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

The matter of an application under and in terms of Article 126 read together with Article 17 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Major Wengappuli Arachchige Samantha,
No. 644,
Thambiliyana,
Kuruwita.

**SC/FR Application No. 100/2016**

**Petitioner**

**Vs.**

1. Inspector Ranjan Samarasinghe
   Officer-in-Charge,
   Opanayake Police Station,
   Opanayake.

2. Hon. Duminda Mudunkotuwa
   Magistrate,
   Magistrate's Court,
   Balangoda,

3. Inspector General of Police,
   Police Headquarters,
   Colombo 01.

4. Hon. Attorney General
   Attorney General's Department,
   Colombo 12.

**Respondents**

**Before** : **Murdu N. B. Fernando, PC. J**
**Janak De Silva, J**
**K. Priyantha Fernando, J**

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| **Counsel** | : | Saliya Pieris, PC with Anjana Rathnasiri with Sarinda Jayawardene for the Petitioner<br><br>Sajith Bandara, SC for the 1st and the 4th Respondents |
| **Argued on** | : | 13.06.2023 |
| **Decided on** | : | 11.08.2023 |

**K. PRIYANTHA FERNANDO, J**

1. The petitioner in this case is a Major serving in the Sri Lanka Army. He alleges that, the actions of the 1st respondent in arresting him without any legal basis and the actions of the 2nd respondent Magistrate in remanding him, has infringed the fundamental rights guaranteed to him under Articles 12(1), 13(1) and 13(2) of the Constitution. This Court granted leave to proceed for the alleged violation of fundamental rights under Article 12(1) and Article 13(1) by the 1st respondent.

2. **The Facts**
According to the petitioner, on 18.02.2016 he has left the *Naval Adi* Army Camp at about 7.00 a.m. to reach the *Boossa* Army Camp in order to make an appointment to meet the Divisional Commander. The petitioner has been accompanied by the driver (Army Private 479243, *R. A. J. U. Rathnakumara*) and an escort (Army Private 480265, *P. G. A. Chathuranga Wijeratne*).

3. The petitioner has been seated on the front passenger seat of the Army Jeep (Toyota Land Cruiser Mark II) bearing Registration No. ශ.භ 5427. The escort Private has been seated behind the petitioner on the rear seat facing sideways. In the course of their journey, while they were on the *Badulla-Colombo-Batticaloa* A4 Highway heading from *Balangoda* towards *Colombo*, the Army Jeep has collided with a three-wheeler bearing Registration No. WP QL 7480 which was headed from *Opanayake* towards *Balangoda* driving in the correct lane (left lane). The collision has taken place on the *Ratnapura-Balangoda* road near the *Uduwela Eerigasmulle* area between the 132nd and the 133rd mile posts.

4. The petitioner stated that, he was awake throughout the entire journey and engaged in conversation with the driver of the Army Jeep for most part of the journey. At or about *Uduwela*, the petitioner has looked down at his phone to search for a contact number in order to place a phone call. While the petitioner was searching for the contact number, he has felt that the vehicle was moving slightly off its course. Within seconds of him instinctively raising his head, the Army Jeep has collided with the said three-wheeler causing the three-wheeler to be thrown off the road and over the culvert. As a result of the collision, the Army Jeep has also hit the culvert and come to a halt. Thereafter, the petitioner has got off the Army Jeep and rushed to the assistance of the injured persons, who were the passengers and the driver of the three-wheeler. The petitioner along with the assistance of the villagers that gathered around the scene of the accident, has rushed the injured persons to the *Balangoda* hospital in a Lorry. The driver of the Army Jeep was also taken to the hospital along with the escort Private in a separate vehicle. Thereafter, the petitioner has also got himself admitted in the hospital as he was suffering from a chest pain after being knocked against the dashboard.

5. The passengers in the three-wheeler have suffered extensive injuries, and a five-year-old girl who was also a passenger in the said three-wheeler succumbed to her injuries, upon being admitted to the hospital. At about 5:30 p.m. on the same day, a Police Sergeant has recorded a statement from the petitioner while he was in the hospital.

6. On the next day (19.02.2016) at about 8.00 a.m. the Ward Doctor has informed the petitioner that he could be discharged after the Judicial Medical Officer (JMO) examines him. Thereafter, at about 10.00 a.m., the same police sergeant who recorded the first statement from the petitioner has recorded a further statement from him. At about 12.00 p.m. the JMO has examined the petitioner and he has been discharged. Subsequently, the petitioner has been informed by the Police Sergeant and the Inspector of Police that the Magistrate would be coming to the hospital to record a statement from the petitioner and the driver of the Army Jeep. The Magistrate has arrived at about 3:00 p.m. and recorded statements and made notes.

7. Thereafter, the Inspector of Police has informed the petitioner that according to the order of the Magistrate, he would be remanded till

23.02.2016 for aiding and abetting the driver of the said Army Jeep to cause the motor traffic accident. Then, the petitioner has been taken to the *Balangoda* Prison. The petitioner spent the night in prison.

8. On 20.02.2016, at about 12.00 p.m. the petitioner has been taken to the *Kuruwita* Prison and was admitted to the prison hospital, where he remained until 23.02.2016. Thereafter, on 23.02.2016 the petitioner has been produced before the Magistrate in the *Balangoda* Magistrate Court under case No. B/135/2016. Upon being produced before the Magistrate Court, the petitioner was released on a personal bond of Rs. 250,000 and was ordered to appear again on 01.03.2016 upon which it was fixed again on 14.06.2016.

9. **The summary of the B-Report No. 135/2016 [P-5A] filed by the 1st Respondent on 19/02/2016 is as follows,**

   The Army Jeep bearing Registration No. ශ.ඇ 5427collided with a three-wheeler bearing Registration No. WP QL 7480 head-on in the *Badulla-Colombo-Batticaloa* A4 highway, between the 131st and 132nd mile posts at the 132/4 km culvert, near the *Eeriyagasmulle amuna* having failed to take the left turn properly, causing the three-wheeler to be thrown off the culvert (page 2 of the B-Report).

   The passengers of the three-wheeler were, the driver of the three-wheeler, his 5-year-old daughter, his 3-and-a-half-year-old son, and his mother-in-law. They received injuries from the accident, and the 5-year-old daughter died upon admission to the *Balangoda* hospital (page 2 of the B-report).

   The two suspects have been produced before the Magistrate for committing offences punishable under the sections 298, 329,328 of the Penal Code and sections 149(1), 151(2), 151(3) and 234 of the Motor Traffic Act and sections 298 read with section 102 of the Penal Code (page 3 of the B-Report).

10. A summary of the statements of the witnesses and the observations of the police officer were also submitted with the B-Report, stating that, further statements of witnesses were to be recorded and that owing to this incident, there has been an unrest among the residents of the *Opanayake* area. Thereby, in order to maintain the peace in the area, the Officer in Charge has requested the

Magistrate to remand the two suspects (the driver of the Army Jeep and the petitioner) till 01.03.2016.

11. Upon the two suspects being produced before the Magistrate Court, the learned Magistrate has remanded the first suspect (the driver of the Army Jeep) till 01.03.2016 and the second suspect (the petitioner) till 23.02.2016. [P-5B]

12. In these circumstances, the petitioner alleges that, the actions of the respondents infringed Article 12(1) of the Constitution, which guarantees equality before the law and equal protection of the law and Article 13(1) of the Constitution, which guarantees freedom from being arrested except according to the procedure established by law.

13. **Alleged violation of Article 13(1)**
In his written submissions, the learned President's Counsel for the petitioner submitted that, the first requisite of Article 13(1) of the Constitution is that, an arrest must be made in accordance with the procedure laid down by law. Section 32(1) of the Code of Criminal Procedure Act and section 63 of the Police Ordinance relates to arrests without warrant. Therefore, the learned Presidents Counsel submits that, an arrest cannot be made on vague suspicion of an offence being committed.

14. The learned President's Counsel submitted that, it is another important requisite of Article 13(1) that, every person arrested shall be informed of the reason for arrest. However, at no point in the process of the investigation was the petitioner informed or made known that he has been arrested or given the reason for such arrest.

15. The learned President's Counsel further submitted that, the attempt by the 1st respondent to justify the illegal arrest of the petitioner by relying on section 169(1)(a) of the Motor Traffic Act is futile. The said section has no applicability in this instance, as it only relates to 'motor tricycle, van or motor coach or lorry' and the vehicle driven by the driver which was a 'Land Cruiser Mark II', does not fall within the description of any of the aforementioned types of vehicles according to the interpretations set out in section 240 of the Motor Traffic Act. Therefore, the requirement of sufficient rest to be given to the driver emphasized in section 169(1)(a) of the Motor Traffic Act was not violated.

16. It was further submitted that, although the 1st respondent has relied on section 169(1)(a) of the Motor Traffic Act in his affidavit, the 1st respondent has not even mentioned section 169(1)(a) of the Motor Traffic Act in the documents annexed by him to his affidavit or in the B-Reports that were filed. Therefore, it is submitted by the learned President's Counsel that it is a fabricated reason to justify the arrest of the petitioner.

17. It was submitted by the learned President's Counsel that, the petitioner in this case was not arrested for the purported violation of section 169(1)(a) of the Motor Traffic Act, but was arrested for aiding and abetting the driver of the Army Jeep in causing the fatal accident and injuries thereon. The petitioner states that, there was no material whatsoever before the police to show that the petitioner either instigated, conspired, or intentionally aided the driver of the vehicle in causing the said accident. The petitioner further states that, neither the Penal Code nor the Motor Traffic Act casts a legal duty upon the passengers to prevent an accident or to be vigilant while travelling.

18. It was further submitted by the learned President's Counsel that, the arrest of the petitioner by the 1st respondent cannot be justified by stating that there was an imminent threat to the petitioner's life. A person cannot be arrested for his or her own protection. Instead, the respondent should have eliminated the threat by providing protection and apprehending the perpetrators responsible for such threats. It is further submitted that, when the accident took place, the public in the area were very cooperative and assisted them in managing the crisis and there was no sign of acting in a negative or detrimental nature, nor was there any unpleasant or repulsive behaviour shown towards the petitioner by any of the friends or relations who visited the injured passengers of the three-wheeler. Therefore, it is submitted that the arrest of petitioner is against the procedure established by law, illegal, unreasonable, unfair, and violative of the fundamental rights guaranteed to the petitioner.

19. The learned State Counsel for the 1st respondent in his written submissions stated that, although the petitioner was not informed the reason for his arrest during the process of the investigation, the 1st respondent informed the petitioner the reason for arrest consequent to the investigation that was made by the police and therefore, the arrest of the petitioner would not be arbitrary. The learned State Counsel relied on the case of ***Joseph Perera Alias***

***Bruten Perera v. AG*** **[1992] 1 Sri.L.R. 199** and stated that for an arrest, a mere reasonable suspicion or a reasonable complaint of the commission of the offence would suffice. And as this has been satisfied in the present case, there is no violation of Article 13(1) of the Constitution.

20. The 1st respondent in his affidavit dated 28.06.2017, in paragraph 12.3 stated that, as per section 169(1)(a) of the Motor Traffic Act, it explicitly requires that after every 4 ½ hours of driving, a driver should get a break of ½ an hour. It was stated that this provision has been violated by the petitioner at the time of the accident.

    Further, at the hearing of this application, the learned State Counsel contended that, the driver of the Army Jeep has not been provided adequate rest, and this violates section 169(1)(a) of the Motor Traffic Act.

21. The learned State Counsel for the respondent further submitted that, as the mother of the deceased child was a doctor attached to the *Balangoda* hospital to which the dead body of the child had been brought, and as there had been a chaotic situation in and around the hospital, the petitioner was arrested by the 1st respondent on the directions of his superior officers to ensure the security of the petitioner. Further, the 1st respondent in paragraph 12.7 of his affidavit also stated that, in the circumstances, he considered there to be an imminent threat to the lives of the petitioner and the driver.

22. In considering whether the fundamental rights guaranteed to the petitioner under section 13(1) of the Constitution have been violated, I will first consider the position of the respondent which attempts to justify the arrest of the petitioner based on abetment.

23. According to the B-Report filed by the 1st respondent [P5A], the petitioner in this case has been arrested by the 1st respondent for aiding and abetting the driver of the Army Jeep in causing the fatal accident and injuries thereon. In order to consider whether there existed reasonable suspicion to arrest the petitioner for the offence of abetment, one must first establish that, what the petitioner did or omitted to do is capable of being captured within the realm of the offence of abetment.
    Section 100 of the Penal Code defines abetment as;
    *"A person abets the doing of a thing who-*

*Firstly- Instigates any person to do that thing; or*
*Secondly- Engages in any conspiracy for the doing of that thing; or*
*Thirdly- Intentionally aids, by any act or illegal omission, the doing of that thing."*

When considering the above provision of the Penal Code, it is clear that, to be guilty of the offence of abetment, a person abetting the doing of a thing must either instigate, conspire, or intentionally aid by way of an act or illegal omission.

24. In case of ***The King v. Marshall 51 N.L.R. 157-159*** it was held that,

*"It will, therefore, be seen that mere presence with the intention of giving aid to the principal offender is not enough. There must also be the doing of something, or the illegal omission to do something… "*

It was held further,

*"The aid given by an abettor must be intentional aid"*

25. The case at hand is concerning a situation where the driver of the Army Jeep was arrested for causing a fatal accident and injuries, and consequently the petitioner (a passenger) was also arrested for aiding and abetting the driver of the Army Jeep in causing the said fatal accident and injuries as per the B-Report [P-5A]. According to the case *Marshall (supra)*, the mere presence of the petitioner when the offence was committed, in the absence of an act or omission is not sufficient to constitute abetment. There is no evidence of any act by the petitioner in this case, and since there is no duty imposed on a passenger of a vehicle to be vigilant while travelling or to avoid accidents that may be caused by a driver of a vehicle, an omission on the part of the petitioner is also absent.

26. The case of ***Ago Singhe, Appellant and De Alwis*** **46 N.L.R. 154,** was concerning a situation where a conductor of an omnibus was charged for overloading it, and the driver of the said omnibus was charged with aiding and abetting the conductor in the commission of that offence. It was held that, the driver, by his act of driving the omnibus, could not be said to have facilitated the commission of the offence and was, therefore, not guilty of abetment, in the absence of evidence of instigation or conspiracy.

In *Ago Singhe(supra)* it was held that,

> *"…the mere knowledge on the part of the driver that the omnibus is overcrowded cannot, in my opinion, make him liable for abetting the offence, for he has in no way facilitated the commission of the offence."*

27. Therefore, even in the presence of an act or omission, if the evidence of the existence of one of the three alternative requirements of instigation, conspiracy, or intention to aid are absent, it would not constitute abetment. In the circumstances of this case, there seems to be no abetment whatsoever by the petitioner as there is no evidence of an act or omission, nor is there any instigation, conspiracy, or anything to say that the petitioner intentionally aided the driver of the Army Jeep in causing the accident. Further, there is no possibility for the petitioner to have knowledge that the said accident would occur and even if he did have such knowledge, according to *Ago Singhe (supra)* it would not suffice. I bear in mind that a police officer is not expected to go into the material particulars of an offence or the ingredients of the offence in order to arrest a suspect. However, to arrest a person and to move for incarceration where there exists no reason whatsoever to even suspect of the commission of an offence would be arbitrary. Hence, as there is no evidence to state that the petitioner abetted the driver of the Army Jeep in causing the accident in any of the notes or observations [1R1, 1R2, 1R3] or in the statements that were recorded, there seems to be no legal basis for the arrest of the petitioner by the 1st respondent.

28. Secondly, I will consider the position of the 1st respondent in his affidavit. His position was that, the arrest was carried out due to non-compliance with the requirement of sufficient rest set out in section169(1)(a) of the Motor Traffic Act. When analyzing this position, one must first look into the provision itself.

**Section 169**

> "*(1) No person shall drive, or cause or permit any person employed by him or subject to his orders to drive, any* ***motor tricycle van or motor coach or lorry****-*
>
> *(a) for any continuous period of more than four and a half hours; or*
>
> *(b) so that the driver has not at least ten consecutive hours for rest in any period of twenty-four hours*

*calculated from the commencement of any period of driving."*

*[Emphasis mine]*

29. As clearly set out in the above provision, the application of section 169(1)(a) of the Motor Traffic Act is limited to *'motor tricycle van or motor coach or lorry'*. However, the vehicle driven by the driver which was a 'Land Cruiser Mark II', does not fall within the description of any of the aforementioned types of vehicles according to the interpretations set out in section 240 of the Motor Traffic Act.

**Section 240**

*"motor tricycle van" means a motor vehicle designed to travel on three wheels, and having a tare which does not exceed four hundred and fifty kilograms, and which is constructed or adapted wholly or mainly for the carriage of goods;*

*"motor coach" means a motor vehicle, not being a motor ambulance or motor hearse, constructed or adapted for the carriage of more than nine persons (including the driver) and their effects, and includes a trailer so constructed or adapted;*

*"lorry" means a motor vehicle constructed or adapted wholly or mainly for the carriage of goods and includes a trailer so constructed or adapted and a tractor but does not include a land vehicle or a motor tricycle van;*

30. Therefore, the position that the arrest of the petitioner was carried out by relying on section 169(1)(a) of the Motor Traffic Act is also futile. The said section has no applicability in this instance as it only relates to 'motor tricycle, van or motor coach or lorry'. Thus, the arrest carried out is contrary to Article 13(1) of the Constitution as it was not carried out according to a procedure established by law. It is also pertinent to note that, although the 1st respondent has relied on section 169(1)(a) of the Motor Traffic Act in his affidavit stating that a proper break was not given, in the written submissions filed on behalf of the 1st respondent, this position (the violation of section 169(1)(a) of the Motor Traffic Act) has not been relied on.

31. Further, when perusing the statement made by the driver of the Army Jeep to the police [1R1] it is clear that the driver of the Army Jeep has had an entire night's rest as his duties ended at around 7:30 p.m. on 17.02.2016 and the journey started at around 7:00

a.m. on 18.02.2016. The vehicle has also been stopped passing *Bandarawela* for utility purposes. Further, the vehicle was once again stopped for tea. Therefore, even if the Army Jeep did fall under the types of vehicles specified in section 169(1)(a) of the Motor Traffic Act, it is clear that the driver of the Army Jeep has had sufficient rest. Thus, the arrest of the petitioner based on non-compliance of the requirement of sufficient rest cannot be relied upon by the 1st respondent and therefore, the arrest of the petitioner cannot be justified on that basis. It is also noteworthy that, as the 1st respondent has not even mentioned section 169(1)(a) of the Motor Traffic Act in the documents annexed by him to his affidavit or in the B-Reports filed, this clearly seems to be an afterthought in order to justify the arrest of the petitioner.

32. Thirdly, I will consider the position of the 1st respondent in attempting to justify that the petitioner was arrested for the petitioner's own safety and security. The circumstances following the accident as portrayed by the 1st respondent were such that, the mother of the deceased child was a doctor of the *Balangoda* hospital to which the dead body of the child had been brought. It was also stated that there had been a chaotic situation in and around the hospital. The 1st respondent alleges that it was in these circumstances that the petitioner was arrested by him on the directions of his superior officers to ensure the security of the petitioner as he considered there to be an imminent threat to the lives of the petitioner and the driver.

33. Although the petitioner stated that there was no unpleasant or repulsive behaviour shown towards him by anyone of the friends or relations who visited the injured party, it is certainly plausible that, in the pretext of a fatal accident such as this, where the victims were severely injured and which caused the death of a 5-year-old child solely due to the negligence of the driver of the Army Jeep and the 5-year-old child who succumbed to the injuries being the daughter of a doctor attached to the hospital to which the body was brought, it is probable that there would have been a public outcry. In a pretext such as this, it is plausible that there may have been an imminent threat to the life of the petitioner. In such a situation, the respondent would be allowed to act in order to render protection to the petitioner.

34. However, it must be noted that, arresting the petitioner in order to provide him protection is a notion that is extremely absurd and far-

fetched. The arrest of the petitioner without any evidence or reasonable suspicion cannot be justified by stating that there was an imminent threat to his life. A person cannot be arrested for his or her own protection. A position such as this would seriously transgress the fundamental rights guaranteed by the constitution opening doors to violations of fundamental rights to take place.

35. It is also questionable as to why a remand order has been requested from the Magistrate Court if the 1st respondent was merely arresting the petitioner for his own safety. Further, the B-Report also does not contain anything relating to this contention by the 1st respondent. It can also be noted that there is no evidence available in the notes nor is there any mention about a superior officer authourising the arrest of the petitioner in the B-Report. Therefore, it is clear that this position that the petitioner was arrested for his own safety is simply an afterthought and portrays malice on the part of the respondent.

36. At this juncture, it must be pointed out that a Magistrate in the exercise of his judicial power, should consider the facts of each case carefully before making an order of remand where there exists no evidence whatsoever to even suspect that a person has committed an offence.

37. A Magistrate should not make orders merely upon the application of investigators. Before acting on an application, the Magistrate must be satisfied that the application is justified. Observations to this effect were also made in case of ***Dayananda v. Weerasinghe and Others*** **[1983] 2 Sri.L.R. 84 at 92** where His Lordship *Ratwatte,* J stated,

> *"It must be remembered that when a person is remanded he is deprived of his personal liberty during the duration of the rem and period and a person who is remanded is entitled to know the reasons why he is so remanded. Magistrates should be more vigilant and comply with the requirements of the law when making remand orders and not act as mere rubber stamps."*

38. In case of ***Mahanama Tilakaratne v. Bandula Wickramasinghe*** **[1999] 1 Sri. L.R. 372 at 382 (S.C/FR No. 595/98)** where the Magistrate issued a warrant without sufficient grounds, His Lordship *Dheeraratne,* J said that,

*"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."*

39. Finally, I will consider the legality of the arrest that was carried out by the 1st respondent based on suspicion.

    Article 13(1) of the Constitution sets out that, "*No person shall be arrested except according to procedure established by law, any person arrested shall be informed of the reason for his arrest."*

40. Article 13(1) consists of two limbs. First, when an arrest is made, it must only be carried out according to the procedure established by law. Second, any person subject to arrest shall be informed the reason for his arrest.

41. According to the first limb under Article 13(1) an arrest must be made according to the procedure established by law. The learned President's Counsel relied upon what was held by this court in case of ***Ponsuge Sanjeewa Tisera and another v. Singappulige Deeptha Rajitha Jayantha and Others SC/FR Application No. 368/2016*** decided on 30.05.2023, in light of arrest that is made on reasonable suspicion.

42. In case of ***Joseph Perera alias Bruten Perera v. The Attorney General and Others*** **[1992] 1 Sri.L.R. 199** it was stated that, for an arrest, there need not be clear and sufficient proof regarding the commission of the alleged offence. A reasonable suspicion based on an objective standard would be sufficient to show that the respondents have acted in good faith if they had reasons to suspect that the petitioners have committed the alleged offence.

    Their Lordships further referred to the provisions of the U.K. law which reflects the interpretation of the above position has been duly explained by citing what Lord *Scott L.* J stated in the case of ***Dumbell v. Roberts*** **[1944] 1 ALL ER 326**

    "*the constable shall before arresting satisfy himself that there do in fact exist reasonable grounds for suspicion of guilt. That*

*requirement is very limited. The police are not called upon before acting to have anything like a prima facie case for convicting ... The duty of the police ... is, no doubt, to be quick to see the possibility of crime, but equally they ought to be anxious to avoid mistaking the innocent for the guilty ... The police are required to be observant, receptive and open-minded and to notice any relevant circumstance which points either way, either to innocence or guilt. They may have to act on the spur of the moment and have no time to reflect and be bound, therefore, to arrest to prevent escape; but where there is no danger of the person who has ex hypothesi aroused their suspicion ... (escaping) ... they should make all presently practicable enquiries from persons present or immediately accessible who are likely to be able to answer their enquiries. I am not suggesting a duty on the police to try to prove innocence; that is not their function; but they should act on the assumption that their prima facie suspicion may be ill founded."*

43. In ***Ponsuge Sanjeewa Tisera and another (supra)*** it was held,

*"In light of the 'reasonable suspicion to arrest', I do concede that a certain degree of discretion must necessarily be awarded to the police for the due performance of their duties and maintenance of public order. However, allowing the police to arrest on suspicion where it is not reasonable would create room for violations of liberty to take place. Therefore, the discretion granted should not extend to the extent where it would amount to an arbitrary violation of liberty and should be strictly where there exist reasonable grounds for such arrest. Even in such a situation, the police must always be mindful that their assumptions may be incorrect."*

44. Thus, an arrest can be made on suspicion, provided that such suspicion is reasonable. It cannot be based on mere vague suspicion. In this case, when perusing the facts submitted before court and the statements of the witnesses included in the B-Reports that were filed [P-5A] and [P-5C], there exists no evidence to show that there was reasonable suspicion to arrest the petitioner. Further, not even the statement by the accused (driver) disclose any evidence that would give rise to a reasonable suspicion to arrest the petitioner.

45. Citing the case of ***Joseph Perera (supra)*** the learned State Counsel has submitted that for an arrest, a mere reasonable suspicion, or the mere reasonable complaint of the commission of an offence would suffice. As it is explained in detail above, for the respondent to arrest the petitioner or to request for the remand of the petitioner, there existed no material to form a reasonable suspicion of committing any offence by the petitioner. Further, neither was there any complaint made against the petitioner.

46. At the hearing of this application, the case of ***Channa Pieris and Others v. Attorney-General and others (Ratawesi Peramuna Case)*** **[1994] 1 Sri.L.R. 1** was brought to the attention of the Court by the learned State Counsel for the respondent.

In ***Channa Pieris (supra)*** **at pages 44,45,46** it was said that;

> *"…Suspicion can take into account matters that could not be put in evidence at all. Suspicion can take into account also matters which, though admissible, could not form part of a prima facie case. … What the officer making the arrest, needs to have are reasonable grounds for suspecting the persons to be concerned in or to be committing or to have committed the offence. …*
>
> *A reasonable suspicion may be based either upon matters within the officer's knowledge or upon credible information furnished to him, or upon a combination of both sources."*

47. The above case refers to an instance where the petitioners were arrested on suspicion of conspiracy to overthrow the government. The police officers who carried on the arrest had overheard the petitioners engaging in such conspiracy. The facts and circumstances of this case are completely different and has no relevance to the case at hand.

48. Thus, when considering the facts and circumstances of this case, it is my view that the arrest of the petitioner is against the procedure established by law, illegal, unreasonable, unfair, and violative of the fundamental rights guaranteed to the petitioner under section 13(1) of the Constitution.

49. <u>Alleged violation of Article 12(1)</u>
The petitioner states that, he believes that the motivation of the police in having him arrested and remanded was to appease what

the police perceived to be a disgruntled public at the expense of the Petitioners rights guaranteed under the constitution.

50. The petitioner further states that he verily believes that he was deliberately targeted by the police since he was an army officer.

51. The petitioner alleges that his arrest and remand is grossly unreasonable and unfair and exposes every passenger of a vehicle to the danger of being arrested, remanded, and charged in the event of a road traffic accident.

52. The learned State Counsel for the respondent in his written submissions stated that, Article 12(1) of the constitution was not infringed by the activities of the respondents in relation to the arrest carried out by the 1st respondent as he conducted the investigations lawfully. The 1st respondent in paragraph 13 of his affidavit, states that, at all times material to this case he performed his duties impartially and to the best of his ability and therefore, did not infringe the rights of the petitioner.

53. Article 12(1) sets out that "all persons are equal before the law and are entitled to the equal protection of the law."
While it remains probable that the petitioner was deliberately targeted by the police as he was an Army Officer, the same could also be probable if it is stated that the petitioner was deliberately targeted as the mother of the deceased child was doctor in the same hospital to which the body of the child was brought. However, nothing in the evidence or the facts and circumstances of this case suggests that the petitioner has been deliberately targeted by virtue of his office as an Army Officer. Therefore, this position should not be acted upon.

54. However, it must be noted that the 1st respondent, by arresting the petitioner who was simply a passenger, for aiding and abetting the driver of the Army Jeep, without reasonable suspicion, thereafter causing the remand of the petitioner and acting maliciously on afterthoughts, has violated Article 13(1) of the constitution. This has been discussed above in detail. While a violation of Article 13(1) of the Constitution does not automatically make it a violation of Article 12(1) in every instance, in the circumstances of this case, the manner in which Article 13(1) has been violated has also deprived the petitioner of the '*equal protection of the law*' as guaranteed by section 12(1) of the Constitution.

55. Thus, in light of the observations made above, it is my view that the arrest of the petitioner was not made on reasonable suspicion as required by law, and therefore is unlawful, arbitrary and in violation of the fundamental rights that have been guaranteed to the petitioners under Articles 13(1) and 12(1) of the Constitution.

56. Declarations and Compensation

In the above premise, I declare that the fundamental rights that have been guaranteed to the petitioner under Articles 13(1) and 12(1) of the Constitution has been violated. As per Article 126(4) of the Constitution, the Supreme Court is empowered to grant such relief as it may deem just and equitable in the circumstances in respect of any petition referred to it under Article 126(2). Therefore, in the circumstances of this case, considering the suffering which the petitioner had to undergo due to the arbitrary acts of the 1st respondent, I order the 1st respondent to pay a sum of Rs.100,000/- as compensation to the petitioner out of his personal funds.

**JUDGE OF THE SUPREME COURT**

**JUSTICE MURDU N. B. FERNANDO, PC.**

I agree

**JUDGE OF THE SUPREME COURT**

**JUSTICE JANAK DE SILVA**

I agree

**JUDGE OF THE SUPREME COURT**