

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

In the matter of an application under  
and in terms of Article 126 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.

Shreemath Muthukumara Algawatte,  
No.154/1, Anagiyawatte,  
Gabadagoda,  
Payagala

**Petitioner**

**S.C.(F.R.) Application No. 325/2013.**

**Vs.**

1. Chamika Kulasiri,  
Inspector of Police,  
Officer-in-Charge,  
Payagala Police Station.
2. Wijepala,  
Sub-Inspector of Police  
Payagala Police Station.
3. Gunasiri,  
Police Sergeant 25317,  
Payagala Police Station.
4. Subasinghe,  
Police Constable 13429,  
Payagala Police Station
5. Chamara,  
Police Constable 81658,  
Payagala Police Station.

6. Dhammadika,  
Sub-Inspector of Police  
Payagala Police Station.
7. N.K. Illangakoon,  
Inspector General of Police,  
Police Headquarters,  
Colombo 01.
8. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**Respondents**

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**BEFORE** : **PRIYANTHA JAYAWARDENA, PC J.**  
**YASANTHA KODAGODA, PC., J.**  
**ACHALA WENGAPPULI, J.**

**COUNSEL** : Hirannya Damunupola for the Petitioner.  
Ms. I Punchihewa SC for the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 6<sup>th</sup> and  
8<sup>th</sup> Respondents.

**ARGUED ON** : 16<sup>th</sup> September, 2022

**DECIDED ON** : 22<sup>nd</sup> February, 2024

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**ACHALA WENGAPPULI, J.**

The Petitioner invoked the jurisdiction conferred on this Court under Article 17 and 126 of the Constitution seeking *inter alia* a declaration that the 1<sup>st</sup> to 6<sup>th</sup> Respondents, have acted in infringement of his fundamental rights

guaranteed under Articles 12(1), 13(1) and 13(2). When this matter was supported on 29.03.2016 by the learned Counsel for the Petitioner, this Court granted leave to proceed against the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents, as prayed for by the Petitioner.

The allegation of the Petitioner on infringement of his fundamental rights stems from the arrest made by the 3<sup>rd</sup> Respondent on 13.08.2013 and his detention at *Payagala* Police Station. The Petitioner claims that his arrest and detention were conducted in a manner contrary to the procedure laid down in Section 32(1) of the Code of Criminal Procedure Act No. 15 of 1979 (as amended). He alleged that his arrest was illegal as it was made even without a complaint being entertained against him. Thus, the Petitioner alleged that, in the absence of any credible information on which the police officers could have entertained a reasonable suspicion to form the opinion that his arrest was necessary or expedient, the arrest made by the 3<sup>rd</sup> Respondent becomes illegal which then rendered his detention too to an illegal detention.

The Petitioner specifically alleged that his arrest was made out of malice and over the “*animosity*” harboured against him particularly by the 1<sup>st</sup> Respondent, the Officer in Charge of the *Payagala* Police Station. The Petitioner attributed the cause for harbouring such an ‘*animosity*’ to his act of making a complaint against the 1<sup>st</sup> Respondent to the Senior Deputy Inspector General of Police. The Petitioner made that complaint against the 1<sup>st</sup> Respondent over the latter’s failure to apprehend a suspect, who had physically assaulted his sister. In addition, the Petitioner further alleged that the close relationship that existed between the 1<sup>st</sup> Respondent and a relative of one of his neighbours, who had initiated legal proceedings against his father, claiming him to be a lunatic, also contributed for that animosity. He relied on

several factual assertions and documents marked P1 to P4 in support of said allegations.

The 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 6<sup>th</sup> and 8<sup>th</sup> Respondents have resisted the application of the Petitioner and sought its dismissal. Only the 1<sup>st</sup> Respondent tendered a Statement of Objections setting out the circumstances that led to the arrest and detention of the Petitioner. In the said Statement of Objections, the 1<sup>st</sup> Respondent admitted that the Petitioner was in fact been arrested and detained at his station. He further averred that the arrest of the Petitioner was made based on a complaint received by the Police Station, implicating him to an incident of physical assault and acted on the statement of *Gabadage Udaya Wasudewa*. The 1<sup>st</sup> Respondent further denied the allegation of malice or of any animosity. The 1<sup>st</sup> Respondent relied on relevant information book extracts, medical reports, and copies of Court proceedings (marked as R1 to R10) in support of his position, while moving for the dismissal of the application. In his counter affidavit, the Petitioner made a general denial of the averments made by the 1<sup>st</sup> Respondent.

At the hearing of this application, the learned Counsel for the Petitioner made an allegation of fabrication of information book notes, a position taken up by the Petitioner in his counter affidavit. He submitted to Court that the reference to the Petitioner in the entry regarding the complaint made to *Payagala* Police on 13.08.2013, by the wife of *Udaya Wasudeva*, is a part that had deliberately been inserted into the said entry, after the instant application was filed. Moreover, the learned Counsel for the Petitioner submitted that *Udaya Wasudeva*, during an inquiry held at the Police Station at a subsequent point of time, had admitted to the Petitioner that he never made any complaint. Placing reliance on the strength of that assertion, learned Counsel

for the Petitioner contended that there was no credible information available to the Respondents at the time of his arrest, on which they could have entertained a reasonable suspicion to form an opinion that his arrest was necessary or expedient.

Learned Counsel relied on the *dicta* of this Court in the judgments of *Dissanayaka v Superintendent, Mahara Prison and Others* (1991) 2 Sri L.R. 247, *Gamlath v Neville Silva and Others* (1991) 2 Sri L.R. 267 and *Channa Peiris v Attorney General* (1994) 1 Sri L.R. 1, to impress upon this Court that the fundamental rights of the Petitioner were infringed by the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents.

In her reply submissions, learned State Counsel who represented the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 6<sup>th</sup> and 8<sup>th</sup> Respondents, submitted to Court that none of the Respondents had any personal animosity towards the Petitioner and his arrest was made only after having followed the procedure laid down by law. She relied on the judgment of *Landage Ishara Anjali (Minor), Wijesinghe Chulangani v Waruni Bogahawatta, Matara Police Station and Others* (SC(FR) Application No. 677/2012 – decided on 12.06.2019) where this Court made certain pronouncements in relation to the proper exercise of powers conferred on peace officer in making an arrest without a warrant, in terms of Section 32(1) of the Code of Criminal Procedure Act No. 15 of 1979 (hereinafter referred to as the Code of Criminal Procedure Act). She further submitted that the circumstances as revealed in the pleadings before Court would clearly satisfy the said requirements were fulfilled by the Respondents.

The complaint presented to this Court by the Petitioner over the allegation of infringement of his fundamental rights is twofold. First, the Petitioner alleged that his arrest and detention were violative of the fundamental rights guaranteed to him under Articles 13(1) and 13(2).

Secondly, he alleged that he was denied of his right to equal protection of law, when he was arrested and detained due to a personal animosity harboured against him by the 1<sup>st</sup> Respondent, which occasioned a violation of his fundamental rights guaranteed under Article 12(1).

Of the two contentions referred to above, I shall consider the first at the very outset of this judgment.

It is evident from the several averments contained in the petition of the Petitioner that his allegation of infringement of fundamental rights was primarily directed at the 1<sup>st</sup> Respondent, who functioned as the Officer-in-Charge of the *Payagala* Police Station, during the relevant period of time. The 3<sup>rd</sup> Respondent, PS 25317 *Gunasiri*, is the officer who investigated into a complaint made by *Ayoma Janaki* alleging of an attack on her husband *Gabadage Udaya Wasudeva* using a stone, and arrested the Petitioner. However, perusal of the information book extracts marked as R1, R2, R3, R4 and R7 by the 1<sup>st</sup> Respondent, did not reveal any involvement of the 4<sup>th</sup> and 6<sup>th</sup> Respondents in the arrest of the Petitioner or for his detention. The Petitioner, in his petition, did not attribute any specific act or omission, by which the 4<sup>th</sup> and 6<sup>th</sup> Respondents had contributed to any of the alleged infringements of his fundamental rights.

Article 13(1) guarantees that no person shall be arrested except according to law, while the said Article further offers a guarantee that a person so arrested shall be informed of the reason for his arrest. The term "*according to law*", as appears in Article 13(1), is referable to the statutory provision which govern the arrests and detention of persons. Section 5 of the Code of Criminal Procedure Act specifies that all offences under the Penal Code or any other law "... shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of this Code." This provision ensures that

the police officers, being officers of the executive and who are empowered to make arrests, should carry out their official functions strictly according to the procedure laid down by the said law.

In the context of powers of investigation that are invested on the agencies of the executive, Prof Peiris, in his work titled *Criminal Procedure in Sri Lanka Under the Administration of Justice Law* (1<sup>st</sup> Ed, p. 35) stated that “ *[T]he primary objectives of the rules applicable to criminal procedure in this area involve a compromise between efficiency and restraint. The public interest demands the discovery and punishment of crime with greater energy and expedition, but not at the expense of rights which, in fairness to the accused, are guaranteed from the outset. It is the aim of the law of procedure to ensure that the liberty of the individual is not eroded by actions taken during the course of the preliminary investigation*” (emphasis added).

Thus, the arrest and detention of a person (except in the instances where the Prevention of Terrorism (Temporary Provisions) Act provisions are applicable) must necessarily be carried out according to the procedure laid down in the Code of Criminal Procedure Act.

Section 32 of the Code of Criminal Procedure Act specifically provides for as to how and when a peace officer may arrest a person without a warrant. Admittedly the Petitioner was arrested without a warrant and therefore his arrest should be in compliance with the procedure as laid down in that Section. The applicable part of the statutory provisions in Section 32(1)(b) in relation to arrests, states that any peace officer may, without an order from a Magistrate and without a warrant, arrest any person ;

*“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 concerned; ...”*

The 1<sup>st</sup> Respondent stated that the Petitioner was arrested after receiving a complaint which revealed his complicity to an offence. Thus, the relevant part of Section 32(1)(b) in relation to the instant application is denoted by the phrase “*against whom a reasonable complaint has been made*”. The scope of this particular segment in the said Section was already considered by this Court in ***Ven. Dharmaratana Thero and Another v Sanjeewa Mahanama and Others*** (2013) 1 Sri L.R. 81. In the said judgment, Dep J (as he then was) made the following pronouncement (at p. 89);

*“[I]n order to arrest a person under this subsection there should be a reasonable complaint, credible information or a reasonable suspicion. Mere fact of receiving a complaint or information does not permit a peace officer to arrest a person. Police Officer upon receipt of a complaint or information is required to commence investigations and ascertain whether the complaint is a reasonable complaint, the information is credible, or the suspicion is reasonable before proceeding to arrest a person.”*

In view of the statutory provisions contained in Section 32(1)(b), the questions that must be decided by this Court in relation to the instant application are; whether the 3<sup>rd</sup> Respondent had a “*reasonable compliant*” against the Petitioner before he made the arrest and whether the 3<sup>rd</sup> Respondent made an attempt to ascertain the reasonableness of the complaint he received, before proceeding to arrest him on that complaint. The assessment of the reasonableness of a complaint too was considered by this Court in the judgment of ***Seneviratne v Rajakaruna and Others*** (2003) 1 Sri L.R. 410. The Court, having observed (at p. 419) that the “... wording in section

32 of the Code of Criminal Procedure Act refers to a 'reasonable complaint' or 'credible information' or a 'reasonable suspicion'. Therefore, the legislature has been emphatic that a mere suspicion alone would not be sufficient to arrest a person in terms of section 32 of the Code", thereafter proceeded to quote the following segment from *Shoni* on Indian Criminal Procedure Code (18<sup>th</sup> edition, Volume 1, pg.240);

*"[A] general definition of what constitutes reasonableness in a complaint or suspicion and credibility of information cannot be given. But both must depend upon the existence of tangible legal evidence within the cognizance of the police officer and he must judge whether the evidence is sufficient to establish the reasonableness and credibility of the charge, information or suspicion. What is a reasonable complaint or suspicion must depend on the circumstances of each particular case, but it must be at least founded on some definite fact tending to throw suspicion on the person arrested and not on mere surmise or information."*

This had been the view consistently taken by the superior Courts for a long time, in dealing with the legality of arrests of individuals and of their detention. Citing an English judgment, of *Mc Ardle v Egan* (1933) 30 Cox C. C. 67, Gratiaen J, stated in *Muttusami et al v Kannangara, Inspector of Police* (1951) 52 NLR 324 (at p. 327) "A suspicion is proved to be reasonable if the facts disclose that it was founded on matters within the police officer's own knowledge or on statements by other persons in a way which justify him in giving them credit." It is important to note that this pronouncement was made by Gratiaen J, in relation to the scope of the Section 32(1) of the Criminal Procedure Code, long before this Country even recognised the freedom of a person from arbitrary arrest as a justiciable fundamental right.

The judicial precedents thus far quoted in this judgment, indicate the position that if an arrest of a person is to be made upon a complaint of committing a cognizable offence, the arresting officer is expected to satisfy himself as to the reasonableness of that complaint by assessing whether that complaint is a credible one or, placed at its lowest in the scale, it “*... must be at least founded on some definite fact tending to throw suspicion on the person arrested and, not on mere surmise or information*” per *Seneviratne v Rajakaruna and Others* (supra). Mark Fernando J, in *Dhanapala Fernando v Attanayaka, officer in charge, Kandana police station and others* (2003) 1 Sri L.R. 196, insisted that (at p. 203) “[U]nder Section 32(1 )(b) a mere suspicion is not enough. A reasonable suspicion or credible information is required”.

The reason for the insistence of credible information could be understood from the pronouncement made in *Piyasiri and Others v Nimal Fernando, ASP and Others* (1988) 1 Sri L.R. 173 (at p.184) that “[N]o Police-Officer has the right to arrest a person on vague general suspicion, not knowing the precise crime suspected but hoping to obtain evidence of the commission of some crime for which they have the power to arrest”.

The question, whether there was a “*reasonable complaint*” at the time of the arrest of the Petitioner, should be determined by this Court by examining whether there was a complaint made to Police providing a credible information against him. Whether the complaint of Wasudeva qualifies to be taken as a “*reasonable complaint*” for the arresting officer to make the arrest would in turn depends on the reliability or credibility of that complaint. Reasonableness of a complaint must be decided by application of an objective test, as this Court, in *Gamlath v Neville Silva and Others* (1991) 2 Sri L.R. 267, held (at p. 274) “[A]n arrest based purely on the subjective satisfaction of the police officer would be arbitrary and violative of Article 13(1)”. Amerasinghe J described

the applicable test, in the judgment of *Senaratne v Punya de Silva and Others* (1995) 1 Sri L.R. 272, as follows(at p. 284);

“[W]ere there circumstances, objectively regarded the subjective satisfaction of the officer making the arrest is not enough that should have induced the First respondent to suspect that the petitioner was concerned in the commission of those offences?”

Thus, the legality of the arrest of the Petitioner made by the 3<sup>rd</sup> Respondent, would have to be determined this Court by objectively assessing whether the material available at the time of arrest was sufficient to induce the officer to act on that complaint, by treating same as a “*reasonable complaint*”.

In determining this question, the extracts from the relevant Information Book of *Payagala* Police Station provides a clear insight into the attendant circumstances that existed at the time of the Petitioner’s arrest. The Petitioner does not challenge the accuracy of the notes of the multiple investigations that were carried out by the Respondents, except to state that implication of him in R7 is a fabrication.

Returning to the Petitioner’s complaint of illegal arrest in violation of Articles 13(1) and (2), in order to impress upon this Court that there was no reasonable complaint against him at the time of arrest, he totally relies on his own factual assertion of there was no complaint made by *Wasudeva*, at the time of his arrest, implicating him of any form of assault.

In paragraph 12 and 13 of his Petition, the Petitioner asserts that during an inquiry conducted by the 1<sup>st</sup> Respondent on 24.08.2013, he confronted the complainant *Wasudeva* over the allegation of assault, and indicated that he would institute legal action for making false accusations. According to the Petitioner, it is at that point of time, *Wasudeva* had denied of making any

complaint against him and maintained he was not aware of the former's arrest. The Petitioner however did not support this important assertion, either by way of an affidavit of *Wasudeva* or by production of a statement made by the 1<sup>st</sup> informant of the said assault, in order to counter the fact of *Wasudeva*, making a statement implicating him.

The information book extracts contain two specific references to the Petitioner, in relation to the complaint of the assault on *Wasudewa*. The contention of the Petitioner to the first reference to him in the entry (R7) made by PC 81657 *Chamara* at 8.30 p.m. on 13.08.2013 contained in the Information Book, which read “පැරිගේ මස්සිනා වන මුතුකමාර යන අයන් ඩීම එළෙන පහර දුන් බව පට්ටා සිටා” is a sentence that had been inserted into the information book entry at a subsequent stage, in order to justify the otherwise illegal arrest.

On behalf of the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 6<sup>th</sup> and 8<sup>th</sup> Respondents, learned State Counsel contended that it was consequent upon a complaint made by *Wasudeva* implicating the Petitioner, his sister and brother-in-law, only they were arrested by the Respondents and therefore the arrest of the Petitioner was made “according to the procedure established by law” in terms of Section 32(1)(a) of the Code of Criminal Procedure Act.

In view of the pronouncements made by this Court, referred to earlier on in this judgment, which laid specific emphasis on the existence of a reasonable and credible complaint against a suspect, that should exist prior to making an arrest without a warrant, it is important to consider whether there was any such credible complaint made relating to the incident, during which *Wasudeva* had sustained injuries, for the Respondents to form a reasonable suspicion.

Before I proceed to consider the question of reasonableness of the complaint, it is helpful if a brief reference is made particularly to the sequence of events that culminated with the arrest of the Petitioner.

The incident of assault, over which the arrest of the Petitioner was made, had taken place at about 7.30 p.m. on 13.08.2013. *Srimath Namasri Algawatte*, a brother of the Petitioner and a three-wheeler driver by profession, entered the public road driving his three-wheeler from a by-lane that led to his house. The public road was in a decrepit state. In order to avoid a heavily washed-out part of the road, *Namasri* had turned his vehicle to a side of the road and, in the process, had brushed against a child, who walked along the road with his father *Gabadage Udaya Wasudeva*. *Wasudeva* had taken the act of *Namasri* as a deliberate act of swerving the vehicle to his child and was offended. This incident ensued an exchange of words between the two men which then escalated into a brawl. Hearing the commotion, *Kalapuge Padmalatha*, who lived in a nearby house, had informed *Namasri's* sister *Shreemali Algawatte* of the brawl. *Shreemali* and her husband "Pattie" (*Ranasinhage Indika Wasnatha*), rushed to the scene and had started attacking *Wasudeva*. The Petitioner too had joined his family members after a while and dealt several blows with his fists and kicked repeatedly on *Wasudewa*.

At about 8.30 p.m. in the same evening, PC 81657 *Chamara* of *Payagala* Police Station made a note in the information book that one *Anoma Janaki* had arrived at the Station with a person bleeding from his nose. She introduced the injured person as her husband (*Gabadage Udaya Wasudeva*). It was claimed that the injured was hit on his head with a stone by one "Pattie" while his wife, *Shreemali Algawatte*, hit him with a pole. She further accused that the Petitioner too had joined in the attack on her husband. The persons referred to in this incident as "Pattie" and *Shreemali Algawatte* are the brother-in-law of

the Petitioner and his sister, respectively. This is the first reference made to the Petitioner, according to the information book extracts.

As the injured was bleeding from his nose, he was issued with a MLE form No. 141/13 by the officer and directed them to proceed to hospital. The 3<sup>rd</sup> Respondent, who was patrolling in *Maggona* town area during that time, was directed by the 1<sup>st</sup> Respondent to conduct investigations into this complaint. The 3<sup>rd</sup> Respondent had therefore proceeded to the hospital and recorded a statement of the injured *Gabadage Udaya Wasudeva* at 10.00 p.m. The injured had already been treated by the medical staff. He had a plaster on his nose. In his statement, *Wasudeva* had accused “*Pattie*” for jabbing him with a stone on his face. He also accused the Petitioner’s sister for attacking his head with a pole. The injured further alleged that the Petitioner, who joined the scuffle after he was hit with a stone, had repeatedly assaulted him with hands and legs, even after he fell ( ජ පාර මුතුකුමාර මම ඩිල වැට්ල ඉන්න කොට අතින් පයන් උව පැන පැන මට ගැහුවා, මූණ දෙහාට ගැහුවා). This is the second reference made to the Petitioner regarding the said complaint of assault.

It appears from the contention advanced by the Petitioner that he strongly relied on the fact that the only information available to the Respondents connecting him to the alleged act of assault on *Wasudeva*, at the time of his arrest, was the entry R7. Understandably, the Petitioner therefore seeks to assail the genuineness of the said entry R7 by making the allegation that it is due to an act of fabrication by the Respondents, consequent to the filing of the instant application. The Petitioner invited attention of Court to the place where the reference to him appeared in R7. He pointed out that it is the last sentence in the said entry and therefore that very fact strongly supports his contention that it an insertion made at a subsequent point of time .

Perusal of the said entry (R7), revealed that the penultimate sentence of that entry did indicate that PC 81657 *Chamara*, having already issued MLEF No. 141/13 to the injured, had directed them to proceed to hospital. This entry is followed by a sentence in which the Petitioner's name too was implicated for the attack (" පැටිගෙ මස්සිනා වන මූලු කුමාර යන අයත් ඩීම බුගෙන පහර දුන් බව පවසා සිරිය."). The entry R7, which described the officer's own observations and the actions he had taken upon the verbal complaint, had ended with the said sentence implicating the Petitioner. As pointed out by the Petitioner, that the penultimate sentence refers to the issuance of MLEF by the officer with the direction to the parties to proceed to hospital. The Petitioner contends that with the act of issuance of MLEF, it is logical to infer the entry regarding the attack had ended and, in the circumstances, the appearance of the said last sentence, is obviously due to an act of fabrication. It is already noted that the said contention was advanced by the Petitioner to substantiate his claim that there was no reasonable complaint before the Respondent to justify making his arrest, particularly in view of the denial made by *Wasudeva* of implicating him.

When *Wasudeva* and his wife arrived at the Police Station on their way to hospital, no statement was recorded from either of the two. The entry R7 is only an entry made by PC 81657 *Chamara* in the Information Book. The officer, in making the entry R7, had merely noted down the gist of the nature of the complaint, who was implicated for causing the injuries, his observations on the injured person and what steps he had taken in relation to the complaint. The appearance of the said last sentence in R7 could be due to an act of insertion of that statement into the entry at a subsequent stage, as the Petitioner's contend. However, it is not the only possible explanation, in view of the contents of the statement recorded off the injured at the hospital.

The Respondents, in seeking to justify the arrest and detention of the Petitioner, relied on the fact that the injured, *Wasudeva*, in his detailed statement made to the 3<sup>rd</sup> Respondent, made a specific allegation that the Petitioner had repeatedly struck him in the face, even after he fell down (ඒ පාර මුතුකුමාර මල තිම වැට්ටීම ඉන්න කොට අතින් පසින් උච්ච පැන පැන මට ගැහුවා, මූණ දිභාට ගැහුවා.). This sentence immediately follows the sentence by which *Wasudeva* implicates the Petitioner's sister and brother-in-law for assault. This statement of *Wasudeva*, which contained a direct accusation against the Petitioner of a physical assault, was recorded by the 3<sup>rd</sup> Respondent after visiting the hospital at 10.00 p.m. a few minutes after R7 was made. Thus, it seems that the last sentence in R7, though entered by the officer after he completed the entry, is not a fabrication as the Petitioner contends.

The 3<sup>rd</sup> Respondent, having recorded *Wasudeva's* statement at the hospital thereafter proceeded to record a statement from *Ayoma Janaki* (*Wasudeva's* wife) at 11.30 p.m. In her statement *Janaki* stated that, upon hearing of the attack on *Wasudeva* through her son, she had rushed to the place of the incident. She states that on rushing there, she saw her husband was seated on the ground while the Petitioner and his brother-in-law stood near him. She also saw *Shreemalee* had a pole in her hand. After making the statement at 11.55 p.m., *Janaki* proceeded to the place of the incident with the 3<sup>rd</sup> Respondent to point out to the officer of the place of attack, which enabled him to make observations and to verify whether there were any other witnesses to the incident. The Petitioner does not challenge the existence of this statement.

The Petitioner was arrested by the 3<sup>rd</sup> Respondent at his residence around 12.10 a.m. on 14.08.2013, after about 15 minutes since his visit to the place of the incident to conduct investigations. The Information Book extracts

indicate that the Petitioner was informed of the reason for his arrest by the 3<sup>rd</sup> Respondent in making the arrest and the Petitioner does not deny that fact either.

Returning to the question, whether there was a reasonable and credible complaint against the Petitioner at the time of his arrest, I would apply the test adopted by Amerasinghe J in the determination of the same. *Amerasinghe J* ( per *Senaratne v Punya de Silva and Others* (supra) formulated the test as follows; “[W]ere there circumstances, objectively regarded the subjective satisfaction of the officer making the arrest is not enough that should have induced the first respondent to suspect that the petitioner was concerned in the commission of those offences?” in the determination of the reasonableness of a complaint on which the impugned arrest was made.

The 3<sup>rd</sup> Respondent, who made the arrest of the Petitioner, was directed by the 1<sup>st</sup> Respondent to investigate into the complaint of assault of *Wasudeva*. When the 3<sup>rd</sup> Respondent received orders from the 1<sup>st</sup> Respondent to investigate, he was patrolling around *Maggona* area. There was no allegation that he too had an animosity against the Petitioner. At the time of receiving orders to investigate, it is very unlikely that the 3<sup>rd</sup> Respondent knew nothing of any involvement of the Petitioner. Upon receiving orders from his superior through radio communications, the 3<sup>rd</sup> Respondent had thereupon proceeded to the hospital where the injured was receiving treatment. A statement of the injured, which contained a direct accusation against the Petitioner implicating him of assault, was recorded. During the said interview, the officer noted that the injury of the injured was already treated by the medical staff. He then proceeded to locate the witness, who accompanied the injured to the Police and then to Hospital. Her statement was also recorded. *Ayoma Janaki* confirmed that the Petitioner was present near the injured, when she rushed

to the place of the incident upon being informed of the commotion by her son. The BHT of *Wasudeva* ( page 2 of R8) also indicated that the injured was admitted with a history of being assaulted by “ *a known group of people with hands and a wooden pole*” which made him bled from his nose. The X ray of the injured indicated an “*undisplaced (sic) fracture*” of his skull.

Clearly the medical records as well as the statement of the injured provided unambiguous and definitive information to the 3<sup>rd</sup> Respondent as to the manner in which *Wasudeva* had sustained his injuries and the persons who are responsible for causing them. These factors made the accusation by *Wasudeva* a well substantiated one. Nonetheless, the 3<sup>rd</sup> Respondent had taken the additional step of recording the statement of *Wasudeva's* wife that very night and also visited the scene before arresting the Petitioner. When these multiple factors that contributed to the decision to arrest of the Petitioner are considered objectively, it is my considered view that there was a reasonable complaint made to the 3<sup>rd</sup> Respondent by *Wasudeva*, alleging physical assault by the Petitioner and others, an allegation which is supported with sufficient material for the 3<sup>rd</sup> Respondent to determine that there was a reasonable complaint made against the Petitioner, that empowered him to make a lawful arrest.

The factual assertion of the Petitioner that *Wasudeva*, making an admission that he did not accuse him of assault, is an important factor in support of his allegation of illegal arrest. The 1<sup>st</sup> Respondent tendered a statement made by *Wasudeva* containing a direct allegation against the Petitioner and the Petitioner does not challenge its existence. In these circumstances, the admission attributed to *Wasudeva*, should have been substantiated either by tendering an affidavit or a statement from *Wasudeva* or even from a third party, who heard *Wasudeva* making the said admission. In

the absence of such material, the said assertion made by the Petitioner remains a mere, unsubstantiated and a self-serving assertion. When the 1<sup>st</sup> Respondent, tendered the statement of *Wasudeva*, the Petitioner conveniently ignored to challenge that fact in his counter affidavit and was content with repeating his contention that there was no reasonable complaint of assault made against him.

Even if *Wasudeva* did formally retract his accusation against the Petitioner, which said to have happened during an inquiry held on 24.08.2013, that factor would not have any effect on the legality of the arrest, since what is material to the determination of the legality of the arrest are the circumstances that existed prior to the making of arrest and not the subsequent events that may have occurred.

This reasoning also applies to the contents of the affidavit dated 14.10.2014, made by witness *Kalapuge Padmalatha*, who, in her statement to the 3<sup>rd</sup> Respondent on 14.08.2014, as well as in the affidavit tendered along with the petition of the Petitioner (P4), claims to have seen the incident of assault on *Srimath Namasri Algawatta*. *Padmalatha* now retracts the contents of her affidavit while asserting that *Namasri* obtained her signature to an affidavit after promising her of Rs. 50,000.00 to implicate *Wasudeva*. She, in her second affidavit, claims that she now wants to rectify the “injustice” that caused to *Wasudeva* by her actions.

The Petitioner, in his petition concedes that he was informed prior to his arrest by the 3<sup>rd</sup> Respondent that the injured “*Udaya Kumara*” (*Wasudeva*) had implicated him, his sister and brother-in-law for the assault and accordingly all three of them needed to be arrested. Petitioner’s sister and brother-in-law could not be arrested along with him, as they were not at home. In view of these factors, the allegation of the Petitioner that the reference to him in the

entry R7, is a fabrication made by the Respondents after he complained of his arrest to this Court, does not support his allegation of illegal arrest. In these circumstances, I hold that the arrest of the Petitioner was made according to procedure established by law and there was no infringement of the fundamental rights guaranteed to him in terms of Article 13(1).

The allegation that the 1<sup>st</sup> and 3<sup>rd</sup> Respondents have acted in violation of Article 13(2) shall be considered next.

The gravamen of the allegation of the Petitioner in this regard seems to be that after his arrest he was kept in the "*cell overnight without any legally valid reason*" and the 1<sup>st</sup> Respondent had taken no action on his continued detention, until his mother intervened in the following morning and "... *beseeced him to release the Petitioner, his sister and brother-in-law*". The Petitioner contends only then the three detainees were released by the 1<sup>st</sup> Respondent on surety bail. The Petitioner is of the firm belief that the 1<sup>st</sup> Respondent had intentionally kept him in detention "overnight" because of his complaint made to a Senior DIG.

The relevant notes contained in the Information Book extracts reveal that the Petitioner was handed over to the reservist by the 3<sup>rd</sup> Respondent after his arrest and detained him at the Station awaiting orders from the 1<sup>st</sup> Respondent. The 3<sup>rd</sup> Respondent thereafter returned to his patrolling duties by leaving the station at 12.50 a.m. on 14.08.2013. At 8.10 a.m. on the same day the Petitioner's sister and brother-in-law too were arrested by PC 88152 *Kanchana* and detained at the Station awaiting orders of the 1<sup>st</sup> Respondent. Statements of *Ranasinghe Indika Wasantha* (brother-in-law of the Petitioner) and *Shreemalee Algawatta* (sister of the Petitioner) were recorded at 8.40 a.m. soon after their arrests. The 1<sup>st</sup> Respondent had averred that the Petitioner, his

sister and brother-in-law too were released on bail, at 9.55 on the same day. The Petitioner confirms that position.

In view of these considerations, the assertion of the 1<sup>st</sup> Respondent that the Petitioner and his relatives were released on bail after their arrest on the same day (14.08.2013) by 9.55 a.m., remains an uncontradicted and unassailed fact. In effect, the Petitioner was kept in detention for a total period of less than ten hours since his arrest at 12.10 a.m.

Sections 36 and 37 of the Code of Criminal Procedure Act governs how a person arrested is to be dealt with and the duration within which such a person could lawfully be detained by a peace officer. Section 37 imposes a mandatory duty on peace officers not to detain suspects in custody or confine them for a period not exceeding twenty-four hours, leaving out only a narrow margin of time, in view of the practicalities involved with actual production of suspects before a judicial officer.

Returning to the consideration of the complaint of the Petitioner on illegal detention, it is observed that the Petitioner was released on surety bail by the 1<sup>st</sup> Respondent, without producing him before a Magistrate. Since the release was made within a period of less than twelve hours since his arrest, the only factor that should be considered in relation to the allegation of illegal detention is whether there was sufficient compliance of the statutory provisions contained in Section 37 of the said Act by the 1<sup>st</sup> Respondent.

Section 37 imposes a duty on a peace officer not to detain individuals unreasonably as it states that such an officer “ *... shall not detain in custody or otherwise confine a person arrested without a warrant for longer period than under all the circumstances of the case is reasonable*” and it further insisted that the total

period of detention should not exceed the twenty-four-hour period, except for certain limited situations qualifying under Section 43A.

In applying the test whether the Petitioner was released by the 1<sup>st</sup> Respondent without keeping him in detention “*for longer period than under all the circumstances of the case is reasonable*” to the totality of the circumstances as revealed from the pleadings, I find that the Respondents have released him on a surety bond well within a reasonable time period, after having sufficiently complied with the applicable legal provisions contained in Sections 36 and 39. The contention of the Petitioner that the Respondents acted in breach of the statutory provisions of Section 65 of the Police Ordinance, in their failure to produce the Petitioner before a Magistrate, despite being enlarged on a surety bond, was made on a clear mis-interpretation of the proviso to the said Section and therefore does not require any further consideration here. Similarly, the Petitioner’s contention that the Respondents were in breach of Departmental Orders which made it obligatory for the Officer-in-Charge of the Station to report of the arrest made by the Police, too is based on a similar misapprehension of the factual and legal position.

It is evident that the Petitioner’s complaint of violation of his fundamental rights was primarily made against the 1<sup>st</sup> Respondent, the Officer-in-Charge of *Payagala* Police Station, although he cited several other officers attached to the said Station as Respondents. In the preceding part of this judgment, the legality of the arrest and detention was considered in the backdrop of the material presented before this Court, which includes the pleadings of the parties and the annexures along with the certified extracts of the notes of multiple investigations carried out by the officers of *Payagala* Police.

Since the Petitioner made direct references to the violation of the statute law in claiming of illegal arrest contrary to procedure established by law, consideration was more focussed into the relevant provisions in the Code of Criminal Procedure Act. In addition to urging illegality of the arrest in terms of the applicable law, it was also alleged that the arrest and detention of the Petitioner was also due to an animosity harboured against him by the 1<sup>st</sup> Respondent. The Petitioner therefore challenges the decision to arrest and to detain are violative of his rights as they were decisions that are "*tainted with malice*". In view of these repeated accusations made against the 1<sup>st</sup> Respondent of acting in *malice* to the detriment of the Petitioner, it is important to consider whether any of his actions, taken or not taken on a series of complaints, were motivated by the said animosity, as alleged by the Petitioner.

Why this becomes an important consideration is, as it has been said"  
*[A]lthough a law is fair on its face and impartial in appearance, yet if it is applied and administered with an evil eye and an unequal hand, so as to make unjust and illegal discrimination it would constitute a denial of equal protection of the laws*" ( vide *Fundamental Rights in Sri Lanka*, S. Sharvananda, 1993, p.124).

Of these multiple references to the actions or inactions that were attributed to the 1<sup>st</sup> Respondent, there are four incidents that stand out clearly from the rest in relation to this very aspect and therefore are considered in this part of the judgment. It is for the purpose of clarity and easy presentation, a re-arrangement of these several instances was made by referring to them in a chronological order.

It is stated in the petition by the Petitioner that, prior to the series of interactions that were referred to in the instant application, he has had no interaction with the Police at all, thereby implying this was his first. That being the case there cannot be any pre-existing animosity between the

Petitioner and the 1<sup>st</sup> Respondent and if at all, such an animosity did actually exist, it should be a result of one or more incidents referred to in the pleadings. The Petitioner's perception of the reason for harbouring an animosity, as stated in paragraph 13 of his petition, is directly referable to his complaint to the Senior DIG regarding the failure of the 1<sup>st</sup> Respondent to take action on a complaint lodged by his mother over an incident of assault on his sister. The Petitioner's position is that due to the said animosity only he was arrested by the Respondent, without even a complaint being lodged against him. However, the Petitioner also alleged in his petition of remanding his father, pending medical examination, too motivated by the same animosity.

In view of the fact that the strong correlation that seem to exist between the series of complaints and counter complaints made to *Payagala* Police. All of them either directly or indirectly had some relevance to the arrest of the Petitioner. This factor needed to be examined closely and in the proper context, in order to assess the justifiability of the Petitioner's complaint of personal animosity on the part of the 1<sup>st</sup> Respondent, which allegedly occasioned a violation of a fundamental right.

There are four such specific instances where the Petitioner attributes malice on the part of the 1<sup>st</sup> Respondent, which shall be examined hereinafter under separate sections.

The origin of the series of incidents that led to the arrest of the Petitioner could be traceable to a complaint relates to the Petitioner's father, *Algawattage Maithreepala*. *Maithreepala*, is a retired medical attendant who lived with his wife, two sons, a daughter and her husband. The starting point of all the subsequent events began with a complaint made by *Karunakalage Deepa Krishanthi* to *Payagala* Police Station at 3.00 p.m. on 21.04.2013. In that complaint, *Krishanthi* accused *Maithreepala* for regularly harassing her and

family by uttering obscenities that are directed to them. She further alleged *Maithreepala*, whilst being under the influence of liquor, regularly made derogatory references to her caste and also to her religious beliefs in those utterances. She suspects that it could be due to a mental illness and if it is so, requests the Police to compel him to obtain medical help. She further claims that informing *Maithreepala's* daughter, *Shreemalee Algawatte* ( a sister of the Petitioner) of her father's abusive behaviour did not help and *Maithreepala's* acts of harassment continued unabated. Not only *Krishanthi* was disturbed by the conduct of *Maithreepala*. There were others who had similar complaints and the officer thereupon proceeded to record statements of *Wittahachchige Don Janaka Prabath*, *Wittahachchige Don Keerthisiri* and *Jayanetti Koralalage Samitha Samanmalie*, all of whom are neighbours of *Maithreepala*. They confirmed the complaint of *Krishanthi* on the abusive behaviour of their elderly neighbour.

On 22.04.2013, PC 31307 *Padmasekara* of *Payagala* Police Station visited the house of *Maithreepala* to investigate into the complaint and found that he was still under the influence of liquor and making incoherent utterances. Due to his state of intoxication, no statement could be recorded off *Maithreepala* at that point of time.

The Police directed the family to produce *Maithreepala* before the 1<sup>st</sup> Respondent on 22.04.2013 but did not do so due to his ill-health. Several opportunities were given to facilitate an inquiry but *Maithreepala* was presented to Police by the Petitioner only on 28.04.2013. They were then re-directed to appear before the Magistrate on 29.04.2013.

Interestingly, the Petitioner, also made a complaint to the Police on 28.04.2013, alleging that *Karunakalage Deepa Krishanthi* is of unsound mind and regularly harasses his family by verbally abusing them. It is relevant to note

here that the complaint against the Petitioner's father alleging harassment was initiated by the same *Karunakalage Deepa Krishanthi*.

The 3<sup>rd</sup> Respondent made reports of facts to the Magistrate's Court of *Kalutara* on 29.04.2013, regarding both complaints of abusive behaviour under case Nos. AR 4724/13 and 4725/13(R6) seeking orders of Court enabling psychiatric assessment of *Algawattage Maithreepala* as well as *Karunakalage Deepa Krishanthi*. The 3<sup>rd</sup> Respondent further states in his report to Court that the complaints made against *Algawattage Maithreepala* by several individuals were independently verified by him after obtaining confirmation by the *Gramma Niladhari* of the area and the Chairman of Civil Defence Committee.

When the case No. AR 4724/13 was taken up before the Magistrate's Court on 29.04.2013, the Court itself made order remanding the Petitioner's father and referred both *Maithreepala* and *Krishanthi* for psychological assessment. When case No. AR 4724/13 was called on 15.05.2013, the report issued by the Consultant Psychiatrist was tendered to Court. The report indicated that *Algawattage Maithreepala* was suffering from Bipolar Effective Disorder and also from alcohol dependency. The report further recommended his treatment to be continued with proper medication coupled with follow up visits to Mental Health Unit of *Kalutara* Hospital.

Thereupon, the Court made order handing the custody of *Maithreepala* over to the Petitioner and directed him to ensure continued medical treatment. Apparently, *Krishanthi* was cleared of any mental impairment.

The 1<sup>st</sup> Respondent denied making any application to remand *Algawattage Maithreepala* and, states that after verifying the complaint of *Karunakalage Deepa Krishanthi*, he merely reported facts to Court. This appears to be so, since the copy of the report filed in Court or the proceeding of Court

does not indicate any such application made by the 1<sup>st</sup> Respondent to commit Petitioner's father to judicial custody pending psychological evaluation. It was the Court, after observing the demeanour of the person, made the order *ex mere motu*. In the circumstances, I am more inclined to accept the explanation of the 1<sup>st</sup> Respondent on this allegation. This is because, if the 1<sup>st</sup> Respondent was determined to act on any animosity, he had ample opportunity to do so after receiving many complaints by the neighbours of the nuisance created by *Algawattage Maithreepala*. The 1<sup>st</sup> complaint was made to *Payagala* Police on 21.04.2013 by *Krishanthi* but the facts were reported to Court only on 29.04.2013. During this time interval, the 1<sup>st</sup> Respondent repeatedly directed the Petitioner to produce his father to the Police Station, to inquire into the said complaints. The Petitioner, claiming his father was unwell, managed to avoid that inquiry. He eventually produced his father before the Magistrate's Court on 29.04.2013, the day on which the remand order was made. The manner in which the 1<sup>st</sup> Respondent reacted to the repeated acts of disobedience to his directions, is an indication that the Petitioner's claim of acting with malice on this issue is only a perception created in the latter's mind, rather than being an actual fact that exists in reality.

Moreover, when *Krishanthi* lodged a complaint against *Maithrepala*, suggestive of latter's mental impairment, the 1<sup>st</sup> Respondent did not take any action until he verified that claim from many different sources of information. However, when the Petitioner made a counter allegation that *Krishanthi* of having a mental disorder, in the evening of the day prior to the date for production of his father before Court, the 1<sup>st</sup> Respondent had promptly acted on that information and moved Court for *Krishanthi*'s mental assessment, without waiting for any verification of that allegation and disregarding the fact that she is the complainant against the Petitioner's father and that she operates a grocery in the area for some time without any problems as it is

unlikely that a person with such an impairment, would conduct her affairs in that manner.

The second incident relates to an allegation of assault on the Petitioner's sister. This is the incident that made the Petitioner to make a verbal complaint to the Senior DIG against the 1<sup>st</sup> Respondent and therefore the starting point of the alleged animosity. At about 8.50 a.m., on 26.04.2013, *Sandage Pushpakanthi* complained to *Payagala* Police Station of an incident of physical assault on her daughter *Shreemali Algawatte* by one "Manju Prabath". She was told by *Shreemali* that *Manju Prabath* had hit her after grabbing her by hair. He also said to have bragged to *Shreemali* that somehow her father would be sent to mental asylum soon. The complainant informed the Police that her daughter was already admitted to *Nagoda* Hospital due to this assault. She also added that their neighbours are harassing them by making repeated complaints to police against her husband, who suffers from a mental illness.

The individual referred to in the said complaint as *Manju Prabath* is one and the same person, who supported *Krishanthi's* complaint against the Petitioner's father, *Wittahachchige Don Janaka Prabath*. After he complained about the nuisance created by *Shreemalie's* father on 23.04.2013, after three days and in the morning of 26.04.2013, at 8.49 a.m., *Pushpakanthi* made a complaint against him alleging assault. The complainant *Sandage Pushpakanthi* is the Petitioner's mother and *Shreemali Algawatte* is his own sister.

PS 3844 *Tillakaratne* recorded a statement of *Shreemali Algawatte* at about 4.50 p.m. on the same day at *Nagoda* Hospital where she accused *Manju Prabath* for assaulting her. PS 3844 *Tillakaratne* visited the place, where the alleged assault had taken place, at 5.30 p.m. and noted his observations. SI *Gamini Silva* thereafter arrested *Wittahachchige Don Janaka Prabath* and produced him at the police station on that evening at 6.05 p.m. his statement

was recorded at 6.30 p.m. on the same day. Page 118 of the same MCIB, in paragraph 318, SI *Gamini* left the Police Station at 5.00 p.m. on 26.04.2013, to make scene observations regarding the said complaint of assault, on the instructions of Personal Assistant to Senior DIG. This entry confirms that the Petitioner did make a complaint to the Senior DIG, on the alleged inaction on the part of the 1<sup>st</sup> Respondent over his mother's complaint which he attributes to personal animosity. But, by then PS 3844 *Tillakaratne* already recorded a statement of *Shreemali Algawatte* on the incident.

According to *Shreemali's* statement, she was cleaning her pots and pans in her backyard in the morning. She was alone. Suddenly, *Manju Prabath* came near her, asked where her husband was and then kicked her twice. She attributes that attack to an incident that had taken place between her husband and *Prabath* on the previous day. She admits there were no witnesses to the assault. Interestingly, the Petitioner, despite the fact that not being a witness to the said incident, provides his own version to it in his petition to this Court. In paragraph 4(g) of his petition, the Petitioner states as follows;

*"On 26<sup>th</sup> April 2013, around 7.30 a.m. the Petitioner's sister had seen another first cousin of the said W.D. Ratnapala named W.D. Janaka Prabath (who is also a first cousin of W.D. Keerthi), who lives in a house adjoining her house, going from house to house asking people to sign a public petition to be handed over to the Payagala Police, which petition stated that the Petitioner's father is insane and a danger and a nuisance to the public. The Petitioner's sister had objected vehemently to the activities of the said W.D. Janaka Prabath in attempting to obtain a public petition against her father and told the said W.D. Janaka Prabath not to be a busy body and meddle in other people's affairs. The Petitioner states that incensed by his sister's words, W.D. Janaka Prabath*

*assaulted his sister, necessitating her admission to the Nagoda Hospital."*

The version presented to Court by the Petitioner not only differs from what his sister told the Police but also connects to an incident not spoken to by any of the others. What *Shrimalee* said in her statement in relation to the attack was "මංපු මට පහර දීමට හේතුව 2013.04.25 ටන දින මගේ පුරුෂය ඉනදික වසන්ත මංපුට පහර දීම නිසාය. වෙන අමතාපයක් නැත." The addition of the fact of collection of signatures to a public petition is obviously a concoction on the part of the Petitioner in making an attempt to attach more weightage to his sister's complaint of assault against *Janaka Prabath* by coupling it with the complaint against his father.

The reason that the Police did not immediately proceed to arrest *Wittahachchige Don Janaka Prabath* after the complaint of *Pushpakanthi* could be inferred upon perusal of the contents of her first complaint. It was stated by *Pushpakanthi* that she did not witness the incident and she only learnt of it from her daughter. Thus, *Pushpakanthi* not being a witness to the incident, who merely repeated what she learnt from her daughter to Police was clearly insufficient for the Police to arrest *Janaka Prabath* since no reasonable suspicion could be formed solely on that statement, particularly in the absence of any such information forthcoming from the alleged victim *Shreemalie*, who by then got herself admitted to Hospital bypassing the Police, despite the fact that she had no injuries. No MLE form was issued as a result. *Shreemalie's* statement was recorded later on at 4.50 p.m. on the same day and, within a period of little over an hour, the Police arrested *Janaka Prabath* as a suspect over her complaint. He too was detained by the Police after arrest. It could well be that the intervention of the Senior DIG contributed to the arrest of *Janaka Prabath*. It must also be observed that only after recording *Shreemalie's* statement, which

contained a direct accusation of assault for the first time, the Police had a reasonable complaint to arrest *Janaka Prabath*.

Similarly, the reasons for the delay in the arrest of *Wasudeva*, against whom a complaint was made by *Namasri*, are evident when the sequence and the chronology of the relevant events are lined up in proper context. The incident of assault on *Wasudeva*, which referred to as the core incident in this judgment earlier on is one immediately followed to the incident of assault, as complained by *Namasri*. The incident involving the three-wheeler driven by *Namasri* and *Wasudeva's* son occurred at about 7.30 or 8.00 p.m. and then only the Petitioner, his sister and brother-in-law joined in the attack. *Wasudeva's* wife had taken her husband to Police by 8.30 p.m. and while they were on their way to hospital, *Namasri* came to Police to make a complaint at 9.40 p.m. Unlike *Wasudeva*, *Namasri* had no visible injuries and he only complained of headache after his head hit the ground as he fell down. He too was issued MLE Form No. 142/13.

After visiting the scene in the following morning, PS 3844 *Tilakaratne* recorded a statement of *Kalapuge Pathmalatha*, who witnessed the incident, at 9.20 a.m. On 21.08.2013, PS 3844 *Tilakaratne* proceeded to arrest *Wasudeva* who, by then, had been discharged from the hospital after three days of inhouse treatment. He was not at home. The officer directed *Namasri* to come to Police Station for an inquiry into his complaint on 24.08.2013. The officer also directed *Wasudeva's* wife to inform her husband, to be present at the Police Station for that inquiry. *Wasudeva* was arrested on 24.08.2013, when he presented himself to the Police. He was detained after his arrest and had his statement recorded. On the instructions of the 1<sup>st</sup> Respondent, *Wasudeva* was released on surety bail and the complaint of *Namasri* against *Wasudeva* for assault was referred to the Mediation Board along with that of *Wasudeva*

made against the Petitioner and others. In these circumstances, I am unable to find any material which indicate the 1<sup>st</sup> Respondent acted with *malice* in dealing with the Petitioner or any other member of his family.

This factor leads to the consideration of the fourth factor cited by the Petitioner in support of his allegation of animosity entertained by the 1<sup>st</sup> Respondent against him. The Petitioner alleges that, for nearly seven months, the 1<sup>st</sup> Respondent did not take any action over the complaints of assault made by his family members.

The document marked R10, indicates that the 1<sup>st</sup> Respondent filed three plaints before the Magistrate's Court of *Kalutara* on 13.12.2013. Two the plaints carried the Petitioner's name, as an accused in relation to offences of causing hurt and issuing death threats on *Wasudeva*. It appears that the incidents of physical assault on *Wasudeva* and the incident of physical assault on *Namasri* were treated by the Police as an instance where both parties made complaints against each other over the same incident. The information book extract marked R7, indicate that the 1<sup>st</sup> Respondent had referred both the incidents for mediation in terms of Section of 7(1)(c) of the Mediation Boards Act No. 72 of 1988 as amended, a requirement to be fulfilled before the institution of proceedings before the relevant Magistrate's Court.

This was the case, in relation to the complaint by the Petitioner's sister , *Shrimalee* against *Janaka Prabath*, as well. The Petitioner himself stated in his petition that the complaint had been referred to for mediation, and *Janaka Prabath* was warned by the board to keep good behaviour. However, the Petitioner, either in his petition nor in the counter affidavit, does not make any averment to the reference of the incident to the Mediation Board. In view of the said entry in the information book, the delay in the institution of proceedings is sufficiently explained. The delay of seven months is

accordingly attributable to the time taken to the mediation process, which obviously failed, as indicative by the fact that plaints were filed in Court.

In relation to the consideration of the allegation of animosity on the part of the 1<sup>st</sup> Respondent, the conduct of the Petitioner and members of his family should also be considered. It was the Petitioner who made an unsubstantiated complaint of insanity against *Krishanthi* for complaining against his father. His sister, *Shrimalie*, too made an accusation against the other complainant who joined hands with *Krishanthi* to complain against their father, for assault. He also complained against the 1<sup>st</sup> Respondent over perceived inaction for not investigating into his mother's complaint over the allegation of assault on his sister expeditiously, simply because no one from the Police visited their house. He complained to the Senior DIG without even enquiring from his sister whether she, being the alleged victim, made a statement implicating *Prabath*. He further alleges that he was illegally arrested without a complaint, when in fact, as notes of investigation indicate, there was a direct accusation levelled against him by *Wasudeva* in his statement. Then he adds a twist to the complaint by his sister of assault, in his petition to this Court. Contrary to the claim of the Petitioner that the 1<sup>st</sup> Respondent had acted with malice in arresting him, it appears from the conduct of the Petitioner that it was he who had a distinct trait of vindictiveness and acted with vengeance on whoever opted to cross his path.

When the totality of the circumstances relating to the interconnected series of incidents referred to earlier on in judgment are considered, it is evident that these incidents occurred primarily due to the acrimonious relationship that exists between the Petitioner and his family members with many of their neighbours. Although the starting point of the gradual

deterioration of their relationship could be traceable to *Maithripala's* actions, it is the continued display of total disregard to the concerns raised by the neighbours over *Maithreepala's* actions by the Petitioner and his family had singularly contributed to the conversion of their relationship into a toxic one. *Maithreepala* is clearly having a psychological issue, which is now confirmed medically. In addition, he had another problem due to his alcohol dependency, which undoubtedly exacerbated his mental impairment. Of course, his family was aware of that even before these incidents. *Pushpakanthi* in her statement to Police on 26.04.2013 admits her husband *Maithreepala* had a psychological illness, but admittedly did nothing about it.

The Petitioner too concedes in his petition that he had taken steps to admit his father to *Mental Hospital, Angoda* only after the Court had ordered him to do so. The Petitioner is silent about any previous attempts he made to help his father with his mental condition. Even after several complaints, the Petitioner or any other member of his family did not think it is necessary for them to seek medical advice on behalf of their father until they were compelled to do so by an order of Court. There was no empathy on the part of the Petitioner or other members of his family towards their neighbours who had to undergo repeated bouts of nuisance created by *Maithripala* on a regular basis. Obviously, the tolerance level of his neighbours, who suffered over the repeated acts of verbal abuse hurled at them by *Maithripala*, which had continued unabated due to the unrelenting stubbornness of the Petitioner and his family, had apparently reached its limits, as indicative from their act of making complaints to *Payagala* Police.

The Statement of Objections of the 1<sup>st</sup> Respondent indicate the position that, after the initial report filed before the Magistrate's Court, the proceedings relating to *Maithripala* were transferred to the District Court. The District

Court is conferred with powers to deal with such instances, in terms of Section 2 of the Mental Deceases Ordinance No. 1 of 1873 (as amended). When produced before the District Court, learned District Judge had observed that *Maithreepala* harbouring a deep-seated hatred towards his neighbours (as per proceedings of the District Court in Case No. "C<sup>o</sup> 4598" on 15.05.2013) and thereby affording validity to the complaints made by the neighbours.

It must be borne in mind that *Maithreepala*, may not be responsible for all or, at least, some of his actions, due to his psychological impairment, but certainly it was for the Petitioner and his family, to help out their own father by securing him of proper medical attention he urgently needed. In addition, the Petitioner and his family are under a duty to prevent *Maithreepala* from being a nuisance to their neighbours due to his mental impairment. Unfortunately, the Petitioner and his family, instead of securing medical attention and giving compassionate care to *Maithreepala*, have apparently diverted their combined energies to take punitive action against their neighbours for making complaints. The neighbours, who sought freedom from the continued acts of nuisance of *Maithripala*, have resorted to a legally permissible course of action by involving the Police, rather than trying to address the problem all by themselves.

This Court, being invested with the Constitutional mandate to protect fundamental rights that are guaranteed by the Constitution in terms of Article 118(b), should consider each complaint of violation of such rights with equal seriousness, in order to protect the applicants from any transgressions made by the State functionaries in the exercise of its executive and administrative functions. In this context, the Petitioner's act of making complaint of a violation of his fundamental rights is a right he should legitimately exercise. If he could establish the alleged infringement, he is entitled to reliefs that are

just and equitable. However, in view of the factors referred to in the preceding paragraph, it is appropriate here to make a brief reference to Article 28, which states thus;

*"[T]he exercise and enjoyment of rights and freedoms are inseparable from the performance of duties and obligations and accordingly it is the duty of every person in Sri Lanka –*

- (a) ...
- (b) ...
- (c) ...
- (d) ...
- (e) *to respect the rights and freedoms of others; and*
- (f) ..."

The several neighbours of the Petitioner, some of whom were accused of having mental issues and of committing acts of violence against his family, too are entitled to all the rights and freedoms he himself enjoys. The Petitioner is undoubtedly under a Constitutional duty to respect the rights and freedoms of others and should have conducted himself reasonably in the discharge of that civic duty. This he owed to his own father, who urgently needed medical attention, and then to his neighbours, who too are entitled to have a peaceful life. The Petitioner had miserably failed in both these aspects.

In view of the multiple considerations referred to in the preceding paragraphs of this judgment, it is my considered view that the alleged illegality of the arrest and detention of the Petitioner cannot be taken as a valid complaint against any of the Respondents. The Petitioner had therefore failed to establish that any of the Respondents have by their executive actions, have violated his fundamental rights guaranteed under Articles 12(1), 13(1) and 13(2) of the Constitution.

The application is accordingly dismissed without costs.

**JUDGE OF THE SUPREME COURT**

**PRIYANTHA JAYAWARDENA, PC., J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**YASANTHA KODAGODA, PC., J.**

I agree.

**JUDGE OF THE SUPREME COURT**