

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

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

Attanayakage Don Susil Attanayake

No. 234/A, Kudamaduwa,

Siddamulla, Piliyandala.

**PETITIONER**

**S.C. (F.R.) Application No. 233/2020**

**Vs.**

1. W.M.J. Sudath Bandara (Deceased),  
Chief Inspector of Police,  
Officer in Charge,  
Kiriella Police Station,  
Kiriella.
2. Chanaka Weerasinghe,  
Sub Inspector of Police,  
Kiriella Police Station,  
Kiriella.
3. PS. No. 42837 Silva,  
Kiriella Police Station,  
Kiriella.

4. PS. No. 40284 Pushpakumara,  
Kiriella Police Station,  
Kiriella.
5. PC No. 81053 Embuldeniya,  
Kiriella Police Station,  
Kiriella.
6. PSD No. 42590 Chandrasiri,  
Kiriella Police Station,  
Kiriella.
7. J.I. Ajith Kumara  
Assistant Superintendent of Police,  
Ratnapura District II.
8. C.D. Wickramaratne,  
Acting Inspector General of Police,  
Police Headquarters,  
311, Olcott Mawatha,  
Colombo.
9. The Honourable Attorney General,  
Attorney General's Department,  
Colombo 12.
10. Welikadage Chaminda Perera,  
Chief Inspector of Police,  
Officer in Charge,  
Kiriella Police Station,  
Kiriella.

**RESPONDENTS**

**Before** : **Janak De Silva, J.**  
**Sampath B. Abayakoon, J.**  
**Sampath K.B. Wijeratne, J.**

**Counsel** : Thishya Weragoda for the Petitioner  
Madhawa Tennakoon, DSG for the Respondents

**Written submissions** : 15.05.2024 by the Petitioner  
27.11. 2024 by the Respondents

**Argued on** : 08.07.2025

**Decided on** : 18.09.2025

**Janak De Silva, J.**

At all times material to this application, the Petitioner was an Inspector of Police attached to the office of the Senior Deputy Inspector General of Police (Western Province) and had been in service for about 17 years. He holds a Bachelor's degree in Commerce and Master's degree in Geographical Information Systems and Remote Sensing from the University of Sri Jayewardenepura.

On 25.02.2020, he along with four others, were arrested by the 1<sup>st</sup> to 6<sup>th</sup> Respondents and produced before the Magistrate of Ratnapura. The B report named the Petitioner and the other four persons as suspects to an offence under Section 6 of the Antiquities Ordinance No. 09 of 1940 as amended (Ordinance).

The Petitioner claims that his arrest is unlawful. Leave to proceed has been granted under Articles 12(1) and 13(1) of the Constitution.

### ***Version of the Petitioner***

The father-in-law of the Petitioner is well-known in the Kiriella village and had been a Justice of the Peace, President of the Village Council and Treasurer of the Funeral Aid Society. He was also a renowned landed proprietor.

The Petitioner's wife inherited various properties from her father including a land named Galapallahena situated in the Hindurangala Grama Niladhari division containing 6 acres in extent.

There is a small area of about 2 perches of that land which was used by the Petitioner and his wife whenever they visited the land. Although this land was situated in Kiriella, it fell within the police division assigned to Eheliyagoda Police Station, and not Kiriella Police Station.

A conflict began when a neighbour, T.A. Seneviratne, first obtained permission to light oil lamps on the property from the Petitioner's father-in-law. In or around 2012, while the Petitioner's father-in-law was in hospital, Seneviratne and other villagers unlawfully constructed a Buddhist shrine on the land. The owners, viewing it as a meritorious act, initially did not object to it.

In 2018, when Seneviratne attempted to expand the construction to add a lavatory and a room for a priest, the Petitioner strongly objected. Upon the Petitioner's complaint, the Grama Niladhari officially verified the wife's ownership to the land and declared the structures to be illegal. Thereafter, steps were taken to demolish the unauthorized constructions except the shrine room after the Petitioner made a complaint at the Eheliyagoda Police Station.

The villagers had filed a complaint at the Kiriella Police Station following this demolition, upon which the Petitioner was requested to present himself at the Kiriella Police Station for an inquiry. However, the Petitioner had informed the 1<sup>st</sup> Respondent that the land in question fell within the Eheliyagoda Police division, whereupon the 1<sup>st</sup> Respondent had taken necessary steps to refer the matter to the Eheliyagoda Police Station. However, the 1<sup>st</sup> Respondent was displeased that the Petitioner did not present himself at the Kiriella Police Station.

In 2019, the said Seneviratne, along with some other villagers again tried to build a foundation on the land. Upon becoming aware of this, the Petitioner had immediately filed a complaint with the Eheliyagoda Police. During the inquiry into this complaint, the Eheliyagoda Police could not find any evidence to support the claim and/or title of the villagers to the land. Thereafter, the Divisional Secretary also verified the ownership of the Petitioner and his wife to the said land. Later, an illicit electricity connection to the shrine obtained by the villagers was transferred back to the Petitioner's wife's name.

On 25.02.2020, when the Petitioner and four others tried to conduct a *Bhairava Poojawa* on the said land, the villagers had verbally abused them while levelling accusations that they were attempting to excavate antiquities, and purportedly made phone calls to the Kiriella Police Station.

Since the abuse was becoming intense, and as the Kiriella Police Station was closer in proximity, the Petitioner too had made phone calls to the Kiriella Police Station. He was then advised to remain at the location. Later, officers of the Kiriella Police Station (4<sup>th</sup> to 6<sup>th</sup> Respondents) had arrived at the location at which point the villagers had started physically assaulting the Petitioner and those with him. The 1<sup>st</sup> Respondent also arrived at the location.

The 4<sup>th</sup> to 6<sup>th</sup> Respondents had thereafter taken the Petitioner and his associates to the Kiriella Police Station, stating that the matter would be better resolved there. At the police station, the 1<sup>st</sup> Respondent had instructed a Police Sergeant (3<sup>rd</sup> Respondent) to put the Petitioner and his associates in the remand cell. The Petitioner's objection regarding this was ignored and his complaint concerning the villagers' assault was not entertained.

Moreover, the Petitioner and the others were not informed that they were being arrested prior to being taken to the Police Station. Neither were they provided the reason for their arrest. Further, requests for dinner and medicine, as well as the Petitioner's renewed request to file a complaint against the villagers' physical assault were denied by the Respondents.

Thereafter, proceedings were instituted against the Petitioner and his associates in the Magistrate's Court of Ratnapura for an offence under Section 6 of the Ordinance. The B Report filed before the Magistrate by the 1<sup>st</sup> Respondent included facts that were not only false, but false to the knowledge of the 1<sup>st</sup> Respondent such as statements that the Petitioner and his associates were excavating in search of antiquities or archaeological valuables and that the excavation took place at a Buddhist temple named 'Namaluwa'.

The 1<sup>st</sup> Respondent falsely and maliciously reported facts with the objective of incarcerating the Petitioner indefinitely, knowing that there was no provision for bail under the Ordinance. However, the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Respondents did not take any steps to arrest the villagers who assaulted the Petitioner and the others in front of them. It was incumbent on the 1<sup>st</sup> Respondent to conduct an inquiry on the conduct of the villagers.

The Petitioner was falsely kept in remand prison. The report of the Department Archaeology tendered to the Court on 10.03.2020 led to the discharge of the Petitioners and release of the motor vehicle, as there was no excavation. However, a sword in

possession of an associate of the Petitioner was retained under the Knives Ordinance, for prosecution.

The 1<sup>st</sup> Respondent out of malice took the extraordinary step of reporting the arrest of the Petitioner to all superior authorities including the Inspector General of Police. However, upon his release, the 1<sup>st</sup> Respondent only notified the Director of Western Province South Crime Division, and not all other superior authorities who were informed of his arrest. Consequently, the wrongful arrest of the Petitioner was given wide media publicity and has negatively affected his career and personal life.

The 1<sup>st</sup> Respondent has requested and obtained a copy of the deed of the land from the wife of the Petitioner. However, it was neither returned nor produced in any Court.

The 1<sup>st</sup> Respondent should have notified the Eheliyagoda Police Station to handle the matter as the land was under its territorial jurisdiction. He did not do so merely to satisfy the demands of the villagers.

The Petitioner complained to the Senior DIG of the Sabragamuwa Province who directed the 7<sup>th</sup> Respondent to inquire into the complaint. Such an inquiry has not been conducted.

The Petitioner was arrested without informing the charges against the Petitioner and contrary to the law. The 1<sup>st</sup> Respondent failed to investigate the complaint of assault made by the Petitioner.

Accordingly, the Petitioner claims that his fundamental rights guaranteed by Articles 12(1) and 13(1) of the Constitution have been infringed.

### ***Version of the 1<sup>st</sup> Respondent***

The fact that the Petitioner is a Police Officer was revealed only during the course of the investigations.

On 25.02.2020 around 21.50, an anonymous person called and informed that a group of people were trying to commence an excavation at *Namaluwa Bodhiya* in order to search for antiquities.

Soon thereafter, the 1<sup>st</sup> Respondent sent a team of Police Officers to investigate the matter. The villagers kept calling the personal mobile number of the 1<sup>st</sup> Respondent complaining about this incident. Therefore, the 1<sup>st</sup> Respondent also went to the scene with another Police Officer in his personal vehicle.

After arriving at the scene, the 1<sup>st</sup> Respondent realized that the villagers had behaved in an aggressive manner. The Petitioner and others who were involved in the incident were handed over to the 1<sup>st</sup> Respondent by the villagers with the equipment allegedly used by them.

In view of the circumstances, the 1<sup>st</sup> Respondent had reasonable grounds to believe that the Petitioner and his crew were trying to excavate the questionable land for antiques and archaeological valuables. Therefore, he arrested the Petitioner and the other suspects for allegedly excavating for antiquities. The Petitioner was informed of the reasons for his arrest.

All actions of the 1<sup>st</sup> Respondent were made *bona fide*. On 25.02.2020, the Petitioner complained to the Police mentioning the names of the villagers who were involved in assaulting him at the scene of the incident. The 1<sup>st</sup> Respondent conducted an inquiry into this complaint and produced the suspects before the Magistrates Court.

The 7<sup>th</sup> Respondent commenced an investigation after the complaint made by the Petitioner.

### ***Version of the 2<sup>nd</sup> Respondent***

The 2<sup>nd</sup> Respondent reiterates the contents in the affidavit of the 1<sup>st</sup> Respondent. He accompanied the 1<sup>st</sup> Respondent in his personal vehicle to the scene.



### **Article 13(1)**

Admittedly, the Petitioner and other suspects were acquitted and discharged from the proceedings in Magistrate Court of Ratnapura Case No. 45384A. Nevertheless, whether an infringement of Article 13(1) has occurred is not dependent on the final outcome of the criminal proceedings.

As Wanasundera, J. held in **Joseph Perera Alias Bruten Perera v. Attorney-General and Others** [(1992) 1 Sri LR 199 at 236]:

*“The principles and provisions relating to arrest are materially different from those applying to the determination of the guilt or innocence of the arrested person. One is at or near the starting-point of criminal proceedings while the other constitutes the termination of those proceedings and is made by the judge after hearing submissions from all parties. The power of arrest does not depend on the requirement that there must be clear and sufficient proof of the commission of the offence alleged. On the other hand, for an arrest a mere reasonable suspicion or a reasonable complaint of the commission of an offence suffices.”*

In **Channa Peiris and Others v. Attorney General and Others** [(1994) 1 Sri. L. R. 1 at 27], Amarasinghe J. held that:

*“The procedure generally established by law for arresting a person without a Warrant are set out in Chapter IV B (Sections 32-43) of the Code of Criminal Procedure. Where a person is arrested without a warrant otherwise than in accordance with these provisions, Article 13(1) of the Constitution will be violated.”*

Hence the legality of an arrest without a warrant depends on whether the provisions in Chapter IV B (Sections 32-43) of the Code of Criminal Procedure has been complied with.

Section 32 of the Code of Criminal Procedure (Code) specifies several instances where any Police Officer may without an order from a Magistrate and without a warrant arrest any person.

In ***Mohamed Razik Mohamed Ramzy v. B.M.S.K. Senaratne and Others*** [S.C.F.R. Application No. 135/2020, S.C.M. 14.11.2023 at pages 41-42] my learned brother Kodagoda, P.C., J. after examining the scope of Section 32(1)(b) of the Code held as follows:

*“[...] 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 office(sic); or*
- (iv) the peace officer should have developed **reasonable suspicion** that the suspect has been concerned in the commission of a cognizable offence.”*  
(emphasis added)

The 1<sup>st</sup> Respondent has affirmed that an informant had given a call to the Kiriella Police Station and informed of an attempt to excavate in search of treasure near Namaluwa Bodhiya. The telephone entry has been produced as 2R2. This corroborates the version of the 1<sup>st</sup> Respondent. However, the arrest of the Petitioner and others did not take place based on this complaint.

According to the entry made by the 1<sup>st</sup> Respondent in the Minor Offences Information Book (2R3), the 1<sup>st</sup> Respondent had observed several items to be used for a poojawa at the scene. However, he had then recorded that the villagers believe that there is an ancient treasure buried on the site. Unfortunately, the rest of the entry is missing from the judges' dockets. An examination of the original docket confirmed that the position is the same in it as well.

However, the 1<sup>st</sup> Respondent states that he arrested the Petitioner and his crew as he had reasonable grounds to believe that they were trying to excavate the land for antiques and archaeological valuables. Hence, the 1<sup>st</sup> Respondent relies on (iv) above to justify the arrest of the Petitioner.

Upon an examination of the matters pleaded by the 1<sup>st</sup> Respondent, it appears that his reasonable suspicion was founded on the following facts:

- (1) There were several items to be used for a poojawa at the scene.
- (2) The villagers believe that there is an ancient treasure buried on the site.

Observation (1) has been explained by the Petitioner in that he and his associates were to perform a *Bhairava Poojawa* at the site to ward off evil spirits. This assertion of the Petitioner is corroborated by Kongahawattage Saman Kumara and Namini Achchige Don Tharindu Dilshan. Both of them conduct various traditional and customary rituals and rites including *Bhairava Pooja* for a considerable period of time.

According to Dokras [Dr. Uday Dokras, *Vajrayāna Shiva Bhairava worship in “India” and Indonesia*<sup>1</sup>], Bhairava (Sanskrit: भैरव lit. 'frightful') or Kala Bhairava is a Shaivite and Vajrayāna deity worshipped by Hindus and Buddhists. In Shaivism, he is a powerful manifestation, or avatar, of Shiva associated with annihilation. In the Trika system *Bhairava* represents the Supreme Reality, synonymous to Para Brahman. Generally, in Hinduism, Bhairava is also called Dandapani ("[he who holds the] Danda in [his] hand"), as he holds a rod or Danda to punish sinners, and Svaśva, meaning "whose vehicle is a dog". In Vajrayana Buddhism, he is considered a fierce emanation of Boddhisatva Mañjuśrī, and also called Heruka, Vajrabhairava, and Yamantaka. He is worshipped throughout India, Nepal and Sri Lanka as well as in Tibetan Buddhism.

There is symbolic evidence that *Bhairava* is considered to be associated with warding off evil spirits. The rectangular blocks of stone which stand on each side of the steps at the entrance to ancient Buddhist shrines in Sri Lanka are known as Guardstones. Many of these Guardstones have *Bhairava* upon their faces.

Nevertheless, it is widely known that *Bhairava Pooja* is also performed prior to excavation for treasure. In this context, the reasonable suspicion the 1<sup>st</sup> Respondent claims to have entertained may be justified.

However, when other circumstances associated with the incident are taken into consideration, this justification disappears. In particular, the allegation made by the Petitioner that the 1<sup>st</sup> Respondent carried out the arrest and produced the Petitioner before the Magistrates Court of Ratnapura with malice is substantiated.

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<sup>1</sup> [https://www.academia.edu/94593013/Shiva\\_Bhairava\\_worship\\_in\\_India\\_and\\_Indonesia](https://www.academia.edu/94593013/Shiva_Bhairava_worship_in_India_and_Indonesia) (last accessed on 05.09.2025)

In **Mohamed Razik Mohamed Ramzy** [supra. at 47] my learned brother Kodagoda, P.C., J. held as follows:

*“To enable the Magistrate to determine whether criminal proceedings against the suspect should be initiated and whether it would be expedient to detain the suspect in remand custody, **the Report submitted under section 115(1) should contain one or more specific allegations that the suspect being produced has committed one or more offences, and the report along with the summary of statements must contain material based upon which the Magistrate can determine whether it is expedient to detain the suspect. If the officer in charge of the police station on whom the statutory duty is cast to submit the report along with the summary of statements is to move the Magistrate to consider placing the suspect in remand custody, he must place before the Magistrate sufficient material to substantiate the allegation contained in the report that the suspect has committed one or more offences.**”* (emphasis added)

Nevertheless, the 1<sup>st</sup> Respondent did not provide the Magistrate with a summary of statements of the suspects, including the Petitioner, to enable him to consider the allegation contained in the report that they had committed the offence identified in the B report. This deprived the learned Magistrate of the version of the Petitioner.

Soon after the arrest of the Petitioner, the 1<sup>st</sup> Respondent conveyed this information in writing to ASP (II) Ratnapura, SP Ratnapura, DIG Ratnapura, SDIG, Sabaragamuwa Province, Police Spokesperson, OIC (Information Room), Director of Western Province South Crime Division and HQI, Mirihana. However, after the Petitioner was acquitted and discharged, he conveyed this information only to the Director of Western Province South Crime Division.

The 1<sup>st</sup> Respondent was aware of the dispute between the Petitioner and the villagers over the land in issue. He had previously unsuccessfully tried to conduct an inquiry into this dispute which was prevented by the Petitioner informing him that the land falls within the police division of the Eheliyagoda Police.

As a corollary, the 1<sup>st</sup> Respondent was aware that the incident occurred outside his area of responsibility.

For all the foregoing reasons, I have no hesitation in concluding that the 1<sup>st</sup> Respondent infringed the fundamental rights of the Petitioner guaranteed by Article 13(1) of the Constitution.

#### ***Article 12(1)***

This guarantees the equal protection of the law. I have concluded that the 1<sup>st</sup> Respondent has infringed the fundamental rights of the Petitioner guaranteed by Article 13(1) of the Constitution. *Ipso facto*, the 1<sup>st</sup> Respondent has infringed the fundamental right of the Petitioner guaranteed by Article 12(1).

What remains is to determine the compensation the Petitioner should be awarded. However, the 1<sup>st</sup> Respondent passed away pending the determination of this application. Hence, no compensation can be awarded against him.

The 2<sup>nd</sup> to 6<sup>th</sup> Respondents were members of the police party that arrested the Petitioner. However, there are no circumstances on which I could reasonably impute to any one of them the malicious intent of the 1<sup>st</sup> Respondent.

Any compensation ordered against the State has to be paid from taxpayer money. Therefore, I am not generally inclined to order the State to pay compensation for the infringement of any fundamental right of a citizen or person unless there is evidence that the State, through executive or administrative act or omission is responsible for the

infringement. There is no such evidence in this case. The actions of the 1<sup>st</sup> Respondent appear to be solely guided by his malice towards the Petitioner.

However, the circumstances of this case are such that not granting any compensation to the Petitioner will not be just and equitable.

Accordingly, I direct the State to pay the Petitioner a sum of Rs. 50,000/= as compensation and a further Rs. 25,000/= as costs.

**JUDGE OF THE SUPREME COURT**

**Sampath B. Abayakoon, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**Sampath K.B. Wijeratne, J.**

I agree.

**JUDGE OF THE SUPREME COURT**