

CHANDRA JAYASINGHE
v.
MAHENDRAN AND OTHERS

SUPREME COURT.
SHARVANANDA, C.J., WANASUNDERA, J. AND H. A. G. DE SILVA, J.
S.C. APPLICATION No. 86/86.
OCTOBER 22, 1986.

Fundamental rights—Detention under Vagrants Ordinance for loitering—Validity of order—Warrant of detention—Vagrants Ordinance, s. 3, 4, 8—House of Detention Ordinance s. 4—Judicial Order.

The petitioner had been convicted for the second time for loitering at night on a highway without being able to give an account of herself when questioned by the Police (s. 3(1)(c) of the Vagrants Ordinance) and on a report from the Probation Officer ordered to be detained at a State House of detention on a Warrant of Detention (s. 8 of the Vagrants Ordinance). Although the warrant of detention did not specify the period this omission was only an irregularity. The irregularity does not invalidate the Warrant of Detention.

Per H. A. G. De Silva, J.:

"I must observe that Magistrates who issue such warrants of detention should be careful to see that the provisions of the law are complied with and the warrants are complete in every necessary detail".

APPLICATION for infringement of fundamental rights.

Nimal Senanayake, P.C. with *Miss S. M. Senaratne* and *Mrs. A. B. Dissanayake* for the petitioner.

Sarath Silva, D.S.G. with *Mrs. Anusha Navaratne, S.C.* for 1st and 2nd respondents.

November 27, 1986.

H. A. G. DE SILVA, J.

The petitioner has filed this application under Article 126 of the Constitution alleging violation of her fundamental rights guaranteed by Articles 10, 11, 12(1), 12(2), 13(2), 13(3), 13(5), 14(a), 14(b) and 14(h) by the executive or administrative action of the respondents. She has *inter alia* prayed for—

- (a) an order releasing the petitioner from detention, and (b) for compensation in a sum of Rs. 100,000 for violation of her fundamental rights.

The petitioner was apprehended by the Police at Bambalapitiya on 24.1.1986 and charged in M.C. Mount Lavinia Case No. 32646 with an offence under section 3(1) of the Vagrants Ordinance (Cap. 32) in that she was found loitering at night on a highway and failed to give an account of herself when questioned by the Police.

On 5.02.86 she pleaded guilty to the said charge (vide J.E. of 5.2.86 in 1R2) and the learned Magistrate remanded her till 19.03.86 and called for a Probation Report. She was further remanded on 19.02.86 till 4.03.86 and on receipt of the Probation Report the learned Magistrate ordered that the petitioner be detained at the State House of Detention at Gangodawila and issued Warrant of Detention 2R1 to that effect. At the conclusion of the hearing of this application this Court made order directing the Magistrate of Mt. Lavinia to discharge the petitioner from the proceedings in M.C., Mt. Lavinia 32646 and hence the petitioner is no longer in detention.

The Probation Report revealed *inter alia* that she had on a previous occasion pleaded guilty to a charge for a similar offence and had been fined Rs. 5. The 1st respondent has in his Probation Report recommended that the petitioner be detained at the State House of Detention, Gangodawila as she could not be rehabilitated in the surroundings in which she was living. (vide 1R2). The 1st respondent also states that he made his recommendations *bona fide* and in the best interests of the petitioner and the Court was not bound to accept this report.

Learned counsel for the petitioner submitted that the detention of the petitioner by the 2nd respondent, who is the Officer-in-Charge of the said House of Detention was illegal in that he was unable to produce a valid order of detention. It was his contention that 2R1 was not a valid order of detention.

Section 4(1) of the Houses of Detention Ordinance (Cap. 33) empowers a Magistrate to order a person convicted of an offence under its summary jurisdiction, who in his opinion is a vagrant within the meaning of the Ordinance to be detained in a House of Detention until, as provided for in sub-section (2) thereof, she avails herself of suitable employment found for her or until she is removed or discharged as provided for in the Ordinance. Section 2 defines a vagrant for the purposes of this Ordinance but it is quite evident that the petitioner does not fall within this definition.

Section 3(1)(c) of the Vagrants Ordinance however enacts that—

“Every person wandering abroad...and not having any visible means of subsistence, and not giving a good account of himself; shall deemed an idle and disorderly person within the true intent and meaning of this Ordinance, and shall be liable upon the first conviction to be imprisoned with or without hard labour, for any term not exceeding fourteen days, or to a fine not exceeding ten rupees”.

Section 4(a) states that—

“Every person convicted a second time of being idle and disorderlyshall be deemed a rogue and vagabond within the true intent and meaning of this Ordinance, and shall be liable to be imprisoned with or without hard labour for any period not exceeding one month, or to a fine not exceeding twenty rupees”.

Section 8 states that—

“In any case in which the offender against any of the provisions, whether of the last preceding section or any other preceding section of this Ordinance, is a female, the Court may in its discretion direct, both in respect of any imprisonment to which she may be sentenced in the first instance and in respect of any imprisonment to which she may be sentenced in default of a fine, that, instead of being imprisoned in one of the regular prisons of Ceylon, she shall be committed to any house of detention established under the Houses of Detention Ordinance, and there detained until the expiration of her sentence, and sections 5 and 6 of the said Ordinance shall apply to every such person so detained”.

Since the petitioner has been convicted of an offence under this Ordinance for the second time she is liable to the enhanced punishment under section 4(a), i.e. one month's simple or rigorous imprisonment or a fine not exceeding twenty rupees. The Magistrate can under section 8, commit her to any House of Detention established under the Houses of Detention Ordinance until the expiration of her sentence, i.e. up to one month only. Learned counsel complains that since the Warrant of Detention 2R1 does not specify the period for which she is to be detained, the warrant is invalid. There appears to be certainly an irregularity but this irregularity does not however invalidate the warrant and hence the 2nd respondent acted lawfully in detaining the petitioner in terms of the warrant. I must observe that Magistrates who issue such warrants of detention should be careful to see that the provisions of the law are complied with and the warrants are complete in every necessary detail. It behoves the authority to whom the warrants are addressed, to bring it to the notice of the Magistrates when such are wanting and incomplete in any way, so that any errors due to inadvertence or otherwise may be promptly rectified.

The present application is one for the alleged infringement of the petitioner's fundamental rights. As stated by the 2nd respondent in his affidavit, the petitioner was detained at the State House of Detention in compliance with and under the authority of the Warrant of Detention 2R1 issued by the Magistrate of Mt. Lavinia. This is a judicial order and could have been canvassed in appropriate proceedings. I do not think that in the circumstances of this case the petitioner is entitled to relief under Article 126 of the Constitution. I therefore dismiss this application. There will be no costs.

SHARVANANDA, C.J. – I agree.

WANASUNDERA, J. – I agree.

Application dismissed.