

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

In the matter of an application
under Article 17 and in terms of
Article 126 of the Constitution of
the Democratic Socialist Republic
of Sri Lanka.

Mery Ruwan Kumara,
No.148, Kekilla Mandiya,
Boosa.

SC/FR/APPLICATION NO 265/12

Petitioner

Vs.

1. Prasan Fernando,
Chief Inspector,
Officer-in-Charge,
Police Station,
Tissamaharama
2. Dadya Manawaduge Basil
Neville de Silva,
Sub Inspector,
Police Station,
Tissamaharama
3. Liyanagamage Premasiri,
Sub Inspector,
Officer-in-Charge, Crime
Branch,
Police Station,
Tissamaharama

4. S.J.D.Suwaris, Inspector of Police,
Acting Officer-in-Charge,
Police Station,
Tissamaharama.
5. M.J.M.Rishard,
Senior Superintendent of Police, Zonal Commanding Officer, Special Task Force Camp,
Suriyawewa.
6. Inspector General of Police,
Police HeadQuarters,
Colombo 01
7. Honourable Attorney General,
Attorney Generals' Department,
Colombo 12

Respondents

BEFORE : MURDU N.B. FERNANDO,PC, CJ
K.KUMUDINI WICKREMASINGHE, J. &
ACHALA WENGAPPULI, J.

COUNSEL : Saliya Peries,PC with Anjana Rathnasiri, Pavithra Manujaya, Miss Andrea Wijewansha and Ms Ushani Rathnasingam for the Petitioner.
Hafeel Farisz with Sharon Thilakarathne for the 1st - 3rd Respondents.

Shyamal A. Collure with Prabath S. Amarasinghe for the
4th Respondent.

Ms I Punchihewa, SC for the 5th- 7th Respondents.

**WRITTEN SUBMISSIONS ON :Written Submissions of the Petitioner
not filed up to date.**

Written Submissions filed
by the 1st -3rd Respondents on 13th
March 2024.

Written Submissions of the 4th,5th,
6th and 7th not filed up to date.

ARGUED ON : 06.12.2023

DECIDED ON : 24.07.2025

K. KUMUDINI WICKREMASINGHE, J

This is a fundamental rights application filed under Article 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka by the Petitioner, a Police Constable attached to the Special Task Force (STF), alleging that his Rights guaranteed under Articles 11, 13(1) and 13(2) of the Constitution have been violated by the 1st , 2nd, 3rd, 4th Respondents and the State. The Petitioner complains of unlawful arrest, arbitrary detention, cruel, inhumane and degrading treatment at the hands of the officers attached to the Tissamaharama Police Station during the period from 28th April 2012 to 1st May 2012. The Court granted leave to proceed on the alleged violations of **Article 13(1)** **Article 13(2)** and **Article 11** of the Constitution.

Factual Matrix

At the time of the alleged violation of his Fundamental Rights, the Petitioner was attached to the Tangalle STF Camp as a Police Constable. The Petitioner stated that the 1st Respondent was the Officer-in-Charge of the Tissamaharama Police Station until he was interdicted. The Petitioner stated that the 2nd and 3rd Respondents were also officers attached to the Tissamaharama Police Station and the 4th Respondent was the Acting Officer-in-Charge of the Tangalle Police Station, while the 5th Respondent served as the Zonal Commanding Officer of the STF in Suriyawewa.

The Petitioner stated that he enrolled in the STF on 16th April 2006 as a Police Constable. (A true copy of his letter of appointment dated 19th September 2006 is annexed as **P-01**). The Petitioner stated that thereafter, he served in various STF units and camps, primarily in operational areas, including the Kundasale Police Training School, Katukurunda STF Headquarters, Thirukkivil STF Camp, Ampara STF Camp, Kalmunai STF Camp and finally the Tangalle STF Camp, where he was stationed from 3rd August 2011 onwards.

The Petitioner stated that on 27th April 2012, the 2nd Respondent, along with another unidentified police officer and several civilians, arrived at the Tangalle STF Camp in a van bearing registration number 56-5838. The 2nd Respondent recorded statements from him as well as from another Sub-Inspector named Sampath, in connection with an alleged abduction and the theft of a "Walampuri" valued at Rs. 3 million.

The Petitioner further stated that on 28th April 2012, the Tissamaharama police station issued a telephone message (No. 774) to the Officer-in-Charge of the Tangalle STF Camp, instructing him to hand over the Petitioner and Sub-Inspector named Sampath to the Tissamaharama police station. The Petitioner claimed that he was handed over to the said police station between 4:30 p.m. and 5:00 p.m. Subsequently, the Officer-in-Charge of the Tangalle STF Camp recorded the return entry under reference No. 377/3114 RIB at 9:15 p.m. on the same day. (marked as **5R1 and 5R2**)

According to the Petition, the Petitioner and Sub-Inspector Sampath were detained at the Tissamaharama police station. On the same night, when the Petitioner requested food from the 2nd Respondent, the 4th Respondent insulted him and directed for him to be taken to the Crime Branch. The Petitioner stated that at the Crime Branch, the 1st, 2nd, and 3rd Respondents forced him to strip naked and kneel on the floor while interrogating him for approximately half an hour. The Petitioner stated that he was not given any food that night.

The Petitioner also stated that on 29th April 2012, at around 11.45 a.m., his brothers, Mery Nimal and Mery Sampath Kumara, visited the police station to check on his condition. He stated that one of his brothers, Mery Nimal (who was also a police officer) and the other brother visited him again on 30th April and 1st May 2012. The Petitioner stated that both brothers have submitted affidavits confirming that he was unlawfully detained from 28th April to 1st

May 2012 without being produced before a Magistrate. These affidavits are annexed as **P-02A** and **P-02B**.

The Petitioner further stated that on 29th April 2012, a person named Dasun Sanjeewa, who had been detained on an assault charge, was placed in the same cell. The Petitioner stated that Dasun Sanjeewa was granted police bail and released a few hours after being placed in the cell on 29th April 2012. At the time of his release, the Petitioner was still in custody in the same cell. The Petitioner also stated that Dasun Sanjeewa witnessed this and subsequently submitted an affidavit confirming the Petitioner's continued detention. This affidavit is annexed as document **P-03**.

The Petitioner stated that on 1st May 2012, he and Sub-Inspector Sampath were produced before the Acting Magistrate of Tissamaharama. The Petitioner was represented by an Attorney-at-Law who informed the court that the Petitioner had been arrested on 28th April 2012. A certified copy of the B Report bearing No. 254/12 is marked as **X**, and the application made is marked as **P-04**.

The Petitioner stated that he was remanded until 8th May 2012 and subsequently further remanded until 15th May 2012. He stated that on 15th May 2012, an identification parade was conducted, but he was not identified by any of the complainants. Nevertheless, he was further remanded until 21st May 2012, on which date he was granted bail. The Petitioner stated that although bail was granted on 21st May 2012, he was only released on the 23rd May 2012. The Petitioner stated that, immediately after he was released

on bail he reported to the STF Camp Tangalle as he was summoned to report back to the STF Camp of Tangalle.

The Petitioner stated that on 25th May 2012, he received a telephone message bearing No. 685 issued at 1655 hours by the 5th Respondent, informing him that he had been interdicted with immediate effect under Sections 27:08 and 27:10 of Chapter XLVIII of Volume II of the Establishments Code due to his arrest and remand. The Petitioner stated that he was ordered to hand over his belongings and leave the camp. (A true copy of the said message is annexed as **P-06.**)

The Petitioner stated that his arrest was effected without any reasonable cause or material to justify it and that he was detained unlawfully for three days without being produced before a Magistrate, in contravention of the procedure set out in the Code of Criminal Procedure. The Petitioner further stated that he was subjected to torture and cruel, inhumane, degrading treatment, including being forced to strip and kneel during interrogation. He also stated that he was denied food on the night of 28th April 2012. The Petitioner stated that the failure to identify him at the identification parade held on 15th May 2012 indicated that there was no basis to pursue criminal charges against him.

The 1st, 2nd and 3rd Respondents denied the allegations made by the Petitioner and submitted that their actions were at all times lawful, reasonable and carried out in the course of their official duties in accordance with the law. They categorically denied the Petitioner's claim that he was arrested and detained by the Special Task Force (STF) on 28th April 2012. The 1st Respondent stated

that the Petitioner surrendered at the Tissamaharama police station on 30th April 2012, following a statement made by another suspect, Sugath Ranjan Dissanayake, who had implicated the Petitioner in the alleged theft of a Valampuri shell. This statement has been marked as **1R 2(a)**.

The 1st, 2nd and 3rd Respondents further submitted that the Petitioner was taken into custody only after proper legal procedure was followed, in accordance with **Section 32(1)(b)** of the **Code of Criminal Procedure Act No. 15 of 1979**. The 1st, 2nd and 3rd Respondents stated that there is no record, written or otherwise, indicating that the Petitioner was arrested by the Special Task Force or detained prior to 30th April 2012. The 1st Respondent specifically stated that he was not present at the police station on the 28th or 29th of April 2012, as he had been assigned to official duties at the Senior Superintendent of Police Conference held in Tangalle on the 28th of April 2012 and at the Sithul Pawwa Temple on the 29th of April 2012. The 1st, 2nd and 3rd Respondents have submitted affidavits, marked as 1R1, 2R1 and 3R1 to assert their version of events that took place. In view of these circumstances, the 1st, 2nd and 3rd Respondents asserted that the Petitioner's account of events lacks any supporting evidence and appears to have been deliberately fabricated to mislead the Court.

Additionally, the 1st, 2nd and 3rd Respondents emphasised that the Petitioner was produced before a Magistrate without undue delay and in full compliance with the applicable legal requirements. They strongly denied any allegation of torture or inhumane treatment while the Petitioner was in custody.

Having considered the above sequences of events as narrated by the Petitioner and the 1st to 3rd Respondents, I will now consider the alleged infringement of the Fundamental Rights of the Petitioner by the 1st to 3rd Respondents.

Legal Analysis

Alleged violation of Articles 13(1) and 13(2) of the Constitution;-

The issues that arise for determination in this application are whether the Petitioner was subjected to an unlawful arrest by the 1st to 3rd Respondents in violation of **Article 13(1)** of the Constitution and whether his continued detention from 28th April 2012 to 1st May 2012 without being produced before a Magistrate amounted to an infringement of his Fundamental Right under **Article 13(2)**. It must also be considered whether the Petitioner was subjected to torture or cruel, inhumane, or degrading treatment or punishment during the period 28th April 2012 to 1st May 2012 in contrary to **Article 11** of the Constitution. Further, it is necessary to determine whether the actions and omissions of the 1st to 3rd Respondents amounted to violations of the Petitioner's Fundamental Rights and whether the State bears responsibility for those violations.

Article 13(1) of the Constitution provides that “[n]o person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest.” This provision serves as a cornerstone of the rule of law and due process, ensuring that executive power is exercised within legal

boundaries and not at the whim of individual authority. The phrase "**procedure established by law**" implies not only that there must be a legal basis for the arrest, but also that such procedure must be fair, reasonable, and just. Any deviation from this constitutional mandate renders the arrest unlawful and infringes upon the personal liberty of the individual, which the Constitution seeks to vigorously protect. Furthermore, the duty to inform the arrested person of the grounds of arrest is not a mere formality but a substantive right, aimed at empowering the detainee to challenge the legality of the detention and to prepare an effective defense.

In this context, credible information becomes the foundational requirement for any lawful arrest under **Article 13(1)**. The legitimacy of the procedure established by law hinges on the presence of trustworthy and verifiable material that gives rise to a reasonable belief or suspicion of an offence. Without such credible input, any action taken by law enforcement risks being arbitrary and in direct violation of the constitutional mandate.

Section 32(1)(b) of the Code of Criminal Procedure Act No. 15 of 1979 provides that any peace officer may, without a warrant, arrest any person who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists of such involvement.

In the context of the powers of investigation vested in executive agencies, **G.L. Peiris, Criminal Procedure in Sri Lanka Under the Administration of Justice Law (1st edn, Lake House Investments 1979) 35**, aptly observed:

“[T]he primary objectives of the rules applicable to criminal procedure in this area involve a compromise between efficiency and restraint. The public interest demands the discovery and punishment of crime with greater energy and expedition, but not at the expense of rights which, in fairness to the accused, are guaranteed from the outset. It is the aim of the law of procedure to ensure that the liberty of the individual is not eroded by actions taken during the course of the preliminary investigation.”

This statement highlights the essential balance that must be maintained between the efficient pursuit of justice and the safeguarding of individual liberties, emphasising that the protection of rights of the accused is fundamental throughout all stages of the criminal investigation.

In this case, the core allegation against the Petitioner arises from a robbery incident involving two conch shells (Valampuri) valued at Rs. 3000,000/=. The 1st to 3rd Respondents have submitted that the Petitioner, allegedly misused his official position as an STF Officer to participate in this robbery along with another STF officer (Sub-Inspector Sampath) from the Tangalle STF camp. The B report (marked as **1R2(a)**) filed in the Magistrate’s Court Thissamaharama was based on the statement made by Sugath Dissanayake.

Sugath Dissanayake’s statement marked as **1R2(a)**, revealed that the Sub- Inspector Sampath had purportedly communicated with him via mobile phone and informed him that the stolen Valampuri shells were kept in the possession of the Petitioner (Ruwan

Kumara) at the house of the Petitioner. Even though this statement creates a suspicion it amounts to hearsay evidence. Stolen items were not recovered and the Petitioner was not identified by the complainants in the Identification Parade.

The 1st, 2nd and 3rd Respondents clarified that they have obtained a search warrant (marked as **P5**) under **section 68** of the **Police Ordinance No 16 of 1865** in their written submissions, but there is no further information about the search to prove that the stolen items were recovered.

Although the 1st, 2nd and 3rd Respondents claimed that the Petitioner surrendered to the Tissamaharama Police on 30th April 2012 and was subsequently arrested, the factual matrix does not disclose any independent or voluntary version by the Respondents concerning the alleged robbery, other than the statement made by Sugath Dissanayake. The 1st, 2nd, and 3rd Respondents have not submitted any contemporaneous investigative material that substantiates the Petitioner's participation in the robbery.

Section 32(1)(b) of the **Code of Criminal Procedure Act No. 15 of 1979** permits arrest without a warrant where credible information has been received or where reasonable suspicion exists regarding a person's involvement in a cognizable offence. However, it is trite law that such suspicion must be grounded in specific, verifiable facts. In the present case, the police have acted based only on Sugath Dissanayake's statement, but no other material corroboration in order to have reasonable suspicion. Lack of supporting evidence and credibility does not create a reasonable suspicion.

Therefore, in analysing whether the arrest and continued detention of the Petitioner were justified, it becomes necessary to evaluate not only the existence of a complaint or statement but also whether such information was sufficiently credible and objectively verified to warrant the deprivation of liberty. In the absence of such verification, the justification for the arrest becomes legally questionable, and the claim of violation under **Articles 13(1)** of the Constitution.

In Mahanama Tilakaratne v Bandula Wickremasinghe, Senior Superintendent of Police and Others [1999] 1 Sri L.R. at page 382, Dheeraratne J stated,

“Issuing a warrant is a judicial act involving the liberty of an individual and no warrant of arrest should be lightly issued by a Magistrate simply because a prosecutor or an investigator thinks it is necessary. It must be issued as the law requires, when a Magistrate is satisfied that he should do so, on the evidence taken before him on oath. It must not be issued by a Magistrate to satisfy the sardonic pleasure of an opinionated investigator or a prosecutor.”

In Ven. Dharmaratana Thero and Another v Sanjeewa Mahanama and Others [2013] 1 Sri L.R. 81 at page 89 Dep J(as he then was) stated,

“[I]n order to arrest a person under this subsection there should be a reasonable complaint, credible information or a reasonable suspicion. Mere fact of receiving a complaint or information does not permit a peace officer to arrest a person. Police Officer upon receipt of a complaint or information is

required to commence investigations and ascertain whether the complaint is a reasonable complaint, the information is credible, or the suspicion is reasonable before proceeding to arrest a person.”

Kulatunga, J in ***Dissanayaka v Superintendent Mahara Prison and others* [1991] (2) SLR 247, 248-249** stated the following to highlight the importance of examining the material to decide the validity of the arrest.

“Nevertheless, it is for the Court to determine the validity of the arrest objectively. The Court will not surrender its judgement to the executive for if it did so, the fundamental right to freedom from arbitrary arrest secured by Article 13(1) of the Constitution will be defeated. The executive must place sufficient material before the Court to enable the Court to make a decision, such as the notes of investigation, including the statements of witnesses, observations etc. without relying on bare statements in affidavits”.

Accordingly, although the 1st to 3rd Respondents relied on **Section 32(1)(b)** of the **Code of Criminal Procedure Act No. 15 of 1979**, which permits arrest without a warrant based on credible information or reasonable suspicion, the lack of objectively verifiable facts raises serious concerns as to whether that legal threshold was in fact satisfied in this case. Where the suspicion is based solely on the confession of a third party, untested by independent corroboration, the legality of the arrest becomes questionable in light of the constitutional safeguards guaranteed under **Article 13(1)**.

Having established the foundational principles of lawful arrest under **Article 13(1)**, it is important to examine how **Article 13(2)** further reinforces these protections by addressing the broader issue of detention following an arrest. While **Article 13(1)** focuses on the legality and transparency of the arrest process itself, **Article 13(2)** shifts the focus to the continued deprivation of liberty, ensuring that individuals who are detained are not held indefinitely or without judicial oversight. In other words, **Article 13(2)** complements **Article 13(1)** by providing an essential safeguard against prolonged or unlawful detention. It requires that any person held in custody or otherwise deprived of liberty must be promptly brought before a judge, in accordance with the procedures established by law. This judicial intervention serves to ensure that detention is not only lawful but also justified, preventing arbitrary or abusive practices by the authorities.

While the Petitioner was formally arrested on 30th April 2012, the period between 28th April and 30th April remains significant. The law prohibits the detention of a suspect for purposes of questioning or investigative convenience without judicial authorisation, particularly beyond the twenty-four-hour limit prescribed by law. This requirement arises from the interplay between the **Code of Criminal Procedure Act No. 15 of 1979** and the **Police Ordinance No. 16 of 1865**, which collectively establish the procedural safeguards for arrest and detention.

Section 37 of the **Code of Criminal Procedure Act No. 15 of 1979** stipulates:

“No peace officer shall detain in custody a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate.”

Correspondingly, **Section 65** of the **Police Ordinance No. 16 of 1865** provides:

“Every person taken into custody by any police officer without warrant (except persons detained for the mere purpose of ascertaining their name and residence) shall forthwith be delivered into the custody of the officer in charge of a station in order that such person may be secured until he can be brought before a Magistrate to be dealt with according to law, or may give bail for his appearance before a Magistrate, if the officer in charge shall deem it prudent to take bail as hereinafter mentioned: Provided that where bail is not taken, the prisoner shall be brought before a Magistrate within twenty-four hours, unless circumstances render delay unavoidable.”

These provisions collectively ensure that the deprivation of liberty is subject to timely judicial oversight, thereby preventing arbitrary or prolonged detention without lawful justification.

Therefore, although proper judicial procedures appear to have been followed from 30th April onwards, the failure to demonstrate lawful detention and prompt judicial production during the

preceding two days raises a question whether the Petitioner's fundamental rights under **Article 13(2)** of the Constitution is violated.

It is evident from the contents of the affidavits placed before this Court. According to the affidavit filed by the 5th Respondent, he admitted the contents of paragraph 5 of the Petition. The 5th Respondent acknowledged that the Petitioner was handed over to the Tissamaharama Police by the Officer-in-Charge of the Tangalle STF Camp in connection with the alleged criminal offence. The notes made by the Officer who effected the handover are marked as **5R1** and **5R2**.

According to document **5R2**, it is recorded that:

“දිනය-2012.04.28.....

තංගල්ල කදවුරේ උ.පො.ප සම්පත්, පො.කො. 16085, රුවන් යන නිලධාරීන් දෙදෙනා අදාළ විමර්ශන කටයුත්ත සඳහා තිස්සමහරාම පොලිස් ස්ථානයේ අපරාධ අංශයේ ස්ථානාධිපති උ.පො.ප ලියනගමගේ වෙත භාරදීමෙන් අනතුරුව කදවුරට පැමිණියා.”

Furthermore, the 5th Respondent admitted that the Petitioner was handed over to the Tissamaharama Police on 28th April 2012.

The 1st Respondent, in his affidavit, stated that he was not present at the Tissamaharama Police Station on 28th April 2012 due to attending the SSP Conference in Tangalle, but no proof has been given to support this claim. Crucially, the 5th Respondent admitted that the Petitioner was handed over to the Tissamaharama Police

on that date by STF officers, as proved by documents (IB Extracts dated 28th April 2012) **5R1** and **5R2**. Thus, regardless of the 1st Respondent's presence or absence, the available material clearly confirms that the Petitioner was in police custody from 28th April 2012.

The affidavit of Dasun Sanjeewa (marked **P3**) and the affidavits of Mery Nimal and Mery Sampath Kumara (marked **P-02A** and **P-02B**), that the Petitioner was in fact in police custody from at least 28th April 2012. According to these affidavits, the Petitioner was handed over to the Tissamaharama Police by STF officers on 28th April 2012 and was continuously held thereafter. Specifically, Dasun Sanjeewa averred:

“2012.04.29 වෙනි දින නිස්සමහාරාම පොලීසියේ පොලිස් සිර මැදිරියේ මා සමඟ රඳවා සිටි බවත්...”

“2012.04.30 දින පෙ.ව 9.00 ට පමණ නිස්සමහාරාම පොලිස් ස්ථානයට මාගේ පැමිණිල්ල වැඩිදුර විභාගය සඳහා පැමිණි විට ඒ වන විටත් මෙරි රුවන් කුමාර සහ ලොකු විතානගේ අරුණ සම්පත් යන දෙදෙනා එම සිර මැදිරියේම සිටි බවත්”

This establishes that the Petitioner was already in custody by 29th April, prior to the alleged formal arrest on 30th April 2012.

Additionally, both Mery Nimal and Mery Sampath Kumara averred that:

“2012.04.28 වන දින නිස්සමහාරාම පොලිස් ස්ථානය වෙත ... භාර දුන් පසු අත්අඩංගුවට ගත් බවට දැන ගත් බවත්”
and

**“2012.04.29 දින ... රුවන් කුමාර ... පොලීස් සිරමැදිරියේ
රඳවා සිටිනු දුටු බවත්”**

The above mentioned Affidavits corroborated that the Petitioner was detained in the Police station from 28th April to the 1st of May 2012.

Based on the evidence presented, it is clear that the Petitioner was in police custody from 28th April 2012, even though his formal arrest was recorded only on 30th April 2012. The affidavits filed by the 5th Respondent and other witnesses, along with documents marked **5R1** and **5R2**, confirm that the Petitioner was handed over to the Tissamaharama Police on 28th April and remained in custody afterward. However, the Respondents have failed to establish that the Petitioner was brought before a Magistrate or lawfully detained during this period.

In **Senaratne v Punya De Silva and others [1995] 1 Sri L.R.** at page 296 Amarasinghe J observed that

“In Mahinda Rajapakse and Vasudeva Nanayakkara v. Chief Inspector Karunaratne and Others (supra), Bandaranayake, J. said that Article 13(2) is not concerned with the lawfulness of the arrest but with the question of ensuring the ‘containment of executive power’. His Lordship said that in considering Article 13(2), ‘No distinction ought to be drawn between lawful and unlawful custody, detention or deprivation of liberty in considering this Article ... The need for such an enquiry should not be read into this Article. This Article is not concerned with this. The Article is plain enough and provides that executive

detention cannot extend beyond 24 hours without judicial intervention.’ The twenty-four hour period is the maximum period (exclusive of the time necessary for the journey from place of arrest to the Magistrate) permitted by section 37 of the Code of Criminal Procedure in the case of an arrest without a warrant. It cannot, as Bandaranayake, J. said, ‘extend beyond 24 hours without judicial intervention.’ However, the fact that a person is in such a case produced before a Magistrate within twenty-four hours does not necessarily satisfy the constitutional requirement prescribed in Article 13(2). Article 13(2) of the Constitution provides, among other things, that ‘Every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent court according to procedure established by law.’ ”

Despite the 1st, 2nd and 3rd Respondents' contention that the formal arrest occurred on 30th April 2012, the undisputed evidence demonstrates that the Petitioner's liberty was curtailed before that date. There is no B Report, judicial warrant, or procedural record authorising such detention from 28th to 30th April.

The law does not permit a suspect to be held for investigative convenience without judicial intervention, especially beyond 24 hours. The detention during this period lacked judicial oversight, was not supported by statutory authority, and was clearly outside the procedural safeguards provided by both the **Criminal Procedure Code** and the **Police Ordinance**.

The Petitioner was subjected to continued detention without being produced before a Magistrate within the time prescribed by law, constituting a breach of these rights.

Accordingly, I find that the Petitioner was subjected to arbitrary arrest and unlawful detention from 28th to 30th April 2012, in violation of **Article 13(1)** and **13(2)** of the Constitution.

Alleged Violation of Article 11 of the Constitution:-

Article 11 of the Constitution of the Democratic Socialist Republic of Sri Lanka of 1978 “*No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*”

This provision is absolute and non-derogable and as such, any claim made under it must be examined with the utmost judicial seriousness. However, the evidential burden to establish a violation lies squarely with the Petitioner. In ***Aranagalle Samantha v OIC Biyagama and Others* [SC (FR) No. 458/2012 SC Minutes of 28.01.2020]**, Aluwihare J, PC observed that

“In proceedings of this nature, the court has very limited avenues to test the veracity of these assertions and necessarily have to depend on the affidavits and other documents filed. In the circumstances, in arriving at a just and equitable decision in the realm of the fundamental rights jurisdiction, the court necessarily has to apply the test of probability to the factual matters placed before us.”

In ***Velmurugu v. Attorney General and another* [1981] 1 SLR 406**, the Court held that

“the standard of proof is a preponderance of probabilities as in a civil case, qualified with the requirement for a high degree of certainty to tilt in favor of the Petitioner.”

Similarly, in ***Kapugeekiyana v. Hettiarachchi* [1984] 2 SLR 153**, Wimalaratne J observed:

“In deciding whether any particular fundamental right has been infringed I would apply the test laid down in Velmurugu that the civil, and not the criminal standard of persuasion applies, with this observation: that the nature and gravity of an issue must necessarily determine the manner of attaining reasonable satisfaction of the truth of that issue.”

In applying the above legal standards to the facts in hand, this Court notes that the Petitioner has, in his Petition, alleged that he was subjected to torture while in police custody. However, these allegations remain wholly unsupported by material evidence. The affidavits marked **P-2A** and **P-2B**, sworn by the Petitioner’s brothers, contained no reference to any instance or indication of torture. Instead, they focused on the period and circumstances of detention. The 1st, 2nd, and 3rd Respondents have specifically denied any allegation of torture. Crucially, the affidavit marked **P-3**, said to have been made by a fellow detainee (Dasun Sanjeewa), also did not contain any reference to mistreatment or physical abuse of the Petitioner.

According to the Affidavits of Mery Nimal and Mery Sampath Kumara (marked as **P-2A and P-2B**), they stated,

“ ඒ අනුව 2012.04.29 වන දිනමල්ලී වන රුවන් කුමාර සහ උපපොලිස් පරීක්ෂක සම්පත් යන දෙදෙනාම තවත් සැකකරුවන් සමඟ පොලිස් සිරමැදිරියේ රඳවා සිටිනු දුටු බවත් ප්‍රකාශ කර සිටිමි.....

තවද මා 2012.04.30 වන දින සහ 2012.05.01 වන දින උදේ කාලයේ නිස්සමහාරාම පොලිස් ස්ථානය වෙත රුවන් කුමාර මල්ලී බැලීමට ගිය අවස්ථාවේදී ද මල්ලී සහ උපපොලිස් පරීක්ෂක සම්පත් යන දෙදෙනා පොලිස් සිරමැදිරියේ රඳවා සිටිනු දුටු බවත් ප්‍රකාශ කරමි.....”

Further scrutiny is warranted with respect to the affidavit of Dasun Sanjeewa, who also stated that he was detained at the Tissamaharama Police Station during the relevant period. His statement is highly relevant because he claimed to have shared custody with the Petitioner on the date in question. The relevant portion of his affidavit stated as follows:

“.....2012.04.30 දින පෙ.ව 9.00 ට පමණ නිස්සමහාරාම පොලිස් ස්ථානයට මාගේ පැමිණිල්ල වැඩිදුර විභාගය සඳහා පැමිණි විට ඒ වන විටත් මෙරි රුවන් කුමාර සහ ලොකු විතානගේ අරුණ සම්පත් යන දෙදෙනා එම සිර මැදිරියේම සිට බවත් ප්‍රකාශ කර සිටිමි.”

This statement confirmed that Sanjeewa was detained on the same date and was released on police bail, but it notably did not include any mention of torture or inhumane treatment of the Petitioner or any other detainee. Given the proximity of the affiant to the

Petitioner's circumstances, the absence of any complaint of mistreatment in his account substantially weakens the Petitioner's version of events.

Specifically, where it is claimed that the Petitioner was forcibly stripped naked and made to kneel on the floor. During this time, the 1st, 2nd, and 3rd Respondents allegedly interrogated the Petitioner for approximately half an hour while he remained in this humiliating position.

Such acts, if proven, clearly fall within the ambit of cruel, inhumane, and degrading treatment prohibited under **Article 11**. Forcing a person to strip naked and to kneel during interrogation constitutes a severe affront to human dignity and is unacceptable under any lawful system of justice.

However, this Court notes the absence of any medical or independent evidence to corroborate these serious allegations. No medical reports or expert testimony were presented to substantiate claims of physical or psychological harm resulting from this treatment. The marked affidavits (**P-3, P2A and P2B**) tendered by the Petitioner's family members and others do not support or reference the occurrence of such treatment.

The burden of proof lies with the Petitioner to establish the occurrence of torture or cruel, inhumane, or degrading treatment. Mere allegations without supporting material cannot suffice to establish a breach of constitutional protections under **Article 11**.

Having carefully considered the above evidence and applicable legal principles, this Court finds that the Petitioner has not

established a violation of **Article 11** on a balance of probabilities. In the absence of even a prima facie allegation of torture in the supporting affidavits, the Court has no basis to presume the occurrence of inhumane treatment.

In light of the 1st, 2nd, and 3rd Respondents' clear denial and the lack of credible, independent corroboration, this Court finds that the Petitioner has failed to substantiate his claim under **Article 11** of the Constitution.

In relation to the 4th Respondent, the only reference to his involvement appears in the Petitioner's version of events. According to the Petition, the Petitioner states that while he was at the Tissamaharama Police Station, the 4th Respondent insulted him and instructed that he be taken to the Crime Branch. However, there is no independent evidence before this Court to support this claim. Apart from this uncorroborated allegation, there is nothing to indicate that the 4th Respondent was involved in the arrest, detention, or any subsequent action taken against the Petitioner.

With regard to the involvement of the 5th Respondent, it is evident that his role was limited and administrative in nature. In his affidavit he admitted that the Petitioner was handed over to the Tissamaharama Police by the Officer-in-Charge of the Tangalle STF Camp on 28th April 2012, in connection with an alleged criminal offence. This fact is supported by the documents marked 5R1 and 5R2. Apart from this admission, there is no indication that the 5th Respondent was involved in the arrest, detention, or interrogation of the Petitioner.

State's Liability:-

In addressing the State's responsibility in protecting fundamental rights, Thurairaja, J, PC in ***Kandawalage Don Samantha Perera v OIC Hettipola and others*** [SC (FR) No 296/2014 SC Minutes of 16.06.2020] emphasised that

“.....State to ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment may provide a starting point. As a society that is committed to protecting the Dignity and Well-being of the People (See the Preamble/ Svasti of the Constitution), the violation of the right to liberty guaranteed by Articles 11 and 13 of the Constitution should be of serious concern and in my view, the State should take more proactive steps to address the gap between the law and practice.”

This observation underscores the imperative for the State not only to ensure compliance with constitutional safeguards but also to actively educate and train all relevant officials to prevent violations, thereby reinforcing the protection of fundamental rights and upholding the dignity of every individual.

The violation of the Petitioner's fundamental rights under **Article 13(2)** entails the liability of the State for failing to uphold constitutional protections regarding personal liberty. It is

incumbent upon the State and its authorities to ensure strict compliance with procedural safeguards, including the timely production of detainees before a judicial officer. Failure to do so not only infringe individual rights but also undermines the rule of law and public confidence in the justice system. The State, therefore, bears responsibility for the unlawful arrest and detention, and must take remedial steps to prevent such violations in the future.

Therefore, based on the above analysis, the Court finds that the Petitioner's fundamental rights guaranteed under **Articles 13(1)** and **13(2)** of the Constitution have been violated by the acts of the 1st, 2nd, and 3rd Respondents and the State.

However, no violation of **Article 11** has been established against any of the Respondents, as the Petitioner has not demonstrated, on a balance of probability, that he was subjected to torture or to cruel, inhumane, or degrading treatment.

Therefore I direct the 1st, 2nd, and 3rd Respondents to pay Rs. 250,000/- each as compensation from their personal funds to the Petitioner and the State to pay a further sum of Rs. 50,000/- as compensation to the Petitioner.

JUDGE OF THE SUPREME COURT

MURDU N.B. FERNANDO P.C., CJ,

I agree.

CHIEF JUSTICE

ACHALA WENGAPPULI, J.

I agree.

JUDGE OF THE SUPREME COURT