

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

In the matter of an Application under and in terms  
of Articles 17 & 126 of the Constitution.

Abdul Raheem Masaheena  
No. 1167, Pudalugasyaya,  
Kolongoda.

**Petitioner**

**Vs.**

**SC. FR. NO. 245/2019**

1. Hon. Attorney General  
Attorney General's Department,  
Colombo 12.
2. J.P. Chandana Nishantha  
Officer-in-Charge,  
Police Station,  
Hasalaka.
3. Inspector General of Police  
Police Headquarters,  
Colombo 01.

**Respondents**

**BEFORE** : **YASANTHA KODAGODA, PC, J.  
KUMUDINI WICKREMASINGHE, J. &  
A.L. SHIRAN GOONERATNE, J.**

COUNSEL : Pulasthi Hewamanna with Ms. Irfana Imran, Ms. Harini Jayawardhana, Ms. Fadhila Fairoze and Ms. Linuri Munasinghe instructed by Fathima Nushra Zarook for the Petitioner.

Ms. V. Hettige, ASG, instructed by Ms. Rizni Firdous, SSA, for the Respondents.

ARGUED & DECIDED ON : 30<sup>th</sup> July 2025

### JUDGMENT

#### YASANTHA KODAGODA, PC., J.

##### **Nature of the action**

1. By filing this Application, the Petitioner has invoked the jurisdiction conferred on the Supreme Court by Article 126 read with Article 17 of the Constitution. Following the Application being supported, this Court had granted *Leave to Proceed* under Articles 12(1) and 13(1) of the Constitution.

##### **Case of the Petitioner**

2. The Petitioner is a 47-year-old female citizen of Sri Lanka of Islamic faith and, at the time of the incident, domiciled in Hasalaka in the Kandy District. She does not appear to have received a good education. Throughout her adult life, has worked as a housemaid, primarily in Saudi Arabia and Kuwait. Her husband is a labourer. She had returned to Sri Lanka in November 2017 and has since been employed as a tailor.

3. On 17<sup>th</sup> May 2019, having left home in the morning to attend to certain personal affairs, she returned home around noon. Shortly thereafter, a police officer [later identified as the Officer-in-Charge (Traffic) of the Hasalaka Police Station] had arrived at her residence and questioned her daughter about a female who had worn a dress with an image of the *Dharmachakra* printed on it. (I shall provide a description of the *Dharmachakra* and comment on its significance at a subsequent point in this Judgment.) The Petitioner, who had been dressed in the same maxi gown she had worn earlier that day, came forward and presented herself to the police officer. On seeing the Petitioner wearing the dress, he had taken a phone call and spoken to the 2<sup>nd</sup> Respondent [Officer-in-Charge of the Hasalaka Police Station] and informed him that the dress the Petitioner was wearing did not, in fact, depict the *Dharmachakra*. However, using his mobile phone, the police officer had

taken a photograph of the Petitioner wearing the dress and had presumably transmitted it to the 2<sup>nd</sup> Respondent. Thereafter, he left the Petitioner's residence.

4. Shortly afterwards, a group of police officers had arrived at the residence of the Petitioner, explained to her that they were acting on the instructions of the 2<sup>nd</sup> Respondent, and had asked her to take a change of clothes and accompany them to the police station. After she had changed her clothes, the officers had taken custody of the maxi gown she was previously wearing. When being arrested, she was informed that the allegation against her was that she had, with full knowledge, worn a dress containing an image of the *Dharmachakra*. She was also told that the police had received several complaints regarding the Petitioner having worn the particular dress. Consequent thereto, the Petitioner had been taken in the police jeep to the Hasalaka Police Station.
5. At the police station, the Petitioner had been instructed by the 2<sup>nd</sup> Respondent to once again wear the maxi gown over the dress she was wearing, and had been questioned as to the circumstances under which she acquired the dress. In response, the Petitioner had explained that she received it as a gift from her employer when she was employed in Kuwait as a housemaid. She had also said that she had been wearing the dress in public for approximately a year, without any objection from the public. Later, the Petitioner's statement had been recorded in the Sinhala language (which she claims she does not understand properly), and she was detained overnight in police custody.
6. The following day, the Petitioner was produced before the learned Magistrate of the Mahiyanganaya Magistrate's Court, and criminal proceedings were initiated against her. The Petitioner had been represented before the learned Magistrate by an Attorney-at-Law retained on her behalf by her daughter. He had moved the learned Magistrate to enlarge the Petitioner on bail. However, the learned Magistrate declined the application on the premise that the police had framed an allegation against the Petitioner under section 3 of the International Covenant on Civil and Political Rights Act (ICCPR Act) and since the police were objecting to the grant of bail. The Petitioner had subsequently come to know that the police had framed an additional allegation as well, stating that she had also committed an offence under section 291B of the Penal Code. Having been denied bail, the Petitioner had been placed in remand custody. On 27<sup>th</sup> May 2019, when the matter was called in open Court, another application for bail had been made on her behalf by her Attorney-at-Law, to which the police had once again objected. Accordingly, she was denied bail, and her remand was extended. On 3<sup>rd</sup> June 2019, when the Petitioner's case was taken up, the police had informed Court that they had sought the advice of the Attorney-General and had been advised to notify the learned Magistrate that the police were dropping the allegation against the Petitioner under section 3 of the IC-CPR Act. Consequently, the learned Magistrate had granted bail to the Petitioner.
7. After several days of the Petitioner's case being called in the Magistrate's Court, and following the Attorney-General by his letter dated 12<sup>th</sup> December 2019 notifying the learned Magistrate that criminal proceedings would not be instituted against the

Petitioner, she had been discharged from proceedings before the Mahiyanganaya Magistrate's Court. This brought about an end to her ordeal.

### **Case of the Respondents**

8. The position of the 2<sup>nd</sup> Respondent, contained in his affidavit to this Court, is that in the aftermath of the terrorist bombings of 21<sup>st</sup> April 2019 (Easter Sunday), on 17<sup>th</sup> May 2019 (the day of the Petitioner's arrest), the villagers of the Kolongoda area had been making preparations to celebrate Vesak Poya which was to dawn on the following day. The Petitioner had been "*wondering several times in a suspicious manner*", which had attracted the attention of the villagers, resulting in a commotion. He had received a telephone call regarding what had happened, and therefore, he had dispatched a team of police officers to the location where the commotion had arisen. At the scene, the team of police officers had observed a large number of persons gathered around the Petitioner as the Petitioner was conducting herself in a suspicious manner. The 2<sup>nd</sup> Respondent has also alleged that "*reasonable suspicion had arisen among the villagers that the Petitioner belonged to an extremist group*" and thus, the villagers had requested that the Petitioner be investigated.
9. Elsewhere in the affidavit, the 2<sup>nd</sup> Respondent has stated that the police had received complaints from villagers that the Petitioner had been "*parading about in a suspicious manner wearing an item of clothing which allegedly had the impression of a Dharmachakra, a venerated symbol and thus bringing disrepute to Buddhism and therefore it was necessary to investigate into the matter*". According to the 2<sup>nd</sup> Respondent, due to these reasons, the Petitioner was arrested and taken to the Hasalaka Police Station.

### **Analysis of the evidence and conclusions reached**

10. It appears from the affidavit of the 2<sup>nd</sup> Respondent that there are two narratives as to the circumstances under which the Petitioner was arrested. Additionally, according to "2R1", which contains an extract of the notes of investigation entered by the 2<sup>nd</sup> Respondent in the Minor Crimes Information Book of the Hasalaka Police Station (produced before this Court as an attachment to the affidavit of the 2<sup>nd</sup> Respondent), on 17<sup>th</sup> May 2019, based on an 'information' received from a private informant stating that "*a Muslim person wearing apparel containing an image of the Dharmachakra was moving about in the area of Kolongoda*", he (the 2<sup>nd</sup> Respondent) had set off from the Police Station to investigate into the matter. He had also instructed Sub-Inspector Herath, who was on mobile duty, to investigate the matter. On the way, he had been informed by Police Sergeant Anura that he had met the person in issue, and that she was not wearing apparel containing an image of the Dharmachakra. Nevertheless, the 2<sup>nd</sup> Respondent had proceeded further and had met the Petitioner at Dahemigama. On that occasion, the Petitioner was wearing apparel containing an image of the Dharmachakra. A group of young persons, agitated by the dress the Petitioner was wearing at the time, were following the Petitioner. Due to these circumstances, the 2<sup>nd</sup> Respondent had arrested the Petitioner on the basis that she was conducting herself in a manner that was arousing hatred of members of other religious communities and causing religious disharmony.

11. In the Report under section 115 of the Code of Criminal Procedure Act (commonly referred to as the ‘B Report’) filed in the Magistrates Court of Mahiyanganaya on the occasion of producing the Petitioner before the learned Magistrate (marked “2R5” and attached to the affidavit of the 2<sup>nd</sup> Respondent), the 2<sup>nd</sup> Respondent has reported that on 17<sup>th</sup> May 2019, while patrolling the areas of Udwawela, Dehemigama and Kolongoda, he observed a female wearing a yellow coloured dress with an image resembling the *Dharmachakra* printed on the dress. He had stopped her and questioned her. When he started to question her, people in the surrounding area had gathered around her and shouted “*certain things*” about the dress she was wearing. Accordingly, he had arrested the Petitioner for having committed an offence under section 291B of the Penal Code and section 3 of the International Covenant on Civil and Political Rights Act.
12. Thus, it can be seen in these four narratives (two versions in the affidavit submitted to this Court, another version in the Report submitted to the Magistrate’s Court and a fourth version in the Notes of Investigation) relating to the circumstances pertaining to the arrest of the Petitioner, the 2<sup>nd</sup> Respondent has provided contradictory versions of events pertaining to (a) the manner in which he got to know of the incident relating to the Petitioner wearing the dress in issue, (b) how he set in motion the process that resulted in the arrest of the Petitioner, (c) his own conduct in the field culminating in the arrest of the Petitioner, (d) who arrested the Petitioner and under what circumstances, and (e) the stage at which the crowd reacted to the dress worn by the Petitioner. These discrepancies appear *ex-facie* in the version of events presented to this Court by the 2<sup>nd</sup> Respondent. Furthermore, no attempt has been made by the 2<sup>nd</sup> Respondent to discredit the version of the Petitioner by presenting to this Court an affidavit from the Officer-in-Charge of the Traffic Division of the Hasalaka Police Station, who, according to the Petitioner, had gone over to her residence after the Petitioner returned home and interviewed her and took a photograph of her wearing the dress in issue. Therefore, it is not possible to accept the version of events presented by the 2<sup>nd</sup> Respondent, due to a lack of consistency and the absence of reliable evidence which could have been used to refute the Petitioner’s version of events. In the given circumstances, I accept the version of events presented to this Court by the Petitioner, which the 2<sup>nd</sup> Respondent has failed to effectively assail.
13. Be that as it may, it remains undisputed that during the morning hours of 17<sup>th</sup> May 2019, while walking about in the Hasalaka area, the Petitioner was wearing a yellow-coloured dress, which contained an image purportedly resembling the *Dharmachakra*. It is also publicly known that, on 21<sup>st</sup> April 2019 (Easter Sunday), a group of Islamic extremist terrorists carried out a series of suicide bombings, which resulted in the killing of 250 innocent civilians and caused serious bodily injuries to over 500 others who had peacefully and faithfully congregated for prayers at several churches on that holy day. This attack also caused extensive damage to several churches and hotels. These terrorist attacks left the entire nation petrified in shock and disbelief, and in utter fear of the possibility of further attacks being launched. Thus, a key issue to be considered is whether, in the immediate aftermath of those horrific terrorist attacks, and given the collective and

individual state of mind of the public, marked by heightened emotions, irrational reactions, and hyper-sensitivity, the Petitioner, by wearing the aforementioned attire and moving about in public places, committed an offence, particularly under section 291B of the Penal Code and section 3 of the ICCPR Act.

14. The *Dharmachakra* or the ‘Wheel of Dharma’ [  ], containing a hub, eight radial spokes, and a rim, is a sacred symbol primarily associated with Buddhism. It represents Lord Buddha’s teachings and the path proclaimed by him to be necessary to reach the cessation of the recurrence of life. Buddhists believe that it signifies the turning of the wheel of truth and the continuous cycle of birth, death, and rebirth, which Lord Buddha had preached, should be breached in order to end suffering and the recurrence of life. He had preached that it can be achieved by following the noble eightfold path, which is founded upon ethical and spiritual principles contained in the *Dhamma* (Lord Buddha’s teachings). The *Dharmachakra* is a symbolic visual representation of that noble eightfold path. It is said to represent Lord Buddha’s first sermon to his first set of disciples, titled the *Dharma Chakra Pavathvana Suthra*. The *Dharmachakra* is recognized as the symbol of Buddhism across all major Buddhist traditions, namely Theravada, Mahayana, and Vajrayana. The *Dharmachakra* is prominently featured in the national emblem of the Democratic Socialist Republic of Sri Lanka. It appears at the crest of the emblem, symbolizing the country’s deep-rooted Buddhist heritage and the requirement for governance according to Buddhist principles. It is also found at the apex of the emblem of the Bar Association of Sri Lanka and is prominently displayed in the body of the emblem of the Sri Lanka Police together with its motto “*Dhammo Havei Rakkhathi Dhamachari*” (“*The one who lives by the Dhamma is protected by the Dhamma.*”). In India, the *Dharmachakra* is a profound symbol of spiritual law, moral governance, and national identity, associated with the mythical universal benevolent king *Chakravarthi*. It is also prominently featured as the *Ashoka Chakra* of Emperor Ashoka (3<sup>rd</sup> century BCE) and is embedded in the centre of India’s national flag. Thus, quite understandably, the *Dharmachakra* is held sacred in the Indian sub-continent and is deeply respected by Buddhists world over.
15. In a plural, multi-ethnic, multi-religious, and multi-cultural society such as that of Sri Lanka, the recognition, status, the symbolic importance and the veneration of the *Dharmachakra* [  ] is similar to that of the Holy Cross [  ] to Christians, Om (Aum) [  ] to the Hindus, and the crescent moon and the five-pointed star [  ] to the Muslims of Islamic faith. Indeed, these four religious symbols are much respected and venerated by those of the respective faiths and held in high esteem by others as well. Some wear their respective religious symbols in the form of a pendant as a means of identification, expression of faith, and in expectation of spiritual protection. However, it is certainly not accepted by Sri Lankans that a religious symbol such as the *Dharmachakra*, or for that matter, the Holy Cross, Om, or the crescent moon and the five-pointed star, be printed on a dress such and for such dress to be worn in public. Doing so would be treated as a display of disrespect and thus would understandably not be tolerated by a vast majority of People. Therefore, any disrespect to the *Dharmachakra* or to any of the

other religious symbols is unlikely to be taken lightly by those of the respective faith, and is likely to arouse resentment, hurt, and even public disquiet.

16. We have been shown a coloured photograph of the Petitioner wearing the apparel in issue (a yellow-coloured maxi dress) containing the image or diagrammatic representation in issue, and it is my view that from the perspective of a reasonably prudent human being considering the matter objectively, the image in issue cannot necessarily and unequivocally be identified as the *Dharmachakra*. It is more similar to a brown-coloured helm (ship's wheel), particularly because the radiating spokes extend quite a distance beyond the outer rim. Be that as it may, I am ready to accept the view that, given the state of mind of the general public that prevailed in the immediate aftermath of the terrorist attacks of Easter Sunday 2019 and their difficulty in distinguishing the difference between the *Dharmachakra* and the image printed on the dress worn by the Petitioner, certain members of the public who may have seen the Petitioner wearing the dress in issue, may have formed the view that she was wearing a maxi dress which had the *Dharmachakra* printed on it. Therefore, if certain individuals who saw the Petitioner wearing that dress felt offended or hurt and took objection to the Petitioner wearing that dress, this Court can very well understand that public reaction.
17. However, according to the Petitioner, when she was walking about in public places, no member of the public had raised any objection to her dress in a manner that attracted her own attention. Even if this Court were to consider one out of the four narratives of the 2<sup>nd</sup> Respondent (which I have rejected for good reason), there had been no outward reaction by the public or a breach of the peace as a result of the Petitioner wearing the dress in issue and walking about in public. All that the public had wanted was to have the Petitioner investigated.
18. The core allegation of the 2<sup>nd</sup> Respondent is that the Petitioner, by wearing the aforesaid apparel, had caused an outrage of the religious feelings of the Buddhist community and had thereby committed offences under sections 291B of the Penal Code and section 3 of the ICCPR Act.
19. Section 291B provides as follows:

*Whoever, with the deliberate and malicious intention of outraging the religious feelings of any class of persons, by words, either spoken or written, or by visible representations, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*
20. It is seen from section 291B that the offence contained therein recognizes both a *mens rea* and an *actus reus* as constituent ingredients of the offence. The *mens rea* is that the impugned conduct of the alleged offender must have been committed '*with the deliberate and malicious intention of outraging the religious feelings of any class of persons*'. The *actus reus* of the offence is that the offender **used** '*words, either spoken or written*' or with the aid

of 'visible representations' **engaged in** 'insulting' or 'attempting to insult' the 'religion' or the 'religious beliefs' of a 'class of persons'. From the material placed before this Court, it is apparent that, though it can be argued that the Petitioner, by wearing in public an apparel which contained diagrammatic images of an object similar to the *Dharmachakra*, used a visible representation, it is not possible to reasonably allege that when she did so, the Petitioner bore an intention to insult or attempt to insult Buddhism or the religious beliefs of persons of Buddhist faith. Thus, it is not possible to conclude that the Petitioner was accountable for having committed an offence under section 291B of the Penal Code.

21. This Court recalls that in the case of *Naomi Mischelle Coleman vs. The Hon. Attorney General and others* [SC/FR 136/2014, SC Minutes of 15<sup>th</sup> November 2017], the Supreme Court, having considered the case of a female of foreign nationality who had soon after arriving in Sri Lanka been arrested for having sported a tattoo on her hand of the face of Lord Buddha upon a lotus, had arrived at the finding that such conduct did not constitute an offence and therefore, her arrest and subsequent deportation was held to constitute an infringement of her Fundamental rights.
22. Section 3(1) of the ICCPR Act provides as follows:

*No person shall propagate war or advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.*
23. Unlike section 291B of the Penal Code, section 3(1) of the ICCPR Act does not explicitly contain a *mens rea*. To constitute the offence (contained in section 3(1)), the purported offender must **engage** in the propagation of war or engage in **advocacy** which takes the manifestation of national, racial or religious hatred that constitutes incitement of discrimination, hostility or violence. Even if this Court were to accept as being true one out of the several narratives of the 2<sup>nd</sup> Respondent regarding the events that led to the arrest of the Petitioner, it would be seen that the Petitioner had in no way engaged in the propagation of war or engaged in advocacy of national, racial, or religious hatred. While noting that wearing a particular apparel can be a form of expression and therefore can be a form of communication aimed at advocating a particular point of view, it is abundantly clear that in the instance which led to the arrest of the Petitioner, she had not engaged in any such expression for the purpose of advocacy aimed at discrimination, hostility, or violence. Therefore, it is not possible to hold the Petitioner accountable for having committed an offence under section 3(1) of the ICCPR Act.
24. In these circumstances, it is well understood as to why the Attorney-General, having examined the investigational material, decided not to institute criminal proceedings against the Petitioner and advised the police to cause her discharge from proceedings before the Magistrate's Court.
25. When questioned by Court, learned State Counsel submitted that the Petitioner had been arrested by the 2<sup>nd</sup> Respondent in terms of section 32(1)(b) of the Code of Criminal Procedure Act. In *Mohamed Razik Mohamed Ramzy vs. B.M.A.S.K. Senaratne, Chief*

**Inspector of Police and Others [SC/FR 135/2020, SC Minutes of 14<sup>th</sup> November 2023], this Court observed the following:**

*"When separated into its constituent ingredients, section 32(1)(b) can be depicted in the following manner:*

*Any peace officer may  
without an order from a Magistrate and without a warrant  
**arrest any person**  
(a) who has been concerned in any cognizable offence  
or  
(b) against whom  
(i) a reasonable complaint has been made  
or  
(ii) credible information has been received  
or  
(iii) a reasonable suspicion exists  
of his having been so concerned.*

*Therefore, for a peace officer to be authorized by law to arrest a person (suspect) for having committed a cognizable offence, one of the following should have occurred -*

- (i) the peace officer should have by himself formed an objective opinion that the suspect has been concerned in the commission of a cognizable offence;*
- (ii) the peace officer should have either directly received a complaint or must be aware that a complaint has been made against the suspect, and he should have formed the objective opinion that such complaint against the suspect (that he has been concerned in committing a cognizable offence) is reasonable;*
- (iii) the peace officer should have either directly received information or should be aware that information has been received against the suspect, and he should have formed the objective opinion that such information is credible and gives rise to the allegation that the suspect has been concerned in the commission of a cognizable offence; or*
- (iv) the peace officer should have developed reasonable suspicion that the suspect has been concerned in the commission of a cognizable offence.*

*It would be seen that a condition precedent for the arrest of a person under any one of the four situations referred to above, is the (a) commission of an **offence**, and (b) a factual and situational connection between the commission of that offence and the person being arrested. In other words, before causing the arrest of a person, the peace officer who seeks to arrest that person must be satisfied founded upon reasonable grounds that the impugned conduct constitutes an **offence** and that one of the four situational and factual connections between the commission of that offence and the person being arrested, exists. This should not be understood as insistence that the arresting officer should possess strict proof that the suspect had committed an offence. Thus, unless, it can be established that an offence recognized by the laws of Sri Lanka has been committed, the law would not permit the arrest of a person for the conduct attributed to him.*

*In fact, a criminal justice measure in the nature of the arrest of the suspected offender can be taken, only if the impugned conduct constitutes an offence. In this regard, it is necessary to*

*note that the entire spectrum of criminal justice measures is those that have a bearing on the liberty of the person against whom such measures are taken. Thus, both procedurally and substantively, it is necessary to take such measures strictly in accordance with the law. It is the commission of an offence that triggers the commencement of the range of criminal justice responses against the person responsible for the commission of such offence, including the arrest of the perpetrator of the offence.”*

26. It would thus be seen that, since the Petitioner had not committed an offence, there was no justification in fact or in law for the 2<sup>nd</sup> Respondent to have either personally arrested the Petitioner or caused her arrest through another police officer. Furthermore, had the 2<sup>nd</sup> Respondent arrived at an objective decision following a correct appreciation of the applicable facts, there was no basis for him to have concluded that there were reasonable grounds to believe that the Petitioner had committed such referred to above or been concerned in the committing of either of those offences. Thus, the arrest of the Petitioner does not satisfy the condition precedent or the threshold requirement of facts contained in section 32(1)(b) of the Code of Criminal Procedure Act. Therefore, I hold that the 2<sup>nd</sup> Petitioner had acted contrary to law when arresting the Petitioner. Thus, it is necessary for this Court to conclude that by carrying out the arrest of the Petitioner, the 2<sup>nd</sup> Respondent infringed the Fundamental right of the Petitioner guaranteed by Article 13(1) of the Constitution.
27. The arrest of the Petitioner had been followed by a period of police custody. Ostensibly, such police custody would be purportedly under section 37 of the Code of Criminal Procedure Act. A period of police custody would be lawful only if the related arrest preceding such custody was lawful. Since the arrest of the Petitioner has been found by this Court to have been unlawful, it necessarily follows that the period of police custody was also unlawful. Therefore, I conclude that by holding the Petitioner in police custody, the 2<sup>nd</sup> Respondent has infringed the Fundamental right of the Petitioner guaranteed under Article 13(2) of the Constitution.
28. Following the Petitioner being produced before the learned Magistrate, he had placed the Petitioner in remand custody. Consequently, the Petitioner remained in remand custody for a period of 16 days. At the end of that period, the Police, on their own Motion, had dropped the allegation under section 3(1) of the ICCPR Act and pursued only the allegation under section 291B of the Penal Code. The Police, left to themselves, appear to have sought the advice of the Honourable Attorney General, who had rightfully concluded that the impugned conduct of the Petitioner does not constitute an offence either under section 3(1) of the ICCPR Act or section 291B of the Penal Code. Under these circumstances, on 17<sup>th</sup> August 2020, the learned Magistrate had discharged the Petitioner.
29. It is thus seen that the unlawful arrest of the Petitioner, followed by a period of unlawful police custody, coupled with her having been produced before the learned Magistrate with a report (under section 115 of the Code of Criminal Procedure Act), containing two unsubstantiated allegations that she had committed offences under section 3(1) of the

ICCPR Act and under section 291B of the Penal Code, is what led to her being placed in remand custody for 16 days. In terms of section 3(4) of the ICCPR Act, once a person suspected of having committed an offence under section 3(1) of the Act is produced before a Magistrate and placed in remand custody, it is the High Court that has jurisdiction to grant bail, and that too on the footing that there are exceptional circumstances which warrant the grant of bail. Thus, it appears that levelling an allegation before a Magistrate that a person has committed an offence under section 3(1) of the ICCPR Act is a way in which the suspect can be denied bail from the Magistrate's Court resulting in the suspect being placed in remand custody either till the High Court grants bail or the allegation under section 3(1) of the ICCPR Act being dropped by the police. In this case, the latter of these two situations occurred, after which the learned Magistrate enlarged the Petitioner on bail.

30. Thus, it would be noted that a situation such as this (where the police level an allegation that the suspect has committed an offence in respect of which a Magistrate does not possess jurisdiction to grant bail) gives rise to an enhanced duty on Magistrates to consider whether there is a sufficient basis in law and fact to accept the allegation that the suspect has committed such an offence (in this instance an offence under section 3(1) of the ICCPR Act), instead of perfunctorily acceding to the application of the police to place the suspect in remand custody. That judicial duty can be performed by a Magistrate by paying attention to and considering the 'report on the case' and the 'summary of statements recorded during the investigation' mandatorily required by law to be included in the Report ('B Report') filed in terms of either section 115 or 116 of the Code of Criminal Procedure Act. Unless the allegation contained in the Report is substantiated by the material contained in the afore-stated two components of the B Report, Magistrates must refrain from acting on the allegation and placing the suspect in remand custody on the basis that he does not possess jurisdiction to grant bail to a person who is alleged to have committed the particular offence. This duty would be particularly applicable in all situations where a Magistrate's Court has not been vested with the jurisdiction to consider the grant of bail. If the allegation contained in the B Report is not well-founded upon the contents of the afore-stated two components of the B Report, an option available to a Magistrate would be to refrain from placing the suspect in remand custody.

31. As observed previously, in this matter, it would be seen that the period of 16 days of remand custody had been preceded by overnight detention in police custody at the Hasalaka Police Station. Thus, for 17 days, the Petitioner was deprived of liberty arising out of Executive action taken by the 2<sup>nd</sup> Respondent. Therefore, I hold that the Petitioner's Fundamental right guaranteed under Article 13(2) of the Constitution has been infringed by the 2<sup>nd</sup> Respondent.

32. In these circumstances, I conclude that the overall criminal justice response enforced against the Petitioner had been blatantly unlawful. Therefore, in addition to the above-mentioned findings, this Court concludes that the Petitioner had been deprived of the equal protection of the law and the right of equality. Thus, this Court concludes that the entire criminal justice response carried out by the 2<sup>nd</sup> Respondent in respect of the Petitioner violated her Fundamental right guaranteed by Article 12(1) of the Constitution.
33. In view of the foregoing, this Court issues a Declaration that the 2<sup>nd</sup> Respondent has infringed the Fundamental rights of the Petitioner guaranteed under Articles 12(1), 13(1), and 13(2) of the Constitution.
34. A consideration of the Petitioner's and the 2<sup>nd</sup> Respondent's narratives points to two important matters. Firstly, the Petitioner has acted most imprudently by wearing in public apparel depicting an image similar (though not identical) to that of the *Dharmachakra*. Members, particularly of a multi-religious society, must act respectfully towards the religious principles, beliefs, rituals, symbols, and institutions of other religious beliefs. This duty stems from Article 12, which confers equality to all persons, from which the principle of parity of status can be derived. Thus, no person or community can claim superiority or a privileged status over another. Possibly due to sheer ignorance stemming from a lack of education, the Petitioner had engaged in conduct that ultimately brought her considerable inconvenience, distress, and infringement of her Fundamental rights. Secondly, the 2<sup>nd</sup> Respondent had reacted to what he had come to know of, as opposed to responding to the information he is said to have received in terms of the law. Though the 2<sup>nd</sup> Respondent had acted contrary to law, there is no basis to conclude that the 2<sup>nd</sup> Respondent acted in the manner he did due to any pre-existing animosity towards the Petitioner, acted with malice, or had bowed to political or other pressure or influence. Particularly when exercising authority and statutorily vested power, police officers must act with restraint and with responsibility, and strictly in accordance with the law. As a prudential principle it must be borne in mind by all law enforcement officers that this type of reaction or the abuse of power against any person who entertains radical religious ideology and maniacal faith can easily drive such a person into religious extremism and violence. Law enforcement over-reach as manifested in this case can also affect religious harmony and peaceful co-existence among communities.
35. In these circumstances, it is necessary to issue a direction to the Inspector General of Police to issue a Police Order under the Police Ordinance setting out guidance as to the exact nature and the ambit of the offences contained in section 3(1) of the ICCPR Act and section 291B of the Penal Code and the manner in which a police officer should enforce the law in a situation where there is a complaint or information that a person has

committed such offence. The Inspector General of Police should issue that Circular within six (6) months from today and should do so having obtained necessary legal advice from the Honourable Attorney General, who shall advise the Inspector General of Police, founded upon the principles contained in this Judgment and other relevant Judgments of this Court, including the Judgment in SC / FR 135/2020.

36. Even though the 2<sup>nd</sup> Respondent does not appear to have acted *mala-fide* towards the Petitioner, it is to be noted that the Petitioner has unnecessarily suffered due to the unlawful actions of the 2<sup>nd</sup> Respondent amounting to infringement of Fundamental rights. That warrants this Court to impose a punitive measure on the 2<sup>nd</sup> Respondent, which will also serve as a deterrence to other Police Officers.
37. In these circumstances, the 2<sup>nd</sup> Respondent is directed to, within six (6) months of this Judgment, make a payment in the sum of Rs. 30,000/= as compensation to the Petitioner using his personal funds. The Inspector General of Police is directed to issue a Certificate to this Court that no funds of the Sri Lanka Police or those of an Association or Fund of Police Officers were used for the purpose of the 2<sup>nd</sup> Respondent making the afore-stated payment.
38. The Petitioner shall be entitled to recover the cost of this litigation from the State.
39. In view of the foregoing, this Application is allowed.

**JUDGE OF THE SUPREME COURT**

**KUMUDINI WICKREMASINGHE, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**A.L. SHIRAN GOONERATNE, J.**

I agree.

**JUDGE OF THE SUPREME COURT**