

**MARIAN AND ANOTHER
v.
UPASENA**

SUPREME COURT
FERNANDO, J.,
WIJETUNGA, J. AND
BANDARANAYAKE, J.
S.C. APPLICATION NOS. 495 AND 496/96
JUNE 26, 1998

Fundamental rights – Possession of Political posters – Arrest and detention under emergency regulations – Articles 13 (1), 13 (2) and 14 (1) (a) of the Constitution.

The two petitioners were arrested by the 1st respondent the officer in-charge of the Wellawatta Police Station for possession of posters containing slogans stating that "Chandrika" was responsible for making the May day a "black day" for which she should pay compensation and exhorting the public to fight against privatisation/ war despite assaults by "Chandrika's police". According to the 1st respondent he arrested the petitioners as the posters contained material "aimed at influencing the Armed Forces from engaging in the war and also enticing the people to react violently against the President, the Government and the Police". The petitioners were arrested under emergency regulations. The police failed to produce them before a Magistrate within the period prescribed by law.

Held:

The impugned posters appeared to be a legitimate exercise of the freedom of expression, and therefore, no offence; and there was no justification for delaying to produce the petitioners before a Magistrate.

AN APPLICATION for relief for infringement of fundamental rights.

D. W. Abeykoon P.C with *Miss Chandrika Morawaka* for the petitioners.

J. Jayasuriya, S.S.C for the respondents.

Cur. adv. vult.

July 28, 1998.

FERNANDO, J.

These two applications, alleging infringements of Articles 13 (1), 13 (2), and 14 (1) (a), were taken up together as they related to a single incident.

The 1st respondent, the Officer-in-charge, Wellawatte Police, says that he was on mobile duty near the Green Path traffic lights on 22.5.96, when, at about 8.00 p.m. he noticed two persons (the petitioners in the two applications) on a motor cycle; the pillion rider was without a helmet, so he signalled the rider to stop; he became suspicious of them, and upon searching the pillion rider, found him to be in possession of a tin of paste, a brush, and 25 posters containing one or the other of the following slogans:

‘මැයි දිනය කළු දිනයක් කිරීම ගැන වන්දිකා වගකිව යුතුයි/වන්දි ගෙවිය යුතුයි’.

‘කෙටක් . . . වන්දිකාගේ පොලිස් ප්‍රහාර නොකකා පුද්ගලිකරණයට/යුද්ධයට එරෙහිව සටන් වැදීමට එක්වෙමු’.

The 1st respondent believed that the posters "were calling upon the public to act violently against actions of the Government and the President, and also attempting to influence the members of the Armed Forces from performing their duties in respect of the ongoing war", and "to resist the police and to fight against the Government". He arrested the petitioners, having explained to them that the posters contained material "aimed at influencing the Armed Force from engaging in the war and also enticing the people to react violently against the President, the government and the police", and that they were being arrested under the Emergency Regulations. He took them to the Cinnamon Gardens Police in order to hand them over, but the Officer-in-charge said that the place of arrest fell within the Kollupitiya Police area; and he handed them over to the Kollupitiya Police at 10.00 p.m.

The Officer-in-charge, Kollupitiya, says that he was satisfied that the petitioners had been arrested for offences under the Emergency Regulations, and therefore detained them for further investigation and action. The pillion rider was smelling of liquor. He considered it advisable to produce both for examination by the J.M.O. At about 2.00 a.m. in the morning, both were then produced before a J.M.O. of Colombo, who resides at Panadura, whose report confirms that the pillion rider was "smelling of liquor" – which is no offence. The Officer-in-charge, Kollupitiya, says that when they were brought back, at 3.30 a.m. he was informed that the place of arrest was within the Cinnamon Gardens area, and at 1.30 p.m. they were handed over to that Police station. They were produced before a Magistrate only at 4.35 p.m. Although the Police objected to their release, the Magistrate released them on bail.

At the hearing, learned Senior State Counsel conceded that the first poster was innocuous, but (stressing the word "සමන්") submitted that the second was an incitement to violence, and that it bore the meaning which the 1st respondent attributed to it.

Learned President's Counsel for the petitioners submitted that the petitioners were members of the Nava Sama Samaja Party, and that the posters were a sequel to the revocation of the permission granted to that Party to hold a procession, which was the subject-matter of S.C. (F R) Application No. 470/96, SCM 17.7.97. He contended that the impugned poster merely called for a legitimate "struggle", just as in the case of any other claim or demand for rights.

We indicated to learned Senior State Counsel that the impugned poster appeared to be a legitimate exercise of the freedom of speech, and therefore no offence; that even if the 1st respondent initially thought otherwise, and needed some time to consider the meaning of the words used in the impugned poster, yet the matter could and should have been clarified within the hour; and that in any event there was no justification for delaying, until the next afternoon, to produce the petitioners before a Magistrate.

However, after judgment was reserved, the parties have filed a consent motion in each case, agreeing:

". . . to settle this case by the respondents paying Rs. 5,000 as an *ex gratia* payment to the petitioner . . . this payment is made without any attachment of personal responsibility of the respondents concerned".

We accordingly make order directing the respondents to pay a sum of Rs. 5,000 as compensation to each of the two petitioners.

WIJETUNGA, J. – I agree.

BANDARANAYAKE, J. – I agree.

Relief granted.
