

WIMALADASA

v.

**SOMADASA, POLICE CONSTABLE, BRIBERY COMMISSIONER'S
DEPARTMENT AND OTHERS**

SUPREME COURT
DHEERARATNE, J.
WIJETUNGA, J. AND
ISMAIL, J.
SC APPLICATION 577/97 (FR)
21st OCTOBER, 1999

*Fundamental rights - Bona fide arrest and detention on a warrant -
Articles 13(1) and 13(2) of the Constitution - Liability of Police Officer.*

The petitioner who was a witness in a bribery case before the High Court failed to attend court on 12.5.1997; whereupon the High Court issued a warrant for his arrest. On 4.6.1997 he had a motion filed in the High Court through an Attorney-at-Law and obtained an order cancelling the warrant. Being unaware of such cancellation, the 1st respondent a police officer attached to the Commission to Investigate Bribery and Corruption executed the warrant, on 14.6.1997. The petitioner told the officer that the warrant had been cancelled but could not produce any proof of cancellation. The petitioner was detained at the police station overnight and produced before the Magistrate on 15.6.1997 when he was remanded by the Magistrate until 16.6.1997 on which date he was produced before the High Court. The petitioner complained of violation of his fundamental rights guaranteed by Articles 13(1) and 13(2) of the Constitution.

Held :

The respondent bona fide believed that the warrant handed over to him was in force; and no malice was attributed to him. In the circumstances, there was no violation of the fundamental rights of the petitioner.

Cases referred to :

1. *Moramudalige Podiappuhamy v. Diananda Liyanage and others*, SC Application 446/93 SC minutes of 31 May 1994 (distinguished)

APPLICATION for relief for infringement of fundamental rights.

P. K. *Prince Perera* for petitioner.

P. G. Dep. DSG for respondents.

Cur. adv. vult.

December 06, 1999

DHEERARATNE, J.

The petitioner is a retired clerk. He was a witness in bribery case no. 1179/96 pending in the High Court of Colombo. He was also suspect in bribery case no. 8696/97 pending at the Magistrate's Court Colombo. In connection with the latter case he was in the remand jail Colombo from 25.3.97 to 30.5.97. The bribery case in which he was a witness was fixed for trial on 12.5.97. Sometime before that date the petitioner informed the officials of the remand jail that he has to be present as a witness in the High Court on 12.5.97. However, the officials informed him that in the absence of a Court order, they could not make arrangements to take him to Court on 12.5.97. When the petitioner was released from custody on 30.5.97 he went to meet the Registrar of the High Court of Colombo to inquire after the case in which he was a witness. The Registrar informed him that as he was absent from Court a warrant was issued against him by Court on 12.5.97. On 4.6.97 he filed a motion in the High Court through an Attorney-at-Law and sought to get the warrant against him cancelled. The High Court judge of Colombo made order cancelling the warrant.

The petitioner states that when he was at his residence at Mahiyangana on 14.6.97, two officers of the Bribery Department came to his home about 6.20 pm. and wanted to take him into custody, as a warrant had been issued by the High Court of Colombo. One of these officers is identified as the 1st respondent. The petitioner informed the officers that the warrant issued against him was already cancelled. In spite of what he told the officers they arrested him and took him to the Teldeniya police station about 8.00 pm. and he was kept at the

police station till 10.30 am. of 15.6.97. He was first taken to the residence of the Magistrate Teldeniya and as he was not there he was produced before the Magistrate Attanagalle about 2 pm. on the same day. The Magistrate Attanagalle remanded the petitioner till 16.6.97 although he told him that the warrant issued against him was cancelled. Ultimately on 16.6.97 he was produced before the High Court about 9.30 am. The petitioner complains that the 1st respondent and the other unknown person violated his fundamental rights guaranteed under Articles 13(1) and 13(2).

The position of the first respondent is that an open warrant issued against the petitioner on 12.5.97 for not appearing in the High Court of Colombo was forwarded on 23.5.97 to the Commission to Investigate Allegations of Bribery and Corruption (the Commission) for execution. The Commission handedover the warrant to the 1st respondent for execution on 13.6.97. The 1st respondent then proceeded to No. 408/4, Dutugemunu Mawatha, Thalangama, the address provided by the petitioner as his residence. The 1st respondent discovered that the said address has never been the residence of the petitioner and a boutique was being run at those premises. After several inquiries as he could not find the whereabouts of the petitioner, he found out the address of D. L. Sunil who had stood surety for the petitioner in one of his cases. The 1st respondent being unable to trace the surety at his address at Bandarawela had to proceed to Mahiyangana where the surety was said to be residing. Finally, when the 1st respondent was able to locate the house of the surety at Mahiyangana, he found the petitioner there; the petitioner was married to the surety's sister.

When the 1st respondent informed the petitioner that he came to arrest him on an open warrant issued against him, the petitioner told him that the warrant was cancelled but he could not produce any proof of such cancellation to the satisfaction of the 1st respondent. The 1st respondent further stated that he genuinely believed that the petitioner was attempting to avoid arrest and abscond.

Learned counsel for the petitioner drew our attention to the case of *Moramudalige Podiappuhamy v. Diananda Liyanage and others*⁽¹⁾. In that case action had been filed in the Magistrate's Court in Panadura against one Sugath Perera in a complaint made by the petitioner. When the case came up for trial the petitioner was absent and the police moved for a warrant of arrest against the petitioner. Although the Magistrate ordered that a summons be issued on the petitioner erroneously the police officer entered the letters WT against the name of the petitioner in the register maintained by the police, suggesting that a warrant had been issued. The police officers, on the strength of that entry in the register, proceeded to arrest the petitioner in that case. This Court held that the arrest was not in accordance with sections 32 and 33 of the Criminal Procedure Code relating to arrest without warrant and that there was therefore a violation of Article 13(1).

I fail to see an analogy between the facts of the present case and that of *Podiappuhamy*. In the present case the fact that the warrant was recalled was not informed by the High Court to the Commission. The petitioner was unable to provide any proof to the 1st respondent of the cancellation of the warrant issued for his arrest by the High Court. The 1st respondent had no reason to believe that the warrant was recalled. He bona fide believed that the warrant handedover to him was in force and no malice is attributed to him. I am unable to say in the above circumstances that there is a violation of the fundamental rights of the petitioner. For the above reasons the petition is dismissed but without costs.

WIJETUNGA, J. - I agree.

ISMAIL, J. - I agree.

Application dismissed.