

**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 read with  
Article 126 of the Constitution of the  
Democratic Socialist Republic of Sri  
Lanka.

Mrs. S. P. Pushpa Chandani,  
No. 03, Second Lane,  
Ratkarawwa, Maspotha,  
Kurunegala.

**SC (FR) No. 53/2020**

**Petitioner**

**Vs.**

1. Mr. J. A. U Pasmakantha  
Jayawickrema,  
Grama Niladhari of Ratkarawwa  
Division,  
No. 275/2, Maspotha Watte,  
Maspotha.
2. Mr. S. M Gamini Abeysinghe,  
Colony Officer in Maspotha,  
No. 101, Colombo Road,  
Pothuhera.
3. Mr. R. M. R. M. Ratnayake,  
Divisional Secretariat,  
Divisional Secretariat Office,  
Maspotha.

4. Mr. Ratnayake,  
Police Constable -20224  
Police Head Quarters Kurunegala.
5. Mr. Ariyasena Bandara  
Police Constable -30332  
Police Head Quarters Kurunegala.
6. Mr. Karunarathne  
Police Constable -23912  
Police Head Quarters Kurunegala.
7. Mr. W.H.A. Dhakshitha  
Darmarathne  
Police Constable -60895  
Police Head Quarters Kurunegala.
8. Mr. S.P. Priyankara Somakumara  
Police Constable -58065  
Police Headquarters Kurunegala.
9. Mr. R.D. Nimal Jayapala Police  
Sergeant -27613  
Police Head Quarters Kurunegala.
10. Mr. K.D. Deshapriya Kulathunga  
Police Sergeant -33568  
Police Headquarters Kurunegala.
11. Mrs. K.A.K.W.G. Ishani  
Madubashini Women Sub Inspector,  
Police Head Quarters Kurunegala.
12. Mrs D.M. Kusumawathi Women Sub  
Inspector,  
Police Head Quarters Kurunegala.

13. Mrs. H.M. Udala Sudershani  
Disanayake Women Inspector of  
Police,  
Police Head Quarters Kurunegala.
14. Mr. D.P. Ramanayake  
Sub Inspector,  
Police Head Quarters Kurunegala.
15. Mr. A. M. Jayasena  
Sub Inspector,  
Police Head Quarters Kurunegala.
16. Mr. Bandara  
Inspector of Police,  
Police Head Quarters Kurunegala.
17. Mr. Saman Disanayake Assistant  
Superintendent of Police.  
Office of the Superintendent of  
Police,  
Kurunegala District -01,  
Kurunegala.
18. Mr. Ariyaratne Bandara  
The Officer in Charge, Miscellaneous  
Offences Branch, Police Head  
Quarters Kurunegala.
19. Mr. A.A. Kapila Adhikari  
The Officer in Charge, Police Head  
Quarters, Kurunegala.
20. Mr. Managala Wickramanayake  
Assistant Superintendent of Police,  
The Office of the Superintendent of  
Police - Kurunegala District (02),  
Kurunegala.

21.Mr. Budhika Siriwardena  
Deputy Inspector General,  
Kurunegala Division,  
The Office of the Deputy Inspector  
General, Kurunegala.

22.Mr. Jagath Abeysiri Gunawardhane,  
Senior Deputy Inspector General,  
North-Western Province,  
Police Headquarters Kurunegala.

23.Mr. C. D. Wickramaratne Acting  
Inspector General of Police, The  
Police Headquarters, Colombo-01.

24.National Police Commission Block  
No. 9, B.M.I.C.H, Baudhaloka  
Mawatha, Colombo-07.

25.Attorney General, Attorney  
General's Department,  
Colombo -12

### **Respondents**

Before : Janak De Silva, J.  
Menaka Wijesundera, J.  
M. Sampath K. B. Wijeratne J .

Counsel : Rushdie Habeeb with Rizwan Uwais, Rizma Imtiaz  
instructed by Shandeepa Gamaethige for Petitioner.

Anil Silva, PC, with Anjana Abeyratne, instructed by  
Nandana Perera for the 6<sup>th</sup> to 15<sup>th</sup> and 18<sup>th</sup> & 19<sup>th</sup>  
Respondents.

V. Hettige, ASG instructed by Nimalika Wickremasinghe for  
1st - 3<sup>rd</sup>, 17<sup>th</sup>, 20<sup>th</sup> - 23<sup>rd</sup> and 25<sup>th</sup> Respondents.

Written

Submissions : Written submissions on behalf of the 1st - 3<sup>rd</sup>, 17<sup>th</sup>, 20<sup>th</sup> –  
23<sup>rd</sup> and 25<sup>th</sup> Respondents on the 9<sup>th</sup> of October 2024.

Written submissions on behalf of the Petitioners on 20<sup>th</sup>  
of February, 2026.

Argued on : 22.01.2026

Decided on : 24.06.2026

**MENAKA WIJESUNDERA J.**

The Petitioner in the instant matter has sought a declaration from this Court that her rights under Articles 11, 12(1) and 13(1) has been violated by the 4<sup>th</sup> to the 20<sup>th</sup> Respondents and has further sought that an order be made to pay her salary and the monthly combined allowances for the time period she had been allegedly interdicted, that is from the 17<sup>th</sup> of March 2019 to 19<sup>th</sup> of September 2019.

When this matter came before the Court on an application for leave, the Court granted leave pursuant to Articles 11, 12(1), and 13(1) of the Constitution, which provide as follows:

**Article 11-** *“No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”*

**Article 12(1) –** *“All persons are equal before the law and are entitled to the equal protection of the law.”*

**Article 13(1) –** *“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 Petitioner has joined as a Woman Police Constable (WPC) in the Sri Lanka Police sub-service on 20<sup>th</sup> March, 1998 and has been promoted to the WPC Permanent Service.

The Petitioner claims that she had been occupying the land given to her by her parents, where she had planted mahogany trees in one of the corners of her land. Her adjoining neighbor had been one Mrs. Sumithra Jayakody, who had destroyed part of her plants, and the Petitioner had lodged a complaint in the Kurunegala Police on or about 7<sup>th</sup> September 2014.

On or about the 28<sup>th</sup> September 2015, the Petitioner further states that the 2<sup>nd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Respondents had entered her land and had cut down some of her castor plants, stating that it had been done on the instructions of the 3<sup>rd</sup> Respondent. On the same day, she had lodged another complaint in the Kurunegala police station. The very next day, the petitioner had cut part of her Mahogany tree when her neighbor had complained against the petitioner once again, stating that she had destroyed her fence and had set fire to the same.

Thereafter, the Police had filed proceedings in the Magistrate's Court under Section 81 of the Criminal Procedure Code, and according to the Petitioner, the Respondents, who came to her land, had lodged a complaint that the Petitioner had obstructed them from conducting their duty, and the Police had filed the case B 2480/15 against the Petitioner under Section 344 of the Penal Code.

According to the Petitioner, the police had filed another case against the Petitioner by the no. 14853/18, which the Magistrate had dismissed.

Thereafter, the Petitioner claims that on the 12<sup>th</sup> of March 2019, the 14<sup>th</sup> Respondent and a police constable entered her land while she was at work and attempted to remove the mahogany log that was the subject of the dispute, but did not succeed.

Thereafter, again on the 17<sup>th</sup> of March, 2019, the 4<sup>th</sup> to the 18<sup>th</sup> Respondents had tried to take the mahogany tree log from her land. The Petitioner further alleges that when she had resisted, she had been arrested and had been subjected to degrading treatment by the 6<sup>th</sup> to the 9<sup>th</sup> and 13<sup>th</sup> to the 16<sup>th</sup> Respondents. She also states that she was mercilessly dragged on the road by the 18<sup>th</sup> and the 19<sup>th</sup> Respondents and

that, because she was handcuffed very tightly by the 11<sup>th</sup> Respondent, she had hurt her wrists.

When she had been produced before the Magistrate, she had complained to the Court of what she had alleged in the petition, and the Magistrate had ordered her to be produced before the Judicial Medical Officer (JMO).

The Petitioner had been charged with Contempt of Court, preventing the police officers from doing their duty for theft and for damage to the Mahogany tree under B763/19, B764/19 and B765/19.

She had been released on bail on the 25<sup>th</sup> of March, 2019. The Petitioner had taken steps to complain to the Human Rights Commission (HRC) on the 28<sup>th</sup> of March, 2019.

Due to all these complaints against the Petitioner, she had been interdicted but later reinstated on her appeal to the National Police Commission.

The 6<sup>th</sup> Respondent, who was attached to the Kurunegala Police Station, vehemently denied the allegations made by the Petitioner and stated that a person named Sumithra Jayakody had lodged a complaint against the Petitioner regarding the felling of a mahogany tree and the setting fire thereto. He further stated that the matter was duly investigated and appropriate legal action was instituted accordingly. The relevant case numbers are as follows:

1. In the case No. 98756 filed under Section 344 of the Penal Code to which the Petitioner had pleaded guilty,
2. In the case No. 1078/16 Magistrate had held that there was no criminal offence revealed and the Petitioner had been discharged,
3. In the case No. 14853/18, the Magistrate had dismissed it on 11.03.2019,

The 6<sup>th</sup> Respondent, on 17.03.2019, had further stated that the above-mentioned complainant, Sumithra Jayakody, had once again complained that the Petitioner had set fire to the mahogany trunk, and a police team had visited the Petitioner. According to the Respondent, the entire team had been obstructed by the Petitioner, and finally, she had been arrested and produced before the Magistrate.

The 3<sup>rd</sup> Respondent, who had been the Divisional Secretary of Maspotha had stated, while denying the allegations made by the Petitioner, that the Petitioner had been occupying part of a land given on a permit to one W. P. Siriyawathie on the authorization dated 08.04.2015. He further stated that he was aware that the 2<sup>nd</sup> Respondent, the Colony Officer, had visited the Petitioner's land to supervise the fencing on his authorization and that the Petitioner and Sumithra Jayakody had been present. Thereafter, a police team had arrived, stating that they had received a 119 call complaint. But later, both parties had settled the matter, and a permanent fence had been erected on 25.01.2016, marked and produced as "3R4".

The 3<sup>rd</sup> Respondent had gone on to say that the Petitioner had violated the terms of the settlement and cut down a mahogany tree, which was in the disputed area, and the Grama Niladhari had complained to him, and he had referred the matter to the police. The said documents had been marked and produced as "3R5", "3R6" and "3R7".

He had vehemently stated that there was no violation of any fundamental right of the Petitioner.

In the counter objections filed by the Petitioner, she had reiterated the position taken up in the petition.

The 17<sup>th</sup> Respondent, who had been the ASP of the Kurunegala District during the relevant period, had stated to the court in his affidavit that, while denying all the allegations made by the Petitioner, on or about the 17<sup>th</sup> of March 2019, the police had received a complaint, as stated above by Sumithra Jayakody, against the Petitioner.

According to the 17<sup>th</sup> Respondent, the police party had visited the area in which the incident occurred, as alleged by the other Respondents. He, too, had stated that the Petitioner had been behaving in a very unruly manner, obstructing the duties of the officers and trying to evade arrest. He, too, has personally gone to the location as he had been informed by one of his subordinate officers with regard to the behavior of the Petitioner. He had said further that the police officers had taken the Mahogany logs, which were partly burnt, and the Katty with which the Petitioner had threatened the police officers. These had been produced in the Magistrate's court of Kurunegala as productions. He had produced his notes marked as "17R1". He further states that the Petitioner had denied examination by a Judicial Medical officer, and he says that the Petitioner had been given food

brought from home because she had refused to eat anything brought by the police.

The 11<sup>th</sup> Respondent, who was serving as the Woman Sub-Inspector of Police, Kurunegala, had accompanied the 18<sup>th</sup> and 9<sup>th</sup> Respondents on 17.03.2019 at approximately 1.00 p.m. to the residence of the Petitioner. She states that she observed the Petitioner behaving in an unruly manner and obstructing the officers in the discharge of their duties. As the Petitioner continued to act in such a manner, she was arrested by the police. The remarks made by the 11<sup>th</sup> Respondent have been marked as "11R1". She further states that, before being taken to the police station, the Petitioner was permitted to change her clothes in her presence. Her note marked as "11R2" revealed the fact that food was brought from outside and was given to the Petitioner.

The 15<sup>th</sup> Respondent states that, at the material time, he was serving as a Sub-Inspector of Police attached to the Kurunegala Police Division. He further states that he adopts and reiterates the objections filed by the other Respondents. He avers that he was a member of the police team that visited the residence of the Petitioner on 17.03.2019 pursuant to a complaint made by one Sumithra Jayakody.

The notes recorded by the 15<sup>th</sup> Respondent are annexed hereto, marked as "15R1" and are pleaded as part and parcel hereof. He further avers that the Petitioner refused to grant the police officers entry into her premises and proceeded to verbally abuse the officers. The 15<sup>th</sup> Respondent states that the Petitioner thereafter brought a katty and attempted to assault the police officers who were present at the scene.

He also states that the Petitioner was never dragged along the road, and she was allowed to change her clothes before she was taken to the police station. His notes have been marked and produced as "15R3", "15R4", and "15R5", which also include a sketch of the land in which this incident, on the 17<sup>th</sup> of March, had taken place.

The 7<sup>th</sup> Respondent, who had also been a police constable attached to the Kurunegala police station, has stated in his affidavit that he had been part of the team that visited the Petitioner on 17.03.2019 and claims it was done on the complaint made by Sumithra Jayakody.

According to him, the Petitioner had also been very abusive, resistant and had tried to assault them with a katty. His notes have been marked and

produced at “7R1”. On the incident that took place on the 17<sup>th</sup> of March 2019, B report 763, 764 and 765 of 2019 had been marked, filed and produced before a magistrate.

The 8<sup>th</sup> Respondent, who was the Officer-in-Charge of the Kurunegala Miscellaneous Offences Branch, has filed an affidavit stating that Sumithra Jayakody initially lodged a complaint against the Petitioner on the 12<sup>th</sup> of March, 2019, following which the officers were directed to investigate the matter. He states that, in the course of the investigation, the officers visited the Petitioner’s residence and removed the said logs to be taken to the Police Station. He further states that, on that occasion, the Petitioner behaved in a boisterous manner and threatened to commit suicide if the officers proceeded with the removal of the logs. The 8<sup>th</sup> Respondent categorically denies that he visited the Petitioner’s residence on 17<sup>th</sup> of March, 2019. His statement has been marked as “8R1”.

The 9<sup>th</sup> Petitioner, also a police officer attached to the Kurunegala police division, has filed his affidavit and mentioned regarding the incident on 17<sup>th</sup> March of 2019, which has corroborated the events taken place and have been marked and produced as “9R2” and “9R3”.

The 10<sup>th</sup> Respondent, who had been a police sergeant attached to the Kurunegala police, also mentioned in his affidavit with regard to the event on the 17<sup>th</sup> of March, 2019, which also corroborates the affidavits of the others and also the boisterous and unruly behavior of the Petitioner on the said date. He had apparently recorded the entire incident and saved it onto Compact Disks, which had been marked and produced as “10R1” and “10R2”.

The 12<sup>th</sup> Respondent, who was a WSI attached to the Kurunegala Police, had also taken up the position of the other Respondent with regard to the incident on 17.03.2019 in her affidavit filed to this court. Her notes have been marked and produced as “12R1” and “12R2”.

The 13<sup>th</sup> Respondent, who is currently the Woman Chief Inspector of Police, Kurunegala, has also corroborated with the other Respondents with regard to the incident on 17.03.2019, which was filed before this court, and it has been produced as “13R2”, “13R3” and “13R4”.

The 14<sup>th</sup> Respondent, who was serving as the Sub-Inspector attached to the Kurunegala Police Division in relation to the incident dated 12.03.2019, states that a complaint had been received from Sumithra

Jayakody. Upon initiating an investigation into the said complaint, he and other police officers visited the residence of the Petitioner. However, at that time, the Petitioner allegedly behaved in an unruly manner and threatened the officers, stating that she would commit suicide if the mahogany logs were removed from the premises. The notes recorded by the 14<sup>th</sup> Respondent in connection with this incident have been marked and produced as “14R1”, “14R2” and “14R3”.

The 18<sup>th</sup> Respondent, who had been an officer in charge of the miscellaneous branch of the Kurunegala police, also has filed his affidavit stating to this court with regard to the receipt of the complaints of Sumithra Jayakody on 12<sup>th</sup> and 17<sup>th</sup> of March 2019 against the Petitioner, and he stated that the Petitioner pleaded guilty in the case filed against the Petitioner in Case No. 98756 in the Magistrates Court of Kurunegala.

He stated in his affidavit that on the 17<sup>th</sup> of March 2019, Sumithra Jayakody had informed the authorities that the police had failed to act on the complaint she lodged on the 12<sup>th</sup> of March 2019, alleging that the Petitioner was setting fire to the mahogany logs. This document has been annexed and marked as “18R1.” Therefore, he had been satisfied that an offence had been committed and had sent a police party including a Woman Police Constable. Later, he had been informed that the police party had been obstructed by the Petitioner. This had been communicated to the relevant SSP and ASP. Thereafter, he had proceeded with the 9<sup>th</sup> Respondent and the 11<sup>th</sup> Respondent to the Petitioner’s place, and his out entry has been marked as “18R2”. He had directed that the Petitioner be arrested, and the ASP of the area had arrived on the scene. These have been marked as “18R3”.

Therefore, he states that although the Petitioner was behaving in an unbecoming manner, her arrest was carried out by a Woman Inspector of Police together with a Woman Sub-Inspector of Police. They had accompanied the Petitioner inside her residence to enable her to change her clothes before escorting her to the police jeep. He vehemently denies the allegation that the Petitioner was dragged along the road and further denies that she was tightly handcuffed in a manner that could have caused any injuries. He further states that she refused to take meals from the police, thus allowing her relatives to bring her meals. His arrest notes had been marked and produced as “18R4”. She had also been produced on the 18<sup>th</sup> of March 2019, before the magistrate and the JMO, the certified copies have been marked as “18R6”.

Therefore, he vehemently denies that they have violated her fundamental rights.

The medico-legal examination form, which has been marked and produced as “18R6”, is attached and marked with his objections, and it has not recorded any injuries on the Petitioner.

The 19<sup>th</sup> Respondent, who was the officer in charge of the Kurunegala police, has stated in their affidavit, while denying the allegations of the Petitioner, corroborating the details in the affidavits of the other Respondents with regard to the incident on the 12<sup>th</sup> and 17<sup>th</sup> of March 2019 and the complaints received by Sumithra Jayakody against the Petitioner. He had further stated that the Petitioner had been occupying a land granted to her on a permit by the state to one Siriyawathi, who is the mother of the Petitioner.

According to the 19<sup>th</sup> Respondent, the complainant, Sumithra Jayakody was living on the adjoining land. On the 21<sup>st</sup> of September 2015, the said Sumithra Jayakody had requested the divisional secretary to demarcate her property, but the Petitioner’s mother had been objecting to the survey of these lands by the government-authorized surveyor and had insisted that a government surveyor should survey the land. Thereafter, the divisional secretary had instructed both parties not to cut down any trees on the boundary of their lands. Notwithstanding this direction, on the 29<sup>th</sup> of April, 2015, the mother of the Petitioner had cut down a tree in the disputed area. Thereafter, the divisional secretary had taken the said tree into his custody and directed the Grama Niladhari of the area to take charge of the said tree. By letter dated 29<sup>th</sup> April, 2015, the divisional secretary of Maspotha had requested the Kurunegala police to take appropriate action.

On the 26<sup>th</sup> of May, 2015, a surveyor attached to the surveyor department had surveyed the land and demarcated the boundaries, and the Grama Niladhari also had participated. But on the 21<sup>st</sup> of September 2015, Sumithra Jayakody informed the divisional secretary of Maspotha that her neighbor, the Petitioner, was trying to create a dispute with her, and the Divisional Secretary of Maspotha had requested the Kurunegala police to provide security on the 28<sup>th</sup> of September 2015 when the boundaries had been demarcated. But on the 1<sup>st</sup> of October, 2015, the Kurunegala Police had received a complaint from the 1<sup>st</sup> Respondent stating that he couldn't carry out his duties because the complainant was obstructing his duties

on the 28<sup>th</sup> of September, 2015. The said complaint was marked as “19R12”.

Thereafter, the Kurunegala police have conducted investigations and have sought an order by the magistrate to arrest the Petitioner. However, on 9<sup>th</sup> of October, 2015, the Petitioner had surrendered to the court and had been enlarged on bail. On the instructions of the Honorable Attorney General, actions had been taken against the Petitioner under Section 344 of the Penal Code bearing case no. 2480/2015, which had been renumbered as 98756, but on 22.06.2018, the Petitioner had plead guilty to the charges and the magistrate had instructed the Petitioner to enter to a bond on good behavior in a sum of rupees 75000, as per section 306 (2) of the Code of Criminal Procedure Act No.15 of 1979.

But on the 2<sup>nd</sup> June 2016, Sumithra Jayakody had complained of one of her mahogany trees being cut down by the Petitioner (Kurunegala Police B 1078/16), requesting that an inquiry be held under 431 Code of the Criminal Procedure. Upon its conclusion, the Magistrates held that there was no criminal offence revealed and had dismissed the case, but the divisional secretary had persistently requested the Police to take action against the Petitioner, as she was destroying the mahogany logs in the disputed area between the Petitioner and the complainant.

This dispute had culminated in the incident on the 17<sup>th</sup> of March 2019, in which he had corroborated the details given by the other Respondents and stated that none of the Respondents violated the fundamental rights of the Petitioner, and his notes have been marked as “19R1” to “19R16”.

In view of the material stated above, the Petitioner had alleged that her fundamental rights under Article 11, 12(1) and 13(1) have been violated from the 4<sup>th</sup> to the 20<sup>th</sup> Respondents. When this matter was supported, leave was granted under the above Article 11, 12(1) and 13(1) and according to the narratives of both parties, the Petitioner had been living on state land, and her neighbor had been one Sumithra Jayakody. The Petitioner’s mother, who was the original permit holder, had objected from day one for the peaceful demarcation of the two properties. However, the relevant officers, despite her objections, had carried out a survey and then had demarcated and fenced off the property of the Petitioner. The neighbor of the Petitioner had complained, on the 12<sup>th</sup> and 17<sup>th</sup> of March 2019, with regard to a mahogany tree belonging to her being cut by the Petitioner. The

neighbour, Sumithra Jayakody, had lodged the 2<sup>nd</sup> complaint as she had claimed that the police had not acted on her initial complaint.

The second complaint had been that she had set fire to the alleged mahogany log. According to the Respondent, when the police party had tried to visit her on the 17<sup>th</sup> of March 2019. The Petitioner had also behaved in an unruly manner, and had tried to assault the Police Officer with a Katty and the Petitioner claimed she had been arrested. The Petitioner claims she acted in this manner as the police didn't come with a warrant. The Respondent claims that there were numerous complaints lodged against the Petitioner; therefore, they had to investigate the matter. The Petitioner also claims that she had been dragged along the road and her hands were tightly handcuffed and because of which she had injuries. However, her medico-legal report does not reveal so.

She further states that she was taken to the police station without being properly dressed. The Respondents strongly deny this and have submitted their official notes stating that she was allowed to change her clothes before being taken into custody. The Petitioner also claims that she was not given any food and was not allowed to contact her relatives while in custody. However, according to the police Information Book (IB) extracts, a relative had brought her food to the police station during her detention.

There were two cases filed against the Petitioner; in one, she had pleaded guilty, and in the second, with regard to the incident of setting fire to a mahogany log, the magistrate had stated that there was no criminal incident revealed.

The Petitioner has alleged that her fundamental rights under Article 11, 12(1) and 13(1) under the constitution were violated. But, in view of the materials submitted in the pleadings of this case, there is no material to substantiate the allegations that her rights under the articles had been violated.

The Respondents may have wanted to investigate the matter without a search warrant but they had received many complaints by one Sumithra Jayakody, her immediate neighbor, and from the Divisional Secretariat office of Maspotha where they had repeatedly requested the Kurunegala Police to investigate into the Petitioner creating trouble to the officers of the secretariat and to her neighbor Sumithra Jayakody with regard to the common fence between the Petitioner and the complainant.

Therefore, it is my view that the Respondents had ample material and reason to visit the Petitioner on the 17<sup>th</sup> of March, 2019. Furthermore, I see no material to substantiate her position that she had been treated differently under the law or that she had been subjected to torture and inhuman treatment. As such, I see no violation of the Petitioner's rights under Articles 11, 12 (1) and 13(1).

Hence, the application is dismissed, without costs.

## **JUDGE OF THE SUPREME COURT**

### **Janak De Silva, J.**

Having had the benefit of reading in draft the judgment of my learned sister, Wijesundera, J. I regret my inability, with the greatest respect, to agree with the conclusion that there has been no infringement of the Petitioner's fundamental rights. I therefore proceed to set out the reasons which have led me to a different conclusion.

Leave to proceed has been granted under Articles 11, 12(1) and 13(1) of the Constitution.

### ***Article 12(1)***

The alleged infringement of these fundamental rights flow from the arrest of the Petitioner on 17.03.2019.

The 19<sup>th</sup> Respondent, who was the Headquarters Inspector of the Kurunegala Police Station, was on leave that day. The 18<sup>th</sup> Respondent was Acting as Headquarters Inspector of the Kurunegala Police Station.

The 18<sup>th</sup> Respondent received a complaint from J.A. Sumithra Jayakody (Complainant) that notwithstanding a complaint made by her on 12.03.2019 against the Petitioner, the Police did not take any action and that the Petitioner was once again setting fire to a Mahogany log. He got her complaint recorded.

It is apposite to quote verbatim, the two complaints made by the Complainant on 12.03.2019 and 17.03.2019. They read as follows:

දිනය :- 2019.03.12      වේලාව :- 08.45      පිටුව :- 21      ඡේදය :- 139

**රු. 20,000/= ක් වටිනා කපා හෙලන ලද ගසක කොටස් ගිණි තැබීම**

අංක 05, දෙවන පටුමග, රත්කරවිච මාස්පොත ලිපිනයේ පදිංචි ජේ.ඒ. සුමිත්‍රා ජයකොඩි යන අය ස්ථානයට පැමිණ ඇයට අයත් කපා හෙලන ලද ගසක කදන් ගිනි තබා ඇති බවට පැමිණිලිකිරීමට පැමිණ සිටි ඇය පාලන අංශයේ ස්ථානාධිපති තුමා හමුවට ඉදිරිපත් කර පැමිණිල්ල පහත සටහන් කරමි. **ජයකොඩි ආරච්චිලාගේ සුමිත්‍රා ජයකොඩි ස්ත්‍රී වයස අවුරුදු 40 යි සි/බු රැකියාව කම්කරු විවාහක පදිංචිය xxxxxxxxxxxxxxxx දු.ක. අංකය xxxxxxxxx** යන අය මෙසේ කියා සිටී. මා ඉහත ලිපිනයේ පදිංචිව සිටින අතර, මීට වසර 04 ක පමණ කාලයක සිට අපේ ඉඩමට අල්ලපු ඉඩමේ පදිවි පුෂ්පා චාන්දනී යන අය සමග මහෝගනී ගසක ආරවුලක් තියෙනවා. මෙම මහෝගනී ගස මට අයත් අතර, 2015.04.29 දින මෙම පුෂ්පා චාන්දනී මෙම ගස මගේ අවසරයක් නැතිව කපා හෙලුවා. මේ සම්බන්ධව කුරුණෑගල මහේස්ත්‍රාත් අධිකරණයේ නඩුවක් පවරා තිබුණු අතර, එම නඩුව 2019.03.11 වන දින ගරු අධිකරණයේ කැඳවා නඩු භාන්ඩ ගරු අධිකරණයට ඉදිරිපත් කර තිබුණේ නැති නිසා නඩුව නිශ්ප්‍රභා උනා. ඒ කරලා අධිකරණයෙන් නියෝගයක් කලා මෙම ගස නැවත අධිකරණයට ඉදිරිපත් කර නඩුව නැවත වරක් අධිකරණයේ කැඳවන ලෙස පොලීසියට නියෝග කලා. මේ සම්බන්ධව අපි කුරුණෑගල පොලීස් ස්ථානයේ ප්‍ර.පො.ප. නවරත්න මහතාට කීවා. අපි ඒ කරලා ගෙදර ගිය අතර, එදින සවස 06.30 ට පමණ මමත් මාගේ සැමියා වන එච්.එම්. හේරත් බංඩා පුතා වන එච්.එම්. රුවන්ත යන අයත් නිවසේ සිටින විට අපිට විශාල රනිඤ්ඤා ශබ්දයක් ඇසුනා. ඒ ඇහුණේ අපේ ගේ ඉස්සරහින් අපි එලියට ඇවිත් බලනවා විට අර කපා හෙලන ලද මහෝගනී ගස ගාව ලොකු රොඩු ගොඩක් එකතු කරලා එය පත්තු කරලා පුෂ්පා හා ඇයගේ සැමියා එම රොඩු ගොඩට රනිඤ්ඤා දාලා කියා. ඒ කරලා පුෂ්පා වැට ලගට ඇවිත් තොපි පොලීස්පති තුමාට කියලා කෙරුවද, වැහැරට කියලා කෙරුවද, උසාවියට දාලා කෙරුවද කියලා ඇහුවා. ඒ වෙලාවේ මගේ සැමියා 119 එකට කොල් කලා. 119 එක ආවේ රාත්‍රී 09.45 ට 10.00 විතර. ඒ අය කීවා මේ සම්බන්ධව පැමිණිලි කරන්න කියලා ඊට පසුව අපි 2019.03.12 වන දින උදේ කපා තිබු ගහ දිහා බැලුවා. එම ගස මීට පෙර කපා කුට්ටි 03 කට වෙන් කර තිබුණු අතර, එහි තිබුණු මැද කොටස සම්පූර්ණයෙන්ම ගිනිගෙන තිබුණා. ඒ වන විටත් ගිනිදර තිබුණා. අපි එතන බලනවා දැකලා පුෂ්පා ඇවිත් නැවත රොඩු - වගයක් ඒ ඇවිලෙන කොට්ට

දාලා ගියා. මෙම මහෝගනී ගසේ වටිනාකම රු.20,000/= ක් පමණ වෙනවා. මම මෙම පැමිණිල්ල කරන්නේ මෙය විභාග කර සාධාරණයක් කර දෙන ලෙස හා දැනට පවතින තත්වය අනුව මෙම කපා හෙලන ලද ගසේ ඉතිරි කොටස හෝ අධිකරණයට ගෙනැවිත් නැවත මගේ නඩුකරය අධිකරණයේ කැඳවන ලෙස ඉල්ලා සිටිනවා. මව් කීමට අත්තේ එපමනයි කියවා දුන්නා නිවැරදි බවට පිලිගෙන(අත්සන) අත්සන් කලා ඉහත නම සදහන් අයගේ ප්‍රකාශය කා.පො.කො. 4237 නයනා වන මා අවංක ලෙසත් නිවැරදි ලෙසත් වාර්තා ගත කළ බවට මෙයින් ප්‍රකාශ කරමි. (කා.පො.කො. 4237 නයනා ගේ අත්සන)

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පිටුව :- 2019.03.17      වේලාව :- 09.30      පිටුව :- 106      ඡේදය :- 210

**ගසක් ගිණිතැබීම**

ඡේද 139 පරිදි කරන ලද පැමිණිල්ලේ එම ගස ගිණිතැබීම සම්බන්ධව පැමිණිල්ලක් කිරීමට පැමිණ සිටින සුමිත්‍රා ජයකොඩි නැමැත්තියගේ පැමිණිල්ල පො.සැ. 5148 වන මා පහත සටහන් කරමි. **ජයකොඩි ආරච්චිලාගේ සුමිත්‍රා ජයකොඩි ස්ත්‍රී වයස අවුරුදු 40 යි සිංහල/බුද්ධාගම රැකියාව පුද්ගලික ආයතනයක කම්කරු විවාහක පදිංචිය xxxxxxxxxxxxxxxx දු.ක. අංකය xxxxxxxxxxxx** මෙසේ කියා සිටී මා ඉහත ලිපිනයේ පදිංචිව ඉන්නවා. මා 2019.03.12 දින මහෝගනී ගසේ කොටසක් ගිණි තැබීම සම්බන්ධව පැමිණිල්ලක් කලා. එම පැමිණිල්ලට පොලීසියෙන් ගොස් එම මහෝගනී ගස පොලීසියට රැගෙන ඒමට පොලීසියෙන් ගියා. නමුත් වග උත්තරකාර පුෂ්පා වාන්දනී නැමැත්තිය පොලීසියට රැගෙන එන අවස්ථාවේ විරෝධය පෑම නිසා පොලීසියට රැගෙන ආවේ නැහැ. පසුව අද දින 2019.03.24 දින උදේ 08.30 ට විතර පුෂ්පා වාන්දනී නැමැත්තිය එම ගසට නැවත ගිණි තබා තියෙනවා. එම ගස දැනට ගිණි ගනිමින් තියෙන්නේ. මේ සම්බන්ධව අධිකරණයේ නඩු පවරා තියෙනවා. මෙය අධිකරණයට ඉදිරිපත් නොකිරීම නිසා එම නඩුව කපා හැරියා. මෙම මහෝගනී ගස කපා දැනට අවුරුදු 3 1/2 ක් පමණ වෙනවා. මා මෙම පැමිණිල්ල කරන්නේ ගස ආරක්ෂා කර දෙන ලෙසටයි. මා හට කීමට ඇත්තේ එපමනයි මාගේ පැමිණිල්ල කියවා දුන්නා. මේ ගස කැලී 03 කට කුට්ටිකර තිබෙනවා. මැද කුට්ටියට ගිණි තබා ඇති අතර, මුල් කුට්ටියටද කෙලවරට ගිණි තබා තියෙනවා. මුල් කුට්ටිය අඩි 12 ක් පමණ වන අතර, දෙවන කුට්ටිය අඩි 04 ක් පමණ වෙනවා. අග කුට්ටිය සම්බන්ධව මට කීමට නොහැක මම ගස ඇත්තේ පුෂ්පා වාන්දනී නැමැත්තියගේ ඉඩමේ තිබෙනවා. ගසේ අයිතිය ඇත්තේ මා හටයි. මා හට කීමට ඇත්තේ මෙපමනයි

ප්‍රකාශය කියවා දුන්නා. මා පැමිණිලි කරන්නේ මේ ගස පොලීසියට රැගෙන ඇවිත් අධිකරණයේ නඩුව ගොනු කරන ලෙසයි. මා හට කීමට ඇත්තේ මෙපමණයි. මාගේ ප්‍රකාශය කියවා දුන්නා. නිවැරදි බවට පිලිගෙන (අත්සන) අත්සන් කලා. ඉහත නම සඳහන් සුමිත්‍රා ජයකොඩි යන අයගේ පැමිණිල්ල පා.සැ. 5148 වන්නිතායක වන මා විසින් අවංකවත් නිවැරදිවත් වාර්තා ගත කළ බව මෙයින් ප්‍රකාශ කරමි. (පො.සැ. 5148 වන්නිතායකගේ අත්සන)

The core of these two complaints is that a Mahogany tree belonging to the Complainant, had been cut by the Petitioner as far back as 2015, there was a case in Magistrates Court of Kurunegala on this matter, this case was called on 11.03.2019 and dismissed as the productions were not produced and that Court had directed the Police to produce the tree in Court and call the case again but the Petitioner set fire to the tree on 12.03.2019.

The 18<sup>th</sup> Respondent states that after the statement of the Complainant was recorded, he contacted his “Senior officers” and on their instructions and being *satisfied that an offence* had been committed, sent a police party consisting of the 6<sup>th</sup>, 7<sup>th</sup>, 10<sup>th</sup> and 15<sup>th</sup> Respondents along with PSD 34364 Kumara to proceed to the location and take action.

Part V of the Code of Criminal Procedure (Code) contains the statutory framework governing the investigation of offences. Section 109(5)(a) Code reads as follows:

*“If **from information received** or otherwise, an officer in charge of the police station or inquirer **has reason to suspect the commission of any offence**, he shall himself **make an investigation** or authorize the making of an investigation under this Chapter in the manner hereinafter set out;*

*Provided however, if the offence is a cognizable offence or he has reason to apprehend a breach of the peace, he shall, in the case of every inquirer, forthwith submit a report to the Magistrate's Court having jurisdiction in respect of such offence and in the case of an officer in charge of the police, station, forthwith submit a report to his own immediate superior and proceed in person to the spot to investigate the facts and circumstances of the case and to take such measures as may be necessary for the immediate discovery and arrest of the offender;*

*Provided further, that an **officer in charge of a police station may depute one of his subordinate officers to proceed to the spot to make such investigation and to take such measures as may be necessary for the discovery and arrest of the offender.***”  
(emphasis added)

It is probably in this context that the 18<sup>th</sup> Respondent claims that he was satisfied that an offence had been committed.

In ***Madushan v. Harith, Officer in Charge, Uragasmanhandiya Police Station and Others [S.C.F.R. Application No. 378/2019, S.C.M. 18.06.2025]*** it was held that the onus is on the Police to establish that they have complied with the requirements in Section 109 of the Code to the satisfaction of Court.

Any criminal investigation should be commenced only where there is reason to suspect the commission of any offence. This suspicion can arise otherwise than on information received in terms of Section 109 of the Code. As Justice Dr. A.R.B Amarasinghe states in discussing Section 109 of the Code in “*Our Fundamental Rights of Personal Security and Physical Liberty*”:

*“Section 109(5)(a) of the Criminal Procedure Code provides that if from information received or otherwise an officer in charge of a police station has reason to suspect the commission of an offence, provided the offence is a cognizable offence, or he has reason to apprehend a breach of the peace, submit a report to his immediate superior officer, and himself proceed or depute one of his subordinate officers to proceed to the spot to investigate the facts and circumstances of the case and to take such measures as may be necessary for the immediate discovery and arrest of the offender.”*

The Police is under no duty to commence an investigation upon every complaint. In fact, Section 109(5)(b) specifically states that an officer in charge of a police station is not bound to investigate a case where it appears to him that there is no sufficient ground for entering on an investigation [***Attorney General v. Punchi Banda and Others (1986) 1 Sri.L.R. 40 at 42***].

The 18<sup>th</sup> Respondent claims that he initiated an investigation upon being satisfied that an offence had been committed, having regard to the complaints lodged by the Complainant on 12.03.2019 and 17.03.2019. It

is therefore necessary to examine whether his conclusion was reasonably founded on the material available to him.

The Magistrate's Court proceedings referred to in the said complaints are those in M.C. Kurunegala Case No. 14853, in which both the Complainant and the Petitioner were named as parties. The proceedings arose from an application filed by the Police on 05.11.2018 seeking an order under Sections 431(1) and 431(2) of the Code.

These provisions contemplate the production before a Magistrate of property seized under Section 29 of the Code, or property alleged or suspected to have been stolen, or found under circumstances giving rise to a suspicion that an offence has been committed. Upon such production, the Magistrate is empowered to make appropriate orders regarding the custody or delivery of the property to the person lawfully entitled to its possession.

A perusal of the proceedings in the aforesaid case reveals that, contrary to the assertions made by the Complainant, the learned Magistrate did not dismiss the application on the basis that the productions had not been produced before Court. Nor did the learned Magistrate direct the Police to produce the tree in Court and thereafter recall the matter.

The full order made by the learned Magistrate is produced below:

.....  
**කුරුණෑගල මහේස්ත්‍රාත් අධිකරණයේදීය.**

**මහේස්ත්‍රාත් ඒ.ඩී.සී.එස්.හේවාචසම් මැතිතුමා ඉදිරිපිටදීය.**

**සටහන් කලේ: ල/ලේ:වානිකා සදමාලි විසිනි.**

නඩු අංකය:14853

දිනය: 2019.03.11

**නි යෝ ග ය.**

මෙම නඩුව කුරුණෑගල පොලීසිය විවිධ පැමිණිලි අංශයේ ස්ථානාධිපතිවරයා විසින් පාර්ශවකරුවන් වන සුමිත්‍රා ජයකෝඩි හා සේනානායක පතිරනලාගේ පුෂ්පා වාන්දනී යන අයවලුන්ට එරෙහිව මෙම අධිකරණයේ අපරාධ නඩු විධාන සංග්‍රහයේ 431 (1) හා (2) වගන්ති ප්‍රකාරව මහෝගනී ගසක් සම්බන්ධයෙන් අයිතිකරු තීරණය කොට මුදාහැරීම සම්බන්ධයෙන් මෙම අධිකරණයට ඉදිරිපත් කර ඇත.

මෙම නඩුවට අදාළව කරුණු සලකා බැලීමේදී මෙම නඩුවට විෂය ගත වස්තුව වන මහෝගනී ගස සම්බන්ධයෙන් මීට පෙර බී.1078/16 යටතේ පූර්වගාමී මහේස්ත්‍රාත්තුමිය වෙත බී වාර්තාවකින් කරුණු ඉදිරිපත් කර ඇති බවට නිරීක්ෂණය වේ. මෙම බී වාර්තාවෙන් ඉදිරිපත් කර ඇති කරුණු පරීක්ෂා කර බැලීමේදී පූර්වගාමී මහේස්ත්‍රාත්තුමිය විසින් නිරීක්ෂණය කර නිගමනය කර ඇත්තේ වරදක් එකී බී වාර්තාවෙන් අනාවරණය නොවන බැවින් අපරාධ නඩු විධාන සංග්‍රහයේ 431 වගන්ති ප්‍රකාරව නියෝගයක් නිකුත් කිරීමේ හැකියාවක් නොපවතින බවයි. මෙම නඩුව සම්බන්ධයෙන් වුවද පොලීසිය විසින් පෙර පැවති තත්ත්වය යටතේම මෙම අධිකරණයේම කරුණු ඉදිරිපත් කර ඇති බවට නිරීක්ෂණය වේ. මෙම නඩුවට අදාළව ප්‍රාදේශීය මහ ලේකම් මාස්පොත විසින් ඉදිරිපත් කර ඇති වාර්තා අනුව අධිකරණයට නිරීක්ෂණය වන්නේ රජයට අයත් ඉඩම් දෙකක ආරවුල් සහිත වැට මායිමක් නිරවුල් කිරීමක් පසු අවස්ථාවක සිදු කර ඇති බවත් එහිදී මහෝගනී ගස එකී පුෂ්පා වාන්දනී යන අයට නිදහස් කිරීම සම්බන්ධයෙන් ප්‍රාදේශීය ලේකම්වරයා සැහීමට පත්වී ඇති බවයි. ඒ අනුව අධිකරණයට නිරීක්ෂණය වන ආකාරයට මෙම නඩුව අයිතිකරු කවරෙකුද යන්න සම්බන්ධයෙන් ප්‍රාදේශීය ලේකම්වරයා ඔහුට හිමි ඉඩම් සංර්ච්චන ආඥා පනත යටතේ පැවරී ඇති බලතල අනුව තීරණය කිරීමක් සිදු කර ඇති බවට නිරීක්ෂණය වේ. විශේෂයෙන්ම මෙම නඩුවට අදාළව අපරාධ නඩු විධාන සංග්‍රහයේ 431 වගන්ති ප්‍රකාරව විමසීමක් පැවැත්වීමට ප්‍රථමයෙන් අපරාධ නඩු විධාන සංග්‍රහයේ 29 වන වගන්තිය යටතේ හා යම් සොරකමක් සිදු කිරීමෙන් අනතුරුව ග්‍රහනයට ගත් දේපළක් ලෙස හෝ යම් අපරාධයක් සම්බන්ධයෙන් යොදා ගන්නා ලද දේපළක් වශයෙන් මෙම මහෝගනී ගස මෙම අධිකරණයටද නිරීක්ෂණය නොවේ. ඒ අනුව මෙම නඩුව සම්බන්ධයෙන් මෙම අධිකරණයට නියෝගයක් ලබාදීමේ හැකියාවක්, ඒ අනුව නොපවතින බවට නිරීක්ෂණය කරමි.

විශේෂයෙන්ම දෙපාර්ශවය විසින්ම අයිතිවාසිකම් ඉදිරිපත් කරණු ලබන අවස්ථාවේදී සිවිල් නඩුවක් ලෙස එය ඉදිරිපත් කිරීමේ හැකියාවක් පවතින බවට නිරීක්ෂණය වන අතර සිවිල් නඩු විධාන සංග්‍රහයේ 628 වගන්ති ප්‍රකාරව භාරය දරණ පාර්ශවය විසින් අදාළ අයිතිවාසිකම් ඉදිරිපත් කරන පාර්ශවයන් විත්තිකරුවන් කරමින් දිසා අධිකරණයේ අන්තර් උත්තරවාදී නඩුකරයක් ගොණු කිරීමේ හැකියාවක් පවතින බව ද නිරීක්ෂණය වේ.

ඒ අනුව මෙම නඩුවේ ඉදිරිපත් කරණු සලකා බලා 01 වන හා 02 වන පාර්ශවය වෙත එකී මහෝගනී ගස මුදාහැරීම සම්බන්ධයෙන් අපරාධ නඩු විධාන සංග්‍රහයේ 431 (1) හෝ (2) වගන්ති ප්‍රකාරව පියවර ගැනීමේ හැකියාවක්

නොපවතින බවට නිරීක්ෂණය කරමි. ඒ අනුව පැමිණිලි ඉදිරිපත් කරමින් විවිධ පැමිණිලි අංශයේ ස්ථානාධිපතිවරයා විසින් කර ඇති එකී කුමන හෝ පාර්ශවයක් වෙත මහෝගනී ගස මුදාහැරීම සම්බන්ධයෙන් වන නියෝගයක් මෙම අවස්ථාවේදී නිකුත් නොකරමි.

අත් කලේ :

(ඒ.ඩී.සී.එස්.හේවාලසම්)

මහේස්ත්‍රාත් - කුරුණෑගල. 2019.03.11

The learned Magistrate expressly held that there was no material before Court to conclude that the Mahogany tree had been seized under Section 29 of the Code, nor that it was property alleged or suspected to have been stolen, or found under circumstances giving rise to a suspicion that it had been used in the commission of an offence.

The learned Magistrate further observed that the dispute between the parties was amenable to resolution through civil proceedings and that recourse could be had to the remedies available under Section 628 of the Civil Procedure Code.

It is also pertinent to note that, prior to the institution of the aforesaid proceedings, the Kurunegala Police had filed a 'B' Report in the Magistrate's Court of Kurunegala in Case No. B1078/16 on 16.05.2016, informing Court that the Petitioner had failed to hand over the Mahogany tree to the Kurunegala Police to be produced before Court. By that report, the Police sought an order directing the Petitioner to surrender the Mahogany tree for production purposes. On 04.07.2016, the learned Magistrate rejected the request and held that no offence has been disclosed.

Against this backdrop, it is evident that the complaints made by the Complainant were founded upon a material misrepresentation, if not a complete distortion, of the order made by the learned Magistrate on 11.03.2019 as well as the previous order made in M.C. Kurunegala in Case No. B 1078/16 on 04.07.2016. The 18<sup>th</sup> Respondent has admitted in his affidavit that he was aware that *“the Learned Magistrate had made an order that the Mahogani logs could not be released to any of the parties to the said case in Magistrates Court Kurunegala Case No. 14853/18.”* Yet, the 18<sup>th</sup> Respondent proceeded to commence an investigation on the basis of those complaints without first taking the elementary step of carefully

examining the order of Court upon which the complaints purportedly relied. Had such inquiry been made, the true position would have been readily apparent.

The decision of the 18<sup>th</sup> Respondent to initiate an investigation has been taken in disregard of the requirements imposed by Section 109(5)(a) of the Code, which obliges an investigating officer to satisfy himself that there exists a proper factual basis warranting the commencement of criminal investigations.

In ***Victor Ivon v. Sarath N. Silva, Attorney General and Another*** [(1998) 1 Sri.L.R. 340 at page 349], Fernando, J. stated that:

***“A citizen is entitled to a proper investigation - one which is fair, competent, timely and appropriate - of a criminal complaint, whether it be by him or against him. The criminal law exists for the protection of his rights - of person, property and reputation - and lack of a due investigation on will deprive him of the protection of the law.”*** [emphasis added]

By enacting Section 109(5)(a) of the Code, the Legislature has imposed a condition precedent to the commencement of an investigation under Part V thereof. The obvious purpose of this provision is to ensure that a person is subjected to the rigours of a criminal investigation only where there exists a reasonable suspicion that an offence has been committed. Such suspicion cannot be founded upon mere assertion or conjecture; it must be grounded upon an objective assessment of the material available to the investigating officer at the time.

In the present case, I am unable to identify any material upon which the 18<sup>th</sup> Respondent could reasonably have formed such an opinion. On the contrary, the material before this Court demonstrates that the allegations contained in the Complainant's complaints were inconsistent with the order made by the learned Magistrate. Had the 18<sup>th</sup> Respondent taken the elementary precaution of examining the said order before initiating investigations, the true state of affairs would have become immediately apparent. Indeed, such an examination may well have raised concerns as to whether the Complainant had deliberately furnished false information with the intention of misleading the Police.

I am mindful that the evidence discloses a history of acrimony between the Petitioner and the Complainant. It is also evident that, on a previous

occasion, the Petitioner pleaded guilty to an offence under Section 344 of the Penal Code arising from the obstruction of a Grama Niladhari who had sought to intervene in the dispute between the parties. However, these matters, whatever their significance in the broader context of the relationship between the parties, cannot detract from the Petitioner's entitlement to the equal protection of the law and the safeguards guaranteed by the Constitution.

The fundamental rights guaranteed by the Constitution is not only for the righteous, the popular, or the law-abiding alone. Lord Buddha allowed Angulimala to become a monk and seek enlightenment despite his violent history. In John 8:7, Jesus states, “*Let him who is without sin among you be the first to cast a stone at her.*” In Bhagavad Gita (9:30), it is stated that ‘even if the vilest sinners worship me with exclusive devotion, they are to be considered righteous because they have made the proper resolve’. Similarly, the fundamental rights enshrined in the Constitution are guaranteed to every person and must be accorded equal respect and protection irrespective of an individual's past conduct, character, or standing. Any interference with those rights must be justified strictly in accordance with law.

As Atukorale J., in examining Article 12(1) of the Constitution, held in ***Amal Sudath Silva v. Kodituwakku, Inspector of Police and Others*** [(1987) 2 Sri.L.R. 119 at 127]:

*“Every person in this country, be he a criminal or not, is entitled to this right to the fullest content of its guarantee. Constitutional safeguards are generally directed against the State and its organs. The police force being an organ of the State is enjoined by the Constitution to secure and advance this right and not to deny, abridge or restrict the same in any manner and under any circumstances...”*  
(emphasis added)

I declare that the 18<sup>th</sup> Respondent has infringed the fundamental right guaranteed to the Petitioner under Article 12(1) of the Constitution by commencing a criminal investigation against her contrary to Section 109(5)(a) of the Code.

**Article 13(1)**

Admittedly the 18<sup>th</sup> Respondent directed the 6<sup>th</sup>, 7<sup>th</sup>, 10<sup>th</sup> and 15<sup>th</sup> Respondents to proceed to the location and take necessary action. At the same time, he directed the 13<sup>th</sup> Respondent to also proceed to the location.

After sometime, the 18<sup>th</sup> Respondent received a call from the 15<sup>th</sup> Respondent informing that the Petitioner was obstructing the Police Officers from carrying out their duties and was creating a breach of the peace. The 15<sup>th</sup> Respondent had also informed this situation to the SSP and the ASP of the area. Both of them had telephoned the 18<sup>th</sup> Respondent and directed him to proceed to the location immediately.

Subsequently the 18<sup>th</sup> Respondent proceeded to the location with the 9<sup>th</sup> and 11<sup>th</sup> Respondents. Upon arriving at the location, the 15<sup>th</sup> Respondent explained to him that the Petitioner obstructed the Police Officers in carrying out their duties. The 7<sup>th</sup>, 10<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup> and 15<sup>th</sup> Respondents have in their affidavits corroborated that the narration of the obstruction to the Police Officers.

Thereafter, as it appeared that the Petitioner was committing a serious breach of the peace and there was credible information that she had committed cognizable offences, the 18<sup>th</sup> Respondent directed the female Police officers present to arrest the Petitioner who was thereafter arrested after explaining the reasons for her arrest.

The entry made by the 18<sup>th</sup> Respondent indicates that the Petitioner was arrested for the offence of obstructing the duties of Police Officers.

In ***Vancuylenberg v. Fernando* [32 N.L.R. 45]** it was held that a police constable has no right to require the driver of a motor bus who has committed an offence under the Motor Car Ordinance to drive him to the police station. Court held that the subsequent events, which took place when the constable overstepped his powers, cannot be said to be an obstruction of the police constable in the discharge of his duties.

In ***Muttusamy v. Inspector of Police, Kahawatta* [54 C.L.W. 33]** Gratiaen, J. held that to establish a charge under Section 183 of the Penal Code, it is incumbent on the prosecution to prove affirmatively (a) that the public officers concerned were in fact engaged in the lawful exercise of their public functions; (b) that the conduct of the accused as specified in the charge constituted obstruction within the meaning of that section.

In ***Darlis v. Rajendra, A.G.A. Matara* [33 C.L.W. 94]** the appellant had been convicted under Sections 183 and 344 of the Penal Code of having

obstructed a public servant in the discharge of his public functions and with having used criminal force on him in the execution of his duties as such public servant. The case for the prosecution was that a Food Control Field Assistant went to search the house of the accused with a view to discovering whether paddy or rice was hoarded in the house of the accused.

On appeal the point was taken that on behalf of the accused that the Field Assistant had no legal right and was not vested with lawful authority to enter the house of the accused and make the alleged search. Nagalingam, A.J., held that the Field Assistant did not have the power and therefore the search is illegal and could be lawfully resisted.

These authorities clearly establish that a charge under Section 183 of the Penal Code cannot be maintained unless the public officers concerned were in fact engaged in the lawful exercise of their public functions.

I am mindful that, whether an infringement of Article 13(1) has occurred is not dependent on the final outcome of the criminal proceedings.

As Wanasundera, J. held in **Joseph Perera Alias Bruton Perera v. Attorney-General and Others** [(1992) 1 Sri LR 199 at 236]:

*“The principles and provisions relating to arrest are materially different from those applying to the determination of the guilt or innocence of the arrested person. One is at or near the starting-point of criminal proceedings while the other constitutes the termination of those proceedings and is made by the judge after hearing submissions from all parties. 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.”*

Article 13 (1) of the Constitution states that:

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

This provision has two parts. The first prescribes that an arrest must be done according to lawful procedure, while the second requires that the reasons for the arrest must be informed.

In the assessment of any violation under Article 13 (1), the questions that arise are 1) if there was an arrest, if so, 2) whether the arrest was made according to the procedure established by law, and 3) if the reasons for the arrest were informed to the Petitioners at the time of arrest.

There is no dispute that the Petitioner was arrested.

The question then is whether the proper procedure was followed in making the arrest.

In **Channa Pieris and Others v. Attorney General and Others [(1994) 1 Sri. L. R. 1 at 27]**, Amarasinghe J. held that:

*“The procedure generally established by law for arresting a person without a Warrant are set out in Chapter IV B (Sections 32-43) of the Code of Criminal Procedure. Where a person is arrested without a warrant otherwise than in accordance with these provisions, Article 13(1) of the Constitution will be violated.”*

Hence the legality of an arrest without a warrant depends on whether the provisions in Chapter IV B (Sections 32-43) of the Code of Criminal Procedure has been complied with.

Section 32 of the Code specifies several instances where any Police Officer may without an order from a Magistrate and without a warrant arrest any person.

In **Mohamed Razik Mohamed Ramzy v. B.M.A.S.K. Senaratne and Others [S.C.F.R. Application No. 135/2020, S.C.M. 14.11.2023 at pages 41-42]** my learned brother Kodagoda, P.C., J. after examining the scope of Section 32(1)(b) of the Code held as follows:

*“[...] for a peace officer to be authorized by law to arrest a person (suspect) for having committed a cognizable offence, **one of the following** should have occurred–*

- (i) the **peace officer** should have by himself **formed an objective opinion** that the **suspect has been concerned** in the commission of a cognizable offence;*
- (ii) the **peace officer** should have either **directly received a complaint** or must be **aware that a complaint has been made** against the suspect, and he should have formed the **objective opinion** that **such complaint against the suspect***

*(that he has been concerned in committing a cognizable offence)*  
**is reasonable;**

- (iii) *the peace officer should have either directly received information or should be aware that information has been received against the suspect, and he should have formed the objective opinion that **such information is credible and gives rise to the allegation that the suspect has been concerned** in the commission of a cognizable offence; or*
- (iv) *the peace officer should have developed **reasonable suspicion** that the suspect has been concerned in the commission of a cognizable offence.” (emphasis added)*

As expounded earlier, the investigation commenced by the 18<sup>th</sup> Respondent is unlawful. The Police Officers sought to obtain the custody Mahogany tree notwithstanding the order made by the learned Magistrate in M.C. Kurunegala Case No. B1078/16 on 04.07.2016 that no offence has been disclosed. How can the setting on fire of the Mahogany tree be an offence when the learned Magistrate has concluded that its cutting down discloses no offence? Moreover, the Complainant distorted the order made in Magistrates Court Kurunegala Case No. 14853/18 which was within the knowledge of the 18<sup>th</sup> Respondent. The actions of the Police party were not under lawful authority. Therefore, the 18<sup>th</sup> Respondent could not have formed an objective opinion that the Petitioner has been concerned in the commission of a cognizable offence.

I declare that the 18<sup>th</sup> Respondent infringed the fundamental rights guaranteed to the Petitioner by Article 13(1) of the Constitution. Thereby he once again infringed the fundamental rights guaranteed to the Petitioner by Article 12(1).

### **Article 11**

I have given anxious consideration to the allegation that the rights guaranteed to the Petitioner by Article 11 of the Constitution has been infringed. However, the evidence does not establish any such violation.

For the foregoing reasons, I declare that the 18<sup>th</sup> Respondent has infringed the fundamental rights guaranteed to the Petitioner by Articles 12(1) and 13(1) of the Constitution.

However, I am not inclined to award any compensation to the Petitioner. This is in light of her overall conduct, which gave rise to the particular incident.

Application partly allowed.

**JUDGE OF THE SUPREME COURT**

**M. Sampath K. B. Wijeratne, J.**

I have considered in draft, the judgements proposed to be delivered by my learned sister Wijesundera, J. and my learned brother De Silva, J. I agree with the reasons and conclusions of my learned brother De Silva, J.

**JUDGE OF THE SUPREME COURT**