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

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

SC (F/R) Application No. 221/2015

Warnakuwatthawaduge Surani Lakshika Fernando,

No 8/2, Mahajana Road,

Kadalana,

Moratuwa.

Petitioner

Vs.

1. Police Sergeant Attapattu,

Police Station,

Mount Lavinia.

2. I.P Ramya Silva,

Officer-in-Charge Minor Offences Branch

Police Station,

Mount Lavinia.

3. C.I. Chanaka Iddamalgoda,

Head Quarter Inspector of Police

Police Station

Mount Lavinia.

4.Deputy Inspector General of Police,

Overseeing Mount Lavinia, Nugegoda, Moratuwa and Kalutara Divisions

Police Headquarters,

Colombo 01.

5. N.K Illangakoon,

Inspector General of Police,

Police Headquarters,

Colombo 01.

5A. C.D Wickramaratne,

Inspector General of Police,

Police Headquarters,

Colombo 01.

6.Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Respondents

BEFORE: Buwaneka Aluwihare P.C, J

Murdu N.B Fernando P.C, J

Mahinda Samayawardhena, J

COUNSEL: Shantha Jayawardena with Thilini Vidanagamage for the Petitioner.

V. Hettige, SDSG for the Hon. Attorney General.

ARGUED ON: 21.03.2022.

WRITTEN SUBMISSIONS: Petitioners on 02.02 2021.

Respondents on 22.03.2021.

DECIDED ON: 24.10.2023.

Judgement

Aluwihare, PC, J.

The Petitioner was an employee of Colombo Montessori Teacher Training Center (Pvt) Ltd. and complained that her Fundamental Rights enshrined in the Constitution were violated by arbitrary, unlawful and overzealous actions of the 1st to 4th Respondents. On 28.04.2016, the Court granted Leave to Proceed for the alleged infringement of the Petitioner's Fundamental Rights under Articles 12(1), and 13(1) of the Constitution.

The Petitioner's Occupation & Employer

The Petitioner completed several professional qualifications in Pre-School Education and was employed as a kindergarten teacher. Subsequently, she was employed in Colombo Montessori Teacher Training Center (Pvt) Ltd (hereinafter Training Center) from 24th July 2014 onwards, as an Instructor - Training Method of Education. According to the Petitioner, she was requested to act the Office Coordinator/Manager at the Training Center from September 2014, on a temporary basis – duties she had performed until her resignation from the post on 13th January 2015. The Petitioner states however, that she was requested by the Chairman of the Training Center to attend to the duties of the Office upto March 2015, until her replacement candidate is adequately trained and would be familiar with the management of the Office. From that point onwards, the Petitioner was employed as a casual employee in the capacity of an Instructor Training Method of Education. However, the Respondents allege that at the time material to the incident, which will be referred to in detail below, the Petitioner acted as the Office Coordinator/Manager and as a teacher as well.

The Training Center is a registered Company under and in terms of the Companies Act No.07 of 2007 and was registered with the Tertiary and Vocational Education Commission (hereinafter TVEC) and the Chairman and the Directors of the Company reside abroad, which is admitted by the Petitioner and the 1st to 3rd Respondents. The Petitioner's position is that the Training Center renewed the registration till 2015, and thereafter requests were made to renew the registration from the TVEC. However, the Respondents state as per the letters dated 12.05.2015 and 15.09.2015, issued by the Acting Director (Standards and Accreditation) of the Tertiary and Vocational Education Commission marked "3R1 and 3R1a", the registration of the Training Center stood terminated since 20.12.2013. The Respondents further state that, although assessments to renew registrations were made by the TVEC, the Training Center failed to satisfy the requisite requirements, therefore the renewal was not granted. Hence, the Respondents' position is that from 20.12.2013 onwards, the conduct of business by the Centre was not lawful.

It is also pertinent that according to the Petitioner, the Training Center maintains two accounts with the Commercial Bank of Mount Lavinia and the usual practice adopted is for the students to pay the fees directly into these accounts. When the deposit slips are presented, the date and amount is inserted into the Students' Record Sheets by the attendant present at the Office. The only monies that are accepted are the fees paid by certain students who are not aware of the payment method adopted by the Training Center. Such fees are collected by the Office attendant and then credited to the bank accounts by the Office staff. This position is also accepted by the 1st to 3rd Respondents.

<u>The Incident</u>

On 22nd April 2015, the Petitioner received a Telephone call, and the caller had alleged that the Training Center was not registered with the TVEC. Thereafter the Petitioner allegedly informed the caller that she was merely a teacher and to raise the concern with the Directors of the Training Center. The identity of the caller is disputed. According to the Petitioner, the caller was unknown to her, but the Respondents state that the caller was a complainant by the name of N.A.D Eranga Nishshanka, (hereinafter 'Nishshanka') who lodged a complaint marked "3R5j" on the 26.04.2015 at the Mount Lavinia Police.

According to the version of the Respondents she was a student at the Training Center and presented the certificates she obtained from the Training Center to the TVEC for due certification, upon which she was informed that the Training Center's registration was terminated. Thereafter, Nishshanka phoned and informed the Petitioner regarding the termination and allegedly, the Petitioner brushed aside the concern stating they were acts of "political vindication".

The Petitioner's avers that on 25.04.2015 she headed to the Office to conduct her lectures in the capacity of a teacher and that at the Training Center, she was confined, detained and intimidated by a mob of students that claimed the Training Center was illegally conducting training courses and receiving payments. The Petitioner attempted to explain to the students that she was merely a teacher and phoned the Chairman of the Training Center, a person by the name of Ranjith Bandra Thalakiriyawe. The Chairman informed her that he had submitted the Prospectus to the TVEC and that necessary steps will be taken to have the registration of the Training Center renewed.

The students had, however, refused to disperse and demanded refunds. Thereafter, on the instructions of the Chairman, at around 4.00 p.m., she phoned the Mount Lavinia Police Station to resolve the issue. According to the Petitioner, by that time students had lodged individual complaints at the Police Station and the 1st Respondent (Sergeant Atapattu) along with another unknown policewoman arrived at the Training Center to escort the Petitioner to the Mount Lavinia Police Station. Thereafter, she was produced before the O.I.C, Minor Offences Branch (2nd Respondent), and it is alleged that the 2nd Respondent accused the Petitioner of deceiving the students and obtaining payments illegally, to which the Petitioner had responded that the payments made by the students are deposited in the bank account of the Training Center and that she is merely a teacher of the said Center.

<u>The Arrest</u>

As asserted by the Petitioner, the 2nd Respondent disregarded the explanation given by her, and instead threatened to arrest the Petitioner. Around that time the Petitioner's husband arrived at the Police Station being informed of the situation by her and when her husband attempted to intervene the 2nd Respondent had berated and had chased him

away. Allegedly, the 2nd Respondent could not be reasoned with and had refused to speak with the Chairman of the Training Center, and instead dictated several letters to the Petitioner. Purportedly 2nd Respondent made the Petitioner draft a letter stating she accepted payments illegally from the students and credited the funds to the Company account and that she will coordinate the refunds for the students. The 2nd Respondent supposedly accompanied the Petitioner to the Office of the Training Center around 10.15 p.m and directed her to affix the seal of the "Manager" on the letter. The 2nd Respondent thereafter provided the photocopies of the letter to the students.

The Petitioner states that the 2nd Respondent was not satisfied even with the letter that was allegedly coerced. Thereafter, the 2nd Respondent informed the Petitioner to notify the Chairman to draft individual letters for the students and attend the Mount Lavinia Police Station on the 28.04.2015 to handover the said letters. It is further alleged by the Petitioner that the 2nd Respondent recorded a statement from her, this alleged statement was not produced before the Court. Subsequently, she was permitted to leave the Police Station at about 11.00 p.m on 25.04.2015 but the 2nd Respondent informed her husband to visit the Police Station the following day. Shortly thereafter, the Petitioner emailed the Chairman of the Training Center and informed him of the demand of the 2nd Respondent and requested him to return to Sri Lanka.

The Respondents deny the above events, and according to their version of events, the 1st Respondent and another unknown female police officer never went to the Training Center on the 25.04.2015. As per the contention of the 1st Respondent, he never visited the Training Center and, in any event, the Respondetn states that he could not visit the Training Center as he was on duty wearing civilian clothing, and that due to health conditions prevailing at the time, he could not adorn the uniform and in those circumstances, he would not have been able to escort the Petitioner to the Police Station. The 1st Respondent provided a medical report marked "1R2" as proof of this position.

The 1st Respondent, however, admits that the Petitioner approached him at the Police Station and that he was delegated the duty to record complaints, subsequent to which, he had produced the Petitioner before the 2nd Respondent. The 2nd Respondent denies that he harassed, intimidated, or threatened the Petitioner. Instead, the 2nd Respondent states

that he informed her that "if it transpires that the offence of cheating had in fact been committed, action would be taken in respect of the party responsible for same". The 2nd Respondent further denies the alleged incident with the husband of the Petitioner and the events relating to the letters and her alleged coerced statement. He further denies ordering the Petitioner to visit the Police Station on the 28.04.2015 and that he informed her husband to visit the Police Station the following day. His version is that he terminated his duties on the 25.04.2015 at 08.42 p.m and left the Police Station as per the Routine Information Book (hereinafter RIB) extract marked "2R2".

The Subsequent Visit to the Police Station

In any event, the Petitioner states that her husband visited the Mount Lavinia Police Station the next day, which was on the 26.04.2015. It is alleged by the Petitioner that when her husband visited the Police Station, the 2nd Respondent sought a bribe to delay the complaints till 18th of May. The Petitioner's husband had avoided the payment of the bribe, avoided the issue and has produced an affidavit ("P 40(x)") as proof. Meanwhile, the 2nd Respondent denies the alleged incident and states that he never met the Petitioner's husband on that day or that he informed the Petitioner's husband to visit the Police Station.

Thereafter, the Petitioner states that the Chairman of the Training Center emailed a letter on the morning of 28.04.2014 to be given to the students as ordered by the 2nd Respondent. The Petitioner made copies of the letters and inserted the individual details of the students and went to the Mount Lavinia Police Station with an Attorney–at–Law to hand over the letters to the students ("P32(a) – P 32(t)"). The 2nd Respondent allegedly made her write on each letter that she will individually coordinate with the Chairman and ensure to refund the students. Further, the Petitioner states that the 2nd Respondent made her write another letter ("P 32(u)") addressed to the students who made complaints after 25.05.2015 to the effect that the Petitioner had charged fees from the students and credited the fees to the Training Center's Company account and will coordinate with the Chairman to refund the said funds. Moreover, the Petitioner states that she was informed that 26 students made complaints against her, and the 1st and 2nd Respondents ordered her to visit the Police Station on the 29th, 30th of April and 1st, 3rd, and 4th of May to give

statements. The Petitioner states she was compelled to provide individual statements and in all her statements she categorically denied that she was responsible for the management of the Training Center and that she was not allowed to read the statements before signing them.

It is further contended by the Petitioner that the Chairman of the Training Center sent the 3rd Respondent, the Officer-in-Charge of the Mount Lavinia Police Station a letter dated 28.04.2015 ("P 33") and certain documents attached to the letter by registered post. The said letter sets out the facts regarding the registration of the Training Center and states that the Training Center was duly registered till 2014 and that in January 2015, the Training Center received notice to renew registration for the year 2015, and that the Chairman faxed the necessary information to renew registration to TVEC. The documents annexed to the said letter were proof of these facts. It is further contended by the letter that there is confusion between the two directors of the TVEC, regarding the registration of the Training Center.

The events of 28.04.2014 as narrated by the Petitioner are disputed by the Respondents. The 3rd Respondent admits that the Petitioner visited the Police Station on that day with an Attorney-at-Law. The 3rd Respondent states that "it was my considered view that there should be deliberations between the complainants and the Petitioner on the matter in issue and also that accordingly I instructed the 2nd Respondent to instruct the Petitioner to come to the Police station to explore the same and record statements of her" (per paragraph 14 of the Statement of Objections). Accordingly, the 3rd Respondent states that deliberations did take place and her statement was recorded on 30th April ("1R3 to 1R3h) and on 4th May ("1R3i").

Meanwhile the 2nd Respondent states that he requested the Petitioner to visit the Police Station on 28.04.2014 as per the directions of the 3rd Respondent but denies that he attempted to bring about a settlement between the Petitioner and the students and that the Petitioner by her own volition attempted to reach a settlement (*vide* paragraph 14 of his Statement of Objections).

It is further disputed by the Respondents the receipt of "P 33" and the documents attached to that letter. The 3rd Respondent states that he did not receive the said letter and annexed

the leaves of the Register for the period 21st April to 5th May 2015 ("3R2"), maintained by the Mount Lavinia Police Station as proof. The said document provides the details of the Registered Post Articles received by the Mount Lavinia Police Station. Further, the 2nd Respondent denies dictating letters marked "P 32(a) to P32(u)" and that he coerced the Petitioner to endorse the said letters.

Thereafter, on 06.05.2015 the Petitioner received a telephone call from the 1st Respondent, instructing her to visit the Mount Lavinia Police Station. On arrival at the Police Station, the Petitioner alleges that 1st Respondent stated that she was being arrested on the instructions of the 4th Respondent. Immediately, the Petitioner contacted her husband and the Chairman of the Training Center, and her husband attempted to intervene by explaining to the 3rd Respondent that the Petitioner is merely a teacher of the Training Center.

Proceedings before the Magistrate's Court

The next day (07.05.2015), the Petitioner was produced before the Learned Magistrate of Mount Lavinia and the 3rd Respondent requested that the Petitioner be remanded till 21.05.2015 on the basis that she committed the Offences punishable by Sections 386, 389 and 403 of the Penal Code.

The Petitioner states that on 24.05.2015, she visited the Mount Lavinia Police Station accompanied by her husband in compliance with the bail conditions. Thereafter, the Petitioner signed the registry and then the 2nd Respondent informed the Petitioner's husband to revisit the Police Station to discuss the progress of the investigation. According to the Petitioner, following her husband's visit to the Police Station, the 2nd Respondent purportedly made an effort to pressure her husband into providing transportation for a visit to a funeral in Kirindiwela. This funeral was for a deceased relative of a Police Officer associated with the Mount Lavinia Police Station. However, the husband refused the demand. A transcript and recording of this alleged conversation were marked "P 40(y) and P40(z)" and produced before this Court the Court granted permission to the Petitioner to produce the said transcript and recording. The 2nd Respondent, however, takes up the position that he never informed the husband to revisit the Police Station on 24.05.2015 and denied that he attempted to coerce transportation from the husband. He

further refuted the authenticity of his voice in the recording marked "P40(y)" produced by the Petitioner.

In relation to the above events, the 3rd Respondent states that he directed the 2nd Respondent to arrest the Petitioner on 14.05.2015 and denies that he was acting on the orders of the 4th Respondent. The 3rd Respondent produced the arrest notes marked "3R3" as proof of this position. The Respondents further alleged that the Student Record Sheets and the bank slips were not produced by the Petitioner for them to peruse. On 27.05.2015 the Petitioner made a complaint to the Human Rights Commission marked "P 41", stating that her arrest was arbitrary, illegal, unreasonable and male fide. The present application relates to the above events. I will now consider the alleged violations.

Alleged Violation of Article 12(1) of the Constitution

Article 12(1) protects persons from any unlawful, arbitrary or mala fide executive or administrative actions or omissions. The Petitioner states that the Respondents actions from 25.04.2015 to 07.05.2015, resulted in a continuous infringement and/or infringement of her rights enshrined in Article 12(1) of the Constitution.

The Petitioner alleges that on 25.04.2015 the 1st to 3rd Respondents failed to act promptly to contain the situation at the Training Center and alleged that the 2nd Respondent threatened to arrest the Petitioner, and that therefore, the Respondents had acted arbitrarily. However, the 1st Respondent denies visiting the Training Center due to his health condition. As proof he provided a medical report marked "1R2". The Petitioner argues in her Counter Affidavit that the medical report relates to injuries sustained by the 1st Respondent in November 2011, which is more than 3 years before the arrest, therefore, is irrelevant and of no evidentiary value. Although the medical report relates to incidents in November 2011, the report is dated 23.07.2013, the time in which the medical evaluations were done. Moreover, it appears that the injury the 1st Respondent had sustained were quite serious and he had to seek leave of absence for nearly two months. In those circumstances I am inclined to agree that the 1st Respondent did not effect the arrest of the Petitioner.

The allegation that the 2nd Respondent dictated several letters and harassed the Petitioner on that day should also be considered in this background. The contention is that the 2nd Respondent escorted the Petitioner to the Training Center around 10.00 p.m, however, RIB extract marked "2R2" states that the 2nd Respondent terminated his duties at 08.42 p.m and left the Police Station. Although the Petitioner in her Counter Affidavit argued that the RIB extract was a "self-serving" document, this Court cannot doubt its credibility, and on the face of the document, it appears genuine. Therefore, I am not inclined to agree with the events on that day as stated by the Petitioner.

The Petitioner had further alleged that the 2nd Respondent attempted to solicit multiple favours or bribes from the Petitioner and acted for a collateral purpose. In particular, the Petitioner states that the 2nd Responded attempted to solicit a bribe from her husband on 26.04.2015. This allegation, on a scrutiny of all the material before the Court, is an allegation of "word against word" and in these circumstances, in arriving at a just and equitable decision in the realm of the fundamental rights jurisdiction, this Court necessarily has to apply the test of probability to the factual matters placed before us.

In this regard, I wish to cite with approval the opinion expressed by His Lordship Justice Wanasundera in the case of ***Velmurugu v The Attorney General and Others*** **[1981] 1 SLR 406**, where his Lordship stated that the test applicable is a "preponderance of probability" adopted in civil cases. It was stated that although the standard is not as high as that required in criminal cases, there can be different standards of probability within that standard and the degree applicable would depend on the subject-matter. Further, His Lordship Justice Soza in ***Vivienne Goonewardene v Hector Perera*** **[1983] SLR 1 V 305** stated;

"The degree of probability required should be commensurate with the gravity of the allegation sought to be proved. This court when called upon to determine questions of infringement of fundamental rights will insist on a high degree of probability as for instance a Court having to decide a question of fraud in a civil suit would. The conscience of the court must be satisfied that there has been an infringement."

An allegation of bribery, if proved, is a significant blow to the reputation of any person and would also result in criminal liability. Therefore, the allegation will require a high

degree of probability to be established, and an allegation based on the word of the Petitioner alone may not suffice. It was also alleged by the Petitioner that the 2nd Respondent sought a "favour" on 24.05.2015 and requested transport to visit a funeral. The alleged transcript and the voice recording marked "P 40(y)" and "P 40(z)" are denied by the 2nd Respondent. In the absence of any voice comparison, specialist comparison or expert evidence to corroborate the alleged "favour", the Court is hesitant to rely on the recording alone produced by the Petitioner.

Moreover, if the 2nd Respondent attempted to solicit a bribe, the Petitioner could have made a complaint to the relevant authorities, but no such attempt was made. Further, the alleged bribe is not mentioned in the complaint made by the Petitioner to the Human Rights Commission marked "P 41", and in fact, the alleged events of 26.04.2015 and 24.05.2015 are completely omitted from the complaint. Although the complaint on its face is dated 24.05.2015, even the Petitioner accepts that the complaint was made on the 27.05.2015. The Petitioner has not provided reason as to why the Petitioner omitted to state these events. In those circumstances, I find that the Petitioner has failed to establish a violation of Article 12(1) of the Constitution.

Alleged Violation of Article 13(1) of the Constitution

Article 13(1) of the Constitution ensures that the personal liberties of a person are protected from arbitrary arrest. The obligations enshrined in Article 13(1) are twofold. First, is that an arrest must be made in accordance with the procedure established by law and secondly, every person arrested must be informed of the reason for the arrest.

Justice Sharvananda states the purpose to inform the reason for the arrest in his treatise, "Fundamental Rights in Sri Lanka" on page 141 as;

"…Meant to afford the earliest opportunity to him to remove any mistake, misapprehension or misunderstanding in the mind of the arresting authority and to disabuse the latter's mind of the suspicion which triggered the arrest and also for the arrested person to know exactly what allegation or accusation against him is so that he can consult his attorney-at-law and be advised by him."

A particular form is not required for the notification, nor does it require a complete or detailed description of the charges against the suspect. The requirement is for the arrested person to be told in simple, non-technical language the essential legal and factual grounds for the arrest at the earliest reasonable opportunity. It is apparent that the Respondents informed the Petitioner the reasons for the arrest *vide* the arrest notes marked "3R3" which state that the Petitioner was arrested for committing the Offence of Criminal Breach of Trust and that she was informed of the reasons. However, the crux of the Petitioner's argument is that the arrest was not according to the procedure established by law.

The procedure established by law for arresting a person without a Warrant is set out in Chapter IV B (Sections 32-43) of the Code of Criminal Procedure. Section 32(1)(b) of the Code of Criminal Procedure Code provides that;

"(1) Any peace officer may without an order from a Magistrate and without a warrant, arrest any person-

(a) who in his presence commits any breach of the peace;

(b) 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;"

The Petitioner submits that she was arrested on a vague and general suspicion and that the Respondents arrested the Petitioner without forming a reasonable suspicion to charge the Petitioner for an Offence in terms of Section 32 of the Criminal Procedure Code or Tertiary and Vocational Education Act No.20 of 1990. The Petitioner further contends that the Respondents were overzealous as well as despotic in arresting her.

In order to effect an arrest, a reasonable suspicion must be in entertained in the mind of the Police Officer. The test is objective, and an arrest made purely on subjective grounds or on a general or vague suspicion would be arbitrary. The requirement is limited and is not equated with prima facie proof of the commission of the Offence. As observed by Lord Devlin in ***Hussein v. Chong Fook Kam*** **[1970] AC 942 at 948**,

"Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking: 'I suspect but I cannot prove'. Suspicion arises at or near the starting point of an investigation of which the obtaining of prima facie proof is the end".

However, the suspicion of the Police Officer must be reasonable, and a Police Officer cannot act on mere conjecture or surmise. As stated by His Lordship Justice Amarasinghe in *Channa Pieris and Others v. Attorney General and Others* [1994] 1 Sri L.R 1 at p. 46 - 47

"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."

"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".

Similarly, in *Gamlath v Neville Silva and Others* [1991] 2 Sri L.R 267 it was held by His Lordship Justice Kulatunga 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 giving them credit."

A Police Officer must form a reasonable suspicion founded upon his own knowledge such as personally observing the commission of an Offence or by statements made by others in a manner which justifies him giving credit to those statements. For instance, if the statements are corroborated by additional evidence or if there are a number of complaints received by the Police Officer corroborating the same events, or by a combination of both personal knowledge of the Police Officer and credible statements made by others.

Plainly, the threshold for the foundation of a reasonable suspicion is limited and must be assessed on the facts of each case and suspecting a person of having committed an Offence falls a short of having demonstrable proof of the commission of the Offence.

It was held in ***Piyasiri v Fernando*** **[1981]1 Sri L.R 173** at 184 that an arrest would be illegal if the arrest was based on speculation or a vague and general suspicion or effected to ascertain whether *some* offence was committed. His Lordship Justice H.A.G De Silva held that;

"The arrest of the Petitioners in my view was highly speculative and was for the purpose of ascertaining whether any of them-could be detected to, have committed a bribery offence. No Police Officer has the right to arrest a person on vague general suspicion, not knowing -the precise crime suspected but hoping to obtain evidence of the commission of some crime for which they have the power to arrest."

In ***Piyasiri v Fernando*** [Supra], the Bribery Commissioner received a complaint alleging that the Customs Officers at the airport were soliciting bribes. It was a general complaint without identifying any particular Customs Officers and the Respondent Police Officers effected the arrest once the Customs Officers were leaving the airport. Therefore, the Court held that the Police Officers acted on a vague and general suspicion.

However, in the instant Application, the Mount Lavinia Police Station received 24 complaints from 25.04.2015 to 28.04.2015 marked "3R5 to 3Rw" and all the complaints alleged that the Training Center ceased to be duly registered with TVEC and stood terminated since 20.12.2013, and that the monies of the students were misappropriated. The letters dated 12.05.2015 and 15.09.2015, provided by the Acting Director (Standards and Accreditation) of the TVEC, although issued after the Petitioner's arrest, marked as "3R1 and 3R1a" provide credit to the Respondents' stance that the Training Center's valid registration had ceased.

While I would not definitively settle the matter that the Training Center was conducting its business illegally, within the context of this case, the Court concurs that the Respondents held a reasonable suspicion that the Training Center was engaged in unlawful operations. It is also pertinent that of the 24 complaints, the complaints marked "3R5f, 3R5h, 3R5j to 3R5n, 3R5p, 3R5q, 3R5u, 3R5v" made specific references to the Petitioner by name and identified her as the Office Coordinator/Manager or as an employee of the Training Center.

The complaints also alleged that she received the receipts and monies that were deposited into the Training Center's account. On that basis, I cannot agree that the Respondents arrested the Petitioner on a vague and general suspicion which was speculative. As admitted by the Petitioner, even on the day she was placed in custody (06.05.2015), the Police were in the process of recording statements from three former students of the institute.

Even if the Respondents did not effect the arrest on a vague general suspicion, did the Respondents act overzealously? In this regard the Petitioner states that the Respondents admit that she functioned as a teacher and that the Petitioner is not a director of the said Training Center. Moreover, the Petitioner alleged that the Respondents admit that fees of the students are credited to the accounts of the Training Center maintained with the Commercial Bank branch in Mount Lavinia and that she produced the relevant bank deposits along with the Student Record Sheets (although the Respondents dispute the production of the bank deposit slips and the Student Record Sheets) as proof that none of the monies were deposited in her personal account. Hence, the Petitioner states that any suspicion would have been purged from the minds of the Respondents and the arrest was overzealous.

In response the Respondents state that the complaint made by Nishshanka, marked "3R5j" explicitly mentions that the Petitioner brushed aside the concerns of Nishshanka, when she called the Petitioner. The Petitioner's response was that these are merely acts of "political vindication" and that the Training Center was duly registered. The Respondents argue that the response given by the Petitioner demonstrate the *means rea* of the Petitioner since she was well aware of the fact that the Training Center was not duly registered and remained to function as an Office Coordinator/Manager and colluded with the Chairman by receiving funds and conducting the management of the Training Center.

The Respondents further state that had the Petitioner been a victim of circumstances, she would have immediately terminated her employment and ascertained the veracity of the allegation.

In *Ganeshan Samson Roy v M.M. Janaka Marasinghe* (S.C (F/R) 405/2018, S.C Minutes of 20.09.2023), I emphasized that 'reasonable suspicion' entails an executive discretion and that an element of prudence is required when making an arrest for 'white collar' crimes. The reason being, it needs to be ascertained whether the impugned transaction is purely a commercial transaction which had gone awry or whether the suspect bore the intent to defraud. I stated in *Ganeshan Samson Roy v M.M. Janaka Marasinghe* [supra] that;

"…..the principle laid by Lord Devlin in Shaaban Bin Hussien v Chong Fook Kam [1969] 3 All ER 1626 at 1630 is relevant to the instant case. As a general rule, an arrest should not be made until the investigation is complete. Still, the legislature allows police officers to affect an arrest before the completion of the investigation in certain circumstances; this is to avoid the investigation process being hampered and in order to maintain the law and order in the country. But to give the power to arrest on a reasonable suspicion does not mean that it should always be or even ordinarily be exercised. It means that there is executive discretion. In the exercise of such discretion, many factors must be considered. Besides the strength of the case, the possibility of escape, obstruction of the investigation, prevention of further crimes, and the threat of the accused to the public are some of the factors a police officer may consider. Thus, it appears the 'strength of the case' is a critical factor in making an arrest."

The exercise of executive discretion upon a reasonable suspicion entails a dual obligation for a Police Officer. On one hand, it involves the responsibility to detect and prevent crimes, while on the other, it entails a duty to be cautious in order to avoid mistaking the innocent for the guilty. Even when an arrest is made upon a reasonable suspicion, the presumption of innocence operates to a modified degree. In the word of Lord Scott in *Dumbell v Roberts* [1944] 1 All ER at 329;

"The duty of the police when they arrest without warrant 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 British principle of personal freedom, that every man should be presumed innocent until he is proved guilty, applies also to the police function of arrest – in a very modified degree, it is true, but at least to the extent requiring them to

be observant, receptive and open-minded and to notice any relevant circumstances which points either way, either to innocence or to 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, the he probably is an "offender" attempting to escape, they should make all presently practicable enquiries from persons present or immediately accessible who are likely to be able to answer their enquiries forthwith. I am not suggesting a duty on the police to try to prove innocence; that is not their function; but that they should act on the assumption that their prima facie suspicion may be ill-founded. The duty attaches particularly where slight delay does not matter because there is no probability, in the circumstances of the arrest or intended arrest, of the suspect person running away".

I am unable to agree that the Respondents acted overzealously in arresting the Petitioner. The Respondents had received numerous complaints to justifiably bear a suspicion that an offence was committed at the Training Center, and as admitted by the Petitioner, the Respondents were recording complaints from former students even on the day she attended the Police Station. Although the Petitioner states that she resigned as the Office Coordinator/Manager around January 2015, at the time of the complaints, the complainants identified the Petitioner as the Office Manager/Coordinator, and the Respondents cannot be faulted for relying on the complaints which were credible.

I also do not doubt the credibility of the complaint made by Nishshanka ("3R5j"), and it appears from the response of the Petitioner that she had the knowledge that the Training Center's registration was dubious. Although the Respondents should have acquired the letters issued by the TVEC before effecting the Petitioner's arrest, the letters procured in the course of investigations indicate that the registration of the Training Center stood terminated from 2013. Given those circumstances, it is reasonable to infer that the Petitioner should have harbored suspicions regarding the questionable activities of the Training Center at some point after 2013, considering her role as the Office Manager/Coordinator of the Center. Therefore, the Petitioner cannot claim ignorance.

However, it is reasonable to presume that the Petitioner produced the bank deposits and Student Sheet Record for the Respondents to peruse, which would have been the natural reaction of a person innocent of the alleged misappropriation of monies, I am unable to agree that the production of the documents would have purged a reasonable suspicion of the Respondents. It is evident that the Petitioner acted as a liaison of the Chairman who was residing abroad in America. The statement of the Petitioner dated 30.04.2015 marked "1R3" states that;

"අප ආයතනයේ හිමිකරු වන්නේ රන්ජිත් කල්කිරියාගම යන අයයි. ඔහු දැනට ඇමෙරිකාවේ ඉන්නේ ඔහුගේ ලිපිනය මා දන්නේ නැහැ. 2014 ඔක්තෝම්බර් 01 දින ඔහු විසින් මා හට කිව්වා ආයතනයේ තිබෙන වැඩ මම දුරකථනයෙන් හෝ විද්‍යුත් තැපෑලෙන් දැනුම් දෙනවා ඒවා මගේ උපදෙස් පරිදි කරන්න කියල. ඒ අනුව ඔහු කියන ඒවා මම ඒ විදිහට ඉටු කලා"

Even though the Petitioner asserts that she was denied the opportunity to review the statements provided to the Respondents, before affixing her signature, the above facts in the statement marked "1R3" are not disputed. The Petitioner also admits that the Chairman and the Directors of the Training Center reside abroad, and it logically follows that if the Directors resided abroad, the Petitioner would act as the local liaison for the Training Center.

Although according to the Petitioner she resigned from her position in January 2015, her own admission states that she was engaged in the administrative duties of the Office Coordinator/Manager at least till March 2015, which was one month before the arrest. As the Office Coordinator/Manager she would have naturally been delegated the administrative tasks of the Center. In those circumstances, it is difficult to state that it was unreasonable for the Respondents to suspect that the Petitioner was colluding with the Chairman and the Directors at least till a point of time recent to the incident.

Therefore, considering the Petitioner's degree of involvement in the organization, and the suspected collusion with the Directors resident abroad, arresting the Petitioner, to prevent the investigation from being hampered is, in my view, reasonable. Hence, I

declare that the Petitioner has failed to establish that the Respondents violated her fundamental rights enshrined in Article 13(1) of the Constitution.

Conclusion

Considering the totality of the evidence I hold that the Petitioner has failed to establish a violation of Article 12(1) and 13(1) of the Constitution.
Application dismissed.

JUDGE OF THE SUPREME COURT

MURDU N.B FERNANDO PC, J

I agree.

JUDGE OF THE SUPREME COURT

MAHINDA SAMAYAWARDHENA, J

I agree.

JUDGE OF THE SUPREME COURT