

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

In the matter of an application under Article 126 of the  
Constitution.

**SC Application No. 488/98**

Hewagam Koralalage Maximus Danny,  
Nattandiya Road,  
Nanalindawatta,  
Dankotuwa.

**Petitioner**

**Vs.**

1. IP Sirinimal Silva,  
Police Station,  
Chilaw.

2. IP Jayatilaka,  
Police Station, Chilaw.

3. Police Sergeant Kapukotuwa, 13846  
Police Station, Chilaw.

4. PC Bandara ,29768  
Police Station, Chilaw. .

5. RPC Deepal, 16638 ,  
Police Station, Chilaw.

6. Head Quarters Inspector,  
Police Station, Chilaw

7. Hon. Attorney General

The Attorney General's Department

Colombo 12.

**Respondents**

**BEFORE : Dheeraratne, J**

**Perera, J.,**

**Shirani A. Bandaranayake, J.**

COUNSEL : J.C.Weliamuna for the Petitioner.

A.H.M.D.Nawaz, SC, for respondents

ARGUED ON : 12/09/2000

DECIDED ON : 12/12/2000

**Shirani A. Bandaranayake, J.**

At the time material to this application, the petitioner had a relationship of sexual intimacy with one Leela Perera, a lonely widow; they met on 22.07.1998 and decided to spend a quiet night at the Sirisevana Guest House, Dankotuwa. About 10.30pm, their hopes for tranquility were dashed to the ground, when a group of persons rudely knocked at their bedroom door. The door opened on six intruding Police Officers, two of whom were in uniform, and among them were in uniform, and among them were the first to fifth respondents. On inquiry by the petitioner they informed him

that they were from the Chilaw Police Station. They arrested both of them and took them by a van, first to the Dankotuwa Police Station and thereafter to the Chilaw Police Station. Five women and four men, also taken into the custody at the said Guest House, were taken in that van along with the petitioner and his companion. From 2.30 a.m. On the 23<sup>rd</sup> July they were kept in custody and were produced before the Magistrate, Marawilla around 12 noon. An application made for bail was refused and petitioner was remanded until 29.07.1998 when he was discharged.

The petitioner alleges that his arrest and detention were violative of Articles 12 (1), 13 (2) of the Constitution. This Court granted leave to proceed in respect of the alleged infringement of Articles 13(1) and 13 (2) of the Constitution.

This court granted leave to proceed in respect of the alleged infringement of Articles 13(1) and 13(2) of the constitution.

The 1<sup>st</sup> respondent in his affidavit averred that on the orders of the Senior Superintendent of Police Chilaw, he left the Police Station around 8.35p.m with a party of Police Officers to investigate the information that several LTTE suspects were residing at the Sirisewana Guest House. They reached the Guest House around 10.45.p.m. There were six rooms in the Guest House and all of them were occupied. He spoke to the male and the female occupants separately and requested them to furnish facts to establish their respective identities. None of them were able to do so. A need therefore arose to verify the true identities of the said occupants and all those who were present were arrested and taken to the Police Station, Chilaw. The petitioner was produced before the Magistrate of Marawila along with the other suspects on 23.07.1998, on charges under the Brothels Ordinance.

Unfortunately, the Magistrate has almost mechanically made an order of remand because the police wanted them to be remanded. In terms of the Brothels Ordinance, having sexual intercourse is not an offence. Section 2 of the Ordinance, which stipulates the offences, reads thus:

"Any person who-

a. Keeps or manages or acts or assists in the management of a brothel; or

b. being the tenant, lessee, occupier or owner of any premises, knowingly permits such premises or any part thereof to be used as a brothel, or for the purpose of habitual prostitution; or

c. being the lessor or landlord of any premises, or the agent of such lessor or landlords, lets the same, or any part thereof, with the knowledge that such premises or some part thereof are or is to be used as a brothel, or is willfully a party to the continued use of such premises or any part thereof as a brothel,

Shall be guilty of an offence, and shall on conviction be liable -"

The word "brothel" is not defined in the Ordinance and the ordinary meanings of the word 'brothel' is a house or establishment where prostitution is practiced. The word prostitute ordinary means to devote to, or offer or sell for an unworthy, evil or immoral use; to hire out for sexual intercourse. The ordinary meaning of 'prostitution' means the act or practice of prostitution. (Chambers Dictionary, 1999 reprint).

Bertram, C.J, in Coore v James Appu ((1920) 22 N.L.R. 206), having examined the purpose of the Criminal Law Amendment Ordinance, No. 21 of 1919, the legislative predecessor of the Brothels Ordinance, observed;

"Speaking generally, the Ordinance and the Ordinances which it amends do not penalize illicit sexual intercourse, except where the act takes place under circumstance which are a public scandal, or an outrageous offence to individual rights, or where it takes place with a girl under the prescribed age. Similarly, the procurement of women for an act of sexual intercourse is not punishable, except in the case of a women under twenty years of age (see section 6). But what the ordinance does specially penalize is the making a living out of the corruption and degradation of others. It does this in

three ways;

- a. it enhance the penalties for brothel-keeping (section 4);
- b. it punishes persons who live on the earnings of prostitution (section 9 (1) a; and
- c. It further punishes persons who systematically procure persons of whatever age for the purpose of illicit intercourse." (at pg 215)

Abeykoon V Kulatunga ((1950) 52 N.L.R.47) is a case in which the meaning of section 2 (a) of the Brothels Ordinance was discussed. In this case, 2 appellants were charged, the first with having managed a brothel and the 2<sup>nd</sup> with having assisted the 1<sup>st</sup> in the management of it. After trial both were convicted; the 1<sup>st</sup> accused was fined Rs.500, the 2<sup>nd</sup> accused a fine of Rs. 250.

There was ample evidence before the learned Magistrate in regard to the 1<sup>st</sup> accused, that she managed a brothel.

The question which arose in this case was whether a woman who is or is kept in a brothel for purposes of consorting with men can be said to assist, in the management, Nagalingam,J.. Stated that,

'If however, the prosecution had been able to establish that the 2<sup>nd</sup> accused did perform any act in regard to the administration or control of the brothel, a case may be said to have been made out against her; but the mere fact that she surrendered her flesh to enable persons who resorted to that place to gratify their sexual appetite cannot be regarded as indicating that she assisted in the management of the brothel" (emphasis added)

It is thus evident that, in the circumstances of the instant case, for the petitioner to be charged under the Brothels Ordinance, there should have been evidence that he had either managed or assisted in the management of the brothel. As it appears, there is no such evidence against the petitioner; he has only been a passive occupant of the said Guest House, who had wanted to stay overnight with his companion whereby he committed no criminal

offence.

The petitioner's grievance is that the respondents had violated his fundamental rights guaranteed in terms of Articles 13(1) and 13 (2) of the Constitution.

Article 13 (1) of the Constitution reads as follows;

'No person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reasons of his arrest.'

Section 32 (1) b of the Code of Criminal Procedure Act, specifies the established procedure for arrest and reads thus;

"Who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned."

The arrest of the petitioner has to be lawful and for it to be lawful, it should be carried out according to the established procedure laid down by law. In this case there was no complaint against the petitioner and there is no reason at all to suspect that the petitioner has committed any offence. For the purpose of bringing charges against a person under the Brothels Ordinance, there should be evidence suggesting that such person was engaged in the management of Brothel. There is not even an iota of evidence suggesting that. Although the respondents mentioned that they had to raid the said Guest House as they had information that they were LTTE suspects residing at the said premises, no one other than the occupants of the six rooms was taken into custody. In this circumstance, I hold that the arrest of the petitioner was unlawful and declare that the petitioner's fundamental rights guaranteed by Article 13 (1) of the Constitution has been violated by 1<sup>st</sup> to the 6<sup>th</sup> respondents.

Admittedly, the petitioner was taken into custody around 2.30 a.m. on 23.07.1998 and was produced before the Magistrate, Marawila around 12 noon of the same day. In the circumstance I hold that

there was no violation of Article 13 (2) of the Constitution.

I must express my concern over magistrates issuing orders of remand, mechanically, simply because the police want such orders made. I cannot do better than to quote the words of my brother, Dheeraratne, J, said in connection with magistrates

Issuing warrants of arrest (in the case of Mahanama Tillakaratne Vs. Bandula Wickramasinghe, 1999 1 Sri L.R 372); Magistrates should not issue remand orders 'to satisfy the sardonic pleasure of an opinionated investigator or a prosecutor' (at pg.382). Remanding person is a judicial act and as such a Magistrate should bring his judicial mind to bear on that matter before depriving a person of his liberty.

I accordingly hold that the petitioner is entitled to a sum of Rs. 25,000/- as compensation and cost payable by the State. I direct the 1<sup>st</sup> to 6<sup>th</sup> respondents to pay Rs.5000/- each, personally, as compensation. In all the petitioner will be entitled to Rs.55,000/- as compensation and costs. This amount must be paid within three (3) months from today.

The Registrar of the Supreme Court is directed to send a copy of this judgment to the Inspector General of Police.

JUDGE OF THE SUPREME COURT

**DHEERARATNE.J**

I agree.

JUDGE OF THE SUPREME COURT

**PERERA,J**

I agree.

JUDGE OF THE SUPREME COURT

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04:34 AM  
Thursday  
May 13th,  
2010