

**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 of the Constitution.

Niluka Dissanayake,
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Colombo 12.

SC/ FR Application No. 556/2009

On behalf of Captain Ambawalage Dammika
Senaratne de Silva of 74, Jayasumanarama
Road, Ratmalana.

Currently held at the Polhengoda Military
Police Headquarters.

Petitioner

Vs.

1. Major Mahesh Kumara,
Sri Lanka Military Police Corps,
Military Police Headquarters,
Sri Lanka Army,
Polhengoda.

2. Colonel Etipola, SS,
Commanding Officer,
Military Police Headquarters,
Sri Lanka Army,
Polhengoda

3. Fernando
Officer of Sri Lanka Military Police
Military Police Headquarters,
Sri Lanka Army,
Polhengoda.
4. Provost- Marshal Dias
Officer of Sri Lanka Military Police
Military Police Headquarters,
Sri Lanka Army,
Polhengoda.
5. Colonel Ediriweera,
Commanding Officer,
Sri Lanka Army,
Alampilli Mulativu Camp,
Mulativu.
6. Army Commander,
Sri Lanka Army Headquarters,
Colombo 01.
7. Hon. Attorney General
Attorney General's Department,
Colombo 12.

Respondents

Before: B. P. Aluwihare, PC, J
Priyantha Jayawardena PC, J
P. Padman Surasena, J

Counsel: Saliya Pieris PC with Danushka Rahubedda for the Petitioner
Suharshi Herath, Senior State Counsel for the Attorney General

Argued on: 26th June, 2019

Decided on: 30th October, 2023

Priyantha Jayawardena PC, J

Petition

The instant application was filed by an Attorney-at-Law (hereinafter referred to as “the petitioner”) on behalf of Captain Ambawalage Dammika Senaratne de Silva (hereinafter referred to as “the detainee”), who was detained in military custody at the time of filing the instant application. The petitioner stated that the detainee was serving as a Captain in the Sri Lanka Army at the time material to the application.

The petitioner further stated that the 1st respondent is a Major of the Military Police of the Sri Lanka Army, in whose custody the detainee was kept. The 2nd respondent is the Commanding Officer of the Military Police. The 3rd and 4th respondents are officers attached to the Military Police Headquarters, the 5th respondent is the Commanding Officer of Alampili Army Camp (hereinafter referred to as “the Army camp”), where the detainee was serving and the 6th respondent is the Commander of the Sri Lanka Army.

The petitioner stated that a soldier named Lance Corporal K.G. Saman Kumara (hereinafter referred to as “the deceased soldier”) died of gunshot injuries on the 22nd of April, 2009 at the Nandikal Army Camp, where the detainee was serving as the ‘Officer Commanding’. Further, the 5th respondent was the ‘Commanding Officer’ of the said Army Camp at that time. However, the deceased soldier was serving in a different Company at the time of his death.

The petitioner stated that in the log book at the Anuradhapura Army camp, which records the deaths of officers and soldiers of the Army, the cause of death of the deceased soldier was recorded as gunshot injuries sustained from the discharge of his own weapon.

The petitioner further stated that on the 30th of May, 2009 the detainee was ordered by the 5th respondent to take the body of another soldier attached to his Company who died of gunshot injuries, which were similar to the injuries suffered by Lance Corporal K.G. Saman Kumara a few days earlier. However, when the detainee was returning to his camp, he was informed that he had been relieved of his duties as the ‘Officer Commanding’ from the camp.

Thereafter, due to the adverse environment at the Army Camp that arose after the deaths of the said soldiers, the detainee requested the 5th respondent to relieve him from his duties at the said camp and sought permission to report to the Regimental Headquarters at Panagoda.

The 5th respondent permitted the said request of the detainee, and accordingly, the detainee reported to the Regimental Headquarters on the 10th of June, 2009. Thereafter, the detainee took medical leave on the 13th and 14th of June, 2009 and reported back to duty on the 15th of June, 2009. On the same day, the detainee informed his mother *via* telephone that he was unable to come home as he was “facing a problem”.

The petitioner stated that following the said telephone conversation, the detainee’s parents visited the Regimental Headquarters on the 16th of June, 2009 to inquire about their son, and they were informed that the detainee was arrested based on an anonymous letter received by the Army stating that the detainee was responsible for the murder of the deceased soldier, named Lance Corporal K.G. Saman Kumara. Further, they were informed that the detainee was taken to the Sri Lankan Army Military Police Headquarters at Polhengoda.

The petitioner further stated that even though the relatives of the detainee attempted to visit him, they were not given access to him. Thereafter, the mother of the detainee made a complaint to the Human Rights Commission of Sri Lanka (hereinafter referred to as the “Human Rights Commission”) on the 3rd of July, 2009 requesting permission for the relatives of the detainee to visit him. On the 7th of July, 2009 the Human Rights Commission requested the 1st respondent to permit the relatives of the detainee to visit him. Thereafter, the relatives of the detainee visited him at the Military Police Headquarters. The petitioner stated that during the said visit, the detainee informed his relatives that he was falsely implicated for a crime that he did not commit because of

the animosity that the 5th respondent had with him. Further, the Military Police were trying to forcibly obtain a confession from him.

Furthermore, it was stated that the detainee's mother had received an anonymous telephone call on the 21st July, 2009 alleging that the detainee was blindfolded and severely assaulted with clubs while in the custody of the Military Police. Further, the said anonymous caller had informed her that the 1st, 3rd and 4th respondents were responsible for the assault of the detainee. The petitioner stated that the detainee's mother complained to several authorities about the arbitrary and unfair treatment of the detainee and requested to conduct a fair investigation into the incident.

The petitioner stated that a soldier named Hewapalliyaguruge Dilum Sanjeewa was forced to give a statement stating that the detainee gave his weapon and asked him to shoot the deceased soldier, and that he shot in the direction of the deceased soldier. However, as he missed the target, the detainee took the weapon and shot at the deceased soldier.

The petitioner further stated that if the detainee committed the murder, he should have been handed over to the civil authorities to take steps under the procedure established by law, as the offence of murder is not an offence that comes within the purview of either the Army Act or the military law and the regulations promulgated thereunder.

In the circumstances, the petitioner stated that the arrest and detention of the detainee without reasonable grounds were unlawful, arbitrary and contrary to the procedure established by law and are an infringement of the Fundamental Rights guaranteed to the detainee.

The petitioner prayed, *inter alia*, for a declaration that one or more of the respondents have infringed the detainee's Fundamental Rights guaranteed to him by Articles 11, 12(1), 13(1), 13(2), and 13(3) of the Constitution, and to grant compensation in a sum of Rs. 1,000,000/-.

Leave to Proceed

The court granted leave to proceed for the alleged violation of Articles 12(1) and 13(2) of the Constitution. It is pertinent to note that the court did not grant leave to proceed for the alleged violation of Article 11 of the Constitution. Thus, the allegations regarding assault and torture will not be considered in this judgment.

Objections of the 1st respondent

The 1st respondent filed objections and stated that the deceased soldier, Lance Corporal K.G. Saman Kumara, served in Company 'A' of the 20th Battalion of Sri Lanka Light Infantry, of which the detainee functioned as the 'Officer Commanding' at the time material to the instant application.

The 1st respondent further stated that the deceased soldier ran away from the said Company on the 16th of April, 2009 and reported to the Battalion headquarters on the following day. Thereafter, the deceased soldier made a written complaint of sexual harassment committed by the detainee. Further, as the deceased soldier refused to report back to the detainee's Company, he was transferred to Company 'D' of the same Battalion.

The 1st respondent stated that Company 'D' was moved to a different location on the 22nd of April, 2009 and to reach the said camp, it was necessary to pass Company 'A'. Further, the death of the deceased soldier occurred when he was passing the location where Company 'A' was stationed.

The 1st respondent denied the allegations that access to the detainee was refused and that the detainee was assaulted while in custody. The 1st respondent stated that an Order was made by the Human Rights Commission requesting the relatives of the detainee to visit him, and the said Order was complied with.

He further stated that the investigation carried out by the Military Police revealed evidence against the detainee with respect to the murder of the deceased soldier. Hence, the Police was informed to take over the investigation with regard to the death of the deceased soldier.

In support of the above statement, the 1st respondent produced a letter dated 3rd of July, 2009 addressed to the Deputy Inspector General of Police of the Criminal Investigations Department, marked as '1R1' which contained the facts revealed during the investigation conducted by the Military Police in respect of the death of the deceased soldier.

The 1st respondent stated that in terms of sections 47(1) and 131(2) of the Army Act No. 17 of 1949, a court martial may be held when an offence is committed by a member of the Army during active service. It was further stated that as the alleged offence was committed by the detainee during active service, the detainee was detained under section 35 of the Army Act and subsequently handed over to the Police on the 6th of August, 2009 for further investigation.

The 1st respondent stated that the detainee was handed over to the Police after the investigation conducted by the Military Police concluded. Thereafter, the Police produced the detainee and Hewapalliyaguruge Dilum Sanjeewa in the Magistrate's Court, and the learned Magistrate remanded them. Later, they were released on bail by the High Court of Anuradhapura on the 18th of January, 2010.

Objections of the 5th respondent

In addition to the averments contained in the objections filed by the 1st respondent, the 5th respondent stated the following in his statement of objections;

The deceased soldier made a complaint of sexual harassment against the detainee on the 17th of April, 2009 which was produced marked as '5R1'. In the said complaint, the deceased soldier stated that the detainee summoned him to his room in the night on the 15th of April, 2009 and sexually harassed him. Further, the alleged sexual harassment commenced with the detainee ordering him to massage his feet.

It was further stated that the cause of death of the deceased soldier was initially considered to be an accidental discharge of his personal weapon, and hence, the letters and messages with regard to his death were issued to that effect. A copy of the message sent by the 5th respondent's battalion informing the headquarters about the death of the deceased soldier and a copy of the convening order of the Court of Inquiry appointed by his battalion to inquire into the death of the deceased soldier dated 23rd of April, 2009 were produced marked as '5R2' and '5R3', respectively.

He further stated that as another soldier named R. Silva, attached to the detainee's Company, also died due to gunshot injuries on the 30th of May, 2009 in similar circumstances that the deceased soldier died, the detainee was removed from his position as the 'Officer Commanding' of Company 'A' with effect from the 1st of June, 2009.

The 5th respondent stated that a military investigation was initiated into the death of the deceased soldier, Lance Corporal Saman Kumara. Subsequently, upon the request of the detainee on the 9th of June, 2009 the detainee was transferred to the Regimental Headquarters of the Sri Lanka Light Infantry at Panagoda.

The investigation conducted by the Army revealed a *prima facie* case against the detainee and soldier, Hewapallyaguruge Dilum Sanjeewa. Hence, he was handed over to the Criminal Investigations Department for further investigations on the 6th of August, 2009. Thereafter, the Police produced the detainee and the other soldier in the Magistrate's Court in respect of the death of the deceased soldier, and the learned Magistrate remanded both of them. Subsequently, the detainee was released on bail by the High Court of Anuradhapura on the 18th of January, 2010. He stated that a Court Martial can be held against the detainee under sections 47(1) and 131(2) of the Army Act for the alleged offence of murder of the deceased soldier.

Counter Affidavit of the detainee

The detainee filed a counter affidavit and stated that he was not informed of the deceased soldier's alleged complaint of sexual harassment dated 17th of April 2009, produced marked as '5R1'. He further stated that an allegation of sexual harassment by a Commissioned Officer on a Non-Commissioned Officer is a serious offence under Military Law, which would have resulted in immediate action being taken against him by the 5th respondent as his Commanding Officer.

In the circumstances, the detainee stated that the failure on the part of the 5th respondent to immediately act on the alleged complaint of sexual harassment raises doubts about the veracity of the said complaint. In view of the above, the said complaint marked '5R1' is either a forged document or had been forcibly obtained from the deceased soldier prior to his death.

The detainee further stated that the 1st respondent assaulted him with pipes filled with sand and forcefully tried to get him to confess that he shot the deceased soldier. Moreover, on the 20th of June, 2009 the 1st, 3rd and 4th respondents blindfolded and assaulted him. The detainee stated that, consequent to the assault, he was bleeding from the ear and the nose.

The detainee stated that he still has a difficulty in eating and his feet get numb when he tries to run. He further stated that after he was released on bail, he obtained medical treatment from the Army Hospital and the Kalubowila Government Hospital and produced medical records marked as 'P15A', 'P15B' and 'P15C' as proof of the treatment given to him by the said hospitals.

Further, the detainee stated that the statement of the soldier, Hewapalliyaguruge Dilum Sanjeewa, had been obtained under duress. Moreover, he is falsely implicated in the death of the deceased soldier due to the animosity that the 5th respondent has with the detainee.

The detainee stated that he was illegally kept in detention for 52 days, where he was severely assaulted by the officers of the Sri Lanka Military Police, including the 1st respondent.

Submissions on behalf of the detainee

The learned President's Counsel for the detainee submitted that the detainee's Fundamental Rights enshrined under Article 12(1) of the Constitution has been infringed as he was deprived access to his relatives and lawyers until the intervention of the Human Rights Commission.

It was further submitted that the said detention in military custody for 52 days without either producing the detainee before a Magistrate or handing him over to civilian authorities is a violation of his Fundamental Rights guaranteed under Article 13(2) of the Constitution.

The learned President's Counsel for the detainee submitted that the words "*procedure established by law*" in Article 13(2) of the Constitution requires a person arrested to be produced before a Magistrate in a court of law. Thus, even though the initial arrest and detention were made under section 35 of the Army Act, further steps should have been taken in accordance with the provisions of the Constitution, which applies to every State institution.

Furthermore, it was submitted that under section 40(1) of the Army Act, the investigation against the detainee should have been conducted "*without unnecessary delay*" after he was taken into military custody and that steps should have been taken either to initiate proceedings against the detainee under section 40(1)(b) of the Army Act or to have the charges against the said detainee dismissed under section 40(1)(a) of the Army Act. In the alternative, to hand over the detainee to the Police to take steps under the law.

The learned President's Counsel further submitted that this court has given a strict interpretation to the term "time limit" in respect of producing persons detained before the nearest judge of a competent court.

In support of the above submissions, the learned President's Counsel cited *Selvakumar v Devananda* (SC/FR/150/93, Supreme Court Minutes 13th of July, 1994), where it was held;

“if the victim of an unconstitutional arrest may run the risk of such grave harm while in police custody, it seems to me that what a “reasonable time” for production before a Magistrate must necessarily be given a strict interpretation...”

Thus, it was contended that the term “without unnecessary delay” stipulated in section 40 of the Army Act should be given a strict interpretation.

Further, the learned President's Counsel cited the case of *Sunil Rodrigo v De Silva* (1997) 3 SLR 265, where the court held that the rights under Article 13(2) of the Constitution to produce a suspect before a judge cannot be taken away unless expressly provided by the Constitution itself.

Moreover, the decision was taken by the Army headquarters to hand over the detainee to the Police on the 3rd of July, 2009 marked as ‘1R1’. Therefore, the Sri Lanka Army had no viable reason to keep the detainee in custody after the said date. However, the detainee had been kept in military custody until he was handed over to the Police on the 6th of August, 2009 when the instant application was supported in the Supreme Court.

In the circumstances, it was submitted that the procedure established by law as set out in section 40 of the Army Act requiring steps to be taken without unnecessary delay had been violated by the Army.

Furthermore, the learned President's Counsel submitted that military personnel are entitled to the protection of Fundamental Rights enshrined in the Constitution. In support of the said submission, the learned President's Counsel cited *Channa Peiris v Attorney General* (1994) 1 SLR 51 at 81, where it was held:

“Constitutional guarantees cannot be removed or modified except in accordance with the Constitution. That, I believe is a proposition that commends itself to general acceptance. I believe it is still a well-established and universally conceded principle. One might say that it is axiomatic.”

Moreover, it was submitted that in *Edirisuriya v Navaratnam* (1985) 1 SLR 100, it was held:

“if it is intended to restrict the requirement of 13 (2) this must be specifically done. Article 13 (2) cannot be restricted without a specific reference to it. In

the result, the Constitutional requirement that a detained person shall be brought before the judge of the nearest competent court remains unaffected”

In the circumstances, it was submitted that the Fundamental Rights of the detainee guaranteed under Article 13(2) has been infringed by the 1st to the 6th respondents.

Submissions of the respondents

The learned Senior State Counsel for the respondents submitted that the arrest of the detainee was made based on the findings of the preliminary investigation conducted by the preliminary Court of Inquiry, which gave rise to a reasonable suspicion of murder of the deceased soldier by the detainee.

It was further submitted that the arrest of the detainee was beyond a mere surmise of a general suspicion, as the findings of the preliminary investigation report contained material to suspect the commission of the offence by the detainee. Thus, the arrest of the detainee was lawful.

In support of the above submissions, she cited the case of ***Perera v Attorney General (1992) 1 SLR 99***, which held;

“.... The power of arrest does not depend on the requirement that there must be clear and sufficient proof of the commission of the offence alleged. On the other hand, for an arrest, a mere reasonable suspicion or a reasonable complaint of the commission of an offence suffices.”

The learned Senior State Counsel contended that the detainee was detained by the Military Police under section 35 and other relevant provisions of the Army Act, and as such, the detention in the instant application is subject to ‘the special procedure prescribed by law’. Similarly, the operation of Article 13 is subject to the restrictions stipulated in Article 15(8) of the Constitution for members of the Armed Forces, in the interest of the proper discharge of their duties and the maintenance of discipline among them.

In the circumstances, it was submitted that the detention by the Military Police is in accordance with the provisions of the Army Act and there was no violation of Articles 12(1) and 13(2) of the Constitution.

Were the Fundamental Rights guaranteed to the detainee by Articles 12(1) and 13(2) of the Constitution infringed?

Was the arrest illegal?

The deceased soldier, Lance Corporal Saman Kumara, ran away from Company A on the 16th of April, 2009 and reported to the Battalion headquarters on the 17th of April, 2009. He made a written complaint on the 17th of April, 2009 against the detainee, stating that he was sexually abused by the detainee on the 15th of April, 2009. Hence, he refused to report back to Company A where he was attached to. Accordingly, he was transferred to Company D, which was situated close to the Camp that he was serving previously. The deceased soldier was found dead on the 22nd of April, 2009 from gunshot injuries. On the 23rd of April, 2009 the Army appointed a Court of Inquiry to investigate the death of the deceased soldier. The Court of Inquiry concluded by stating that the deceased soldier died due to an actual discharge of his personal weapon.

By letter dated 17th of May, 2009 addressed to the 6th respondent, a group of soldiers from Company A complained that the detainee committed the murder of the deceased soldier, as he had complained against the detainee for sexually abusing him. Thereafter, on the 30th of May, 2009 another soldier attached to the same Company died due to gunshot injuries under similar circumstances.

The detainee was removed from his appointment as the Officer Commanding in the said camp on the 1st of June, 2009. Subsequently, upon a request made by the detainee, he was transferred to the Regimental Headquarters of the Sri Lanka Light Infantry in Panagoda on the 9th of June, 2009.

The Military Police commenced investigating into the death of the deceased soldier on the 17th of June, 2009 under section 40(1) of the Army Act. Further, on the same day the detainee and another soldier named Hewapalliyaguruge Dilum Sanjeewa were arrested on suspicion of the death of the deceased soldier on the same day. The said soldier, Hewapalliyaguruge Dilum Sanjeewa has given a statement to the Military Police stating that the detainee requested him to ask the deceased soldier to come to his room in the night on or around the 15th of April, 2009. When the deceased soldier entered the detainee's room, he heard the detainee asking him to massage his feet. After about half an hour, he saw the deceased soldier leaving the detainee's room. On the next day, the deceased soldier ran away from the Company where he was attached to and reported to the Battalion

headquarters on the following day. When the detainee heard about it, he told him that “he will not let him eat rice in the Army, for what he did to me”.

In his statement, he had further stated that, on the 22nd of April, 2009 he saw the detainee talking to the deceased soldier but did not hear their conversation. Thereafter, the detainee asked him to bring the detainee’s T-56 weapon and a bucket of water, stating that he wanted to go to the jungle to relive himself. He further stated that he brought the detainee’s gun and handed it over to him. Thereafter, they followed the deceased soldier, and the detainee gave the gun to him and ordered to shoot the deceased soldier. However, as he missed the target, the detainee took the gun from him and shot the deceased soldier, who fell to the ground.

The detainee alleged that he was illegally arrested and detained by the respondents and thereby, his Fundamental Rights guaranteed by Articles 12(1) and 13(2) of the Constitution were infringed.

Article 15(8) of the Constitution states:

“The exercise and operation of the fundamental rights declared and recognized by Articles 12(1), 13 and 14 shall, in their application to the members of the Armed Forces, Police Force and other Forces charged with the maintenance of public order, be subject to such restrictions as may be prescribed by law in the interests of the proper discharge of their duties and the maintenance of discipline among them.”

(emphasis added)

Thus, in terms of Article 15(8) of the Constitution, the Fundamental Rights guaranteed by Articles 12(1), 13 and 14 are subject ‘to the restrictions as prescribed by the laws’. The Army Act No. 17 of 1949 and the Army Disciplinary Regulations 1950 (hereinafter referred to as the “Army Disciplinary Regulations”) are applicable to all military personnel, including the detainee. Hence, the applicability of Articles 12(1), 13 and 14 of the Constitution are subject to the provisions of the Army Act and the regulations promulgated thereunder.

Further, the detainee being an officer of the regular force is subject to the military law in terms of section 34 of the Army Act.

The detainee was detained under section 35 of the Army Act, which states as follows:

“A person subject to military law who commits any military or civil offence may be taken into military custody.”

Further, under section 47(1) read with section 131(2) of the Army Act, a court martial can be held against the detainee in respect of an offence of murder committed by an Army personnel.

As stated above, the evidence transpired during the investigation conducted by the Military Police, established a *prima facie* case against the detainee and the soldier, Hewapalliyaguruge Dilum Sanjeewa. Hence, the arrest of the detainee and Hewapalliyaguruge Dilum Sanjeewa in connection with the death of the deceased soldier is justified.

Further, it is pertinent to note that, after the detainee was handed over to the Criminal Investigations Department of the Police, the Police informed the Magistrate’s Court that there is evidence to suspect the detainee and the soldier, Hewapalliyaguruge Dilum Sanjeewa, for the murder of the said deceased soldier. Having considered the material filed in court by the Police, the learned Magistrate remanded the detainee and the soldier, Hewapalliyaguruge Dilum Sanjeewa pending further investigations in respect of the offence of committing murder of the deceased soldier.

An investigation commences where there is reason either to suspect the commission of the offence.

The sole purpose of the investigation is to gather evidence from which they could form an opinion whether there is material to institute criminal proceedings. Hence, investigation officers are conferred with the power that may be necessary for the discovery of evidence and arrest of the suspects. Further, an investigation has a fact-finding character. At the conclusion of the investigation, it needs only to decide whether there is sufficient material to suspect a particular person or persons committing an offence. Furthermore, a preliminary investigation is not concerned with the issue of actual guilt.

Moreover, a person can be arrested if a credible complaint is received or an information has been received or if a reasonable suspicion exists of committing an offence.

In view of the facts revealed at the investigation carried out by the Military Police and the Criminal Investigations Department of the Sri Lanka Police, I am of the opinion there were sufficient material to arrest the detainee in respect of the offence of murder of the deceased soldier.

Further, the cases of *Selvakumar v Devanada*, *Channa Pieris v Attorney General*, *Edirisyriya v Navaratnam* and *Sunil Rodrigo v De Silva* cited by the learned President's Counsel for the detainee are not applicable to the instant application as the petitioners in those applications were arrested by the Police under the Criminal Procedure Code and not by the Military Police under the Army Act and the Regulations promulgated thereunder.

Therefore, I am of the view that the Fundamental Rights of the detainee enshrined under Article 12(1) of the Constitution has not been infringed by the respondents by arresting the detainee.

Whether the detention (confinement) is unlawful?

As stated above, the Military Police commenced the investigation with regard to the death of the deceased soldier consequent to the aforementioned letter sent by the soldiers of the Camp A where the deceased soldier and the detainee were serving. Once the investigations were concluded by the Military Police, the evidence revealed that the detainee and soldier, Hewapalliyaguruge Dilum Sanjeewa were responsible for the murder of the deceased soldier. Hence, the Criminal Investigations Department was informed by letter dated 3rd of July, 2009 marked and produced as '1R1', the findings of the investigations carried out by the Military Police on the death of the deceased soldier, Lance Corporal Saman Kumara. Further, as the said investigations found evidence against the detainee and soldier, Hewapalliyaguruge Dilum Sanjeewa, the Police was requested to take over the investigations with regard to the said death of the deceased soldier. Thereafter, the detainee was handed over to the Criminal Investigations Department on the 6th of August, 2009 for further investigations.

Moreover, the Police filed a B report in the Magistrate's Court of Anuradhapura on the 7th of August, 2009. In the said report, the Police has named the detainee and the soldier, Hewapalliyaguruge Dilum Sanjeewa, as suspects in respect of the murder of the deceased soldier. Further, the said report filed by the Police in the Magistrate's Court stated that there is evidence to suggest that the detainee and the soldier, Hewapalliyaguruge Dilum Sanjeewa, committed the murder of the deceased soldier. Hence, the learned Magistrate remanded both of them as the investigations were pending. Later, the detainee was released on bail on the 18th of January, 2010 by the High Court of Anuradhapura.

It was submitted by the learned President's Counsel for the detainee that the detention of the detainee during the time of the investigation by the Military Police without producing him before a Magistrate was a violation of his Fundamental Rights guaranteed under Article 13(2) of the Constitution.

Article 13(2) of the Constitution states:

“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 made by such judge in accordance with procedure established by law.”

However, as stated above, the Fundamental Rights of the detainee enshrined under Articles 12(1), 13 and 14 of the Constitution are subject to restrictions prescribed in the military law. Section 18(2) of the Army Disciplinary Regulations states:

“No officer or warrant office shall be kept in military custody, unless his commanding officer is satisfied on investigation that it will be necessary to proceed with the case and report it to the Commander of the Army.”

(emphasis added)

Thus, it is evident that the detainee was kept in military custody during the course of the investigation and thereafter, pending a review from his Commanding Officer as to whether or not to proceed with the case against the detainee and soldier, Hewapalliyaguruge Dilum Sanjeewa. As the evidence revealed that the detainee and the Army were responsible for the death of the deceased soldier, the Army has sent a letter dated 3rd of July, 2009 marked '1R1' addressed to the Deputy Inspector General of Police of the Criminal Investigations Department, to take over the investigations in respect of the death of the deceased soldier. Thereafter, the detainee was handed over to the Criminal Investigations Department on the 6th of August, 2009.

The material filed in this court shows that there was no undue delay on the part of the respondents in handing over the detainee and soldier, Hewapalliyaguruge Dilum Sanjeewa to Police custody. Further, there was no intentional violation of the Fundamental Rights of the detainee.

A similar view was expressed in *Wijesinghe v Attorney General and Others (1978-80) 1 SLR 102 at 106* it was held;

“Every wrong decision or breach of the law does not attract the constitutional remedies relating to fundamental rights. Where a transgression of the law takes place, due solely to some corruption, negligence or error of judgement, I do not think a person can be allowed to come under Article 126 and allege that there has been a violation of constitutional guarantees. There may also be other instances where mistakes or wrongful acts are done in the course of proceedings for which ordinarily there are built-in safe-guards or adequate procedures for obtaining relief.”

Therefore, I am of the view that the Fundamental Rights of the detainee enshrined under Article 13(2) of the Constitution has not been infringed by the respondents.

Accordingly, the application is dismissed without costs.

Judge of the Supreme Court

B. P. Aluwihare PC, J

I agree

Judge of the Supreme Court

P. Padman Surasena, J

I agree

Judge of the Supreme Court