that the attendance of the accused person at the time appointed in the summons to answer the charge cannot otherwise be secured, to issue a warrant for his arrest in the form No. 133 in the First Schedule or to the like effect, which warrant shall recite the issuing of the summons, and the day appointed therein for the hearing of the charge, and shall command that the accused person after arrest be kept in custody until that day, and be then brought before the court to answer the charge in the summons:*

*Provided that the person arrested shall at any time after arrest be enlarged upon sufficient security, to an amount endorsed on the warrant by the court, either of the accused person's own bond or that of another person, for his appearance in court on the day named in the summons, being furnished to the officer in whose custody he is.*

*795. When the information upon which the charge is based is furnished to the court, either wholly or in part, by the personal observation of the Judge of the accused person's behaviour and language in his presence, the Judge shall at the time record a minute of the facts so observed by him, which shall be admissible as evidence at the hearing of the charge, and in such case no such summons as in section 793 is mentioned shall be necessary, but the accused person may be forthwith committed to jail or admitted to bail as in the last preceding*

*section provided, and all further steps shall be taken in manner herein provided, as though such summons or summons and warrant as aforesaid had been issued.*

*796. On the day appointed by the court for the hearing of the charge, or on any subsequent day to which the hearing may have been adjourned in consequence of the previous non-attendance of the accused person, the court shall commence the hearing by asking the accused person whether or not he admits the truth of the charge; and if he does not admit the truth of the charge, the court shall proceed to take evidence (if any) which may be necessary in addition to the court minute under section 795 to establish the charge; and also to take the accused person's statement and any evidence which he may offer in answer to the charge.*

*797(1) If the accused person admits the charge, or if after taking the evidence on both sides and considering the court minute and hearing the accused person's explanation the court finds the accused person guilty of the charge, it shall make out a conviction in the form No. 134 in the First Schedule or to the like effect, which shall recite the materials on which the conviction is founded, and adjudicate upon the material facts of the accused person's behaviour and language, with so much of the surrounding circumstances as cause these to constitute the offences of contempt of court. And the sentence passed by the court shall be recorded on this conviction.*

*(2) If the court finds the accused person not guilty of the charge laid, it shall dismiss the charge, and shall make and record an order to that effect.*

*798. An appeal shall lie to the Court of Appeal from every order, sentence, or conviction made by any court in the exercise of its special*

*jurisdiction to take cognizance of, and to punish by way of summary procedure the offence of contempt of court, and of offences by this Ordinance made punishable as contempt of court; and the procedure on any such appeal shall follow the procedure laid down in the Code of Criminal Procedure Act regulating appeals from orders made in the ordinary criminal jurisdiction of Magistrates' Courts.*

*799. Every sentence of fine or imprisonment passed by a court in exercise of its special jurisdiction to take cognizance of, and to punish by way of summary procedure the offence of, contempt of court, and offences by this Ordinance made punishable as contempt of court, shall be carried into effect in the same manner and according to the same procedure as is provided in the Code of Criminal Procedure Act for carrying into effect sentences of fine or imprisonment passed by any court in the exercise of its ordinary criminal jurisdiction.*

*800. The provisions of Article 105 (3) of the Constitution and sections 18 and 55 of the Judicature Act shall apply to the sentence of fine or imprisonment, as the case may be, that may be imposed on conviction for contempt under this Chapter by the various courts.*

Accordingly, in terms of section 11, all High Courts, District Courts, Family Courts, Small Claims Courts, Magistrates' Courts, and Primary Courts are required to follow the procedure set out in Chapter LXV of the Civil Procedure Code, irrespective of whether the alleged contempt committed is *in facie curiae* or *ex facie curiae*. This includes, for example, acts such as the intentional insult or interruption of a Judge during the course of judicial proceedings—an offence identified in section 223 of the Penal Code, read with section 388 of the Code of Criminal Procedure Act in relation to the District Court and Magistrate's Court, and section 392 read with section 135(1)(c) of the Code of Criminal Procedure Act in relation to the High Court. It also extends to the giving of false evidence in the High Court and the other

courts, as contemplated in sections 448 and 449 of the Code of Criminal Procedure Act.

This represents a departure from the previous legal position, under which procedural requirements for contempt varied depending on the forum and the nature of the alleged act. Section 11 now establishes a uniform procedural regime, thereby enhancing consistency, fairness, and legal certainty in contempt proceedings across all courts of first instance including the High Courts.

Section 15 of the Contempt of Court Act of 2024 reinforces this position by providing that:

*The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other written law, and accordingly, in the event of any inconsistency between the provisions of this Act and such other law, the provisions of this Act shall prevail.*

Section 15 of the Contempt of Court Act of 2024 contains a non obstante clause, which stipulates that the provisions of the Act shall prevail over any inconsistent provisions in any other written law. This legislative directive underscores the intention of Parliament to accord overriding effect to the procedures, powers, and safeguards set out in the Contempt of Court Act of 2024, even where such provisions may conflict with those contained in earlier enactments, such as the Judicature Act or the Code of Criminal Procedure Act.

### **Trial before another Judge**

According to section 11(2) of the Contempt of a Court, Tribunal or Institution Act, No. 8 of 2024, the Judge of the court of first instance in whose presence or hearing the contempt is alleged to have been committed is required to inquire from the accused whether he wishes to be tried by a

different Judge, and to take steps accordingly. The provision reads as follows:

*Where the Judge of a Court of First Instance referred to in subsection (1) acts under section 795 of the Civil Procedure Code, such Judge shall inquire from the accused whether he wishes to be tried by a Judge other than the Judge in whose presence or hearing the contempt of court is alleged to have been committed.*

It must, however, be clarified that this requirement applies: (a) at the stage of inquiry/hearing, and (b) only in cases where the alleged contempt is committed *in facie curiae*. Accordingly, the Judge is not required to make such an inquiry where the contempt is alleged to have been committed *ex facie curiae*. I must further observe that the applicability of this provision cannot be circumvented by resorting to summary punishment, in view of the uniform procedural framework introduced by the Contempt of Court Act of 2024, as outlined above.

### **The purpose and importance of contempt jurisdiction**

Contempt committed against, or in disregard of, the authority of court must be viewed with the utmost seriousness. If courts and their orders are not respected, the very foundation of the rule of law is placed in jeopardy. The exercise of contempt jurisdiction is not intended for the glorification of the court, but rather to safeguard the dignity and authority of the judicial office, without which public confidence in the administration of justice cannot be sustained. Public confidence is the cornerstone of any judicial system. Once eroded, the rule of law crumbles and anarchy takes its place. I must emphasise that public confidence in the administration of justice is undermined not only by condoning the unlawful intrusion upon the authority of court, but also by the misuse of the contempt jurisdiction by Judges for the enhancement of their personal stature.

The traditional distinction between civil contempt and criminal contempt, often drawn on the basis of whether the act was committed *in facie curiae* (in the face of the court) or *ex facie curiae* (out of court), has become increasingly blurred over time and no longer occupies a central place in modern contempt jurisprudence.

In *Kandoluwe Sumangala v. Mapitigama Dharmarakitta* (1908) 11 NLR 195 at 201, Justice Wood Renton (as His Lordship then was) stated:

*It is extremely difficult to bring home to the minds of some people, and yet it is of vital moment that everyone should know, that the law of contempt of Court does not exist for the glorification of the Bench. It exists—and exists solely—for the protection of the public.*

The oft-quoted statement of Lord Morris in *Attorney-General v. Times Newspapers Limited* [1974] AC 273 at 302, succinctly captures the fundamental rationale of the contempt jurisdiction vested in courts:

*[T]he phrase contempt of court is one which is compendious to include not only disobedience to orders of a court but also certain types of behaviour or varieties of publications in reference to proceedings before courts of law which overstep the bounds which liberty permits. In an ordered community courts are established for the pacific settlement of disputes and for the maintenance of law and order. In the general interests of the community it is imperative that the authority of the Courts should not be imperilled and that recourse to them should not be subject to unjustifiable interference. When such unjustifiable interference is suppressed it is not because those charged with the responsibilities of administering justice are concerned for their own dignity: it is because the very structure of the ordered life is at risk if the recognised courts of the land are so flouted and their authority wanes and is supplanted.*



It is sometimes overlooked that contempt is an offence committed against the court itself, and not against any individual party. The confusion frequently arises, as in the present case, when a party invokes the contempt jurisdiction, in effect, on behalf of the court. In this context, it must be emphasised that there should be no room for overly technical objections in contempt proceedings, although, regrettably, prevailing practice tends to suggest otherwise.

The fact that, in proceedings for contempt of court, the matter lies between the court and the alleged contemnor was underscored by the Supreme Court of India in *D.N. Taneja v. Bhajan Lal* [1988] 3 S.C.R. 888 at 894, in the following terms:

*A contempt is a matter between the court and the alleged contemnor. Any person who moves the machinery of the court for contempt only brings to the notice of the court certain facts constituting contempt of court. After furnishing such information he may still assist the court, but it must always be borne in mind that in a contempt proceeding there are only two parties, namely, the court and the contemnor.*

In *Om Prakash Jaiswal v. D.K. Mittal & Another* AIR 2000 SC 1136 at 1140-1141, the Supreme Court of India stated as follows:

*A private party or a litigant may also invite the attention of the Court to such facts as may persuade the Court in initiating proceedings for contempt. However, such person filing an application or petition before the Court does not become a complainant or petitioner in the proceedings. He is just an informer or relator. His duty ends with the facts being brought to the notice of the Court. It is thereafter for the Court to act on such information or not to act though the private party or litigant moving the Court may at the discretion of the Court continue to render its assistance during the course of proceedings.*

However, as emphasised earlier, the exercise of contempt jurisdiction must always be guided by the principles of fairness, necessity, and proportionality, and should never be invoked lightly.

In *Re Garumunige Tilakaratne* [1999] 1 Sri LR 134 at 149, Justice Amerasinghe remarked:

*Because the offence of contempt is amorphous and has no determinate shape or structure and is virtually unrestrained in the will of the Court, the jurisdiction to punish for contempt given by Article 105(3) of the Constitution ought to be jealously and carefully watched and cautiously exercised with the greatest reluctance and the greatest anxiety.*

It is a power to be exercised not as the first resort, but as the last resort. Consistent with this approach, the issuance of summons *ex parte* under section 793 of the Civil Procedure Code should not be done as a matter of routine. Before issuing such summons, the court must make a considered assessment of the material placed before it to determine, on a *prima facie* basis, whether sufficient grounds exist to justify requiring the accused to answer the charge. However, at that stage, the court is not required to examine the application in detail or determine the substantive matter on its merits. (*Media Image Ltd v. Dissanayake* [2006] 3 Sri LR 215)

Section 10 of the Contempt of Court Act of 2024 sets out the procedure by which the Court of Appeal may assume jurisdiction over contempt of court committed against a court of first instance. However, even the Court of Appeal is not empowered to issue process merely upon the invocation of its jurisdiction. In terms of section 10(3), the Court of Appeal must first peruse the reference, motion, or affidavit filed under subsection (1) and satisfy itself that a *prima facie* case of contempt has been established against the person

alleged to have committed such contempt before causing a rule to be issued. Section 10(3) reads as follows:

*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, cause a rule to be issued on such person.*

Any misuse of contempt powers for the personal glorification of the Judge constitutes a grave abuse of judicial authority, which must be unequivocally condemned and addressed by the appropriate disciplinary authorities, as such conduct often causes irreparable and irretrievable harm on the integrity of the whole justice system.

### **Conclusion**

I am unable to accept the argument that section 18 of the Judicature Act applies only where a High Court established under Article 154P of the Constitution exercises criminal jurisdiction under the provisions of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990. Such an artificial distinction not only contradicts the language of the statute but also runs counter to well-established canons of statutory interpretation and common sense.

I hold that section 18 of the Judicature Act applies to offences of contempt committed against, or in disrespect of, the authority of any High Court, including the High Court established under Article 154P of the Constitution, whether such contempt is committed *in facie curiae* or *ex facie curiae*.

In addition, under Article 105(3) of the Constitution, the Court of Appeal has concurrent jurisdiction to punish for contempt of any court of first

instance, including the High Court. Similar provisions have been introduced in section 6(3) of the Contempt of Court Act of 2024, which enacts as follows:

*6(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.*

When a party opts to invoke the jurisdiction of the Court of Appeal instead of the High Court and is found guilty of contempt, as provided for in Article 105(3), the Court of Appeal may punish the accused with “*imprisonment or fine or both as the court may deem fit.*” Unlike the High Court, there are no prescribed upper limits for the imprisonment or fine that the Court of Appeal may impose. However, such punishment must always be commensurate with the gravity of the contempt.

I answer the question of law on which leave to appeal was granted in the affirmative and dismiss the appeal with costs.

The High Court is directed to conclude the contempt inquiry and main inquiry as expeditiously as possible.

Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

Judge of the Supreme Court

Arjuna Obeyesekere, J.

I agree.

Judge of the Supreme Court