

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

In the matter of an Application under
and in terms of Article 17 and 126 of
the Constitution of the Democratic
Socialist Republic of Sri Lanka.

S.C. (F/R) Application No. 192/2014

Petitioners

S.C. (F/R) Application No. 193/2014

Adasuriya Mudiyanseleage Dinuka
Madushan Adasuriya,

Pothuwela, Ganthiriyawa,
Bamunukotuwa.

(Petitioner S.C. (F/R) Application No.
192/2014)

1. Wijeyamunige Nadish Srinath
Ranatunga,
'Kusum Nivasa', Horewila,
Walasmulla.

2. Nuwan Buddhika Bandaranayake,
53/2/B, Ayurveda Road, Uda
Aludeniya, Weligalla.

3. Hashan Dhananjaya Wijesinghe,

110/B,
Battagala, Dambara,
Meewanapalaana.

4. Gunasekara Liyanage Janith Kalana,
21/18, Ranasooriya Mawatha,
Paniyana,
Ambalangoda.

5. Athapattu Mudiyanseelage Asanka
Sanjeewa Athapaththu,
Kalawanegama, Kohumola Road,
Wariyapola.

6. Aarachchi Mudiyanseelage Buddhika
Dilshantha Bandara,
Katamillagaswatte, Vellawela,
Atampitiya.

7. Induwara Wedagedara Pathum
Madushanka,
832/162, Hinnarandeniyaawatte,
Gampola.

8. Jasiri Liyanage Waruna Dhananjaya
Ratnawansa,

Liyanage Trade Centre,
Yakdehiwatte, Niwithigala.

9. Bambagedara Priyantha Dinesh
Somasiri,
45, Aanakatawa, Dambulu Halmilla
Weva,
Kekirawa.

10. Kannanagarage Don Chanaka
Mihiran Wijekoon,
216/2, Kurana, Handapaangoda.

11. Palpolage Don Tharindu Sampath,
Bollunna, Hadigalla Janapadaya,
Baduraliya.

12. Warahena Liyanage Thushan Indika
Sampath,
Beligaswatte, Halla, Diwuldeniya.

**(Petitioners in S.C. (F/R) Application
No. 193/2014)**

Vs

Respondents

1. Chief Inspector Malin Perera,
Officer-in-Charge, Police Station,
Slave Island.
2. N. K. Illangakoon,
Inspector General of Police, Police
Headquarters, Colombo 01.
3. Attorney General, Attorney
General's Department, Colombo 12.

**(Respondents in S.C. (F/R)
Application No. 192/2014 & No.
193/2014)**

BEFORE: Buwaneka Aluwihare, PC, J.
Prasanna S. Jayawardena, PC, J. &
Vijith K. Malalgoda, PC, J.

COUNSEL: J. C. Weliamuna, PC with Pulasthi Hewamanna for the
Petitioners in 192/2014.
Upul Kumarapperuma with Muzar Lye for the 1st Respondent.
Sanjeeva Dissanayake, SSC for the AG.

ARGUED ON: 03. 09. 2018

DECIDED ON: 30. 10. 2019

Aluwihare, PC, J.

The Petitioner in SC FR Application 192/2014, an undergraduate of the Allied Health Sciences Faculty, University of Peradeniya following a course in Laboratory Sciences complained of the violation of his fundamental rights under Article 10, 11, 12 (1), 13 (1), 13 (2), 13 (5) and 14 (1) (a) of the Constitution primarily by the 1st Respondent, Officer-in-Charge of the Slave Island Police Station. Twelve other undergraduates following the same course, the Petitioners in SC FR Application 193/2014, complained of the violation of their fundamental rights under the identical Articles of the Constitution referred to above. Leave to proceed in both Applications was granted for the alleged violations of Article 11 and 13 (1). In view of the fact that it was the same incident that gave rise to the violations alleged, both Applications were considered together in a single judgment. For ease of reference, the Petitioner in SC FR 192/2014 is referred to as “Petitioner Dinuka Madushan” and Petitioners in the Application No 193/2014 as “Petitioners in Application 193”.

According to the Petitioners, after having taken part in a protest campaign and *satyagraha* held in front of the University Grants Commission on the 16th of May 2014, calling for the re-introduction of a 4-year Allied Health Science Degree, the Petitioners had boarded a bus to travel to Fort.

While the Petitioners were on the bus, two individuals in civilian clothes who claimed to be Police Officers had directed the Petitioner Dinuka Madushan to disembark, stating that there was a warrant for his arrest. When asked to be shown the warrant, a photocopy of a warrant had been shown to the Petitioner Madushan. The particular warrant, however, had been issued against another person, namely one Prabashana Rajapaksa and not the Petitioner. Upon the Petitioner producing his National Identity card and indicating that he was not the person named in the warrant, the said individuals had left the Petitioner alone and had moved to another part of the bus.

A while after this confrontation, the Petitioners had become aware that the bus was being diverted from its designated route. Amidst protests from the other passengers the bus had been driven to the Slave Island Police Station. Approximately 10 police officers in uniform and a cordon of officers in civilian clothing as well as a senior Police Officer had surrounded the bus and all the passengers had been directed to disembark. Accordingly, the Petitioners in Application 193 had also disembarked. They had observed that one of the officers in civilian clothing who had earlier attempted to execute the warrant against Petitioner Dinuka Madushan, in discussion with the senior Police Officer. As the Petitioner Dinuka Madushan was disembarking, he had been informed by the same senior police officer that there was a warrant for his arrest. When the Petitioner stated that the said warrant was not issued against him, he had been shown the original of the warrant, which had been torn in two. The Petitioner had again produced his National Identity Card and had made an attempt to explain that the warrant was in respect of another individual. The Police had then taken his National Identity Card which was later returned to the Petitioner. Upon the senior officer's insistence on arresting the Petitioner some of the students who were with the Petitioner, including the Petitioners in Application 193/2014 had repeatedly told the police officers that the Petitioner should not be arrested as he had not been involved in the commission of any offence.

At this point, according to the Petitioners, the police officers who were present had appeared to be angered by the reaction of the students. According to the Petitioners, some of them had been dragged away using force while subjecting them to assault. The 1st Petitioner in Application 193, Nadish Ranatunga also asserts that during this incident, he was dragged away and then surrounded and assaulted by several police officers in civilian clothing. According to the said Petitioner, he had been kicked and dealt blows with the fists, and as a result of the attack he had fallen. Two police officers in civilian clothing had then dragged the Petitioner into the Police Station.

According to the Petitioners, when they were inside the Police Station, several other uniformed Police Officers had assaulted the 1st, 11th and 12th Petitioners in Application 193. Thereafter, all the Petitioners had been detained in the Police cell. After the assault, the Petitioner Nadish Ranatunge had felt dizzy and had also felt that his vision of the left eye was blurred. The said Petitioner asserts that regardless of the fact that he was bleeding from his left eye and mouth by this time, his requests for medical treatment had been ignored by the Police.

According to the Petitioner Dinuka Madushan, he too had been dragged into the police station while being assaulted by police officers in civilian clothing and detained in the police cell. Soon after, he had been summoned to the office of the 1st Respondent and in the presence of three other senior police officers, informed that even though the name on the warrant was wrong, it was issued for *his* arrest based on a photograph. He was shown a photograph of himself captioned with the name mentioned in the warrant, “Prabashana Rajapakse”. Thereafter, the twelve Petitioners in Application 193 were summoned, and the same information relayed to them as well. They were further informed that the Petitioner, Dinuka Madushan had to be detained due to the warrant and the rest of the students had to be detained for obstructing his arrest.

Afterwards, statements had been recorded from all the Petitioners. At around 11.30 p.m. the same day they had been produced before the Fort Magistrate. The Magistrate had directed that they be referred for examination by the Judicial Medical Officer and be remanded until produced before the court on the following Monday, 19th May 2014. The Petitioners had then been taken to the New Magazine Remand Prison.

On the following day i.e. 17th May 2014, the Petitioner and the other students had been produced before a Judicial Medical Officer and two other doctors at the National Hospital. Four of the Petitioners, the 4th, 6th, 9th and 11th Petitioners in Application 193, were admitted to the National Hospital on medical advice while

the Petitioner Dinuka Madushan and the other Petitioners were advised to be admitted to the Prison Hospital. On their return to the Remand Prison the Petitioner Dinuka Madushan had also been admitted to the Prison Hospital until he was produced before the Magistrate's Court, Fort on 19th May 2014. The Petitioner, Nadish Ranathunge (a Petitioner in Application 193) had been given a referral to have his eye examined at the National Hospital.

The Diagnosis Tickets of the 4th, 6th, 9th and 11th Petitioners in 193 which have been produced in these proceedings indicate that all 4 Petitioners were warded at the National Hospital and had complained of trauma to the head due to assault. According to the Patient Assessment Sheet issued by the National Hospital to the 4th Petitioner Janith Kalana, his "vital signs" had been stable and "no neurological" signs had been recorded. He had been subjected to a X-Ray and it is noted in the Sheet that, "cervical spine-clinically normal" and "no orthopedic intervention" meaning no orthopedic treatment was required. Similarly, according to the Patient Assessment Sheet of the 6th Petitioner Buddhika Dilshan, he also has complained of trauma to the head following assault. It is recorded in the Assessment Sheet that there were "no neurological signs" and in addition, "the spine is clinically normal" and "no orthopedic intervention" according to the X-Ray reports.

The findings recorded in the Patient Assessment Sheet of the 9th Petitioner Priyantha Dinesh who also had complained of head injury following assault, is no different to the other two referred to earlier. The X-Ray of his cervical spine had shown that it was clinically normal, and it is also recorded that there were "clinically no other injuries or issues". The Patient Assessment Sheet of the 11th Petitioner Tharindu Sampath again carries similar findings although he too has given a history of head injury following assault. As far as the 11th Petitioner was concerned, his X-Ray findings indicate that both his spine as well as the cervical spine had been "clinically normal" and "no orthopedic intervention" was required. The 3rd Petitioner Hashan Dhananjaya had given a history of assault by the police

with bare hands to the scrotum which is recorded so in the Diagnosis Ticket issued to him on 19th of May 2014 (marked 'P6a'). The following is recorded on his Diagnosis Ticket: "both testicles normal, no hydrocele and no orthopedic problems". It appears that none of the medical records produced on behalf of the Petitioners support the allegation that they were dealt fist blows, kicked and dragged.

On 19th May 2014, the Petitioners who were not warded at the National Hospital, namely the Petitioner Dinuka Madushan and the 1st, 2nd, 3rd, 5th, 7th, 8th, 10th and 12th Petitioners in 193 had been produced before the Fort Magistrate and had been released on bail under case number B/955/14. The officers of the Slave Island Police had informed the Magistrate that the Petitioner in 192/2014 was needed for the case bearing B/7542/1/14, the case in which a warrant is purported to have been issued against him by the Chief Magistrate, Colombo.

The Petitioner Dinuka Madushan had been produced before the Chief Magistrate's Court along with several others regarding case B/7542/1/14 in which it was alleged that a warrant had been issued against the Petitioner. The Petitioner and the others produced with him, however, had been enlarged on bail by the learned magistrate.

On the same day the 1st Petitioner in Application 193, (Nadish Ranathunga) had got himself admitted to Ward 72 at the National Hospital. In his Diagnosis Ticket at the National Hospital (marked 'P5a') it is recorded that he had "sub conjunctival hemorrhage- glaucoma suspected". After being examined at the Eye Hospital on the 20th May 2014, the Petitioner had received treatment at the National Hospital until 22nd May 2014.

After being informed by some students that an investigation regarding this incident of arrest and assault was being conducted by the Mirihana Police on 26th May 2014, the Petitioner Dinuka Madushan and all the Petitioners in Application 193 except the 1st Petitioner had reported to the Mirihana Police station where their

statements had been recorded. The Petitioners assert that no further steps have been taken over their complaints.

In the objections filed by the 1st Respondent, the Officer in Charge of the Slave Island Police Station, it is stated that on the 16th of May, 2014 the 1st Respondent was instructed via telephone by the Deputy Director of the Colombo Crime Division to assist in the arrest of a person against whom a warrant had been issued by the Chief Magistrate and that the person concerned was, at the time, travelling in a bus plying via Slave Island.

The 1st Respondent states that even though the name on the National Identity card of the Petitioner and the name on the warrant were not identical, the Officers of the Colombo Crime Division and the Intelligence Bureau of the Western Province who had been on the bus had shown him a photograph of the Petitioner, and the Assistant Superintendent of Police from the Intelligence Bureau of the Western Province had confirmed that the Petitioner was the person in the photograph and had instructed him to arrest the Petitioner. He also states that he is only aware of the fact that the application for obtaining the warrant had been made by the Cinnamon Gardens Police Station.

The 1st Respondent denies the contention that he insisted on arresting the Petitioner and arrested him by force. The Petitioner had been requested to come inside the Police Station and clarify any confusion that might be there. At that point the students who were with the Petitioner had behaved in an aggressive manner. This had led the police officers to arrest the Petitioner and his colleagues with the use of minimum force, for obstructing the police officers from carrying out their duties. In Paragraph 48 of the extract from the Information Book of the Colombo Crime Division Unit 6 (marked 'R6a1') Inspector of Police Hettiarchchi has recorded that when the 1st Respondent attempted to arrest the Petitioner Dinuka Madushan, about 15 students had obstructed the arrest by directing blows at him and pulling at his uniform. It is also recorded that at this point, the police officers of the Slave

Island Police Station had come to the assistance of the 1st Respondent and had subdued those attacking the 1st Respondent and taken them into the Police Station. Excerpts from the Information Book of the Slave Island Police Station (marked ‘R9a’ & ‘R9b’) indicate that some Police Officers also had sustained injuries in the altercation between the Petitioners and the Police.

It is contended by the 1st Respondent that, the Petitioner with the injured eye, had that injury on him at the time he was arrested, and that the Petitioner did not sustain the injury in the process of arresting. The 1st Respondent rejects the Petitioners’ assertion that the students were denied medical attention and states that the student with the injury to the left eye had refused medical assistance when it was offered to him by the 1st Respondent and that this had been recorded in the Information Book (‘R10’). He takes up the position that he and his officers were only providing assistance to the Colombo Crime Division for the arrest of the Petitioner.

While the facts produced before this court are such, I now turn to the analysis of those facts in relation to the alleged violation of Article 11 and 13 (1) of the Constitution in both Applications i.e. 192/2014 and 193/2014.

It would be pertinent at this point to refer to the position taken up by the Petitioner, Dinuka Madushan with regard to his arrest and the arrest of the other 12 petitioners in Application 193.

In this regard the averments in Subparagraphs (d), (e) and (f) of paragraph 16 of the affidavit of the Petitioner Dinuka Madushan are relevant and are reproduced below.

“(d) Soon thereafter, I was escorted to the office of the 1st Respondent OIC. I state that there were approximately 4 senior officers in uniform, including the Respondent OIC, and another individual in civilian clothing.

(e) I was informed by the officers present that a warrant had in fact been issued against me and though the name set out in the warrant was wrong, it had allegedly been issued based on a photograph. At which point, I was shown a photograph of myself, with a caption that read Prabashana Rajapakse.

(f) Thereafter, the other 12 arrested students were also summoned into the room, and were informed of the same and my photograph was shown to all those present. The students were informed that I would have to be detained due to the warrant and the rest of the arrested students had been so arrested for obstructing the police duties and I and the other students were thereafter again detained in the police cells for several hours.”

From the foregoing, two matters are apparent, that is, the Respondents had instructions from their superiors to arrest the person depicted in the photograph and that photograph happened to be of Dinuka Madushan, which the Petitioner Dinuka Madushan himself has admitted in his affidavit.

Alleged violation of Article 13 (1):

Article 13 (1) of the Constitution requires that “*No person shall be arrested except according to procedure established by law.*” In the present case there had been two reasons for the arrest of the Petitioner Dinuka Madushan on 16th May 2014, firstly, the alleged warrant issued for the arrest and secondly, the obstruction of police officers from carrying out their duties.

The arrest on an alleged warrant for the Petitioner’s arrest

The contents of the “B” report of 19th May 2014 (marked ‘P4b’) reveals that on 16th May 2014 two other students were arrested on warrants and the Petitioner was arrested based on photographic and video evidence. The reason stated for their

arrest is Unlawful Assembly in connection with the organizing and leading of an unlawful procession held on the same day.

The 1st Respondent avers that the investigation was being handled by the Colombo Crime Division and he was only acting on the instructions that were given to him by the Deputy Director of the Colombo Crime Division to assist in the arrest of a person against whom an warrant had been issued by the Chief Magistrate and he was informed that, the person concerned was, at the time travelling in a bus that was plying via Slave Island . He admits that the name on the warrant was not identical to that on the Petitioner's National Identity Card but that the officers who had been tasked to execute the warrant and who had been on the bus had shown him a photograph and in addition the ASP from the Intelligence Bureau of the Western Province had confirmed that the Petitioner was the person in the photograph and that he should be arrested. This, as referred to earlier, is common ground, that the photograph supplied to the arresting officers was that of the Petitioner Dinuka Madushan.

It appears that the 1st Respondent was following the instructions from the Senior Officer to arrest the Petitioner and was supported by the photograph and confirmation given by the ASP from the Intelligence Bureau of the Western Province. **Section 59 of the Code of Criminal Procedure Act No. 15 of 1979** provides for arrest by a police officer where he is not in possession of the warrant for the time being, thus; *“where a Police Officer has reasonable grounds to believe that a person is one for whose arrest a warrant of arrest has been issued, he may arrest that person in execution of the warrant although the warrant is not in his possession for the time being.”* In the present case, this court is of the opinion that the instructions from a superior officer and the photographic evidence and confirmation from a member of the Intelligence Bureau could be considered as reasonable grounds from the perspective of the 1st Respondent to arrest the Petitioner even though the name on the warrant was not identical to the name of

the person sought to be arrested. The likelihood is that there was a *bona fide* mistake as to the name of the person who was being sought to be arrested. Especially where the photograph shown to be that of the person sought to be arrested was a photograph of the Petitioner, as claimed by the 1st Respondent which is conceded by the Petitioner Dinuka Madushan. That the photograph which was shown to the 1st Respondent was a photograph of the Petitioner Dinuka Madushan and that he was correctly identified and pointed out to the 1st Respondent by IP Hettiarachchi is recorded in Paragraph 46 of the Information Book of the Colombo Crime Division Unit 6 (“R6 (a1)”).

Analysing the scope of the authority to arrest vested in the Police, Wanasundera J. in **Jospeh Perera v Attorney General** 1992 1 Sri LR 199 expressed the view that *“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. I should, however, add that the Test is an objective one... This wider discretion vested in the Police is logical and is also necessary for the proper performance of the functions of the Police and for the maintenance of the law and order in the country.”* The wider discretion articulated thus is warranted by the circumstances of the present case. The 1st Respondent had sought to arrest the Petitioner Dinuka Madushan which can be termed as reasonable suspicion as it was based on the directions of a senior officer strengthened by the certification given by the investigators handling the case.

Thus, it appears that the 1st Respondent had been under a sincere belief, that he was expected to carry out the arrest and did so under the belief that he was bound by law to do so. There is no allegation that the arrest was carried out in bad faith. Thus the 1st Respondent is entitled to the protection of the general exception embodied in **Section 69 of the Penal Code, which** reads thus; *“Nothing is an offence which is done by a person who is or who by reason of a mistake of fact and not by*

reason of a mistake of law in good faith believes himself to be, bound by law to do it". According to the Respondents, when the Petitioner asserted that he was not Prabhashana Rajapaksha, they had taken steps to verify that with the Intelligence unit and he was instructed to place the Petitioner in custody, thus the bona fides of the arresting officer appears to be clear.

In the case of **Emperor v Gopalia Kallayia** AIR 1924 Bomb. 333 where a policeman had arrested a person whom he believed to be one Giria which in fact he was not, the Court acquitted him on the ground that he made reasonable inquiries and having come to Bombay from an upcountry station to effect the arrest he was honestly mistaken. The same view was taken in the English case of **Lawrence v Hedge** 3 Taunt 14, where it was held that although there was no specific offence disclosed, the arrest was justified by "abundant ground of suspicion".

Although a person should not be deprived of their personal liberty in derogation of the procedure established by law in a manner so as to place that person at a disadvantage, it does not prevent the arrest of a person when there are reasonable grounds to believe that the person in question is a person sought to be arrested by law enforcement authorities, particularly so from the context of the arresting officer.

Channa Pieris and Others v Attorney General and Others (Ratawesi Peramuna Case) [1994] 1 Sri LR 1 at page 62, establishes precedent to the effect that Section 53 of the Code of Criminal Procedure Act No. 15 of 1979 does not set out a requirement that the warrant must be produced at the point of arrest. "In ***Kumaranatunge v Samarasinghe*** followed in ***Sanasiritissa Thero v De Silva and Others*** Soza, J. clarified: *"Nowhere is service of the detention order made imperative by any rule of law... In fact, even under the Code of Criminal Procedure Act, no service of a charge sheet or Warrant of arrest where the arrest is on a Warrant is provided for. The person being arrested can ask to see the Warrant or order, but there is no legal requirement that it should be served. No legal consequences flow from the non-*

service of the order." While there is no doubt that it is in the interest of natural justice to serve the warrant (as held by Colin Thome J. in *Nanayakkara v Henry Perera*, in the present circumstances, the failure to serve a warrant issued in the name of the Petitioner Dinuka Madushan does not, in my view amount to a breach of the correct procedure of arrest.

However, the manner in which the officers of the Intelligence Unit had conducted themselves in this instance with regard to the error in the name on the warrant cannot be condoned by this court. It was incumbent upon them to carry out their duties with sufficient care and due diligence and not to inconvenience citizens due to shortcomings in their adherence to duty.

Arrest for obstructing police officers from carrying out their duty

The 1st Respondent states that the Petitioners in Application 193 were arrested for the obstruction of the Police from carrying out their duties. The same was another ground for the arrest of the Petitioner Dinuka Madushan as well. In terms of **Section 32 (1) (f)**, of the **Code of Criminal Procedure Act No. 15 of 1979** "*Any peace officer may arrest, without an order from a Magistrate and without a warrant, any person- who obstructs a peace officer while in the execution of his duty...*" The Petitioners themselves have admitted in their petition that they repeatedly objected to the arrest of Dinuka Madushan, as he had not committed any offence. As referred to earlier, IP Hettiarachchi had recorded in the Information Book ('R6a1') that when the arrest of the Petitioner Dinuka Madushan was to be effected, the students conducted themselves in an aggressive manner, and about 15 of them had started assaulting the 1st Respondent and pulling from his uniform. At this point police officers attached to the Slave Island police station had come to their assistance in order to overpower the unruly students. Therefore, it is reasonable to conclude that the Petitioners hindered the police officers in the

execution of their duty as they had not cooperated with the police in clarifying the matter, and had physically resisted the arrest.

Necessity of informing the reason for the arrest of the Petitioners

Article 13 (1) of the Constitution further envisages that *“Any person arrested shall be informed of the reason for his arrest.”* Justice Sharvananda in his treatise ‘Fundamental Rights in Sri Lanka’ at page 141 explains that this provision is *“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.”* It has also been held in *Mariadas Raj v Attorney-General*, FR (Vol 2) 397 that *“The necessity to give reasons serves as a restraint on the exercise of power and ensures that power will not be arbitrarily employed.”*

Section 23 (1) of the Code of Criminal Procedure Act No. 15 of 1979 requires that the person making an arrest *“... shall inform the person to be arrested of the nature of the charge or allegation upon which he is arrested.”* Where a number of past cases bear testimony to the dangers of a non-transparent process of arrest, it is in the best interests of the person whose liberty is being curtailed, to know the reason for arrest.

In the present case the Petitioner Dinuka Madushan in the affidavit filed by him in these proceedings admits the fact that he and the others were summoned to the office of the 1st Respondent and informed the reasons for their arrest. Furthermore, at the initial point before arresting the Petitioner Dinuka Madushan (outside the Slave Island Police Station) the 1st Respondent had informed the Petitioner that he would have to be arrested as there was a warrant for his arrest, which fact is not denied by the Petitioners. Given that the 1st Respondent, the OIC of the Slave Island Police Station was only *assisting* the execution of a warrant which had been

obtained by the Cinnamon Gardens Police, it would be setting an unnecessarily high standard to say that he should have informed the Petitioners the nature of the charge or allegation at the outset, in the context where the 1st Respondent had verified that the person to be arrested was the same person that he was in fact arresting. It must also be noted that the warrant itself had been shown to the Petitioners albeit the discrepancy in the name.

Considering the above, I hold that the Petitioner Dinuka Madushan and the petitioners in application 193, have failed to establish that their fundamental rights enshrined in Article 13 (1) had been violated by the respondents.

Alleged violation of Article 11:

Article 11 of the Constitution states that “No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” If we are to follow the jurisprudence and the precedents laid down by this court with regard to the burden of proof with regard to a violation of Article 11 of the Constitution, the burden is on the Petitioners to establish the violation to the satisfaction of this Court.

In the case of **Vivienne Goonewardene v Hector Perera** 1983 SLR 1 V 305 Ratwatte J. stated; *“Before I deal with the facts, a word about the burden of proof. There can be no doubt that the burden is on the petitioner to establish the facts on which she invites the court to grant her the relief she seeks. This leads to the next question. What is the standard of proof expected of her?”* Wanasundera, J. considered the question in the case of **Velmurugu v The Attorney General and another** and held that the standard of proof that is required in cases filed under Article 126 of the Constitution for infringement of fundamental rights is proof by a preponderance of probabilities as in a civil case and not proof beyond reasonable doubt. I agree with Wanasundera, J. that the standard of proof should be a preponderance of probabilities as in a civil case. It is generally accepted that within this standard there could be varying degrees of probability. 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.”

It must be kept in mind that, as Justice Sharvananda in **‘Fundamental Rights in Sri Lanka’** at page 71 states, “The Police force, being an organ of the state, is enjoined by the Constitution to secure and advance this right (Article 11) and not to deny, abridge or restrict the same in any manner and under any circumstances.”

The ‘quality’ of the actions of the police in forcing the petitioner, Dinuka Madushan to disembark from the bus he was travelling in and assaulting him must be considered in the light of the circumstances prevailing at the time of the arrest. As far as both the Petitioner Dinuka Madushan and the 1st Respondent are concerned, it is common ground that there was opposition to the arrest of the Petitioner from the Petitioner himself and his colleagues who were in the bus. The severity of their opposition is the point on which the two versions diverge.

Since the police officers attempting to arrest the Petitioner, Dinuka Madushan had in their possession a warrant issued in the name of a person other than the Petitioner, it is natural that the Petitioner and his colleagues would question the arrest. Given the fact that they were returning from a protest urging the government to consider their requests, where some of their student representatives had been arrested by the Police, in all probability the students would have been in a state of mind that would make them react to such a situation with overt suspicion and belligerence. Therefore, it is likely, as the Respondents assert, that the Petitioners acted in an aggressive manner and even assaulted the 1st Respondent and other officers compelling the Police Officers to use force.

It is also common ground that the police officers concerned did not proceed to arrest the Petitioner Dinuka Madushan inside the bus when the Petitioner pointed out that he was not Prabahshana Rajapaksha, the person against whom the warrant

was issued. It is a pointer indicating that the police had not acted arbitrarily. Admittedly the photograph supplied to the police officers was that of the Petitioner. In the circumstances there was a duty on the part of the Petitioner and his fellow students, the Petitioners in Application 193 to cooperate with the law enforcement to sort out the confusion rather than confronting them. Such a conduct is not only expected but also demanded from every law-abiding citizen of this country.

I have considered the admission forms issued to nine of the Petitioners, including the Petitioner Dinuka Madushan, when they were admitted to the Prison Hospital on 17th May 2014, the day after the alleged arrest and assault. (Filed on behalf of the Petitioner by motion dated 19-01-2015). The medical officer had noted “no external injuries” on six of them, including the Petitioner Dinuka Madushan.

If the Petitioners were dragged, kicked and assaulted by the police as alleged, it is reasonable for one to expect injuries even, of a trivial nature. Even the Medico-Legal Report issued to Dinuka Madushan states “there were no injuries found on the body”.

In considering the allegation that the injuries to the eye of the 1st Petitioner in Application 193, Nadish Ranatunge, were inflicted by the Police during their attempt to arrest the Petitioner Dinuka Madushan, the court has recourse only to the word of the Petitioners against the word of the Respondents. It is possible that the Petitioner may have behaved in an overtly aggressive manner and received the injury in the attempt to bring him under control. In the absence of any other injuries that denote that the Petitioner was subjected to deliberate physical assault it is difficult to conclude that the threshold necessary to indicate that the Petitioner was subjected to cruel, inhuman or degrading treatment or torture has been reached.

Considering the totality of the material placed before this court, I find the Petitioners have failed to establish the alleged violation of Article 11 of the Constitution to the degree the law requires the Petitioners to do so.

As such, I hold that the Petitioners have failed to satisfy this court that they had been subjected to torture or they have been treated in a cruel, inhuman or degrading manner by the Respondents.

Accordingly, these Applications (SC FR 192/ 2014 and SC FR 193/2014) are dismissed.

Under the circumstances of the case I make no order as to costs.

JUDGE OF THE SUPREME COURT

JUSTICE PRASANNA JAYAWARDENA PC

JUDGE OF THE SUPREME COURT

JUSTICE VIJITH K. MALALGODA PC

JUDGE OF THE SUPREME COURT