

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

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

SC FR Application No. 337/2016

S. Junaideen

337, Dampillawa,

Kal-Eliya.

PETITIONER

Vs.

1. Chulananda Perera
Former Director General of Customs,
Sri Lanka Customs,
Customs House,
40, Main Street, Colombo 11.

1A. Mrs. P. S. M. Charles
Director General of Customs,
Sri Lanka Customs,
Customs House,
40, Main Street,
Colombo 11.

1B. The Director General of Customs,

Sri Lanka Customs,
Customs House,
40, Main Street,
Colombo 11.

2. V. W. Nanayakkara
Superintendent of Customs,
Revenue Task Force,
Sri Lanka Customs,
Customs House,
40, Main Street,

BEFORE : **S. THURAIRAJA, PC, J.**

KUMUDINI WICKREMASINGHE, J. AND
JANAK DE SILVA, J.

COUNSEL : Dharshana Weraduwage for the Petitioner
Induni Punchihewa, SC for the 2nd and 3rd Respondents

WRITTEN Petitioner on 22nd October 2021
SUBMISSIONS : 2nd and 3rd Respondents on 13th September 2023

ARGUED ON : 29th February 2024

DECIDED ON : 28th March 2024

THURAIRAJA, PC, J.

1. The Petitioner, S. Junaideen, who is an importer of general food items and tobacco leaves for the manufacturing of beedi for the domestic market, invoked the fundamental rights jurisdiction of this Court alleging violations of Articles 12(1), 13(1) and 13(2) of the Constitution by his arrest, detention and subsequent production before the Magistrate by the 1st and 2nd Respondents.
2. Having heard the learned Counsel for the Petitioner and submissions on behalf of the Attorney-General, on 16th January 2017, this Court granted leave to proceed on the alleged violations of Article 12(1), 13(1) and 13(2) by the 2nd Respondent.

Factual Matrix

3. The 2nd Respondent (now retired) was a Superintendent in the Customs Revenue Task Force (hereinafter 'RTF') who was responsible for the Customs Inquiry (CRTF/1359/CCR/2679) conducted against the Petitioner, at the time material to this case.
4. According to the Petitioner, he had, along with his wife, produced himself before the RTF Office at Orugodawatta on 30th August 2016, having received summons purportedly issued by the 2nd Respondent on behalf of the Director General of Customs. As the 2nd Respondent was not in his office, he had undertaken to return on the following day as advised by the RTF Office.
5. When he produced himself at the RTF Office on the following day, i.e. 31st August 2016, the 2nd Respondent had forced him to admit that he was involved in the importation and removal of an undeclared craft paper shipment without proper examination of the goods for customs purposes. When Petitioner had refused to admit the same, the 2nd Respondent had threatened that he would not be released unless such admission was

made. Thereafter, the Petitioner had sought permission from the 2nd Respondent to return home owing to some medical conditions, providing proof thereof. Accordingly, the 2nd Respondent had released the Petitioner after obtaining an undertaking to report at his office once again on the following day.

6. The Petitioner states that, when the Petitioner visited on the following day, i.e. 01st September 2016, the 2nd Respondent had once again started to demand that he admit the allegations levelled against him. When the Petitioner refused, the 2nd Respondent had informed him that he was under arrest and that he would be remanded after being produced before the Magistrate.
7. The Petitioner further states that he fainted at the RTF Office due to the tremendous pressure he felt and that he was subsequently taken to the Colombo General Hospital in one of the Customs vehicles. The 2nd Respondent had accompanied him to the Hospital and doctors had informed him that he needed to be admitted.
8. According to the Written Submissions of the Petitioner, on the following day, i.e. 02nd September 2016, in furtherance of a "B Report"¹ dated 31st August 2016, filed before the Colombo Magistrates Court, the 2nd Respondent had tendered further reports to the Magistrate pleading the Petitioner be remanded. As the power to grant bail to any persons accused or suspected of an offence under the Customs Ordinance in respect of goods exceeding the value of one million rupees is vested in the High Court, the Petitioner was accordingly remanded.²

¹ Technically a report under Section 127 of the *Customs Ordinance*

² Section 127C of the Customs Ordinance No. 17 of 1869 (as amended by § 6 of Act No. 24 of 1991) provides as follows: "No person suspected or accused of an offence under this Ordinance in respect of any goods the value of which exceeds one million rupees, shall be released on bail except by the High Court, in exceptional circumstances. The power conferred on the High Court by this section shall be exercised by the Judge of the High Court holden in the Zone within which the accused resides or the Judge of the High Court holden in the Zone within which the offence is alleged to have been committed."

9. Although the Petitioner has set out various other details regarding what transpired thereafter, as the same are not relevant to the questions brought before this Court regarding his arrest, detention and subsequent production before the Magistrate, I see no need to mull over them.

Alleged Violation of Article 13(1): Arrest and Detention

10. Article 13(1) of the Constitution provides that "[n]o person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest."

11. This Article covers not only arrest but also detention except in accordance with the procedure established by law.³ The procedure established by law in the instant case is set out in the Customs Ordinance, No. 17 of 1869 (as amended). Where the Ordinance is silent, the procedure set out in the Code of Criminal Procedure Act shall apply.

12. According to Section 127 of the *Customs Ordinance*,

*"Every offence under this Ordinance shall be deemed to be cognisable within the meaning of the Code of Criminal Procedure Act, and any person against whom a reasonable suspicion exists that he has been guilty of any such offence may be arrested in any place either upon land or water by any officer of Customs or other person duly employed for the prevention of smuggling. Every person so arrested shall with all convenient dispatch, be taken before the nearest Director-General of Customs to be dealt with according to law."*⁴

³ vide *Channa Peiris v. Attorney-General* [1994] 1 Sri LR 1

⁴ Emphasis is mine

13. The 2nd Respondent, in his Affidavit dated 18th May 2017, has set out the particulars with regard to the process of investigation in extensive detail, in an attempt to enlighten this Court as to the reasonable suspicion he acted upon. It appears, *prima facie*, from the contents therein, that the 2nd Respondent has prudently carried out a careful investigation which pointed towards the Petitioner.
14. However, I see no need to needlessly consider these facts in detail, as the learned Counsel for the Petitioner unequivocally conceded before this Court, when this matter was taken up for argument, that reasonable suspicion existed against the Petitioner at the time of his arrest.
15. However, the learned Counsel contended, interpreting Section 127, that there is an additional requirement imposed by the Customs Ordinance to be met where an arrest or detention is effected thereunder. Indeed, where a person is arrested under the reasonable suspicion of committing an offence under the Ordinance, it requires that all persons so arrested "with all convenient dispatch, be taken before the nearest Director-General of Customs to be dealt with according to law".
16. In general, I am inclined to agree with the learned Counsel that there can be a violation of Article 13(1) where there is a failure to promptly produce a person arrested 'before the nearest Director-General of Customs'. The question, then, is whether the Petitioner has been so produced before a 'Director General of Customs'
17. The term Director General of Customs is defined in Section 167⁵ of the *Customs Ordinance*. As provided therein,

⁵ Interpretation section of the Customs Ordinance

*"Director-General" shall mean the Director-General of Customs, Director, Assistant Director of Customs, **Superintendent of Customs**, or other principal acting officer of Customs of any port or place"⁶*

18. It is clear, from the words I have emphasized in the above Section, that a Superintendent of Customs is included within the meaning of 'Director General of Customs', which was the post held by the 2nd Respondent at the time material, for the purpose of Section 127.
19. However, it was the position of the learned Counsel for the Petitioner that even where the officer effecting arrest is a 'Director General of Customs' as contemplated in Section 127 read with Section 167, it is necessary for such officer to take such arrestee before another Director General of Customs to obtain an opinion as to whether the arrestee is capable of interfering with the investigation, requiring such arrestee to be produced before a Magistrate.
20. In support of this, he relied upon the following reasoning of Amerasinghe, J. in **Farook v. Raymond and Others**,⁷

*"...Imprisoning the Petitioner and confiscating his passport, and bringing the petitioner before a Magistrate and requesting the magistrate to order the further detention of the Petitioner in **police custody**, were things the 1st Respondent was neither required nor authorized by law to do. And by not producing the Petitioner 'with all convenient despatch' before the nearest Director-General of Customs or other Customs officer, he failed to act according to procedure established by law, viz. section 127 of the Customs Ordinance. I find myself in agreement with Mr. Goonesekere's submissions. I have no hesitation in declaring that the 1st Respondent acted in contravention of the Petitioner's fundamental right guaranteed by Article 13*

⁶ Emphasis is mine

⁷ (1996) 1 Sri L.R. 217 at 224-5

(1) of the Constitution of freedom from arrest except according to procedure established by law.”⁸

21. In ***Farook v. Raymond and Others***, one of the respondent police officers had stopped and caused the motor vehicle of the petitioner at a roadblock causing the same to be searched having suspected the goods therein to be stolen or smuggled. Thereafter, the said petitioner was taken to the police station, where was put in a cell and treated roughly, in violation of the procedure established by law.
22. This case is easily distinguishable from the case at hand, for the instant matter involves an arrest made by a customs officer, unlike the ***Farook*** case where a police officer had made the arrest. Where a police officer effects an arrest under the *Customs Ordinance*, as His Lordship has observed, such police officer must absolutely cause the arrestee to be produced before the nearest Director General of Customs, as contemplated in the Ordinance, ‘with all convenient despatch’.
23. Moreover, the instance case involves not an extemporaneous arrest as in the ***Farook*** case, but an arrest made following a thorough investigation and in pursuance of advice received thereon. In this regard, the Affidavit of the 2nd Respondent provides as follows:

“Thereafter I submitted a report stating the position of the investigation to the Director RTF Mr. J.P. Chandraratne and on his instructions, Mr. Chandraratne and myself met Mr. Chulananda Perera, the Director General in the afternoon on 01.09.2016 and informed the evidence available against petitioner for the smuggling of the consignment in question. It was decided to arrest the petitioner considering the gravity of the offence and the possibility of destroying evidence and to conduct the investigation without any obstructions...”

⁸ Emphasis is mine

The Director General granted permission to arrest the second suspect, who is the petitioner of this case, and instructed me to produce the suspect before the Magistrate.”⁹

24. As proof thereof, the 2nd Respondent has attached thereto the Report he submitted to the Director of the RTF marked **R2(e)**.¹⁰ Having perused the said Report, the Court observes that the 2nd Respondent had, in fact, given a succinct, yet sufficient, summary of the evidence against the Petitioner along with an explanation as to why it would be prudent to produce the Petitioner before the Magistrate.
25. The contents of the 2nd Respondent’s Affidavit are corroborated by the Affidavit of Jayasekera Pathirannehelage Chandraratne,¹¹ Director of Customs, Revenue Task Force Directorate, at the time material, as well as the Affidavit of the 1st Respondent.¹²
26. From the minute dated 01st September 2016 on the said Report marked **R2(e)**, the above averments are further corroborated. Instructions are written thereon, in no uncertain terms to arrest and procedure the suspect, viz. the Petitioner, to the Magistrate. Furthermore, from the minute dated 2nd September 2016 thereon, it appears that the 2nd Respondent had kept the Director General of Customs informed of the progress of the investigation.
27. In fact, the Director General of Customs, in his Affidavit, categorically states that “[t]he 2nd respondent submitted a written report stating reasons that there are possibilities of

⁹ Affidavit of Vidya Wathsala Nanayakkara (2nd Respondent) dated 18th May 2017, paras 8(e) and 8(f)

¹⁰ Report dated 01.09.2016, addressed to “DC(RTF)/ DDC(RTF)”, produced marked **R2(e)** attached to the Affidavit of Vidya Wathsala Nanayakkara (2nd Respondent) dated 18th May 2017

¹¹ Affidavit of Jayasekera Pathirannehelage Chandraratne dated 18th May 2017, produced marked **R2(f)**, paras 5 and 6

¹² Affidavit of Wedikkara Arachchige Chulananda Perera (1st Respondent) dated 18th May 2017, paras 6(g) and 7

*obstruction of the investigation by the second suspect Mr. S. Junaideen (the petitioner)" and that he "...authorized Mr. V.W. Nanayakkara, Superintendent of Customs to arrest the suspect and to produce him to the Hon Magistrate in terms of section 127 A of Customs Ordinance".¹³ The said Affidavit further states that the Director General "...issued instructions to the 2nd Respondent to arrest the Petitioner and to produce him to Court."*¹⁴

28. The purpose of Section 127 of the *Customs Ordinance*, as it appears to me, is to maintain some form of oversight over investigations, arrests and subsequent detentions so as to increase accountability on the part of State officials. In this spirit, the phrase '*the nearest Director General of Customs*' therein means the most expeditiously approachable Customs officer of the ranks contemplated in Section 167,
29. The 2nd Respondent in the instant case, has acted upon the advice of not only his immediate supervisor but also the highest ranked officer in Sri Lanka Customs, the Director-General himself. As such, I find the 2nd Respondent's impugned conduct to be in substantial compliance with the provisions of the *Customs Ordinance*.
30. Accordingly, I find no violation of Article 13(1) of the Constitution.

Alleged Violation of Article 13(2)

31. According to Article 13(2) of the Constitution, "*[e]very Person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent court according to procedure established by law and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law.*"

¹³ Affidavit of Wedikkara Arachchige Chulananda Perera (1st Respondent) dated 18th May 2017, para 6 (g)

¹⁴ Ibid at para 7

32. As was held in ***Channa Peiris v. Attorney-General***,¹⁵ by Amerasinghe J, while illegal arrest makes subsequent detention *ipso facto* illegal, the fact that an arrest and subsequent detention is illegal 'does not carry with it the corollary that Article 13(2) is violated'.¹⁶ Articles 13(2), while intricately related to Article 13(1), have a separate and independent existence. There can be a violation of Article 13(2) in the absence of a violation of Article 13(1).

33. In ***Channa Peiris*** Amerasinghe J opined:

"The provisions of both Articles 13(1) and 13(2) may be violated in a given case..."

However, the fact that Article 13(1) is violated does not necessarily mean that Article 13(2) is therefore violated. Nor does the violation of Article 13(2) necessarily mean that Article 13(1) is violated. Arrest and detention, as a matter of definition, apart from other relevant considerations, are "inextricably linked". However, Article 13(1) and 13(2) have a related but separate existence. Article 13(1) is concerned with the right of a person not to be arrested including the right to be kept arrested except according to procedure established by law and the right to be informed of the reasons for arrest, whereas Article 13(2) is concerned with the right of a person arrested to be produced before a judge according to procedure established by law and the right not to be further deprived of personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law..."

The fact that Article 13(1) was not violated does not necessarily mean that Article 13(2) cannot be violated. For instance, a person may be arrested on grounds of reasonable suspicion and given reasons for his arrest. However, if he is not produced before a judge in accordance with a procedure prescribed by law - and that is the

¹⁵ [1994] 1 Sri LR 1

¹⁶ Ibid at 95

matter dealt with by Article 13(2) - there will be a violation of Article 13(2), although Article 13(1) was not violated.”¹⁷

34. The Petitioner, according to his own admission, had fainted at the instance of his arrest resulting in his hospitalisation. The 2nd Respondent had gone with the Petitioner to the hospital in a Customs vehicle, and one of the Petitioner’s friends who accompanied them had signed the admissions papers. According to the Report in terms of Section 127 of the *Customs Ordinance* dated 02nd September 2016 submitted to the Colombo Magistrate Court No. 6, the hospitalization had happened around 7.10 p.m., which the Petitioner at no point disputed.
35. Furthermore, minute dated 02nd September 2016 on the aforementioned Report marked **R2(e)**¹⁸ indicates as follows:

“... Following day on 02.09.2016, submitted a further report to the Hon. Magistrate and the Magistrate visited the suspect who admitted in the ward 45 [sic] on the bed 34 and ordered to the Superintendent of Welikada Prison to provide prison security to the suspect... [sic]”¹⁹
36. As such, it is clear that the 2nd Respondent had taken necessary steps to expeditiously report facts to the Magistrate following the hospitalization. Thereafter, the Petitioner had been in judicial custody.
37. Under these circumstances, I find no violation of Article 13(2) of the Constitution as well.

¹⁷ Ibid at 98-99 (Emphasis added)

¹⁸ Report dated 01.09.2016, addressed to “DC(RTF)/ DDC(RTF)”, produced marked **R2(e)** attached to the Affidavit of Vidya Wathsala Nanayakkara (2nd Respondent) dated 18th May 2017

¹⁹ Reproduced *verbatim* for accuracy

Alleged Violation of Article 12(1)

38. With regard to Article 12(1) of the Constitution, the learned Counsel for the Petitioner sought to argue that a violation of the Rule of Law has occurred *ipso facto* the violation of fundamental rights enshrined under Articles 13(1) and 13(2) *vis-à-vis* the Petitioner.
39. As I have already decided that there had been no violation of Articles 13(1) and 13(2), this submission has no legs to stand on and is accordingly rejected.
40. Considering the totality of the circumstances discussed hereinbefore, I find no violation of Articles 13(1), 13(2) or 12(1).

Application Dismissed.

Judge of the Supreme Court

KUMUDINI WICKREMASINGHE, J.

I agree.

Judge of the Supreme Court

JANAK DE SILVA, J.

I agree.

Judge of the Supreme Court