

**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.

**S.C. APPLICATION NO. 646/2001**

Manikku Kankanamge Hubert  
Seneviratne, 36, Police Bungalow  
Road, Moragalla, Beruwala.

Petitioner

Vs.

1. Sub Inspector Rajakaruna,  
Criminal Investigation Department,  
Bandaranaike International  
Airport, Katunayake.

2. Officer in Charge,  
Criminal Investigation Department,  
  
Bandaranaike International  
Airport, Katunayake

3. Director of Criminal  
Investigation Department, Criminal  
Investigation Department,  
Bandaranaike International  
Airport, Katunayake.

4. Rasika Krishantha Anthony,  
Ground Operation Officer, Sri

Lankan Air Lines, Airport,  
Katunayake.

5. Officer in Charge, Sri Lankan  
Air Lines, Airport, Katunayake.

6. The Attorney General, Attorney  
General's Department, Colombo  
12.

### **Respondents**

**BEFORE:** **S. N. SILVA, CJ BANDARANAYAKE, J. AND  
EDUSSURIYA, J.**

**COUNSEL:** Asoka Weerasuriya with H. S Ponnampenima for  
petitioner.

Palitha Kumarasinghe with Palitha Yaggahawita for 4th  
respondent.

K. A. P Ranasinghe, State Counsel for 1st and 6<sup>th</sup>  
respondents

**ARGUED ON:** 25.11.2002

### **WRITTEN SUBMISSIONS TENDERED ON:**

For the petitioner 31.01.2003.

For the 4<sup>th</sup> respondent 17.02.2003

For the 1<sup>st</sup> and 6<sup>th</sup> respondents 20.02.2003

**DECIDED ON:** 30.05.2003

***Fundamental Rights - Arrest for alleged use of a forged passport - Power of arrest - Code of Criminal Procedure Act, section 32(1)(b) - Reasonable suspicion as a pro-condition for valid arrest.***

The petitioner who had served the Sri Lanka Navy from 1977 to 1982 later joined a commercial liner as an able seaman and since 1991 was serving with Fort Shipping Ltd. He submitted that at the time material to the incident in suit, namely 20.10.2001 he had travelled overseas over 30 times. On that day the petitioner was waiting to board an aircraft scheduled to leave for London at 2.30 am. A few minutes before the departure he was informed by airline officers of an allegation that he possessed a forged passport. He was then questioned by an officer from the CID. Notwithstanding his explanation supported by a number of documents, the 1st respondent police officer arrested him and produced him before the Magistrate on the same day which was a Saturday. The petitioner was remanded. On 23rd Monday, further inquiries disclosed that his passport was authentic, whereupon the Magistrate discharged him on the same day. The reasons adduced by the airline officers for suspicion that the passport was not genuine were:

(a) the lamination of the photo page was detached at a corner;

(b) the photograph on the impugned passport and the photograph on his previous passport differed.

Prior to his arrest, the petitioner produced his passport P1, air ticket P2, seaman's book P3, his previous passport obtained in 1983, P4, seaman's identification and record book P5, flight details document P6, appointment letter P7, diving licence PS, and the certificate of proficiency in watch keeping P9. As per his previous passport and the certificate of discharge as seaman (1982), which also the 1st respondent admits to having compared, the petitioner had a clean shaven face. The current passport which was obtained 10 years later in 1993 shows that by then the petitioner had grown a beard and a moustache. The change of appearance was due to age. Besides the 1993 passport was itself 10 years old having been extended once until the year 2003.

**Held:**

**On the facts of this case there was no reasonable suspicion that the petitioner was concerned in committing the offence of travelling on a forged passport; and that the arrest and detention of the petitioner infringed his rights under Articles 12(1), 13(1) and 13(2) of the Constitution.**

**Case referred to:**

1. Veeradas v Controller of Immigration and Emigration (1989) 2 Sri LR 205  
(distinguished)

**APPLICATION** for relief for infringement of fundamental rights.

May 30, 2003.

**BANDARANAYAKE, J.**

The petitioner who has served in the Sri Lanka Navy from 1977 to 1982 had later joined a commercial liner in the rank of able seaman and since 1991 was serving with Fort Shipping Ltd. He submitted that at the time the incident material to this application took place, he had travelled overseas over 30 times. On 19.10.2001 he arrived around 11.45 p.m. at the Bandaranaike International Airport (hereinafter referred to as the BIA) in order to leave for London. His schedule time for departure was at 2.30 a.m. on 20.10.2001. After going through Customs the petitioner proceeded to obtain his boarding pass. When he had submitted his travel documents to the lady employee at the BIA counter, she had informed him to wait for a while in which time she had taken the documents to another senior officer. On querying as to the delay he was informed that he will have to wait for a while and around 1.50 a.m. the said lady officer had informed him that there is a problem with his passport. Immediately thereafter, an officer from the CID questioned the petitioner on the incident. The petitioner had produced his passport (P1), Air ticket (P2), Seaman's book (P3), his previous passport (P4), Liberian seaman's identification and record book (P5), Flight detail document which contains emergency contact numbers/agent (P6), Appointment letter (P7), Driving licence (P8) and the Certificate of proficiency in watch keeping (P9).

Nevertheless, the 1st respondent arrested the petitioner. The petitioner was thereafter produced before the learned acting Magistrate of Negombo along with a B report, the offence being that the petitioner had attempted to travel to London by producing a forged passport. The Magistrate had ordered to remand him. Later on 23.10.2001, the Magistrate had discharged him.

This court granted leave to proceed for the alleged infringement of Articles 12(1), 13(1) and 13(2) of the Constitution.

The 1st respondent conceded that he had arrested the petitioner at the BIA around 4.30 a.m. on 20.10.2001. He contended that the 4th respondent informed him that the petitioner and another passenger with suspicious travel documents had attempted to travel on board a Sri Lankan Air Lines flight to London, which was due to depart on

20.10.2001. Both passengers were produced by the 4th respondent who had requested the 1st respondent to inquire into the matter. According to the 1st respondent, the 4th respondent in his complaint alleged that he suspected that the petitioner's passport was tampered with and that it needs to be investigated. The 4th respondent had elaborated the kind of tampering, viz, that the photograph of the passport holder may have been inserted and that it appeared to him that the place of birth of the passport holder had been changed (1R1).

Therefore, the 1st respondent contended that the petitioner was arrested and produced before the Magistrate, Negombo on 20.10.2001. He was remanded until 23.10.2001 pending further investigations. The 1st respondent submitted that as the petitioner was arrested on a Saturday, the earliest opportunity of establishing the authenticity of the impugned passport was on Monday the 22nd October and immediately after it transpired that the passport in question was an authentic passport, a further B report was filed on the 23rd October informing the Magistrate that no further action would be taken against the petitioner. Later the petitioner was discharged.

Learned State Counsel on behalf of the 1st respondent submitted that the arrest of the petitioner was made in terms of section 32(b) of the Code of Criminal Procedure Act, No.15 of 1979. This section is on the following terms:

"32(1)-

Any peace officer may without an order from a

Magistrate and without a warrant arrest any person -

(b) who has been concerned in any cognizable offence as 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."

It is common ground that there was no credible information or a reasonable complaint against the petitioner. The 1st respondent submitted that the 4th respondent informed him that the petitioner was attempting to travel with suspicious travel documents and that he had arrested the petitioner on the grounds of reasonable suspicion. The suspicion, according to the 4th respondent, was after intense scrutiny by the airline staff. The 4th respondent, who was on duty at the checking counter, was the first to observe the suspicious nature of the passport. This was brought to the notice of the Duty Supervisor, who was also of the opinion that the passport had been tampered with and her statement (1 R6) describes the kind of tampering. This was reported to the Duty Manager at the relevant time at the BIA, which was finally referred to an immigration Officer on duty, who was of the view that the authenticity of the passport was in doubt. It was at this stage that a decision was taken to hand over the petitioner to the 1st respondent for the purpose of further investigation.

The Duty Supervisor who had checked the originals of the travel documents of the petitioner on a request made by the 4th respondent, has been of the view that the passport has been tampered with and that the photograph of the passport was different. In her statement, she gives her reasons in the following terms (1 R6):

Mr. Rasika Anthony brought to me the original documents...and requested me to check the documents as the lamination of the passport was detached from the cover. I checked the same and I too observed that the lamination of the photograph was detached. I also observed that the photograph of the passport No. G.... and passport No. L.... differed from each other."

The Duty Manager too had come to the conclusion that the lamination on the photo page of the passport had come out and therefore the authenticity of the passport was in doubt. At that stage, she had referred the matter to the 1st respondent and the culmination of the whole episode was the arrest of the petitioner 'on suspicion' that he had attempted to board a flight to England on forged documents. The alleged suspicion was based on the facts that the passport was tampered with and the 4th respondent and the Duty Supervisor had come to this conclusion due to the fact that,

- a. the lamination of the photo page was detached;
- b. the photograph of the impugned passport and the photograph of the previous passport differed.

On an examination of the passport, with the help of a magnifying lens and an ultra violet light, the Duty Manager had got her opinion confirmed and had taken the decision to hand over the matter to the 1st respondent for investigation. The 1st respondent has categorically stated that he arrested the petitioner only on 'suspicion' that his pass-'port was either tampered with or he was using forged documents.

The Passenger Service Manual of the Sri Lankan Airlines (4A1) refers to the guidelines on passenger acceptance. Details are given regarding the travel documents that are necessary for the purpose and the manual refers to the following:

## "2. Travel documents

2.1 Travel documents consisting of passenger ticket, passport, visas and health certificates. To confirm that these are in order check-in and transfer desk must ensure;

- the ticket is valid for the flight and date of travel
- the route and class of travel are in order
- any endorsements and restrictions are met
- the name on the ticket tallies with that on the passport

- the validity of the passport does not expire before the end of the journey (for some countries 6 months before entry)

- valid visas for destination and/or intermediate points are held. Any suspicious passports and or visas be immediately referred to the officer or supervisor."

It appears that out of the checks on passports and visas, the manual has emphasized the check on visas, by stating as follows:

'2.2 The visa check is an extremely important function of check-in and transfer desk agents. It is imperative that passengers hold destination visas and transit visas required by en route points. In case of doubt, refer to the current TIM or to the TIMATIC in the DCS

No allegations were made against the petitioner with regard to any of the other requirements referred to in terms of travel documents in the Passenger Service Manual. It is therefore accurate to add that, the suspicion was purely on the basis of the passport, which was in the petitioner's possession.

The petitioner in his statement made at 2.15 p.m. on 20.10.2001 has categorically stated that he had obtained the passport in issue in 1993 at the time the Passport Office was located at Chaitya Road, Colombo. Later he had got the period extended until the year 2003 at the new office at Bambalapitiya. Further he had answered a question raised by an officer stating that he had himself obtained the British Visa from the British High Commission and that at no stage had he handed over the passport to any one else.

The submissions made on behalf of the respondents, and the documents filed by them clearly indicate that if there was any kind of suspicion regarding the petitioner's travel documents, it could have been at the most only on his passport. Even with regard to the petitioner's passport, the observations of the 4th respondent were that,

a. the lamination of the photo page has come out from the corner; and b. instead of the doffed printing of the letters at the place of birth, there were hand written letters.

The 4th respondents position was that the petitioner's passport was a possible case of "a photo insertion".

The 4th respondent finally submitted that he had compared the photograph on the photo page of the passport in question together with the other photograph in the previous passport, certificate of discharge of seaman (CDS) and visas and stated that he "observed that there was a marked difference in the photo page of passport No. L...."

It is to be noted that the passport in question was obtained in February 1993 (P1), whereas the previous passport was issued in April 1983 (P4). The Certificate of

Discharge was issued in June 1982. The photograph in the earlier passport and the photograph of the Certificate of Discharge are identical and in my view the petitioner has used two copies of the same photograph taken during the time he obtained the certificate of discharge and the earlier passport. The passport in question was obtained ten years later and therefore it should not be a surprise that the photograph in the second passport is different to that in the 1st passport. A time span of 10 years could make several changes to the facial features of any person, especially a weather beaten seaman. Furthermore, it is interesting to note the similarity in the photograph of the Liberian Seaman Identification and record book (PS), which was issued in January 1997. The similarity in the two photographs, which appear in the said record book and the second passport are clear even to the naked eye. Ironically, the 1st respondent accepts that this document was produced before him at the time the petitioner was arrested and it is even entered in the production registry under PR 129. It is observed that between the time the petitioner obtained his 1st passport and the 2nd, he had grown a beard and a moustache. His 1st passport and the Certificate of Discharge bear photographs of a fully shaven face whereas the 2nd passport and the Liberian Seaman Identification card carry photographs of a bearded person. If careful attention was given to the photograph in the Liberian Seaman identification card and if that was compared with the photograph of the passport in question, it would have clearly indicated the authenticity of the passport. The respondents made their submissions on the basis that they suspected that a photograph had been inserted in the passport belonging to the petitioner.

The petitioner was scheduled to fly on 20th October 2001 by UL 505 at 2.30 a.m. to join MT 'Lanrick', a LPG carrier owned by Fort Shipping Ltd., in Scotland, United Kingdom. Apparently, this was not the first visit the petitioner was making to Scotland to join the said company, as he has been serving Fort Shipping Ltd., since 1991. The petitioner had with him his appointment letter dated 01.10.2001 (P7) issued by the Assistant Shipping Officer of the Ministry of Internal and International Trade and Commerce, Shipping Development and Muslim Religious Affairs (merchant shipping division). Attached to the said document was a letter issued by the Director/General Manager of the Colombo office of Fort Shipping Ltd., informing that the petitioner will be joining the tanker MT "Lanrick". The petitioner was carrying with him a letter issued by the Colombo office of the Fort Shipping Ltd., with the emergency contact addresses and telephone numbers in Sri Lanka and in England. In fact a telephone number in Colombo that could be contacted after office hours was also included in the list. In the circumstances, it is surprising that the petitioner was taken into custody by the 1st respondent on suspicion that he was in possession of a passport, which had been tampered with or with the possibility of an insertion of a photograph. Even if he was not satisfied after checking all the documents referred to above, the 1st respondent could have contacted the Colombo office, prior to taking a decision to arrest the petitioner.

The officers at the BIA, including the immigration officers and the CID officers no doubt must be empowered to carry out necessary investigations. If there are any violations the offenders should be brought before the courts of justice to ensure that law and order is maintained and the proper procedure is followed. However, in this particular instance,



when there was material available to indicate the bona fides of the petitioner, the conduct of the officers and the respondents involved in overlooking the credentials of the petitioner, paints a dismal picture of the attitude towards a hapless traveller en route to accept his employment in a foreign country.

Learned State Counsel for the 1st and 6th respondents relied on *Veeradas v. Controller of Immigration and others* (1) which he submitted as strikingly similar to the instant case and where the Supreme Court held that the respondents had not violated any fundamental right of the petitioner. I find it difficult to agree with the learned State Counsel for the 1st and 6th respondents as the instant case could be clearly distinguished from the decision of *Veeradas's* case for the following reasons.

Firstly it would be difficult to state that the facts in these two cases are strikingly similar. In *Veeradas's* case, the petitioner, who was from Kolavil, Akkaraipattu was to travel to the United Kingdom at the invitation of the Islington and Hackney Group of the British Section of Amnesty International to address the Group in a series of talks in a seminar organized on the theme 'Sri Lanka Today' with regard to the Human Rights situation in Sri Lanka and the Sri Lankan refugees in the United Kingdom. Amnesty International had provided his flight ticket. His passport initially was valid only for certain designated countries in the Asian region. By an endorsement made on 09.08.1988 its validity was extended to all countries. The British government had issued a single visit visa for the journey. At the airport the petitioner had checked in, paid the embarkation tax, proceeded through the customs to the Immigration and Emigration counter. While he was seated in the departure lounge, he was informed that there was a problem with the petitioner's passport and had taken him in for questioning. When his travel documents and the baggage were checked, the officers found notices regarding the petitioner's earlier detention in custody by the Minister of National Security dated September 1986 and April 1987 under emergency regulations. When the passport was examined by the investigating officer of the BIA, it was found that,

- a. there was a mark, similar to an eraser mark on page 3 of his passport in the space below the petitioner's photograph at the point of his signature; and
- b. that there was a difference in the first name given in his National Identity Card as compared with his first name as appearing in his passport. While in his National Identity Card the name appeared as Kulandivel Veeradas, in his passport it appeared as Kulanthavelu Veeradas.

Secondly it is also important to note that the court had no opportunity of examining the passport in question due to the fact that the original passport not being tendered to court as the petitioner at the time his case was being heard was said to be in the United Kingdom.

In the instant case, the petitioner was present in court and the passport in question was in the custody of the Registrar and the court had the advantage of examining the passport.

The present case therefore cannot be said to have 'striking similarities' as in Veeradas's case. In fact it is important to consider the atmosphere that prevailed during the time Veeradasa was arrested. Referring to this Bandaranayake, J., in his judgment in Veeradas's case stated that,

"In the circumstances suspicions were raised that the passenger may be a person involved in anti-government terrorist activity constituting offences under anti-terrorist and Emergency laws and regulations in the back ground of continuing widespread civil unrest in the country and a suspicion that his passport was forged, irregular or altered."

The arrest of the petitioner in the case presently before court was not done in such circumstances.

There is one more point that needs to be examined before I depart from this judgment. Reference was made to section 32 of the Code of Criminal Procedure Act, No.15 of 1979 that the 1st respondent took the petitioner into custody on 'reasonable suspicion' that the petitioner was attempting to leave for the United Kingdom with a forged passport or presumably with a tampered passport. The question which arises here is that was it a reasonable suspicion or a 'mere suspicion' that the petitioner did not have a genuine passport in his possession. We are mindful and fully possessed of the difficulties faced by the airport officials in dealing with the passengers and appreciate the efforts taken to eradicate the violations and the steps taken to apprehend the violators. At the same time officials must ensure that passengers with genuine passports are not put to the inconvenience of rescheduling or cancelling their flights due to their (officials) acting hastily and negligently in the absence of credible material in the circumstances of each case. The wording in section 32 of the Code of Criminal Procedure Act refers to a 'reasonable complaint' or 'credible information' or a 'reasonable suspicion'. Therefore the legislature has been emphatic that a mere suspicion alone would not be sufficient to arrest a person in terms of section 32 of the Code. Defining suspicion, Sohoni in his work on the Indian Criminal Procedure Code, which uses the identical wording incorporating the phrases of reasonable complaint, credible information or reasonable suspicion (18th edition, volume 1, pg.240), stated as follows;

"A general definition of what constitutes reasonableness in a complaint or suspicion and credibility of information cannot be given. But both must depend upon the existence of tangible legal evidence within the cognizance of the police officer and he must judge whether the evidence is sufficient to establish the reasonableness and credibility of the charge, information or suspicion. What is a reasonable complaint or suspicion must depend on the circumstances of each particular case, but it must be at least founded on some definite fact tending to throw suspicion on the person arrested and not on mere surmise or information."

As referred to earlier in detail, the petitioner had produced several other documents to the 1st respondent for him to clarify the petitioner's bona fides vis-a-vis his travel documents. A comparison of his passport with the Liberian Seaman's identity card

would in my view have cleared any kind of doubt the officials would have had in their minds.

**For the aforementioned reasons I hold that the petitioner was treated unequally and was arrested and detained illegally and therefore the petitioner's fundamental rights guaranteed in terms of Articles 12(1), 13(1) and 13(2) were violated by the 1st and 3rd respondents. I accordingly direct the State to pay a sum of Rs. 30,000/- as compensation and costs. This amount must be paid within three (3) months from today.**

**S. N. SILVA, C.J. - I agree**

**EDUSSURIYA, J. - I agree**

***Relief granted.***