

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

In the matter of an Application for mandates in the nature of writs of Habeas Corpus under and in terms of Article 141 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA Writ (Habeas Corpus)

Case No: HCA 04/2012

D.G. Mendis Appuhamy,
No. 17/7, Silva Lane,
Meethotamulla Road, Wellampitiya.

Petitioner

Vs.

1. Lt. Gen. Jagath Jayasuriya,
Commander of the Sri Lanka Army,
Army Headquarters, Baladaksha
Mawatha,
Colombo 03.
2. N.K. Illangakoon,
Inspector General of Police,
Police Headquarters,
Colombo 01.
3. Officer in Charge,
Police Station,
Wellampitiya.
4. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Janaka Prabath Dodampe Gamage,
98/T, Perera Mawatha,
Wadugodawatta,
Meethotamulla.

Corpus

Before: **R. Gurusinghe J.**
&
M.C.B.S. Morais J.

Counsel: Pulasthi Hewamanne with Harini Jayawardhana on behalf of the Legal Aid Commission.
Maheshika Silva, DSG for the Respondents.

Written Submissions: By the Legal Aid Commission – on 11.02.2020, 19.02.2024, 09.10.2024
By the Respondents – on 04.03.2020, 19.02.2024, 29.10.2024

Argument: By way of Written Submissions

Decided On: **07.11.2024**

JUDGMENT

This is a petition seeking a writ of habeas corpus in pursuant to Article 141 of the Constitution of Sri Lanka.

In this application, the Petitioner contests the unlawful arrest and subsequent detention of his son—the corpus—allegedly detained by and currently in the custody of the Sri Lanka Army. The Petitioner seeks a writ directing the immediate release of his son from such detention.

The Petitioner seeks relief from this Court to;

- a) Issue notice on the Respondents
- b) Grant and issue a mandate in the nature of writ of habeas corpus to produce the corpus before this court to be dealt with according to law;
- c) Grant and issue a mandate in the nature of writ of habeas corpus releasing/discharging the corpus forthwith from detention/custody;

- d) In the first instance, to refer the matter for an inquiry and report, to the Chief Magistrate – Colombo under the proviso to Article 141 of the constitution;
- e) Award exemplary compensation in a sum determined by the court
- f) Grant the Petitioner costs of this Application or in the circumstances of the case grant the Petitioner exemplary costs at the discretion of this court
- g) Make such other order/direction, as this court shall seem just & equitable, as provided for by the constitution.
- h) Grant such other and further reliefs as to this court shall seem fit.

The corpus, who was engaged in collecting metal and plastic at the Meethotamulla garbage site, was abducted by unidentified individuals on 02nd of February 2012. This incident was witnessed by a local resident, '*Mohammed Hussain*'. During the abduction, a magazine cartridge was dropped by the abductors and subsequently handed over to the Police. The family of the corpus promptly lodged a complaint with the Wellampitiya Police Station. Despite this complaint, no information about the corpus's whereabouts was obtained. Consequently, the Petitioner and his family sought assistance from various organizations to locate the corpus. The Petitioner asserts that, notwithstanding these efforts, he received no information regarding the whereabouts of the corpus, and the Police were unable to trace him.

On 10th March 2012, an attempt to abduct the corpus's brother, Ravindra Udeshantha Dodampe Gamage, was thwarted, and four individuals were apprehended. Mohammed Hussain, the earlier witness to the corpus's abduction, identified two of these apprehended individuals as being present during the corpus's abduction. The Petitioner promptly reported this identification to the Wellampitiya Police. The Petitioner was informed by the Police that the apprehended individuals were members of the Sri Lanka Army and would be produced in court. According to the aforementioned reasons the Petitioner alleges that the corpus is being unlawfully detained by the Sri Lanka Army.

However, on 11th of March 2012, the Petitioner was informed by the Police that the apprehended individuals had been released to the custody of the Sri Lanka Army and had not been presented before the Court. The Petitioner contends that no proper investigation has been conducted regarding the whereabouts of the corpus. Furthermore, there is no evidence

whatsoever that either the Sri Lanka Police or the Sri Lanka Army having conducted any investigation on the incident and the allegations.

On 22nd of February 2013, the Court of Appeal referred this application to the Chief Magistrate in Colombo for an inquiry and a report regarding the arrest and alleged detention in question. The Chief Magistrate conducted an inquiry and submitted findings to the Court of Appeal on 1st of August 2019. In the report, the Chief Magistrate concluded that an abduction has been confirmed and that the Police have not conducted a proper investigation regarding it.

Upon review of the materials before us, it is clear that the identity card numbers and photographs of the individuals in question were obtained from the Police when handing them over. Not only have the police failed to conduct an investigation into the matter, but they have also neglected to present the suspected individuals before a Magistrate as required by law. Instead, the police have simply transferred the custody of these individuals to the Army, citing their status as Army officers, without any further legal process or even an investigation.

Due to the negligence of the Officer in Charge of Police, Wellampitiya, who is the 3rd Respondent in this case and his subordinates, a thorough and proper inquiry was not conducted into the abduction of the corpus, nor into any subsequent attempt of abduction. As a result, there remains a lack of accountability and transparency in addressing the serious nature of these incidents, which has contributed to creating an atmosphere of impunity around such offenses.

In the light of above, I am of the view that the fundamental rights of the ‘corpus’ and the Petitioner which is affirmed by Article 12 of the 3rd chapter of the Constitution, has apparently been infringed.

Machchavallavan Vs. OIC, Army Camp, Plantain Point, Trincomalee and Others (2005) 1 SLR 345,346

“Article 126(3) of the Constitution is quite precise in its position and the said Article states clearly that if it appears to the Court of Appeal, while in the course of hearing an application for orders in the nature of writs of habeas corpus, certiorari, prohibition, procedendo, mandamus or quo warranto, that there is prima facie evidence of an

infringement or an imminent infringement of fundamental rights, such matter should forthwith be referred to the Supreme Court for determination.”

Therefore, I am of the view that this is a fit and proper case to be considered by the Supreme Court and accordingly this matter is referred to the Supreme Court under Article 126(3) of the Constitution.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree

Judge of the Court of Appeal