

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

In the matter of an Application under Article
126 of the Constitution of Sri Lanka.

SC. FR. Application No: 458/2010

Kandegedara Priyawansa, No. 42/28-B,
Katumana, Nuwara-Eliya, (currently,
detained at the Welikada Remand
Prison)

PETITIONER

Vs.

1. Gotabhaya Rajapakse
Secretary,
Ministry of Defence,
Public Security and Law &
Order, No. 15/5,
Baladaksha Mawatha, Colombo 3.
2. C.N. Wakishta
Deputy Inspector General of
Police, Director,
Terrorist Investigation
Division, 2nd Floor, Secretariat,
Colombo 01.
3. Officer-in-Charge
Welikada Remand Prison,
Welikada,
Colombo 8.
4. S. Hettiarachchi
Additional Secretary,

Ministry of Defence, Public
Security and Law & Order, No.
15/5, BaladakshaMawatha,
Colombo 3.

5. Bogamuwa
Inspector of Police,
Terrorist Investigation
Division, 2nd Floor, Secretariat,
Colombo 01.
6. Hon. Attorney-General
Attorney-General's
Department,
Colombo 12.

RESPONDENTS

BEFORE : Sisira J. De Abrew, J.
Anil Gooneratne, J. &
Nalin Perera, J.

COUNSEL : J.C. Weliamuna with Pasindu Silva and Sulakshana
Senanayake for the Petitioner.

Nayomi Wickramasekera, SSC for the Respondents.

ARGUED ON : 10.11.2016

DECIDED ON : 15.2.2017

Sisira J De Abrew J

The Petitioner in this case seeks a declaration that his fundamental rights guaranteed by Article 12(1), 13(1) and 13(2) of the Constitution have been violated

by the Respondents. This court by its order dated 10.2.2012 granted leave to proceed for alleged violation of Article 12(1) and 13(1) of the Constitution.

The Petitioner, in April 1975, joined the Sri Lanka Army as a soldier and in 1985 was promoted to the 7th Military Intelligence Unit as a Lance Corporal. In 2003 he left the Sri Lanka Army without permission. In 2006 he was apprehended by the Sri Lanka Army and was sent to Singha Regiment in Nuwara Eliya. During the period commencing from 2003 to 2006 he worked as a lorry driver. On 27.2.2010, the officers of the Terrorist Investigations Division (TID) led by the 5th Respondent arrested the Petitioner informing him that they wanted to record a statement from him. The Petitioner states that he was not informed of the reasons for his arrest. At the Criminal Investigation Department (CID), he was asked whether he knew a person by the name of Pitchchai Jesudasan. As he could not recollect the name of such person, he was shown a photograph of a person said to be Pitchchai Jesudasan. The Petitioner then identified the person in the photograph as Das. Das was a motor mechanic in Nuwara Eliya. He (the Petitioner) explained to the officers of the TID when he was working as a lorry driver, he used to take his lorry to Das's garage for repairs and that on some occasions he had consumed liquor with Das. The Petitioner further states that he was questioned with regard to the murder of Lasantha Wickramatunga. On 26.5.2010 he was produced before the Magistrate's Court, Colombo and was transferred to the Remand Prison. He has produced a copy of the case record of the Magistrate's Court as P1 and a copy of the detention order as P2. On 10.11.2010 he was discharged from the proceedings in the Magistrate's Court (MC Colombo B 4855/8/2010) on the basis that no further legal action would be pursued against him. Pitchchai Jesudasan too was discharged on the same basis. The Petitioner states although he was discharged from the proceedings in the Magistrate's Court, Colombo, he was added as a suspect to the proceedings in the Magistrate's Court Mount Lavinia B 92/2009

regarding the murder of Lasantha Wickramatunga. The Petitioner states that his arrest and detention are illegal and that his arrest and detention constitute continuing infringement of his fundamental rights guaranteed Article 12(1) and 13(1) of the Constitution.

The 2nd Respondent who is in charge of the Terrorist Investigation Division of the CID in his affidavit states that the investigation which was conducted by Mirihana Police regarding the murder of Lasantha Wickramatunga was subsequently handed over to the CID on 17.12.2009; that Lasantha Wickramatunga had received telephone calls from five mobile numbers prior to his death; that the Sim Cards pertaining to the said mobile numbers had been purchased by a person holding National Identity Card (NIC) number 711713050V; that the investigation had revealed that said NIC belongs to one Pitchchai Jesudasan of Nuwara Eliya; that when Pitchchai Jesudasan was arrested it was revealed that he had lost his NIC in 2008; that the said Sim Cards had been purchased subsequent to the losing of his NIC; that the investigation had revealed that Pitchchai Jesudasan had lost his wallet after he consumed liquor with the Petitioner in August 2008; that acting on this information the Petitioner was arrested on 27.2.2010; and that the said Sim Cards had been purchased from a communication centre which was situated opposite the Military Camp where the Petitioner was attached to. The officer who arrested the Petitioner has not filed an affidavit in this court. Arresting notes had not been produced by any Respondent. The 2nd Respondent is the only respondent who has filed an affidavit in this case.

One of the important questions that must be decided in this case is whether the above information furnished by the 2nd Respondent in his affidavit justifies the arrest of the Petitioner. There was no evidence or material to suggest that Pitchchai Jesudasan's NIC was in the possession of the Petitioner nor was there any material to suggest that the Petitioner had purchased the said Sim Cards. Merely because

Pitchchai Jesudasan lost his wallet after consuming liquor with the Petitioner, there is nothing to suggest that the Petitioner had stolen his wallet and the NIC. From the matters set out in the affidavit of the 2nd Respondent, there was no material, in my view, for the arresting officer to form the opinion that he had reasonable grounds or reasonable suspicion to arrest the Petitioner. In the case of Joseph alias Bruten Perera Vs. The Attorney General [1992] 1 SLR page 99 His Lordship Justice Wanasundera remarked thus; “The power of arrest does not depend on the requirement that there must be clear and sufficient proof of the commission of the offence alleged. On the other hand for an arrest, a mere reasonable suspicion or a reasonable complaint of the commission of an offence suffices.”

When I consider the affidavit of the 2nd Respondent, I hold the view that the arresting officer (the 5th Respondent), at the time of arrest, did not have sufficient material to justify the above principle laid down in the above judgment.

For the above reasons, I hold that the arrest of the Petitioner is illegal.

The article 12(1) of the Constitution is as follows.

“All persons are equal before the law and are entitled to the equal protection of the law.”

Article 13(1) of the Constitution is as follows.

“No person shall be arrested except according to the procedure established by law. Any person arrested shall be informed of the reason for his arrest.”

When I consider all the aforementioned matters, I hold that the 5th Respondent has violated the fundamental rights of the Petitioner guaranteed by Article 12(1) and 13(1) of the Constitution.

The next question that must be considered is whether the fundamental rights of the Petitioner had been violated when the Petitioner was detained after the arrest. The Detention order dated 27.2.2010 had been issued by the 4th Respondent. But the 4th Respondent has not filed any affidavit in this court. Did the 2nd Respondent forward any report to the 4th Respondent for the purpose of obtaining the detention order? The 2nd Respondent in his affidavit does not attach any such report. This shows that the 2nd Respondent had not forwarded any report to the 4th Respondent for the purpose of obtaining the detention order. The arrest of the Petitioner was on 27.2.2010. The detention order was also issued on the same day. I have earlier held that the 5th Respondent did not have reasonable grounds to arrest the Petitioner. If the 5th Respondent did not have reasonable grounds to arrest the Petitioner on 27.2.2010, there could not have been any material to issue a detention order on the same day. As I pointed out earlier there is nothing to indicate that a report had been forwarded to the 4th Respondent to sign a detention order. The 2nd Respondent states in his affidavit that the Petitioner was discharged on 22.8.2013 by the learned Magistrate on the advice of the Attorney General. In considering the case against the 4th respondent, two factors are possible. One is that the 2nd Respondent or the 5th Respondent verbally made incorrect representation to the 4th Respondent and persuaded him to sign the detention order or the other possibility is that the 4th Respondent signed the detention order knowingly that there was no material against the Petitioner. The 4th Respondent is not an investigator or a police officer. He is only an additional secretary attached to the Ministry of Defence. It is difficult to think that he, knowingly that there was no material against the Petitioner, signed the detention order. When I consider all these matters, I feel that it is not proper for me to find the 4th Respondent guilty for violating the fundamental rights of the Petitioner.

I have earlier held that the 5th Respondent has violated the fundamental rights of the Petitioner guaranteed by Article 12(1) and 13(1) of the Constitution. Considering all these matters, I make order that the 5th Respondent should pay Rs.100,000/- to the Petitioner for violating his fundamental rights. The 5th Respondent is directed to pay the above amount of money (Rs.100,000/-) to the petitioner within three months from the date of this judgment.

Judge of the Supreme Court.

Anil Gooneratne J

I agree.

Judge of the Supreme Court.

Nalin Perera J

I agree.

Judge of the Supreme Court.