

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

***In the matter of an Application under and in
terms of Article 126 read with the Article 17
of the Constitution.***

SC (F/R) Application No. 110/2016

Gamlath Bandara Rathnasiri
Panapitiya Road, Meda Pothupitiya,
Wadduwa.

PETITIONER

Vs.

1. Mr. Soba Ranaweera,
Inspector of Police,
Police Station, Beruwala.
2. Mr. Duminda Rajapaksha,
Officer-in-Charge,
Police Station, Beruwala.
3. Mr. Ranmal Kodithuwakku,
Senior Superintendent of Police,
Beruwala Division,
Office of the Superintendent of Police,
Kalutara.
4. W.A.D Gamini Jayalath Wijesingha
Assistant Superintendent of Police,

Office of the Superintendent of Police,
Kalutara.

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

6. Mr. P. Don Janath Aruna Shantha
No. 172, Adistanapura,
Gorakaduwawatta,
Mattiyanamulla, Payagala.

7. Hon. Attorney General,
Attorney-General's Department,
Colombo 12.

RESPONDENTS

BEFORE: **S. THURAIRAJA, PC, J.**
MAHINDA SAMAYAWARDHENA, J. AND
ARJUNA OBEYESEKERE, J.

COUNSEL: Saliya Peiris, PC with Thanuka Nandasiri for the Petitioner

Madhawa Tennakoon, DSG for the Respondents

WRITTEN Petitioner on 05th April 2022 and 31st January 2023

SUBMISSIONS: Respondents on 1st March 2024

ARGUED ON: 03rd May 2024

DECIDED ON: 14th February 2025

THURAIRAJA, PC, J.

1. The Petitioner, Mr. Gamlath Bandara Rathnasiri (hereinafter referred to as “the Petitioner”), alleges a violation of his fundamental rights guaranteed under the Constitution of Sri Lanka by one or more of the Respondents. By a petition dated 28th March 2016, the Petitioner invoked the jurisdiction of this Court, alleging breaches of Articles 12(1), 13(1), and 13(2) of the Constitution. On 26th October 2010, this Court granted leave to proceed against the 1st to 4th and 6th Respondents for the purported violations of the Petitioner’s constitutionally enshrined rights in Articles 12(1), 13(1), and 13(2) of the Constitution.
2. The Petitioner was recruited by Lanka Fisheries Corporation in September 2001 as a Trainee Executive. Over the years, he rose through the ranks, ultimately serving as Zonal Manager of Zone IV and Manager of the Beruwela Regional Office at the time of filing the petition.
3. The Respondents comprise the following: the 1st to 5th Respondents are members of the Sri Lanka Police, while the 6th Respondent served as the Purchasing Officer of the Beruwela Regional Office of the Lanka Fisheries Corporation.

Facts according to the Petitioner

4. It is necessary first to outline the factual backdrop of this case. The 6th Respondent lodged a complaint with the Beruwela Police on 23rd December 2015, alleging financial misconduct by the Petitioner in connection with the Lanka Fisheries Corporation. Pursuant to this complaint, the Petitioner was directed to appear at the Beruwela Police Station on 18th February 2016 at 9:00 a.m. for the recording of his statement. The Petitioner states that, despite arriving at or around 9:00-9:30 a.m., the Petitioner’s statement was recorded only at 2:30 p.m. that same day. Shortly thereafter, the 2nd Respondent arrested the Petitioner under the direction of the 3rd Respondent.

5. On 19th February 2016 (the next day) at around 3:00-3:30 pm, the Petitioner was produced before the learned Magistrate of Kalutara with a certificate of the 4th Respondent under the Offences Against Public Property Act (No. 12 of 1982) (hereinafter "Offences Against Public Property Act") with the effect that the Petitioner had cheated public money amounting to over Rupees 100,000. Accordingly, the learned Magistrate remanded the Petitioner. The Petitioner's application for bail was refused by the learned Magistrate.
6. Aggrieved by the learned Magistrate's bail refusal, the Petitioner's wife filed a revision application before the Provincial High Court of the Western Province Holden of Kalutara. On 25th February 2016, the learned High Court judge, whilst staying the proceedings of the case before the Magistrate Court, directed that the Petitioner be enlarged on bail. The Petitioner contends that despite the bail bond being communicated and accepted when the matter was called before the Magistrate Court on 29th February 2016, a certified copy of the bail order could not be obtained by reason of the learned Magistrate's retirement for the day, resulting in the Petitioner remaining in remand custody until he was released on 1st March 2016.
7. The Petitioner's grievances towards the 1st to 4th Respondents in relation to the violation of his rights guaranteed under Article 13(2) pertain to his purported restriction of liberty and unlawful detention by the officers contrary to procedure established by law due to: firstly, alleged failure to produce the Petitioner before a competent court within 24 hours provided that he was required to be present at the Station at 9-9:30 am on 18th February and produced before the Magistrate the next day at 3-3:30 pm and, secondly, alleged reporting of false and/or fabricated facts to the learned Magistrate by maliciously attempting to take away the learned Magistrate's jurisdiction to enlarge the Petitioner on bail.

8. In relation to the Petitioner's complaint in relation to the violation of his rights guaranteed under Article 13(1), it is the Petitioner's contention that the 6th Respondent is guilty of impropriety or connivance with the 1st-4th Respondents, which led to his arbitrary and illegal arrest which is without reasonable cause and, therefore, a violation of his constitutional rights protecting him from the same.
9. The Petitioner frames his relationship with the 6th Respondent as contentious and recounts a series of events that purport to establish a history of animosity between them. Such series of events are narrated in the petition as follows: according to the Petitioner, when the Petitioner was appointed as Regional Manager, he was aware that the 6th Respondent was transferred to the Galle Regional Office purportedly due to acts of financial irregularities. However, the Petitioner states that instead of assuming his duties in the Galle, the 6th Respondent continued to remain in the Beruwala Regional Office. The Petitioner having informed the higher management of this discrepancy, the services of the 6th Respondent were formally vacated, which the Petitioner paints as the first stroke of animosity that developed between him and the 6th Respondent.
10. The situation escalated when the Petitioner lodged a complaint on or around 5th December 2015 at the Beruwala Police Station against the 6th Respondent due to a purported attempt by the 6th Respondent to plant a parcel of cannabis in the Petitioner's office, allegedly with the intention of entrapping him. The Petitioner states that, to date, the 2nd Respondent has failed to inquire into or take any action to resolve the Petitioner's complaint, which the Petitioner asserts is a violation of his fundamental right to equality enshrined in Article 12(1) of the Constitution.
11. Further, based on the history of antagonism between the Petitioner and the 6th Respondent, the Petitioner alleges that the 6th Respondent is guilty of connivance with the 1st-4th Respondents to illegally arrest the Petitioner, stating that the complaint is a

false and malicious one provided that the 6th Respondent is not an aggrieved or concerned party.

Facts according to the Respondents

12. The affidavit of the 1st Respondent offers a counter-narrative; The 1st Respondent affirms that the Petitioner filed a complaint against the 6th Respondent at the Beruwela Police Station, which was investigated by the Wadduwa Police Station by virtue of the fact that the Petitioner was a resident of Wadduwa. The 1st Respondent further contends that an inquiry was, in fact, conducted, at the conclusion of which the 6th Respondent was issued a warning.
13. The 1st Respondent also affirms that the 6th Respondent lodged a complaint on 23rd December 2015 against the Petitioner in the backdrop of alleged acts of financial fraud at the Lanka Fisheries Corporation. Prior to such complaint, the then Honourable Minister of Fisheries and Aquatic Resources Development, Mr. Dilip Wedaarachchi, advised the Senior Superintendent of the Kalutara Police Division, the 3rd Respondent, to investigate the financial irregularities at the Lanka Fisheries Corporation by letter dated 28th October 2015.¹ According to the 1st Respondent, his investigations into the acts of financial fraud were therefore also supported by instructions from the 3rd Respondent, SSP of the Kalutara area.
14. The Petitioner was subsequently arrested on 18th February 2016 based on, according to the 1st Respondent, sufficient evidence available against him for committing financial fraud amounting to Rupees 162,350 at the Lanka Fisheries Corporation. The 1st Respondent, in his affidavit, also denies the Petitioner's averments in relation to his bail

¹ Marked "1R4"

application and further contends that all duties were carried out in good faith and according to the procedure established by law.

Analysis

Alleged violation of Article 13(1)

15. I will first deal with the Petitioner's complaint of the violation of his rights under Article 13(1) of the Constitution, which safeguards, *inter alia*, an individual's right to freedom from arbitrary arrest. Article 13(1) states 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.*"
16. The 6th Respondent's complaint to the Beruwala Police Station implicating the Petitioner in acts of financial fraud is accused of being false and malicious, especially given that he is not an aggrieved party to the crimes alleged. In fact, there is no indication in the present body of law preventing any person from reporting a crime.
17. One needs only to peruse the **Code of Criminal Procedure Act** to understand this; Section 109 of the Act, codified under **Chapter XI: 'Information to Police Officers and Inquirers and their Powers to Investigate'** reads as follows: "*(1) Every information relating to the commission of an offence may be given orally or in writing to a police officer or inquirer.*"
18. While the term 'complainant' is not defined in the **Code of Criminal Procedure Act**, 'complaint' is described in section 2 in the below manner:

"Complaint" means the allegation made orally or in writing to a Magistrate with a view to his taking action under this Code that some person, whether known or unknown, has committed an offence..."

19. Furthermore, section 136(1) of **Chapter XIV**, which deals with the commencement of proceedings before the Magistrate's Court, refers to the fact proceedings in a Magistrate's Court shall be instituted on a complaint being made orally or in writing to a Magistrate of such Court that an offence has been committed, which such Court has the jurisdiction either to inquire into or try such a complaint.
20. In **Kesara Senanayake v. Attorney General and Another**,² Shiranee Bandaranayake J (as Her Ladyship was then), analysed a line of authorities that deal with the interpretation of 'complainant', in the manner quoted below:

'Referring to the provisions in the Code of Criminal Procedure Act, which deals with the complaints, Dias, J. in The Attorney-General v. Herath Singho had stated that the 'complainant' must mean the person, who makes the 'complaint'. In Herath Singho (supra) Dias, J., had to consider the applicability of the word 'complaint' defined in Section 2 of the Code of Criminal Procedure Act in relation to other relevant sections in the Code. Considering the question, Dias, J., was of the view that the 'aggrieved person or persons' or the police, who have been induced by the aggrieved person or persons, could take up the grievance before Court. In such instances, if the aggrieved person or persons desire to be the 'complainant', the Code of Criminal Procedure Act would give him the right to make a 'complaint' making himself the 'complainant'. If, on the other hand, the aggrieved person or persons, without exercising their right to make a complaint in terms of the Code of Criminal Procedure Act, state their grievances to the police, who after inquiry decides to take up the case and institute proceedings on their own, the said police would file their 'complaint' and the aggrieved person or persons would cease to be 'complainants'. In such situations, it

² [2010] 1 Sri. L.R. 149, at p.154-155

is clear that the police officers, who 'instituted the proceedings' would become the complainant.

Dias, J., in The Attorney-General v. Herath Singho (supra) referring to Dalton, J.'s decision in Nonis v. Appuhamy had stated that,

" . . . for the institution of proceedings by complaint or written report, the person making the complaint or written report is regarded as the party instituting the proceedings against the accused person."

This position was further affirmed by Dalton, J., in Babi Nona v. Wijesinghe, where the Court had considered the right of appeal of an aggrieved party in a matter in which the proceedings were instituted on a written report by a police officer."

21. The Petitioner's misconception that the 6th Respondent is barred from lodging a complaint to report a crime is, therefore, misguided and erroneous.
22. The Petitioner has also alleged that he was arrested by the 1st Respondent in the absence of reasonable cause. Section 32 of the **Code of Criminal Procedure Act** prescribes the specific circumstances and manner in which a peace officer may lawfully effect an arrest without a warrant. In the present case, the Petitioner was admittedly arrested without a warrant, necessitating strict compliance of his arrest with the statutory provisions in that Section.
23. The applicable part of the statutory provisions in Section 32(1)(b) in relation to arrests, states that 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 concerned..."

24. It is paramount first to understand what constitutes 'reasonable cause' or 'reasonable suspicion'. In the oft-cited case of **Channa Pieris and Others v. Attorney General and Others**,³ the Court held, thus:

*"However the officer making an arrest cannot act on a suspicion founded on mere conjecture or vague surmise. His information must give rise to a reasonable suspicion that the suspect was concerned in the commission of an offence for which he could have arrested a person without a warrant. The suspicion must not be of an uncertain and vague nature but of a positive and definite character providing reasonable ground for suspecting that the person arrested was concerned in the commission of an offence."*⁴

25. Per Gratiaen J in **Muttusamy v. Kannangara**,⁵ the well-known test of reasonableness of a suspicion is that,

"...a suspicion is proved to be reasonable if the facts disclose that it was "founded on matters within the police officer's own knowledge or on statements made by other persons in a way which justify him in giving them credit."..."

26. **Gamlath v. Neville Silva and others**,⁶ Kulatunga J, with reference to the above observation in **Muttusamy v. Kannangara (supra)**, opined the following:

"The observance of this procedure is now a constitutional right under Article 13(1) of the Constitution which guarantees freedom from arbitrary arrest. The information on which the arrest is based must be credible by the application of the objective test.

³ [1994] 1 Sri. L.R. 1, at p. 47

⁴ Emphasis omitted

⁵ 52 N.L.R. 324, at p.327

⁶ [1991] 2 Sri. L.R. 267, at p. 275

An arrest based purely on the subjective satisfaction of the police officer would be arbitrary and viola-tive of Article 13(1)."

27. Amerasinghe J described the applicable test, in the judgment of **Senaratne v. Punya de Silva and Others**,⁷ as follows:

"Were there circumstances, objectively regarded—the subjective satisfaction of the officer making the arrest is not enough—that should have induced the First respondent to suspect that the petitioner was concerned in the commission of those offences?"

28. Citing the above authority of **Senaratne v. Punya**, Wengappuli J stated in **Shreemath Muthukumara Algawatte v. Chamika Kulasiri, Inspector of Police and Others**,⁸ that,

"the legality of the arrest [...] would have to be determined [by] this Court by objectively assessing whether the material available at the time of arrest was sufficient to induce the officer to act on that complaint, by treating [the] same as a 'reasonable complaint'."

29. Therefore, the question before this Court is whether there was material to conceive a reasonable suspicion of an objective character for an officer to cause such arrest, which includes the degree of reasonableness present in the complaint made against the Petitioner. To answer this question, it is necessary to peruse the material available to the police officers prior to the arrest.

30. The B-Report submitted by the 2nd Respondent, marked "**1R9**", contains detailed statements and evidentiary material pertaining to the alleged transactions and activities

⁷ (1995) 1 Sri L.R. 272, at p. 284

⁸ S.C. F/R 325/2013, S.C. minutes of 22nd February 2024), at p. 11

involving the Petitioner in his capacity as an employee of the Corporation's Beruwela Regional Office. I have outlined this material from the relevant excerpts in the subsequent paragraphs of this judgment.

31. According to the B-Report, one Mohamed Hussain Mohamed Suraj attested that he supplied fish pursuant to orders placed by the Petitioner, Rathnasiri Bandara. In his statement, he further provided that, his business enterprise was not formally registered, he did not maintain financial records or accounts, and he transacted based on the “ඵදිනෙදා පවතින මිල ගනන් යටතේ [price of the day]”. Conveniently, he was unable to recall or specify the prices at which the fish were sold.
32. Mohamed Suraj also stated that several bills bore forged signatures purporting to identify him as the supplier. He stated that these documents were subsequently presented to him for his signature, which he affixed after the falsification had occurred. Furthermore, Mohamed Suraj alleged that multiple cheques were issued in his name, none of which he received. He expressed his lack of knowledge as to the identities of those who ultimately encashed the cheques.
33. Dhammika Sanjeewa, a Purchasing Officer, provided a statement indicating that he procured fish for the Beruwela Executive under directives issued to him. He clarified the following: Prior to 20th October 2015, the Beruwela Executive Purchasing Officer was Aruna Shantha (the 6th Respondent). During this period, Mohamed Suraj was not recognised as a supplier to the Beruwela Executive. He further stated that, acting under the explicit instructions of Rathnasiri Bandara, the Petitioner, he signed bills submitted in the name of Mohamed Suraj in his capacity as Purchasing Officer.
34. Roshini Maduwage, who held the position of Chief Clerk at the Beruwela Regional Office until 17th November 2015 and was entrusted with overseeing accounts-related responsibilities, affirmed that payments to all other suppliers of fish to the Beruwela

Regional Office were duly processed, with the sole exception of Mohamed Suraj. Cheques ostensibly intended for payments to Mohamed Suraj were routed through the Manager, Rathnasiri Bandara, and further that she had no knowledge of whether such payments were actually effected. Roshini Maduwage also corroborated that Mohamed Suraj never appeared in person at the Beruwela Branch to collect his cheques or payments.

35. Finally, the B-Report details the statement of Dinusha Perera, who succeeded Roshini Maduwage as Chief Clerk after 15th November 2015, and independently corroborated the aforementioned assertions regarding the non-receipt of payments or cheques by Mohamed Suraj.

36. Evidently, the cumulative weight of the statements and corroborative testimonies in this case provides sufficient grounds for the peace officers to form a reasonable suspicion of an objective character. These irregularities, coupled with the direct assertions of individuals involved and their corroborative nature, establish not only a reasonable, but well-founded, basis for suspicion that transcends mere conjecture. Such suspicion aligns with the legal threshold required for the arrest of the suspect of such alleged crime.

37. Based on the above, it is the opinion of this Court that the 1st Respondent was justified in possessing reasonable suspicion towards the commission of the crime by the Petitioner, and thus, the arrest of the Petitioner was legal and in accordance with the rights guaranteed by Article 13(1) of the Constitution.

Alleged violation of Article 13(2)

38. Article 13(2) of the Constitution enshrines the following:

"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 and shall not be further held in custody, detained or deprived of

personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law."

39. This is supplemented by Section 37 of the **Code of Criminal Procedure Act**, which states that,

"Any peace officer shall not detain in custody or otherwise confine 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."

40. Section 37 imposes a mandatory duty on peace officers not to detain suspects in custody or confine them for a period not exceeding twenty-four hours, leaving out only a narrow margin of time, in view of the practicalities involved with the actual production of suspects before a judicial officer. The Petitioner was arrested on 18th February 2016 at around 2.00 pm, as evidenced by the Petitioner's recorded statement submitted by the 1st Respondent to this Court (marked "**1R8**") and was presented before the learned Magistrate of Kalutara the next day, 19th February 2016, at around 3:00 pm.

41. I therefore do not find cause or reason to entertain the Petitioner's contention that he was unlawfully detained at any point during the process of his arrest and production before the Magistrate Court of Kalutara for a period longer than under all the circumstances of the case is reasonable.

42. Further, in my view the Petitioner has failed to present any cogent material before this Court to support his allegation that the Respondents reported false or fabricated facts to the learned Magistrate which purportedly affected the jurisdiction of the Court to enlarge the Petitioner on bail.

43. In the learned Magistrate’s order,⁹ he refuses to authorise the Petitioner’s bail application on the basis that the Petitioner is charged with an offence under section 8(1) of the Offences Against Public Property Act, which provides:

“8. (1) The provisions of the Code of Criminal Procedure Act, No. 15 of 1979, in relation to bail shall apply where any person surrenders himself or is produced on arrest on an allegation that he has committed or has been concerned in committing or is suspected to have committed or to have been concerned in committing an offence under this Act:

Provided, however, that where a Gazetted officer not below the rank of Assistant Superintendent of Police certifies that the value of the subject-matter in respect of which the offence was committed, exceeds five thousand rupees such person shall be kept on remand until the conclusion of the trial. It shall be competent for the court. in exceptional circumstances to release such person on ball after recording reasons therefor.

44. Below is the relevant excerpt from **P15A**, wherein the learned Magistrate reasons that,

“මේ අවස්ථාවේ එම කරුණ පිළිබඳව තීරණයකට එළඹීම සඳහා සාක්ෂි මෙහෙය ව විමට [sic] අධිකරණයට හැකියාවක් නැත. [this Court is unable lead evidence at this stage to make a decision on that]”¹⁰

45. The immediate succeeding provision in the Act allows for the convicted individual to lodge a petition of appeal and, if such appeal is proved successful, empowers a competent court to release such individual on bail:

⁹ Marked “P15A”

¹⁰ An approximate translation added

"8. (2) Every person convicted by the court of any offence under this Act shall, notwithstanding that he has lodged a petition of appeal against his conviction or the sentence imposed on him, be kept on remand until the determination of the appeal:

Provided, however, that it shall be competent for such court in exceptional circumstances to release such person on bail after recording reasons therefor.

46. Accordingly, following the revision application filed by the Petitioner's wife in the High Court of Kalutara, the learned High Court judge directed that the Petitioner be enlarged on bail by order dated 25th February 2016.¹¹ Until such determination, the Petitioner was retained in remand in accordance with the provisions of the afore-cited Act.

47. In these above circumstances, I fail to see any merit in the Petitioner's contention that his liberty was in any way restricted in a manner that offends his rights protected by Article 13(2).

Alleged violation of Article 12(1)

48. Finally, the Petitioner alleges that he was denied his right to equal protection of the law, when he was arrested and detained due to a personal animosity harboured against him by the 6th Respondent, which occasioned a violation of his fundamental rights guaranteed under Article 12(1).

49. Despite the Petitioner's allegations that the 2nd Respondent failed to inquire into the complaints lodged by him against the 6th Respondent, the relevant Information Book extracts submitted by the 1st Respondent, marked "**1R1**" and "**1R2**", denounce such allegations by revealing that the Petitioner's complaint was investigated by the Wadduwa Police Station, the Petitioner had failed to appear on the date he was summoned by the

¹¹ Marked "P17B"

Station to conduct the inquiry, and the conclusion of the complaint culminated in the 6th Respondent receiving a warning.

50. In light of the above circumstances, it is my view that the Petitioner has failed to establish any discriminatory treatment by the Respondents in a manner which offends his right to equality under Article 12(1) of the Constitution.

51. In light of the numerous considerations discussed in the preceding paragraphs, I am of the firm view that the alleged illegality of the Petitioner's arrest and detention cannot be sustained as a valid grievance against any of the Respondents. The Petitioner has failed to demonstrate that the actions of the Respondents, undertaken in their executive capacities, amounted to violations of his fundamental rights as guaranteed under Articles 12(1), 13(1), and 13(2) of the Constitution. Accordingly, this application is dismissed, and no order is made as to costs.

Application Dismissed.

JUDGE OF THE SUPREME COURT

MAHINDA SAMAYAWARDHENA, J.

I agree.

JUDGE OF THE SUPREME COURT

ARJUNA OBEYESEKERE, J.

I agree.

JUDGE OF THE SUPREME COURT