

**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.

1. Ediriweera Arachchige Sisira
Wickramasekera,
No. 234/1, Gadaldeniya,
Pilimathalawa.
2. Galahitiyawe Gedara Kamani
Damayanthi,
264/ A, Gadaldeniya,
Pilimathalawa.

S.C. (FR) No. 27/2017

Petitioner

Vs.

1. Vijitha Wijekone,
Inspector of Police,
Office in Charge, Police Station,
Dawulugala.
2. Garunayaka Mudiyaasenlage
Nayanapriya Senatath Bandara
Garunayake,
Inspector of Police,
OIC, Special Crime Branch,
Police Station, Kandy.
3. Gunasinghe,
Inspector of Police, Officer in
Charge, Crime Branch, Police
Station, Kandy.

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

Respondents

Before : Janak De Silva, J.

Dr. Sobhitha Rajakaruna, J.

Menaka Wijesundera, J.

Counsel : Manohara De Silva, PC with Dilmini De Silva instructed by
Anusha Perusinghe for the Petitioners.

Anoopa de Silva, DSG instructed by Sonali Collure, SA for
the Respondent.

Written

Submissions : Latest written submissions on behalf of the Petitioner
on the 30th of June 2026.

Latest written submissions on behalf of the Respondents
on the 21st of August 2026.

Argued on : 21.05.2026

Decided on : 01.10.2026

MENAKA WIJESUNDERA J.

The two Petitioners in the instant matter namely Ediririweera Arachchige Sisira Wickramasekara and Galhitiyawwe Gedara Kamani Damayanathi, are husband and wife. They have sought a declaration that their rights under Articles 11,

12(1), 13(1) and 13(2) of the Constitution have been violated by the 1st, 2nd and 3rd Respondents. This Court, at the time the instant matter was supported, had granted leave under Article 12(1) of the Constitution and only against the 2nd Respondent on 20.03.2017.

An extract of Article 12(1) of the Constitution is set out below,

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

The two Petitioners have alleged that they had been arrested on 13.12.2016 and 14.12.2016 and that they were held in remand custody for some time.

The 1st Petitioner had been a construction contractor who had been doing business with a company called Convix Kandy for a sum of Rs. 988,000. This amount was due to be paid by the 1st Petitioner, and the 1st Petitioner had taken steps to issue four cheques to the company.

According to the 1st Petitioner, the complainant company had lodged a complaint with the Police Special Crimes Branch in Kandy. He had been summoned by the Police, according to him, and he claims that he had promised to pay back the money on or before 25.12.2016 to the 2nd Respondent. He further states that the 2nd Respondent had constantly reminded him of the undertaking. However, on 13.12.2016, the 2nd Respondent, along with Sub-Inspector (SI) Kulasekara, had gone to the address of the Petitioner around 5.00 a.m.

The 1st Petitioner had resisted arrest and had not assisted the Police investigations. He had been aided by the 2nd Petitioner, who, together with the 1st Petitioner, had behaved in a disorderly manner towards the Police party, following which SI Kulasekara had attempted to arrest the 1st Petitioner. SI Kulasekara along with the Petitioner and an Officer named Bandara, had fallen down a few steps. SI Kulasekara had sustained serious injuries from the fall and had been hospitalized in the Dawulugala Pamunuwa Hospital, and was later transferred to the Peradeniya Hospital, where he had succumbed to his injuries.

The Petitioners, in their petition, deny of any resistance shown to the Police group. According to them, they had been woken up by a sudden disturbance created by the Police group and had been alarmed at the possibility of being arrested for no justifiable reason.

Following the incident on 13.12.2016, the 1st Petitioner had been taken into Police custody on the same day and had been produced before the learned Magistrate on 14.12.2016. Thereafter, the Petitioners claim that the 1st and 2nd

Petitioner had been arrested and produced before the Magistrate on 14.12.2016 on B report No. 40910/16.

The Petitioners state that a B report had been filed on 16.12.2016 reporting the death of SI Kulasekara, in which they had been named as suspects. They have vehemently denied intentionally causing the death of SI Kulasekara

Although leave in the instant matter has been granted only against the 2nd Respondent under Article 12(1) of the Constitution, all three Respondents have filed their objections.

The Respondents in their objections, have stated that the 1st Petitioner had been a wanted suspect in the Magistrate Court case No. B 37495/16 for the offence of cheating and accordingly, a B report had been filed, marked and produced as “3RI”. The 2nd Respondent had called upon him to appear at the Police Station but, since he had failed to do so, the 2nd Respondent, acting on instructions of the Deputy Inspector General, Kandy, had gone to the residence of the Petitioners on 13.12.2016 and had tried to arrest him.

According to the Respondents, the 1st Petitioner had resisted being handcuffed by SI Kulasekara and the 1st Petitioner had pushed Kulasekara, causing him to fall down a few steps and sustain injuries. The 2nd Respondent had lodged a complaint regarding this incident but unfortunately, on 13.12.2016, SI Kulasekara succumbed to his injuries. Therefore, the 1st and 2nd Petitioners had been produced before the Magistrate for causing the death of SI Kulasekara, which had been done on the instructions of the Attorney General.

According to the Post-mortem Report of SI Kulasekara, he died on 13.12.2016 at 7.10 a.m. The Report recorded that he sustained injuries to the back of his head together with soft tissue injuries, in the form of abrasions and contusions which were placed on both the right and left arms.

The report further noted fibrosis existing in the left anterior descending coronary artery, showing a severe concentric narrowing causing 90% obstruction with atherosclerosis and the right coronary artery showing a narrowing of approximately 50%. The cause of death had been identified as ischaemic heart disease (restricted blood supply resulting in cell death).

The 2nd Respondent, against whom leave had been granted, specifically stated, while denying all the allegations against him, that the 1st Petitioner was a wanted suspect in relation to the relevant matter and that he had been evading arrest. As a result, they were compelled to go to his residence on 13.12.2016 along with

the now deceased SI Kulasekera. He further stated that the 1st Petitioner and his wife had been quite hostile towards the Police group, had seriously resisted arrest and had pushed SI Kulasekara and Police Constable (PC) Bandara.

SI Kulasekara had sustained injuries and succumbed to his injuries on the same day. The 2nd Respondent vehemently denies violating the rights of the Petitioners.

Upon perusal of the material placed before this Court by both parties, I am of the opinion that the 1st Petitioner, who was a wanted suspect for a cheating offence, had been evading arrest. As a result, the 2nd Respondent, along with SI Kulasekara, PC Bandara and others, had been compelled to go to his residence. Upon seeing the Police group, the 1st and 2nd Petitioners had become very aggressive. When the 1st Petitioner was about to be handcuffed and arrested by SI Kulasekara, SI Kulasekara, along with PC Bandara, had been pushed by the Petitioners. Both officers had fallen and sustained injuries. SI Kulasekara had later succumbed to his injuries.

It is, in fact, the Petitioners who had acted in an aggressive manner and were instrumental in causing the death of the now deceased SI Kulasekara. The Respondents had been compelled to go to the house of the Petitioners because when the Respondents had requested the 1st Petitioner to be present at the police station regarding a complaint of a cheating offence against him but he had ignored it.

Although all citizens are equal before the law, they also bear a corresponding duty to respect the law, maintain public order, and assist law enforcement authorities in the discharge of their lawful functions.

The material marked and produced as “1R2” before this Court discloses that the Petitioners had been served with Police Summons, issued under Section 109(6) of the Code of Criminal Procedure Act No. 15 of 1979, requiring them to appear before the Special Criminal Investigation Division on 21.11.2016. The summons expressly notified the Petitioners that, in the event of their failure to comply therewith, warrants would be sought for their arrest. However, the Petitioners failed to comply with the said summons.

It is the resistance of the Petitioners for the notice they have received from the Respondents which had compelled the Respondents to go to the house of the Petitioners, and when they did, they had behaved in an overtly hostile manner, which cost the life of a public officer when he was performing his duty.

In view of the above, I am unable to find that the actions of the Respondents were arbitrary, unlawful, or otherwise violative of the Petitioners' fundamental rights guaranteed under Article 12(1) of the Constitution.

Hence, as stated above, I see no violation of any fundamental rights of the Petitioners guaranteed under Article 12(1) of the Constitution. Accordingly, the instant petition is dismissed with Rs. 100,000 in costs.

JUDGE OF THE SUPREME COURT

Janak De Silva, J.

I agree.

JUDGE OF THE SUPREME COURT

Dr. Sobhitha Rajakaruna, J.

I agree.

JUDGE OF THE SUPREME COURT