

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

In the matter of an application under
Article 145 of the Constitution.

CA Application Number:

MCR 01 / 2025

Magistrate Court Nugegoda
Case Number: 29187 / 24

Iresha Udayangani Attanayake
No. 02, 2nd Lane,
Pengiriwatta Road,
Gangodawila, Nugegoda.

PETITIONER

Vs.

Herath Mudiyanseelage Kamal Sisira
Kumara Wickramanayake
No. 469/6A,
Cooperative Rural Bank Lane,
Bandiyamulla, Gampaha.

RESPONDENT

AND NOW

Herath Mudiyanseelage Kamal Sisira
Kumara Wickramanayake
41/1, Rambukkana Road,
Mawathagama.

RESPONDENT – PETITIONER

Vs.

1. Iresha Udayangani Attanayake
No. 02, 2nd Lane,
Pengiriwatta Road,
Gangodawila, Nugegoda.

PETITIONER – RESPONDENT

2. Hon. Attorney General
Attorney General's Department
No. 159, Sanchi Arachchi watta,
Colombo 12.

RESPONDENT

Before : **Hon. Rohantha Abeysuriya PC, J.(P/CA)**

: **Hon. K. P. Fernando, J. (CA)**

Counsel : Petitioner is appearing in person.
Oswald Perera, SC for the 2nd Respondent.

Written Submissions on : 14.10.2025 for the Petitioner

Supported on : 01.07.2025

Decided on : 29.10.2025

The Petitioner by his Petition drafted in Sinhala language dated 27.03.2025 prayed for relief to get vacated the interim order, and to prevent imposing protection order.

The original case, from which this petition arose, had been filed by the Respondent Petitioner's wife in the Nugegoda Magistrate's Court under the provisions of the **Prevention of Domestic Violence Act, No. 34 of 2005**. The case was being heard under case number TRF 8/25.

The matter related to an Interim Order that the Magistrate's Court had issued against the Respondent Petitioner on 12th March 2024, in his absence. The Petitioner contended that this Interim Order had remained in force for more than a year due to delays in the trial.

He submitted that such delay was unjust, as the duration of the Interim Order had already exceeded the maximum one-year period prescribed for a confirmed Protection Order under the said Act, thereby resulting in a greater punishment than what could be imposed upon conviction.

In his written submissions filed on 14.10.2025, the Petitioner elaborated upon the legislative intent and the procedural shortcomings in the conduct of the case. He stated that the Prevention of Domestic Violence Act (PDVA) was intended solely to provide short-term, temporary relief and did not render a respondent criminally liable or subject to imprisonment.

He emphasized that under **Section 10(2)** of the Act, a final Protection Order could be granted only for a maximum period of twelve months, thereby indicating that the legislature had intended for such trials to conclude expeditiously ideally within three to four months.

The Petitioner asserted that the present case, which commenced on 12th March 2024, had continued for over one year and seven months, despite the Court of Appeal having directed the Magistrate's Court on two occasions to expedite the proceedings.

He submitted that if this delay were to continue, the trial might take as long as two and a half to three years to conclude, thereby subjecting him to what he termed an “abnormal punishment” never intended by the legislature.

The Petitioner further contended that this prolonged trial created a legal inconsistency when compared to the consent provision under **Section 13** of the PDVA.

He argued that if a respondent consented at the outset, a Protection Order would be issued for one year, after which they would be free from its operation. However, a respondent who maintained their innocence was being subjected to a process lasting significantly longer than the maximum period prescribed by law.

He submitted that this extended duration had caused irreparable harm to his relationship with his child and had deprived him of fundamental rights, including freedom of speech and movement. He also pointed out that other sufficient civil and criminal laws already existed to address physical harm or violence. Accordingly, the Petitioner invoked the powers of the Court of Appeal under Article 145 of the Constitution to make such orders as were necessary in the interest of justice.

CONCLUSION:

The main grievance of the Petitioner is that since the interim order is now prevailing over one year, it is causing irreparable harm to him.

Section 5 subsection 3 of the Prevention of Domestic Violence Act No. 34 of 2005 provides that

“An Interim Order shall remain in force until a Protection Order is issued by the court, or such Interim Order is vacated.”

Section 6 of the Act deals with Issue of Protection Order where the respondent appears.

Section 6 subsection 4 states that,

*“Where on the date specified in the Notice issued under subsection (3) of section 4 the respondent appears and does not admit to the act or acts of violence but, **does not object to the issue of a Protection Order, the court shall issue a Protection Order** having regard to the provisions of section 8”. (the emphasis was added).*

As admitted by the Petitioner, he could have easily preferred not to object the issuance of a Protection Order without admitting to the acts of violence. If he opted for the issuance of the Protection Order on the day he first appeared, viz. 12.03.2024, it would have expired by 12.03.2025. He could have been free to enter the matrimonial home by now. The Petitioner himself must accept the blame of not taking such prudent decision at the earliest.

Upon being served with the “Interim Order” issued by the Magistrate Court of Nugegoda on 12.03.2024, the Petitioner has appeared in the Court on 26.03.2024, **he has opted to object to the issuance of a Protection Order** which is permanent in nature if issued but only valid for 12 months.

Section 10 subsection 2 provides that

“A Protection Order shall remain in force for a period not exceeding 12 months as specified therein.”

Section 13 relates to orders which can be made with consent of parties.

“13. The Court may, with the consent of the parties to the proceedings, make any Order under this Act without proof or admission of guilt and such Order shall not be construed as having been made consequent to an admission of guilt or upon proof of guilt.”

This was the 2nd alternative which was open for the Petitioner (who is the respondent in the Magistrate Court).

Section 14 has provided for variation and revocation of any Protection order:

*“(1) A Protection Order may be altered, modified, varied, extended or **revoked**, on an application made either by the aggrieved person or the respondent, and where the Court is **satisfied that there is a change of circumstances that**; require such alteration, modification, variation, extension, or **revocation**.”*

*Provided however, **no such** alteration, modification, variation, extension or **revocation**, **shall be made without hearing both the aggrieved person and the respondent**:*

Provided further that the Court shall not grant such an application to the aggrieved person unless it is satisfied that the application is made freely and voluntarily.” (the emphasis was added)

So that, there is and there has been an option of revoking the Protection order if the respondent (the Petitioner in this application) can satisfy the Magistrate Court regarding change of circumstances.

The Petitioner has not opted for both alternatives described above and challenged the interim order expecting to prove his alleged innocence. As a result, the inquiry relating to the issuance of Protecting Order has now been pending for over one year.

When perusing the journal entries of the Magistrate Court case, it appears that the petitioner in the said case, who is the wife of the present petitioner, has given evidence for 3 days until 22nd July 2024. Thereafter, the respondent started giving evidence on 3rd of October 2024. He has given evidence for two days. On 13th February 2025, when it was due for further examination of chief, it was revealed to the learned Magistrate that the respondent has written to the Judicial Service Commission to transfer the case to another judge.

Due to this fact, the case was fixed for 18.03.2025 to be called before Court number 01. **This fact also has caused a delay of exceeding one year's period.**

It is pertinent to note that **Section 11 (2) (b)** of the Act made it mandatory for the Magistrate Court to have regard to any hardship that may be caused to the respondent as a result of making of the Protection Order.

*“(2) In imposing any prohibition referred to in subsection (1) the **Court shall have regard to - any hardship that may be caused to the respondent** or to any other person as a result of the making of the Order.”* (the emphasis was added)

In terms of the above provision, the Magistrate Court must take cognizance of the hardship that has already been caused to the respondent as a result of the making of the Order. All the grievances which the Petitioner has forwarded to this Court can be brought forth before the Magistrate. By doing that, the Petitioner in this application can get relief from the Magistrate Court itself.

Moreover, at the conclusion of the inquiry, if the Petitioner become dissatisfied with an Order made by the learned Magistrate, **Section 17** of the Act has provided for appeal to the High Court.

“17. Any person who is dissatisfied with an Order made by a Magistrate under section 6 or section 7 may prefer an appeal to the High Court established under Article 154p of the Constitution in like manner as if the Order was a final Order pronounced by a Magistrate's Court in a criminal case or matter, and sections 320 to 330 (both inclusive) and sections 357 and 358 of the Code of Criminal Procedure Act, No. 15 of 1979 shall, mutatis mutandis, apply to such appeal.”

Thus, there is statutorily provided appeal procedure laid down in the Prevention of Domestic Violence Act for the Petitioner to get relief. All his grievances can be forwarded to the relevant High Court and get redress.

Thus, this Court has no jurisdiction to give any relief to the Petitioner since the correct jurisdiction is vested with the Magistrate Court itself and the High Court established under Article 154p of the Constitution.

For the foregoing reasons, this application is dismissed without costs.

Judge of the Court of Appeal

Hon. Rohantha Abeysuriya PC, J.(P/CA)

I agree.

President of the Court of Appeal