

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

In the matter of an Application in terms of
Articles 17 and 126 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

1. Atham Lebbe Mohamed Nawas
No. 30, Methaippalli road,
Kattankudy 2

SC FR Application No: 77/2018

Petitioner

V.

1. Pujitha Jayasundara
Inspector General of Police
Police Head Quarters
Colombo-01

1A. C.D. Wickramaratne
Inspector General of Police
Police Head Quarters
Colombo-01

2. P.P. Kasthooriarachchi
Office-in-Charge

3. Mr. Muwsseer
PC 5867
Police Constable

4. Mr. Muhajith
PC 5868
Police Constable

The 2nd to the 4th Respondents above
named all of Police Station of Kathankudy
Hisbulla Street Ward No 19
Manchanthuduwai

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

Respondents

Before : Shiran Gooneratne, J.
Arjuna Obeyesekere, J.
K. Priyantha Fernando, J.

Counsel : K. Thambiah with Neshanee De Zoysa instructed by
Hiroshan Kumar for the Petitioner.

Sajith Bandara, SC for the Respondents.

Argued on : 07.08.2025

Decided on : 17.09.2025

K. PRIYANTHA FERNANDO, J

1. The Petitioner is a citizen of Sri Lanka who is engaged in a business known as “Gaya Bakers” since 2012. He alleges that the 1st - 4th Respondents violated fundamental rights guaranteed to him under Articles 11, 12(1), 12(2), 13(1), and 13(5) of the Constitution. This Court granted leave for the alleged violations of Articles 12 (1) and 13 (1) of the Constitution.

The Facts

2. The Petitioner is a member of the Sri Lanka Podujana Peramuna (SLPP) where he obtained membership in 2017. Mr. H.A. Munaff and Mrs. Yohara Ummah (husband and wife respectively) were known to the Petitioner owing to them being candidates in the additional list for the Kaththankudy Urban Council of SLPP.
3. The Petitioner states that the aforementioned Mr. H.A. Munaff was arrested as a suspect for the possession of cannabis in a house rented by him between 19:00 – 20:00 hours on or around the 7th of January 2018. On the same day, two individuals claiming to be from the Criminal Investigation Division (CID), having arrived at the residence of the aforementioned Yohara Ummah, had demanded Rs. 250,000 to release Mr. H.A. Munaff from police custody. Yohara Ummah, suspecting the veracity of their identities, had called the Petitioner stating she was in danger.
4. Upon receiving this call, the Petitioner states that he immediately went to the residence of Yohara Ummah with some friends. The two individuals had still been there. Upon questioning the individuals and realizing they are not police officers, he has called “119” and reported the incident to the Police, whereby the Police had come and arrested the individuals. The Petitioner has later got to know that Yohara Ummah had lodged a

complaint about this incident to the Kaththankudy police upon the arrest of the individuals.

5. Thereafter, on the 9th of January 2018 the Petitioner has received a call from the Kaththankudy Police Station stating that he is required to give a statement regarding the aforementioned incident. As the Petitioner was not in Kaththankudy at the time, he had communicated his difficulty to attend, requesting a further date.
6. Later, the Petitioner has become aware that the 2nd Respondent has reported a false story in relation to case No. B/17/2018 to the learned Magistrate of Batticaloa stating that the Petitioner had assaulted the aforementioned individuals who claimed to be CID officials and that the Petitioner has disappeared from the area. It is the contention of the Petitioner that this was done in order to obtain arrest warrants against the Petitioner and his friends. He further submits that the aforementioned individuals who claimed to be CID officials had been hospitalized by the Respondents with the intention of obtaining an arrest warrant as well.
7. The Petitioner submits that the issuing of such warrant was refused by the Learned Magistrate of Batticaloa and that instead, the Learned Magistrate had issued summons to the Petitioner alongside two others to appear before the Magistrates' Court on the 13th of March 2018.
8. He submits that the SLPP main rally for the 2018 Local Government Elections was to be held on the 26th of January 2018 and that he played an active role in its organization. He states that the above false "B" report that was filed in the Magistrates' Court of Batticaloa was done with the intention of preventing the Petitioner's involvement in the aforementioned rally.
9. Thereafter, on the 20th of January, the Petitioner states that he was illegally arrested by the 3rd and 4th Respondents albeit the refusal by the Learned

Magistrate to issue an arrest warrant. At the time of the arrest, the Petitioner had been at a friends' house, in close proximity to the Police Station of Kaththankudy.

10. The Petitioner states that he was treated in a degrading and humiliating manner in being arrested publicly and that reasons for arrest were not disclosed by the 3rd and 4th Respondents even at the police station. He further contends that he was arrested by officers who are usually entrusted with other duties – officers in the traffic police attire. Upon being produced before the Learned Magistrate of Batticaloa on the 21st of January 2018, the Learned Magistrate had enlarged the Petitioner on bail. The Petitioner states that this impugned arrest caused an irreparable damage to him during the election campaign and that it was carried out contrary to the provisions of the Code of Criminal Procedure, further stating that he was deprived of the equal protection of the law having being discriminated against on grounds of political opinion. Whereby, he submits that fundamental rights guaranteed to him under Articles 11, 12(1), 12(2), 13(1), and 13(5) of the Constitution were in violation.
11. The 2nd and 3rd Respondents in their affidavit state that on the 7th of January 2018, Hanifa Abdul Munaf was arrested at 23:30 hours for having 34 kilograms of cannabis in possession and that he was subsequently produced before the Magistrate on 08th of January 2018.
12. The Respondents submit that a call was made to “119” on 08th of January 2018 at 01:24 hours and that a statement of Kalandara Lebbe Jafer was recorded on 08th of January 2018 at 02:20 hours. The Respondents, in their written submissions provide that prompt action was taken by them to arrest the alleged suspects with regards to this complaint.
13. In relation to “B” Report 17/2018, the Respondents submit that a complaint was lodged by Asath alleging that the Petitioner, together with other persons had assaulted him. The complainant had been produced

before the judicial medical officer on the same date. It is submitted that on the 20th of January 2018, the Petitioner was made aware of the alleged assault committed by him and was arrested at 23:00 hours in front of the Kaththankudy Police Station and that the Petitioner's statement was recorded therein. The Petitioner has then been produced before the Magistrates' Court.

14. The Respondents further submit that due process was followed in arresting the Petitioner and that the reasons for arrest were communicated to the Petitioner as admitted by the Petitioner himself in his statement made to the police. Further, it is stated that the 3rd Respondent has never carried out duties attached to the traffic unit and that the 4th Respondent was not involved in the arrest on any level. It is their contention that the Petitioner is attempting to fabricate a story.

My Observations

15. Given the vast inconsistencies between the two factual backgrounds presented to this Court, I am compelled to, upon the perusal of the material before me, note the following.
16. The Petitioners state that "B" Report No.17/2018 states that the Petitioner had assaulted the two individuals who claimed to be CID officials and that it was on this basis that a case was filed in the Magistrates' Court. The aforementioned "B" Report is submitted to this Court marked "R 10" and it presents a completely different version.
17. According to the "B" Report, on the 8th of January one Asath, having had dinner had been returning home. Where one Kaleel has stopped him and his friend Najath stating that Asath was the one who informed the police of the possession of cannabis by the individual who was arrested for the same on the same day. They had then been assaulted by the Petitioner and one Siraj Ahamed and taken to a secondary location, a house. They

had then learned that this was the same house where cannabis was previously found, and an arrest was made. The aforementioned Kaleel has told Asath and Najath had come to this house to receive money. They had then been brought to the police. The “B” Report notes that this is an offence in terms of sections 314 and 316 to be read in conjunction with section 32 of the Penal Code. The report also provides that the suspects (the Petitioner, Kaleel and Siraj Ahamed) are absconding and moved for a date to produce the suspects before the Magistrates’ Court.

18. I must also note that the Petition repeatedly mentions of a refusal to issue an arrest warrant to arrest the Petitioner by the Learned Magistrate. The same was also submitted at the hearing by the Counsel for the Petitioner. However, I fail to find any material to support such a claim that there was an application to issue a warrant to arrest the Petitioner. According to the “B” report, police have only moved for a further date to produce the suspects. Whereby I am inclined to believe such was merely an attempt to mislead the Court by stating that applications for a warrant of arrest was refused by the learned Magistrate.

19. Having resolved the inconsistencies and clarified the factual background, I will move to discuss any possible violation of fundamental rights.

Alleged violation of Fundamental Rights

20. The standard of proof required in cases filed under Article 126 of the Constitution for infringement of Fundamental Rights is proof by a preponderance of the probabilities, as in a civil case, rather than proof beyond a reasonable doubt, as said in the case of ***Velmurugu v. The Attorney General and Others [1981] 1 Sri LR 406.***

21. Further, in ***Gunawardene v. Perera and Others [1983] 1 Sri LR 305 at 313***, Soza J. held that

“...It is generally accepted that within this standard there could be varying degrees of probability. The degree of probability required should be commensurate with the gravity of the allegation sought to be proved. This court when called upon to determine questions of infringement of fundamental rights will insist on a high degree of probability as for instance a court having to decide a question of fraud in a civil suit would. The conscience of the court must be satisfied that there has been an infringement.”

Alleged violation of Article 12(1)

22. Article 12(1) of the Constitution provides:

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

23. Looking at the jurisprudential development vis-à-vis Article 12 (1) of the Constitution, it must be noted that it is rich in interpretation. In ***Palihawadana v. Attorney General & Others (1978-79-80) 1 Sri LR 65 at page 68*** Shraavananda J. comprehensively interprets Article 12 (1) as follows:

“...Article 12 of the Constitution lays down the general rule of equality that all persons are equal before the law and are entitled to equal protection of the law and that no citizen shall be discriminated against on grounds of race, religion, language, caste, sex, political opinion, place of birth or any of such grounds.”

His Lordship goes on to further analyse its applicability in the following way in page 69:

“...Though Article 12 prescribes equality before the law and equal protection of the law, it has to be recognized that equality in any literal or abstract sense is not attainable. Its strict enforcement will, in fact,

bring about the very situation it seeks to avoid. The fundamental act is, all men are alike. Some, by the mere accident of birth, inherit riches; others are born to poverty. Some acquire skills and qualifications while others are untrained. There are differences in social standing and economic status. It is, therefore, impossible to apply rules of abstract equality to conditions which predicate inequality from the start. Yet the words have meaning. What is postulated is equality of treatment to all persons in utter disregard of every conceivable circumstance of the difference, such as age, sex, education and so on and so forth as may be found amongst people in general. Indeed, while the object of the Article is to ensure that invidious distinction or arbitrary discrimination shall not be made by the State between citizen A and citizen B who answer the same description and the differences which may obtain between them are of no relevance for the purpose of applying a particular law or operating an administrative scheme, reasonable classification is permissible and a certain measure of inequality permitted. The State is permitted to make unequal laws or take unequal administrative action if it is dealing with individuals or groups whose circumstances and situations are different.”

24. It must also be noted that the scope of Article 12 (1) has significantly widened over the years. Cases such as **Wijerathna v. Sri Lanka Ports Authority [SC/FR/ 256/2017 S.C. Minutes of 11 December 2020]** which captures this change as follows:

“...The concept of ‘equality’ was originally aimed at preventing discrimination based on or due to such immutable and acquired characteristics, which do not on their own make human being unequal. It is now well accepted that, the ‘right to equality’ covers a much wider area, aimed at preventing other ‘injustices’ too, that are recognized by law. Equality is now a right as opposed to a mere privilege or an entitlement, and in the context of Sri Lanka a ‘Fundamental Right’, conferred on the people by the Constitution, for the purpose of curing not

only injustices taking the manifestation of discrimination, but a host of other maladies recognized by law.”

25. I must also note that Article 12 (1) has often been a catalyst in protecting one’s right to not be discriminated against on grounds of political opinion, as witnessed in cases such as ***U. N. S. P. Kurukulasuriya and J. K. W. Jayasekara v. Sri Lanka Rupavahini Corporation and others*** [SC FR Application No. 556/2008 SC FR Application No. 557/2008 SC Minutes of 17. 02. 2021], ***Deshapriya and Another v. Municipal Council, Nuwara Eliya and Others*** [SC FR 884/92] 1995 1 Sri LR page 362, and ***Palihawadana v. Attorney General & Others*** (1978-79-80) 1 Sri LR 65.

26. The Petitioner in the instant application contends that his Article 12 (1) protections were taken away by way of discrimination on grounds of political opinion as he believes the arrest was made to hinder his participation in SLPP activities. There is no evidence to back this claim except for the fabricated story the Petitioner presents to this Court, which I have previously dealt with and concluded to be factually untrue.

27. To award protection under Article 12 (1) in cases such as the instant application, where there is absolutely no material to conclude discrimination on any basis, in my opinion is not only illogical but also an abuse of Constitutional protections guaranteed by way of fundamental rights. Therefore, I am of the opinion that, as there are no credible grounds to conclude discrimination based on political opinion, there is no violation of Article 12 (1).

Alleged Violation of Article 13 (1)

28. Article 13 of the Constitution concerns the due process of arrest and detention. Therein, Article 13 (1) provides as follows:

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

29. In the instant application, two arguments were raised by the Petitioner in this regard. Firstly, that due process was not followed in making the arrest as the arrest took place albeit summons being issued for the Petitioner to appear in Court on 13.03.2013 and secondly, that he was not informed of the reason for arrest.

30. Regarding the first argument, in the case of **Joseph Perera Alias Brutten Perera v Attorney General [1 Sri LR 1992 199 at page 236]** the following is noted with regards to making an arrest:

“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.”

31. The manner in which an arrest ought to be conducted is provided in **section 23 of the Code of Criminal Procedure Act No. 15 of 1979** which reads:

“(1) In making an arrest the person making the same shall actually touch or confine the body of the person to be arrested unless there be a submission to the custody by word or action and shall inform the person to be arrested of the nature of the charge or allegation upon which he is arrested.

(2) If such person forcibly resists the endeavour to arrest him or attempts to evade the arrest, the person making the arrest may use such means as are reasonably necessary to effect the arrest.”

32. In the instant application, as per the “B” Report 17/2018, the Petitioner was arrested for commission of offences under sections 314 and 316 of the Penal Code read in conjunction with section 32.
33. As per schedule 1 of the Code of Criminal Procedure Act (No. 15 of 1979), persons who are suspected of committing offences under S.314, and S.316 may be arrested without a warrant by a peace officer. Therefore, in the case at hand, I am of the opinion that due process was followed in making the arrest as the arrest was not arbitrary and was a result of an investigation conducted by the Police following a complaint they had received against the Petitioner.
34. The Petitioner also alleges that the reasons for arrest were not communicated at the time of arrest. In response to this the 2nd and 3rd Respondents have taken up the position that the reason was communicated both at the time of making the arrest and when getting the Petitioner’s statement. The latter is also reflected in the Petitioner’s statement to the police upon getting arrested (see “R9”). In these circumstances, I am inclined to believe that the reason for arrest was communicated to the Petitioner.
35. Therefore, I am of the opinion that due process was in fact followed by the Respondents in making the arrest and that there is no violation of Article 13 (1) of the Constitution.

36. In the above premise, I declare that the fundamental rights that have been guaranteed to the petitioners under Articles 12 (1), and 13 (1) of the Constitution have not been violated.

Application is Dismissed.

JUDGE OF THE SUPREME COURT

JUSTICE A. L. SHIRAN GOONERATNE

I AGREE

JUDGE OF THE SUPREME COURT

JUSTICE ARJUNA OBEYESEKERE

I AGREE

JUDGE OF THE SUPREME COURT