

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

In the matter of an application under and in
terms of Articles 17 and 126 of the Constitution

Liyanagamage Anoma Santhi,

Welikanda,

Ahungalla.

Petitioner

SC /FR/ Application No.135/2017

Vs,

1. W.A. Mahinda,
Headquarters' Inspector,

2. Sandaruwan,
Police Constable 69864,

3. Bandara Karunathilake,
Sub-Inspector,

1st to 3rd Respondents, all of Ambalangoda
Police Station,
Ambalangoda.

4. Pujith Jayasundara,
Inspector General of Police,
Police Headquarters, Colombo 01.

5. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before: Justice Vijith K. Malalgoda, PC
Justice S. Thuraija, PC
Justice Mahinda Samayawardhena

Counsel: Sanjeewa Ranaweera with Malaka Palliyaguruge Instructed by Dinesh de Silva for the Petitioner.
Vishva M. Gunaratne with Darshika Perera for 1st to 3rd Respondents
Ms. Chathurangi Mahawaduge SC for Hon. Attorney General.

Written Submissions on: On behalf of the 5th Respondent 08.01.2021
On behalf of the 1st to 3rd Respondents 25.06.2021
On behalf of the Petitioner 07.06.2022

Argued on : 17.06.2022

Judgment on : 29.09.2022

Vijith K. Malalgoda PC J

The Petitioner made an application in terms of Article 126 of the Constitution for the alleged violation of her Fundamental Rights guaranteed under Articles 12 (1) and 13 (1) of the Constitution as a consequence of an illegal arrest of her by several officers attached to Ambalangoda Police Station including the 2nd Respondent. This court, having considered material placed before it, granted leave to proceed for the alleged violations under Articles 12 (1) and 13 (1) on 07.07.2017. Some of the Respondents namely, the 1st to 3rd Respondents who were originally represented by the Hon. Attorney General, had later retained Private Counsel and were represented by the said counsel during the arguments before us.

As revealed before us, the Petitioner was a 58 years old widowed woman with 05 grown up children at the time she filed the instant application. In her Petition filed before this Court, the Petitioner admits having a past record of several convictions for possession and sale of illicit liquor and drugs but had taken up the position that she had a reformed life in the recent past.

It was her position that she left her residence in Welikanda Ahungalla where she stayed with her daughter, somewhere in May 2016 and had visited her eldest daughter namely, Induwadura Anusha de Sliva who lived in Mabulgoda Pannipitiya and stayed with her for some time.

When she was with her eldest daughter, she learnt that somewhere around 24th June 2016, the 2nd Respondent and five other police officers attached to Ambalangoda Police Station had broken into the house of the Petitioner's daughter at Welikanda- Ahungalla in the absence of her daughter at home. However, her sister Liyanagamage Ashoka Shanthi and her daughter in law Peyahadi Devika de Silva who occupied the house adjacent to the house of the Petitioner's daughter had witnessed the incident.

Since the Petitioner was not in the village and was living with her eldest daughter in Pannipitiya area, she lodged a complaint at the Police Headquarters with regard to the incident that took place on 24th June at her younger daughter's place in Ahungalla. The Petitioner underwent a cataract surgery at Hemas Hospital Wattala on 25.09.2016. On 24th, the Petitioner's younger daughter who lived in Ahungalla had received a police message through Ahungalla Police informing her mother, i.e., the Petitioner before this court, to be present at the office of the Senior Superintendent of Police Elpitiya on 26.09.2016 for an inquiry with regard to the written complaint the Petitioner had lodged with the Inspector General of Police. The Petitioner, who returned to the village immediately after the eye surgery, had visited the office of the Senior Superintendent at Elpitiya with her son on the 26th at 10.00 a.m.

As revealed before this court, the Petitioner and her son had waited several hours at the Senior Superintendent's office waiting for the Senior Superintendent, but since they were informed by the other officers that the Senior Superintendent will not be available, they came out of the office premises in order to go home. At that time the Petitioner was stopped outside the Senior Superintendent's Office by a team of police officers including the 2nd Respondent and was dragged into a jeep that was parked nearby. According to the affidavit filed by the son of the Petitioner namely, Induwadura Inosh de Silva, when his mother was dragged inside the Jeep, he had rushed to the police office and informed them as to what happened to his mother, but the officers at the Senior Superintendent's office were silent and had refused to record a statement from him.

The Petitioner who was arrested on the 26th near the Police office at Elpitiya was produced before the Magistrate of Balapitiya on the same day and remanded to the Fiscal Custody in a case that was pending before the said court on a 'B' Report filed by Ambalangoda Police Station. The said report referred, to a raid conducted by the officers attached to Ambalangoda Police Station on 23.06.2016 at the Petitioner's residence, where the police had recovered 710 milligrams of heroin but could not arrest the suspect since the Petitioner had fled the scene of crime leaving 6 Packets of suspected brown powder. After producing the Petitioner before Magistrate's Court, the 3rd Respondent submitted evidence before Court by way of an affidavit and moved the Productions to be sent to the Government Analyst. The Petitioner continued to be in remand custody until the receipt of the Government Analyst's Report. On 06.03.2017 PS 28850 who appeared for the prosecution had informed court that the police will not proceed with the case since the Government Analyst had not found any dangerous drugs in the brown powder and the learned Magistrate had accordingly discharged the suspect on the same day.

Whilst submitting that the Respondents have fabricated a false case against her and subsequently arrested her illegally when she came to appear before the Senior Superintendent Elpitiya to attend an inquiry, the Petitioner had submitted that the said conduct of the 1st to the 3rd Respondents were in violation of the Petitioner's Fundamental Rights guaranteed under Article 12 (1) and 13 (1) of the Constitution.

In response to the position taken up by the Petitioner, the 1st to the 3rd Respondents have submitted that,

- a) The Petitioner is a well-known drug dealer in the area and her antecedents reveal 07 convictions for drug related offences.
- b) On credible information received through the Assistant Superintendent of Police of the area, the 1st Respondent along with 2nd and 3rd Respondents conducted a raid and apprehended one Asanka de Silva at Sri Gunananda Mawatha Mohottiwatta Balapitiya for possession of a substance suspected as heroin.
- c) Upon being questioned, the suspect revealed that he purchased the said quantity of 'drugs' from one 'Anoma Shanthi' alias 'Kudu Nona', who lived close by, and the police party visited the house of the Petitioner.
- d) Upon seeing the arrival of the Police party, the Petitioner who was standing near the gate of her house had fled the area. At that time the Petitioner dropped six packets as the Petitioner stripped off some of her garments. Since the police party did not consist of a female officer to apprehend the Petitioner, they gave up the idea of chasing her but, the substance which was dropped by her was subsequently taken into custody by the police party.

- e) The facts pertaining to the said raid was reported to court under B/91496/2016 before the Magistrate's Court of Balapitiya on 24.06.2016 and time was obtained to produce the suspect.
- f) The Petitioner was subsequently arrested on 26.09.2016 while she was travelling in a three-wheeler at Aruwala Bridge and produced before the Hon. Magistrate on the same day and remanded for fiscal custody.
- g) The Respondents were unaware of a complaint made by the Petitioner to the Police Headquarters and/or with regard to an inquiry by the Senior Superintendent of Police Elpitiya scheduled for the 26.09.2016.
- h) On the strength of the Government Analyst's Report, and the application made by the police, Hon. Magistrate Balapitiya discharged the suspect from the proceedings.

Whilst submitting the above in the affidavit filed before this court, the Respondents have annexed a copy of the relevant case record marked R-1. The said record contained the very first 'B' Report filed before the Magistrate's Court on 24.06.2016, immediately after the raid at the house of the Petitioner and the subsequent proceedings before the Magistrate's Court of Balapitiya.

In the 'B' Report, signed by the 1st Respondent, it was reported to court that, a police party led by the 3rd Respondent along with three other officers including the 2nd Respondent, whilst on patrol duty, had acted on information received by a private informant with regard to the sale of illegal drugs and raided the house of one Liyanagamage Anoma Shanthi alias "කඩ නොනා" at Sumangala Mawatha Welikanda.

After seeing the police party, the suspect who was standing near the gate of her house had fled the area dropping six packets which were in her custody at that time.

The six packets which contained 710 milligrams of suspected brown powder, were produced at the Police Station on the same day.

When the Petitioner was arrested by the officers of Ambalangoda Police Station on 26.09.2016, a further report was filed before the Magistrate's Court on the same day and moved to remand her to the fiscal custody under the provisions of the Poisons Opium and Dangerous Drugs Ordinance. Whilst making an order to remand the Petitioner for fiscal custody, the learned Magistrate had made the following observation in the journal entry.

“බන්ධනාගාර ගත කරමි. බන්ධනාගාරය මගින් ඇසේ ශල්‍යකර්මයකට අදාලව ප්‍රථිකාර අවශ්‍යනම් ලබා දීමට අවධානයට යොමු කරමි. ”

From the material that was placed before this Court by both parties, it is clear that the Petitioner who had undergone an eye surgery on the 25.09.2016 at a private Hospital in Wattala, had appeared at the Senior Superintendent's Office at Elpitiya on the following day to attend an inquiry with regard to a complaint she made at the Police Headquarters. The Inspector General of Police, the 4th Respondent before this Court had failed to explain whether he called for any information from the Senior Superintendent of Police Elpitiya as to why the Senior Superintendent of Police was not present for the inquiry, when he summoned the complainant for an inquiry before him on the 26th morning. According to the further report filed on the 26th after the arrest of the Petitioner, the 1st Respondent had not explained as to how and on what information the police managed to arrest the Petitioner after several months from the raid they carried out in Ahungalla.

According to their own reports filed before the Magistrate's Court, the Petitioner had fled the area when the police party raided her house and the police could not arrest her for nearly 03 months since then. If the Petitioner was absconding during this period, that has to be specifically stated in

the report that was filed on the 26th September, but there is no such reference in the report filed before the Magistrate's Court.

According to the affidavit filed by Induwadura Inosh de Silva, the son of the Petitioner who was with the Petitioner at the time of her arrest, he immediately rushed to the SSP's Office and informed the Officers at the Office of the illegal arrest of his elderly mother, but the officers at the SSP's office, neither took any interest to listen to him nor recorded his complaint at that time.

With regard to the raid said to have been conducted by the 2nd and the 3rd Respondents with several other officers on the 23.06.2016, the 1st Respondent had filed a 'B' Report before the Magistrate's Court of Balapitiya on the following day, but the Respondents have taken two contradictory positions, when the said report is compared with the affidavit filed by the 2nd Respondent before the Supreme Court on behalf of all the Respondents.

As already referred to in this judgment, prior to the raid at the house of the Petitioner, the police party led by the 3rd Respondent arrested one Asanka de Silva on credible information received through the ASP, which led to the raid carried out at the house of the Petitioner. However, the 'B' Report does not refer to the credible information received through the ASP, which led to the arrest of Asanka de Silva but it only refers to receiving credible information from a private informant whilst the police party was on patrol duty. There is no reference to the arrest of one Asanka de Silva in the 'B' Report. When considering the above, it appears that the facts placed before the Magistrate's Court by the 1st Respondent on 24.06.2016 are incorrect.

With regard to the raid carried out at the house of the Petitioner, the Respondents have submitted that they did not chase behind the Petitioner in the absence of a lady officer in the raiding party. If the police decided to act on the information received by the private informant, they should have first

obtained the assistance of a lady officer, since the raid has to be carried out on a female suspect at her residence.

The above position taken by the Respondents before this court is also contradictory with the narration given by the Petitioner before this court. As submitted by the Petitioner, she decided to lodge a complaint at the Police Headquarters when she heard of some police officers including 2nd Respondent forcibly entering her daughter's house whilst the residents were away. The Petitioner who wanted an impartial investigation with regard to the said incident had decided to come back to Balapitiya and visited the Senior Superintendent's office at Elpitiya, even after undergoing an eye surgery on the previous day.

This position was corroborated by two witnesses namely Liyanagamage Ashoka and Peyahandi Devika de Silva the sister and niece of the Petitioner who lived in close vicinity, by submitting affidavits before this court. The said witnesses were silent on any subsequent visit by the police officers looking for the Petitioner until an officer from the Ahungalla Police Station visited the house of the Petitioner's daughter on 24th September and left a police message informing the Petitioner to be present for an inquiry at the police office Elpitiya. The Respondents were also silent as to the subsequent investigation carried out by Ambalangoda Police Station to apprehend the Petitioner who escaped when the police party raided her house on the 23.06.2016. However, it is unusual for the officers, attached to Ambalangoda police station to have visited Elpitiya area, assisted by a lady officer, and to have spotted the Petitioner who was travelling in a three-wheeler, when the Petitioner left the police office Elpitiya since the Senior Superintendent of Police did not turn up for the inquiry.

According to the Petitioner and her son who had tendered an affidavit before this court, the Petitioner was dragged into a police jeep that was parked near the police office. Except for the copies of the case record, the Respondents have not produced the arrest notes for the perusal of this court.

Similarly, the Respondents has failed to produce the notes with regard to the raid carried out by several officers from Ambalangoda Police Station on 23.09.2016 at Ahungalle. The two versions given by the Petitioner and the Respondents contradict each other. According to the Petitioner she was not in her village on the day the so-called raid was carried out by the Respondents. In addition to the above, the Respondents had given two versions as to how they decided to carry out the raid at the Petitioner's house.

In this regard it is also important to observe the role played by officers attached to Ambalangoda Police station by conducting a raid at the house of the Petitioner, (as submitted by the Respondent) which is situated outside the police area of Ambalangoda. It is admitted that the Petitioner as well as her daughter lived in the police area of Ahungalle Police Station. The Respondents were once again silent whether they received specific instructions and/or orders to carry out the raid outside their police area.

With regard to the failure by the Respondents to place relevant information before Court when their conduct was in question, this court is mindful of the following observation made by Anil Gooneratne (J) in the case of *Kelum Dharsana Kumarasinghe V. S. Hettiarachchi SC FR 108/2010 Supreme Court Law Reports 2015 387 at 395*.

“When the Law enforcement Authorities concerned take steps to deprive persons of their personal liability by arrest and detention, the Apex Court need to be informed of all details of such arrest and detention, if such arrest is challenged in court. In the absence of such details and cogent reasons to arrest the detainees would naturally fortify the case of the detainees, who have placed material of illegal arrest by the state machinery which sees to have been abused at that point of time. The liberty of an individual or a group of persons, as per Article 13 (1) is a matter of great constitutional importance. This liberty should not be

interfered with, whatever the status of that person or persons arbitrarily or without legal justification.”

The fact that the Petitioner lodged a complaint at the Police Headquarters is not denied by the Respondents before this court. The Petitioner has produced marked P-1 the message said to have been received from the Ahungalla Police Station with regard to the inquiry. The outcome of the said inquiry is very much relevant to the instant case, since it will confirm whether the Petitioner was present in Ahungalla on 23.06.2016 as claimed by the Respondents or she was away from the village as complained by the Petitioner. In this regard it is important to note that it is the Petitioner who went to the police Headquarters and lodged the complaint with regard to the conduct of a police party including the 2nd Respondent on the 23.06.2016 and had returned to the village immediately after undergoing an eye surgery in order to attend the inquiry with regard to her complaint.

The 4th Respondent, the Inspector General of Police, to whom the complaint was made by the Petitioner, had neither informed the outcome of the inquiry with regard to the complaint made by the Petitioner nor had shown any interest to take part in the proceedings of the instant application before this court.

Having placed the above material, which was revealed during the arguments before the Supreme Court I will now consider whether the 1st to 3rd or any one of the said Respondent have violated the Fundamental Rights of the Petitioner guaranteed under Article 12 (1) of the Constitution.

Article 12 (1) refers to equality before law, as follows;

“All persons are equal before the Law and are entitled to the equal protection of the law”

The arrest of the Petitioner had taken place near the Police Office Elpitiya when she came to attend an inquiry before the Senior Superintendent of Police. She was dragged into a police jeep when she

protested against the arrest. It is very much clear from the above material that reasons for her arrest were not explained to her. The Petitioner was unaware of a 'B' Report that had been filed before the Magistrate's Court of Balapitiya under the provisions of the Poisons Opium and Dangerous Drugs Ordinance, making her an accused with regard to a raid carried out by the officers of Ambalangoda Police Station. Otherwise, she would not have made a complaint at the Police Headquarters and come to Elpitiya to attend the inquiry immediately after undergoing an eye surgery. The material that was placed before the Magistrate's Court in the 'B' Report is contradictory to the material placed before this court by the Respondents and the arrest notes that are material to the case before the Supreme Court had not been produced before Court. The fourth Respondent, the Inspector General of Police had not informed this Court of the progress with regard to the complaint made by the Petitioner at the Police Headquarters.

When above facts are considered, it is clear that the Petitioner has not received equal protection of law. It is the 1st Respondent who had signed the 'B' Report with regard to the so-called raid that had been carried out by several officers including the 2nd Respondent, led by the 3rd Respondent. The notes made with regard to the said raid are not before us but the Petitioner had lodged a complaint at the Police Headquarters with regard to an incident that had taken place at her daughter's place when the residents were away. The Respondents have neither explained the reason nor had submitted authority they received to carry out a raid outside the police area of Ambalangoda Police Station. In such a situation it can also be concluded that the Respondents have fabricated charges against the Petitioner. This fact is further established from the fact that Petitioner had finally been discharged from the proceedings before the Magistrate's Court after being in remand custody for nearly six months when the Government Analyst could not identify "dangerous drugs" in the samples submitted to him.

When all these matters are considered, I have no hesitation to conclude that the 1st to the 3rd Respondents are responsible for the above conduct, and therefore had violated the Fundamental Rights of the Petitioner guaranteed by Article 12 (1) of the Constitution. I will now consider whether the said Respondents have violated the Fundamental rights of the Petitioner guaranteed by Article 13 (1) of the Constitution, which reads 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.”

From the material that had already been discussed in this judgment, it is clear that the Petitioner was arrested by a police party including the 2nd and the 3rd Respondents outside the Police Office Elpitiya. However, it was the position of the Respondents that the Petitioner was arrested at Aruwala Bridge while she was travelling in a three-wheeler, but arrest notes made by the arresting officer is not before us for our perusal. Even if the said position is considered as correct, the Respondents had failed to submit before this court, the information they received in order to apprehend the suspect, who was required by them with regard to a case already filed in the Magistrate’s Court of Balapitiya. This arrest had taken place three months after the raid. According to the Petitioner as well as her son, the police officers had dragged her into a jeep which was parked closer to the Police Office, when they came out from the Police Office. The above position taken by the Petitioner is not challenged by the Respondents by submitting arrest notes before us. Subsequent to her arrest a further report was filed before the Magistrate’s Court signed by the 1st Respondent.

Even though the Petitioner was a ‘wanted suspect’ at the time of her arrest, the law requires the arresting officer to explain the reason for the arrest. There is no material before this court to conclude that the reasons for the arrest had been explained to the Petitioner. As already referred to in this judgment, the Petitioner is unaware of any detection that had taken place on the 23.06.2016

involving the Petitioner, and as she was suspicious of the conduct of the Respondents, she had lodged a complaint at the Police Headquarters. The Respondents have never taken up the position that they could not arrest the Petitioner until 26th September, since she was evading her arrest or had absconded to avoid her being arrested. In the said circumstances, it is clear that the Petitioner was not explained of the reasons for her arrest at the time of her arrest by a police party including the 2nd and the 3rd Respondents and the said Respondents have violated the Fundamental Rights of the Petitioner guaranteed under Article 13 (1) of the Constitution.

For the reasons set out hereinbefore I hold that, the 1st, 2nd and 3rd Respondents have violated the Fundamental Rights of the Petitioner guaranteed under Article 12 (1) of the Constitution and the 2nd and 3rd Respondents have also violated the Fundamental Rights guaranteed under Article 13 (1) of the Constitution.

I therefore direct the 1st Respondent to pay Rs. 100000/- to the Petitioner from his personal funds. I further direct the 2nd and 3rd Respondents to pay Rs. 200000/- by each Respondent to the Petitioner from their personal funds.

The State is directed to pay Rs. 50000/- as the cost for the litigation.

Application allowed.

Judge of the Supreme Court

Justice S. Thuraiaraja, PC

I agree,

Judge of the Supreme Court

Justice Mahinda Samayawardhena,

I agree,

Judge of the Supreme Court