

**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 of the Democratic
Socialist Republic of Sri Lanka.

Tiran P.C. Alles
No. 345/33, Kuruppu Lane,
Colombo 8.

Petitioner

Vs.

S.C. FR Application No. 171/15

1. Mr. N.K. Illangakoon
Inspector General of Police
Police Headquarters
Colombo 01
2. Mr. Mevan Silva,
Superintendent of Police,
Director, Special Investigations Unit
Police Headquarters
Colombo 01.
3. Mr. M.D.C.P. Gunatilleke
Inspector of Police,
OIC Unit 1
Special Investigations Unit
Police Headquarters
Colombo 01.
4. Mr. Ruwan Gunasekera
Assistant Superintendent of Police
Police Media Spokesman
Police Headquarters
Colombo 01.
5. The Hon. Attorney General
Attorney General's Department,
Hulftsdorp,
Colombo 12.

Respondents

BEFORE

:
K. Sripavan., C.J.
E. Wanasundera, P.C., J.
R. Marasinghe, J.

COUNSEL

Romesh de Silva, P.C. with Sugath Caldera for
Petitioner.

Yasantha Kodagoda, P.C., Additional Solicitor General with
Ms. Viveka Siriwardene, Deputy Solicitor General for
Attorney General.

ARGUED ON : 30.07.2015

**WRITTEN SUBMISSIONS)
FILED)** : 05.08.2015

DECIDED ON : **02.09.2015**

SRIPAVAN, C.J.

The Petitioner's complaint is that there is an imminent danger of the petitioner being arrested without due process of law being followed and the Petitioner apprehends that such arrest would be solely on political grounds and *mala fide* thereby becomes unlawful, arbitrary and capricious.

Learned Additional Solicitor General referred to Section 32(1)(b) of the Criminal Procedure Code and argued 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 so concerned.

The relevant question would therefore be whether it was reasonable for the Peace Officer on whom the power is conferred to be satisfied of the existence of the facts, the existence of which empowered him to make the arrest. I am of the view that the burden is on the Peace Officer to place sufficient material to satisfy Court that the deprivation of petitioner's liberty is not arbitrary, capricious and unreasonable. The standard of review is consonant with the approach to the interpretation of statutory provisions vesting power, should be based on objective standards and subject to review as to its reasonableness.

Article 13(1) of the Constitution embodies a salutary principle safeguarding the life and liberty of the subject and must be complied with by the Executive. The Executive, the legislature and the Judiciary are the creation of the Constitution. The language of the Constitution should be interpreted and effect given to it as a paramount law to which all other laws must yield. Thus,

the Constitution is but a higher form of statutory law. Article 13(5) provides that every person shall be presumed innocent until he is proved guilty. These Articles coupled with the constitutional mandate to secure and advance fundamental rights bind the judiciary to make just and equitable orders and directions under Article 126(4). Further, Article 12 prohibits any arbitrary, capricious and/or discriminatory action. It is now well settled that powers vested in the State, public officers and public authorities are not absolute or unfettered but are held in trust for the public to be used for the public benefit and not for improper purposes. Where a Police Officer has discretion, the exercise of that discretion would also be subject to Article 12 as well as the general principles governing the exercise of such discretion.

It may be appropriate to refer to the observations of Scott L.J. in *Dumbell Vs. Roberts* (1944) 1 All E R 326 at 329 cited by Gratiaen J. in *Muthusamy Vs. Kannangara* (1951) 52 N.L.R. 324 at 330 as follows :

“The principle of personal freedom, that every man should be presumed innocent until he is found guilty applies also to the Police function of arrest... for that reason it is of importance that no one should be arrested by the Police except on grounds which the particular circumstances of the arrest really justified the entertainment of a reasonable suspicion.”(emphasis added)

It is for the Court to determine the validity of the arrest objectively. In *Dissanayaka Vs. Superintendent, Mahara Prison and Others* (1991) 2 S L R 247 at 256 Kulatunga, J. emphasized that *“the Court will not surrender its judgment to the executive, for if it did so, the fundamental right to freedom from arbitrary arrest secured by Article 13(1) of the Constitution will be defeated. The executive must place sufficient material before the Court to enable the Court to make a decision, such as the notes of investigations including the statements of witnesses, observations etc. without relying solely on bare statements in affidavits.”*

The documents filed by the 2nd Respondent along with his affidavit dated 04.06.15 reveal the following :-

1. The document **2R1** is the first complaint to the Inspector General of Police. The complaint is dated 25.02.2015 whereas the rubber stamp of the office of the Inspector General of Police bears the date as 01.02.2015, on the first complaint.

2. Paragraph 5 of the said affidavit of the 2nd Respondent states that the complaint **2R1** relates to a fraud involving Emil Kanthan and the former President. Thus, the complaint is not against the Petitioner.
3. The two agreements referred to in paragraphs 9(j) and 9(l) of the said affidavit with regard to the construction of 400 houses each by RADA both in Trincomalee and in Batticaloa are not before Court. There is no evidence to establish that the said agreements were entered into by the Petitioner on behalf of RADA.
4. Paragraph 9 (n) of the said affidavit states that upon the request of the Petitioner in his capacity as the Chairman of RADA, the Additional Government Agent/District Secretary, Batticaloa issued a letter certifying that the work relating to Jaya Lanka Housing Programme had commenced. There is no evidence to show the number of houses that had not been constructed.
5. No statements from the Government Agents/Divisional Secretaries of Trincomalee and Batticaloa during the relevant period are filed for the consideration of Court.
6. The only evidence to show that the Petitioner received money was based on the confession made by Shanthi Kumar Gajan Kumar to the learned Magistrate on 21.05.2015 marked **2R5**. The learned Magistrate translated Gajan Kumar's statement made in English language into Sinhala Language and recorded it.
7. The proceedings in S.C.FR 184/07 dated 17.11.2008 marked **H** shows that the Attorney-General presented an indictment against the Petitioner to the High Court of Colombo and that the Attorney-General would not be objecting to the grant of bail when the indictment is served in the High Court. The proceedings before the High Court is not before this Court in order to ascertain whether the same allegations or complaints against RADA were inquired into by the Police and an indictment was served against the Petitioner by the Attorney General.

No evidence has been placed before Court to establish that the Petitioner is interfering with any witnesses or might interfere with any of the witnesses. Whenever the Police requested the Petitioner to present himself for investigation, he has complied with such requests.

In any event, by an Order issued by the Magistrate, Colombo Fort, the foreign travel of the Petitioner has been banned.

Considering the totality of the material placed before Court, I do not see any justifiable or reasonable grounds to arrest the Petitioner. Court is therefore inclined to grant leave to proceed for the alleged imminent violation of Articles 12(1) and 13(1) of the Constitution by the second and third respondents.

The parties are directed to maintain the “*status quo*” as at today until the final hearing and conclusion of this application. Objections of the respondents to be filed within 4 weeks from today. Counter objections if any, within two weeks thereafter.

CHIEF JUSTICE

E. WANASUNDERA, P.C.,J

I agree.

JUDGE OF THE SUPREME COURT.

R. MARASINGHE, J.

I agree.

JUDGE OF THE SUPREME COURT.

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(i)

(ii)

