

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

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

SC/FR Application No. 57/2019

Kariyawasam Atukoralage Don Peter
Hayasinth
No. 61/1, Pahalawela, Pamunuwatte,
Meergama.

PETITIONER

Vs.

1. Lalith Sandasiri,
Officer in Charge,
Police Station,
Weeragula.
2. Nissanka,
Police Station,
Weeragula.
3. Ajith
Police Station,
Weeragula.
4. Police Constable 42055,
Police Station,
Weeragula.

5. Police Constable 71035,
Police Station,
Weeragula.
6. Police Constable 89325,
Police Station,
Weeragula.
7. Police Constable 95364,
Police Station,
Weeragula.
8. Mrs. Wijewardhana,
WP Sargent,
Police Station,
Weeragula.
9. Assistant Superintend of Police,
DIG's office - Gampaha Division,
Gampaha.
10. Inspector General of Police,
Police Headquarters,
Colombo 11.
11. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

BEFORE: **S. THURAIRAJA, PC, J.**
YASANTHA KODAGODA, PC, J. AND
MAHINDA SAMAYAWARDHENA, J.

COUNSEL: A.D.H. Gunawardhana with Shanaka Warnakulasooriya and Ruwan Senasinghe for the Petitioner.

V. Hettige, Senior Deputy Solicitor General for the Respondents.

WRITTEN Petitioner on 28th April 2022.

SUBMISSIONS: Respondent on 23rd January 2023.

ARGUED ON: 30th January 2024.

DECIDED ON: 28th March 2024.

THURAIRAJA, PC, J.

1. The Petitioner, namely one Kariyawasam Atukoralage Don Peter Hayasinth (hereinafter sometimes referred to as "the Petitioner"), filed this application on 14th February 2019 against the 1st to 11th Respondents (hereinafter sometimes jointly referred to as "the Respondents") seeking relief in respect of the alleged infringement of his fundamental rights, namely under Articles 11, 12(1) and 13(1), guaranteed by and under the Constitution of the Democratic Socialist Republic of Sri Lanka.
2. This Court, observing no merit in the alleged violation of Article 11, granted leave to appeal on 02nd October 2019 for the alleged infringement of Articles 12(1) and 13(1) of the Constitution.

Factual Background

3. The Petitioner is an Ayurvedic Doctor, having passed his examination conducted by the National Council of the Sri Lanka Ayurvedic Department, and, from the year 2000, operated an Ayurvedic medical centre named "Beheth Shalawa" in Pasyala.
4. The Petitioner was arrested and charged with offences under Sections 58(2) and 131(1) of the *National Medicines Regulatory Authority Act No. 5 of 2015*, case bearing number 63818, to which the Petitioner pleaded guilty and upon whom a fine of Rs. 200,000/- was imposed.
5. According to the Petitioner, the series of events that form the basis of this application are as follows: on 13th January 2019, a group of police officers arrived at his place of work in a jeep belonging to the Weeragula Police Station. Having conducted a search of the Ayurvedic centre, they seized certain prescribed drugs. The Petitioner was asked to close the centre, the key to which was kept in the custody of the officers, and to get into the jeep, at which point he was told that he was under arrest. Thereon, they purportedly proceeded to the Petitioner's residence, where, again, a search was conducted and certain drugs, which the Petitioner claims belonged to his wife for her disease of low pressure, were seized.
6. Thereafter, the Petitioner was transported to the Weeragula Police Station and allegedly detained until 15th January 2019. The Petitioner alleges that during his detention at the Weeragula Police Station until 15th January 2019, his signature was coerced on an unread document, and his personal belongings, including Rs. 14,500/-, his ayurvedic identity card, motorbike revenue license, and insurance, were confiscated, with the money allegedly not returned upon his release.

7. The Petitioner has submitted that, two days after the arrest, on the morning of 15th January 2019, he was removed from the cell and transported to his ayurvedic centre by two police officers, where he claims to have witnessed certain media personnel awaiting his arrival. Upon entering the ayurvedic centre, he was purportedly handed 'blue coloured capsules' by the police officers unknown to him, and the media personnel were allowed to take pictures of the Petitioner. According to the Petitioner, the 1st Respondent was a participant in these aforementioned events on 15th January.
8. Later that same day, purportedly three days after his arrest on 13th January, the Petitioner states he was produced before a Magistrate's Court. The proceedings of the Petitioner's case before such Magistrate are marked 'P2', and the filed B-Report is marked 'P2A', which indicates the date of arrest to be 15th January, contrary to the Petitioner's averments.
9. The Petitioner has adopted the position that he was, firstly, 'treated in a different way' thereby infringing his fundamental right of equal protection of the law guaranteed under Article 12(1) of the Constitution, and, secondly, unlawfully detained for nearly three days, in violation of his rights guaranteed under Article 13(1) of the Constitution.
10. The Petitioner has adduced evidence in the form of three affidavits: the first from the Petitioner's wife (marked 'P3'), the second from a neighbouring resident (marked 'P4'), and finally, the third from the building owner of the Petitioner's medical centre (marked 'P5'), all of whom have testified that the Petitioner was arrested on January 13, 2019.
11. When the written submissions on behalf of the Petitioner dated 28th April 2022 were filed, the Petitioner also submitted the charge sheet filed by the Food and Drugs Inspector, Gampaha, in the Magistrate's Court (marked 'A'), in which the date of the arrest has been indicated as 13th January 2019.

12. Peculiarly, the Petitioner’s written submission dated 23rd April 2023 is solely attributed to establishing purported violations of the Petitioner’s rights under Articles 11 and 13(2) of the Constitution. This is despite the fact that, as already discussed, the Petitioner failed to convince the Court of any such infringement under Article 11 and accordingly, leave to proceed was not granted upon this ground. Compounding the issue, the Petition to the Supreme Court does not, whatsoever, make reference to a purported violation of Article 13(2).
13. On the contrary, the 1st Respondent, in his Affidavit dated 19th November 2021, has submitted that, in fact, the Petitioner was arrested on 15th January, informed of his reason for arrest, and produced before the Acting Magistrate of Attanagalle on the same day. 15th January being a public holiday, the Petitioner was remanded until he was produced before the permanent Magistrate of Attanagalle the next day, 16th January.
14. This statement is corroborated by the extracts of the Routine Information Book (marked ‘1R1’) and B-Reports filed by the 1st Respondent on 15th and 16th January 2019 (marked ‘1R2’ and ‘1R3’ respectively).
15. It is the position of the Respondents that information pertaining to this investigation was revealed as a result of long-term surveillance conducted in the Weeragula Police jurisdiction.
16. The Respondents further submitted that a statement by the Petitioner was recorded without force by the 5th Respondent admitting to not possessing authority to sell or prescribe the western medicine in his possession.
17. The relevant excerpt of the entry within the extract of the RIB marked ‘1R1’ is as follows:

“සංචාරයේදී නීති විරෝධී ලෙසට කුඩා ළමුන්ට කිසිදු ලියවිල්ලක් නොමැතිව මත් ද්‍රව්‍ය වර්ග අලෙවි කරන බවට මා හට ලත් තොරතුර අනුව එම වෛද්‍ය මධ්‍යස්ථානයෙන්

තහනම් මත් ද්‍රව්‍යන් ද අලෙවි කරන බවට ලත් තොරතුරට අනුව පරීක්ෂා කිරීමට එම වෛද්‍ය මධ්‍යස්ථානය පිහිටි වීරසූරිය කන්ද පස්සාල ලිපිනයේ පිහිටි (ආ) නම් වූ බෙහෙත් ශාලාව පරීක්ෂා කිරීමට නිලධාරීන් සමග එම ස්ථානයට ගොස් පරීක්ෂා කර බැලීමේදී එම වෛද්‍ය මධ්‍යස්ථානයේ වෛද්‍ය මධ්‍ය ස්ථානයක් ලෙස පවත්වා ගෙන යාමට ලියාපදිංචි කිසිදු ලියවිල්ලක් නොවූ අතර එම ආයතනය අදාළ ප්‍රාදේශීය සභාවේ ලියා පදිංචි වූ වෙළඳ බල පත්‍රයක් හෝ කිසිදු ලියවිල්ලක් ඉදිරිපත් නොකළ අතර එම වෛද්‍ය මධ්‍යස්ථානය තුළ බටහිර වෛද්‍යවරු විසින් ලබා දෙන ලද බෙහෙත් පෙනී ඹෟෂධ වර්ග තැන් විශාල ප්‍රමාණයක් තිබූ අතර ආයුර්වේද බෙහෙත් බෝතල් කිහිපයක් ද විය. ගුලි, පෙනී වර්ග ද දක්නට තිබුණා. මා විසින් එම වෛද්‍ය මධ්‍යස්ථානයේ වෛද්‍යවරයා ලෙස සිටි කාර්යවසම් අතුකෝරල ලාගේ දෙන් පිටර් හයිසින්ත් යන අයට බටහිර වෛද්‍යවරයකු ලෙස බෙහෙත් ලබා දීමට අති සුදුසුකම් සම්බන්ධව විමසා බැලූ අතර ඔහුට ආයුර්වේද වෛද්‍යවරයකු ලෙස කටයුතු කිරීමට බලතල තිබෙන බව කියා සිටි අතර ඉන් ඉංග්‍රීසි බෙහෙත් ලබා දීමට බලපත්‍රයක් හා අනුමැතියක් නොමැති බවත් දැනුම් දුන්නා. පසුව මා විසින් වැඩි දුරටත් ප්‍රශ්න කිරීමේදී අනාවරණය කර ගැනීමට හැකි වූයේ තමා විසින් පැමිණෙන සියළු දෙනාටම දේශීය හා බටහිර වෛද්‍ය ප්‍රතිකර්ම ද ලබා දුන් බවට පසුව පවසා සිටියා. ඒ අනුව එම සැකකරු වන දීප්ති පහන්ගම, හංවැල්ල ලිපිනයේ පදිංචි කාර්යවසම් අතුකෝරලලාගේ දෙන් පිටර් හයිසින්ත් යන අය නීත්‍යානුකූල බලපත්‍ර නොමැතිව වෙළඳ ආයතනයක් පවත්වා ගෙන යාම බටහිර වෛද්‍යවරයකු ලෙස ව්‍යාජ ලෙස පෙනී සිටීම, අන් අයකු ලෙස පෙනී සිටීම, යන චෝදනාවන් සඳහා වරද කීයාදී පැය 1200 ට පරීක්ෂා කර බලා අත් අඩංගුවට ගත්තා.

In the investigation executed upon the information received while in patrol that the said Medical Centre sells drugs illegally to small children without any prescription and that the said Medical Centre also sells prohibited drugs, it was discovered that there was no registered document available to establish it as a Medical Centre and no trade license or any other document was submitted to confirm its registration under the relevant Pradeshiya Sabha at said investigation conducted with the officers at Medical Centre named (ආ) located in Weerasuriya Kanda, Pasyala. In the

aforementioned Medical Centre, there were numerous pills and medications prescribed by Western doctors, along with several bottles of Ayurvedic Medicine. Guli (Ayurvedic pills) and syrups were also visible. I inquired from an individual named Kariyawasam Athukoralalage Don Peter Hayasinth, who appears to be serving as the Medical Officer of the institution, about his qualifications to administer Western Medicine. He mentioned that he is authorized to work as an Ayurveda Doctor but does not have a licence or approval for Western Medicine. Later, upon my further questioning, it was revealed that he provided both Ayurvedic and Western Medicinal Treatments to all those who visited the Centre. Accordingly, the aforesaid suspect namely, Kariyawasam Athukoralalage Don Peter Hayasinth residing at the registered address 'Deepthi', Pahangama, Hanwella was arrested at 1200 hours for operating a trade establishment without having a valid licence, fraudulently appearing as a Western medical professional and for impersonation after explaining the reason to effect the arrest."

[An approximate translation added]

18. Furthermore, the Respondents have submitted that the charge sheet marked 'A' was submitted by an Official of the National Medicines Regulatory Authority, who is not a party to the Petitioner's case in the Magistrate's Court. In fact, upon inquiry, the said Official has replied that, in drafting the charge sheet, the statement of the Petitioner which denoted the date of arrest to be 13th January 2019, was the core consideration. The said explanation has been submitted by the Respondents (marked as 'X' and 'Y').

Alleged violation of Article 12(1) of the Constitution

19. The Petitioner complains that the Respondent's conduct in allegedly arresting him without adequate material, falsely implicating him, and unlawfully detaining him from 13th to 15th January without obtaining an order from a court constitutes a failure to afford equal protection of the law as guaranteed under Art 12(1) of the Constitution.

20. Article 12(1) of the Constitution stipulates that,

"All persons are equal before the law and are entitled to the equal protection of the law."

Article 12(1) aims to ensure that a person is protected from arbitrary, capricious, irrational, unreasonable, discriminatory, or vexatious executive or administrative actions.

21. In the Supreme Court judgement of **Wasana Niroshini Wickrama v. Nalaka, Acting Officer-in-Charge, SC (FR) Application No. 349/2014, S.C. Minutes of 16 October 2023**, Fernando J., relying on the principles in **Leo Fernando v. Attorney-General [1985] 2 S.LR. 341**, observed that,

"[E]qual protection of the law' does not mean that the same law should identically apply to all persons. What it stipulates is that, the law should apply similarly and without discrimination to all persons similarly situated."

22. As per Amerasinghe J, in **Perera v. Monetary Board of Central Bank (1994) 1 SLR 152**, the burden of proof in adducing discrimination rests on the Petitioner, whereas the burden of adducing evidence to show that the discrimination made was rational and justifiable lies on those who had the authority to do so and made the distinctions.

23. The only materials for consideration before this Court in verifying the Petitioner's submission are the three affidavits P3 to P5, which are strangely silent upon, and cannot

speak to, several of the Petitioner's averments, such as the return of the Petitioner to the Ayurvedic centre and the ambush by media personnel.

24. When one considers the infirmities of the Petitioner's account of the events that have unfolded, bare assertions by the Petitioner, such as that no reason was assigned to his arrest, are not sufficient in this backdrop to hold that the Petitioner's arrest was illegal.
25. Further, the Petitioner has also failed to adduce any evidence, such as newspaper clippings, as proof of the media ambush and photographs within the Petitioner's version of events. Further, the Petitioner has failed to provide an explanation as to the reason for which his alleged illegal arrest was not complained of to the Magistrate despite the fact that the Petitioner was produced before the Magistrate's Court on four different occasions during the period of his remand: first on the 15th of January, second and third on the 16th and 28th of the same month, and finally on 11th February.
26. Conversely, the 1st Respondent has submitted the B-Report (marked '1R2'), which corroborates the fact that the Petitioner was arrested on the 15th of January and produced before the Acting Magistrate on the same day. Further, the extracts from the Routine Information Book (marked '1R1') recounting the details of the arrest of the Petitioner align with the submissions of the Respondents in the course of these proceedings; the Petitioner was arrested on the 15th of January following a search of the ayurvedic medical centre which revealed that the Petitioner was neither registered nor the owner a licence from the Local Council as required by law despite storing and possessing prohibited drugs and thereby committing offence under section 58(2) of the *NMRA Act*.
27. A perusal of the B-Report (1R2) dated 15th January 2019 filed by the 1st Respondent reveals that the Petitioner had been in possession of eighteen types of allopathy drugs prohibited from authorised prescription. The relevant excerpt from 1R2 is as follows:

“සැකකරු සන්නකයේ විවිධ ඉංග්‍රීසි නම් සඳහන් ඖෂධ වර් 18 ක් වූ අතර ඒ අනුව බලපත්‍ර නොමැතිව ඖෂධ, බටහිර ඖෂධ මත්පෙති ලග තබා ගැනීමේ වරදට වරද කීයා දී කුලී...කාරියවසම් අතුකෝරාලගේ දෙන් පීටර් හයිසින්ත් යන අය අත්අඩංගුවට ගන්නා ලදී.

There were 18 types of medicines, with English names mentioned, found in the possession of the suspect. Consequently, the individual named Kariyawasam Athukoralalage Don Peter Hayasinth was arrested for the offence of possessing medicines, including western medicinal drug pills”

[An approximate translation added]

28. The offence of unauthorised possession of such narcotic drugs is identified as a cognizable offence under the First Schedule to the *Code of Criminal Procedure* and, accordingly, does not require a submission of a warrant in terms of an arrest. As such, I see no reason to find that the police officers have deviated from the procedures established by law or that they have acted in an unreasonable or arbitrary manner in the disposition of the powers conferred to them by the law in administering the arrest of the Petitioner.

29. In the circumstances of this case, it is my view that the rights of the Petitioner under Article 12(1) of the Constitution have not been infringed by the Respondents as they have acted reasonably in exercising their lawful authority.

Alleged violation of Article 13(1) of the Constitution

30. The Petitioner has alleged unlawful arrest and detention by the Respondents in contravention of rights guaranteed by Article 13 (1) of the Constitution.

31. Article 13 (1) of the Constitution stipulates that,

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

32. Article 13(1) is commonly cited with reference to its two limbs; firstly, the arrest should be in accordance with the procedure established by law, and secondly, the person being arrested shall be informed of the reasons for his arrest. Accordingly, prior to the deprivation of the freedom of an individual in the exercise of the powers vested in the police forces, the procedure prescribed in law must be strictly adhered to without deviation, ensuring no harm or disadvantage to the affected person.

33. It is established jurisprudence that the phrase 'established by law' refers to the rules of the *Code of the Criminal Procedure Act No. 15 of 1979* (read with the amendments thereto), section 23(1) of which reads:

"In making an arrest the person making the same shall actually touch or confine the body of the person to be arrested unless there be a submission to the custody by word or action and shall inform the person to be arrested of the nature of the charge or allegation upon which he is arrested."

34. In the instant case, the material before this court to determine whether there has been a transgression of Article 13(1) is the assertion of the Petitioner, which is supported by three affidavits and charge sheet (marked 'A') by the Food and Drug Inspector on the one hand and the assertion of the 1st Respondent supported by the relevant excerpts from the Police Information Book (1R1) on the other.

35. Clearly, the statement of the Inspector (marked 'X' and 'Y') in clarifying that, in fact, the basis of the abovementioned charge sheet stems from the Petitioner's own assertions not only wholly refutes the document marked 'A' but also, in my view, speaks volumes to the

Petitioner's credibility, or lack thereof, shedding light on the Petitioner's selective presentation of evidence.

36. It is also prudent to observe, at this juncture, the disappointing absence of administrative competence by the Food and Drugs Inspector in the failure to document accurate information from the relevant law enforcement authorities when drafting the said charge sheet.

37. In returning to this instant case, this Court must determine whether the Petitioner has discharged the burden of proving the alleged infringements of his fundamental rights guaranteed under Article 13(1) of the Constitution.

38. This Court has consistently maintained that the individual alleging the violation of their fundamental rights bears the burden of proving the alleged transgressions with a high threshold of probability.

39. As Amerasinghe J. observed, in the case of **Samanthilaka v. Ernest Perera and Others 1990 1 SLR 318** (at page 320), in the consideration of an alleged violation of Article 13 (1) of the Constitution:

"Being serious allegations of misconduct on the part of an agent of the State-the police-I looked with caution for a high degree of probability in deciding which of the facts alleged had been established."

40. After thoroughly reviewing the affidavits, examining additional materials submitted by both the Petitioner and the Respondents, and considering the arguments presented by the respective Counsel, I cannot attribute any reason to disregard the version of the Respondents, and it is further evident that the Petitioner has not sufficiently demonstrated the alleged transgressions of unlawful arrest to the standard of proof mandated by law in fundamental rights cases.

41. In fact, I would venture to say that the failure of the Petitioner to plead Article 13(2), the primary provision enshrining the prohibition of illegal detention in the Constitution, is a reflection of the Petitioner's fatal misconceptions and inadequacies in establishing such unlawful detention at the outset.
42. Considering the above, I hold that the Petitioner has failed to establish that the Respondents have infringed his fundamental rights enshrined in Articles 12(1) and 13 (1) of the Constitution, and accordingly, this application is dismissed.
43. In concluding, it is important to remark that this Court's weighty responsibility as a guardian of fundamental rights and constitutional liberties, in my view, is informed by a dual purpose of not only providing redressal where a citizen's rights have been violated but also protecting the sanctity of these rights by safeguarding them from capricious or frivolous petitions that may obscure the court's focus from genuine grievances and dilute the integrity of the constitutional guarantees.
44. This application and its several attempts to detract this court's attention from the lack of merit in the Petitioner's claims, such as unwarranted discussions of constitutional articles outside the scope permitted by this court and fragmented narration of events speckled with infirmities and suppressed facts, dangerously border on misleading this court, which is intolerable.

Decision

45. I find that the Petitioner has not established an infringement of his rights by any of the Respondents under Articles 12(1) and 13(1) of the Constitution. The Petitioner is directed to pay Rs. 25,000/- to the treasury through Sri Lanka Police in State costs.

Application Dismissed.

Judge of the Supreme Court

YASANTHA KODAGODA, PC, J.

I agree.

Judge of the Supreme Court

MAHINDA SAMAYAWARDHENA, J.

I agree.

Judge of the Supreme Court