

**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 Application No. 446/93

Moramudalige Podiappuhamy, 77, Deepal,
Eluwila, Panadura.

Petitioner

Vs

1. PS 4430 Dayananda Liyanage
 2. PC 18269 Jayaratne Alahapperuma
 3. PC 17489 Muthamenuhga Santha Prabath
Livera, Panadura Police Station, Panadura
 4. The Attorney General, Attorney General's
Department, Colombo 12
- Respondents

BEFORE: Amerasinghe J, Perera J and Wijetunga J.

COUNSEL: R.C. Gooneratne for the petitioner, Palitha Fernando SSC for the
State

ARGUED ON: 4.5.94

DECIDED ON: 31.5.94

Amerasinghe J.

On the basis of a complaint made by the petitioner, charges had been framed against
one Sudath Perera in MC Panadura Case No. 25528 for committing an offence under
section 401 of the Penal Code.

**When the matter came up for the trial on 6 October 1993, the petitioner was not
present in Courts and one Bamuna Arachchige Mahipala, Sub Inspector of Police**

attached to the Police Station, Panadura, moved for a warrant to arrest the petitioner. The Court instead, issued a summons. Erroneously, believing that a warrant had been issued the Sub Inspector entered the word 'Wt' in a Court Register, maintained at the police station. The Court Register contained particulars of persons against whom warrants were issued and was used by police officers as the basis for arresting persons in respect of whom they believed warrants had been issued. The respondents explained that such a procedure was adopted because there were delays in receiving copies of warrants issued by the Courts at the police station.

The 1st respondent in his affidavit states that at about 11.30 pm on 8 November 1993, on a directive of the Officer in Charge of the Crimes Division of the police station, accompanied by the second and third respondents, he set out 'to arrest persons against whom warrants had been issued'. Finding 'Wt' written against the name of the petitioner in the Court Register of the Panaduar Police Station, the first respondent arrested the petitioner, because he **'firmly believed that the petitioner is a person against whom a warrant has been issued by a Court of Law, and I am bound by law to arrest him although I was not in possession of the warrant at that time. Acting on the said belief I arrested the petitioner at his resident after explaining reasons for his arrest'**.

The petitioner was locked up at the police station and produced before the Magistrate on the 9th of November, 1993. Upon perusal of the record, the Magistrate found that he had made no order of arrest and released the petitioner.

On 24 November 1993, the petitioner applied to this Court for a declaration that his fundamental rights guaranteed by Article 13(1) of the Constitution had been violated and praying for compensation in a sum of Rs. 100,000/- for wrongful arrest. Leave to proceed was granted on 6 December 1993.

The procedure established by Law for arresting persons without an order from a Magistrate and without a warrant, are set out in Sections 32 and 33 of the Code of Criminal Procedure. The petitioner was not arrested in pursuance of the powers conferred by Sections 32 and 33 of the Code of Criminal Procedure. Therefore the arrest was violative of Article 13(1) of the Constitution which provides that 'no person shall be arrested except according to procedure established by law'. (See *Jayakody v. Karunanayake*, SC Application 91/91 SC minutes 18 November 1992).

Learned Senior State Counsel submitted that it is not every wrong decision or breach of the law that attracts the Constitutional remedies relating to fundamental rights. Citing the decision of this Court in *Nimala Wijesinghe v. AG and others* (1979) 1 FRD 40, he submitted that where a transgression of the law takes place due solely to negligence or

error of judgment a person cannot be allowed to maintain that there has been a violation of Constitutional guarantees.

I agree that there may be cases in which the Court finds itself unable to grant relief because the breach is only of an ordinary right and not a breach of fundamental right. However, the matter before us is entirely different. The petitioner may have other remedies open to him additionally. But, that does not preclude him from invoking jurisdiction of this Court in respect of the violation of his Constitutional rights. There is a clear breach of his fundamental rights guaranteed by Article 13 (1) of the Constitution, which entitles him to invoke the jurisdiction of this Court under Article 126 of the Constitution.

Learned Senior State Counsel also submitted that the first respondent was mistaken but acted bona fide. On the other hand, Mr. Goonaratne pointed out that in furnishing their report to the Magistrate in terms of Section 38 of the Code of Criminal Procedure (3R2), the police had requested the Magistrate to remand the petitioner until 10 November 1993. In any events, the good faith of the person making the arrest is in my view, entirely irrelevant in deciding whether Article 13(1) of the Constitution had been violated (Of *Premaratne and Somawathie v. Somapala* SC Application Bo. 68/86 SC minutes 11 May 1988). He may have had a wrong appreciation of the Law but the infringement remains. See *Gunawardena v. Perera* 1983 2 FRD 46 at p. 436). I might add that however anxious police officers may be to avoid the evils of the law's delay and `commendably assist the administration of justice they must comply with the solitary provisions established by law designed to protect the liberty of the subject. The procedure of using the Court Register, as a substitute for the procedure laid down by the Court of Criminal Procedure is not one established by law within the meaning of Article 13(1) of the Constitution whatever the purposes for such a procedure may have been. It should be discontinued forthwith.

For the reasons explained, I decide that the fundamental rights of the petitioner to be free from arrest, except according to procedure established by law, has been violated.

I order that the petitioner be paid a sum of Rs. 5,000/- as a solatium for the violation of his fundamental rights as aforesaid.

I further order that a sum of Rs. 7,500/- be paid by the State to the petitioner as costs.

Judge of the Supreme Court

Perera J.

I agree

Judge of the Supreme Court

Wijetunga J

I agree

Judge of the Supreme Court