IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI ANKA.

SC Application No. 290/2002

1.Develamulla Pathiranage Amerasena of Ceylon Electricity Board Quarteres, Kesbewa

and

2.L. Muhandiramlage Jayanath Kumara of No. 195, Thissa Mawatha, Thissawewa, Anuradhapura.

Petitioners

IP Jayaratnem, Officer in Charge, Intelligence Unit, Police Station, Mt. Laviniya And 4 others.

Respondents

BEFORE: **Hon. Sarath N. Silva CJ, Hon. Shirani Bandaranayake J**

And Hon. P. Edussuriya J.

COUNSEL J.C. Weliamuna with Lavanagi Weerapana & Chrika

Samarakoon for the petitioners.

N. Srikantha with Ms. C. Jeya Devi Royappu and

K.S. Balakrishnan for the 1st, 2nd, 3rd & 4th respondents.

Viveka Siriwardena de Silva SC for Attorney General.

ARGUED ON: 11.09.2002

DECIDED ON: 04.04.2003.

11TH SEPTEMBER, 2002

Fundamental Rights - Attempt by police officer to apprehend petitioners on a complaint given by mistake - Resistance by the petitioners - Articles 11, 13(1) and 13(2) of the Constitution - Prohibition on police against detaining a suspect for an unreasonable period without producing him before Magistrate.

The 1st and 2nd petitioners were proceeding in a three wheeler to the Telecommunications office, Ratmalana when the police attempted to arrest them on information given by a person that they were concerned in an offence. It appeared that the informant was misled as to the identity of the petitioners. When a police officer attempted to apprehend them, the 1st petitioner became violent and bit off a portion of the police officer's ear lobe. The 2nd petitioner also got involved in the fray. They were both arrested for obstructing the police officer from discharging his functions and for causing grievous hurt to a constable. They were arrested at about 1.00 p.m. on 04.05.2002, detained overnight at the police station and produced before a Magistrate at noon the next day. The police had to use reasonable force in arresting them. Medical evidence disclosed an abrasion on the 1st petitioner.

Held :

The alleged infringement of Articles 11 and 13(1) were not established on the facts of the case. However, the arrest of the petitioner for obstruction and causing grievous hurt did not warrant the detention of the petitioners at the police station overnight. Such detention was unreasonable. Investigations could have been concluded swiftly and the petitioners produced before the Magistrate on the same day. There was a duty to produce the petitioners before a Magistrate within a reasonable time not exceeding 24 hours.

2. In the circumstances there was an infringement of the petitioners' rights under Article 13(2) of the Constitution.

April 4, 2003

SARATH N. SILVA, C.J.

The 1st petitioner is an Electrical Superintendent, employed in the Ceylon Electricity Board and the 2nd petitioner is a person who is working under him in a private capacity. The petitioners have been granted leave to proceed in respect of alleged infringement of their fundamental rights, guaranteed by Articles 11,13(1) and 13(2) of the Constitution.

The incident, which is the subject matter of this application took place on 4.5.2002. The 1st petitioner finished his work at a location in Wattala and came with the 2nd petitioner who is working as a cleaner in a lorry owned by him, to the Liberty Plaza Shopping Complex at Colpetty, at about 12 noon to get a switch key cut for the lorry. Thereafter he went to the Billing Centre at the Telecom office at Ratmalana. That being a Saturday, the Billing Centre was due to close at 1.00 p.m. and the petitioner had to rush to that place. He states that after parking the vehicle when he was walking hurriedly towards the gate of the Telecom office, a tri-shaw that was heading towards Moratuwa slowed down and a person asked whether he signalled before parking. He identified the 2nd respondent Sgt. Ediriweera as the person who spoke to him in this manner. He claims that he answered the respondent saying that he did in fact signal and rushed towards the Telecom office. Before he could reach the gate of the Telecom office, he was apprehended by the 2nd respondent. At this stage he stated that he bit the ear of the 2nd respondent to free himself and the 1st and 3rd respondents came and assaulted him.

The version of the respondents presents a different aspect. The 1st respondent being the Officer - in - Charge of the Intelligence Unit of the Mt.Lavinia Police, has stated that he was engaged in an investigation to apprehend two suspects, namely Asiri Fernando and 'Army Jagath', who were wanted in connection with a number of robberies of motor vehicles. He received information that these two persons have been sighted and he set off together with the 2nd and 3rd respondents in a 3 wheeler to apprehend them. Whilst going along Galle Road they met the informant who stated that a person resembling the said Asiri Fernando was seen at the Liberty Plaza a short while earlier and was seen getting a key cut. The informant gave the number of the vehicle in which the wanted suspects were alleged to be travelling as 58-3264. When they were proceeding further along Galle Road, they saw the vehicle bearing that number near the Telecom office at Ratmalana.

The 3rd respondent signaled the driver to stop the vehicle but he did not heed the signal. They overtook the vehicle and stopped ahead of it. According to the 1st respondent, a person whom he subsequently identified as the 1st petitioner hastily got down from the vehicle and rushed towards the Telecom office. They pursued the 1st petitioner. Then the 2nd respondent asked him to stop, which was ignored by the 1st petitioner. Then the 2nd respondent caught him by the hand and showed his official identity card. According to the respondents the 1st petitioner grappled with the 2nd respondent, biting off a portion of the left ear lobe of the 2nd respondent and spitting it out.

The 1st respondent states that at that point he delivered a blow on the 1st petitioner and since he was behaving violently used force to bring him under control. He explained to the 1st petitioner that he is being arrested for the offence of voluntarily obstructing a public servant in the discharge of his public functions. The 2nd petitioner who joined in the fray was also arrested on the same charge and they were brought to the Mt. Lavinia Police Station in the three-wheeler.

According to the petitioners none of the police officers were in uniform. However, according to the police, the 3rd respondent being a police constable, was in uniform and others being officers of the Intelligence Unit were not clad in uniform.

The 1st and 2nd petitioners were produced before the Acting Magistrate on the following day and were released on bail around 1.30 p.m.

The hospital ticket R2 issued by a doctor at the Police Hospital and the Medico Legal Report Examination form 2R1 issued by a doctor at the Colombo South Hospital disclose that the 2nd respondent had a cartilage laceration on his left ear and that a portion of an ear lobe was missing. The injury is described as been grievous. The Medico Legal Report P10 in respect of the 1st petitioner reveals that he had one abrasion of 1/2 centimeter over the lateral aspect of the left upper neck, probably caused by a finger nail. The Consultant's opinion noted in the report is that the 1st petitioner suffered acute stress reaction due to assault. The medical report P10 does not support the allegation of the 1st petitioner that he was severely assaulted in the three wheeler and later at the police station, causing him to bleed from the nose and mouth.

The facts presented above disclose a misapprehension on both sides. The 1st petitioner had legitimately engaged in his chores and was rushing towards the Billing Center of the Telecom office to get there before closing time. The 1st, 2nd and 3rd respondents being officers of the Intelligence Unit were checking on information that had been received about 2 persons who were wanted in connection with several robberies of vehicles**. It is probable that the informant was misled by the fact that the 1st petitioner got a key cut and hurriedly went towards Ratmalana**.

The 1st respondent and the other officers had reasonable information to apprehend the 1st petitioner to check his identity. The 1st petitioner on the other hand being innocent of any offence was rushing towards the Billing Center and would very probably have brushed aside the police officer in plain clothes, who was trying to apprehend him. However, from that point onwards the reaction of the 1st petitioner descends to a level of being inhuman. His biting off of the ear lobe of the 2nd respondent and spitting it out in the manner graphically described by the respondents is something that can not be condoned. If he paused for a while and revealed his true identity, subsequent events could have been avoided. Police officers should in the discharge of their duties take every step to detect offences and apprehend persons who have committed such offences. In this instance, it is clear that the officers of the Intelligence Unit had been following the information given by one of their informants. Considering the type of offences that were being investigated they could not possibly have used normal police vehicles or been clad in uniform. They had to take action swiftly, for which they cannot be faulted.

In the circumstances I am of the view that the 1st and 2nd respondents had reasonable grounds to arrest the petitioner. Admittedly, at the time of arrest the 2nd respondent had suffered a grievous injury which had been inflicted when they were discharging their official duties. There is no basis to doubt the version of the 1st respondent that the petitioners were informed of the reasons for the arrest. In the circumstances I am of the view that there has been no infringement of the fundamental right guaranteed by Article 13(1) of the Constitution.

As regards the infringement of Article 11, the allegation of the 1st petitioner is that he was assaulted severely at the place of the arrest, in the trishaw and thereafter at the police station. On the other hand the respondents have stated that they used force only at the place of arrest and that too after the 2nd

respondent suffered injuries. The medical report P10 as noted above reveals only one injury, an abrasion 1/2 centimeter in the region of the neck which could have been caused by finger nails. This is supportive of the fact that the respondents used reasonable force to apprehend the 1st petitioner.

The opinion of the consultant that the 1st petitioner suffered acute stress due to assault does not take into account the fact that the 1st petitioner himself had bitten off a portion of the police officer's ear. That by itself is totally irrational behaviour. The mental stress referred to in the report is probably the cumulative result of the entire incident in which the 1st petitioner caused the more serious injury. **In the circumstances I am inclined to accept the version of the respondents regarding the injury that was inflicted on the 1st petitioner in the course of the arrest. There is no basis to come to any finding as to an infringement of Article 11 of the Constitution.**

I have now to deal with the alleged infringement of Article 13(2) of the Constitution. Article 13(2) guarantees to every person held in custody the fundamental right to be brought before the Judge of the nearest competent court according to the procedure established by law. The procedure established by law is contained in section 37 of the Criminal Procedure Code Act, No. 15 of 1979, which reads 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."

The petitioners were arrested at 1.00 p.m. and were brought before the Magistrate at about noon on the next day. They were detained overnight at the police station. When the facts relevant to the arrest and detention are objectively viewed, it is seen that the 1st petitioner was apprehended by the 1st respondent to verify his identity on the basis of information received with regard to a wanted suspect. However, the arrest was in connection with the offence of obstructing a public servant in the discharge of his public functions. In addition there is the offence of causing grievous hurt in view of the injury suffered by the 2nd respondent. It would have been obvious to the respondent that the initial apprehension was on the basis of mistaken identity. Therefore the subsequent detention is warranted only for the purpose of investigating the offences under sections 183 and 316 of the Penal Code.

These offences are alleged to have been committed in respect of police officers and the investigation could have been concluded swiftly. The limit of 24 hours laid down in section 37 of the Code of Criminal Procedure is the maximum period of detention. However, the section clearly provides that a person should not be detained in custody for more than the period that is reasonable under the circumstances of the case. In this instance, as noted above, the investigation did not involve any ramifications and should have been concluded within a few hours. **The petitioners could then have been produced before the Magistrate on the same day. It appears that the respondents have exceeded this period and kept the petitioners in custody overnight at the police station. This in my view amounts to an infringement of the fundamental right guaranteed to the petitioners under Article 13(2) of the Constitution and I grant a declaration to that effect**. **Considering the facts and circumstances of the case and in**

particular the conduct of the 1st petitioner referred to above, I am of the view that the petitioners are not entitled to any compensation in the matter. Further considering the fact that the 1st to 3rd respondents have acted in the lawful discharge of their functions and the nature of the infringement in respect of which a declaration is granted, I have to place on record that the granting of the declaration by itself will not affect the careers of the 1st to 4th respondents.

The State will pay a sum of Rs. 5000/- as costs to the petitioners.

BANDARANAYAKE, J. - I agree.

EDUSSURIYA, J. - I agree.

Relief granted.