

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

*In the matter of an application under and in
terms of Articles 17 and 126 of the Constitution
of the Democratic Socialist Republic of Sri
Lanka.*

SC/FRA/15/2018

1. Mahamalage Nidush Nirantha
Fernando
No. 20, Sumanakusum Gama,
Marawila

2. Rathnayake Mudiyansele Sujith
Priyankara Kumara
Vilgamdematawa,
Gonagama,
Kurunegala

PETITIONERS

Vs.

1. S. R. D. Priyantha
Officer in Charge
Police Station
Marawila.

2. Gayan Pushpakumara
Sub Inspector of Police
Police Station
Marawila.

3. Kaushitha Premarathne
Sub Inspector of Police
Police Station
Marawila.

4. Deputy Inspector General of Police
DIG Office
Puttalam District.

5. Inspector General of Police
Police Headquarters
Colombo 01.
6. Hon. Attorney General
Attorney General's Department
Colombo 12.

RESPONDENTS

Before: Achala Wengappuli, J
Dr. Sobhitha Rajakaruna, J
Menaka Wijesundera, J

Counsel: Shantha Jayawardena with Duleeka Ambuldeniya for the Petitioner.

Saliya Pieris, PC, with Geeth Karunaratne and Ishan Jayasundara for the 1st
- 3rd Respondents.

Lakmali Karunanayake, PC, ASG, for the 5th & 6th Respondents.

Written Submissions: Petitioners - 06 August 2021

1st – 3rd Respondents - 05 January 2024 & 31 October 2025

6th Respondent - 19 January 2022

Argued on: 22 September 2025

Decided on: 08 May 2026

Dr. Sobhitha Rajakaruna J.

Having considered the submissions made by both parties, this Court, on 25 October 2018, granted leave to proceed with the Petition alleging a violation of Article 13(1) of the Constitution against the 2nd and 3rd Respondents.

Background and Petitioners' Case

The 1st Petitioner is the brother-in-law of the 2nd Petitioner, and both are accomplished cyclists. On 13 December 2017, after attending a funeral, they returned to the 1st Petitioner's residence in the company of his parents, grandmother, wife, and daughter. The 2nd Petitioner, who ordinarily resides in Kurunegala, stayed overnight at the same house with his wife and daughter.

The Petitioners allege that at approximately 9:30 a.m. on 14 December 2017, the 2nd and 3rd Respondents entered the 1st Petitioner's residence and assaulted the 1st Petitioner with their hands and motorcycle helmets, causing injuries to his head. According to the Affidavits of the 1st and 2nd Petitioners, the 3rd Respondent later apologised to the 1st Petitioner, admitting fault by stating (in Sinhala): "මල්ලි මට සමාවන්න, වැරද්ද අපේ බව වැඩිය හිතන්න ඔනේ නැහැ" (translated: "Brother, forgive me; there is no need to think too much that the fault is ours").

Shortly thereafter, a police jeep arrived with several officers. The 2nd and 3rd Respondents then complained to the police that the 1st and 2nd Petitioners had assaulted them with an iron rod, stating: "සර් මුන් තමයි අපිට යකඩ පොල්ලකින් ගැහුවේ" (translated: "Sir, it was they who hit us with an iron rod"). Consequently, the 1st and 2nd Petitioners were arrested.

The Petitioners further claim that, while being transported for a medical examination, the police officers repeatedly instructed them to tell the Judicial Medical Officer ('JMO') that they had not been assaulted and that any injuries were sustained from other causes. Out of fear, the 1st Petitioner gave a different version to the JMO. Upon their return to the *Marawila* Police Station, the 2nd Petitioner was allegedly assaulted with a hose pipe, while the 1st Petitioner was beaten on his face, stomach, and back with fists.

On 15 December 2017, the Petitioners were produced before the Magistrate's Court of Marawila under B-Report No. B1898/17.

The Petitioners maintain that they were never informed of the reasons for their arrest at the time of apprehension, either by the 2nd and 3rd Respondents or by the other officers who arrived in the Police jeep. They contend that their arrest and subsequent detention were effected without any material or reasonable suspicion, in violation of established legal procedure, and therefore infringed their fundamental rights against arbitrary arrest and detention guaranteed under Articles 13(1) and 13(2) of the Constitution.

2nd and 3rd Respondents' Position

The 2nd and 3rd Respondents denied the allegations in the Petition. They stated that they visited the premises on the basis of information received from informants regarding the possession of illicit liquor by the 1st Petitioner. At about 10:25 a.m., they observed the 1st Petitioner entering the kitchen carrying a plastic bottle containing illicit liquor. They further asserted that the Petitioners resisted arrest, abused the officers, and that the 1st Petitioner attempted to assault the 2nd Respondent with an iron rod, causing both to fall during the ensuing struggle. As a result, the 1st Petitioner sustained minor abrasions on the back of his neck, right shoulder, and upper right arm, while the 2nd Petitioner sustained a minor abrasion on his elbow.

The said Respondents produced an unsigned document (marked R13) purporting to show prior arrests of the 1st Petitioner's parents for possession of illicit liquor between 2008 and 2013.

Analysis

The central issue before this Court is whether the arrest of the 1st and 2nd Petitioners was carried out in accordance with the procedure established by law and whether they were promptly informed of the reasons for their arrest.

The arrest was purportedly made in respect of an offence under Section 47 of the Excise Ordinance No. 8 of 1912, which criminalises the unlawful possession or transport of any excisable article. By Excise Notification No. 509 dated 9 February 1963, police officers are empowered to perform the duties set out in Section 35(1) of the Ordinance. That provision expressly authorises an officer to arrest without warrant any person found committing an offence punishable under Section 46 or 47 in any place other than a dwelling house.

While there is no dispute that the 2nd and 3rd Respondents possessed the general authority to act under Section 35(1)¹, the critical question is whether the alleged offence was committed in a place other than a dwelling house. The evidence placed before Court clearly establishes that the 2nd and 3rd Respondents entered the 1st Petitioner's residence and that the primary confrontation and alleged discovery of the illicit liquor occurred inside the house. The fact that the 2nd Petitioner was also staying there was not contested.

A reasonable inference from the evidence is that the Petitioners were allegedly found committing the offence of possessing unlawful liquor inside the dwelling house. Accordingly, the arrest fell outside the scope of the power conferred by Section 35(1) of the Excise Ordinance.

Any subsequent alleged offences, such as using criminal force to obstruct a public servant, arose only during the attempted arrest itself. Since the initial attempt to arrest was unlawful, the Respondents could not have been acting in the discharge of a lawful public duty. Furthermore, the Affidavits of the 2nd and 3rd Respondents contain only a bare assertion that the Petitioners were informed of the reasons for arrest; they do not adequately disclose what those reasons were. This Court is therefore unable to accept the Respondents' reliance on Section 32(1) of the Code of Criminal Procedure Act.

Conclusion

In conclusion, I declare that the fundamental rights of the 1st and 2nd Petitioners under Article 13(1) of the Constitution have been violated due to unlawful arrest on 14 December

¹ 35(1) Any officer of the Excise, Police, Customs, or Revenue Departments, not below such rank and subject to such restrictions as the Minister may prescribe, and any other person duly empowered, may arrest without warrant any person found committing, in any place other than a dwelling house, an offence punishable under section 46, section 47 or paragraph (a) of section 48; and may seize and detain any excisable or other article which he has reason to believe to be liable to confiscation under this Ordinance or other law for the time being in force relating to excise revenue; and may search

(2) The driver of any vehicle or vessel who fails or refuses to stop or to halt such vehicle or vessel when directed to do so either verbally or by signal by an excise officer not below the rank of Inspector wearing his uniform and acting in execution of his duty, shall be guilty of an offence and shall be liable, upon conviction, to a fine not less than five thousand rupees and not exceeding twenty five thousand rupees or in default of payment of such fine to simple imprisonment for a term which may extend to two months.

(3) In this section 'vehicle' includes any carriage coach, cart, motor car, motor cycle, omnibus, lorry, bicycle, or other mechanically propelled vehicle and the 'driver' of a vehicle includes the rider of a motor cycle or of a bicycle; and 'signal' includes one or more blasts of a whistle

2017 by the 2nd and 3rd Respondents. This declaration shall not prejudice or affect the continuation of any pending criminal proceedings against the 1st and 2nd Petitioners.

Judge of the Supreme Court

Achala Wengappuli, J.

I agree.

Judge of the Supreme Court

Menaka Wijesundera J.

I agree.

Judge of the Supreme Court