

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

*In the matter of an application under
Article 17, 126, Article 11, 13(1) and
12(1), 14(g) and 14(h) of the
Democratic Socialist Republic of Sri
Lanka.*

CASE NO: SC/FRA/505/19

R.H. Iresha Lakmali,
No. 57B, Palleliyaddewatte,
Ampe, Imaduwa, Galle.

PETITIONER

vs.

1. Major General Kamal Gunarathne,
The Secretary to the Defence,
The Ministry of Defence,
15/5, Baladaksha Mawatha,
Colombo.
2. Mr. K.W.E. Karalliyadda,
(Chairman)
3. Mrs. Savithri D. Wijesekara,
(Member)
4. Mr. Y.L.M. Zawahir, (Member)
5. Mr. Gamini Nawarathne,
(Member)
6. Mr. Thilak Collure, (Member)

7. Mr. Ashoka Wijethilaka, (Member)
8. Mr. G. Jayakumar, (Member)
9. Mr. Nishantha A. Weerasinghe,
(Secretary)
All of
National Police Commission,
Block 9, B.M.I.C.H,
Buddhaloka Mawatha,
Colombo 07.
10. Mr. Chandana Wickramaratne
Inspector General of Police,
Police Headquarters,
Colombo 01.
11. Mr. Deshabandu Tennakoon
Senior DIG,
Colombo Crime Division,
Dematagoda,
Colombo 09.
12. Mr. G.J. Nandana, SP,
Colombo Crime Division,
Dematagoda,
Colombo 09.
13. Mr. Nevil Silva,
Colombo Crime Division,
Dematagoda,
Colombo 09.

14. Mr. A. Meththananda,
Chief Inspector,
Colombo Crime Division,
Dematagoda,
Colombo 09.

15. Hon. Attorney-General,
Attorney-General's Department,
Colombo 12.

RESPONDENTS

BEFORE : **S. THURAIRAJA, PC, J**
MAHINDA SAMAYAWARDHENA, J AND
ARJUNA OBEYESEKERE, J

COUNSEL : Shiral Lakthilaka for the Petitioner
V. Hettige, SDSG for the Respondents

WRITTEN SUBMISSIONS : Petitioner on 16th January 2023 and 24th October 2023
Respondents on 19th June 2023

ARGUED ON : 10th October 2023

DECIDED ON : 31st May 2024

S. THURAIRAJA, PC, J.

1. On or about 15th December 2019, as an ordinary day came to an end for the Petitioner and her family, she is visited by a group of officers attached to the Imaduwa Police Station and the Colombo Crime Division, asking the whereabouts of her husband.

2. The Petitioner, Ranepura Hewage Iresha Lakmali, wife to one Valawe Mahadurage Dilum Thusitha Kumara and mother to a child who was but 23 months old at the time of the incident, invoked the jurisdiction of this Court under Article 126 of the Constitution alleging that her fundamental rights have been violated by the events which transpired thereafter.
3. On 14th March 2022, the Counsel for the Petitioner was only able to establish prima facie violations of Articles 13(1), 13(2) and 14(h) of the Constitution and leave to proceed was granted accordingly.

FACTUAL BACKGROUND

4. In 2016, the Petitioner's husband, who once worked as the driver of former Minister Patali Champika Ranawaka, attached to the Ceylon Electricity Board (CEB), was involved in an accident. We are told that some aspects of it are still pending before courts to date. It was revealed that the impugned conduct of the police officers had taken place pursuant to some ongoing investigations regarding the same matter.
5. On 15th December 2019, a group of police officers attached to the Imaduwa Police Station and the Colombo Crime Division, some clad in police uniforms and others in civil clothing, visited the residence of the Petitioner's mother—where the Petitioner was residing at the time with her toddler—looking for her husband.
6. The Petitioner and the Respondents have different versions of what transpired thereafter. This being a case mainly dependent upon its surrounding facts, it is apropos that we reflect on their versions separately.

Facts According to the Petitioner

7. The Petitioner states that her predicament began when the officers visited the said residence around 9.30 p.m. inquiring about the whereabouts of her husband, at which point she informed them that he works in Colombo. Thereafter, the officers had

informed her that they needed to take a statement from her husband and asked her to contact him over the phone. As the Petitioner obliged and informed her husband of this over the phone, one of the officers had spoken to him through her telephone.

8. At this point, the Petitioner states that she overheard her husband informing the officer, upon being inquired as to his whereabouts, that he lives in Jayanthipura, Battaramulla. In reply to this, the officer had said that he pities his wife and child [මියාගේ වයිරි සහ ළමයා පව්], and had asked him to keep his mobile phone switched on until they reach Colombo to take a statement from him.
9. During this conversation, the call had gotten disconnected. When the Petitioner called her husband again, she had found the mobile phone to be switched off. The husband of the Petitioner, by his affidavit marked 'P5', states that it was disconnected due to his mobile phone battery running out.
10. Following this, the police officers had asked the Petitioner to accompany them to Colombo as the Petitioner's husband was no longer reachable over the phone. The Petitioner states that she initially resisted this request stating that she could not possibly leave her toddler at home. Thereafter, to her dismay, the officers had insisted that she bring her toddler with her. When the Petitioner and her toddler—who needed careful medical care and nourishment on account of her premature birth—prepared to depart with the said police officers, the Petitioner's mother, had reluctantly come forward to accompany them.
11. The officers had departed the Petitioner's residence at around 12.45 a.m., along with the Petitioner, her mother and the toddler, huddled inside a police vehicle, which the Petitioner colloquially referred to as a 'Police Jeep' in her affidavit. Around 4.30 a.m., the said vehicle had reached a place, which the Petitioner discerned to be Jayanthipura, Battaramulla, from the conversations between the officers. The Petitioner further states that the officers kept the vehicle parked in Jayanthipura for

roughly three hours, until around 7.45 a.m., before they were taken to an unknown place, which the Petitioner later found to be the Colombo Crime Division in Dematagoda. There, too, the officers had kept the vehicle parked outside for approximately three hours. Thereafter, the officers had dropped the Petitioner, along with her mother and child, at her home in Imaduwa at around 12 p.m. on 16th December 2023, having left Dematagoda at around 10 a.m.

12. On the very same day, the Attorneys-at-Law of the Petitioner had reported the incident to the Colombo Additional Magistrate. The proceedings dated 16th December 2023 of the case bearing No. 23783/04 has been tendered before this Court as proof of the same.

13. According to the sequence of events the Petitioner laid out, the officers had first arrived at her residence around 9.30 p.m. on 15th December 2019, and thereafter she had spent, with her mother and child, nearly 12 hours in police custody, viz., from about 12.45 a.m. till 12 p.m. of the following day (16th December 2019). For the entire duration of this ordeal, they had not been provided with food, water or lavatory facilities. To make matters worse, the Petitioner had had to breastfeed her toddler in this vehicle brimful of strangers.

Facts According to the Respondents

14. Riddled with clerical errors and serious incongruities—which I shall analyse later on—the material submitted by the Respondents leave their account of the events in much obscurity. Despite these shortcomings in sufficiently assisting this Court, we are able to discern, in general, the following narrative by carefully studying the material before us.

15. The 14th Respondent (Wedaralalage Ajith Shantha Meththananda, Inspector of Police attached to the Colombo Crime Division, at all times material to this case) in his affidavit dated 23rd July 2022, states that he met the 13th Respondent (Nevil Silva,

Chief Inspector and Acting Director, Colombo Crime Division, at all times material to this case), upon the instructions of the 11th Respondent (Deshabandu Tennakoon, Senior DIG, Colombo Crime Division, at all times material to this case). Thereafter, the 14th Respondent had gone to the Petitioner's residence in Imaduwa along with SI Maduranga (PC 91282) and Police Driver 89729, as instructed by the 13th Respondent. Later on, Nirosha (WPC 3541) attached to the Imaduwa Police station, too, had joined this investigation.

16. According to the Respondents, the officers had visited the said residence in relation to an investigation regarding a motor vehicle accident which took place on 28th February 2016 within the Welikada Police Division, in which the Petitioner's husband was named as a suspect.

17. When inquired as to the whereabouts of the said suspect, his wife, the Petitioner, had informed the officers that he works in Colombo. The Respondents state that the Petitioner then insisted on accompanying them to Colombo as her husband asked her to come to Battaramulla. Even when the 14th Respondent told her that they needed the statement from her husband and not her, the Petitioner had still insisted on setting out to Colombo with the police party. As they left Colombo, WPC 10248 and WPC 10554 of the Galle Police Station had joined the group of officers as Nirosha (WPC 3541) could not travel to Colombo.

18. After they arrived in Battaramulla, the Petitioner had contacted her husband, at which point he had instructed to Petitioner to wait where they were until he could arrive there. Subsequently, the Petitioner's husband had called the mobile phone belonging to her mother, stating that his Attorney-at-Law wished to speak to the police officers. An Attorney had informed the 14th Respondent officer that he would come to their location with the Petitioner's husband. Two persons, who identified as Attorneys-at-Law, had so arrived at the place where they were, but without the Petitioner's husband. Respondents state that they were not dressed as Attorneys-at-Law and that

they refused to comply when asked to produce identification. They had informed the Respondents that the Petitioner's husband could be produced to the courts if necessary.

19. The 14th Respondent had then informed the Attorneys of the presence of the Petitioner and her mother, and they had threatened to take legal action against the 14th Respondent. According to the 14th Respondent, the Petitioner and her mother were then taken back home to Imaduwa.

20. The essence of the Respondents' contentions is that they had acted *bona fide* at all times and that the Petitioner accompanied a group of police officers—most of whom were men—with her 21-month-old daughter, in the dead of night, on her own volition.

ANALYSIS

21. In the instant case, whether there has been a violation of the Petitioner's freedom of movement is dependent upon whether there has been an arrest in the first place, and, if that question is to be answered in the affirmative, the legality of such arrest. Therefore, I shall first dispense with the submissions relating to Article 13.

22. It is trite law that fundamental rights can only be circumscribed within the permitted limits of Article 15. All paragraphs thereunder place special emphasis on the words "*as may be prescribed by law*". The Constitution has, in no unclear terms, declared that fundamental rights may only be restricted as provided by law. In effect, peace officers, whose sphere of activities has plenty to do with the fundamental rights of the citizenry, have no authority whatsoever to act beyond their legal mandates in carrying out their official duties.

Article 13(1): Arrest & Detention

23. Article 13(1) of the Constitution sets out that *"[n]o person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest."*
24. Here, too, the framers of the Constitution leave no ambiguity in declaring that an arrest can only be made *"according to procedure established by law"*. All peace officers are required by the constitution to strictly follow established legal procedure in effecting arrests, and in doing all other acts which may impinge upon personal liberties. Individual dignity and liberty being at the heart of all fundamental rights, it is imperative that we closely scrutinize this requirement whenever called upon.
25. Furthermore, Article 13(1) prohibits not only arrest, in the sense of taking one into custody, but also the keeping of such person in a state of arrest by imprisonment or other form of restraint except according to the procedure established by law. The latter is often understood as falling within the scope of Article 13(2), which, as we shall see, is a misapprehension of its ambit.

Was There an Arrest?

26. This Court has time and time again set out the legal parameters of arrest and detention. The action of taking one into custody needs no formalities to amount to an 'arrest' as contemplated in Article 13(1). The Explanation under Section 23 of the *Code of Criminal Procedure Act, No. 15 of 1979* makes this manifestly clear.
27. Section 23(1) of the *Code of Criminal Procedure Act* states,
- "In making an arrest the person making the same shall actually touch or confine the body of the person to be arrested unless there be a submission to the custody by word or action and shall inform the person to be arrested of the nature of the charge or allegation upon which he is arrested."*

Explanation - Keeping a person in confinement or restraint without formally arresting him or under the colourable pretension that an arrest has not been made when to all intents and purposes such person is in custody shall be deemed to be an arrest of such person."

28. The Section further clarifies that there can be an arrest even when a person submits to the custody of an officer with no physical compulsion. In fact, it is only when one refuses to submit, and not otherwise, that an officer is empowered by law to touch or confine the body of such person.

29. As per Lord Denning, "[w]hen a Police Constable says to a man 'Come along with me. I am taking you to the station', that is an arrest. No matter if the man goes quietly or resists with all his strength; it is an arrest."¹

30. As Amerasinghe J., opined in **Mahinda Rajapaksa v. Kudahetti**,²

"...in order to sustain the petitioner's claim that his fundamental right of freedom from arrest guaranteed by Article 13 (1) of the Constitution has been violated, [the petitioner] must establish that there was an apprehension of his person by word or deed and an imprisonment, confinement, duration or constraint by placing him, (such apprehension and placing having been signified by physical action or by words spoken or by other conduct from which it might have been inferred), in the custody, keeping, control, or under the coercive directions, of an officer of justice or other authority, whether the purpose of such arrest was to enable the petitioner to be available and ready to be produced to answer an alleged or suspected crime or to assist in the detection of a crime or in the arrest or prosecution of an offender or some such or other purpose of the officer making, or authority ordering, the arrest. I do not intend this to be a definition of "arrest".

¹ Lord Denning, *The Due Process of Law* (Butterworth 1980) at 103

² [1992] 2 Sri L.R. 223 at 243

A definition, I suppose, must await the wisdom of the future. Nor is it an attempt to lay down general guidelines concerning other situations not involved here. I do not even suggest that a bright line can be easily drawn that separates the type of deprivation of liberty within the reach of Article 13 (1) from the type without. Close questions undoubtedly will sometimes arise in the gray area that necessarily exists in between. Whether an act amounts to an arrest will depend on the circumstances of each case."

31. As His Lordship has stated, whether an act amounts to an arrest or not is greatly dependent upon the circumstances of each case. However, what can be unequivocally found is that, for an act to be an arrest, it does not require physical confinement nor the observance of any formalities in effecting it. This Court has affirmed this time and time again.³

32. In ***Namasivayam v. Gunawardena***,⁴ a police officer required the petitioner to accompany him to the Police Station to be questioned over suspicion of robbery. The said petitioner was released after he gave a statement at the Police Station. Answering the question where he was under arrest, Sharvananda C.J., with Atukorale and H.A.G. de Silva JJ. agreeing, opined that;

"In my view, when the 3rd Respondent required the Petitioner to accompany him to the Police Station and took him to the Police Station, the Petitioner was in law arrested by the 3rd Respondent. The Petitioner was prevented by the action of the 3rd Respondent from proceeding with his journey in the bus. The Petitioner was deprived of his liberty to go where he pleased. It was not necessary that there

³ Vide *Piyasiri v. Fernando*, ASP [1988] 1 Sri LR 173; *Sirisena v. Ernest Perera* [1991] 2 Sri L.R. 97; *Hettiarachchige Srimathi Devika Tissera & 2 Others v. Police Constable Madagammedgedara Nirosha Sanjeewa Jayasekara & 7 Others* SC/FR No. 94/2013, SC Minutes of 30.06.2021; *Karunmalagaswena Vidanelage Swarna Manjula and Another v. Pushpakumara, OIC, Police Station Kekirawa and Others* S.C. F.R. No. 241/14, SC Minutes of 18th July 2018

⁴ [1989] 1 SLR 394

should have been any actual use of force; threat of force used to procure the Petitioner's submission was sufficient. The Petitioner did not go to the Police Station voluntarily. He was taken to the Police by the 3rd Respondent, in my view the 3rd Respondent's action of arresting the Petitioner and not informing him the reasons for his arrest violated the Petitioner's fundamental rights warranted by Article 13 (1) of the Constitution.”⁵

33. Even where there is no physical or formal act of taking one into custody, there can be an arrest by implication through subtle coercive means. Such coercive directions may be verbal, non-verbal, direct or even constructive. If the circumstances are such to place a reasonable person under the impression that he is able to not comply with the directions of a peace officer and go about his way as he pleases, then it may be said that there is no arrest. But, where the coercion of circumstances is such that a person reasonably apprehends that he has no option but to comply, and his autonomy is so deprived, there is most certainly an arrest as contemplated under Article 13.

34. In their Written Submissions, the Respondents contended that there was no arrest nor detention as the Petitioner voluntarily accompanied the officers on their journey to Colombo for the purpose of meeting her husband.⁶

35. By Affidavit dated 23rd July 2022, the 14th Respondent submitted as follows:

“The Petitioner informed me that her husband the said Walluwe Mahadurage Dilum Thusitha Kumara asked her to come to the place at Battaramulla.”⁷

I informed the Petitioner that the statement I required was from Walluwe Mahadurage Dilum Thusitha Kumara and not from the Petitioner, Yet the

⁵ ibid at 401

⁶ Written Submissions on behalf of the Respondents dated 19th June 2023 at 7

⁷ Affidavit of the 14th Respondent dated 23rd July 2022 at para 8(i)

*Petitioner insisted that she too accompany us to the place where her husband is, The notes of same dated 15.12.2019 are marked as **1R2** and pleaded as part and parcel of this affidavit. ⁸ [sic]*

...

I categorically state that the Petitioner was not arrested at any time. I further state that the Petitioner came of her own volition, and as per the Petitioner upon instructions of Walluwe Mahadurage Dilum Thusitha Kumara, her husband.”⁹

36. The aforementioned notes marked **1R2**¹⁰ states as follows:

“ඔහු බන්තරමුල්ල පාලම ලග ජයන්ති මාවතේ නිවසක සිටින බවත් ප්‍රකාශයක් ලබා දිය හැකි බවත් දැනුම්දී බිරිඳට ද එම ස්ථානයට පැමිණිය හැකිද කියා අසා හෝ විමසා සිටියා. ඇය කියා සිටියා ඇයටද පැමිණිය හැකි බවත් එතනට ඇවිත් ඔහුගේ ජංගම දුරකථනයට ඇමතුමක් ලබා ගත විට ඔහු එතනට එන්නම් කියා දුරකථනය විසන්ධි කළා. පසුව තුසිතගේ බිරිඳ විසින් විමසා සිටියා තුසිත ඇයට එන්න කියූ බවත් ඇයට අප පැමිණි වහනයෙන් එම ස්ථානයට යා හැකිද කියා විමසා සිටියා. මා ඇයට පවසි [sic] සිටියා යාමට හැකි බවත් නමුත් ඔබ අවශ්‍ය නැහැ. අපිට තුසිත ව සම්බන්ධ කළ හැකි නම් හැකිනම් [sic] එය ප්‍රමාණවත් බව කියා සිටියා. ඉන්පසු ඇය පවසා සිටියා එයා වැඩිය කාත් එක්කවත් කතා කරන්නේ නැ එයාගේ හැටිය. මට එන්න කියන්නේ එකයි කියා මට කිවුවා. මා ඒ සම්බන්ධයෙන කො.අ.කො. ස්ථානාධිපතිතුමා [13th Respondent] ව දැනුවත් කළ අතර ඇයගේ ප්‍රකාශ සටහන් කර නොමැතිනම් අරගෙන එන්න කිව්වා. ඇය අප සමඟ පැමිණීමට සූදුනම් වන විට ඇයගේ මව වන රනේදුර හෙවගේ සුමනා වනී යන ඇය ද ඇය සමඟ සමඟ [sic] පැමිණීමට අවශ්‍ය බව දැනුම් දුන් අතර ඔවුන් තම දැරුවාද රැගෙන පැමිණෙන බව කියා සිටියා. ඒ සම්බන්ධයෙන් ප්‍රකාශය උ.පො.ප මදුරංග නිලධාරියාට සටහන් කරන ලෙසට උපදෙස් දී අප බන්තර මුල්ල ජයන්ති මාවතට නිලධාරීන් සමඟ පිටව යමි. 2019.12.16 දින

⁸ ibid at para 8(j)

⁹ ibid at para 8(t)

¹⁰ Excerpts of the Investigation Notes taken by 14th Respondent, Inspector Meththananda, from Information Book of Colombo Crime Division Unit 1, p. 309, para 215

පැය ගාල්ල පොලිස් ස්ථානයෙන් මා උ.පො.ප මධුරංග ඉමදුව පොලිස් ස්ථානයේ කා පො. කො. 3541 නිලධාරිනිය ද සමඟ පො කො.රි 89729 විසින් පදවන ලද අංක WP CAY 0532 දරන රථයෙන් පැමිණියා. අප සමඟ තුසිතගේ බිරිඳ මව හා කුඩා දරුවා ද සිටි.

[He stated that he lives in a house near Jayanthi Mawatha, Battaramulla Bridge and having informed that he can give a statement asked if his wife could come to that location. She said that she could also come and stated that he would come there when we called his cell phone after reaching there and hung up the phone. Thereafter, Thusitha's wife stated that Thusitha asked her to come and enquired if she could accompany us in our vehicle. I told her that she could accompany us, but also told her that she was not needed. I stated that it would be sufficient if we could contact Thusitha. Then, she stated that he doesn't talk much with anyone and that it is his nature. And that is why he's asking me to come, she told me. I informed the same to Colombo Crime Division, Officer-in-Charge and he told to bring her if a statement had not been taken. As she was getting ready to come with us, her mother, Ranedura Hewage Sumanawathi, told that she also needed to come and that they were bringing her child. Having instructed Sub Inspector Maduranga to note the statement regarding this, we depart with the officers to Battaramulla. We arrived in vehicle No. WP CAY 0532 driven by Police Constable Driver 89729 on 2019.12.16 at with Sub Inspector Maduranga of Galle Police and WPC 3541 of Imaduwa Police Station. With us, Thusitha's wife's mother and small child are present]"¹¹

37. As previously noted, on the same day, i.e., 16th December 2019, the Attorneys-at-Law of the Petitioner have reported the ordeal to the Magistrate Court of Colombo. The Proceedings of the Magistrate Court, which the Petitioner submitted, reveals that the

¹¹ An approximate translation to reflect the notes as closely as possible

13th Respondent has made the following submission before the Hon. Magistrate in response to the allegation:

“...ඒ වගේම උගත් නීතීඥ මහත්තයා පැහැර ගැනීමක් ගැන සඳහන් කලා. තුසිත කුමාර යන අයගේ ප්‍රකාශයක් ලබා ගැනීමට අවශ්‍යතාවයක් තිබුණා මේ විමර්ශනයේ. අපි ඔහු ගැන සොයා බැලුවා. සොයා බලන අවස්ථාවේ දී ඔහුගේ ලිපිනයන් වශයෙන් සඳහන් වුණේ ගාල්ල ඉමදුව ප්‍රදේශයේ. පසුව ඉමදුව ප්‍රදේශයට ගියාම බිරිඳ හිටියා. අපි ගියේ අපේ පොලිසියේ වාහනයකින්... අපි පිළිගන්නවා මෙත්තානන්ද කියන පොලිස් පරීක්ෂකවරයා ගියා ඒ නිවසට. නිවසේ බිරිඳ හිටියා, ඇයගේ මව හිටියා, කුඩා දරුවා හිටියා. බිරිඳට දැනුම් දුන්නා ඇයගේ දුරකථනයෙන් තමන්ගේ පුරුෂයාට දුරකථන ඇමතුමක් ලබා ගන්න කියලා. ඇමතුම ලබා ගත්තට පසුව ඔහු කිව්වා, මම ඉන්නවා, එන්න ජයන්තිපුර ප්‍රදේශයේ නිවසක කියලා. නමුත් ඒ ස්ථානය හරියට ඔහුට කියන්න බෑ කියලා දැනුම් දුන්නා. ඒ අනුව ඔහුගේ ඉල්ලීම මත බිරිඳ, පොඩ් දරුවා අරන් හේතුව තමයි අම්මත් එක්ක දරුවා එන්න ඕනෑ, ඒ තැනැත්තියගේ, අපිට අවශ්‍ය ප්‍රකාශයක් ලබා ගැනීමට අවශ්‍ය අයගේ බිරිඳගේ මවත් ඒ එක්කම ලබා ගන්නා. ඒ අනුව ඔහුගේ කැමැත්තෙන් මේ ගමන පිටත් වුණේ. ඒ අතරේ කාන්තා පොලිස් නිලධාරීන් ඒ අවස්ථාවේ දී හිටියා. විමර්ශනය සඳහා සහාය වීමක් සඳහා තමයි පැමිණියේ. ඒ අවස්ථාවේ දී ඔහු දුරකථනය විසන්ධි කිරීම, ආයේ නැවත සන්ධි කලේ නෑ. නමුත් මේ මොහොත වන විටත් ඉතා නිරූපදිතව වගකීමෙන් කොළඹ අපරාධ කොට්ඨාශයේ ස්ථානාධිපතිවරයා වශයෙන් සඳහන් කරනවා ඒ සඳහන් කල තිදෙනා ගාල්ලේ ඉමදුව නිවසේ ඉන්නේ. අපි කිව්වා රැ ගෙනාවා කියලා. අපි කිව්වේ නෑ ගෙනාවේ නෑ කියලා. අපි පිළිගන්නවා විමර්ශනයක් සඳහා රැගෙන ඇවිල්ලා තියෙනවා. අවශ්‍යතාවය ඉටු වුණේ නෑ. නැවත අවශ්‍ය ස්ථානයට ගිහිං අපේ පොරොන්දුව මත ඇයගේ ඉල්ලීම මත ආවේ. කිසිඳු භාරකමක් පැහැර ගැනීමක් නෑ. මවාපෑම් කරන්න උත්සාහ කරන්නේ. අපි විමර්ශනයක් කරන්නේ. පැහැදිලි විමර්ශනයක් කර ඔතුමියගේ අධිකරණයට කවුද සැකකරුවන් කියලා ඉදිරිපත් කිරීමට අපි සූදුනමින් ඉන්නවා. ඒකට නිසි විමර්ශනයක් කරන්න ඕනෑ. ඇත්ත තත්ත්වය ඒක. කිසිඳු පැහැර ගැනීමක් කොළඹ අපරාධ කොට්ඨාශය විසින් සිදු කර නෑ. මේ වෙනකොටත් එම අය නිරූපදිතව එම නිවසේ ඉන්නවා. පොඩ් දරුවා ගෙනාවේ අම්මත් එක්ක කුඩා දරුවා එන්න ඕනෑ නිසා. මව ගෙනාවේ තවත් ආරක්ෂාව අවශ්‍ය නිසා. කාන්තා පොලිස් නිලධාරීන් දෙදෙනෙක්

හිටියා... මේක තමයි සත්‍ය කථාව තරයේ ප්‍රතික්ෂේප කරනවා උගත් නීතීඥ මහතන්ගේ මේ ප්‍රකාශ. මිනිස්සු පැහැර ගන්නේ ඔහොම නොවේ. පැහැර ගන්නවා නම් එළිපිට ජීප් එකෙන් ගිහිං පැහැර ගන්නේ නෑ. අපි කිව්වා පැහැරලීම අපි අරන් ආවා කියලා.¹²

[... and the learned Attorney-at-Law mentioned about an abduction. There was a need to get a statement from Thusitha Kumara in this investigation. We looked for him. At the time of investigation, his address was mentioned as Galle Imaduwa area. Later, when we went to the Imaduwa area, his wife was there. We went in our police vehicle... We accept that an inspector named Meththananda went to that house; the wife was there, her mother was there, and the little child was there. The wife was informed to make a phone call to her husband from her phone. After making calls, he said, I am there, come to a house in Jayanthipura area. But it was informed that he could not tell the exact location. Accordingly, upon his request, the wife and the small child were taken, the reason being that the child should come with the mother, of that lady, we needed to take a statement, along with that took the wife's mother of the person from whom we needed a statement. Accordingly, we set out on this journey with his consent. During this, female police officers were present. Was there to assist in the investigation. At that time he disconnected the phone and did not connect again. But as of this moment, as the Officer-in-Charge of the Colombo Crime Division, it is submitted that the three mentioned are at Imaduwa's house in Galle. We said that we brought at night. We did not say that we did not bring. We admit that they were brought in for investigation. It wasn't fruitful. Returned to the required place and came on her request on our promise. There is no transgression or abduction. They are trying to fabricate. We are doing an investigation. We are ready to conduct a clear investigation and present the suspects to your Honour's court. It should be properly investigated. That is the real situation. No abduction has been carried

¹² Proceedings dated 16th December 2019 of case bearing No. 23783/04 (Emphasis added)

out by the Colombo Crimes Division. Even at this moment, they are safe in that house. Brought the child because a child should come with the mother. Brought the mother [Petitioner's mother] for further security. There were two women police officers... This is the true story. We vehemently reject the statements of the learned Attorneys-at-Law. It is not how people were kidnapped. If being abducted, they won't go out in the open in a jeep to abduct. We stated clearly that we brought]"¹³

38. It baffles me how a senior police officer could think this to be an appropriate submission before a learned Magistrate. The derision pervading the words and the nonchalance in the face of what should be considered serious misconduct are damning indictments of the perilous attitude that is prevalent within many law enforcement authorities.

39. To make matters worse, in their Written Submissions dated 19th June 2023, the Respondents sought to argue that the Petitioner volunteered to accompany the police officers in search of her husband as she is bound to assist the officers by virtue of Section 19 of the *Code of Criminal Procedure Act, No. 15 of 1979*.

40. Section 19 of the *Code of Criminal Procedure Act, No. 15 of 1979* states as follows:

*"Every person is bound to assist a Magistrate or a peace officer **reasonably demanding** his aid [inter alia] –*

*(a) in the taking of any other person whom such Magistrate or peace officer is authorized to arrest"*¹⁴

41. The Respondents in their Written Submissions contended as follows:

"It is the respectful submission of the respondents that when the Police are called upon to investigate an alleged crime, the person who directs or commands the

¹³ An approximate translation to reflect the submissions before the Magistrate as closely as possible

¹⁴ Emphasis added

investigation shall first ascertain whether a crime had, in fact, been committed. If so, then he shall proceed to investigate the case in order to discover any reasonable material which points to the identity of the offender and to find out other material which tends to corroborate or contradict the matters complained of. In such circumstance the Police had to obtain a statement from Walluwe Mahadurage Dilum Thusitha Kumara — the husband of the Petitioner. For which activity the Petitioner volunteered to escort the Police officers.

It is reasonably expected that no person shall negligently fail or refuse to aid a law enforcement officer, when called upon for assistance in preventing or halting the commission of an offence, or in apprehending or detaining an offender, when such aid can be given without a substantial risk of physical harm to the person giving it.

The Petitioner is burdened by law to aid a law enforcement officer when, upon a reasonable command by a person known to him to be a law enforcement officer, to aid and assist such an officer — which in the present case the Petitioner did.

The Petitioner was bound to assist the Officers with regard to the statement of her husband. It is the respectful contention of the respondents that the petitioner voluntarily accompanied the Police officers in search of her husband.”¹⁵

42. The Respondents would have this Court believe that a woman, with her young daughter, on her own volition came forward to travel hundreds of kilometres, in the dead of night, cooped up in a police vehicle with a group of police officers—most of whom were men unknown to her—so that she may help the officers find her own husband.

¹⁵ Written Submissions on behalf of the Respondents dated 19th June 2023 at 5-6 (reproduced *verbatim* for accuracy)

43. In addition, is this Court to believe that a husband wished for his wife to accompany such a group of officers, all by herself, leaving behind his daughter, who is but a toddler? Need I even explain why this ludicrous version of events cannot stand the test of probability?
44. Even if the Petitioner and her husband did, in fact, insist that she be taken on their journey to Colombo for some asinine design, there was no reason for the officers to comply with such requests. As I last saw it, public transport is not one of the functions of a police officer. Had they been moonlighting for the Transport Board unbeknownst to this Court, they should not have used a police vehicle in such ventures.
45. The position taken by the Respondents in defence is not only ludicrous but also an insult to this Court's common sense. This Court is not so detached from reality to gobble up whatever the feeble excuses placed before it.
46. Upon perusal of the Investigation Notes of the 14th Respondent,¹⁶ the Court also observes many instances where time slots are left blank. Considering this infirmity and the aforementioned improbabilities, I see the evidence tendered by the Respondents as sordidly unreliable. As such, common sense compels me to reject this preposterous version of events *in toto*.
47. The Petitioner's version was that the officers asked her to accompany them with her child in a threatening manner and that her mother, too, came forward to join them

¹⁶ Investigation Notes taken by 14th Respondent, Inspector Meththananda, dated 23rd December 2019 as recorded in the Information Book of Colombo Crime Division Unit 1, p. 309, para 215, produced marked **1R2** annexed to the Affidavit of the 14th Respondent dated 23rd July 2023

when the Petitioner had no option but to comply.¹⁷ This version is corroborated by the Affidavits of her mother and husband.¹⁸

48. Regarding the contention as to Section 19 of the *Code of Criminal Procedure Act, No. 15 of 1979*, the interpretation so put forward by the Respondents, in my view, is neither rational nor justifiable. The Respondents' submission was that Section 19 imposes upon a person a duty to assist law enforcement officers except where there is a "*substantial risk of physical harm*".

49. I am not inclined to agree with this interpretation of Section 19 to any extent whatsoever. Great emphasis must be placed upon the words "*reasonably demanding his aid*".

50. A person is bound to aid only when such demand, as well as the circumstances of such demand, reasonably enables such person to aid. What is reasonable, of course, depends on the circumstances of each case. What is most certainly not reasonable is for police officers to expect friends and family of a suspect to toil on their behalf. I reject the contention of Respondents that the Petitioner was bound to assist the officers in taking a statement from her husband for the comical absurdity it is.

51. I am of the view that the Respondent Officers, by requiring the Petitioner to accompany them to Colombo, have restrained the Petitioner under a state of arrest as contemplated within Article 13 of the Constitution.

¹⁷ Affidavit of the Petitioner dated 17th December 2019 marked **P3** at paras 15-18

¹⁸ Affidavit of Ranepura Hewage Sumanawathi dated 17th December 2019 produced marked **P4** at paras 11-14; Affidavit of Walawe Mahadurage Dilum Thusitha Kumara dated 21st December 2019 produced marked **P5**

52. Furthermore, it is clear, from the affidavits submitted attached to the Petition, that the child was brought along only under the directions of the officers. In this regard, the affidavit of the Petitioner states as follows:

“16. ඉන්පසු මා කියා සිටියේ, අනු දරුවෙකු සමඟ කොළඹ යාමට නොහැකි බව, බවත් ප්‍රකාශ කර සිටිමි.

[I state that, thereafter what I said was that I cannot go to Colombo with an infant child]”¹⁹

“17. නමුත් එසේ කළ නොහැකි බවත්, මාහට දරුවා සමඟ කොළඹ යාමට සිදුවන බවත් තර්ජනය කළ බව ප්‍රකාශ කර සිටිමි.

[I state that, despite this, I was threatened that I cannot be so done and that I have to come to Colombo with the child]”²⁰

53. Moreover, the affidavit of the Petitioner’s mother states as follows:

“ඉන් පසුව මගේ දියණිය අනු දරුවෙකු සමඟ කොළඹ යාමට නොහැකි බව ප්‍රකාශ කළ නමුත් එසේ කළ නොහැකි බවත්, දියණියට දරුවා සමඟ කොළඹ යාමට සිදුවන බවට තර්ජනය කළ බවත්, ඉන්පසු මගේ දියණිය තම දරුවා සමඟ කොළඹ යාමට ඉදිරිපත් වූ බවත් ප්‍රකාශ කර සිටිමි.

[thereafter, although my daughter stated that she cannot go to Colombo with a toddler, she was told that it cannot be so and threatened that daughter has to go

¹⁹ Affidavit of the Petitioner dated 17th December 2019 marked **P3** at paras 16 (Approximate translation added to reflect the contents of the Affidavit as closely as possible)

²⁰ *ibid* at para 17 (Approximate translation added to reflect the contents of the Affidavit as closely as possible)

to Colombo with her child. Thereafter my daughter agreed to go to Colombo with the child]"²¹

54. Though it may appear, *prima facie*, that all three of them—viz. the Petitioner, her mother and her child—have been arrested, the Counsel for the Petitioner did not move this Court with regard to the rights of the Petitioner’s mother and child. As a result, the Respondents have not been given a fair opportunity to answer such allegations. Therefore, I refrain from making any pronouncements in that regard.

Was the Arrest Legal?

55. As per Article 13(1), an arrest can only be legal if it is carried out “*according to the procedure established by law*”, which means according to the procedure set out under the *Code of Criminal Procedure Act, No. 15 of 1979*.²²

56. Section 32 of the *Code of Criminal Procedure Act, No. 15 of 1979* sets out when a peace officer may arrest a person without a warrant. Section 32 states as follows:

(1) “*Any peace officer may without an order from a Magistrate and without a warrant arrest any person -*

(a) *who in his presence commits any breach of the peace;*

(b) *who has been concerned in any cognizable offence or 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;*

(c) *having in his possession without lawful excuse (the burden of proving which excuse shall lie on such person) any implement of house-breaking;*

(d) *who has been proclaimed as an offender;*

²¹ Affidavit of Ranepura Hewage Sumanawathi dated 17th December 2019 produced marked **P4** at paras 12 (Approximate translation added to reflect the contents of the Affidavit as closely as possible)

²² vide *Kapugeekiyana v. Hettiarachchi* [1984] 2 Sri L.R. 153

- (e) *in whose possession anything is found which may reasonably be suspected to be property stolen or fraudulently obtained and who may reasonably be suspected of having committed an offence with reference to such thing;*
- (f) *who obstructs a peace officer while in the execution of his duty or who has escaped or attempts to escape from lawful custody;*
- (g) *reasonably suspected of being a deserter from the Sri Lanka Army, Navy or Air Force;*
- (h) *found taking precautions to conceal his presence under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence;*
- (i) *who has been concerned in or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in any act committed at any place out of Sri Lanka, which if committed in Sri Lanka would have been punishable as an offence and for which he is under any law for: the time being in force relating to extradition or to fugitive persons or otherwise liable to be apprehended or detained in custody in Sri Lanka."*

57. Needless to say, the Petitioner, being the wife of a suspect, by no means fall into any of the categories aforementioned. This is a case of arresting a relative to induce a suspect to surrender. Tragically, such cases are not uncommon.

58. In the case of **Lakshman de Silva v. Officer-in-Charge, Kiribathgoda Police**,²³ which the Petitioner heavily relied upon, H.N.J. Perera J., as His Lordship was then, opined as follows:

"Detention of the spouse or a family member or a relative of a suspect merely to compel or to induce a suspect to surrender to the police cannot be a reasonable

²³ SC FR Application No. 09/2011, SC Minutes of 03rd March 2017

reason for the Peace officer to arrest and detain such a person in police custody under section 32(1)(b) of the Criminal Procedure Code. The arrest and detention of a spouse or a family member or any other relative of a suspect by a peace officer must be condemned and discouraged by Courts of law in this Country. The arbitrary deprivation of the liberty of the 2nd Petitioner was caused by the Respondents not because they bona fide suspected that the 2nd Petitioner was involved in the commission of an offence, but for the wholly improper illegal purpose of compelling the 1st Petitioner to surrender to the police. It is very clear that the Respondents kept the 2nd petitioner at the police Station as a hostage in order to compel the 1st Petitioner to arrive at the police station"²⁴

59. It is very clear that the arrest of the Petitioner is an abduction of such nature as described by His Lordship. This abhorrent practice of arresting relatives in order to compel suspects to act in a certain way is one which all powers that be for the protection of the Rule of Law must condemn in unison. Police officers have no legal mandate to act like common thugs and terrorize relatives of suspects in furtherance of their investigations. Such practices, repugnant not only to law but also to good sense and morality, are, in fact, tantamount to state terrorism. Such reprehensible practices have no place and must find no tolerance within a democratic state. This applies across the board from the pettiest of offences to the most cruel and barbaric. The fundamental rights of a person as recognized by law are inherent to their personal dignity and exist quite independently from those to whom they may be connected or related.

60. For the foregoing reasons, I find the arrest and subsequent detention of the Petitioner unlawful and accordingly hold that the impugned actions amount to a violation of the Petitioner's fundamental rights as enshrined under Article 13(1) of the Constitution.

²⁴ *ibid* at 12-13

VIOLATION OF ARTICLE 13(2)

61. Article 13(2) states that “[e]very Person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent court according to procedure established by law and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law.”

62. Sections 36, 37 and 38 of the Code of Criminal Procedure Act, No. 15 of 1979 deal with the detention of persons arrested without a warrant.

63. Section 36 states that,

*“A peace officer making an arrest without warrant shall **without unnecessary delay** and subject to the provisions herein contained as to bail **take or send the person arrested before a Magistrate** having jurisdiction in the case.”*²⁵

64. Section 37 provides that,

*“Any peace officer **shall not detain in custody or otherwise confine** a person arrested without a warrant **for a longer period than under all the circumstances of the case is reasonable**, and such **period shall not exceed twenty-four hours** exclusive of the time necessary for the journey from the place of arrest to the Magistrate.”*²⁶

65. Whereas Section 38 provides that,

“Officers in charge of police stations shall report to the Magistrates' Courts of their respective districts the cases of all persons arrested without warrant by any police

²⁵ Emphasis added

²⁶ Emphasis added

officer attached to their stations or brought before them and whether such persons have been admitted to bail or otherwise."

66. As Amerasinghe J. has explained in **Channa Peiris v. Attorney-General**,²⁷ while illegal arrest makes subsequent detention *ipso facto* illegal, the fact that an arrest and subsequent detention is illegal 'does not carry with it the corollary that Article 13(2) is violated.'²⁸

67. In **Channa Peiris** Amerasinghe J. opined:

*"The provisions of both Articles 13(1) and 13(2) may be violated in a given case... However, the fact that Article 13(1) is violated does not necessarily mean that Article 13(2) is therefore violated. Nor does the violation of Article 13(2) necessarily mean that Article 13(1) is violated. Arrest and detention, as a matter of definition, apart from other relevant considerations, are "inextricably linked". However, Article 13(1) and 13(2) have a related but separate existence. Article 13(1) is concerned with the right of a person not to be arrested including the right to be kept arrested except according to procedure established by law and the right to be informed of the reasons for arrest, whereas Article 13(2) is concerned with the right of a person arrested to be produced before a judge according to procedure established by law and the right not to be further deprived of personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law. Article 13(1) and 13(2) are no doubt linked: For instance, **the procedure under which a person is arrested may determine the period within which a person has to be produced before a judge. Moreover, as we shall see the lack of grounds for arrest or subsequent cessation of reasonable grounds might well be important in deciding***

²⁷ [1994] 1 Sri LR 1

²⁸ *ibid* at 95

whether an obligation arises to produce a person. Article 13(1) and (2) are linked but not inextricably so.

The fact that Article 13(1) was not violated does not necessarily mean that Article 13(2) cannot be violated. For instance, a person may be arrested on grounds of reasonable suspicion and given reasons for his arrest. However, if he is not produced before a judge in accordance with a procedure prescribed by law - and that is the matter dealt with by Article 13(2) - there will be a violation of Article 13(2), although Article 13(1) was not violated.”²⁹

68. While I concur with the observations of Amerasinghe J., I also see it necessary to take due cognizance of cases such as ***Faiz v. Attorney-General & Others***³⁰ and ***Shantha Wijeratne v. Vijitha Perera***,³¹ in which this Court found violations of Article 13(2) even with regards to detention within the twenty-four-hour period—with Goonewardene J. disagreeing in both cases. In the former case, Fernando J. regarded the detention as “unnecessarily prolonged”³² even in the absence of evidence that it had been longer than twenty-four hours.

69. Amerasinghe J., in ***Channa Peiris (supra)***, referred to both the aforementioned cases.³³ In His Lordship’s appraisal, while some infirmities have been noted, I find no material therein contradicting the dicta of ***Faiz v. Attorney-General*** and ***Shantha Wijeratne v. Vijitha Perera***.

²⁹ *ibid* at 98-99 (Emphasis added)

³⁰ SC Application 89/90, SC Minutes of 19 November 1993; now reported as [1995] 1 Sri L.R. 372

³¹ SC Application 379/93, SC Minutes of 02nd March 1994; now reported as [2002] 3 Sri L.R. 319

³² [1995] 1 Sri L.R. 372 at 379

³³ For a detailed analysis of the law with regards to Article 13(2), vide *Channa Peiris v. Attorney-General* [1994] 1 Sri LR 1, 92-101

70. As can be seen from the language of Sections 36 and 37 of the *Code of Criminal Procedure Act, No. 15 of 1979*, the former requires a police officer to take or send the person arrest before a Magistrate “without unnecessary delay”, whereas the latter states that a person shall not be detained for a period longer than “under all the circumstances of the case reasonable”. The latter further states that such a period shall not exceed twenty-four hours. What I have emphasized, in my view, are the operative elements of the Sections.

71. The twenty-four-hour limit set out in Section 37 is a maximum threshold, subject to such other provisions of law which may provide for extended detention—for instance, the law may provide for further detention by virtue of detention orders. It does not for a moment give carte blanche to police officers for twenty-four hours to do with an arrestee as they please. In certain instances, depending on the circumstances of the case, Article 13(2) may be violated where a person is kept in custody for a period longer than reasonable—or for a period ‘unnecessarily prolonged’, in the words of Fernando J.—without being produced before a judge, even where such period amounts to less than twenty-four hours.

72. The analysis of Amerasinghe J. in ***Channa Peiris*** and the dicta of ***Faiz v. Attorney-General*** and ***Shantha Wijeratne v. Vijitha Perera***, to this extent, appear utterly cogent and sound. Nonetheless, as I say this, I am struck with a sense of foreboding, for this reasoning can easily be stretched to logical extremities resulting in the most illogical of ends. Hence, I wish to place on record a word of caution.

73. It is a trite rule of interpretation that laws concerned with fundamental rights are to be interpreted in a manner that would broaden and give meaning to such rights. While that may be true, where police powers and the like are concerned, we ought to consider if we are, by such interpretation, throttling the good and honest officers in effectively and conveniently carrying out their duties. If we render such officers virtually powerless in their pursuit of meting out justice and maintaining law and

order, that would stand equally inimical to the design of broadening fundamental rights as narrowing down the rights themselves, for chaos stands noxious to individual rights, and anarchy antithetical.

74. Lest we forget, from limited resources to hefty workloads, this good and honest officer who works by the book is often set up for a battle uphill. Twenty-four hours means little towards any thorough and genuine investigation. This is why the law itself excludes the time necessary for the journey from the place of arrest to the Magistrate. In this setting, keeping in custody a legitimate suspect for twenty-four hours in pursuit of any well-founded investigation is almost always reasonable.

75. It is only in those extreme residual cases, with the most exceptional of circumstances, does it become a violation of Article 13(2) where a person is held in detention for less than twenty-four hours without producing before a judge.

76. Arresting a relative of a suspect who has nothing to do with transgressions under investigation is most definitely so exceptional. The Petitioner of the instant application had no involvement whatsoever in the case being investigated. She was merely present at the time when several of the Respondents visited her home looking for a suspect to whom she happened to be married. The 13th Respondent and his subordinate officers have taken her well over 100 kilometres from the site of the arrest, and kept her for over twelve hours along with her mother and child, forcing them to endure the midnight cold and the dreadful warmth come midday cooped inside a police vehicle, without so much as food, water or lavatory facilities. I wish to also put on record that the Respondents have at no point denied the Petitioner's allegations in this regard.

77. An adult may be able to weather such conditions with difficulty, but to cause a child of such tender age, whose mental faculties have only begun to develop, to undergo such agony is nothing short of inhuman. Children so young should not be forced to

spend such long periods at a stretch in school, let alone in police custody under such coarse inhospitable conditions. Needless to say, such trauma can have lasting effects on a child's mental and emotional well-being.

78. Expecting experienced law enforcement officers to comprehend such basic truths, which any man with half a wit—let alone a reasonable man—can understand, is but the bare minimum. As this Court was not moved apropos the fundamental rights of the child, and we are therefore unable to make any pronouncements in this regard.

79. In light of this, I am of the opinion that the detention of the Petitioner for approximately twelve hours inside the police vehicle was unnecessarily prolonged, albeit it was for less than twenty-four hours; therefore, I hold that the Petitioner's fundamental rights under Article 13(2) of the Constitution have been violated by the impugned acts of the Respondents.

VIOLATION OF ARTICLE 14(1)(h): FREEDOM OF MOVEMENT

80. The scope of freedom of movement is seldom defined. This may be so due to the self-explanatory nature of its application on one hand, and the resultant difficulty in precisely articulating its scope on the other.

81. Article 14(1)(h) establishes that every citizen is entitled to *"the freedom of movement and of choosing his residence within Sri Lanka..."*.

82. This right, in its essence, protects the autonomy of locomotion, or one's liberty of moving about as they please. It is implicit in this right that an individual also has the freedom not to move from a space he or she has lawfully occupied. The freedom of movement is equally violated by the unlawful compulsion of movement as by the unlawful restriction of movement.

83. In **Rodrigo v. Imalka, Sub-Inspector of Police, Kirulapone**,³⁴ Sarath N. Silva C.J. observed, *obiter*, even intermittent stoppage of traffic to permit 'VIP movement' to be a violation of Article 14(1)(h). His Lordship noted;

*"Counsel submitted that at times traffic is brought to a halt on principal roads at peak hours causing severe congestion which in itself is a security threat... We have to note that such measures deny to the people the equal protection of law. It has to be borne in mind that our State is a Democratic Socialist Republic in which all persons are equal. The obstruction of traffic on public roads and the consequential restriction of the freedom of movement would be an infringement of the fundamental rights of the citizens guaranteed under Article 14(1)(h) of the Constitution."*³⁵

84. While I find no objection towards His Lordship's reasoning, we must be mindful not to stretch such reasoning to illogical and absurd ends. As colloquially said, my right to swing my fist ends where your nose begins.³⁶ A citizen's freedom of movement may be justifiably restricted in a multitude of ways in their day-to-day life, be it by traffic restrictions, security restrictions and even by another's property rights etc. As provided by the Constitution, the freedom of movement under Article 14(1)(h) can be restricted in the interest of national economy, according to Article 15(6), or in the interest of national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms or others, or of meeting the just requirements of the general welfare of a democratic society, in accordance with Article 15(7). But, such restriction can only be done **'as may be prescribed by law'**.

³⁴ [2007] 2 Sri L.R. 100

³⁵ *ibid* at 115

³⁶ Often attributed to Justice Oliver Wendell Holmes Jr.

85. In this regard in **Sarjun v. Kamaldeen**,³⁷ Sarath N. Silva C.J. opined as follows:

*"A person freely moving on the road in compliance with the law could be stopped and made to alight from the vehicle only on a reasonable suspicion of illegal activity. Such suspicion would have to be justified in Court. Superior Officers who do not take precautions to prevent any infringement by their subordinates who are detailed for duty would themselves be liable for the infringement of the freedom of movement..."*³⁸

86. Conversely, a person standing by a road in compliance with the law cannot be compelled to move unless upon lawful and objectively reasonable grounds. Such grounds would have to be justified in court.

87. We have already found that the Petitioner was unlawfully detained by the police party when the Petitioner was compelled to accompany them to Colombo in their Police vehicle. The ludicrous justifications afforded by the Respondents are by no means acceptable. As such, I find that the Petitioner's freedom of movement as enshrined under Article 14(1)(h) has been infringed upon by this compulsion of movement.

LIABILITY OF THE RESPONDENTS

88. The 14th Respondent has throughout been at the centre of these violations. He has readily admitted his participation and involvement in the investigation by his Affidavit dated 23rd July 2022.

³⁷ [2007] 2 Sri L.R. 67

³⁸ *ibid* at 74

13th Respondent

89. By his Affidavit, the 14th Respondent further established that he acted upon the instruction of the 13th Respondent—ASP Nevil Virginton De Silva, CI and OIC of Colombo Crime Division at the time material.³⁹

90. Evidence placed before us indicated that the violations in question have been carried out under the direct instructions, authority and supervision of the 13th Respondent.

91. The said Affidavit states as follows:

“...On 15.12.2019 upon the instructions of the 11th Respondent , I met the 13th Respondent ,⁴⁰

Upon the instructions of the 13th Respondent I with SI Maduranga, PC 91282, Police Driver 89729 left for Imaduwa...[sic]”⁴¹

92. With regards to the involvement of the 13th Respondent, the notes state as follows:

“...මා ඒ සම්බන්ධයෙන් කො.අ.කො. ස්ථානාධිපතිතුමා ව දැනුවත් කළ අතර අයගේ ප්‍රකාශ සටහන් කර නොමැතිනම් අරගෙන එන්න කිවිවා...

[I informed of the same to Colombo Crime Division, Officer-in-Charge and he told to bring her if a statement had not been taken]”⁴²

93. ‘කො.අ.කො. ස්ථානාධිපතිතුමා’ (OIC, Colombo Crime Division) very clearly refers to the 13th Respondent. The Petition of the Petitioner at paragraph 6 and the affidavit of the

³⁹ Affidavit of the 14th Respondent dated 23rd July 2022

⁴⁰ Affidavit of the 14th Respondent dated 23rd July 2022 at para 8(a)

⁴¹ ibid at para 8(b)

⁴² Investigation Notes of the 14th Respondent Inspector Meththananda dated 23rd December 2019, as recorded in the Information Book of Colombo Crime Division Unit 1, p. 309, para 215, produced marked **1R2** annexed to the Affidavit of the 14th Respondent dated 23rd July 2023 (Approximate translation added)

Petitioner at paragraph 7 very clearly identify the 13th Respondent as the Officer-in-Charge of the Colombo Crime Division. The 14th Respondent has admitted to the ranks of the officers so set out,⁴³ which the 13th Respondent has not denied in his affidavit.

94. Moreover, knowledge on the part of the 13th Respondent regarding these violations is further evident from his submissions before the Magistrate Court of Colombo as recorded in the Proceedings dated 16th December 2019 of case bearing No. 23783/04, which I have produced earlier in the judgement.

95. **IGP's Circular 2328/2011 dated 29th December 2011 (Safety of Persons in Police Custody)** states as follows:

"02. in making an arrest of a suspect, the police should comply with Section 23 of the Code of Criminal Procedure Act No. 15 of 1979 and whereas –

...

*XI. **All the Officers- in - Charge** are liable to work in a manner which ensure the rights and protection of all persons who are being arrested. The officers in charge of the District who are monitoring such places should strictly monitor the rights and protection of the people who are under arrest.*

*04. It shall be **the duty of all the officers in charge of the Districts cum Divisions** and the Deputy Inspector Generals who are in charge of Ranges to execute constant monitoring process as to whether the said instructions are properly carried in to effect and rights of the arrested suspects are properly ensured."*

⁴³ Affidavit of the 14th Respondent dated 23rd July 2022 at Para 6 – by paragraph 6, the 14th Respondent, answering paragraphs 2, 3, 4, 5, 6, 7, 8 and 9 of the Petitioner's affidavits, admitted only the ranks contained therein.

96. All superior officers vested with supervisory authority have a special duty to make certain that their subordinates act within the bounds of their legal mandates. Superior officers cannot give orders or instructions to investigate and thereafter fall asleep on the wheel. It is their duty to closely supervise and scrutinize the conduct of those officers placed under their supervision.
97. Senior officers who do not take precautions to prevent any infringement of fundamental rights by their subordinates and fail in their supervisory duty are as guilty of such infringement as the subordinates who commit the acts themselves, unless such supervising officers have distanced themselves from the violation by taking necessary steps to hold offending subordinates accountable.
98. What is even more concerning is when superior officers, in the face of serious fundamental rights infringements, fail to take appropriate steps to hold errant officers accountable, thus leading to an environment of virtual impunity. Such failures of senior officers to report fundamental rights violation and take disciplinary steps, on its own, may even amount to a violation of the right to equality and equal protection before the law.
99. I am of the view that the 13th Respondent, as an Officer-in-Charge, at the time material, has failed to fulfil his duty as a supervising officer, thereby enabling the violations of fundamental rights committed by his subordinates.
100. The Affidavit of the 14th Respondent further establishes the involvement of SI Maduranga (PC 91282), Police Driver 89729, Nirosha of the Imaduwa Police Station (WPC 3541), WPC 10248 and WPC 10554 of the Galle Police Station. However, these officers have not been named as Respondents in the instant case. Therefore, I make no orders against them, as they have not had the opportunity to plead their case in defence before this Court.

101. With regards to the National Police Commission, the Counsel for the Petitioner submitted during the course of these proceedings that he does not intend to move against its members. Despite this, we direct the National Police Commission to take cognizance of the pressing need to improve the standards of the Police Force.

CONCLUSION & CONSEQUENTIAL ORDERS

102. The conduct of the Respondents, judged even by the lowest of standards, is a magnificent failure of all that the Rule of Law stands for. They have no doubt acted in a manner unbecoming of public office.

103. How are we to sympathize with their contention of *bona fides* when they have been absolutely insensitive towards even the most basic needs of the arrestees? The fact that the Petitioner had to breastfeed the child inside the vehicle tells us that the Respondents have had scant regard towards her dignity and even the mere rudiments of human decency.

104. What is worse, perhaps, is the Respondents' abhorrent attempt to underplay the Petitioner's woes by suggesting that she had undergone all this trouble, while putting her own child through the same, on her own volition.

105. In view of the aforementioned, I hold that the 13th and 14th Respondents, in this extraordinary display of ineptitude and incompetence, have violated the fundamental rights of the Petitioner guaranteed under Articles 13(1), 13(2) and 14(1)(h) of the Constitution.

106. As the mother and child of the Petitioner are not party to this case and the Petition of the Petitioner has not made any submissions *vis-à-vis* the rights of the Petitioner's mother and child, I make no orders in their regard.

107. Furthermore, I do not see it just and equitable to impose upon the taxpayer the burden of compensating for the transgressions of dysfunctional public agencies,

seeing as they are already saddled with the burden of maintaining the same. In cases of this nature, *cursus curiae* with regards to awarding compensation has been to direct errant officers to personally make amends. This appears to me a fit case to make such orders.

108. The Respondents are ordered to pay compensation to the Petitioner in the following manner:

- i. The State is ordered to pay as compensation a sum of Rs. 10,000/- (Rupees Ten Thousand) out of the funds allocated to the Police Department, in view of the institutional issues observed;
- ii. The 13th Respondent is ordered to pay as compensation a sum of Rs. 250,000/- (Rupees Two-Hundred Fifty Thousand); and
- iii. The 14th Respondent is ordered to pay as compensation a sum of Rs. 250,000/- (Rupees Two-Hundred Fifty Thousand).

109. The 13th and 14th Respondents are to pay the aforementioned sums, within six months from the date of judgment, out of their personal funds.

110. Moreover, the National Police Commission is directed to take appropriate disciplinary action against the Respondents found responsible for the violations set out hereinabove.

Application Allowed.

JUDGE OF THE SUPREME COURT

MAHINDA SAMAYAWARDHENA, J

I agree.

JUDGE OF THE SUPREME COURT

ARJUNA OBEYSEKERE, J

I agree.

JUDGE OF THE SUPREME COURT