

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

S.C (FR) No. 121/2011

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

Jayanetti Korallalage Rajitha Prasanna
Jayanetti
Of No. 237, Thimbirigasyaya Road,
Colombo 5.

PETITIONER

Vs.

1. H.H. Harischandra (PS 28312)
Police Sergeant
Police Station,
Matugama.
2. Anura Samaraweera
Sub Inspector of Police,
Special Criminal Investigation Unit
Police Station,
Matugama
3. Neville Priyantha (PS 10967)
Sub Inspector of Police
Special Criminal Investigation Unit
Police Station,
Matugama.
4. K. Udaya Kumara
Chief Inspector of Police
Head Quarter Inspector
Police Station, Matugama.

5. Dr. M. Balasooriya
Inspector General of Police
Police Headquarters,
Colombo.
6. Pinnawalage Chandrasena
Pahala Uragala
Ingiriya.
7. Hon. Attorney General
Attorney General's Department
Colombo 12.

RESPONDENTS

BEFORE: Priyasath Dep P.C., C.J
Upaly Abeyrathne J. &
Anil Gooneratne J.

COUNSEL: Shantha Jayawardena with Chamara Nanayakkarawasam
For the Petitioner

Madhawa Thennakoon S.S.C. for the 1st – 5th and 7th Respondents

6th Respondent absent and unrepresented

ARGUED ON: 17.02.2017

DECIDED ON: 06.06.2017

GOONERATNE J.

The Petitioner is a businessman who allege that his fundamental rights have been infringed under Articles 12(1) and 13(1) of the Constitution.

The 6th Respondent is a supplier of scrap rubber with whom the Petitioner had certain business dealings. It is submitted by the learned counsel for the Petitioner that the 6th Respondent maliciously aided and abetted and or instigated the 1st to 4th Respondents, all of whom have acted together maliciously and violated the Petitioner's fundamental rights.

On or about 19.01.2011 the 6th Respondent delivered a quantity of about 5379 kg of scrap rubber to the factory of the Petitioner. Thereafter the 6th Respondent informed the Petitioner and in fact met him regarding the quantity of scrap rubber delivered to the Petitioner at his factory and informed that a total sum of Rs. 1,522,257/- is due for same from the Petitioner. The Petitioner paid the 6th Respondent a sum of Rs. 600,000/- in cash and having agreed to deduct the same of Rs. 42,528/- as against the part of excess money paid as advance, issued a cash cheque in a sum of Rs. 879,729/- dated 20.01.2011. Thereafter 6th Respondent left the Petitioner's premises. After the 6th Respondent left the premises, an employee of the Petitioner informed him that part of the scrap rubber delivered by the 6th Respondent was not satisfactory and the proper rubber content could be 57% and that the balance rubber contained a lot of extraneous contents. As such the Petitioner promptly telephone the 6th Respondent and informed the 6th Respondent of the unsuitability of the supplied scrap rubber, and requested him to see the

Petitioner. The 6th Respondent informed the Petitioner that he is unable to come and see the Petitioner but told the Petitioner that 61 bags of scrap rubber had been purchased by one Kodituwakku and that quality was not inspected by him. 6th Respondent also informed the Petitioner that he would meet him on a subsequent date. In these circumstances the Petitioner requested the 6th Respondent not to present the cheque for payment until the accounts are examined and settled, on the sums payable to him is correctly ascertained to which 6th Respondent agreed. On this arrangement with the 6th Respondent, the Petitioner informed and instructed his bank on 20.01.2011 in writing to stop payment (letter 'H').

It is submitted that despite the request and undertaking obtained by the Petitioner from the 6th Respondent not to present the cheque as stated above, the 6th Respondent surreptitiously tendered the said cheque to the bank on 20.01.2011 and the bank had not made any payment to the 6th Respondent, on the cheque.

Petitioner also take up the position that the 6th Respondent had no right to present the said cheque for payment and it is in breach of the undertaking to do so, before accounts were settled between parties. The 6th Respondent had also over the phone inquired about the stop payment of cheque and Petitioner replied stating it was so, as agreed between them.

It is pleaded that the 6th Respondent met the Petitioner to discuss the matter and the Petitioner gave him a statement 'E' showing several transactions between the parties, but the 6th Respondent did not go through the statement and left the factory.

On perusing the Petition I find that thereafter a different turn had taken to this transaction as described in paragraph 19 to 30, where the police involvement is stated. The said averments up to the point of, Petitioner being remanded could be summarised as follows:

- (a) 6th Respondent on 25.01.2011 requested the Petitioner to be present at the Weligama police. Petitioner went to the police but the 6th Respondent was not present. Petitioner spoke to the 6th Respondent on the mobile phone. Then a person who identified himself as Officer In Charge, Matugama Police spoke to the Petitioner on the mobile phone and Petitioner told him he would come the next day.
- (b) On 26.01.2011 the Petitioner went to the office of the Assistant Superintendent of Police and the 6th Respondent was in conversation with the A.S.P.
- (c) The A.S.P (paragraph 21) inquired from the Petitioner about the payment of the cheque and the Petitioner explained the transaction he had with the 6th Respondent. The said A.S.P. observed that this is a civil transaction and directed the officers to record statement.

- (d) On 02.03.2011 Petitioner received a call from the 1st Respondent who identified himself as a Court Sergeant requested the Petitioner to come to the police and make a statement.
- (e) As described in paragraph 24 of the petition the Petitioner was arrested by the police and placed in the police cell.
- (f) Petitioner's employees contacted Attorney-at-Law Seneviratne and he attended the police and saw the Petitioner in the cell with other inmates.
- (g) The said Attorney-at-Law questioned the 1st Respondent about the illegal arrest. 1st Respondent told them about recording a statement and Petitioner to be produced before the Magistrate.
- (h) Petitioner under arrest was produced before the Magistrate in case No. 70641/11. Police moved to remand the Petitioner without disclosing to court the contents of the statement.
- (i) In the Report to court made by the 2nd Respondent, it had been revealed that the Petitioner had committed the offence of cheating and criminal breach of trust.
- (j) An application made on behalf of the Petitioner for bail on 02.03.2011 was objected by the police without any reasonable cause. Petitioner was accordingly remanded and kept in the remand prison till 03.03.2011. On the said date on an application made by the Petitioner's Attorney-at-Law,

the Petitioner was released on bail, upon two sureties executing two surety bonds for Rs. 1,000,000/-.

In paragraph 35 of the petition it is averred that 1st to 4th Respondents acted together with the 6th Respondent maliciously without any reasonable cause for the reasons set out in paragraphs 35 (a) to 35 (d) of the petition. Further a letter marked 'J' is annexed from the Bank of Ceylon to indicate that the Petitioner had sufficient credit facilities on his account, at the time of issuing the cash cheque to the 6th Respondent. Supreme Court on 06.05.2011 granted Leave to Proceed for the alleged violation of Articles 12 (1) & 13 (1) of the Constitution by the 1st to 4th Respondents.

I have also perused the affidavit of one Samson an employee of the Petitioner who took delivery of scrap rubber delivered by the 6th Respondent. He also examined the scrap rubber so delivered to be unsatisfactory containing extraneous particles than normal scrap rubber. This employee immediately informed the Petitioner of above. The said employee also states that he was present with the Petitioner on 26.01.2011 at the Assistant Superintendent of Police office, at Matugama, and the A.S.P. observed that the transaction to be a civil matter.

The 1st Respondent a Police Sergeant and the other three Respondents have filed objections to this application. 1st Respondent deny that he acted in a malicious manner towards the Petitioner or breached the Petitioner's fundamental rights. He also pleads that the 6th Respondent is not personally known to him and 6th Respondent complaint was recorded as a civilian. Copy of the complaint is annexed marked 1R1 (a) and 1R1 (b). On such complaint Petitioner was requested to attend the police station and he was kept in police custody and arrested having informed the Petitioner of the reason for arrest. The arrest notes are annexed marked 1R3. He states he acted according to law. He produced the Petitioner before the Magistrate and note pertaining to Petitioner being taken to the Magistrate is annexed marked 1R4.

The 2nd Respondent is the Officer-In-Charge of the Special Crimes Investigation Branch A.S.P's office, Matugama. He Plead inter alia that at the material time he was attending a training programme at the Katana Police Academy, during the period 28.10.2012 to 02.03.2012. On his return to the police station after the training period he became aware whilst inspecting the books in the branch, that a statement of the Petitioner was recorded, and that the Petitioner was produced before the Magistrate on a 'B' Report. He denies

any malicious act on his part towards the Petitioner. Further the 2nd Respondent never acted in a manner to humiliate the Petitioner nor did the 2nd Respondent act in collusion with the 6th Respondent.

The 3rd Respondent is the Court Sergeant who recorded the statement of the Petitioner. His affidavit is supportive of the facts pleaded by the 1st and 2nd Respondents. The 4th Respondent is the Head Quarters Inspector of Weligama Police. It is his position that he was not involved in the investigation of the complaint against the Petitioner. Officer of the Special Crimes Investigations Branch conducted the investigation against the Petitioner. Any malice alleged against him is denied by the 4th Respondent.

The 6th Respondent has never participated in these proceedings, before this court. At the hearing before this court the learned counsel for Petitioner no doubt supported his case. Learned Senior State Counsel who appeared for 1st to 5th and 7th Respondents very correctly submitted to this court that the transaction in question was a civil transaction. I have to hold that the 6th Respondent who was responsible to initiate criminal proceedings, breached the fundamental rights of the Petitioner along with the 1st, 2nd and 4th Respondents. Whatever it may be the Petitioner could not have been arrested and produced before court on the available material as the facts are supportive of a civil transaction. This is a very unfortunate incident, for the authorities

concerned to have deprived the Petitioner of his personal liberty, by attaching criminal liability to the transaction in question. However law cannot permit this sort of lapses to take place either knowingly or unknowingly and deprive a persons' freedom and personal liberty.

It is apparent that the Petitioner and the 6th Respondent had been dealing with each other for some time and had transactions on scrap rubber. Petitioner purchased scrap rubber from the 6th Respondent and even made part payment in cash. In that type of business transactions, sometimes parties withhold payment for various reasons. Every such transaction would not amount to cheating. In the instant case the Petitioner in fact tendered a statement of accounts to the 6th Respondent to verify the accounts. It appears that the 6th Respondent had not taken the trouble to check the accounts, instead thought it fit to change the complexion of the transaction from civil transaction to be an act of cheating. The police should have not been so hasty especially where part payment had been made to the 6th Respondent in cash, by the Petitioner. The hurry in which a prosecution was launched by the police is rather suspicious.

This appears to be a simple case of goods sold and delivered, where a buyer would have an option to reject the goods for want of quality. As such the Petitioner is entitled to a declaration that his constitutional rights are violated. Even if the police had a wrong appreciation of the law, yet the infringement would remain. It is essential to comply with the statutory provisions established by law designed to protect the liberty of the subject. State is liable and has to be held responsible for the acts of the police, which appears to have been influenced by the 6th Respondent.

An arrest must be supported by a clear provisions of the law – *Gunawardena Vs. Perera (1983) 1 SLR 305*. It was held in *Piyasiri Vs. Fernando 1988 (1) SLR 173* that a police officer has no right to arrest a person on vague general suspicion, not knowing the precise crime suspected but hoping to obtain evidence of the commission of some crime for which he has the power to arrest.

I hold that Petitioner's fundamental rights guaranteed by Articles 12(1) and 13(1) have been violated, and the 1st, 2nd, and 4th Respondents are liable. It appears to me that 1st, 2nd and 4th Respondents have acted with the 6th Respondent who instigated them, maliciously. There was no legal basis to arrest the Petitioner, this being a pure civil transaction. In these circumstances, I direct the 1st, 2nd and 4th Respondents to pay the Petitioner as compensation a sum of

Rs. 25,000/- each as these Respondents are responsible for arresting and producing the Petitioner in Court.

In this entire episode the 6th Respondent initiated and instigated the above Respondents to violate the fundamental rights of the Petitioners. As such this court Orders the 6th Respondent to pay a sum of Rs.75,000/- as compensation.

Application allowed with costs.

JUDGE OF THE SUPREME COURT

Priyasath Dep P.C.

I agree.

Chief Justice

Upaly Abeyrathne J.

I agree.

JUDGE OF THE SUPREME COURT