

**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. 555/2001**

Kandasamy Konesalingam, Unit 4,  
Pavakkulam, Varikuttiyur, Vavuniya. Presently  
in remand at Remand Prison, Kalutara.

Petitioner

Vs

1. Major Muthalif, Officer in Charge, JOOSSP  
Army Camp, Vavuniya.
  2. Ranaweera IP, Officer in Charge, Counter  
Subversive Unit, Police Station, Vavuniya.
  3. Inspector General of Police, Police  
Headquarters, Colombo 1
  4. The Superintendent of Prison, Remand  
Prison, Kalutara.
  5. The Attorney General, Attorney General's  
Department, Colombo 12
  6. Dharmadasa SI, Officer in Charge, Special  
Investigation Unit, Police Station, Vavuniya.
- Respondents

BEFORE: Sarath N. Silva CJ, Shirani A. Bandaranayake J and P. Edussuriya J.

COUNSEL: V. Yogeswaran, for the petitioner, Riyaz Hamza SC for 3<sup>rd</sup> to 5<sup>th</sup>  
respondents and K.R.M. Abdul Raheem for the 6<sup>th</sup> respondent

ARGUED ON: 05.11.2002

WRITTEN SUBMISSIONS TENDERED ON: for the petitioner 10.12.2002  
for the 6<sup>th</sup> respondent 13.12.2002

DECIDED ON: 10.02.2003

*Fundamental rights – Constitution Article 12(1), 13(1) and 13(2)- reason for the arrest not revealed – kept in custody without detention order – torture – injuries – Code of Criminal Procedure Act section 37*

The petitioner complains that the army arrested him on 19.4.2001 and kept him in detention in the army camp till 21.5.2001 and that during this period he was assaulted. Thereafter he was handed over to the Special Investigation Unit where he was kept in detention until 26.6.2001 and assaulted. The petitioner complained of violation of Article 11, 13(1) and 13(2).

Held:-

- (1) The Officer in Charge of the Special Investigation Unit – 6<sup>th</sup> respondent has not revealed the reason for the arrest of the petitioner. The 1<sup>st</sup> respondent who had initially taken the petitioner into custody did not make any submission nor has he tendered any written submission.
- (2) The silence of the 1<sup>st</sup> respondent and his officer and the non availability of any material indicating the reasons for the arrest only leads to the conclusion that no acceptable reasons were available at the time he was arrested.
- (3) It appears that the petitioner was taken into custody on a vague suspicion, without there being any reasonable ground for such arrest. The arresting officer could not have possibly informed the petitioner that the reason for his arrest Article 13(1) violated.
- (4) No detention order was issued until 22.5.2001 and admittedly, the petitioner was kept in custody from 19.4.2001 until 22.5.2001 without a valid detention order he was produced before the Magistrate only on 26.6.2001 Article 13(2) violated.
- (5) The petitioner was in the custody of the army and the Special Investigation Unit for over two months. Except for the injury he has sustained a few years earlier (loss of the lower left limb) there is no evidence to indicate that he had any injuries at the time of arrest. The observations of the AJMO substantiate the version that the petitioner was assaulted while being interrogated by the officer of the Special Investigation Unit.

Application under Article 126(1) of the Constitution.

Cases referred to:

- (1) Vinayagamorthy (AAL) on behalf of Wimalentharan v The Army Commander and others – 1997 1 Sri LR 113

February 10, 2003

Shirani Bandaranayake J.

**The petitioner is 26 years of age and married with 2 children. According to him in 1991 he had accidentally stepped on a land mine which cost him his lower left limb. He claimed that he is a labourer and that he is the sole breadwinner of his family. The petitioner submitted that the personnel of the JOSSP Army Camp arrested him on 19.04.2001 and kept him in detention in the said Camp until 21.05.2001. During this period the petitioner claims that he was assaulted with batons and sticks. Thereafter he was handed over to the Special Investigation Unit of the Police Station, Vavuniya where he was kept in detention until 26.06.2001. The petitioner submitted that during this period he was interrogated from time to time and during the time of interrogation, he was assaulted and was forced to admit that he was a member of the Liberation Tigers of Tamil Eelam (LTTE). On occasions when he attempted to explain his innocence, he was further assaulted and was forced to place his signature on documents of which the contents were neither read nor explained to him. His position is that in fear of further torture he signed the said documents as ordered. The petitioner was produced before the Magistrate, Vavuniya on 25.06.2001 who ordered him to be sent to Remand Prison, Kalutara.**

**During the time he was under detention, the petitioner claims that he was tortured and treated in a cruel, inhuman and degrading manner and his submission is that his arrest and detention are both wrongful and illegal thereby violating his fundamental rights. The Court granted leave to proceed for the alleged infringement of Articles 11, 13(1) and 13(2) of the Constitution.**

The 6<sup>th</sup> respondent who is the Officer in Charge of the Investigation Unit of the Police Station, Vavuniya concedes that the petitioner was arrested but he refutes the period of detention given by the petitioner. His position is that the petitioner was handed over to the Police Station, Vavuniya only on 22.05.2001 and the Special Investigation Unit Vavuniya had taken over the petitioner and the investigation on 23.05.2001. Further he submitted that the petitioner was produced before the Magistrate, Vavuniya on 25.05.2001. He further submitted that the petitioner was detained in terms of 2 detention orders dated 22.05.2001 and 27.06.2001 for 30 days and 28 days respectively for the purpose of investigation. The 6<sup>th</sup> respondent denies that the petitioner was assaulted while he was in custody.

Article 13(1) of the Constitution provides as follows:

‘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 6<sup>th</sup> respondent has not revealed the reasons for the arrest of the petitioner. He has taken the position as referred to earlier that he was handed over to him only on 22.05.2001.

The 1<sup>st</sup> respondent who had initially taken the petitioner into custody did not make any submissions nor has he tendered any written submissions. The two detention orders (6R5 and 6R5A) issued by the Deputy Inspector |General of Police for Wannai Range regarding the petitioner sated as follows:

‘A member of the LTTE who had received training in the use of arms and thereby committed an offence punishable under Regulation 3 (a) of the Emergency Regulations published in the Government Gazette extra ordinary bearing No. 1012/16 of 27.01.1998.’

However it is to be noted that they were issued only on 22.05.2001 and 21.06.2001 respectively and that the petitioner was taken into custody on 19.04.2001. Amerasinghe J in Vinayagamorthy AAL (on behalf of Wimalenthran) Vs the Army Commander and others (1997 1 Sri LR 113) has held that in deciding whether the arrest was in accordance with the procedure established by law, the matter in issue is not what subsequent investigations revealed but whether at the time of the arrest the person was committing an offence or that there were reasonable grounds for suspecting that the person arrested was concerned in or had committed an offence.

In the instant case although the detention orders refer to the petitioner as ‘a member of the LTTE’ no material was produced before the Court to show that at the time of the arrest of the petitioner, the arresting officers had such information prior to the decision to arrest the petitioner. The 6<sup>th</sup> respondent’s version only relates to the position he was handed over to his custody on or about 22.05.2001. The silence of the 1<sup>st</sup> respondent and his officers and the non availability of any material indicating the reasons for the arrest of the petitioner, only **leads to the conclusion that no acceptable reasons were available at the time he was arrested.**

**It appears that the petitioner was taken into custody on a vague suspicion without there being any reasonable grounds for such arrest. The arresting officers could not have possibly informed the petitioner the reason for his arrest.**

I there for hold that the petitioner’s fundamental right guaranteed under Article 13(1) of the Constitution was violated.

The respondents have not disputed the date of arrest. Their position is that the petitioner was kept in custody of the JOOSP Army Camp until 21.05.2001 on which date he was handed over to the Special Investigation Unit, Vavuniya. The 6<sup>th</sup> respondent who is the OIC of the said unit submitted that immediately after concluding the

investigations on 25.05.2001 the petitioner was produced before the Magistrate, Vavuniya and two detention orders referred to above and dated 22.05.2001 (6R5) and 21.06.2001 (6R5A) were issued for 30days and 28days respectively.

In the circumstances, it is evident that the petitioner was kept in custody from 19.04.2001 to 22.05.2001 without producing him before the Magistrate. No material was produced before the Court to indicate that there was a valid detention order to detain him during this period. Article 13(2) of the Constitution provides that:

‘Every person held in custody detained or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent Court according to the procedure established by law and shall not be further held in custody detained or deprived of personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law’

The established procedure regarding persons arrested according to section 37 of the Code of Criminal Procedure Act is as follows:

‘Any peace officer shall not detain in custody or otherwise confine a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable and such period shall not exceed twenty four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate’

It is not disputed that no detention order was issued until 22.05.2001 and admittedly, the petitioner was kept in custody from 19.04.2001 until 22.05.2001 without a valid detention order. He was produced before the Magistrate only on 26.06.2001.

**In the circumstances, I am of the view that the detention of the petitioner for a period of over one month without a valid detention order is in violation of the petitioner’s fundamental right guaranteed by Article 13(2) of the Constitution.**

The petitioner complained of torture during the period he was in detention initially at the JOOSP camp and later at the Special Investigation Unit, Vavuniya. Based on an order made by the Court the petitioner was examined by the Assistant Judicial Medical Officer, Colombo on 13.11.2001. The relevant contents of the report given by the Medical Officer is reproduced below:

#### EXAMINATION OF SCARS OF THE INJURIES

1. Obliquely placed scar (4X1/4”) on the back of the right shoulder.
2. Obliquely placed scar (3X1/4”) on the back of the left shoulder.
3. Obliquely placed scar (7X1/4”) on the back of the right shoulder.

4. Obliquely placed scar (7X1/4") on the back of the left shoulder.
5. Obliquely placed scar (4X1/4") on the back of the lower part of the back of the chest, left side.
6. Obliquely placed scar (6X1/4") on the lower part of the back of the chest right side.
7. Obliquely placed scar (5X1/4") on the back of the chest and loin on left side.
8. Transversely placed scar (5X1/4") on the right loin.
9. Circular burn scar (3/4 in diameter) on the dorsum of the right wrist.
10. Circular burn scar (1/4 in diameter) on the dorsum of the right hand.
11. Circular burn scar (1/4 in diameter) on the dorsum of the right index finger.
12. Circular burn scar (1/4 in diameter) on the dorsum of the right ring finger.
13. Two burn scars (1/4 in diameter) on the right palm.
14. Circular burn scar (1/4 in diameter) on the right thigh laterally.
15. Two circular burn scars (each ¼ in diameter) on the middle of the right thigh.
16. Circular burn scar (1/4 X 1/4") on the dorsum of the right foot.
17. Scar (3/4 X ½") on the middle of the right leg.

It is to be noted that the AJMO has not referred to the probable period of time the assault on the petitioner would have taken place. However in concluding the report the AJMO stated that,

‘scar No. (1) to (8) and 17 were not inconsistent with caused by blunt weapons (sic).

scar No. (9) to (16) were consistent with history of burns with cigarette butts’

The 6<sup>th</sup> respondent submitted that the petitioner was produced before the Medical Officer of the Base Hospital, Vavuniya on 23.06.2001. Although detailed descriptions are not available that Medical Officer too has referred to the presence of a number of scars on the petitioner at the time of the physical examination.

Admittedly, the petitioner was in the custody of the JOOSP army camp and the Special Investigation Unit for a period of over two months. Except for the injury he had sustained a few years earlier, which cost him his lower left limb, there is no evidence to indicate that he had any injuries at the time of his arrest. This fact, combined with the observations of the AJMO in my view, substantiate the version of the petitioner that he was assaulted while being interrogated by the officers of the Special Investigation Unit.

**For the aforementioned reasons I hold that the petitioner’s fundamental rights guaranteed by Article 11, 13(1) and 13(2) were violated by the officers attached to the 6<sup>th</sup> respondent’s office. I accordingly direct the state to pay to the petitioner a sum of Rs. 15,000/- as compensation and costs. This must be paid within three months from today.**

JUDGE OF THE SUPREME COURT

Sarath N. Silva CJ

I agree

Chief Justice

P. Edussuriya J

I agree

JUDGE OF THE SUPREME COURT