

ELASINGHE
v.
WIJEWICKREMA AND OTHERS

SUPREME COURT.
FERNANDO, J., KULATUNGA, J.
AND DHEERARATNE, J.
SC APPLICATION 218/92.
FEBRUARY 17, 1993.

Fundamental Rights – Illegal Arrest – Principles applicable to arrest – Detention.

1. In a case of arrest –

(i) It is not the duty of the Court to determine whether on the available material the arrest should have been made or not. The question for the Court is whether there was material for a reasonable officer to cause the arrest.

(ii) Proof of the commission of the offence (or a *prima facie* case for conviction) is not required ; a reasonable suspicion or a reasonable complaint of the commission of an offence suffices. The test is an objective one.

(iii) A suspicion is proved to be reasonable if the facts disclose that it was founded on matters within the police officer's knowledge or on the statements made by other persons in a way which justify him giving them credit.

(iv) During a period of emergency a wider discretion is vested in the police in the matter of arrest.

2. Where the duty to inform the reason for arrest is concerned –

This duty which was established by common law and recognized by statute is now a fundamental right. The obligation is to give the reason at the moment of arrest or where it is, in the circumstances excused, at the first reasonable opportunity.

The petitioner was arrested as a person wanted for subversive activities and conspiracy to assassinate a number of persons including politicians, police officers, members of parliament and local bodies, television artistes and a Vice-Chancellor of a University. The Police version was that the petitioner was arrested after the allegation was explained to him. The petitioner stated that he was interrogated about the alleged murders on the day of the arrest itself.

Held :

The petitioner's arrest under Regulation 18 (1) of the Emergency Regulations was lawful and so also was his detention.

Cases referred to :

1. *Muttusamy v. Kannangara* 52 NLR 324.
2. *R. v. Corea* 55 NLR 457.
3. *Withanachchi v. Herat* SC 144-45/86 S.C.M. of 01.07.88.
4. *Wijewardena v. Zain* SC 202/87 ; S.C. Mins. of 24.07.89.
5. *Piyasiri v. Fernando* [1988] 1 Sri LR 173.
6. *Joseph Perera v. Attorney-General* S.C. Nos. 107-109/86 SC Mins. of 25.05.87.
7. *Dumbell v. Roberts* (1944) 1 All ER 326, 329.
8. *Gunasekera v. De Fonseka* 75 NLR 246.
9. *Yapa v. Bandaranayake* [1988] 1 Sri LR 63.
10. *Mallawarachchi v. Seneviratne* SC Appeal No. 212/88 SC Mins. of 28.09.1989.

APPLICATION for relief for infringement of fundamental rights.

R. K. W. Goonesekera for petitioner.

D. P. Kumarasinghe, D.S.G. for respondents.

Cur. adv. vult.

March 19, 1993.

KULATUNGA, J.

*The petitioner who was arrested on 09.01.92 by police officers attached to the Crime Detection Bureau, Colombo and has since been kept in detention on the 6th floor of the Police Headquarters complains that his arrest and detention infringe his fundamental rights. This Court granted him leave to proceed in respect of the

alleged infringement of Articles 13 (1) and (2) of the Constitution. At the time of his arrest the petitioner was 27 years of age and was serving as a Mathematics Instructor at the Sri Jayawardenapura University.

The petitioner states that he had been previously arrested on 29.10.89 by the army and was released on 20.03.90 without any charges having been framed against him. Immediately thereafter, he had found employment in the Department of Census and Statistics. On the day of his second arrest on 09.01.92, after work he left the Sri Jayawardenapura University and was approaching the Wijerama Junction, at about 4.10 p.m. when 4 persons in civilian clothing including the 1st respondent (Sub-Inspector Wijewickrema) arrived in a motor car No. 11 Sri 7160. They forcibly pushed him into the car and took him away. At Narahenpita, he was blindfolded and taken to a place which he later came to know is the National Intelligence Bureau ; the same night he was taken to the 6th floor of the Police Headquarters and was detained there under an order dated 10.01.92 issued under Regulation 19 (2) of the Emergency Regulations, where he remains detained to-date.

The petitioner further states that from 9th to 23rd January 1992, he was taken daily to the N.I.B. in the morning and interrogated there by the 4th respondent (Inspector of Police Perera) and other police officers and was brought back to the 6th floor in the evening ; that they assaulted him and questioned him about his connections with student bodies, activities in respect of the Peace Accord, Impeachment Motion and about murders. On 03.02.92 he was produced before a Magistrate and was ordered to be detained for a further period of 30 days ; that he was kept incommunicado until 04.02.92 on which date he was shown to his father, the Vice-Chancellor, Sri Jayawardenapura University and some members of the academic staff who visited him ; and that on 03.03.92 he was forced to sign a statement before Police Sergeant Wijeratne and Police Constable Kalyani (typist) purporting to be a statement made before Assistant Superintendent of Police Gnanaratne (whom he had never met).

The petitioner's case (according to his petition) is that he was abducted by the police without giving any reasons ; that his arrest is invalid for want of material justifying it and his detention is invalid (a) as it follows an unlawful arrest and (b) as it cannot be justified

on the basis of his conduct after his release from detention without charges in 1990.

The 1st respondent admits having arrested the petitioner on 09.01.92 accompanied by 3 other police officers all of whom travelled in the motor car No. 11 Sri 7160 and that they were in civilian clothings. It is his position that the petitioner was arrested on suspicion that he was concerned in subversive activities during the recent insurgency.

In support he has produced Information Book extracts 1R1 and 1R7 containing the notes of investigations. According to those notes, the police party left the C.D.B. at 8.00 a.m. on 09.01.92 to check certain information regarding a wanted person. At Hanwella they engaged an informant to look for one Gamini. At 3.20 p.m. the informant returned and reported that Gamini was not there and suggested that they ambush near the Pubudu Club, Nugegoda, which is a place which Gamini used to frequent. At 4.20 p.m. whilst they were passing Wijerama junction, on their way to Nugegoda, the informant showed a person who was at the bus stop and said that he is a person wanted in connection with murders and subversive activities at the Sri Jayawardenapura University.

In 1R7 the 1st respondent has recorded that as the said informant had previously given reliable information, he sent away the informant and went up to the petitioner ; that having disclosed his identity he arrested the petitioner at 4.15 p.m., after explaining the allegation and forthwith proceeded to the Station with a view to questioning him in detail. They ascertained from the petitioner his name and his occupation and his temporary place of residence in Dehiwela and the fact that the petitioner's home town is in the Elpitiya police area. The 1st respondent informed his superior officer about the arrest and obtained instructions to have the petitioner detained on the 6th floor pending investigations. He was so detained under detention orders 1R2, 1R3 and 1R4 issued under Regulation 19 (2) of the Emergency Regulations for a period of 90 days commencing 10.01.92. Instructions were also given to P.C. 6012 to notify the arrest of the petitioner to the Vice-Chancellor, Sri Jayawardenapura University and to send messages to the Mirihana and Elpitiya police stations regarding the said arrest. It would appear from the records of messages given that by 14.01.92 the Vice-Chancellor and the petitioner's family were so informed (Vide 1R8, 1R9, 1R10, 1R11 and 1R12).

The respondents deny taking the petitioner to the N.I.B. and interrogating him there or the alleged questioning by the 4th respondent. According to them, it was the 1st respondent who interrogated the petitioner in consequence of which on 04.03.92 the petitioner made a statement before A.S.P. Gnanaratne confessing having conspired to assassinate a number of persons including politicians, police officers, Members of Parliament and local bodies, television artistes and a Vice-Chancellor of a University. This statement has been produced marked 1R6. It is this statement which the petitioner states he was forced to sign. It is to be noted that in his counter affidavit the petitioner admits that the 1st respondent questioned him from 04.02.92 to 20.02.92.

In view of the statement 1R6, an Additional Secretary, Ministry of Defence issued a preventive detention order dated 20.03.92 under Regulation 17 (1) of the Emergency Regulations (1R5) in terms of which the petitioner has been kept in detention on the 6th floor to-date. At the hearing of this application, the Senior State Counsel representing the respondents informed us that the petitioner has since been indicted on 20.07.92 with charges of conspiracy to commit murders and the case against him is presently pending before the High Court.

In his submissions, the learned Counsel for the petitioner did not appear to urge that the petitioner's present detention is unlawful. I am of the view that in the light of the petitioner's statement 1R6 the detention order 1R5 which is currently in force is justified. We understand from counsel that the voluntariness of this statement will be contested in the High Court. I will therefore refrain from any observations which may prejudice those proceedings. However, counsel contended that the petitioner's arrest under Regulation 18 (1) of the Emergency Regulations is invalid in that there was no material which gave rise to a reasonable suspicion that the petitioner was concerned in any offence under the said regulations ; that the said arrest is speculative i.e., in the hope that further investigations might disclose evidence of the suspect's involvement in an offence; and that no material has been placed before this Court to justify the said arrest by the application of the objective test. Counsel cited many decisions including *Muttusamy v. Kannangara* ⁽¹⁾ ; *R. v. Corea* ⁽²⁾ ; *Withanachchi v. Herat* ⁽³⁾ ; *Wijewardena v. Zain* ⁽⁴⁾ and *Piyasiri v. Fernando* ⁽⁵⁾. He reiterated the petitioner's averment

that the action by the police really constituted an abduction of the petitioner and that this is confirmed by the fact that he was forcibly removed without informing him of the reason for such removal.

PRINCIPLES APPLICABLE TO ARREST

(a) Lawful arrest—

1. It is not the duty of the Court to determine whether on the available material the arrest should have been made or not. The question for the Court is whether there was material for a reasonable officer to cause the arrest. *Withanachchi v. Herat* ⁽³⁾.
2. Proof of the commission of the offence (or a *prima facie* case for conviction) is not required ; a reasonable suspicion or a reasonable complaint of the commission of an offence suffices. The test is an objective one. *Joseph Perera v. Attorney-General* ⁽⁶⁾. *Dumbell v. Roberts* ⁽⁷⁾ ; *Gunasekera v. de Fonseka* ⁽⁸⁾.
3. A suspicion is proved to be reasonable if the facts disclose that it was founded on matters within the police officer's knowledge or on the statements made by other persons in a way which justify him giving them credit. *Muttusamy v. Kannangara* ⁽¹⁾ see also *Yapa v. Bandaranayake* ⁽⁹⁾.
4. During a period of emergency, a wider discretion is vested in the police in the matter of arrest. As Wanasundera, J. said in *Joseph Perera v. Attorney-General* (supra)—

" This wider discretion vested in the police is logical and is necessary for the proper performance of the functions of the police and for the maintenance of the law and order in the country."

(b) Duty to inform the reason for arrest—

This duty which was established by common law and recognized by statute is now a fundamental right. In *Mallawarachchi v. Seneviratne* ⁽¹⁰⁾ it was held :

" The obligation is to give the reason at the moment of arrest or where it is, in the circumstances excused, at the first reasonable opportunity."

APPLICATION OF THE PRINCIPLES TO THE FACTS OF THIS CASE

The salient features of the facts which I have earlier summarised are as follows :-

- (a) It has not been alleged that the petitioner was maliciously singled out for arrest on the ground of any private motive.
- (b) In fact, the police left on investigations on the day in question in search of a " wanted person " (not necessarily the petitioner). At Hanwella, they engaged a reliable informant to look for one Gamini. Having failed to find him there, they were on their way to Nugegoda to look for him when at the Wijerama junction the informant showed the petitioner as being another man wanted for subversive activities.
- (c) The 1st respondent says that he arrested the petitioner having explained the allegation but promptly took him to the Station for better questioning. Petitioner's own averments are to the effect that his interrogation relating to, *inter alia*, alleged murders commenced on the day of the arrest itself.
- (d) The police had taken prompt action to inform the Vice Chancellor of the Sri Jayawardenapura University and the petitioner's family the fact that he had been arrested.

On the basis of the above facts, I am satisfied that the police had reason for suspicion to justify the petitioner's arrest and that he was informed of the reason for his arrest as required by law. As such, the petitioner's arrest under Regulation 18 (1) of the Emergency Regulations is lawful ; and hence the alleged infringement of Article 13 (1) of the Constitution has not been established. I am also satisfied that in the light of the allegations against the petitioner of being concerned in large scale subversive activity, the petitioner's detention under Regulation 19 (2) on orders, 1R2, 1R3 and 1R4, pending investigations is lawful. The petitioner complains that he was not

shown the said orders. This is denied by the 1st respondent. It is clear from the petitioner's own affidavit that he was aware of the order for his detention under Regulation 18 (2) ; and hence the alleged infringement of Article 3 (2) by reason of such detention fails.

For the foregoing reasons, the petitioner has failed to establish any violation of his fundamental rights. Accordingly, I dismiss this application, but without costs.

FERNANDO, J. – I agree.

DHEERARATNE, J. – I agree.

Application dismissed.
