

VEERADAS
v.
CONTROLLER OF IMMIGRATION AND EMIGRATION AND
OTHERS

SUPREME COURT
BANDARANAYAKE, J.
FERNANDÓ, J., AND KULATUNGA, J.
S.C. APPLICATION NO. 221/88
SEPTEMBER 27, 1989.

Fundamental Rights – Wrongful arrest and detention – Deprivation of right of freedom of speech – Articles 11, 13, 14(1) (a) and (h) of the Constitution – Immigrants and Emigrants Act, Ss. 41, 45(1) (b) and 46 – Code of Criminal Procedure Act, No. 15 of 1979, s. 32(1)(b), 35 – Section 72 of the Penal Code.

The Petitioner Veeradas was to travel to the United Kingdom at the invitation of a Group of Amnesty International to address the Group on the human rights situation in Sri Lanka. Amnesty International provided the flight ticket. The petitioner had a passport valid for travel to all countries and a single visit visa was issued by the British High Commission. Upon presentation of the documents Airlanka issued a flight ticket and petitioner was booked to fly on Airlanka flight to London on 4.11.1988. On 3.11.86 he presented himself at the Airlanka counter and was checked and allotted seat 34J. His baggage was checked by customs and taken away for loading. His passport was inspected and franked with the departure seal. He then entered the departure lounge and awaited the "boarding" call. At that stage two security officers questioned him and took him back to the Immigration and Emigration office and alleging suspicions of his being a terrorist and of his documents being forged restrained and prevented him from boarding the plane despite the fact that he had a valid passport, a valid visa, his National Identity Card, Airline tickets, and documents to prove the truth of his reason to travel. Further he was not on the National Intelligence Bureau wanted list. The petitioner was taken to the Katunayake Police Station and later produced before the Negombo Magistrate and remanded until 11.11.88 on which day he was discharged as the Police said they were not instituting proceedings. He later made the trip to the United Kingdom on 24.11.88 by an Airlanka Flight. The Seminar date was adjustable around the date of the petitioner's arrival.

On behalf of the respondents it was contended that during the last two years the incidence of passengers travelling on Air Lanka Flights with forged passports and visas or being found at destination airports without travel documents necessitating deportation at the airline's expense and exposure to fines had increased to alarming proportions. There was inconvenience on such occasions to the other passengers and humiliation to the airline. On the petitioner's passport there was a mark like an erasure mark or smudge on page 3 in the space below the photograph; there was also a difference in the first name given in the National Identity Card (Kulanđeivel) and the first name given in the passport (Kulanthavelu) and among his papers there were

documents showing he had been in preventive detention. There was reluctance on his part to answer questions. In these circumstances suspicions were aroused in the background of continuing widespread civil unrest, that the passport may be forged.

Held –

1. The facts show reasonable bona fide grounds for suspicion that the passport was forged, altered or irregular and the action taken against the petitioner was lawful.
2. The use or possession of a forged, altered or irregular passport is a cognisable offence under S. 45(1) (f) read with S. 46 of the Immigrants and Emigrants Act. A person reasonably suspected of committing this offence is liable to be arrested without a warrant under S. 32(1)(b) of the Code of Criminal Procedure Act No. 15 of 1979 by a peace officer or legally detained under S. 41 of the Immigrants and Emigrants Act by an authorised officer.
3. (a) There was no violation of Article II
 (b) As the petitioner was lawfully arrested and detained there was no violation of Articles 13 and 14(1) (h). The freedom of movement guaranteed here is within Sri Lanka and not to leave Sri Lanka.
 (c) Delay in attending the International Seminar is not an infringement of Article 14(1) (a).

Cases referred to:

1. *Wiltshire v. Barrott* [1965] 2 All ER 271, 275.
2. *Thani v. State of Kerala* 1965 KLT 697.

APPLICATION for infringement of Fundamental Rights

A.H.H. Perera for petitioner

L.C. Seneviratne, P.C., with M.A. Bastiansz for 2,3,4 and 9 respondents

M. Samarakoon, S.S.C., with A. Meddegoda, S.C., for 1,5,6,7 and 8 respondents.

Cur adv. vult.

November 8, 1989.

BANDARANAYAKE, J.

This concerns an application for a declaration that the fundamental rights of the petitioner guaranteed by Articles 11, 13, 14(1) (a) and 14(1) (h) of the Constitution have been violated and a claim in damages and costs of action. At the hearing learned Counsel for petitioner confined his arguments to the complaint of wrongful detention and arrest and deprivation of personal liberty in violation of his rights guaranteed by Article 13 of the Constitution and deprivation of his freedom of speech guaranteed by Article 14(1)(c) of the Constitution.

Relevant background facts are as follows : The petitioner K. Veeradas of Kolavil, Akkaraipattu was to travel to the United Kingdom at the invitation of the Islington and Hackney Group of the British Section of Amnesty International to address the Group in a series of talks in their "Sri Lanka Today" Seminar in regard to the Human Rights situation in Sri Lanka and the situation for Sri Lankan refugees in the United Kingdom. These facts are a part of the Petitioner's case and are confirmed by letters P4A to P4C and X2 and X3 being correspondence from Amnesty International in the possession of the petitioner at the time of his arrest.

Consequent to his acceptance of this invitation, Amnesty International provided for his flight ticket. The petitioner applied to the British High Commission in Colombo on 31.9.88 for a visa to visit the United Kingdom presenting his passport (P2). This passport had been issued to him by the Controller of Immigration and Emigration on 8.7.85 and was valid for certain designated countries in the Asian Region. By an endorsement made on 9.8.88 its validity was extended to all countries – vide P2B. A single visit visa was issued to the petitioner by the British High Commission on 31.10.88 – vide P2C.

Upon presentation of documents a flight ticket was issued to the petitioner by Air Lanka Ltd. the 2nd respondent. Petitioner was booked to fly on Air Lanka Flight UL 511 to London (Gatwick) on 4th November, 1988. On 3.11.88 the petitioner says he arrived at the Katunayake International Airport and presented himself at the Air Lanka counter and was allotted seat 34J. His baggage was then checked by Customs and taken away for loading. At the Immigration and Emigration counter his passport was inspected and franked with the departure seal. He then entered the Departure lounge and awaited the 'boarding' call. At that stage he says two security officers of Air Lanka Ltd. questioned him and took him back to the Immigration and Emigration office. There they examined his travel documents and baggage and found notices extending the petitioner's earlier detention in custody by the Minister of National Security dated September 1986 and April 1987 under Emergency Regulations. The petitioner states that on 22.12.85 he had been taken captive along with many others by Government forces in what is known as a "Cordon and search" operation in which movement of persons are restrained and they are interrogated and released or further detained. The petitioner was released on 9.8.87 by order P6. However the petitioner states the 4th respondent took up the position that he was

a suspected terrorist, suspected his travel documentation was forged and restrained and prevented him from boarding Flight UL 511 aforesaid despite the fact that he had a valid passport and a valid visa to enter the United Kingdom and he also had his National Identity Card (P1) and Airline ticket and documents to prove the truth of his reason to travel if that was necessary. There was also the fact (known later) that the National Intelligence Bureau office at the Airport had at that time informed Air Lanka after checking that the petitioner was not on their lists of wanted persons and was not required by the National Intelligence Bureau – vide affidavit of L.D.A. Jayasekera, Security Superintendent, Air Lanka – 3R4. It is in evidence that at the request of Air Lanka Ltd the Department of Immigration and Emigration then cancelled the authority given earlier by them to the passenger to leave Sri Lanka – P2D. Thereafter the petitioner states he was produced at the Katunayake Police Station at 4 a.m. on 4.11.88, his statement and that of the 4th respondent recorded and he was kept at the Police Station and was produced before the Negombo Magistrate on 6.11.88 upon a 'B' Report and remanded to Fiscals custody until 11.11.88. The petitioner was discharged from custody on 11.11.88 by the Magistrate on being informed by the Police that they were not instituting any proceedings against him. He subsequently travelled to London on Air Lanka flight UL 511 on 24.11.88. The petitioner is said to be still in the United Kingdom.

The submissions of learned Counsel for the petitioner were:

- (1) The passenger's travel authorisation came from London.
 - (a) Amnesty International, British Section paid for and provided the ticket for travel from Colombo to London. Thus, from the very inception Air Lanka Ltd. knew who this passenger was – the fact that Amnesty International has provided the flight ticket was known to the 2nd respondent.
 - (b) The petitioner had presented his passport to the 2nd respondent with a visa to enter the United Kingdom for the purpose of the issue of a ticket. The 2nd respondent therefore had had an opportunity of scrutinising his passport and visa and satisfying themselves of its validity which they would have done before they issued a ticket.
- (2) The petitioner spoke the truth to all officials who examined his documents and baggage at the Airport on 3-4th November 1988

- There was no evidence whatsoever that he was a terrorist or that he had committed any offence known to the law. In fact the National Intelligence Bureau at the Airport had cleared him that night in the sense that they had intimated to the officials of the 2nd respondent that the petitioner was not on their list of wanted persons. The petitioner had simply been an innocent person who had been taken in for questioning in the course of a security operation and kept in detention for a very long time and released without any conditions.
- (3) All documents presented by the petitioner to the authorities at the Airport for scrutiny were genuine and valid. It has also been subsequently ascertained from the Controller of Immigration and Emigration that the petitioner's passport (P2) is genuine. There is now an endorsement at page 6 of P2 that it is a genuine issue – vide P2E. It was also submitted that the mark like a smudge mark appearing below his photograph on his passport P2A which the Air Lanka authorities say influenced them in preventing his departure was a natural flaw on the paper, and was too trivial a matter in the face of all other available evidence to have attracted such disastrous consequences to him – (ie) to be prevented from travel, arrested by the Police and remanded in Fiscals custody for a week and the programme arranged for him in London disorganised. It was submitted that the petitioner was legally entitled to have been permitted to board flight No. UL 511 on 4.11.88. The 2nd respondent through its officers could not have restrained him; nor could they have advised the Immigration and Emigration authorities to cancel his departure authorisation; nor could he have been handed over to the Police.
- (4) Petitioner's Counsel stated he was not pressing his case in regard to action taken by the Police in the circumstances.
- (5) Counsel however complained that a Wood's Lamp test where a document is examined under ultra violet light was not done. Nor was his passport examined by the Government Examiner of Questioned Documents.
- (6) There were no good grounds to give rise to a reasonable suspicion about the authenticity of his travel documents or the purpose of his travel. The action taken by the 2nd respondent and its officers 3rd and 4th respondents was in the

circumstances perverse, unjustified, unfair and oppressive. For the foregoing reasons there had been an infringement of his fundamental right to be free from unlawful arrest or detained or deprived of personal liberty guaranteed by Article 13 of the Constitution.

On the facts it was admitted by the 2nd to 4th respondents that the petitioner had been cleared in the check-in process, and allowed into the departure lounge pending a call to board the aircraft. At that point it is the case for the 2nd to 4th respondents that the petitioner had attracted their attention and on suspicion taken by them to the Immigration and Emigration office where he did not appear to answer questions – vide – the affidavit of the 4th respondent – paragraph 12B. His conduct thus gave rise to reasonable suspicion in the background of recent experience the 2nd respondent had had with its passengers travelling with false documents which entailed Air Lanka Ltd having to face considerable embarrassment, trouble and expense and have their good name and reputation tarnished. By his affidavit (3R1) the Chairman and Managing Director of Air Lanka Ltd has at paragraph 7 thereof stated that during the last two years the incidence of passenger travelling on Air Lanka flights with forged passports and visas or being found at the destination airports without travel documents has increased to alarming proportions. When such passengers are discovered, officials at the relevant airports invariably carry out security details with regard to –

(1) disembarkation of passengers,

(2) search of passengers leading to delay and dissatisfaction amongst passengers flying on Air Lanka. This affects the reputation of the carrier to its detriment. In addition passengers so discovered without valid travel documents are (a) deported back to Colombo at the expense of the carrier and (b) particularly in the United Kingdom under the Immigration Carrier Liability Act of 1987 and in West Germany the carrier becomes liable to pay a fine to the Government concerned which in the United Kingdom is £1000. Therefore officers in charge of ground handling have been given strict instructions to prevent passengers having suspicious travel documents from boarding Air Lanka flights pending investigations into the genuineness of the documents. Annexed to this affidavit were copies of telexes in respect of the months of March, April, November and December 1987 and January to December 1988 from overseas

stations of Air Lanka Ltd relating to deportation of passengers on Air Lanka flights from West Germany, France, United Kingdom, Switzerland, Bahrain and Dubai –3R6. These annexures are meant to explain why Air Lanka ground staff maintain a strict vigilance on passengers on its carrier as to the genuineness of their travel documents.

It was submitted on behalf of the 2nd to 4th respondents that on checking the passport it was discovered that :

(a) There was a mark like an erasure mark on page 3 of his passport in the space below the petitioner's photograph at the point of his signature – vide P2A.

(b) There was a difference in the first name given in his National Identity Card as compared with his first name as appearing in his passport. In the National Identity Card his first name is given as *Kulendeivel* Veeradas whereas in his passport his first name appears as *Kulanthavelu* Veeradas.

(c) The passenger had in his possession documents P5A and P5B showing that he had been in preventive detention by order of the Minister of National Security under the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979, in the years 1985 and 1986 and a document (P6) showing that the said order of detention had been cancelled on 9.8.87.

In the circumstances suspicions were raised that the passenger may be a person involved in anti-government terrorist activity constituting offences under anti-terrorist and Emergency laws and regulations in the background of continuing widespread civil unrest in the country and a suspicion that his passport was forged, irregular or altered. The above facts as sworn to by the affidavits of the Duty Manager, the Senior Investigating Officer the 4th respondent, the Joint Operations Officer and the Security Superintendent of Air Lanka Ltd, all of whom were on duty that night and all of whom inspected the passport (P2) and other documents – vide 3R3, 4R1, 3R1 and 3R4 – before handing the petitioner over to the Police having had the passenger's departure authorisation cancelled.

It was submitted that upon the foregoing the 4th respondent and other Air Lanka staff whilst being mindful of their responsibility to prevent passengers with documents suspected to be false travelling in their carrier, suspected the petitioner to be in possession of a

forged or altered or irregular passport and prevented his departure pending investigations. During this period they handed the petitioner over to the Police and forwarded the passport for verification to the Controller of Immigration and Emigration, who declared it to be a genuine issue – vide endorsement at page 8 of the passport after which the petitioner was discharged by Court and allowed to travel. In the circumstances the 4th respondent claimed that their actions were in good faith and lawful, in the performance of duty consequent to a reasonable suspicion arising upon the material before them at the time that the passport was forged, altered or irregular and which needed investigation.

(d) In pursuance of inquiries made by the Acting Manager of the 2nd respondent's company (United Kingdom and Ireland) a letter dated 25.4.89 from the former Secretary, Islington and Hackney Amnesty International Group was received. That letter enclosed an annexure 'X4' which is a press cutting from the Islington Chronicle of 8.2.89. That press cutting contains an article under the caption "Campaigners told of Tamil's prison and torture ordeal". The article contains the following among other statements, to wit: "Freedom campaigners in Islington came eye to eye with one of their success stories – a man they helped free from a Sri Lankan jail. Local members of Amnesty International welcomed Mr. Veerathas Kulantheivelu, a member of the Tamil minority to hear about 2 years he spent in prison without trial. He (Veerathas) said that, like the others, he was tortured (and he) was arrested the first time he tried to board a plane at Colombo Airport. Only then did he get a trial charged with subversive activities – and he was found to be completely innocent...." It was submitted on behalf of the 2nd to 4th respondents that –

(i) the entirety of the papers filed in the instant Fundamental Rights application (petition and affidavit) on behalf of the petitioner made no reference whatsoever to his having being tortured whilst he was under detention by order of the Minister of National Security in spite of the fact there is specific references to his arrest and detention from December 1985 to August 1987 in paragraphs 40, 41 and 42 of his petition and affidavit. This allegation of torture has been made for the first time since the petitioner went to the United Kingdom.

(ii) The article contains a false statement that the petitioner was charged and tried for subversive activity and acquitted consequent to

his arrest when trying to board a plane. In fact he was merely produced before Court and remanded pending investigations of his travel documents: he was never charged for an offence nor acquitted after trial but discharged from custody upon the Police informing Court that they had no material against him and he was allowed to fly to the United Kingdom. It was submitted the incorrect report in the newspaper was probably the result of the petitioner giving a garbled and malicious version of what happened in Sri Lanka on 3/4.11.88 suggesting thereby that the petitioner is a person capable and willing to misrepresent matters when it is advantageous to him. This fortifies the respondent's decision to investigate the petitioner's travel documents for the reasons already stated. The 2nd to 4th respondents deny that they have in any way infringed upon the fundamental rights of the petitioner.

Conclusions :

In the Memorandum of Association of Air Lanka Ltd – X5 – the objects for which the Company was established are amongst others :

Article 3(1): "To carry on business as a local and international airline or air transport undertaking and to operate air transport services for passengers and cargo and to undertake any allied or ancillary services in the Republic of Sri Lanka or any part of the world ... etc." Ancillary to this purpose is the employment of persons as management staff, traffic staff etc "and to secure the fullest development..... of official Air transport services to be operated by the Company – Article 3(2)".

Article 4: "and to engage, employ and maintain managers, clerks and servants etc – Article 47. The business of the Company is to be managed by the Board, either by themselves or through a Managing Director and the Board shall have power and may make such rules and regulations for the management of the business and property of the Company as they may think expedient ... Article 116 of the Articles of Association – X6.

A Company must of necessity act through the medium of its natural officers or agents.

A part of the ticket issued to the petitioner has been marked in this case – P3. It states that the passenger ticket and baggage check are subject to the conditions of the contract on passenger coupon. These conditions do not appear to have been appended. P3 also states that

Air Lanka makes every effort to provide seats for which confirmed reservations have been made but no absolute guarantee of seat availability is denoted by the expressions (used).

The Emigration Laws of Sri Lanka provide that no person if he is a citizen of Sri Lanka shall leave Sri Lanka unless he has in his possession a Sri Lankan Passport – s.35(a) of the Immigrants and Emigrants Act. This means the passenger must have a valid passport. There is thus a duty cast on Air Lanka Ltd to prevent passengers from violating Sri Lankan laws. Similarly under the laws of foreign countries (eg) the United Kingdom Immigration Carrier Liability Act cited London being the destination airport, it would be an offence for the carrier to have brought in a passenger with false documents for which the carrier is liable to a fine. There is then a further duty on the carrier to take such step as to prevent a passenger violating the laws of a foreign country. I have also to refer to Article 33 of the Warsaw Convention as modified and amended which reflects standard international practice and which provides that a carrier may refuse to carry any passenger when in the exercise of reasonable discretion the carrier decides such action is necessary to prevent violation of the laws of any country to be flown from, into or over. – Chitty on Contracts – 25th Ed, Vol 2, para 2742.

The questions that arise for consideration vis-a-vis the 2nd to 4th respondents upon the allegations raised by the petitioner therefore are,

- (i) Whether the act of detaining him and denying him embarkation and off loading his baggage and handing him over to the Police for the purpose of investigating his travel documents was within the capacity of the Company; and,
- (ii) whether the company and its officers, viz: the 2nd, 3rd and 4th respondents have acted intra vires their authority or employment.

The affidavit of the Chairman and Managing Director responsible for the Management of the Company – 3R – and already referred to states that in view of the parlous state that existed affecting the good name and business of the 2nd respondent company as a result of passengers with invalid travel documents or no travel documents using this carrier to travel to foreign lands (which facts have not been denied) he had issued strict instructions to his staff to *prevent* Passengers with suspect documents from using the carrier. Neither the fact that he gave such instructions or the underlying reasons for

such instructions have been challenged by the petitioner at this hearing.

It is my opinion that in the light of the objects of the Company and the powers of the Managing Director as referred to above and the background of frequent abuse of the carrier resulting in embarrassment, expense and loss of reputation and the necessity for the 2nd respondent company to prevent any breach of the laws of Sri Lanka or another country it was within the capacity of the 2nd respondent company to have instructed its employes through its Managing Director to prevent passengers with suspicious documents from boarding its aircraft. Having regard to the fact that there is an obvious clear visible mark like an erasure or smudge mark on the photocopy of P2A below the photograph of the petitioner (the original passport not being tendered for the examination of the Court as the petitioner is said to be in the United Kingdom) and taking into account the differences in the first names of the petitioner appearing in the Identity Card (P1) and the passport (P2) – Kulandeivel in P1 and Kulanthavelu in P2 and the petitioner's reluctance to answer questions – vide 4R which has not been denied, and given the high degree of caution and alertness expected of the servants of the 2nd respondent company there could well have arisen in the minds of the 2nd respondent's ground staff on duty that night a bona fide reasonable suspicion that the passport P2 was either forged, altered or irregular. The passport could have been altered etc after issue of the Airline ticket. This being so, it is my view that the 4th respondent acting on behalf of the 2nd respondent has acted bona fide and lawfully within the scope of his authority and employment which is of a public nature in the business of running an airline, in the course of duty, in refusing embarkation to the petitioner pending investigation of his travel documents. (The petitioner indeed left Sri Lanka after investigation revealed the passport was a genuine issue – P2E – on 24.11.88 on an Air Lanka flight) Flowing from this the act of the 1st respondent acting through an authorised officer, to wit: A.J.W. Fernando – 1R2 – in cancelling the departure endorsement in the petitioner's passport – P2D, or being off-loaded by Air Lanka Ltd. suspected of having illicit Sri Lankan documents, is not unlawful – in fact it is accepted international aviation practice – vide 1R and 1R2 not denied by the petitioner; and the acts of the 5th, 6th and 7th respondents in detaining the petitioner; on suspicion of having in his possession a forged, altered or irregular passport is also lawful. In

fact learned Counsel for the petitioner states he is not seeking relief against the 1st, 5th, 6th and 7th respondents. The 8th respondent has been added in view of the provisions of Article 134(1) of the Constitution.

It may be pertinent to note that the use or possession of a forged, altered or irregular passport by a person constitutes a cognisable offence under s.45(1)(f) read with s.46 of the Immigrants and Emigrants Act – Cap. 351 and as such a person is liable to be arrested without a warrant upon a reasonable suspicion that such an offence has been committed under the provisions of s.32(1)(b) of the Code of Criminal Procedure Act, No. 15 of 1979 by a peace officer, or legally detained under s.41 of the Immigrants and Emigrants Act aforesaid by an authorised officer.

In the result there has been no violation of Article 11 of the Constitution and it has not been pressed by Counsel for petitioner. As the petitioner was lawfully arrested and detained there has been no violation of rights guaranteed by Articles 13 and 14(1)(h). Any consequential delay in attending the Amnesty International Seminar does not in the circumstances constitute an infringement of Article 14(1)(a) of the Constitution.

For these reasons the application is dismissed but without costs.

FERNANDO, J.

During a “cordon and search” operation conducted on 22.12.85 at Akkaraipattu, the Petitioner was taken into custody by the Police, and was thereafter detained at various Camps, under a Detention Order dated 30.12.85, issued under the Prevention of Terrorism Act (and extended from time to time). No complaint is made in his petition to this Court that his detention was illegal; or that he was subjected to torture or other treatment contrary to Article 11 – and his Counsel informed us that no complaint had been made, during his detention or after his release, to any Court or tribunal, or to any authority in Sri Lanka, alleging any improper treatment. According to his Counsel, he was released on 9.8.87 in consequence of a general decision connected with the Indo-Sri Lanka Accord of July 1987.

It would appear that the “Islington and Hackney Amnesty International Group” (“the AI Group”), a group of persons associated with or affiliated to the British Section of Amnesty International (“AI”),

had taken a keen interest in the Petitioner's detention. In a letter dated 14.7.88, the AI Group Secretary refers to the Petitioner having been "an investigation case prisoner of our Group during [your detention]", and invited him to participate in a seminar, then scheduled for October, on the Human Rights situation in Sri Lanka: the Petitioner was requested "to recount [his] experiences and also give an update of the situation of Tamils in Sri Lanka today". It was also mentioned that the International Secretariat of Amnesty International, as well as the British Section, would like the Petitioner to address them. The Petitioner having accepted this invitation, in a subsequent letter, dated 19.9.88, he was asked "the exact dates you will be in England", and was informed that "since you will be the only speaker coming from abroad, we will arrange the date around your travel arrangements". His participation in the proposed seminars and talks was therefore of high importance. He duly obtained a visa from the British High Commission on 31.10.88, and his air-ticket from Airlanka (the 2nd Respondent) on the very next day. This ticket contains an endorsement "PTA ref F14152", and Counsel submitted that this refers to a "Passenger Travel Authorisation" (or perhaps Pre-paid Ticket Advice), and that payment had been made by AI in London. The ticket also bears an endorsement "Pax holds visa" which indicates that the officer of Airlanka responsible for the issue of that ticket had examined his passport, and was then satisfied as to the genuineness of the passport and the visa. Counsel rightly submitted that Airlanka knew on 1.11.88 that AI had paid for the Petitioner's ticket, and had satisfied itself that the passport and the visa were in order; he conceded, rightly, that there was no material to suggest that the ticketing staff had noticed any discoloration in the passport at that point of time, or even that such discoloration had then existed.

The Petitioner had a confirmed reservation on Airlanka flight 511, leaving Colombo at 1.00 a.m. on 4.11.88. He checked in, paid the Embarkation Tax, passed through Customs, and proceeded to the Immigration and Emigration Department counter. The officer on duty was satisfied, says the Petitioner, that his passport was genuine and that his other documents in order. Although the Petitioner does not mention any problem or delay at this stage, Airlanka's *Traffic Supervisor* states that he saw the Petitioner *in the office* the Immigration Department, and that that officer had informed him that "there was a problem with regard to the Petitioner's passport and no decision has been taken as yet". This information he conveyed to the

Duty Manager, who, a few minutes later, saw the Petitioner seated in the Departure Lounge, awaiting embarkation, and decided to examine his travel documents.

According to the Petitioner, he was questioned by two persons, as to why he was leaving the country, and upon replying that he had been invited by an Amnesty International Group, he was taken to the 4th Respondent (an Investigations Officer in Airlanka's Security Division), who also questioned him; on seeing the AI Group letters, the 4th respondent searched his hand baggage, and thereafter took charge of his passport, national identity card, ticket, the letters, and the Detention Orders: the primary reason for the off-loading, he says, was the fact that he had been invited to address that Group. The 4th Respondent "prevailed" upon the Immigration Officer to cancel the departure endorsement, thereby countermanning the authority for the Petitioner's departure from Sri Lanka. It is common ground that the Petitioner's name was not on any list of persons debarred from leaving Sri Lanka or "wanted" for any terrorist or other activities. The Petitioner also states that the 4th Respondent "took the position that [he] was a suspected terrorist and that his travel documentation was forged".

According to the Duty Manager, on examining the passport, she noticed a discoloration in the space reserved for the signature of the passport-holder, immediately below his photograph. Suspecting that this portion had been tampered with, and that even the visa might not be genuine, she reported the matter to her superiors, and in consequence of the Chief Operating Officer's decision the Petitioner was "off-loaded", i.e. he was not permitted to embark on that flight and his checked baggage was taken off. The Security Superintendent (presumably the second person referred to by the Petitioner) corroborates the Duty Manager, and further states that he examined the Petitioner's *checked* baggage, which had been off-loaded by then, and found the documents relating to the Petitioner's detention. The Duty Manager issued a letter to the effect that the Petitioner had been off-loaded, whereupon the Immigration Department officer made an endorsement on the Petitioner's passport cancelling the departure endorsement previously made. The 4th Respondent denies that he "prevailed" on the Immigration Officer to cancel that endorsement, and the latter states that the departure endorsement was cancelled, in accordance with the normal practice, in consequence of the Duty Manager's letter stating that the passenger had been off-loaded.

The 4th Respondent enumerates the various matters, apart from the discoloration, which made him suspect the genuineness of the passport, and the detention orders. The Petitioner's name as set out in his national identity card was slightly different to his name as set out in the passport, and he did not answer questions regarding these documents. He thus suspected forgery as well as a possible connection with terrorist activity. (The absence of his name from any "Wanted" list could not have dispelled his suspicions, for obviously forgery and other criminal and terrorist acts are being committed by persons quite unknown to the Police; on the other hand, had it been found that the Petitioner's name was on any "Wanted" list, that would have strengthened that suspicion). It was in these circumstances that the 4th Respondent took the Petitioner, and handed him over to the Katunayake Police, (of which the 6th Respondent was the Officer-in-Charge), together with his travel documents and baggage. The Petitioner was suspected of continuing offences, namely the use or possession of a forged, altered or irregular passport, which were cognizable offences under sections 459 and 462 of the Penal Code, and section 45(1)(d), (e) and (f), read with section 46, of the Immigrants and Emigrants Act. These offences were "committed" *in the presence of the Duty Manager, the Security Superintendent and the 4th Respondent, who were jointly responsible for the restraint on the Petitioner's liberty: in my view that restraint was placed in the exercise of the right of arrest under section 35 of the Code of Criminal Procedure Act, for the expression "any person who in his presence commits a cognizable offence", in the context of section 35, includes a person who "reasonably appeared" to be committing such offence (as in *Wiltshire v Barrett*, (1)).* The Petitioner was detained in Police custody, produced before a Magistrate the next day, and remanded till 11.11.88; on that day he was released, as the Police informed the Court that there was no evidence to support the allegations against him.

On 22.11.88, in order to dispel the suspicion created by the discoloration, the 1st Respondent made an endorsement that "despite the discoloration on page 3 hereof it is confirmed that this passport is a genuine issue". On 25.11.88 the Petitioner left for London on another Airlanka flight, and this application was filed on 3.12.88. In response to a query, the AI Group informed Airlanka, by letter dated 25.4.89, that the Petitioner participated in the meeting organised by that Group, and forwarded a newspaper cutting relating

to that meeting. The news item is headed "Campaigners told of Tamil's prison and torture ordeal", and states *inter alia* -

"Freedom campaigners in Islington came eye to eye with one of their success stories - a man they helped to free from a Sri Lankan jail [The Petitioner] told them he had never been involved in politics but was arrested with hundreds of other Tamils by the army. He said that, like the others, he was tortured though he had committed no crime. Even when he was released in 1987 he and his family were still harassed by the Indian army peace-keeping force.

The Islington group invited him to speak after campaigning hard for his release. Members spent much of 1986 and 1987 writing letters on [his] behalf to the Sri Lankan authorities.

Even their invitation attracted attention from the island's police - [he] was arrested the first time he tried to board a plane at Colombo airport. Only then did he get a trial, charged with subversive activities - and he was found to be completely innocent. "

This news item paints a picture different to that presented by the Petitioner to this Court. His Counsel referred to the Indo-Sri Lanka Accord as being the cause of the Petitioner's release, in 1987, and did not even suggest that there had been any other contributory influence whatsoever; nor did he allege that the Petitioner had previously been tortured, while under detention. No reference is made in the news item to the real reason for the Petitioner's arrest and detention on 4.11.88. The statement that he was thereafter charged, with subversive activities, and found to be completely innocent, after trial, is baseless. Indeed, the Petitioner having being remanded on Saturday 5th November and released on Friday 11th November, it would have exceeded the best expectations of anyone concerned with the elimination of the Law's delays, to learn that a contested criminal trial on a serious charge had been concluded within five working days. The AI Group submitted this news item to Airlanka without in any way suggesting that it was incomplete or inaccurate, and in the absence of any counter-affidavit by the Petitioner it must be assumed to be a correct report of his part in the proceedings of that meeting. The Petitioner thus appears not to be averse to suppressing and distorting (or even inventing) facts, to suit his own purposes, and this must necessarily affect his credibility, when considering the allegations in his affidavit, especially that he

was subjected to "degrading" treatment and the reasons attributed for his being off-loaded.

It is necessary to refer to two other allegations that were made. According to the Petitioner's written submissions, "it is a surmise that such off-loading [of the Petitioner] was done wilfully so that his seat could have been made available to some other person", i.e. to some other passenger wait-listed for that flight." This surmise was not pursued at the hearing. The ticket and other expenses of the Petitioner were being met by AI, and he had no foreign exchange. Counsel submitted that he was off-loaded because he was unable to comply with demands for money made by Airlanka officials. When it was pointed out that this allegation had not been made in the petition or in any of the supporting documents, it was not pursued by his Counsel.

It was strongly contended at the hearing that the Petitioner was off-loaded because he was intending to address the AI Group. Several Airlanka officers have in their affidavits set out the reasons for off-loading the Petitioner and handing him over to the Police; not only do these affidavits set out the events of that night in great detail, but corroborative facts and documents have been referred to. The Petitioner's allegation that the 4th Respondent "prevailed" upon the Immigration Officer to cancel the departure endorsement is not only denied by the latter, but is intrinsically improbable: once an Airline refuses to carry a Sri Lankan passenger out of Sri Lanka, the Immigration authorities have no power to compel such Airline to change its decision, and have no alternative but to cancel the departure endorsement. The Petitioner has not chosen to deny or explain any of these matters by means of a counter-affidavit. I hold that the Duty Officer first examined the Petitioner's passport, and questioned him further only after, and only because, she noticed a discoloration, which gave rise to a suspicion in her mind as to the genuineness of the passport. The Petitioner has made no complaint of difficulty or delay in regard to the original issue of the ticket on 1.11.88, and this tends to negative the suggestion that just two days later, Airlanka was motivated by a desire to prevent the Petitioner travelling to the United Kingdom, to address an AI Group. That the Petitioner chose to make the allegations referred to in the preceding paragraph confirms that in his own mind he did not really believe that the off-loading was on account of the AI connection. The statements

made by him at the AI Group meeting indicate a readiness to depart from the truth to suit his own purposes. I hold that his off-loading was occasioned by a suspicion that his passport had been tampered with. The 4th Respondent found other features which tended to enhance this suspicion, and therefore handed the Petitioner to the Police.

The background in which the 4th Respondent, the Duty Manager and other Airlanka officials acted at about midnight on 3.11.88 is of great relevance, in determining whether this suspicion was a reasonable suspicion. There was unchallenged evidence that the incidence of passengers travelling on Airlanka flights with forged passports or visas, or being found upon disembarkation to be without any travel documents, had increased to alarming proportions; that a variety of ingenious ruses were being resorted to; that of the names mentioned in the telexes produced in this connection, an unduly large number were Tamil names; that apart from delays and dissatisfaction among other passengers, Airlanka was put to great inconvenience and expense as a result of the consequent liability to repatriate such passengers at its own expense and to pay heavy fines to governmental authorities abroad. Thus in addition to what may today be occupational hazards of air travel, affecting the life and safety of passengers, their property and the aircraft itself, from causes such as hijacking and sabotage, there were additional risks of financial loss and operational delays, as a result of passengers travelling on forged or irregular travel documents. The documents produced indicate that passengers with forged passports or visas had escaped the vigilance of Immigration officers. There can thus be no presumption that a passenger who had passed through Immigration controls had valid travel documents; in any event, faced with an allegation at an airport abroad, that a passport was forged, any attempt by Airlanka to disclaim liability by relying on any such presumption would have received short shrift. I therefore cannot accept the Petitioner's contention that Airlanka was in any way bound by the Immigration officer's opinion. Airlanka had, quite justifiably, issued strict instructions that particular vigilance and care should be exercised to check the travel documents of passengers on its flights, and to prevent those with suspicious travel documents from boarding its flights.

The Petitioner contends that his fundamental rights have been violated in the following manner:

(1) He suffered "degrading treatment at the hands of the subordinates of the 1st and 2nd Respondents, and also at the hands of the 6th and 7th Respondents" in violation of Article 11;

(2) While Article 14(1)(h) guarantees the Petitioner the freedom of movement, the Respondents deprived him of that freedom, by restraining him from leaving Sri Lanka on 4.11.88;

(3) " He was precluded on 4.11.88 from proceeding to London, where he was to participate in Seminars and Discussions which were arranged for by Amnesty International " in violation of Article 14(1)(a); and

(4) He was subjected to arbitrary arrest, detention and deprivation of personal liberty in violation of Article 13(1) and (2).

(1) No details whatsoever of the "degrading" treatment suffered have been averred. Apart from a statement that, even after his discharge in the Magistrate's Court proceedings, employees of Airlanka "continued to treat him with disdain insisting that his passport was a forgery", nothing even faintly hostile or unfriendly has been alleged. This allegation is thus patently untenable, and learned Counsel for the Petitioner did not press it.

(2) When the attention of learned Counsel for the Petitioner was drawn to the text of Article 14(1)(h), he conceded that the fundamental right recognised is the freedom of movement *within Sri Lanka*; and did not extend to a right *to leave Sri Lanka*. Any restriction on his freedom of movement *within Sri Lanka* was consequent upon his arrest and detention: if such arrest and detention was proper, there would be no violation of Article 14(1)(h); if improper, relief would be granted under item (4) below. This allegation was not pressed as an independent ground of complaint.

(3) There was evidence that the Petitioner did leave Sri Lanka, on 25.11.88, on another Airlanka flight. It is clear from the AI Group correspondence that being the only speaker coming from abroad, the dates of the proposed seminars and talks were to be arranged to suit his travel arrangements; it was confirmed by the AI Group that the Petitioner did address the Group as planned. Thus the Petitioner was not precluded from exercising his right of expression – though the question might have arisen whether the fact that the exercise of that right was *delayed* also constituted an infringement of Article 14(1)(a). Counsel was also invited to address us on the question whether Article 14(1)(a) extended to a case where the fundamental right to

the freedom of speech was sought to be exercised *outside Sri Lanka*, but was prevented by an act done within Sri Lanka. However, Counsel did not pursue this complaint. In any event, if the off-loading, arrest and detention was not in violation of Article 13, there could not be, in the circumstances of this case, any infringement of Article 14(1)(a).

(4) The only matter that was ultimately pressed was that the arrest and detention of the Petitioner was in violation of Article 13(1). This potentially involved three different aspects.

(a) the off-loading of the Petitioner, in consequence of questioning by the Duty Manager and the Security Superintendent, upon a decision by the Chief Operating Officer;

(b) the arrest, referable to section 35 of the Code of Criminal Procedure Act, and consequent detention (until handed over to the Police), by the 4th Respondent and other Airlanka officers; and

(c) the arrest on 4.11.88, and detention until production before the Magistrate on 5.11.88, by the Katunayake Police.

In the light of the discoloration in the passport, and the problems encountered by Airlanka at airports abroad, learned Counsel for the Petitioner was forced to concede, in the course of the hearing, that the suspicion entertained by the Duty Manager, the Security Superintendent and the Chief Operating Officer was a *reasonable* suspicion, justifying the off-loading of the Petitioner. In any event, off-loading involved no violation of Article 13(1).

The fact that the circumstances gave rise to a reasonable suspicion warranting off-loading (possibly involving civil liability for damages for breach of the contract of carriage) does not necessarily mean that there was a reasonable suspicion justifying arrest. Counsel submitted that Airlanka should have refrained from handing the Petitioner to the Police, and should have conducted further investigations as to the genuineness of the passport before taking any steps to cause him to be arrested. This contention is unacceptable: if the circumstances gave rise to a reasonable suspicion that a cognizable offence was being committed, arrest was justified; further, if the Petitioner had been released, and it later transpired that the passport had been tampered with, there was no assurance that the Petitioner could thereafter have been traced; if the 4th Respondent had released the Petitioner despite suspicion of the

commission of a serious offence, such release would have been relied upon as proof that the 4th Respondent did not in fact entertain such suspicion; arrest and handing over to the Police, in terms of section 35 of the Code, is conduct consistent with the 4th Respondent having genuinely entertained a suspicion that the passport had been tampered with. It is also relevant that the 4th Respondent was not content to act on the opinions of others: he questioned the Petitioner and learnt of other matters which enhanced his suspicions. I therefore hold that the 4th Respondent and the other Airlanka officers did have reasonable grounds for suspecting that the Petitioner's passport had been tampered with, and that they did not violate the Petitioner's rights under Article 13(1) and (2).

I am confirmed in my view by the express submission of learned Counsel for the Petitioner that there was no infringement of Article 13 by the Katunayake Police; he accepted that, as far as the Police were concerned, there was reasonable ground for suspicion. Since the Police acted upon the same material as that upon which the Airlanka officers acted, it would follow, considered objectively, that the Airlanka officers did have reasonable ground for suspicion: in the absence of any circumstance indicating that the Airlanka officers did not in fact (i.e. subjectively) entertain such suspicion, it must necessarily follow that the finding in respect of the Airlanka officers must be the same as the finding in respect of the Police.

The Petitioner's application thus fails. The allegations made against the public officers, namely of the Immigration Department and the Police have been made recklessly, and I would order the Petitioner to pay one set of costs to the 1st, and 5th to 7th Respondents in a sum of Rs 500/-. In respect of the allegations against Airlanka, one can appreciate the sense of grievance under which the Petitioner laboured: despite having a genuine passport, he was not only off-loaded, but deprived of liberty, and put to the inconvenience of changing his travel plans; despite the flimsy nature of the allegations of the infringement of fundamental rights made against Airlanka and its officials, it appears equitable that no order for costs should be made in favour of the 2nd to 4th Respondents.

Learned President's Counsel for Airlanka submitted that in any event the acts of Airlanka and its officials did not constitute "executive or administrative action" within the meaning of Article 126(1) of the Constitution, but in view of my findings on the merits, that is a battle left to be fought another day.

KULATUNGA, J.

I have had the advantage of reading, in draft, the judgments of my brothers Bandaranayake, J. and Fernando, J. in which the facts material to this application have been fully stated. The petitioner complains that on 04.11.88 he was prevented from leaving Sri Lanka on Air Lanka flight 511 to attend a seminar and talks on human rights arranged by the "Islington and Hackney Amnesty International Group" in London. Mainly in consequence of a decision about the genuineness of his passport made by Air Lanka Officials the petitioner was "off-loaded" i.e. he was not permitted to embark on his flight and his checked baggage was taken off; the Immigration officer at the Airport was made to cancel the departure endorsement on his passport; and the 4th respondent handed him over to the Katunayake Police. He was produced before the Magistrate and was remanded till 11.11.88 on which day the Magistrate discharged him upon being informed by the Police that sufficient material was not available to institute action against him.

On 25.11.88 the petitioner left for London on another Air Lanka flight and participated in the Amnesty International Seminar. In this petition he alleges infringement of his rights under Articles 11, 13, 14(1)(a) and 14(1)(h) of the Constitution.

In the course of the hearing before us, learned counsel for the petitioner informed us that he is not seeking relief against the 1st, 5th, 6th and 7th respondents and would press the application against the other respondents only in respect of the, alleged infringement under Articles 13 and 14(1)(a) of the Constitution.

In the light of the facts and circumstances more fully set out in the judgements of my brothers Bandaranayake, J. and Fernando, J., I am of the view that the off-loading of the petitioner on 04.11.88 was bona fide and lawfully done; there is no material to justify the allegation that his rights under Articles 11 and 14(1)(h) of the Constitution have been violated; and the available evidence does not establish any infringement of his rights under Article 14(1)(a). For the reasons which I shall proceed to set out, I am of the view that the petitioner's arrest and detention by the Air Lanka officials and the 4th respondent pending his being handed over to the Katunayake Police on a decision regarding the genuineness of his passport are justified under Section 35 of the Code of Criminal Procedure read with Sections 459 and 462 of the Penal Code and Sections 45(1)(f) and 46 of the

Immigrants and Emigrants Act.

Section 35 of the Code of Criminal Procedure provides, inter alia, that any private person may arrest any person who in his presence commits a cognizable offence and shall without unnecessary delay make over the person so arrested to the nearest peace officer or in the absence of a peace officer take such person to the nearest Police Station; if there is reason to believe that such person comes under the provisions of Section 32 a peace officer shall re-arrest him; if there is reason to believe he has committed a non-cognizable offence he shall where appropriate be dealt with under the provisions of Section 33. If there is no reason to believe that he has committed any offence he shall be at once discharged.

The commentary on the corresponding Section in the Indian Code (S.43) in Sohoni's – The Code of Criminal Procedure 18th Edition Vol. 1 at page 251 states –

“The section is purely enabling and not in any sense obligatory. Further, it is the intention of the legislature to prevent arrest by private persons on mere suspicion or information. Hence the limitation as to persons who would be arrested by the words in his presence commits a non-bailable and cognizable offence A private person has no power, on receiving information of theft, to arrest the thief while carrying away the stolen property as the offence is neither a continuing offence nor one committed in his presence”.

The following passages (based on the decision in *Thani v. State of Kerala* (2) appear at page 252 –

“Arrest by a private individual on mere suspicion or on inference or opinion or information is illegal. The right of the private individual to arrest is more restricted in India than in England

“Where the accused was chased and arrested on mere suspicion, he got a right of self-defence. He, being a one eyed man, was caught hold of and attacked by three or four persons armed with sticks and chopper. If in the exercise of his right of self-defence, he happened to cause the death of one of them, he could not be said to have exceeded the right”.

The above views would equally apply to the construction of Section 35 of our Code; it follows that an arrest by a private person on the

ground of the commission of a cognizable offence would be lawful only if the act which constitutes such offence is committed in the presence of such person. After any suspect who is so arrested is handed over to the Police, the assessment of the available evidence shows that there is no reason to believe that he has committed any offence he is entitled to be discharged. This, however, would not necessarily make the initial arrest by a private person unlawful. If that were the law no private person would take the risk of arresting a person under Section 35, a provision which even though limited in scope is intended to aid the arrest of offenders who may otherwise escape the law.

Sohoni's 'Code of Criminal Procedure' has this to say on the extent to which private persons making arrest are protected.

"For protection of persons, acting in good faith under this section, see sections 79 and 99 I.P.C. The protection given to Ministers of Justice extends also to private persons arresting or endeavouring to arrest felons, etc., under certain limitations. As these persons are discharging duties or exercising powers imposed and given by law, they are in a sense engaged in the public service and for the advancement of justice, though not specially appointed. If such a person is resisted and killed, the slayer is guilty of murder if he had express notice of the purpose for which the deceased came, e.g., by commanding the peace or otherwise showing that his inter-position was in the interest of peace and justice or with friendly intent".

The corresponding provisions in our Penal Code which afford such protection are Sections 72 and 92. Section 72 which is relevant to this case provides –

"Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law in doing it.

Illustration:

A sees Z commit what appears to be a murder. A in the exercise, to the best of his judgment exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the act, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may

turn out that Z was acting in self defence”.

Ratnalal & Thakore “The Law of Crimes” 19th Edition at page 143 commenting on the corresponding Section in the Indian Penal Code (S.79) confirms that persons acting, inter alia, under Section 59 (now Section 43) of the Code of Criminal Procedure are protected under this section.

In the instant case, according to the petitioner after he was first questioned by Air Lanka Officials he was taken to the 4th respondent who also questioned him; the 4th respondent searched his hand baggage and thereafter took charge of his passport and other documents. The 4th respondent’s defence is fully set out in the judgements of my brothers Bandaranayake, J. and Fernando, J. which is unnecessary for me to repeat except to state that the 4th respondent did, in all the circumstances, suspect forgery in respect of the petitioner’s passport. If his passport had in fact been forged, it would constitute offences under Section 459 (using as genuine a forged document) and 462 (possession of a document purporting to be made by a public servant) of the Penal Code, which are cognizable offences under the Code of Criminal Procedure. It would also constitute an offence under Section 45(1)(f) of the Immigrants and Emigrants Act (use or possession of a forged, altered or irregular passport) which read with Section 46 of the said Act is a cognizable offence for the purposes of the application of the provisions of the Code of Criminal Procedure; all such offences were committed in the presence of the 4th respondent and other Air Lanka officials; and the arrest and the handing over of the petitioner to the Police is justified under Section 35 of the Code of Criminal Procedure.

I am satisfied that notwithstanding the subsequent exoneration of the petitioner by the Police leading to his discharge by the Magistrate, the 4th respondent acted in good faith in arresting the petitioner and making him over to the Police and as such the 4th respondent is protected under Section 72 of the Penal Code. Whilst the protection under Section 72 would preclude the prosecution of the 4th respondent for any offence. I am also of the view that upon a purposive construction of Section 35 of the Code of Criminal Procedure the 4th respondent will not by reason of the subsequent exoneration of the petitioner become liable for any infringement of fundamental rights.

I therefore hold that the 4th respondent is not guilty of any violation

of the petitioner's rights under Article 13 of the Constitution. I agree that his application fails and make order dismissing it. I also agree with the order for costs proposed by my brother Fernando, J.

Application dismissed
