

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

In the matter of an application under and in  
terms of Articles 17 & 126 of the  
Constitution of the Republic.

**K. G. I. Krishantha Kapugama**  
No. 94/4, Kobbekaduwa, Yahlathanna

**Petitioner**

**SC (FR) Application No. 264/2015**

**Vs.**

1. **I. P. Anura Krishantha,**  
Officer-in-Charge, Police Station,  
Irrataperiyakulam
2. **CI. Channa Abeyratne,**  
Head Quarters Inspector,
3. **SI. Wanninayake**
4. **SI Somaratne**
5. **Sergeant Seneviratne (31978)**
6. **PC J.M.S. Jayawardene (5786)**

*The 2<sup>nd</sup> to 6<sup>th</sup> Respondents, of Police  
Station, Vauniya.*

7. **Inspector General of Police;** Sri Lanka  
Police Department, Police Headquarters,  
Colombo 01

**8. Hon. The Attorney General**, Attorney  
General's Department, Hulftsdorp  
Colombo 12

**Respondents**

Before: Priyantha Jayawardena, PC, J  
Murdu N. B. Fernando, PC, J  
E. A. G. R. Amarasekara, J

Counsel: Ms. Pulasthi Hewamanna with Ms. Harini Jayawardhana with Ms. Githmi  
Wijenarayana instructed by Mrs. Niluka Dissanayake for the Petitioner

Ms. Induni Punchihewa, SC for the Respondents

Argued on: 22<sup>nd</sup> of January, 2024

Decided on: 29<sup>th</sup> of February, 2024

**Priyantha Jayawardena PC, J**

The petitioner filed the instant application alleging that his Fundamental Rights guaranteed by the Constitution were infringed by the 1<sup>st</sup> to 7<sup>th</sup> respondents. After considering the said application, the Supreme Court granted leave to proceed for the alleged infringement of Article 13(1) and 13(5) of the Constitution.

## **Facts of the Application**

The petitioner stated that he went to Vauniya on the 15<sup>th</sup> of November, 2014 in his car, along with Sergeant Buddhika Karunasinghe, to meet with Squadron Leader Sumedha Ritigala. Further, he reached Vauniya at or around 10.00 p.m. on that day and met with his friends. At or around 1.00 a.m. on the 16<sup>th</sup> of November, 2014, the petitioner had gone to Vauniya town in his car to purchase foods and drinks for his friends and he had lost his way on returning to his friends.

The petitioner further stated that at around 1.30 a.m. he was stopped on the road by individuals dressed in civilian clothes who were armed with T56 weapons. Moreover, the 1<sup>st</sup> respondent, the Officer In Charge who was in civilian clothes made inquiries as to who the petitioner was and what he was doing in that area at that time. Hence, the petitioner produced his identity card and identified himself as an officer of the Sri Lanka Air Force. He further stated that the said 1<sup>st</sup> respondent then made disparaging remarks about the Sri Lanka Air Force and its senior officers, deeply offending the petitioner who then told him to refrain from making such remarks. Thereafter, the 1<sup>st</sup> respondent threatened to kill the petitioner and throw his body into the forest. The 1<sup>st</sup> respondent then instructed the other officers present at the scene to conduct a search of the petitioner's car.

At or around 2.00 a.m. of the same day, the 2<sup>nd</sup> Respondent Head Quarters Inspector (hereinafter referred to as the "2<sup>nd</sup> respondent") arrived at the scene with approximately 15 officers and verbally abused the petitioner and the Sri Lanka Air Force in derogatory and profane language. Thereafter, the petitioner was taken to the Irrataperiyakulam Police Station and was instructed to sit in a room.

The petitioner stated that the 3<sup>rd</sup> respondent entered the room with a document and forced the petitioner to sign the said document but the petitioner refused to sign it. He was then threatened with legal action by the said 3<sup>rd</sup> respondent and the other officers present at the police station. The petitioner further stated that his request to call his family and/or an Attorney-at-Law was denied and he was not informed of the reason for his arrest and detention. Further, the petitioner stated that he was harassed by the officers of the Irrataperiyakulam Police Station during that night.

Further, it was stated that at around 11.30 a.m. on the 16<sup>th</sup> of November, 2014, the petitioner was permitted to speak to his wife *via* telephone, immediately after which he was transferred to the Vauniya Police Station and detained in a police cell. At the said police station, the petitioner stated that he was verbally abused by the 2<sup>nd</sup> respondent who also demanded the petitioner to accept that

he had committed some minor offence in order to release him. The petitioner stated that he refused to admit that he committed an offence, and once again requested for the reasons for his arrest and detention. Angered by the responses of the petitioner, the 2<sup>nd</sup> respondent threatened to take legal action against the petitioner. The petitioner further stated that his wife came to the said police station, but was only permitted to speak with him very briefly.

Furthermore, the petitioner stated that on the evening of the 16<sup>th</sup> of November, 2014, around 6.30 p.m., he was produced before the learned Magistrate of Vauniya in Chambers, but was not permitted to speak with the Magistrate. After they came out of the said chamber, he was informed that the learned Magistrate remanded him for a week.

The petitioner was then taken to the Vauniya remand prison and detained therein until the 21<sup>st</sup> of November, 2014. The petitioner stated that the Vauniya Prison housed several L.T.T.E. cadres and that the petitioner was later made aware of the fact that the Vauniya Police Station had released a media statement giving details of the petitioner and his arrest, and it resulted in several inmates harassing him due to his involvement in the war as a pilot of a fighter jet.

Thereafter, the petitioner was produced before the Vauniya Magistrate's Court on the 21<sup>st</sup> of November, 2014 and enlarged on bail by the court. Further, on the 30<sup>th</sup> of January, 2015, the petitioner was discharged by the learned Magistrate of Vauniya.

In the circumstances, the petitioner stated that the course of conduct culminating in his arrest and detention and remanding him amounted to torture or cruel, inhuman, or degrading treatment or punishment and are an infringement of the Fundamental Rights guaranteed to the petitioner by the Constitution.

### **Objections filed by the 1<sup>st</sup> Respondent**

The 1<sup>st</sup> respondent filed objections stating that on the 16<sup>th</sup> of November 2014, he received information from a private informant about a car that was said to be roaming in the Galnattakulam area in a suspicious manner in the early hours of the morning. Hence, he along with a team of police officers proceeded to the said area and stopped the car which was driven by the petitioner. Further, when asked about his name, address, where he was travelling and the reasons for

travelling, the 1<sup>st</sup> respondent stated that the petitioner gave varying and inconsistent responses, thereby failing to reveal his identity properly.

The 1<sup>st</sup> respondent further stated that, taking into consideration the suspicious conduct of the petitioner, his inability to disclose his identity and co-operate with law enforcement officials, and that suspicion that the petitioner was involved in the commission of a cognizable offence, he arrested the petitioner on the 16<sup>th</sup> of November, 2014 at 3.05 a.m.

The 1<sup>st</sup> respondent further stated that thereafter, an ‘A report’ was filed in the Magistrate’s Court of Vauniya and reported the facts pertaining to the matter and the need to conduct further investigations into the matter and produced the petitioner before the learned Magistrate of Vauniya, who remanded the petitioner.

Thereafter, the Police had sought the advice of the Attorney General in respect of the said investigations and having considered all matters, the Attorney General had advised the Police to discharge the suspect from the case by letter dated 30<sup>th</sup> June, 2016.

## **Analysis**

Article 13(5) of the Constitution states, *inter alia*, that every person shall be presumed innocent until he is proved guilty. Further, Article 13(1) of the Constitution states;

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

[emphasis added]

The procedure applicable for arrest are set out in several laws including section 32 of the Code of Criminal Procedure Act No. 15 of 1979, as amended. Section 32 of the Code of Criminal Procedure Act reads as follows:

*“**Any peace officer may without an order from a Magistrate and 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 his having been so concerned; a suspicion is proved to be reasonable if the facts disclose that it was founded on matters within the police officer's knowledge or on the statement made by the other persons in a way which justify him giving them credit."*

In the objections filed by the 1<sup>st</sup> respondent, he stated that he received a credible information that a car was roaming in his police area in a suspicious manner. Therefore, he along with a team of police officers proceeded to the area and stopped the car that the petitioner was driving and questioned the petitioner with a view to obtain information and identify the petitioner. At that time, as the petitioner behaved in a suspicious manner and gave contradictory answers to his questions, he arrested the petitioner.

Though it is possible to arrest an individual without a warrant, such arrest must be based on probable cause for the police to believe that a person has committed cognizable offence. Moreover, the arrest of the petitioner merely because his behaviour was suspicious, is not a ground for arrest under section 32 of the Code of Criminal Procedure Act. Further, if a person is arrested for committing an offence, he should be informed of the reasons for the arrest at the time of the arrest.

After the petitioner was arrested, he was taken to the police station. Thereafter, the 2<sup>nd</sup> respondent filed an 'A Report' in the Magistrate's Court of Vauniya and moved court to remand the petitioner in order to carry out further investigations to ascertain whether he was involved in committing a crime. The said 'A report' states that;

*“අපරාධයක් සිදුකර හෝ අපරාධයක් සිදු කිරීමේ කාර්ය සඳහා සංවිධානාත්මකව පැමිණි අයකු සැකපිට අත් අඩංගුවට ගත් බව...”*

*“...මෙම තැනැත්තා සහ කාර් රථයේ නිවේ සොයා ගෙන ඇති දේපල සම්බන්ධවත්, ඔහු විසින් ඉදිරිපත් කර ඇති තොරතුරු සම්බන්ධවත් ඇති වූ සැකය මත මෙම තැනැත්තා කිසියම් අපරාධයක් සිදුකර පලා යන හෝ කිසියම් අපරාධයක් සිදු කිරීමට*

තවත් අය සමග පැමිණ පුර්වෝපාය යොදමින් සංවිධාන වන අයකුද යන්න ගැන ඇති වූ සැකයමන ඉහත කී තොරතුරු සම්බන්ධව තව දුරටත් විමර්ශන සිදුකිරීම සුදුසු යයි පොලිස් නිලධාරීන්හට හැඟියාම මත සැකකරු හා දේපල අත් අඩංගුවට ගෙන් ස්ථානයට ඉදිරිපත් කර ඇත.”

“...මෙම සැකකරු දිවයිනේ වාර්ථා ගත වෙනත් අපරාධ ගත සිටින්නට අවශ්‍ය කරන සැකකරුවකුද යන්න සැක කිරීම සඳහා දිවයිනේ සෑම පොලිස් ස්ථානයකටම සැකකරු සම්බන්ධව තොරතුරු ලබා දීමටත් සැකකරුගේ බාරයේ තිබී අත් අඩංගුවට ගත් කාර් රථය වෙනත් අපරාධ සඳහා උපයෝගී කරගත් කාර් රථයක්ද යන් සොයා බැලීමටත් එවැනි අපරාධ සඳහා කාර් රථයේ තිබී පොලිස් භාරයට ගෙන ඇති ජංගම දුර කථන සහ අනෙකුත් උපකරන බාවිතා කර තිබේද යන්න පිලිබඳවත් වැඩිදුර විමර්ශන සිදු කිරීමට කටයුතු කරගෙන යමි. අත් අඩංගුවට ගන්නා ලද සැකකරු වන කපුගම ගීගනගේ ලලිත් ක්‍රියාන්ත කපුගම යන සැකකරු අද දින ගරු අධිකරණය වෙත ඉදිරිපත් කරමින් මෙම සැකකරු 2014.11.28 වන දින දක්වා රක්ෂිත බන්ධනාගතා ගත කර එදිනට ගරු අධිකරණය වෙත ඉදිරිපත් කිරීමට බන්ධනාගාර අධිකාරී තැනට නියෝගයක් කරමින් ගරු අධිකරණයෙන් ගෞරවයෙන් අයද සිටිමි.”

Subsequently 2<sup>nd</sup> respondent filed a ‘B Report’ in the said Magistrate’s Court stating that the petitioner refused to make a statement in terms of section 109 of the Code of Criminal Procedure Act. The said ‘B’ report was titled;

“පොලිස් නිලධාරීන් කණ්ඩායමකී විසින් සිදුකරන ලද විමර්ශනයක් සඳහා කරන ලද ප්‍රශ්න වලට පිළිතුරුසීම ප්‍රතිකේෂ

*කරමින් ප්‍රකාශයක්ද ලබා නොදීම පිලිබඳව ගරු අධිකරනය වෙත  
කරුණු වාර්තා කරමින් එකී අයට අධිකරනයේ පෙනී සිටීමට,  
නොනිසියක් නිකුත් කිරීමට කරනු ලබන ඉල්ලීම.”*

A careful consideration of the aforementioned ‘A report’ and ‘B report’ filed in the Magistrate’s Court show that the petitioner was not interrogated in connection with any cognizable offence.

Further, there was no credible complaint, credible information or material to show that the petitioner had committed or had conspired to commit or abetted the commission of such an offence. Moreover, the materials filed in court did not show that there were grounds to form a reasonable suspicion that the petitioner had committed or abetted the commission of such an offence.

Further, even though the 2<sup>nd</sup> respondent filed a ‘B report’ stating that the petitioner committed the offence under the Code of Criminal Procedure Act, the learned Magistrate was subsequently informed that the Police would not proceed against the petitioner consequent to the advice given by the Attorney General.

## **Conclusion**

I have considered the materials filed in the instant application and I am of the opinion that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents failed to produce any materials that could justify forming a reasonable suspicion that the petitioner was responsible for committing any cognizable offence or any other offence.

Therefore, the arrest is contrary to the provisions of section 32(1)(b) of the Code of Code of Criminal Procedure Act and was not in accordance with the applicable procedure established by law. Further, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents failed to produce materials that there were sufficient grounds to produce the petitioner in the Magistrate’s Court and to make an application to the learned Magistrate to remand him. Moreover, there were no materials to file a ‘B report’ stating that the petitioner refused to make a statement to the Police in terms of section 109 of the Code of Criminal Procedure Act No. 15 of 1979.



Hence, I hold that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents have violated Article 13(1) of the Constitution. Accordingly, I order the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents to pay a sum of Rs. 100,000/- to the petitioner.

**Judge of the Supreme Court**

**Murdu N. B. Fernando PC, J**  
I agree

**Judge of the Supreme Court**

**E. A. G. R. Amarasekara, J**  
I agree

**Judge of the Supreme Court**