

**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.

Charith Eshanka Hopwood,  
No. 60/5, Kerawalapitiya Road,  
Hendala,  
Wattala.

**Petitioner**

**SC. FR. Application**

**No. 257/2018**

**Vs.**

1. Inspector of Police Gunawardena,  
Officer-in-Charge,  
Minor Offences Branch,  
Police Station,  
Ragama.
2. Chief Inspector of Police Gunasekera,  
(Acting Officer-in-Charge),  
Police Station,  
Ragama.
3. Inspector General of Police,  
Police Headquarters,  
Colombo 01.

4. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**Respondents**

**Before:**           **Justice Buwaneka Aluwihare, PC**  
                  **Justice E.A.G.R. Amarasekara**  
                  **Justice A.L. Shiran Gooneratne**

**Counsel:**       Shyamal A. Collure with Prabath S. Amarasinghe, A.P. Jayaweera  
                  and Ravindra Silva **for the Petitioner.**

                  Ms. Induni Punchihewa, SC **for the Respondents.**

**Argued on:**     23/02/2021

**Decided on:**   29/07/2021

**A.L. Shiran Gooneratne J.**

The Petitioner, the Chief Manager of Rainbow Garments Technologies (Pvt) Ltd. contends that his arrest and detention by the 1<sup>st</sup> Respondent, the Officer-in-Charge of the Ragama Police Station, on 18/07/2018, and producing him in the Magistrates Court of Negombo on 19/07/2018, in Case Bearing No. L. 69786, is a violation of his fundamental rights guaranteed by Article 11, 12(1), 13(1), 13(2) and 14(1)(g) of the Constitution. This Court granted Leave to Proceed on 04/09/2018 to the Petitioner in respect of the alleged infringements of Article 12(1), 13(1), 13(2) and 14(1)(g) of the Constitution.

The facts of the case as established from the pleadings and the documents therein are set out as follows:

Rainbow Garments Technologies (Pvt) Ltd. is a limited liability company dealing in the purchase and sale of ready-made garments from various suppliers and one such supplier was M.B. Subani Chathuri. During a business transaction, Dinesh Wimalachandra, the Managing Partner of the said company issued two cheques to Subani Chathuri, to the value of Rs. 216,150/- and Rs. 217,775/- for garments supplied to the company. Having observed that some of the garments supplied were damaged and/or defective, the company informed the said supplier to replace the said items. Since there was no response from the supplier, the company advised the respective banks to stop payment which is reflected in the cheque return notifications marked 'P8' and 'P9' endorsed as *"payment stopped by drawer"*.

The cheques marked '1R3(a)' and '1R3(b)' have been issued by the proprietor of 'Rainbow Fashion World', Dinesh Wimalachandra and not by the Petitioner. Therefore, the Petitioner contends that there can be no suspicion that the Petitioner had committed any offence arising from the complaint made by Subhani Chathuri, marked '1R1'.

The Petitioner states that on or about the first week of June 2018, on a complaint lodged by the said supplier, the 1<sup>st</sup> Respondent informed the company that a representative be present at the Ragama Police Station. Accordingly, the Petitioner and another employee representing the company informed the 1<sup>st</sup> Respondent about the events leading up to the "stop payment" of the relevant cheques. The 1<sup>st</sup> Respondent by a Police message addressed to the Officer-in-Charge of the Police Station Thalangama, required Dinesh Wimalachandra, the proprietor of the company to be present at the Ragama Police Station on 18/07/2018. The Police Message marked '1R5(a)' dated 13/07/2018, confirms this position. Since Dinesh Wimalachandra was indisposed, the Petitioner responded to the Police message by presenting himself at the Police Station.

The Petitioner states that he was arrested by the 1<sup>st</sup> Respondent on 18/07/2018 and a statement was recorded around 8.30 p.m. on the same date and held overnight in the Police cell.

On 19/07/2018, the Petitioner was taken to the Negombo Magistrates Court and was produced in Case Bearing No. L. 69786 for misappropriating a sum of Rupees 646,325/- an offence punishable under Section 386 of the Penal Code. The Petitioner further claims that the 2<sup>nd</sup> Respondent filed a police report dated 19/07/2018 in the Magistrates Court and moved that the Petitioner be placed in remand custody until 26/07/2018, pending further investigations. The Petitioner contends that due to immense pressure being brought about, the Petitioner was forced to pay the amount alleged to have been misappropriated and settle the case.

The Petitioner's claim as set out in the Petition is based on the following contentions.

- a) that there was no complaint lodged against him by M.B. Subani Chathuri at the Police Station of Ragama.
- b) the arrest and detention of the Petitioner at the Ragama Police Station on 18/07/2018, is contrary to the procedure established by law and therefore is illegal, unlawful, and arbitrary.

Subani Chathuri in her complaint dated 05/06/2018, marked '1R1', has clearly stated that Dinesh Wimalachandra of Rainbow Fashion World (Pvt) Ltd. had instructed the relevant banks to stop payment of cheques bearing his signature issued to her and therefore, Dinesh Wimalachandra should be summoned and questioned regarding this transaction.

In the first week of June 2018, a person introducing himself as the 1<sup>st</sup> Respondent, had informed the Petitioner that a representative of the company be present at the Ragama Police Station for an inquiry in connection with the complaint lodged by the complainant.

At the said inquiry, The Petitioner had explained to the 1<sup>st</sup> Respondent the circumstances, which led to the present situation. Thereafter, by Police message dated 13/07/2018, the 1<sup>st</sup> Respondent through the Officer-in-Charge of Thalangama Police summoned Dinesh Wimalachandra, as the accused in Case bearing No. 69786, to be present at the Ragama Police Station on 18/07/2018, in order to record a statement on a charge relating to a cheque fraud. The Officer-in-Charge of the Thalangama Police Station, by message dated 17/07/2018, marked '1R5(b)', informed the Ragama Police that Wimalachandra is not to be found in the given address and therefore, a copy of the message had been handed over to a manager of the company by the name Indika Mano. Since Wimalachandra was indisposed, the Petitioner voluntarily presented himself at the Ragama Police on 18/07/2018, around 11 a.m.

The investigation report dated 21/06/2018, filed by the 1<sup>st</sup> Respondent clearly identified Wimalachandra as the suspect. According to the Police message dated 13/07/2018, Wimalachandra was required to be present at the Ragama Police Station for further investigations. However, when the Petitioner arrived at the police station on 18/07/2018, the 1<sup>st</sup> Respondent arrested him and kept him overnight in the Police cell and was produced before the learned Magistrate of Negombo on 19/07/2018. The 1<sup>st</sup> Respondent having produced the Petitioner, filed a handwritten charge sheet dated 19/07/2018, marked 'P7', and a further report moving Court to remand the Petitioner until 26/07/2018.

In paragraph 13 of the affidavit, the 1<sup>st</sup> Respondent clearly states that the person wanted in connection of the alleged fraud is Wimalachandra and that he deliberately evaded investigations into the matter with no valid reason. However, relying on purchase orders marked '1R6' and '1R7', the 1<sup>st</sup> Respondent alleges that the Petitioner was a person in authority who should be responsible for the said transaction. In the affidavit tendered to Court the 1<sup>st</sup> Respondent has contended that the Petitioner was arrested due to the "continuous evasion of Dinesh Wimalachandra".

**Section 23(1) of the Code of Criminal Procedure Act** sets out the procedure in making an arrest of a person, *inter alia*, it states,

*“in making an arrest the person making the same ... shall inform the person to be arrested of the nature of the charge or allegation upon which he is arrested.”*

The Explanation provided in **Section 23(1) of the Code of Criminal Procedure Act** states thus;

*“Keeping a person in confinement or restraint without formally arresting him or under the colourable pretension that an arrest has not been made when to all intents and opposes such person is in custody shall be deemed to be an arrest of such person”.*

In **Tuduge Achalanka Srilal Perera Vs. Police Sergeant Ananda & Other S.C. (F/R) App. No. 198/2011**, the Court held that,

*“Every arrest by a police officer, attracts Section 23 (1) of the Code of Criminal Procedure Act and it is mandatory that the person arrested should be informed of the nature of the charge or allegation upon which he is arrested. A bare assertion that the arrest is in accordance with the procedure established by law, falls far short of the standard expected of the applicable legal provision.”*

In order to justify the arrest of the Petitioner, the 1<sup>st</sup> Respondent relied on an affidavit dated 12/03/2019, marked ‘1R4’ made by the Attorney-at-Law who represented the complainant at the inquiry held at the Ragama Police. The Attorney in her affidavit states that the Petitioner in his capacity as a manager of the company had signed the documents relating to the transaction and accordingly did undertake to pay the monies due to the complainant. The Attorney further states that the Petitioner who is an authorized person of the company was represented by an Attorney-at-Law at the said inquiry, undertook to settle the amount due to the complainant.

The Petitioner denies that he was represented by an Attorney-at-Law and also deny that he had the capacity to settle such disputes.

The arrest and detention of the Petitioner on 18/07/2018 is justified by the 1<sup>st</sup> Respondent on the basis that the Petitioner was a person in authority (manager) of the said company. The 1<sup>st</sup> Respondent relied on the statement made by the complainant and the affidavit made by the Attorney-at-Law who is alleged to have accompanied the complainant to the Ragama Police.

The complaint dated 05/06/2018 was against Wimalachandra.

According to the investigation report dated 21/06/2018, Wimalachandra was the suspect in Case Bearing No. L.69786, pending before the Magistrates Court of Negombo. On 19/07/2018, a further investigation report together with a handwritten charge sheet was filed and the Petitioner was produced in Court as the accused in the aforesaid case. The 1<sup>st</sup> Respondent produced the Petitioner before the learned Magistrate and made an application to remand the Petitioner pending further investigations.

The learned State Counsel submitted that the Petitioner was arrested in terms of ***Section 32(1)(b) of the Code of Criminal Procedure Act*** and justifies the arrest on the basis that:

*“a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists”*,

to arrest the Petitioner and therefore the arrest and detention of the Petitioner was according to procedure established by law.

In an application for a Writ of Habeas Corpus, H. N. G. Fernando, C.J. in ***Gunasekara vs. De Fonseka, (1972) 75 NLR 246 at p. 250*** stated as follows,

*“Only if a person is informed of the ground for his arrest, or in other words, of the offence which he is suspected, that he will have the opportunity to rebut the*

*suspicion or to show that there was some mistake as to identity” ---- “exceptional cases in which the requirement will not apply, particularly cases in which it is obvious in the circumstances that a person must necessarily know why he is being arrested. Examples of such cases are found in paragraphs (a), (c), (e) and (f) of s. 32 (1) of the Criminal Procedure Code.”*

Therefore, an arrest made in terms of Section 32 (1) (b) would not be within the said exception.

In ***Guneththige Misilin Nona and others vs. P.C. Muthubanda, (10312), Police Station, Moragahahena and others (S.C. (F/R) No. 429/2003)***, Shiranee Thilakawardana J. cited with approval the case of ***R vs. Howell (1981) 3 All ER 383***, where Watkins LJ, observed on the English Common Law power to arrest for breach of peace as follows:

*“The public expects a Policeman not only to apprehend the criminal but to do his best to prevent the commission of crime, to keep the peace in other words. To deny him therefore, the right to arrest a person who he reasonably believes is about to breach the peace would be to disable him from preventing that of which might cause serious injury to someone or even to many people or to property. The common law, we believe, whilst recognizing that a wrongful arrest is a serious invasion of a person’s liberty, provides the Police with this power in the public interest. In those instances of the exercise of this power which depend on a belief that a breach of the peace is imminent it must be established that it is not only an honest, albeit mistaken belief but a belief founded on reasonable grounds”*

The investigation reports filed in Court did not cast any reasonable justification to arrest the Petitioner as a suspect in the case.

The Petitioner as a manager of the company, on notice, willingly participated at the inquiry held by the 1<sup>st</sup> Respondent, in the absence of Wimalachandra, due to ill health. However, the 1<sup>st</sup> Respondent without any reasonable suspicion detained the Petitioner over night at the police cell and produced him before the Magistrate on the following day.

Dicey defines the right to personal liberty as:

*“a person’s right not to be subjected to imprisonment, arrest or other physical coercion in any manner that does not admit of any legal justification”* **Guneththige Misilin Nona and others vs. P.C. Muthubanda, (10312), Police Station, Moragahahena and others (supra)**

Rights of an arrested person was discussed in the case of **Joginder Kumar vs. State of UP and others, (AIR 1994 SC 1349)** where the Indian Supreme Court observed that:

*“a person was not liable to arrest merely on the suspicion of complicity in an offence and there must be some reasonable justification in the opinion of the police effecting the arrest that such arrest was necessary and justified”.*

In **Gamlath vs. Neville Silva and others (1991) 2 SLR 267**, having observed that,

*“a suspicion is proved to be reasonable if the facts disclosed 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”, (Baba Appu vs. Adan Hamy).*

Kulatunga, J. held that;

*“The observance of the procedure for arrest without a warrant is now a constitutional right under Article 13(1) of the Constitution which guarantees freedom from arrest. The information on which the arrest is based must be credible by the application of the objective test. An arrest based purely on the subjective satisfaction of the police officer would be arbitrary and in violation of Article 13(1)”.*

The first investigation report dated 21/06/2018, or the subsequent police messages by the 1<sup>st</sup> Respondent does not cast an aorta of reasonable suspicion or a reasonable complaint of the commission of the offence against the Petitioner. To the contrary, the

police message dated 17/7/2018, states that Wimalachandra is required to be present in the Negombo Magistrates Court on 18/07/2018. Therefore, there was absolutely no justification for the 1<sup>st</sup> Respondent to arrest the Petitioner on 18/07/2018.

***In Channa Peiris and Others Vs. Attorney General and Others (1994) 1 SLR 1 at page 47*** the Court held, thus:

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

It is the position of the Petitioner that his statement was recorded around 8.30 p.m. on 18/07/2018, and thereafter he was detained in the Police cell. The 1<sup>st</sup> Respondent admits that the Petitioner did make a statement to the Police. The statement made by the Petitioner could have undoubtedly shed more light to the events which culminated in his arrest. Despite a direction given by court to tender the said statement together with the investigation notes before the date fixed for hearing, the 1<sup>st</sup> Respondent has failed to do so. (vide Journal entry dated 04/09/2018). Therefore, the grounds upon which the Petitioner was arrested as contended in the affidavit of the 1<sup>st</sup> Respondent are not supported by evidence.

The 1<sup>st</sup> Respondent was better placed to tender such documents to prove his bona fides and to vindicate himself from the alleged arbitrary arrest, which he failed to do, for reasons best known to him.

The 1<sup>st</sup> Respondent does not deny the arrest of the Petitioner nor his detention overnight. However, there is no formal arrest of the Petitioner on record nor reasons for his arrest made known to him.

The allegation upon which the Petitioner was arrested is described by the 1<sup>st</sup> Respondent in **Paragraph 15** of his Affidavit as:

*“all attempts to get Wimalachandra down failed. Wimalachandra purposely evaded such inquiries. The Petitioner appeared at the Police Station each time when Wimalachandra was summoned”.*

This clearly, “*inter alia*” shows that the 1<sup>st</sup> Respondent was aware that the Petitioner presented himself at the police station on notice to represent the interest of Wimalachandra.

Sharvananda C.J. in his “**Treatise on Fundamental Rights in Sri Lanka**” (page 141) observed as follows;

*“The requirement that the person arrested should be informed of the reason for his arrest is a salutary requirement. It 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 the allegation or accusation against him is so that he can consult his Attorney-at-Law and be advised by him.....” (Tuduge Achalanka Srilal Perera Vs. Police Sergeant Ananda & Others (S.C. (F/R) Application No: 198/2011)*

***In Landage Ishara Anjali & Other Vs. Waruni Bogahawatte & Others (2019), SC (FR) Application No. 677/2012***, the Supreme Court elaborating on the scope of Article 13(1) stated as follows:

*“Article 13 (1) of the Sri Lankan Constitution declares the rights relating to personal liberty and criminal procedure. It reads;*

*“No person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest.”*

*The Article guarantees freedom from arbitrary arrest and mandates that any deprivation of liberty should strictly follow the procedure established by law. These procedural safeguards are set in place to avoid rule by whim or caprice and to prevent the abuse of judicial process for individual gain and for political purposes.”*

This Court in several previous judgments have very clearly held that taking a person into custody and detaining for the purpose of procuring evidence in the circumstances of the case, to obtain their assistance to locate another person, as a first step in the process of bringing criminal suspects to justice or any other deprivation of personal liberty amounted to be violative of Article 13(1) of the Constitution. (***Weragama vs. Indran and others, SC application 396 and 397/93 SC minutes 24 February 1995, SC application 27/88 SC minutes 6 April 1990***)

This is not a case of mistaken identity. The 1<sup>st</sup> Respondent was aware that the person under investigation was not the Petitioner. When all attempts to arrest the person under investigation failed, the 1<sup>st</sup> Respondent without any reasonable explanation, arbitrarily exercised his power to detain and arrest the Petitioner. By not following the procedure established by law, the 1<sup>st</sup> Respondent deprived the Petitioner of knowing the nature of the offence or the reason for his arrest. Therefore, the 1<sup>st</sup> Respondent has failed to satisfy this Court that the arrest and detention of the Petitioner was in accordance with the procedural and substantive safeguards provided by law. In all probability, the 1<sup>st</sup> Respondent connived with the complainant to arrest and detain the Petitioner to place him under restraint in order to force a settlement of the money due to the complainant. The 1<sup>st</sup> Respondent’s conduct depriving the Petitioner of his personal liberties, as noted above, cannot be condoned by this Court.

In all the above circumstances, the Court observes that the deprivation of personal liberty of the Petitioner amounts to a violation of Article 13(1) of the Constitution for which the 1<sup>st</sup> Respondent should be personally responsible. Therefore, the Petitioner is entitled for an order for relief.

Accordingly, the 1<sup>st</sup> Respondent is directed to pay Rupees 100,000/- to the Petitioner and Rupees 20,000 as costs.

**Buwaneka Aluwihare PC. J.**

I agree

**E.A.G.R. Amarasekara J.**

I agree

**Judge of the Supreme Court**

**Judge of the Supreme Court**

**Judge of the Supreme Court**