

THAVARASA AND TWO OTHERS  
V.  
GUNASEKERA AND OTHERS

SUPREME COURT.

G.R.T.D. BANDARANAYAKE, J.

DHEERARATNE, J. AND

WADUGODAPITIYA, J.

S.C.APPLICATION NO. 224/94.

S.C.APPLICATION NO. 225/94.

S.C.APPLICATION NO. 226/94 .

(CONSOLIDATED)

02, 20 JUNE, 7, 13 JULY AND 01 AUGUST 1995.

*Fundamental Rights - Illegal arrest and illegal detention - Constitution - Article 13 (1) and Article 13(2) - Parliamentary Elections Act No. 1 of 1981, section 74(1) which prohibited the pasting of posters in public places - Code of Criminal Procedure Act, section 116(1).*

The three Petitioners were campaign supporters of Anura Bastian former Member of Parliament and U.N.P. organiser for Colombo West and U.N.P. candidate for Colombo District of the Parliamentary Elections of August 1994.

Of two widely divergent versions of the facts the Court accepted the version of the 1st and 2nd Respondent Police Officers. According to the version accepted by Court:-

Police found a group of persons pasting posters on behalf of Anura Bastian on the public road and environs. The pasting of such posters was an election offence.

The 1st Respondent ordered the persons who were committing these election offences to stop doing so. They ignored his orders and continued committing these offences. The three Petitioners were among the crowd committing these offences and were the leaders and one of them (Ramanathan) became extremely aggressive towards the 1st Respondent. There were 49 others with the Petitioners and all were arrested. Ramanathan pulled out a pistol from his waist and attempted to shoot the 1st Respondent and acted in a manner to voluntarily obstruct the 1st Respondent a public servant in the performance of his duty.

Two Police Officers, A.S.P. Kulatilleke and S.P. Paranathala denied knowing

of the allegation of attempted murder until the following morning. There was quite insufficient ground for the C.I.D. submitting, a second B report or stating that the allegation has not been supported beyond reasonable doubt. The C.I.D. operation was described on behalf of the 1st and 2nd Respondents as fraudulent.

**Held :**

(1) The duty of the 1st Respondent as a public servant had to perform is set out in section 74(5) of the Parliamentary Elections Act No.1 of 1981 and empowered the Police to take such steps and use such force as may be reasonably necessary for prevention of contravention of election laws. Section 74(1) (b) of the Act prohibits the display of posters in a place where the public have a right of access. The offence of such display of posters is a cognisable offence punishable with fine or imprisonment or both. Therefore the police arrested everybody at that time and that arrest was lawful.

The protection afforded by Article 13(1) is the protection against unlawful arrest and the recognition of the individual's right to know the reason for the arrest. The Petitioners who were perpetrators of a prohibited act have been caught red-handed. The offenders were caught on the road in *flagrante delicto* and in the circumstances there is no need to explain the reason for the arrest. There is therefore no infringement of the rights of the petitioners as contained in the second part of Article 13(1).

Section 116(1) (of the Code of Criminal Procedure Act.) is directory and not imperative or mandatory. Despite its language there lies a discretion with the Police to produce a suspect before a Magistrate instead of releasing him on bail to appear in court although the offences of obstruction and intimidation are bailable. The Petitioners were treated by the 1st and 2nd Respondents as organisers or ring leaders and that was the distinction made as against the 49 others arrested and given Police bail. Those 49 were treated merely as workers or helpers who actually pasted the posters given to them by the organisers.

The version of the 1st and 2nd Respondents shows a massive obstruction to public officers. The words used are not mere words of protest. They are words of intimidation, threat to employment, threat of transfer to a war zone, clearly intended to deter a police officer from doing his lawful duty of preventing election offences being committed, words likely to dissuade to hinder or prevent a public servant from doing his duty. These words uttered on the public road in the company of about 50 of their helpers amounts to offences punishable under sections 183 and 486 of the Penal Code. The Police wisely produced the disputing party, disputing their arrest, before a Magistrate.

Procedures regarding detention vary with the relevant law governing the arrest. The prescribed period of detention following arrest under the Parliamentary Elections Act is governed by the Code of Criminal Procedure Act and is the outer limit within which the arrestee must be brought before a judge. That is the essence of this sub-article (Article 13(2)) and is one of the checks the law provides to protect the freedom of the individual.

A violation of Article 13(1) (illegal arrest) does not necessarily result in a violation of Article 13(2). Article 13(2) seeks to ensure that persons are not detained arbitrarily by persons like Police Officers who perform executive functions. Detention until 11 a.m. was not arbitrary but justifiable in the circumstances. There was therefore no infringement of the provisions of Article 13(2).

Any finding on the allegation of attempted murder, which really is a matter for a trial Court, will not affect the decision regarding Article 13(1). The 2.30 a.m. entry of the 1st Respondent containing information of an attempt to shoot at him was a prompt contemporaneous entry made in the course of inquiries and is not belated. The Court is not impressed with the denial of the petitioners of the 1st Respondent's allegation of an attempt to shoot at him. The Court is unable to hold that the 1st Respondent has not done an impartial inquiry or that he has fabricated evidence against Ramanathan in particular. The role of A.S.P. Kulatilleke and S.P. Paranathala and of the C.I.D. was suspicious and unacceptable.

#### **Cases referred to:**

1. *Muthusamy v. Kannangara* 52 N.L.R. 324, 329.
2. *Corea v. The Queen* (1954) 55 N.L.R. 457.
- 3(a). *Abeywickrema v. Pathirana* 1986 I SLR 171
- 3(b). *Uparis v. Robert* 36 NLR 325
- 3(c). *Christie v. Leachinsky* (1947) A.C. 573, 593.
4. *Tunnaya alias Gunapala v. O.I.C. Police, Galewela* (1993) 1 Sri L.R. 61, 66.
5. *Police Sergeant v. Razak* 13 C.L.W. 39.
6. *Police Sergeant v. Simon Silva* 15 C.L.W. 13.
7. *Selvakumar v. Devananda* S.C. Application 150/93. S.C. Minutes of 13.7.94.
8. *Kumara v. Rohan Fernando* S.C. Application 22/90- S.C. Minutes of 21.7.94.
9. *Mahinda Rajapakse's case* S.C. Application No. 2/93. S.C. Minutes of 31.3.94.
10. *Faiz v. A.G.* S.C. Application No. 89/91 S.C. Minutes of 19.11.93.

**APPLICATION** alleging infringement of Fundamental Rights guaranteed under Article 13(1) and 13(2).

*D.S. Wijesinghe, P.C. with Manohara R. de Silva* for Petitioner, V. Thavarasa.

*F. Mustapha, P.C. with S. Jayawardena* for Petitioner S. Ramanathan.

*R.K.W. Goonesekera* for Petitioner S. Balachandran.

*E.D. Wikramanayake* for 1st and 2nd Respondents.

*Nihara Rodrigo*, Senior State Counsel for 3rd and 4th Respondents.

November 17, 1995.

**BANDARANAYAKE, J.**

These Petitions contain complaints against officers of the Mount Lavinia Police in regard to an incident which took place on 7th/8th August 1994 during the campaign and run-up to the Parliamentary General Election held on 16th August 1994 when the Peoples Alliance won the election and formed a Government. This was a period of intense political activity by contesting candidates and their supporters.

## **FACTS:**

### **Brief statement of events leading to arrest:**

The Petitioners were campaign supporters of Mr. W.D.I. Anura Bastian former Member of Parliament and UNP organiser for Colombo West and UNP candidate for Colombo District.

The three Petitions were taken up and heard together of consent as the facts were common to all. But it was pointed out that the involvement of each Petitioner was different and this must be kept in mind when the Court considered the affidavits and other evidence in the background of applicable Election Laws and Penal Laws.

Petitioner Velauthan Thavarasa is an Attorney at law and avers he had been retained by Mr. Anura Bastian to advise, represent and appear for Bastian's supporters during the campaign, He is a member of the National Executive Committee of the United National Party.

Petitioner S.Ramanathan is a member of the United National Party and is also a member of its National Executive Committee besides being a Colombo businessman. The businesses mentioned by him in his petition are:

Chairman of Groundmet Travels and Tours (Private) Ltd. an Air-line Travel and Ticketing agency of 4 York Street Colombo 1. and Sole Agent for Beeman Bangladesh Airline and Royal Nepal Airline; he says he is also a passenger ticket sales agent for Air Lanka, Emirates Airlines, Air India, Cathay-Pacific Airlines, Singapore Airlines, Balkan Airlines and Royal Jordanian Airlines. He is also President of the Union Importers Association.

Petitioner Sathasivam Balachandran is a brother of Petitioner Velauthan Thavarasa and is a businessman.

This incident occurred during the period of permitted meetings regulated by the Parliamentary Elections Act No: 1 of 1981. Election Laws prohibited the pasting of posters of candidates in public places- vide section, 74(1). On 7.8.94, there had been a public meeting at Soysapura in support of former MP and Minister Tyrone Fernando also a UNP candidate at the said election contesting Colombo District. This public meeting continued into the night. Both the Petitioners and the Respondents state they had been present at that meeting. Both parties had to return along Galle Road to reach Mount Lavinia and Colombo.

There had been a group of persons pasting posters on behalf of Mr. Anura Bastian on the public road and environs. The road has a dual carriage way. There were street lights. The posters were of Anura Bastian singly, of Bastian with former President D.B.Wijetunge and of Bastian with former Prime Minister Ranil Wickramasinghe. This place of incident was close to the Basic Technical Training Institute Ratmalana and close to a junction known as Belek Kade Handiya.

We now come to the point where the 1st and 2nd Respondents proceed to the scene at about midnight consequent to a telephone message from Assistant Superintendent of Police J. Kulatilleke.

Jayantha Kulatilleka who, whilst returning from Soysapura himself had seen several vehicles and people pasting UNP posters on parapet walls and on the road near Belek Kade Junction had directed the 1st Respondent to take steps according to law. The relevant police entry has been produced marked 1R1 being an extract from the Election Information Book of the Mount Lavinia Police and the time of that entry is at 00.20 a.m. on 8.8.94.

The 1st Respondent who was at Soysapura, assembled a police party and came to a spot near the Technical College where he says was a crowd of persons and several vans parked and, *inter alia*, pasting posters of Anura Bastian which acts constituted offences. The 1st Respondent states he ordered the persons who were committing elections offences to stop doing so. They ignored his orders and continued committing offences. The three Petitioners were among this crowd of persons committing offences. S. Ramanathan was directing the others and all three Petitioners became extremely aggressive towards him. There were 49 others whom he apprehended at the time besides the Petitioners.

The Court will deal with the particulars relating to the conduct of each of the Petitioners, from the time of the first confrontation with the 1st and 2nd Respondents, as presented by the versions before court.

At this point however I allude to the versions of the Petitioners as to the circumstances in which they came to be confronted by the police. The Petitioners state that at about 12.30 a.m. on 8.8.94 after attending the said meeting at Soysapura Moratuwa, they left for Colombo in a van driven by driver Alagarathnam. On the way the Petitioners received a telephone call from one Nirmalan, a Bastian supporter, that some of Bastian's supporters were being assaulted by the police at Ratmalana. Simultaneously the Petitioners saw a gathering of almost 50 persons on the road opposite the Technical Training Institute and some persons were being assaulted by the police. They stopped their van, got down and made their way to the police officers. Petitioner Thavarasa identified himself as an attorney at law looking after the interests of candidate Anura Bastian.

Before the Court considers the conflicting versions of the parties *i.e.* facts supportive of the claim of the Petitioners of an infringement

of their fundamental rights on the one hand, and facts inconsistent with the Petitioners version which may show that the police officers conducted themselves within the law to enforce the law by preventing its breach on the other, it would be useful and convenient to set down briefly the successive events that took place after the police took the three Petitioners and 49 others to the police station and took into custody several vehicles and posters and articles used for the purpose of pasting posters.

#### BRIEF STATEMENT OF EVENTS AT POLICE STATION AFTER ARREST.

From documents produced at this hearing we find that, after several people were brought to the police station that night, the 1st Respondent pleads that he informed the Petitioners of the charges of committing prohibited acts under elections laws and other offences such as intimidation and attempted murder punishable under the Penal Code against them and took them into custody. An entry to this effect has been made in notes made by the 1st Respondent in the aforesaid Elections Information Book and produced marked 1R1. This note commences at 2.30 a.m. on 8.8.94. It is a continuation of the earlier entry made at 00.20 a.m. in 1R1. This later entry also contains notes pertaining to the extremely aggressive intimidatory conduct of these Petitioners and the threats they made against the 1st and 2nd Respondents, details of which will be set out in due course.

The Assistant Superintendent of Police Mt.Lavinia Jayantha Kulatileke on information given by telephone by the 1st Respondent HQI, visited the Mt.Lavinia Police station at 1.15 a.m.. on 8.8.94. His notes entered in the Officers Visit Book commonly referred to as the OVB commence at 1.15 a.m. and have been marked 1R2. According to that note, when he went to the police station he saw 5 vans parked outside and inside the police station premises, about 45-50 persons alleged to have been caught pasting election posters on the public road, and the three Petitioners along with the 1st and 2nd Respondents and several other police officers present. He questioned the 1st Respondent regarding the incident. The notes of the ASP at this point do not refer to the 1st Respondent having informed him that Petitioner Ramanathan fired at him with a pistol. This omission is a point stressed by all Counsel for the Petitioners. It was by their submission that the

allegation of attempted murder was an afterthought. The note continues to state that he separately questioned the Petitioners and they told him that they were assaulted by police officers and taken into custody on the road upon an allegation of pasting posters and brought to the station, that the 1st Respondent took Ramanathan's licenced pistol and a bag containing Rs.82,000/- and the Celltell phone belonging to Petitioner Thavarasa (which has been returned). The note continues and refers to Anura Bastian coming to the police station at 2 a.m. and asking for the release of the Petitioners. At 2.15 a.m. ASP notes he received a telephone call from C.V. Gooneratne (PA candidate from Colombo District at the general election) informing him that a crowd of Anura Bastian's supporters committing election offences have been arrested, that they have attempted to shoot police officers and that he informed the IGP and requested me to act according to law. ASP informed the SP. J. Paranathala of the incident. Also, it is noted that at the urgent request of AAL Thavarasa and Mrs. Thavarasa for bail, he will consider the matter. At this point is a full stop in the note. It continues on the same line thus:

මට මු: පො: ප: (වේලාව ෭.෦෦) පමණ මට දන්වා සිටියා තමා මෙම පිරිස අත්අඩංගුවට ගන්න යන කල මෙහි සිටින රාමනාදන් යන අය තමාට ඔහු අත තිබූ පිස්තෝලයෙන් වෙඩි තැබීමට තැත්කලා කියා

Thus the ASP's note pointedly records the time at which he says an information was given to him by the 1st Respondent namely, that Petitioner Ramanathan attempted to shoot him with a pistol at the time of arrest and for that reason they cannot be released on bail. Counsel for the Petitioners rely on this entry contained in 1R2 in making the submission that it was only at about 7 a.m. on 8.8.94 that the 1st Respondent for the first time made the allegation of an attempt made by Petitioner Ramanathan to shoot at him at the time of his arrest. I have used the word "pointedly" because the said time has been noted within brackets.

Nowhere else in the ASP's note 1R2 has any time been placed within brackets although specific times have been given regarding the arrival of Anura Bastian at 2 a.m. and C.V. Gooneratne's telephone call at 2.15 a.m. Counsel for the 1st Respondent submits that the (7 a.m.) entry is a false entry in the circumstances and has been done pur-

posely by the ASP in the morning to ensure that the Petitioners are released from custody on bail as all other offences were bailable. The circumstances 1st Respondent's counsel alludes to are:

(a) That other specific times contained in 1R2 have not been placed within brackets;

(b) C.V. Gooneratne telephones the ASP at 2.15 a.m. and informs him specifically of the attempt made by those committing elections offences to shoot at police; This information is thus available to the ASP at 2.15 a.m. Someone, perhaps a member of the public at Belek Kade Junction had informed Mr. Gooneratna.

(c) The 1st Respondents notes 1R1 commencing at 2.30 a.m. refers to the attempt to shoot him with a pistol.

(d) That Anura Bastian came at 2 a.m. and requested that all those people arrested be released - 1R2. This was not done. They were not released. Why?

(e) Subsequent events confirm that quite unusual steps have been taken to report to court by 4 p.m. the same day that, contrary to the B report already filed by the 1st Respondent - P2 the allegation of an attempted murder by shooting cannot be seriously supported upon the available evidence. So Petitioner Ramanathan comes home on bail the same day.

ASP Kulatileke in 1R2 has inspected the pistol P1 and the mis-fired bullet P2 at 8.30 a.m. having been given same by reserve PS12298. ASP had seen an indentation on bullet P2 (This marking of P2 is what had been given by the Mt.Lavinia police in their investigation.) This portion of his note 1R2 is marked 3RY2. To continue the narrative of events, the three Petitioners were produced before the JMO by the 1st and 2nd Respondents that morning despite their objection. No injuries were seen. Thereafter they were produced before the Magistrate with B report P2 at about 11 a.m. The Magistrate did not wish to hear the case but transferred it to the Additional District Judge who made an order of remand in custody as against Petitioner Ramanathan against whom there was a specific allegation whilst granting the other two Pe-

tioners bail. The B report P2 contained allegations of offences punishable under sections 183,300,486 (i.e) obstruction; attempted murder and criminal intimidation. The police did not object to bail as against Petitioners Thavarasa and Balachandran probably because it involves questions of law such as common intention.

#### INTERVENTION OF THE CID:

Concurrent with the events of the 1st and 2nd Respondents taking the Petitioners in the morning of 8.8.94 for a medical examination by the JMO at about 7.30 a.m. and later producing them in Court at 11 a.m. other happenings with regard to this matter have been placed before the Court by learned Senior State Counsel representing the Inspector General of Police and the Attorney General, the 3rd and 4th Respondents. Letter 3R1 was produced before us; this is a photocopy of a letter written by Anura Bastian to Deputy Inspector General of police CID (Amarasena Rajapakse since retired). The letter is undated. It is in the English language. It reads as follows:

.....Quote..... "Strong representations are being made to me by a large number of supporters regarding the HQI, Mt. Lavinia, to have them remanded till the election is over.

One such case is one Ramanathan against whom the HQI has made a case where Ramanathan has attempted to shoot him.

As this is going too far I would like you to take an interest and see that justice is done."

Sgd:

Ex:MP. Anura Bastian "...unquote. On this letter, Amarasena Rajapakse side lines the 2nd para marking it "X" and minutes as follows:

Sgd:

.....Quote..... ". On the direction of IG police please send a team under the direction of SP. Mr. Othnapitiya particularly about the allegation at "x" above and report."

Sgd:

(8.8.94 DIG). Thereafter 3R1 reaches SP Othnapitiya (SP, CID, Interpol Division)

(It would appear that it was DIG\CID, who selected the SP in charge of Interpol Division to conduct inquiries against police officers of Mt. Lavinia.) Overleaf of 3R1 is another minute addressed to E10 marked 3R2- requesting E10 to look into these allegations and report - comply with orders of DIG/CID. Thereafter at 9.05 hrs. on 8.8.94 Othnapitiya's notes, also found in document 3R1, states that DIG/CID and Director CID are present. DIG informs him that Mt. Lavinia Police had arrested some persons in connection with offences relating to election offences Viz: UNP supporters putting up posters on behalf of Mr. Anura Bastian and that a person named Ramanathan has been taken into custody for attempting to shoot HQI Mt. Lavinia.

The note continues stating DIG has said that the IGP has ordered an impartial inquiry be conducted by the CID since allegations have been made that police had not done an impartial inquiry.

Thereafter Director/CID was asked to form a team immediately under Othnapitiya's command to conduct inquiries.

Next, Othnapitiya's notes of inquiry are marked 3R3. They read as follows: 10.45 hours police station Mt.Lavinia. Now to SP's office.

I met SP Mr. J. Paranathala and ASP J. Kulatileka. They briefed me facts of the case. According to SP/ASP., the HQI had not informed them of the alleged attempted shooting incident until this morning although HQI had met the ASP immediately after the incidents last night. There had been several armed police officers together with the HQI at the time of the alleged incident. I instructed CI Upasena to record a statement of ASP in his office. I shall get down the other police officers and question them.....sgd. SP Othnapitiya. The next entry of Othnapitiya has been marked 3R4 and reads thus:

8.8.94 13.45 hrs: Director/CID telephoned me and informed that the IG Police had directed DIG/CID to file a report in Court on the basis of the material as it is strongly suspected that HQI Mt: Lavinia has fabricated evidence against 3 persons, namely Ramanathan and two others implicating them in a case of alleged attempt to shoot. Director/CID instructed me(Othnapitiya) to move Courts that the CID is making detailed inquiries into this matter and submit a report on

completion of the investigation and CID has no objection to releasing the suspects on bail. Unquote

#### COURT PROCEEDINGS ON CID REPORT.

The next thing that took place as far as the Court proceedings were concerned, was the filing of a 2nd B Report at 4 p.m. on the same day by CI. Rohan Upasena of (Interpol Division). In his report he says that the CID was conducting a wide investigation at MT. Lavinia Police Station and has obtained a statement from ASP Jayantha Kulatileka of Mt.Lavinia and that "according to the evidence so far collected, facts to show that there had been any attempted murder or a threatening by aiming a pistol have not been revealed beyond reasonable doubt. Therefore I move that these suspects (1) W.P. Thavarasa. (2) S. Balachandran and (3) S. Ramanathan who have been produced before court now, be discharged on bail under section 114 of the Criminal Procedure Code. Act No 15 of 1979."

Upon this 2nd B Report the Magistrate, now decides to deal with the case regarding Ramanathan, and stating that - quote "the 2nd B report produced reports that there is no evidence to support the facts stated in the first report in respect of suspect Ramanathan ".....unquote.....and decides .....quote....." accordingly I am ordering bail to him since it is an infringement of his rights to remand him. Accordingly I am ordering same bail to him as ordered to the other suspects. I am ordering this 1st suspect (Ramanathan) Rs.2500/ - cash/certified bail. Call case on 22.08.94 ...."unquote" ....

Next, CI. Rohan Upasena giving evidence before the Magistrate on 10.08.94, produces a pistol bearing serial No.A3404 of Czechoslovakian make and live bullets and a misfired live bullet with a mark as though hit by the firing pin which he says he received from the 1st Respondent and placed the seal on the package. Witness moves to send productions to the Government Analyst for examination and report. The Magistrate makes order that productions P1-P4 be so sent to the Analyst. He further orders that the productions"...quote....." be handed over to Chief Inspector Rohan Upasena to be sent to the Government Analyst".....At this point of the proceedings on 10.08.94, Attorney at Law Kanthilal Kumarasiri appearing for the present

Petitioners (who were accused in the Magistrates Court) in the course of submissions has stated to Court".....quote....." The firearm had not been sealed and on the following day at 9 a.m. the police officers have forwarded it to the CID. My request is that reports on the production be obtained and the Analyst's report and the productions be kept in special custody of Court". But the Magistrate made order ...quote..." in accordance with the request of Mr. Kumarasiri, I order that the productions be sent to CID through CI. Rohan Upasena and that they be kept in their charge....I reject the application made to keep the productions in Court. I order that they be kept with CID"..... The Magistrate in so ordering, has referred to a JSC circular sent in 1983 against keeping of fire arms in court premises in the wake of massive disturbances in Colombo.

Chief Inspector Upasena filed in court a further report P5. This report refers to statements recorded of thirteen persons. The statements of the two Respondents and three other police officers, namely Inspector Dhanandaya, Sub-Inspector S. Jayamaha and police sergeant 1965 Mathes all support the 1st Respondent's assertion that Petitioner Ramanathan who was wearing a sarong, at one point took a pistol from his waist and pointed it at the 1st Respondent. We do not know how far away from the HQI these witnesses were. The 2nd Respondent and PS. Mathes corroborate. The 1st Respondent states that Ramanathan pulled the trigger. Inspector Dhanandaya and Jayamaha say Ramanathan pulled out the pistol and pointed the pistol upwards at the HQI when the HQI caught him and wrested the pistol from him.

As against this, the summary of the statement made by SP Jayantha Paranathala is to the effect that at about 2 a.m. on 8.8.94 ASP Kulatileka informed him that a group of persons pasting posters were obstructing the police and that they were detained at the police station; no one informed him of this shooting till next morning although they were bound to inform him of such serious incidents immediately.

The summary of ASP Kulatileka's statement in P5 is that whilst returning home from the Moratuwa meeting he noticed persons affixing posters on the road. He informed HQI Mt. Lavinia the 1st Respondent to take action. Again at about 1 a.m. he had to come to the police

station to settle a dispute that was ongoing between those caught and the HQI. The HQI informed that the Petitioners had obstructed him in his duties. He questioned the petitioners who informed him that the police had taken into custody Ramanathan's bag containing Rs.82,000/- and they assaulted him but that no information regarding an alleged shooting at the HQI was given to him that night but that he knew it for the 1st time next morning when reading the B report that had been prepared.

Alagaratnam's affidavit P8 shows he did not get down from the van.

An examination of the Information Books of the Mt.Lavinia Police shows.

(i) That the routine information book 3R5 at page 319 para. 1373 contains an out entry at 17.30 hrs. on 7/8/94 marked 3R5 A that officers are going for election duty at Moratuwa. This confirms the affidavits of 1st and 2nd Respondents.

(ii) Next is an entry in the Election Information Book 3R6 at 00.40 am. although date on page is 7.8.94 Senior State Counsel submits that it has to be on 8.8.94 having regard to other entries. Court is satisfied that this is so. This entry is marked 3R6B.

(iii) There are entries regarding the handing over of suspects to the reserve. Then bail has been granted to 46 named persons on orders of the ASP at 5.45 a.m. on 8.8.94 - vide page 199 at para .70. This entry is marked 3R7B.

(iv) After that there is another out entry at p.202 para. 71. at 7.15 a.m.-HQI taking 3 named suspects to Kalubowila Hospital for examination by the JMO. This entry is marked 3R8B. The relevant provision to do this is section 122(1) of the Criminal Procedure Code.

(v) An entry at p.122 para 388 at 1 p.m. on 8.8.94 made in the Beat Information Book explains why 1st Respondent had to start a new book at Mt. Lavinia police as books had been removed by the CID. This entry has been marked 3R9C.

(vi) A second Election Information Book had to be opened by Mt. Lavinia Police on 8.8.94 at 22.15 hours as the earlier book had been removed by the CID. This is marked 3RX.

(vii) 1R1 already referred to are notes made by the 1st Respondent in his crime note book pages 20 and 21 at 00.20 hrs: and pasted. Pasting commences at 22.30 hours - vide page 34 on 8.8.94-marked 3RX1. Again notes made in this crime note book by the 1st Respondent commencing on 8.8.94 at 2.30 a.m. are also pasted marked 3RX2.

(viii) Entry made by ASP Kulatilake at P.362 at 8.30 a.m. on 8.8.94 in the Officers Visit Book 3RY1 that he inspected the pistol and bullet presented to him by PS 12298 and that he saw an indentation on a bullet is marked 3RY2.

The Government Analysts report P10 dated 7.10.94 states that he received 3 parcels from Magistrate Mt.Lavinia with seals intact. The parcels contained.

- P1 - 9x19 mm CZ75 pistol
- P2 - 9x19 mm - cartridge with indentation
- P3 - 9x19 mm - 11 cartridges
- P4 - cartridge case.

#### **GOVERNMENT ANALYST'S OPINION:**

Opinion of the Government Analyst:

P1 is a firearm as described in the firearms Ordinance.

P1 barrel had smell of spent gun powder residues denoting P1 had been fired but one cannot say when P1 was last fired.

P2 cartridge with indentation was compared with test rounds fired. The indentation seen on P2 was different to indentations on test rounds fired with P1. P2 has not been fired from P1.

#### **Submissions of Counsel on behalf of Petitioners**

To summarise submissions of Counsel in these applications, on

behalf of Velauthan Thavarasa, Petitioner in application 224/94 D.S. Wijesinghe PC submitted.

(a) The police say he was pasting posters on the public road-  
vide 1R3. Petitioner denies it. He says he got to the scene after the  
police. On reaching the scene when he saw the police assaulting  
their helpers on the road he protested as an Attorney looking after  
the interests on Anura Bastian but the police taking umbrage at his  
protests took him and others to the police station. Thus the only  
allegation that can possibly be made against him is one of obstruc-  
tion for the protest he made.

(b) Mere words of protest do not amount to obstruction of a public  
servant, an offence punishable under section 183 of the penal code.  
In support of this contention he cited: *Muthusamy v. Kannangara*<sup>(1)</sup>

Again, the true reason for an arrest must be made known to the  
arrestee *Corea v. The Queen*<sup>(2)</sup>

The case *Abeywickrema v. Pathirana*<sup>(3a)</sup> and the case reported in  
SC 212/87; SC minutes of 24.7.89 were also cited.

(c) There is an important contradiction between the 1st and 2nd  
Respondents version on the one hand and that of the ASP's and SP's  
Kulatilake's and Paranathala's on the other as to the time the allega-  
tion of attempted shooting was made. The ASP says he knew of it for  
the first time at 7a.m. whereas the Respondents seek to put the time  
much earlier to about 1.15 a.m. The investigation done by the CID  
tend to confirm the position of the ASP and SP that there is substan-  
tial doubt in regard to the allegation of an attempt to shoot the 1st  
Respondent. If so then the police are left only with the allegations of  
obstruction and intimidation of a public servant both of which are bail-  
able offences for which police bail could have been given. The fact  
that bail was refused shows the *mala fides* of the Respondents. The  
allegation of pasting posters is denied. The allegation of threats and  
intimidatory behaviour by the Petitioner is also denied. Petitioner's  
statement recorded at 4.30 a.m. in the GC1B (II) at p.144/145 makes  
no reference to obstruction or attempted murder. There was in fact  
no reasonable ground for arrest. There is therefore an infringement

of Article 13(1) and continued unnecessary detention violative of Article 13(2).

(d) There is a difference in the number of bullets said to have been taken from Petitioner Ramanathan between what is stated in the First-B report and the 1st Respondent's objection filed in the case. (Counsel for Respondents admits a mistake having been made as books were not available to them as CID had removed the books)

(e) Counsel wished the Court to look at the entries made by police officers at Mount Lavinia intrinsically. On behalf of S. Ramanathan Petitioner in application 225/94 Faisz Mustapha PC contended that:

(A) There were two issues the Court has to consider in regard to the Petitioner's claim of violation of his rights of freedom from unlawful arrest and unlawful detention - protected by Articles 13(1) and 13(2) of the Constitution.

They were:

(i) As the Petitioner got to the scene after the police, was there reasonable grounds for his arrest. Has the true reason for arrest been given? Mere words do not amount to obstruction of a public servant. Counsel adopted the submissions of other Counsel. Was continued detention overnight warranted?

(ii) Offences set out in section 74(2) of the Parliamentary Elections Act as well as the offences of criminal intimidation and voluntary obstruction of a public servant from performing his duty punishable under sections 486 and 183 of the Penal Code as set out in the B Report presented by the 1st Respondent were bailable. Under section 116(1) of the criminal procedure code, the police should have granted bail without producing him before the Magistrate. There has therefore been unlawful detention until 11 a.m. on 8/8/94.

(B) The allegation of attempted murder is entirely false. Petitioner had a licensed pistol for the protection of his business. The licence was produced that night. The gun was in his bag with Rs:82,000/- which is missing.

(ii) Test the 1st Respondent's version in 1R1 in the light of ASP

Kulatilake's notes in 1R2. The allegation of attempted shooting has been entered in the notes made by the 1st Respondent in 1R1 after 2.30 a.m. after Mr. C.V. Gooneratne's telephone call at about 2.00 a.m. to the ASP informing him of a shooting incident at Belek Kade Junction. How Mr. Gooneratne came to hear of such an event remains unexplained. The ASP's note at 1R2 that he heard of the attempted shooting only at 7 a.m. on reading the B report destroys 1st Respondent's notes made at 2.30 a.m. for if it were so, the 1st Respondent should have informed the ASP of that fact which he has failed to do. Therefore 1st Respondent's allegation is unreliable.

(C) Petitioner complained of loss of money Rs:82,000/- to the ASP that night. Therefore this false allegation of attempted shooting has been foisted on the Petitioners; they learnt of this allegation only at 11 a.m. in Court.

(D) Government Analyst's Report P10 contradicts any possibility that unexpended bullet with markings made by a firing pin, had been fired from the production pistol;

(E) SP Paranathala supports ASP Kulatilake that 1st Respondent had not mentioned about the gun incident before 7a.m.

(F) Statement of Petitioner recorded at 4.30 a.m. does not bear a specific reference to the attempt to shoot. There is no denial or admission of same although there is a reference to the gun and the loss of money. Petitioner made allegations to the ASP against the police. Thus if the allegation of attempted shooting is false, there was no reason to arrest. He should have been released along with the 49 others by 7 a.m. As a false reason has been given continued detention violates petitioners rights under Article 13(2).

On behalf of **Balachandran** Petitioner in application 226/94 R.K.W. Gunasekara contended:

(A) When Petitioners were produced before the ADJ Mt.Lavinia at 11 a.m. they thought there was only a "pasting of posters" charge. Now they found a charge of attempted murder. A lawyer for PAFFERAL organisation Mr. Mendis appeared and objected to bail for Ramanathan.

Ramanathan was remanded whilst Petitioner also on a section 300 Penal Code charge was released on bail. How?

- (B) According to the police these were two incidents
- (a) of pasting posters;
  - (b) of obstruction to the police and of attempt at firing a pistol.

It was submitted that the latter part of 1st Respondent's story was fabricated to make charges more severe as Thavarasa had protested at the arrest of the other 49 helpers. Although the three Petitioners came in a van together later, they were also taken with the 49 others pasting posters. Verbal protest was made. That is not obstruction of a public servant.

(C) Senior officers were not informed until 7 a.m. the next morning of the matter of the attempt to shoot as they should have been. Therefore the Respondents version was improbable.

(D) CID investigation report is supportive of the senior officers claim that they were not informed of the attempt to shoot until the following morning. Therefore Magistrate granted bail to Ramanathan. All Petitioners were discharged on 9.10.94 and all proceedings discontinued.

(E) Only supportive evidence was of obstruction by Thavarasa as he protested both at the scene and at the police station. That was the shouting match referred in 1R2.

(F) Petitioner Balachandran had nothing to do with the alleged attempted shooting incident or of obstruction or of pasting posters. Therefore he has been wrongfully arrested and detained.

### **Submissions of Counsel for 1st and 2nd Respondents**

Submissions made by Counsel on behalf of the 1st and 2nd Respondents on specific matters have been set down in earlier parts of this judgment. A summary is

(a) That the Petitioners were at the scene directing the operation of pasting posters when the police got there on instructions of ASP Kulatileka;

(b) That Thavarasa, Ramanathan and Balachandran out of the crowd who were acting in contravention of election laws challenged the police, abused and threatened them. Ramanathan pulled out a pistol attempted to shoot the 1st Respondent and acted in such a manner as to amount to voluntary obstruction of a public servant in the performance of his duty. That duty is contained in section 74(5) of Act No 1 of 1981 empowering the police to take such steps and use such force as may be reasonably necessary for prevention or contravention of election laws. There is a prohibition against the display of posters in a place where the public have a right of access - vide section 74(1) (b) of the Act. The offence of such display of posters is a cognisable offence punishable with fine or imprisonment or both. Therefore the police arrested everybody at that time, and that arrest was lawful.

(c) That to say that it was only at 7 a.m. that ASP Kulatilake learned of an attempt to murder was an untruth. The 1st Respondent had informed him of it when ASP came to the station about 1 a.m. The ASP also learned of it from Mr. C.V. Goonaratne. ASP's conduct in bracketing the time thus (7a.m.) is indicative of a desire to draw attention to that time in his note. SP Paranathala's statement to CI Upasena cannot be true.

(d) The conduct of DIG/CID Amarasene Rajapaksa is very unusual. Why did he choose Interpol to investigate the conduct of the Mt. Lavinia Police. Is not the police hierarchy in charge of administration of the Mt. Lavinia police division the proper authority to have investigated allegations such as this. That would have been normal procedure. How can anyone say that police hierarchy in the Mt. Lavinia police division is less independent or less competent than the international crimes division. This puts the entire investigation of CI Upasena in a suspicious perspective. Were handpicked supporters of the political party of which two of the Petitioners were executive committee members solicited to ensure that one of them, Ramanathan, is released on bail the same day. The report of CI Upasena is unacceptable as it does not deal with important aspects of the material available to him;

(e) The Magistrate's order placing the production pistol and cartridges etc: in the hands of CI Upasena is not proper in the

circumstances of this case. The Magistrate's Court has not opened the parcel presented by Upasena, inspected its contents as it should have, and resealed it with the Court seals. This failure results in a possible challenge to the Government Analyst. Thus the 1st and 2nd Respondents challenge the production unspent cartridge with marks of indentation of the firing pin examined by the Analyst as not the same one taken into custody from the Mt. Lavinia police by Upasena. This challenge is warranted in the suspicious circumstances of the CID investigation already adverted to. It was all a ruse to have Ramanathan released on bail by 4 p.m. the same day.

(f) The contradictory positions taken by the Petitioners as to where the gun was remaining is unexplained. Ramanathan says it was in his bag along with cash Rs: 82,000/-. Nanayakkara who has filed affidavit in favour of the Petitioners puts the pistol under the carpet in the van.

The Respondents say it was in Ramanathan's waist. This is more probable as the Analyst has found gun powder residues in the barrel and says it has been previously fired. Again, Mrs: Thavarasa went to the police station with Anura Bastian at 2.00 a.m. and produces the licence. Why rush in with the licence at that time if the gun had been harmlessly lying in a bag or in the van. On the contrary does not that suggest that the gun has assumed significant relevance in the inquiries by 2.00 a.m.

(g) The allegation of loss of cash Rs: 82,000/- is denied and is palpably false made to superior officers and introduced by Ramanathan to embarrass the police for arresting him and not giving in to his intimidatory tactics. For one thing, there was no need to carry such a large amount of money as helpers had been fed and transported by Anura Bastian. For another, the CID inquiry is silent about the loss of money.

(h) The 1st and 2nd Respondents were merely doing their duty as ordered by their ASP when they were subjected to much abuse, threats of transfers to unpopular stations and even physical threats. They were subjected to massive obstruction. The police were fully entitled to arrest everyone involved in pasting posters at midnight on the road.

The 49 others were released on bail as they did not behave in an improper manner but stopped doing prohibited acts. The 1st and 2nd Respondents were justified in what they did. They were prevented from making necessary entries, as their books were removed by the CID and they had therefore to open new books. This explains the minor inconsistencies pointed out by Counsel for Petitioners. Also only 12 bullets were found - vide first B report and not 13 as mistakenly stated in the objections. Objections were filed whilst the information books were not available to the 1st and 2nd Respondents.

(i) There has been no infringement of any of the Fundamental Rights of the Petitioners. Counsel submitted that the 1st and 2nd Respondents have been unable to present themselves before promotion Boards because of this case and asked for costs.

## CONCLUSIONS

[A]

**The question whether the Petitioners were on the public road participating in the commission of prohibited acts under Elections laws when the police arrived.**

The burden of proof to show an infringement of their fundamental rights lies with the Petitioners. The record of entries made by inquiring officers, and their statements and reports have been recounted in detail as have the submissions of Counsel. The repetition of some facts at this stage also is unavoidable and has to be endured.

A vital matter the Court has to address its mind to at the threshold of the decision making process in this case is whether this Court is satisfied that the Petitioners got to the scene where election offences were being committed after the police as they all say, consequent to receiving a telephone call to the cellular telephone in the van in which they were travelling or whether they were there before the police !

There is no dispute that the police got there consequent to a direction from the ASP. In regard to the Petitioners claim there are the following circumstances:

(a) Some helpers had had their dinner at Anura Bastian's house that night. They also took meals to other workers and helpers that night. Helpers Mangaleswaran and Thiruchanderan did so at midnight - They went to Ratmalana with dinner packets - vide P6 and P7 also Nirmalan says he hired 4 vans to take workers to Ratmalana. This suggests - that people involved in Bastian's election campaign knew that workers were hard at work at Ratmalana at midnight. Chandrakapila and Gomez in their affidavits P14 and P16 admit going to Bastian's house at about 7 p.m. being given dinner there and with several others being transported to Galle Road Ratmalana to paste posters. Belekkade junction is in Ratmalana. Therefore it can safely be inferred, that these Petitioners knew of the activity of their workers at Belekkade junction at around midnight. Petitioner Thavarasa being a lawyer should have been aware of the provisions of the Parliamentary Elections Act - viz - the prohibition against pasting posters in places where the public have a right of access. Thavarasa is specifically retained to overlook Bastian's election campaign situations. Can such a person say he was only made aware of a crowd at Belekkade junction by a telephone call? Or is it not much more likely that Thavarasa and his companions well knew beforehand that posters were to be pasted on the road at Ratmalana and he was at hand to supervise whilst his workers were engaged in unlawful activity. It is not denied that posters were indeed pasted by Bastian's campaign workers that night.

(b) Coupled with above there are the affidavits of 1st and 2nd Respondents that Thavarasa on being challenged stated -Quote- "What is the law prohibiting the pasting of posters?" This suggests that Thavarasa participated in pasting posters in some way.

(c) The serious contradictions in the Petitioners case regarding the denial that the pistol was in the waist of Ramanathan; viz: Ramanathan says the pistol was in a bag with money in the van, whereas K.A.Sumith Nanayakkara says the pistol was under the carpet near the front seat - vide P5. These contradictory versions do not seriously challenge the 1st Respondent's narrative that the pistol was in Ramanathan's waist. If he was standing on the road with his helpers at midnight participating in committing offences and he owned a pistol for his safety, it is not improbable that he had his pistol at hand.

(d) Several vans have taken workers and their meals to Ratmalana. There were nearly 50 workers with all the necessities required for the job at hand. Would they not need some supervision and advice and some protection in the middle of the night? It is obvious that the operation of pasting posters was to be kept secret perhaps both from the public authorities as well as the supporters of Tyrone Fernando of Moratuwa the other UNP candidate close to whose territory Ratmalana was. Therefore they chose late night. In such circumstances it is natural to have supervisors. *i.e.* - someone accountable to the candidate. ASP Kulatilake saw people committing election offences, why did he not stop and challenge them and call for assistance? He goes home. Is it that he did not wish to interfere with the ruling party? This conduct is significant when considering his subsequent conduct.

(e) In all the above circumstances taken together, the Court has serious doubts in regard to the Petitioners version that they reached the scene after the police. It could well be that Petitioners also went to listen to the meeting at Moratuwa earlier that evening. But Belekade junction is proximate enough to Moratuwa so that the Petitioners had an opportunity to have got back to Ratmalana long before the police. In view of the above, the supportive material contained in affidavits filed on behalf of the petitioners that the police were there before the Petitioners got there is unconvincing and is suspicious. The only alternative version before the court is that the 1st and 2nd Respondents with a police party upon proceeding to the scene, found a large crowd of about 50 people committing elections offences. They had to use some force to bring things under control as they were empowered to do. The three Petitioners were among that crowd of persons.

It is the contention of the Petitioners, that the note made regarding the arrest was made only at 2.30 a.m. at the police station - 1R1 - and that by that time the Petitioner had been protesting at the purported assault on their supporters having come upon the scene after the police, and objecting to their arrests which angered the 1st Respondent and his subordinates and resulted in an attempt being made by the 1st Respondent to falsely implicate the petitioners, not only with elections offences but also with obstruction and intimidation and

attempted murder charges whilst at the same time stealing their money Rs: 82,000/-.

Looking at this submission, one has also to keep in mind the state of things at the time. Between 00.20 hrs: and 2.30 hrs: on 8/8/94 a crowd of above 50 persons had to be prevented from committing prohibited acts, apprehended, herded into their own vehicles with all the materials used by them to commit offences and brought to the police station. All the while there appears to have been a shouting match between these petitioners and the police. The ASP is informed. He comes. Mr. Anura Bastian and Mrs. Thavarasa come and there is much talk. In the circumstances the 2.30 a.m. entry in 1R1 can be regarded as a contemporaneous entry setting out the circumstances of arrest.

The Court is of the view that the case sought to be made out by the Petitioners is highly unlikely. No investigation whatever has been made by the CID regarding the loss of cash. Considering all these circumstances the Court sees no sensible compelling reason to suspect or reject the Respondents version that the Petitioners were among the crowd committing elections offences on the road at midnight when they got there. The Court accepts the Respondents version on this matter. The petitioners have failed to prove this important matter that the police had reached the scene before them and were assaulting their workers and that they came there later.

[B]

**The question whether the arrests of the Petitioners was lawful.**

The protection afforded by article 13(1) is the protection against unlawful arrest and the recognition of the individuals right to know the true reason for his arrest. Thus the court has to consider whether the arrests were lawful. The offences complained of against the Petitioners as reflected both in 1R1 and in the body of the first B report filed were for committing prohibited acts under the elections laws besides intimidation, obstruction and attempted murder. At this point I will only be dealing with the allegations of elections offences, obstruction and intimidation. The allegation of attempted murder will be considered later in this judgment. Counsel for Petitioners argued that the offences

of voluntary obstruction of a public servant from doing his duty and criminal intimidation were not made out on the Petitioners version of the facts, viz that the petitioners, finding the police at the scene made verbal protests which did not amount to obstruction and/or intimidation and that therefore the arrests were unlawful. But the court is of the view that the case law cited in support of this contention can be distinguished upon a proper view of the events of that night. It is obvious that it was the pasting of posters on the public road that attracted the police. The ASP informed the 1st Respondent of it - vide first part of 1R1-which the ASP admits and which the 1st Respondent found happening when he reached the scene and which he ordered to be stopped; that is the point at which the police intervened and used force. It is the pasting of posters which was the primary offence committed and for which the culprits were arrested. All else stem from that initial unlawful act. The police went there to prevent it and in so doing took everyone into custody. Thus when in the objections of the Respondents, it is stated at paragraph 12 that the arrest was made in respect of the offence of attempted murder and offences under election laws, it merely restates the fact that both those offences are cognisable offences wherein the police have the power to arrest without warrant, unlike the other offences averred, and both were committed in the same transaction. The fact that mention of attempted murder is made makes no difference to the view of the Court that the arrest was primarily to prevent prohibited acts being committed under elections laws.

Section, 74(1) (b) of the Parliamentary Elections Act No.1 of 1981 prohibits the display of posters in a place where the public have a right of access. Section 74(1) (e) of the Act provides for punishment - fine or imprisonment or both. Section 74(4) of the act provides that it is a cognisable offence when an arrest can be made by a police officer without a warrant. Thus, the 1st and 2nd Respondents could have lawfully made the arrests they made, in the manner in which they were made. The above were the enabling provisions of law under which the police could have properly acted, and the police say the Petitioners were participants in the commission of that offence, the leaders of that group.

The police are required to make an assessment of a factual situation and take necessary action. Here there is no question but that

the police had to take the action they took. Thus the physical act of arrest is lawful and justifiable. There has been no infringement of Article 13(1) of the Constitution affecting the rights of the Petitioners on this ground.

The next question is whether the right of a citizen to know or to be told of the reason for depriving him of his freedom at the time of arrest or so soon after has been avoided. Petitioners complain they were not informed as to why they were arrested. Counsel spent much time on this matter in their submissions. They cited *Corea v. Queen* (*supra*) and *Uparis v. Robert* <sup>(3b)</sup> Has the true reason for the arrest been intimated to the arrestees? In the instant case the perpetrators of a prohibited act have been caught red-handed. The offenders were caught on the road in *flagrante delicto*. Observations of Lord Simonds in *Christie v. Leachinsky* <sup>(3c)</sup> are apt and applicable to the instant situation. Quote ..... " It is clear that the constable has not been guilty of an illegal arrest if he reasonably suspected that murder had been done. Again I think it is clear that there is no need for the Constable to explain the reason for arrest if the arrested man is caught red - handed and the crime is patent to high Heaven..." I am in respectful agreement with this statement of the law which is the same in Sri Lanka as it is in England in this area. Again, it is found that Gratiaen, J. has approved of this same proposition in *Corea v. The Queen* <sup>(2)</sup> Quote .... " a police officer acts illegally if he arrests a man without a warrant on a mere unexpressed suspicion " that a particular cognisable offence has been committed - unless ofcourse " the circumstances are such that the man must know the general nature of the offence for which he is detained or unless the man himself produces the situation which makes it practicably impossible to inform him..." The version of events narrated by the police which the Court accepts combine the observations of the learned judge quoted above. The Court is therefore satisfied that there has been no infringement of the rights of the Petitioners as contained in the second part of Article 13(1) either.

[C]

**Scope of Section 116(1) of the criminal procedure code, and consideration of Article 13(2)-the allegation of unlawful detention.**

I now turn to the contention of the Petitioners that, even if the arrest was justifiable under the election laws, (although they contend

that the arrest was unlawful) still such offences were bailable being the offences of obstruction and intimidation, and the police being empowered by section 116(1) of the Criminal Procedure Code to grant bail, did not do so but instead, produced the petitioners before the JMO Colombo South for medical examination whilst in custody and thereafter kept them in further detention until 11 a.m. on the same day. The police then did not object to bail in respect of Thavarasa and Balachandran and the Court granted bail. They were thus detained in custody for a time longer than necessary. It was contended that the police are obliged to release persons in custody accused of bailable offences as soon as reasonably possible. Here those inquiries were over by about 7.30 a.m. when they were taken to hospital ; the police inquiry notes having been made and the suspects, statements recorded etc. There was thus, according to the contention of Counsel for Thavarasa and Balachandran, an infringement of their rights protected by article 13(2) of the Constitution (ie) freedom from unlawful detention. The above submission was made on the further contention that the charge of attempted murder was false and therefore ought not to be taken into account in ascertaining whether there was an infringement of Article 13(2).

The first answer to this question is that the empowering section viz: section 116(1) of the Criminal Procedure Code is directory and not imperative or mandatory. Despite its language there lies a discretion with the police to produce a suspect before a Magistrate instead, depending on the circumstances of the case. For example, the suspect may have received serious injury from some other unknown cause, may be even self inflicted wounds, where a Magistrate ought to be informed of the case. Again, the suspect may be physically or mentally unable to cope with freedom and needs assistance. The law thus keeps the matter open to enable the police to deal with different situations. I have held in *Tunnaya alias Gunapala v. OIC Police, Galewela*,<sup>(4)</sup> that where an offence is bailable, it is permissive for a police officer, acting in terms of section 116(1), to take security from a suspect for his appearance before Court. An examination of the provisions of sections 38 and 39 of the Criminal Procedure Code support this view. Section 38 requires an OIC in charge of a station to report to Court all cases of arrest without warrant whether admitted to bail or otherwise. Similarly, Section 39 of the code stipulates that a person arrested

without a warrant shall not be discharged (from custody) except on his own bond or on bail or **under the special order in writing of a Magistrate**. An interpretation which narrows the scope of this section, which is a pivotal point in an investigation, ought not to be adopted. Such an interpretation could also expose the police to allegations of abuse or misuse of power. A discretionary act by a police officer at this point would better promote the ideal of good judgment by a responsible public officer upon a proper consideration of relevant data reflecting good faith, rather than an interpretation which compels a police officer to grant bail even against his good sense without taking into account surrounding circumstances. I hold that the powers contained in section 116(1) aforesaid are discretionary and that the 1st Respondent could have, instead of granting bail himself to these petitioners who he says were the ringleaders, decided to produce them before a Magistrate. Other relevant considerations which justified the 1st Respondent's refusal of police bail were numerous. For Example:

(i) The Petitioners complained of police assault-*vide* statements of the Petitioners recorded at 4.30 a.m. by SI. Bandara in the GCIB II of Mt. Lavinia police PP:144, 146, 148, 149, and signed by them, and the notes of ASP-1R2. In the face of such a recorded complaint against the police it is plain good sense to produce suspects for a medical examination promptly. If police bail is granted to such a suspect, he is being given a tool, an opportunity, to fabricate evidence against the police.

### **The offence of voluntary obstruction of a public servant.**

(II) The Petitioners were treated by the 1st and 2nd Respondents as organisers or ringleaders and that was the distinction made as against the 49 others arrested and given police bail. Those 49 were treated merely as workers or helpers who actually pasted the posters given to them by the organisers. The question is whether the evidence justifies this distinction. To answer that we go to the notes made by the 1st Respondent recorded in the Election Information Book at 2.30 a.m. and produced as 1R1. Referring to the protests raised by the Petitioners at the scene on the road after midnight, while the police were preventing the commission of prohibited acts under election laws,

Petitioner Ramanathan Sathasivam threatened thus" ...quote..." From which police are you. If you become too active you will be sent to Jaffna. Yesterday we drove away SP. Ignatious. We are UNP'ers, Anura Bastian' people. Why can't we paste posters. We are working for the government. We know the President and Prime Minister very well. Therefore your coat will be removed and you will be transferred to Jaffna immediately. At that time Attorney at Law Thavarasa said ....quote.... "What is the law that prohibits pasting of posters.... do you want us to get permission from A.S.Seneviratne (DIG)? if you get too officious you will be sent to Jaffna,... You will be dismissed from service. Sathasivam Balachandran said ... quote..."..You cannot stop us pasting posters...I know His Excellency and the Prime Minister ... If you talk too much you will be sent to Jaffna... You will be dealt with."

The above, if true shows a massive obstruction to public officers. These are not mere words of protest. They are words of intimidation, threat to employment, threat of transfer to a war zone, clearly intended to deter a police officer from doing his lawful duty of preventing election offences being committed, words likely to dissuade, to hinder or prevent a public servant from doing his duty. These words uttered on the public road in the company of about 50 of their helpers amounts in my view to offences punishable under section 183 and 486 of the Penal Code. Case law cited by Respondents Counsel, to wit: *Police Sergeant v. Razak*<sup>(5)</sup> which held that "words may be as potent as physical acts" and *Police Sergeant v. Simon Silva*<sup>(6)</sup>. Which held there is "voluntary obstruction" when "the interference complained of hinders or is likely to deter an officer from discharging his duty" are to my mind on all fours with the evidence of obstruction in the instant case and should be adopted. The case of *Muthusamy v. Kannagara* (*supra*) can be distinguished and is inapplicable to this case, as that case dealt with an attempt to search premises without a search warrant so that the police officer was acting unlawfully and the prevention of such a search by asking the officer to get out of the premises was not regarded as words sufficient to constitute an obstruction of a public servant. The words attributed to each of the Petitioners shows them acting in concert with a common attitude and frame of mind using common intimidatory language. Thavarasa the Attorney, says "why can't we paste posters?" This supports the view that he had to impress

his men that he was looking after their interests. Thus we have a situation where the police are not playing their normal role of investigating the complaints of disputing parties. Here they are one of the parties to a dispute and they have in the lawful exercise of their powers arrested the other party. In these circumstances, in the face of an allegation of assault too, the police wisely produced the disputing party, disputing their arrest, before a Magistrate. The police have acted quite properly in these circumstances and *prima facie* a case of obstruction has been made out. In this back-ground I get on to the Petitioners' contention of unlawful detention resulting in an infringement of Article 13(2) of the Constitution.

### **The allegation of unlawful detention:**

Procedures regarding detention vary with the relevant law governing the arrest. (eg) for offences under the normal law the criminal procedure code would apply whereas if the arrest is under emergency regulations or other special laws, the provisions operative under those laws or regulations would apply: The prescribed period of detention following arrest under the Parliamentary Elections Act is governed by the Criminal Procedure Code and is the outer limit within which the **arrestee must be brought before a Judge**, That is the essence of this sub-article and is one of the checks the law provides to protect the freedom of the individual --see *Selvakumar v. Devananda*<sup>(7)</sup> and *Kumara vs. Rohan\_Fernando*<sup>(8)</sup>.

There are dicta in some decisions suggesting that if Article 13 (1) is violated because the arrest is 'illegal' or 'unlawful' it follows that Article 13(2) is violated and that if the detention is excessive in the sense that it was very long simpliciter -there is a violation of Article 13(2). In *Mahinda Rajapakse's case - S.C. Application No.2/93, SC Minutes of 31/03/94*<sup>(9)</sup> I held that the Petitioners had not been arrested according to procedure established by law and that their arrests were violative of Article 13(1). However I rejected the submission of Counsel that a violation of Article 13(1) necessarily resulted in a violation of Article 13(2). I held that while detention is integral of the act of arrest Article 13 (1) is concerned with what the persons making the arrest do, whereas Article 13(2) is not concerned with the lawfulness of the arrest but with the question of ensuring "the containment of executive power".

By requiring a person arrested to be brought before a neutral person, namely a Judge, Article 13(2) seeks to ensure that persons are not detained arbitrarily by persons like police officers who perform executive functions. In that case I held that even though Article 13(1) was violated, Article 13(2) was not violated. In the instant case the arrest has been lawful. The view that questions of "unlawfulness or illegality of the arrest resulting in a violation of Article 13(1) is irrelevant in deciding whether article 13(2) has been violated" was also stated by Goonawardene, J. in *Faiz v. A.G.*<sup>(10)</sup> It was held that it was unnecessary to -- quote "characterise any action that does not conform to the provisions of Article 13(1) as an **illegal arrest**". It is my view that the refusal by the 1st Respondent to grant bail was justifiable. It is seen that even ASP Kulatilaka in his note has stated that the question of bail is being considered -vide his notes at -1R2 just before the [7AM] entry when he says he was informed of the attempted shooting. It is my view for the reasons given in this part of the judgment, that detention until 11 a.m. was not arbitrary but justifiable in the circumstances. There is therefore no infringement of the provisions of Article 13(2).

[D]

### **Challenge against allegation of attempted murder**

The Petitioners challenge this allegation made more specifically against S.Ramanathan by the 1st and 2nd Respondents upon the facts, as being false, malicious and revengeful. The Petitioners contend that such a thing never happened and complain that it has been added to counter the allegation of theft of Rs. 82,000/- made against the police, as a means of refusing police bail and keeping S.Ramanathan and the others in custody on remand as punishment, thereby depriving them of their freedom and causing an infringement of their rights protected by Article 13(1).

Petitioners' Counsel have had at the forefront of their submissions, the contention that it was this pretext, this false allegation upon which the arrest of the Petitioners and their continued detention was sought to be justified by the Mt. Lavinia Police.

I have already held in this judgment that the arrest, on the evidence, certainly shows it could have been made, and was indeed

made for the commission of elections offences and that the detention was justified in the circumstances without the grant of police bail. In the result, any finding on the allegation of attempted murder, which really is a matter for a trial Court, will not affect the decision of this Court regarding Article 13(1). Petitioners' Counsel have advisedly chosen to present their case contesting the allegation of attempted shooting as the starting point for unlawful arrest and detention.

In view of this contention it behoves the Court to consider the arguments on this matter. The Court has therefore to look at, not only the conduct of the Mt. Lavinia Police but also all other consequential events that took place, including the investigations by the Interpol division of the CID, the contents of the second B report presented to court, the productions and the Analyst's Report and the steps taken by the Mt. Lavinia Magistrate and his orders, as all of this presents a composite whole in regard to this aspect of the case.

Petitioners arguments have been presented on the premise that the 1st Respondent divulged to the ASP this matter of an attempt to shoot at him for the first time only at 7 a.m. on 8.8.94, but that the 1st Respondent had an opportunity from 01.15 a.m. that night of informing his superior officer of such an important matter when the ASP visited the station but which he failed and neglected to do. Therefore the 1st Respondent's assertion is belated, untrustworthy and in fact palpably false, as in the meantime, petitioner S.Ramanathan had accused the police of stealing his money. This accusation had been made to the ASP by Ramanathan long before even his statement was recorded at 4.30 a.m.

We therefore have to look at both entries in 1R1 i.e. the 00.20 a.m. entry and the later entry at 2.30 a.m. the ASP's notes at 1R2, Anura Bastian's letter to DIG/CID-3R1 and CI Upasena's inquiries and report P3.

1st Respondent's entry at 2.30 a.m. on 8.8.94 in 1R1 contains the alleged event of Ramanathan being dressed in a sarong and shirt pulling out a pistol from his waist and pulling the trigger when 1st Respondent was seeking to prevent the commission of prohibited acts under election laws. 1st Respondent grappled with Ramanathan, dis-

armed him and brought him under control. As against this, ASP Kulatilake's notes commence at 01.15 a.m. on 8.8.94-vide 1R2. It refers to a visit by Anura Bastian to the station at 2.00 a.m. in the company of Mrs: Thavarasa asking for bail for his men; it also refers to a telephone call being received from C.V. Gooneratne at 02.15 a.m. who had informed that Anura Bastian's workers had been arrested for pasting posters on the road and that they had attempted to shoot police officers and requested him to act according to law. The note continues and states that he (ASP) will consider grant of bail if possible. Then an entry of the time [07.00AM] in brackets, followed by a note that the 1st Respondent informed him that when he was seeking to arrest the crowd of persons (pasting posters),

.....Quote..... Ramanathan attempted to shoot him. This entry in 1R2 is the basis upon which the case for the applicants have been presented. What is of utmost significance however in this entry, and which should be forthwith noted, is that it contains an admission by ASP Kulatilake that the 1st Respondent had told him that it was in the process of taking these persons into physical custody that Ramanathan shot at him." These persons" must in the context mean the persons committing elections offences. So this note contains an admission that the arrest were being made was for committing elections offences. This reiterates and supports the view of this Court, expressed earlier, that the arrests were lawfully made under powers given by the Parliamentary Elections Act Section 74(4) and (5). But what is presently sought to be discussed is the submission of Petitioners Counsel, that it was only at about 7 a.m. and not before, that the 1st Respondent informed the ASP for the first time of the attempt to shoot him. What are the relevant matters pertaining to this submission? We know that it was the ASP himself who first came across elections offences being committed on the road. Instead of confronting the lawbreakers himself, he informs Policemen on duty at Tyrone Fernando's meeting to take action according to law and goes home. Then at 01.15 a.m. on 8.8.94 on information received from the 1st respondent, he goes to the police station. At 2.00 a.m. Mrs: Thavarasa turns up with Anura Bastian and with Ramanathan's gun licence bearing reference No: 320:ක: 11/С 544 marked x- vide-1R2-and P5-statement of Goury Thavarasa to Rohan Upasena --to show that the pistol in police custody is a licensed weapon. Who told her that the

police had taken the pistol into custody is not known. Obviously it had become known to Mrs: Thavarasa before 2.00 a.m. that Ramanathan's pistol has become a significant item of evidence in the ongoing inquiry and she has collected the licence apparently from the Ramanathan household that night. Otherwise her conduct in producing this licence at that time is inexplicable. At paragraph 15 of 1st Respondent's objections he has stated that a large number of persons unconnected with the incident gathered on the road and were witnesses to the incident and that the use of a pistol against the 1st Respondent became a sensational and notorious fact that in a short while it reached the ears of C.V. Gooneratne; so also could it have reached the ears of Mrs: Thavarasa to rush in with licence. At 2.15 a.m. C.V. Gooneratne informs ASP of an attempt to shoot at police officers by Anura Bastian's people committing elections offences - 1R2.

Thus the pistol's licence in the name of Ramanathan and C.V. Gooneratne's telephone call are known to the ASP at about 2.15 a.m. With the confrontation taking place in his presence between his police officers and these people brought to station for committing offences as is evident by 1R2 with Anura Bastian and Mrs. Thavarasa joining in, how can ASP be believed when he says he was not informed of an attempted shooting at the Inspector until the next morning? In the circumstances any normal person would inquire from the Inspector as to whether there was any truth in the information given by C.V. Gooneratne. He has not done that according to 1R2. That is quite unusual conduct. It is now known that five police officers of Mt. Lavinia police have confirmed to CI.Upasena that Ramanathan pulled out a pistol from his waist when challenged whilst persons were committing prohibited acts under election laws. There is also the ASP's own note in 1R2 made by him before his [7.00 Am] entry, that he is considering the grant of police bail at the urgent request of Anura Bastian and Mr. Thavarasa. What was there to consider when the other offences allegedly committed were elections offences, obstruction and criminal intimidation, all bailable. Nor were the petitioners demanding a medical examination for assault on their persons although they had complained of assault. So if he was unaware of any attempt at shooting at anyone, police bail could have been ordered by him for these Petitioners too as he did to the 49 others. If the 1st Respondent refused

bail, he would also have questioned the 1st Respondent as to the reason for his refusal. Something stayed his hand. The only thing that could have deterred him at that point of time, long before morning surely was that he was aware of an allegation of attempted murder being made by the Inspector. All of these circumstances taken together makes ASP Kulatilake's version extremely unlikely, highly suspicious and unacceptable. It would appear that the truth is being suppressed.

In the same vein, SP Paranathala's denial of knowing anything of the allegation of attempted murder until the following morning is also suspicious questionable and quite unacceptable. ASP Kulatilake should have informed the SP of the events at the police station that night involving informations of trying to shoot police officers, which at least according to his own admission he had got on the telephone. Paranathala lived next door to the Police Station.

His denial being unacceptable it seems more likely that the truth is being suppressed by the ASP and the SP Messrs: Kulatilake and Paranathala. Their conduct is unnatural and does not inspire any confidence in their credibility.

This Court is unable to accept their position that they knew nothing of an attempted murder allegation until the following morning. In the result the Court is of the view that the 2.30 a.m. entry of the 1st Respondent containing information of an attempt to shoot at him was a prompt contemporaneous entry made in the course of inquiries and is not belated and that this matter with a pistol was known to everyone at the police station that night.

The ASP examined the production pistol and cartridges with the reserve officer and noted that one cartridge bore indentations as if the firing pin of a pistol had struck it. These productions had been handed over to CI. Upasena. CI. Upasena took away the police books at Mt. Lavinia and therefore new books had to be opened.

Details of the investigations done by the Interpol Division of the CID have been particularised in an earlier part of this judgment. That investigation deserves special mention. The documentation produced -3R1- begins with handwritten orders being given by former DIG/CID

Amarasena Rajapakse on an undated letter written by Anura Bastian. There is mention of orders coming from the IGP but no document showing such an order has been produced. Who or why the International division (Interpol) was chosen for this task is not divulged to the Court. SP Othnapitiya and CI Upasena are harnessed for the task. Ordinarily one would expect the higher administrative authorities of the police department overlooking the work of a police station or division to initially look into complaints against the police. This was not done. In this case this mysterious step of involving Interpol has been taken. One would have thought that Interpol would have been better employed looking for "Carlos" rather than looking into the misdeeds of a suburban police station in this country. Mr. Wikramanayake submits that it was to ensure that obliging police officers would submit a report to court so as to enable the grant of bail to Petitioner Ramanathan forthwith.

The inquiries of SP Othnapitiya commence at 9.05 a.m. on 8.8.94 into allegations that Mt. Lavinia police have not done an impartial inquiry. At 10.45 a.m. -3R3- Othnapitiya meets SP Paranathala and ASP Kulatilake of Mt. Lavinia. According to these two officers, HQI Mt. Lavinia had not informed them of the alleged attempted murder incident until that morning although HQI had met the ASP. This then was the crux of the matter supposedly being inquired into.

At 1.45 p.m. -3R4- Director CID allegedly telephoned Othnapitiya and informed that "...quote... the IGP has directed DIG/CID to file a report in Court on the basis of the material as it is strongly suspected that HQI Mt. Lavinia has fabricated evidence against 3 persons, namely Ramanathan and two others implicating them in a case of alleged attempt to shoot"..."and that the CID is conducting detailed inquiries ... and will submit a report on completion of investigations.. and that .. the CID has no objection to releasing the suspects on bail." No documents to prove that the IGP in fact made these orders or that Director CID did in fact give the aforesaid orders to Othnapitiya have been produced for the scrutiny of the Court. Again the report filed in Court upon the order contained at 3R4 above is the report of CI. Upasena marked P3 setting out the "basis of the material". It merely says that the CID is conducting a wide investigation at Mt. Lavinia Police Station but only sets out that - ASP Jayantha Kulatileke has made a

statement and that "according to the evidence so far collected" facts to show that there has been any attempted murder or threats by aiming a pistol have not been revealed beyond reasonable doubt... Therefore I move that the suspects Thavarasa, Balachandran and Ramanathan... be discharged on bail..." The contents of P3 are spurious. The only evidence referred to is a statement of ASP Kulatilleke. No other evidence suggesting any fabrication is revealed. Therefore there was quite insufficient ground to either file a second B report or state that the allegation of the HQI has not been supported beyond reasonable doubt. In fact, as stated earlier, 4 other officers of Mt. Lavinia Police have supported the HQI as is divulged in the later report P5 filed by CI. Upasena. Again, according to report P3, it is the CID that moves for the discharge of suspects and that they be given bail. This is quite abnormal conduct by the CID. This is obviously meant to countermand the application of the HQI in the first B report. Is the Interpol Division of the CID appearing on behalf of the suspects? Between 9.05 a.m. and 1.45 p.m. the CID have done their investigation and decided to move for bail in respect of the suspects. This supports the 1st Respondent's complaint of massive obstruction by the Petitioners on the road and at the police station-conduct propelled by political clout. Mr. Wikramanayake submits that the entire CID operation has been fraudulent. Certainly he has good reason to say so. There is also the fact that no serious inquiry has been made by the CID in relation to the allegation of theft of cash Rs:82,000/- by the Mt. Lavinia police which they deny. Was that allegation a red herring?.

The Magistrate holds that the 2nd B report produced shows that there is no evidence to support the fact stated in the first B report in respect of 1st suspect (Ramanathan) and he orders bail to Ramanathan in a sum of Rs: 2500/- cash/certified bail. It is noted that the only material filed before the Magistrate contra the 1st Respondent's B report is a reference to a position taken by the ASP. No other material was placed before the Court. No evidence or affidavit of the ASP was placed before Court. No information from the HQI's Information book entries have been revealed. The fact that [7a.m.] is highlighted in 1R2 has not been revealed; No reference to the evidence of other police officers of the Mt. Lavinia Station supportive of the HQI has been made. No information that C.V. Gooneratne informed ASP at 2.15 a.m. that there has been an attempt to shoot police officers (as in 1R2) has been revealed.

Nor have the contradictory positions of Ramanathan and his helpers as to where in fact the pistol was in the van been referred to in P3.

The Magistrate has merely preferred the contents of one report to that of the other. Had he asked HQI Mt. Lavinia (1st Respondent) for his views about the Interpol report, he may have been told that it is quite unreliable upon all the circumstances, unfair, and suggestive of an unwarranted interference with the course of justice, which may have impelled a Magistrate acting judicially to reject the contents of the second B report or have it inquired into.

Taking all of the above features and all matters set down in this part of the judgment into account, the Court is not impressed with the denial by the Petitioners of the 1st Respondent's allegation of an attempt to shoot at him. The Court is unable to hold that the 1st Respondent has not done an impartial inquiry or that he has fabricated evidence against Ramanathan in particular. If the pistol was in the van, the HQI would not know to whom it belonged or who possessed it. The mere fact that Mrs. Thavarasa produced the licence at about 2a.m. and that licence was in the name of Ramanathan, does not mean that Ramanathan brandished it. No particular reason is given or suggested as to why the HQI picked on Ramanathan to foist a false allegation of improper use of the pistol. The conduct of all three petitioners amounts to obstruction and intimidation claims the 1st Respondent. All of these factors militate towards a conclusion that the HQI is speaking the truth and no more. In the result the Court holds that the allegation of the Petitioners of partiality and fabrication of evidence upon which a false arrest was made has not been proved. There was therefore no infringement of the rights of the Petitioners of unlawful arrest on this ground.

[E]

This really concludes this order. However there are a few other matters that need be mentioned. CI Upasena produced a parcel containing the pistol, one cartridge "suspected to have been struck by a trigger" and live cartridges and magazine case before Court. Attorney at law Kumarasiri appearing for the present Petitioners who were the suspects before that Court, stating that the pistol had not been

sealed but forwarded to the CID, and moved that the productions be kept in special custody of Court and sent to the Government Analyst for report. To this request, the Magistrate, stating that.....they cannot be kept in the Court house quoted a JSC circular to that effect, and made order that the productions be sent to the CID through CI Upasena to be sent to the Government Analyst. There is no material to show that the parcel was opened and checked by the Court as it should have been, nor were the Court seals put on the parcel. By this means, Mr. Wikramanayake pertinently submitted, "the jackal was put in charge of the chicken coop". The JSC circular referred to JG 44/1 was issued on 8th September 1983 consequent to the extreme communal unrest in Colombo and the burning of the Mount Lavinia Magistrate's Court. It directed that - all firearms, explosives and ammunition "in the custody of the Court" be handed over to the police after making necessary entries in the relevant registers. Such productions had hitherto been kept in safe custody by the Court and the Court had to take steps to ensure safe custody of guns and other firearms, explosives and ammunition. On receipt of productions, section 27(1) of the Judges Manual required the production clerk to enter the productions in separate productions registers and see that they were well tagged with the production labels and sealed where necessary. Particulars such as the case number assigned to it has to be noted. The circular was redistributed in June 1987. It required that the handing over of productions to the police be done after making the necessary entries in the relevant registers. So once Upasena handed over the productions to Court, section 27(1) aforesaid should have been followed and the contents noted in the register, the productions labelled, tagged and sealed and the sealed productions containing the Court seals could have been handed over to the police. There is no material whatsoever to show that all this was done. Rather, the parcel produced by Upasena was handed back to him to be taken to the Government Analyst. In the circumstances of this case it would have been preferable if the Magistrate had not handed back the production parcel to CID. The analyst's report P10 throws no light on this either. Thus the finding of the Analyst - vide-P10 - that the cartridge bearing indentations made by the striking of the trigger pin has not been made by firing the production pistol is, according to Mr. Wikramanayake, not a significant fact in this case. Viewed in the background of the many unsatisfactory features found in report P3 as well as that we do not

know if in fact the unfired cartridge with indentation taken from Mount Lavinia Police was identical to that examined by the Analyst, the Court is not able to come to any conclusion on this matter and therefore the Analyst's finding does not militate against the 1st and 2nd Respondents.

## **FINDINGS AND JUDGMENT**

**[F]**

Learned Counsel for the 1st and 2nd Respondents brought to the notice of Court that these Respondents were only doing their duty as public servants according to law. They have, by these applications suffered much mental stress and strain besides pecuniary loss; their promotional prospects too have been jeopardised in that, pending these applications, they were not allowed to present themselves before promotion boards which were constituted; nor were they represented by the Attorney General in the normal way.

**[G]**

Leave to proceed was granted only in respect of the alleged violations of Articles 13(1) and 13(2). This Court is of the view that the Petitioners have failed to prove infringement of their fundamental rights protected by Articles 13(1) and 13(2) of the Constitution. Each of the applications is accordingly dismissed with costs as specified below:

Each of the petitioners shall deposit in Court, on or before 15th December 1995 a sum of Seventy Thousand Rupees (Rs.70,000/-). Out of the total sum of Two Hundred and Ten Thousand Rupees (Rs.210000/-) thus deposited, a sum of Ten Thousand Rupees (Rs.10,000/-) shall go to revenue as costs of the state.

Of the balance, each of the 1st and 2nd Respondents will be entitled to a sum of One Hundred Thousand Rupees (Rs.100,000/-).

**R.N.M.DHEERARATNE, J. – I agree**

**WADUGODAPITIYA, J. – I agree**

*Application dismissed.*