

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

In the matter of an application under Article 126 read with Article 17 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC/FRA/155/2023

Nona Moreen Noor

No. B/4/2/7,
Mihidusenpura,
Baseline Road,
Dematagoda.

Petitioner

Vs.

1. H.N.B.J. Wijewardena,
Officer in Charge,
Police Station
Maligawatte.
2. A. G. J. Chandra Kumara,
Deputy Inspector General of Police
Colombo Range,
Police Head Quarters, Colombo 01.
3. T. M. W. D. Thennakoon,
Senior Deputy Inspector General of
Police – Western Province,
Police Head Quarters,
Colombo 01.

3A. K. P. M. Gunaratne,
Senior Deputy Inspector General
Police – Western Province,
Police Head Quarters,
Colombo 01.

4. Rashantha Senerath,
Assistant Superintendent of Police
Colombo Central III.

5. C. D. Wickremaratne,
Inspector General of Police (Former),
Police Head Quarters,
Colombo 01.

5A. T.M.W.D. Thennakon,
Inspector General of Police (Former),
Police Head Quarters,
Colombo 01.

6. Hon. Attorney General
Attorney General's Department,
Colombo 12.

7. General (Retired) Kamal Guneratne
Secretary, Ministry of Defence,
Defence Headquarters Complex
Akuregoda.

8. Tiran Alles,
Minister of Public Security,
Floor 4, Suhurupaya,
Subuthipura road,
Battaramulla.

Respondents

Before	: Mahinda Samayawardhena, J. Menaka Wijsundera, J. M. Sampath K. B. Wijeratne, J.
Counsel	: Nuwan Bopage instructed by Hansaka Chandrasinghe for the petitioner. Ms. Anoopa De Silva, DSG, for instructed by Ms. Mihiri Wickremanayake, SA, for all the Respondents except the 3 rd Respondents.
Written Submissions	: Written submissions on behalf of the Petitioner on 6 th February, 2024. Written submissions on behalf of the Petitioner on 26 th September, 2024.
Argued on	: 18.12.2025
Decided on	: 06.02.2026

MENAKA WIJESUNDERA J.

The petitioner in the instant matter namely Nona Moreen Noor has filed alleging that the rights of the petitioner under Articles 10, 11, 12(1), 12(2), 13(1) and

13(2), 14(1)(a), 14(1)(b), 14(1)(c), 14(1)(f), 14(1)(i), 14(1)(h) has been violated and that this Court may declare so.

When the instant matter was supported for leave this Court has granted leave on 20th July, 2023 under Articles 12(1), 13(1), 14(1)(a) and 14(1)(h).

The petitioner has claimed that she was an unemployed person and she was directly affected by the financial crisis in the country.

The petitioner has also claimed that on or about the 9th of April 2022 that, she along with some others, organized themselves to occupy the Galle face green as a mark of protest for the economic crisis in the country.

She also states that on the 9th of May of the same year the ruling party at that time had instructed some persons to enter the Galle face green and assault the protesters including the petitioner.

On the 9th of May of the following year the petitioner had decided to demonstrate her displeasure and protest by herself and had decided to walk from Dematagoda to Fort holding a placard.

She claims that her walk was entirely peaceful but when she tried to pass the Dematagoda police station she had stopped by some police officers.

The petitioner had stated that the 1st respondent, along with some other police officers, had abused her mentally and physically and had in fact threatened her stating that she cannot proceed eventually she had been detained at the Dematagoda police station for 15 hours and hereafter she had been produced on a B report no. B 91553/04/23 to the Magistrate Court.

The petitioner had filed P2a(i) to P2a(vi) to substantiate her position that she was walking alone and that she was waylaid by the police and was harassed.

The respondents have filed their objections and according to which the 1st respondent, on the 9th of May 2023, had left for special duty because he had received instruction from the 4th respondent that there could be a breach of peace as one year had lapsed since the unrest in the country.

The said instruction had been marked and produced 1R1 by the respondents.

In the meantime, the Maligawatte telephone operator had received three telephone calls that a female and several others were walking on street causing a traffic jam shouting slogans calling for action to be taken against the persons who according to her had attacked the protesters on the Galle face green on 9th of May 2022.

One caller had complained that she was unable to proceed to hospital with her sick child because of the walk on the road and the entries made by the operator had been marked and produced as 1R2 by the respondents.

The 1st respondent had informed the 4th respondent and as instructed by the 4th respondent had proceeded to where the walkers were and had seen the entire crowd blocking the road and as well as the pavement.

As the 1st respondent had seen an impending breach of public order had decided to take action against the petitioner and the other protesters.

In the meantime, the Fort OIC and the Kollupitiya OIC had obtained a restraining order from the Magistrate and that had been marked and produced as 1R4.

But the petitioner and her crowd had continuously behaved in a manner which had obstructed public order the 1st respondent had taken steps to arrest the petitioner and had taken steps to produce her before the Magistrate and before doing so the petitioner had been produced before the Judicial Medical Officer and the JMO had not observed any injuries on the petitioner although she had alleged that she was physically abused by the respondents.

Therefore, the respondents state very firmly that there was no violation of the fundamental rights of the petitioner.

Having carefully considered the material placed on record, including the pleadings in the docket and the oral submissions advanced by learned counsel for both parties, this Court notes that while the petitioner has repeatedly asserted that she was engaged in a solitary protest and was arbitrarily restrained by the respondents, the evidentiary material does not fully support such a claim. The photographs relied upon by the petitioner indicate that she was not walking alone at the relevant time. Further, her posture and demeanor, as discernible from the said photographs, reflect a defiant stance and assertive mannerisms, which are inconsistent with the portrayal of a passive or singular act of protest.

The respondents had received prior intelligence inputs indicating the likelihood of a breach of public order and peace, and had accordingly made necessary preparations. Subsequently, the police station of the first respondent received multiple telephone calls from members of the public reporting obstruction to their free movement along the road. Among these was a complaint from a motorist who, while enroute to a hospital with her sick child, was compelled to alter her course due to the obstruction. In these circumstances, and in light of a restraining order issued and marked and produced as 1R4 by the respondents had restrained the petitioner from entering the Temple Trees, Prime Minister's

office, President's house, Presidential secretariat, Ministry of Finance, the Galle face roundabout up to the NSA roundabout, by the learned Magistrate—which had been wholly disregarded by the petitioner and the accompanying crew. As such the respondents were constrained to take action against the petitioner, because the respondents concluded, from the actions and slogans of the petitioner and her crowd, that the final destination was the Galle Face Green.

Thereafter, she was produced before the JMO and the Magistrate and the facts had been reported to Court without delay.

In view of the fact that the Petitioner has alleged violations of her rights under Articles 12(1), 13(1), 14(1)(a), and 14(1)(h) of the Constitution, and that leave to proceed has been granted in respect of those alleged infringements. I shall now proceed to examine the applicable law and determine whether the said fundamental rights have in fact been violated by the Respondents.

The scope and content of Articles 12(1), 13(1), 14(1)(a) and 14(1)(h) are set put below;

Article 12(1) -

“All persons are equal before the law and are entitled for equal protection of the law.”

Article 13(1) -

“No persons shall be arrested except according to procedure established by law. Any persons arrested shall be informed of the reason for his arrest.”

Article 14(1) –

“Every citizen is entitled to –

(a) the freedom of speech and expression including publication;

(h) the freedom of movement and of choosing his residence within Sri Lanka.”

Both parties had very clearly set out the law which they think is relevant to this matter and as set out by them article 14(1)(a) of the Constitution enshrines freedom of speech, expression and publication.

The Attorney General appearing for the respondents had quoted a case pronounced by **Chief Justice Sharvananda** who had observed that in the case of **Dissanayake v University of Sri Jayawardena and two others (1986) 2 SLR 254, where it has been held that,**

“absolute and unrestricted rights do not and cannot exist in a modern society. Social control is needed to preserve the very liberty guaranteed. All rights are only relative and not absolute. The principle which the power of the State to impose restriction is based on the principle that all individual rights of a person are held subject to such reasonable limitations and regulations as may be necessary and expedient for the protection of the general public.

Thus, it is important to note that the guarantee of freedom of speech, recognized by article 14(1)(a) of the Constitution does not give an absolute protection for every utterance. The exercise of the rights conferred by this article must not result in the violation of the rights of the others.”

In the instant matter, the actions of the petitioner had obviously violated the rights of the motorists and the pedestrians and the rights of a child who was prevented from receiving timely medical treatment.

Hence, I see no violation under article 14(1)(a) of the Constitution.

Article 14(1)(h) of the Constitution guarantees the freedom of movement, and the Petitioner contends that this fundamental right has been infringed by the acts of the Respondents.

Upon perusal of the facts set out above, it is evident that it was the Petitioner who interfered with the freedom of movement of the individuals, who lodged complaints at or around noon the same day, alleging that their right to free movement had been restricted as a result of the actions of the Petitioner.

Accordingly, I find that there has been no infringement of the Petitioner's fundamental rights guaranteed under Article 14(1)(h) of the Constitution.

The petitioner also has alleged that her rights have been violated under article 12(1) of the Constitution which stipulates equality before the law.

The respondents have cited some very appropriate case laws pertaining to this article, all of which embodies that protection of the law to all citizens by enforcing and upholding the rule of law.

This has been so decided in a full bench judgment by this Court in the case of **Sampanthan et.al. vs Attorney General et.al. (SC FR 351-356) SC minutes 13th December 2018 which held that**

“the right under article 12(1) of the Constitution encompasses protection of rule of law too. Maintenance of the law and order forms an integral part of protection rule of law and the police force as the organ that is entrusted with

tasks such as investigation of crimes apprehension and prosecution of offenders carries a heavy burden to ensure that the powers vested on its officers are not arbitrarily or decrementally exercised”.

In the instant matter, the Respondents acted upon intelligence reports indicating a potential breakdown of public peace and, subsequently, upon complaints received from members of the public regarding a possible deterioration of law and order, whereupon they took the impugned action. Accordingly, I find no element of arbitrariness in the actions of the Respondents.

Leave had also been granted on the violation of the petitioner’s rights guaranteed under Article 13(1), which enshrines the validity of the arrest of the petitioner.

In the case of **Dissanayaka v Superintendent Mahara Prison and others 1991**, Kulatunga, J. stated the following to highlight the importance of examining the material to decide the validity of the arrest.

“Nevertheless, it is for the Court to determine the validity of the arrest objectively. The Court will not surrender its judgement to the executive for if it did so, the fundamental right to freedom from arbitrary arrest secured by Article 13(1) of the Constitution will be defeated. The executive must place sufficient material before the Court to enable the Court to make a decision, such as the notes of investigation, including the statements of witnesses, observations etc. without relying on bare statements in affidavits”.

Furthermore, in **Channa Pieris and Others v. Attorney General and Others 1994 1 SLR (Ratawesi Peramuna Case)** the Court held that,

“However the officer making an arrest cannot act on a suspicion founded on mere conjecture or vague surmise. His information must give rise to a reasonable suspicion that the suspect was concerned in the commission of an offence for which he could have arrested a person without a warrant. The suspicion must not be of an uncertain and vague nature but of a positive and definite character providing reasonable ground for suspecting that the person arrested was concerned in the commission of an offence.”

In the instant matter, the respondents were in possession of a duly issued restraining order against the protesters, which was marked and produced in evidence by the respondents (marked 1R4). Furthermore, the respondents had received complaints from the public and were confronted with instances of public disorder, including traffic congestion. In light of these circumstances, the respondents acted in accordance with the provisions of the Code of Criminal Procedure (CPC) and lawfully proceeded to effect the arrest of the petitioner.

The subsequent steps taken also had been according to the provisions of the CPC. Therefore, I see no violation of Article 13(1) of the Constitution by the respondents in arresting the petitioner.

In view of the material stated above I see no merit in the submissions of the petitioner and as such, the instant application is dismissed.

JUDGE OF THE SUPREME COURT

Mahinda Samayawardhena, J.

I agree.

JUDGE OF THE SUPREME COURT

M. Sampath K. B. Wijeratne, J.

I agree.

JUDGE OF THE SUPREME COURT