SUSILA DE SILVA

v.

WEERASINGHE AND OTHERS

COURT OF APPEAL.
SIVA SELLIAH, J. AND JAMEEL, J.
C.A. APPLICATION HCA 34/85.
MAY 5, 1986.

Habeas Corpus – Arrest without warrant – Sec. 18(1) of the Emergency Regulations.

An arrest without warrant was made under section 18(1) of Emergency Regulations of 18.8.85 by S.I. (Police) on instructions given by his superior A.S.P. of a person reasonably suspected of inciting others to commit offences under the Emergency Regulations. The S.I. making the arrest had no firsthand knowledge of the facts but he told the detainee at the time of his arrest the reason for the arrest. Subsequently detention orders were made by the I.G.P. under section 19(2) of the Emergency Regulations of 1985 and thereafter by the Minister of National Security under section 9 of the Prevention of Terrorism Act No. 48 of 1979 and No. 10 of 1982.

Following the decision in *Nanayakkara v. Henry Perera, A.S.P. (1985) 2 SLR p.375* that a police officer making an arrest under Emergency Regulations 18(1) may either have firsthand knowledge or his knowledge may be acquired on statements by others in a way which justifies him to give such statements credit:

Held–

(i) the arrest was lawful, and
(ii) the subsequent detention orders by the I.G.P. and the Minister of National Security are in accordance with the law.

Cases referred to:

(1) *Muthusamy v. Kannangara – (1951) 52 NLR 324.*
(2) *Corea v. The Queen – (1954) 55 NLR 457.*
(3) *Gunasekera v. De Fonseka – (1972) 75 NLR 246.*
(4) *Christine v. Leachinsky – (1947) AC 583.*
(5) *Deshpande v. Emperor – AIR 1945 Nagpur 8.*
(6) *King-Emperor v. Deshpande – AIR 1946 P.C. 123; 47 Criminal Law of India (1946) p.831.*
(7) *Nanayakkara v. Henry Perera – (1985) (2) SLR 375.*

APPLICATION for Writ of Habeas Corpus.

D. W. Abeykoon with *P. H. Dharmawardena* for petitioner.

Asoka de Silva, S.S.C. for Attorney-General

June 6, 1986.

SIVA SELLIAH, J.

This is an application for a Writ of Habeas Corpus in respect of K. K. V. Jayatillake de Silva (47), a journalist and translator who was taken into custody by the police on 29.8.85 and still continues to be in custody. The petitioner is the wife of the corpus.

The facts upon which this application is made are stated to be as follows:

Two police officers came to the house of the petitioner on 29.8.85 at about 7.15 p.m. and removed her husband – thereafter she is unaware of her husband's whereabouts. She has made complaints at the Welikade Police and the Police Headquarters. She has stated that her husband is innocent of any crime or illegal or unlawful incidents and moves that the respondent be directed to produce him in court to be dealt with according to law.

Sub-Inspector Jinasena of the Maharagama Police who arrested the corpus on 29.8.85 at Koswatte has filed affidavit 2R4 dated 17.10.85 stating that he arrested the corpus on the instructions of ASP-CID, K. V. T. Perera and that he explained the purpose of his arrest to the corpus.

ASP K. V. T. Perera has filed affidavit on 17.10.85 2R3 and states that he is an officer of the unit established to investigate offences against the Prevention of Terrorism Act No. 48 of 1979 as amended by Act No. 10 of 1982; he has there stated that he received information to the effect that the corpus was concerned in inciting a group of persons to commit acts contrary to the Emergency Regulations and accordingly instructed SI Jinasena to arrest the corpus; he has also stated that after his arrest he placed the relevant material concerning the corpus before the IGP who then made order on 29.8.85 under section 19(2) of the Emergency Regulation No. 8 of 1985 for detention of the corpus for 30 days and that the said order was served on the corpus; he has also set out in para 8 of the affidavit that the investigations have revealed that the corpus is the secretary of the Samajawadi Janatha Viyaparaya which is affiliated to the breakaway group of the proscribed organization known as the JVP.

the sole object of which is to overthrow the legally elected government of Sri Lanka by illegal means and establish in its place a Marxist form of government and that towards this end were engaged in subversive activity and that the corpus is involved in this conspiracy to overthrow the government. He has furnished all this material to the IGP who made a detention order on 29.8.85 and also to the Minister of National Security who made a detention order on 12.9.85 which were served on the corpus. The corpus he stated, is at present held on the detention order made by the Minister on 12.9.85 under section 9 of the Prevention of Terrorism Act No. 48 of 79 as amended by Act No. 10 of 1982.

The Director CID has filed affidavit dated 22.10.85 setting out all these matters and the affidavits of the Minister of National Security, of the ASP and Sub-Inspector referred to above and states that the arrest and detention of the corpus are in the circumstances lawful and that the petitioner is not entitled to the relief claimed by him.

The IGP (1R) has filed affidavit dated 22.10.85 (2R2) setting out that on the material furnished to him including the matters set out in the affidavits of SI Jinasena and ASP K. V. T. Perera 2R3 and 2R4, he had reasons to suspect that the corpus was concerned in inciting groups of persons to commit acts contrary to the Emergency Regulations and that he made a detention order dated 29.8.85 (X1).

The Minister of National Security has filed affidavit 2R1 dated 17.10.85 wherein he stated in para 3:

> "Having regard to all the information furnished to me including the matters set out in the affidavits of ASP K. V. T. Perera and SI Jinasena, I have reasons to suspect that the said corpus K. K. V. Jayatillake de Silva is concerned with or concerned in unlawful activities, to wit, doing acts preparatory to causing and conspiring to cause the death of members of the armed forces and the police force and to commit mischief to the property of the government".

He states that accordingly he made detention order dated 12.9.85 (X2) under section 9 of the Prevention of Terrorism Act.

At the hearing before us, learned counsel for the petitioner placed two principal submissions which he canvassed strongly:

(1) That SI Jinasena who arrested the corpus had no firsthand knowledge of the alleged subversive activities of the corpus to arrest him, and that he arrested him on the instructions of the ASP and that therefore the arrest was illegal and unlawful and thus anything that was done in regard to the corpus was and remained illegal.

(2) That the subsequent detention orders X1 and X2 by the IGP and by the Minister for National Security were thereafter made for a collateral purpose, i.e. to legalise or cover up the illegal arrest and therefore were bad and unlawful.

I shall now proceed to consider these submissions.

As far as the first submission was concerned that the arrest was unlawful as SI Jinasena had no firsthand knowledge of the corpus' alleged involvement in subversive activities against the State but only acted on the orders of the ASP, he contended that the arrest of the corpus was made under section 18(1) of the Emergency Regulation of 18.8.85 which states as follows:

"Any police officer, any member of the Sri Lanka Army, the Sri Lanka Navy or the Sri Lanka Air Force, or any other person authorized by the President to act under this regulation may search, detain for purposes of such search, or arrest without warrant, any person who is committing or has committed or whom he has reasonable ground for suspecting to be concerned in or to be committing or to have committed, an offence under any Emergency Regulation, and may search, seize, remove and detain any vehicle, article or substance or thing whatsoever used in or in connection with the commission of the offence".

He accordingly contended that since SI Jinasena was merely carrying out orders of the ASP he, i.e. SI Jinasena has no reasonable grounds for suspecting the corpus to be concerned in any subversive activity and could not have informed him of the reason for his arrest and therefore the arrest was unlawful. He relied on the cases of *Muthusamy v. Kannangara* (1) and *Corea v. The Queen* (2) which held that a person must be informed of the reasons for his being arrested;

he also quoted the case of *Gunasekera v. De Fonseka* (3) where it was held that where an ASP has purported to arrest a person under Regulation 19 merely because he had orders to do so from his superior officer, the SP, and was not personally aware of the actual offence of which the person arrested was suspected by the SP, such arrest is liable to be declared in Habeas Corpus proceedings to have been unlawful. H. N. G. Fernando, C.J. has there held at p. 249 that the duty to inform a person of the grounds of his arrest is no more an arbitrary requirement and that a citizen has a right to resist an unlawful arrest. In *Christine v. Leachinsky* (4) Lord Simon said–

> "Is citizen A bound to submit unresistingly to arrest by citizen B in ignorance of the charges against him? I think that cannot be the law of England".

In *Deshpande v. Emperor* (5) the High Court dealing with the suspicions of the police officer who effected the arrest made the following observation at p. 26:

> "The only affidavit we have on the side of the Crown is one wh tells us about the suspicions entertained by the Provinc Government, not by the police officer making the arrest. But wh we have to determine here is what were his suspicions, and were they reasonable, and not what the Provincial Government's suspicions are; moreover, under Regulation 129 the court has tc determine whether the suspicions were reasonable and not the Provincial Government".

The decision of the Nagpur High Court which held that *Deshpande's* arrest and detention was unlawful were upheld by the Privy Counci (6). H. N. G. Fernando, C.J. held in *Gunasekera v. De Fonseka (supra)* (3) adopting the principle in the above case to the facts of the present case, it is apparent that the arrest of the detainee and his subsequent detention were unlawful and that he was entitled to be released from custody.

The learned Senior State Counsel who appeared for the respondents stated that the submissions are not tenable as the affidavit of SI Jinasena sets out in para 2 thereof that he arrested the corpus on 29.8.85 on the instructions of the ASP CID and that *he explained the purpose of arrest to the said corpus.* (The underlining is by me). This clearly establishes that when he went to arrest the corpus he was well aware through the instructions received from the ASP that

the corpus was involved in subversive activities against the State and was trying to overthrow the legally elected government of this country and was thus in a position to explain the reason of arrest to the corpus. I am of the view accordingly that SI Jinasena had knowledge and had "reasonable ground for suspecting" that the corpus was committing offences under the Prevention of Terrorism Act under the Emergency Regulation. In *Nannayakkara v. Henry Perera* (7) a Bench of 5 judges considered this point in relation to a Fundamental Rights application and held at p. 383–

> "Learned President's Counsel submitted that the knowledge of the police officer making the arrest had to be firsthand. There is no such requirement in Regulation 18(1). Knowledge may be firsthand or acquired on statements by others in a way which justifies a police officer giving them credit. On the material available in this case I hold that the procedure followed in the petitioner's arrest was lawful and did not infringe his fundamental rights under article 13(1)."

In the instant case I am of the view that on the instructions of the ASP, SI Jinasena to whom the instructions were given became possessed of sufficient material and information relating to the subversive activities of the corpus which would necessarily have given him reasonable suspicions of the corpus' unlawful activities in contravention of the Emergency Regulation and the provisions of the Prevention of Terrorism Act and thus enabled him to give the corpus the reasons for his arrest. I therefore conclude that the arrest was lawful and that the subsequent detention orders X1 and X2 made by the IGP and the Minister for National Security are in accordance with the law.

The first point taken therefore by the learned counsel for the petitioner fails.

In view of my findings that the first submission that the arrest of the corpus is unlawful must fail, the second submission that the detention orders X1 and X2 were for a collateral purpose, i.e. to justify the illegal arrest does not arise for consideration; for if the arrest was lawful no collateral purpose exists for the making of the detention orders which have been duly made in accordance with law, i.e. 9(1) of the Prevention of Terrorism Act No. 48 of 1979 by the Minister of National Security (X2).

There is no allegation in the petitioner's affidavit of the arrest being made due to any malice in fact or in law. The detention orders have been lawfully made and being ex facie valid there is thus no reason to hold that they were motivated by any kind of malice legal or otherwise against the corpus, or made for a collateral purpose as contended by learned counsel for the petitioner.

For the reasons set out by me this application for Writ of Habeas Corpus is dismissed.

JAMEEL, J. – I agree.

Application dismissed.