
**ABDUL LATHIF
V
DEPUTY INSPECTOR GENERAL OF POLICE,
NUWARA – ELIYA AND OTHERS**

SUPREME COURT

FERNANDO, J.

YAPA, J AND

JAYASINGHE, J

S. C. APPLICATION NO. FR 244/2002

7 TH JULY, 26TH SEPTEMBER AND 29TH OCTOBER, 2003

Fundamental Rights – Malicious arrest and detention on an allegation of cheating – Articles 13 (1) and 13 (2) of the constitution.

The petitioner was the Chairman of S. F. (Pvt) Ltd. engaged in manufacturing garments. The company had executed an order of garments for BIF (Pvt) Ltd. to the value of Rs. 10 Million at which stage there commenced an acute industrial action at the petitioner's company. The petitioner was threatened by the workmen allegedly on the instigation of a powerful politician. The petitioner complained to the 2nd respondent SSP, Nuwara – Eliya where upon he was directed to appear at the Nuwara –Eliya Police station. DIG, Nuwara Eliya (1st respondent) SSP (2nd respondent) the ASP (3rd respondent) HQI Nuwara Eliya (4th respondent) and his subordinates at the Nuwara Eliya Police station were made parties to this application besides the IGP and the Attorney – General.

At that stage, the petitioner had also obtained an interim order from the District Court against the workmen creating disorder at the factory. On 03. 04. 2003 when the petitioner appeared at the Police Station, he was informed that there was a charge of cheating againsts him. The charge was that a cheque which he had issued to BIF (Pvt) Ltd. had been dishonored. It happened as it had been presented prematurely against instructions. An attorney-at-law representative of the complainant company met the 4th respondent and informed that it was a civil matter which had been since settled.

The 4th respondent said that the petitioner will be produced before the Magistrate the next day. But the petitioner was produced before the Magistrate at 8.00 p. m. on the same day with a misleading report and was remanded until 04. 04.

2002. The next day the attorney-at-law for the virtual complainant and the complainant Ramani Weeraratne appeared and informed court that the matter had been settled and sought to withdraw the complaint. The petitioner even complained to the Prime Minister for help.

The petitioner's version was also supported by the affidavit of his attorney – at – law and Ramani Weeraratne's statement to the court.

Held:

1. The 4th respondent HQI Nuwara – Eliya had arrested and produced the petitioner before the Magistrate on false grounds. There were no objective grounds of suspicion against the petitioner.
2. By such arrest and consequent detention, the 3rd and 4th respondents and the State infringed the petitioner's rights under Articles 13 (1) and 13 (2) of the Constitution.
3. The 3rd and 4th respondents were personally liable for payment of compensation on the ground of such infringements in addition to the liability of the State.

Cases referred to :

1. *Senaratne V A Punya de Silva* (1995) 1 Sri L R. 272
2. *Channa Peiris V Attorney – General* (1994) 1 Sri LR 1
3. *Faiz V Attorney – General* (1995) 1 Sri LR 372

APPLICATION for relief for infringement of fundamental rights.

Chandana Premathilake for petitioner.

K. A. P. Ranasinghe, State Counsel for 2nd to 6th respondents.

December 5, 2003.

JAYASINGHE. J.

The Petitioner is the Chairman Smart Fashion (Pvt.) Ltd., of Nanu Oya. At all times material to this application Smart Fashion (Pvt.) Ltd. had

executed an order of garments for Bairdwear Inter Fashions (Pvt.) Ltd. to the value of Rs. 10 million and was awaiting dispatch to Bairdwear Inter Fashions (Pvt) Ltd. At or about this time the workers of Smart Fashion (Pvt.) had resorted to industrial action over the delay in the payment of wages and anticipating the industrial action taking dangerous and life threatening proportions, the petitioner sought protection from the Nanu Oya Police. Since the Police took no steps the Petitioner brought to the notice of the Prime Minister the situation prevalent and also the fact that despite the 2nd and 3rd respondents being informed of the situation, Nanu Oya Police had refused even to record his statement (P2). The Petitioner states that the Additional Secretary, Ministry of Industries had referred his complaint addressed to the Prime Minister (P2) to the Secretary of Defence for necessary action. Further Police Head Quarters too had referred P2 to the 1st Respondent for appropriate action. However no action was taken by Nanu Oya Police. The Petitioner also complained that a powerful politician was behind the unrest created at Smart Fashion (Pvt) Ltd. Since some of the employees were preventing Smart Fashion (Pvt.) Ltd. the Petitioner obtained an interim order restraining the offending employees from interfering with the management of Smart Fashion (Pvt.) Ltd. The Petitioner states that on 03. 04. 2002, when the Petitioner went into a hotel in Nuwara Eliya after attending the District Court, a group of employees who were Defendants in the said application came in and threatened him. Thereupon the Petitioner complained to the 2nd Respondent on the telephone and subsequently three police officers from the Nuwara Eliya Police Station met him and informed the Petitioner that the 4th Respondent had requested him to report to the Nuwara Eliya Police Station. The Petitioner accordingly went to the Nuwara Eliya Police Station around 2.00 p. m. on the same day and instead of recording his complaint he was informed after a lapse of about 2 hours that a complaint of cheating has been made against him and that he will be arrested. It was alleged that a complaint has been made by Bairdwear Inter Fashions (Pvt.) Ltd. that a cheque drawn by the Petitioner has been dishonored by the bank. The Petitioner explained to the 4th Respondent that he has settled all his dues with Bairdwear Inter Fashions (Pvt.) Ltd. and therefore there was no basis for the police to arrest the Petitioner and requested the police to cross check with Bairwear Inter Fashions (Pvt.) Ltd. whether or not all dues have been settled. Nevertheless the 4th Respondent was in no mood to ascertain the factual position as he was acting at the behest of a powerful politician.

The Petitioner thereupon contacted his attorney – at – law and Bairdwear Inter Fashions (Pvt.) Ltd. and requested them to come to the police station and appraise the 4th Respondent in an endeavour to have him released. Accordingly attorney – at – law Mr. Rajapaksa and 3 officers from Bairdwear viz. Ramani Weeraratne, Loganathan Asokkumar and Sellamuttu appeared at the station and informed the 3rd and 4th Respondents that the Petitioner had settled all the outstanding dues and sought to withdraw the complaint made regarding the dishonored cheque. The Petitioner says that the 4th Respondent refused the request. The 4th Respondent produced the Petitioner before the Magistrate around 8.00 p.m. who remanded him till 04. 04. 2002. The Petitioner complains that the Respondents have by their conduct violated the Petitioner's fundamental rights enshrined in Articles 13 (1) and 13 (2) and seeks compensation in a sum of Rs. 100,000/- from the 1st to 7th Respondents. The Petitioner is also seeking an order from this court directing the 7th and 8th Respondents to initiate a departmental inquiry and/ or criminal proceedings against the 1st to 6th Respondents for the alleged violation.

The 4th Respondent filed objections ; stated that a complaint of cheating was made by one Ramani Weeraratne on 15. 03. 2002 that a cheque for R. 392, 868 drawn by the Petitioner in favor of Bairdwear Inter Fashions (Pvt.) Ltd. has been dishonoured. Not once but twice; that the Petitioner could not be found during the investigations either at Smart Fashion (Pvt.) Ltd. or his residence and was evading arrest; that the Petitioner had not paid the salaries and that the factory was closed; that while investigations were proceeding the Petitioner had come hurriedly to the Nuwara Eliya Police Station in order to escape a group of employees who had accosted him in the town; that having realized that he was the person who was wanted in connection with the complaint of cheating the 4th Respondent proceeded to arrest him. The 4th Respondent denies that the three persons referred to above by the Petitioner or attorney at law Mr. Rajapakse ever met him on that day or informed that the Petitioner had settled all the monies due from the Petitioner and therefore wished to withdraw the complaint against the Petitioner. The 4th Respondent contends that there was reasonable suspicion that the Petitioner had committed a cognizable offence which warrants the arrest of the Petitioner. He denies violating any of the fundamental rights guaranteed by the Constitution.

The Petitioner alleges that the 4th Respondent acted maliciously and without due cause in arresting him and thereafter in seeking a remand order from the Magistrate.

The Petitioner contends that since the Petitioner had settled all his dues to Bairdwear Inter Fashions (Pvt.) Ltd. there was no cause for the 4th Respondent to arrest the Petitioner unless he was actuated by malice. Petitioner says that the cheque was issued to Bairdwear Inter Fashions (Pvt.) Ltd. With instructions not to deposit the said cheque for payment till the 22nd October as the necessary funds would be available only after that date. However Bairdwear Inter Fashions (Pvt.) Ltd. in violation of the instructions had chosen to credit the cheque on the 9th which was consequently dishonoured. The Petitioner says that the 3rd and 4th respondents rejected the contention of the Petitioner's attorney that no criminal proceedings could be instituted in the absence of any material to show dishonest intention especially in view of P11 and that it was prima facie a civil transaction. The 4th Respondent denies that any of the persons referred to by the Petitioner or any one from Bairdwear Inter Fashions (Pvt.) Ltd. informed him that all the monies due from the Petitioner has been settled. The 4th Respondent also denies that Ramani Weeraratne or any one else informed him that they wish to withdraw the complaint against the Petitioner. Mr. Rajapaksa in his affidavit P9 has averred that he explained to both the 3rd and 4th Respondents that there was nothing due from the Petitioner and that it was for that reason the complaint was sought to be withdrawn. The 4th Respondent had declined the request by Ramani Weeraratne. When the Petitioner was produced before the learned Magistrate in open court on the following day (04. 03. 2002) attorney – at – law for Bairdwear Inter Fashions (Pvt.) Ltd., Ms. Tilaka Herat had informed court in the presence of the virtual complainant, Ms. Ramani Weeraratne that all dues have been settled by the Petitioner and that she wishes to withdraw the complaint. The Petitioner has on 03. 04. 2002 when he was produced before the Magistrate also told the Magistrate that Bairdwear Inter Fashions (Pvt) Ltd. had sought to withdraw the complaint which the police had refused. This position is supported by P4. Since Mr. Premathilake was vehement in his assertion that the complainant sought to withdraw the complaint before the police and which request the police declined this court called for an affidavit from Ramani Weeraratne the virtual complainant. The said affidavit has been tendered to court and filed of record marked X. The said Ramani Weeraratne has averred that she went to the police

station on 03.04.2002 between 4.00 p.m. and 6.00 p.m. on being informed by the Operations Manager of the company that the petitioner has been taken into custody, with the intention of withdrawing the complaint as the Petitioner has paid the amounts due to the company on the 30th March. She has averred that neither the 4th Respondent nor the police officer who recorded her statement were available at the police station and hence she was unable to withdraw the complaint and left the police station thereafter. It seems that the said Ramani Weeraratne has carefully worded her affidavit to prevent any transgression on the version disclosed by the police. The uncontradicted fact is that Ramani Weeraratne intended to withdraw the complaint. It appears therefore that the position of the Petitioner that the complainants sought to withdraw the complaint is not altogether unfounded. The 3rd Respondent submitted to court that even though the monies have been paid yet the police intended to pursue the prosecution against the Petitioner. The arrest of the Petitioner in the circumstances seemed unnecessary unless actuated by external considerations.

The Petitioner also complains that the 4th Respondent in order to persuade the Magistrate to remand the Petitioner, sought to mislead the Magistrate into the belief that the Petitioner had been absconding; that the Petitioner had on previous occasions too given similar cheques without funds and had committed financial frauds on the employees of Smart Fashions (Pvt) Ltd. ; that he was yet to record complaints regarding those incidents and that the investigations were yet continuing.

In the first instance the 4th Respondent's assertion that the Petitioner was evading arrest is not tenable. According to the Petitioner there was in the Petitioner's factory in March 2002 when the industrial action commenced, finished products to the value of Rs. 10 million and plant and machinery worth 20 million. There was a threat of arson and the Petitioner suspected a hidden hand behind the unrest. The Petitioner has been in touch with the Nanu Oya Police ever since the industrial action commenced and sent P1 to O. I. C, Nanu Oya and P 2 to the Prime Minister pleading for help. The Petitioner consulted his attorney – at-law Mr. Rajapakse who addressed a complaint P3 to O. I. C Nanu Oya. The Petitioner sought an interim order from the District Court of Nuwara Eliya against a group of employees from interfering with the management of Smart Fashions (Pvt.) Ltd., 4 R3 relied upon by the 4th Respondent is proof of such interference. The Petitioner complains that the Police refused to record his complaint but proceeded to record 4R3 relating to

the labor dispute. The Petitioner says that on 03. 04. 2002 when the Petitioner went into a Hotel in Nuwara Eliya after having attended Court, some of the employees who are Defendants in the said case threatened him and he consequently contacted the 2nd Respondent regarding the threats and thereafter three police officers from Nuwara Eliya Police Station met him and required him and the Defendants to meet the 4th Respondent at the police station. The Petitioner went to the Nuwara Eliya Police Station at about 2 p.m. to make a complaint regarding the incident that took place in the Hotel. Police arrested him on an allegation for cheating.

The complaint of cheating against the Petitioner was made by Ramani Weeraratne on 15. 03. 2002 P5. The Petitioner states that only when he reported to the Nuwara Eliya Police station to lodge a complaint regarding the incident that took place at the hotel in the Nuwara Eliya town earlier on the same day that he was told that he would be arrested on a complaint of cheating. Until that moment no police officers had come looking for him and had no notice of the complaint (P5).

If the 4th Respondent says that 6th Respondent went looking for him it was false. The entries of the 6th Respondent are self serving and are designed to mislead the Magistrate to obtain a remand order.

I am satisfied that the 4th Respondent misled the Magistrate into making a remand order by his allegation that the Petitioner had on previous occasions too given similar cheques without funds in the account and that investigations into such complaints are being continued. There is no material placed before court to support the 4th Respondent's contention that the Petitioner has committed similar offences. The allegation that the petitioner was evading arrest and investigations into other matters are continuing must also fail.

The position taken up by the 4th Respondent there was no application to withdraw the complaints is palpably false and unworthy of a police officer on whom the responsibility of acting fairly reasonably and honestly has been discharged and his audacity to blatantly lie before this Court demands that this Court take serious cognizance of his conduct. The attitude of 3rd and 4th Respondents clearly demonstrates that they were being led from behind the stage. Malice cannot be negated.

In *Senaratne Vs. Punya de Silva and others* ⁽¹⁾ Amerasinghe, J. laid down the test to be followed when an arrest is sought to be made without warrant. His Lordship stated: "Were circumstances, objectively regarded- the subjective satisfaction of the police officer making the arrest in not enough – that should have induced the 1st Respondent to suspect that the Petitioner was concerned in the commission of those offences? the suspicion must not having been of an uncertain and vague nature, but of a positive and definite character providing reasonable grounds for concluding that the Petitioner was concerned in the commission of the offences it is of importance that no one should be arrested by the police except on grounds which the particular circumstances of the arrest justified entertainment of the reasonable suspicion." In *Channa Peiris Vs. Attorney General and Others* ⁽²⁾ Amerasinghe, J. stated that reasonable suspicion may be based upon matters within the officer's knowledge or upon credible information furnished to him, or upon a combination of both sources a suspicion does not become reasonable merely because the source of the information is credit worthy. If he is activated by an unreliable informant the officer making the arrest should as matter of prudence act with great circumspection than if the information had come from a credit worthy source." Amerasinghe, J. went on to state "Article 13 (1) could be violated not only by the act of first depriving a person of his liberty in violation of procedure established by law, but also by holding any person in custody of the law during any period unless perhaps the detention is extremely brief and momentary so as to be of a *de minimus* nature when he is deprived of his liberty contrary to the procedure established by law he is under arrest.

In *Faiz vs. Attorney General* ⁽³⁾ the Petitioner was arrested at about 6.30 p.m. 26. 04. 1991 and produced before the Magistrate on the following evening within the prescribed 24 hour maximum period, and remanded till the 29th and released on bail. Fernando and Perera, J J. held that 13 (2) was violated. Fernando, J. explained that in the circumstances of the case the detention was unnecessarily prolonged. In this case the Petitioner complains that the 4th Respondent induced the attorney at law Mr. Rajapaksa to leave the police station on the pretext that the Petitioner would be produced on the following day and sought to produce him before the Magistrate at his bungalow around 8.00 p. m. This is clearly a violation of 13 (2) .

It is my view that the 4th Respondent could not have arrested the petitioner and produced him before the Magistrate especially in view of the fact that he has repeatedly been told that the transaction between the Petitioner and Bairdwear was of a civil nature that in any event the money due has been paid. In those circumstances the question of reasonable suspicion or the credibility of the source did not arise. It appears that the Petitioner was detained at the police station from 2.00 o' clock until he was produced before the Magistrate at his bungalow around 8.00 p. m. There is no cogent reason considering all attendant circumstances that transpired to discount the Petitioner's allegation that the 4th Respondent misled both the Petitioner and his counsel that the Petitioner would be produced before Court on the following day, but sought to produce him after attorney-at-law had departed from the police station. Attorney-at-law, Mr. Rajapaksa in his affidavit P9 has stated that he inquired from the 4th Respondent when the Petitioner would be produced before the Magistrate so that he could make representations to secure his release.

On a consideration of all the material disclosed before court, I am of the view that the 3rd and 4th Respondents have acted in violation of the Petitioner's rights as enshrined in Article 13 (1) and 13 (2).

Accordingly the 3rd Respondent shall personally pay the Petitioner a sum of Rs. 25,000/- as compensation.

The 4th Respondent shall also personally pay the Petitioner a sum of Rs. 40,000/- as compensation.

I also order the State to pay a sum of Rs. 20,000/- as costs.

The 3rd and 4th Respondents and the State shall deposit the above amounts on or before 31. 03. 2004 with the Registrar of the Supreme Court.

I also direct the National Police Commission in consultation with Inspector General of Police to initiate disciplinary proceeding against the 4th Respondent upon charges of misleading the Magistrate into making a remand order and also stating to this court matters in his affidavit which he knows are not true.

FERNANDO. J. -I agree.

YAPA. J. -I agree.

Relief granted.