

SENARATNE
v.
PUNYA DE SILVA AND OTHERS

SUPREME COURT.

FERNANDÓ, J.

AMERASINGHE, J.

DHEERARATNE, J.

S. C. APPLICATION NO : 18/95.

OCTOBER 9, 1995.

Fundamental Rights – Constitution, Articles 13(1), and 13(2) – Right to freedom from arbitrary arrest – Communicating reasons and grounds for arrest – Detention – Code of Criminal Procedure Act, No. 15 of 1979, Sections 2, 32, 36 and 37 – Cognizable offence – Compensation and costs.

The petitioner was the President of the Nidahas Sevake Sangamaya, a Registered Trade Union. In November 1994, the Secretary of the Prima Bakery, Rajagiriya branch of the Sangamaya was interdicted as a result of which a protest campaign was staged by the members of the Union at the Prima Bakery.

On 7th December 1994 some of the employees took two executives of Prima Ceylon Limited as hostages and detained them on the roof top of the Bakery where the water storage tanks were located. The workers threatened to push the hostages off the roof top if the police attempted to move into the Bakery.

The petitioner received a message from the S. P., Nugegoda about the above incident and was requested to intervene in his capacity as the President of the Sangamaya to secure the release of the hostages.

Thereafter the petitioner played a vital role in securing the release of the hostages and signed an agreement in his capacity as President of the Trade Union.

The petitioner was informed by the Director, C.I.D. to call over at the department on 14.12.1994 to make a statement regarding the dispute at the Prima Bakery. When the Petitioner arrived at the Department he was directed by the 1st respondent to an A.S.P. who interrogated him from about 10.20 a.m. till 6.15 p.m.

On 23rd December 1994 at about 9 a.m. the 1st respondent, accompanied by other police officers, went to the residence of the petitioner and the 1st respondent informed the petitioner that he had come there to arrest him.

The petitioner's case is that :-

- (1) His right to freedom from arbitrary arrest guaranteed to him by Article 13(1) of the Constitution was violated because the 1st Respondent had no reasonable cause to arrest him.
- (2) His fundamental right to be informed of the reason for his arrest had been violated because he had not been informed the reasons for his arrest.
- (3) The 1st respondent by keeping the petitioner in illegal custody on 23.12.1994 violated the Petitioner's fundamental right to freedom from arbitrary detention guaranteed to him by Articles 13(1) and/or 13(2) of the Constitution.

Held :

- (1) Although the 1st respondent was not required to have proof of the commission of the offences and could have made the arrest on the basis of suspicion, the suspicion must not have 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.
- (2) The petitioner was not implicated in any cognizable offence. There was no reasonable complaint or reasonable information that he had committed or had conspired to commit or abetted the commission of such an offence. There were no grounds for reasonable suspicion that he had been "concerned" in any of the specified cognizable offences in a sense that he was one of the group of persons responsible for the criminal activities committed at the Bakery on 7 December 1994.
- (3) The petitioner could not have been arrested in accordance with the provisions of Section 32(1)(b) of the Code of Criminal Procedure and his arrest was not in accordance with the applicable procedure established by law and therefore the 1st respondent violated Article 13(1) of the Constitution.
- (4) It is the person arrested and not others, even his wife or lawyer, who must be given the reasons for the arrest.
- (5) There had to be reasons for supposing him to be 'concerned' in the relevant way in the commission of cognizable offences to enable the 1st respondent to arrest the petitioner and the petitioner had a right to be given those reasons.
- (6) The Constitutional right to be given the reasons for arrest is not satisfied by giving any kind of explanation. A reason for depriving a person of his

personal liberty within the meaning of Article 13(1) of the Constitution must be a ground for arrest. There can be no such ground other than the violation of the law or a reasonable suspicion of the violation of the law.

- (7) A citizen has a right to resist an unlawful arrest, but he can exercise that right if he is informed of the "grounds upon which he is to be arrested".
- (8) The petitioner should have been informed of the offences of which he was suspected. It would not have been possible otherwise for the petitioner to have explained away the mistaken notions which the 1st respondent may have held and thereby regained his liberty. The underlying purpose of giving the reasons for the arrest was thwarted.
- (9) A person who is detained in the custody of the law beyond a specified prescribed maximum permissible time or beyond a reasonable time cannot be said to be a person arrested in accordance with procedure established by law and such a detention "for whatever the period may be", subject to the principal of *de minimis*, would violate Article 13(1) of the Constitution.
- (10) The delay in producing the petitioner was in the circumstances unnecessary and unreasonable and that his production at 2.45 p.m. was not in compliance with the provisions of Sections 36 and 37 of the Code of Criminal Procedure. Admittedly he was detained only a few hours. Nevertheless such a detention being unnecessary and unreasonable was not according to procedure established by law and it was therefore a violation of the petitioner's Fundamental Right guaranteed by Article 13(2) of the Constitution.
- (11) The award of compensation or costs is not automatic but a matter for the Courts discretion.

Cases referred to:

1. *Malinda Channa Pieris & Others v. A.-G. & Others*. [1994] 1 Sri L.R. 1.
2. *Elasinghe v. Wijewickreme* [1993] 1 Sri L.R. 163.
3. *Kumara v. Rohan Fernando & Others* SC App. 22/90 SC Min. 21 July 1994.
4. *Wijenayake v. Chandrasiri & Others* SC Appl. 380/93 SCM 22 March 1995.
5. *Dumbell v. Roberts* [1994] 1 All ER 326.
6. *Muttusamy v. Kannangara* (1951) 52 N.L.R. 324.
7. *Faiz v. A.-G. S.C.* App 89/91 S.C.M. 8 Sept 1994
8. *Faurdeen v. Jayatilleke* SC App. 366/93 S.C.M. 8 Sept 1994.
9. *Selvakumar v. Douglas Devananda*. SC App. 150/93 S.C. Min. 13th July 1994.
10. *Gunasekera v. De Fonseka*. [1972] 75 N.L.R. 246.
11. *Garusinghe v. Kadurugamuwa* SC App 133/87 SCM 1st June 1988.
12. *Piyasiri v. Fernando* [1988] 1 Sri L.R. 173.
13. *Mahinda Rajapakse and Vasudeva Nanayakkara v. Chief Inspector Karunaratne & Others*. SC App. 2 and 4/93 SCM 31.3.1994.

14. *Faiz v. A.G.* SC App. 89/91 SCM 19th Nov. 1993.
15. *Wijeratne v. Vijitha Perera* SC App. 379/93 SCM 2 March 1994.
16. *Kumarasena v. Shriyantha & Others* SC App 257/93 SCM 23 May 1994.
17. *Kumara v. Rohan Fernando & Others* SC App 22/90 SCM 21 July 1994.
18. *Nallanayagam v. Gunatilleke* [1987] 1 Sri L. R. 293.

APPLICATION for infringement of Fundamental Rights.

Tilak Marapana, P.C. with *Dulinda Weerasuriya* and *Lakshman Ranasinghe* for the petitioner.

C.R. de Silva, D.S.G. with *B. Aluvihare, S.C.* for the respondents.

Cur. adv. vult.

November 03, 1995

AMERASINGHE, J.

THE TAKING AND RELEASE OF HOSTAGES ON 7 DECEMBER 1994.

The Nidahas Sevaka Sangamaya is a registered Trade Union. In November 1994, the Secretary of the Prima Bakery, Rajagiriyi, branch of the Sangamaya, was interdicted. This led to a protest campaign by the members of his Trade Union at the Bakery. On 7 December 1994 some of the employees took the General Manager of the Bakery, Mr. Lin (in some documents he is referred to as Lyn) Sin Hui, and the Assistant Bakery Manager, Mr. Jayantha de Silva, as hostages and detained them on the roof top, sixth floor level of the Bakery where the water storage tanks were located.

The petitioner, who is a Member of Parliament and the President of the Nidahas Sevaka Sangamaya, received a message from the Superintendent of Police, Nugegoda, (conveyed through the officer-in-charge of the Parliament Police Post) that workers at the Bakery had taken two hostages and were threatening to push them off the roof top where they were being held if the police attempted to move into the Bakery. The petitioner was requested to intervene in his capacity as the President of the Nidahas Sevaka Sangamaya to

secure the release of the hostages. The petitioner was unable to immediately accede to the request, for he was scheduled to speak in Parliament. However, after Parliament adjourned for the day, the petitioner spoke to the Minister of Labour about the incident at the Bakery. The petitioner had, a few days prior to the incident, met the Minister of Labour regarding the dispute at the Bakery. The petitioner informed the Minister that he was proceeding to the Bakery with the Superintendent of Police, Nugegoda, and requested the Minister to help him resolve the dispute. The Minister of Labour agreed and requested the Petitioner to keep him informed of any developments.

The facts stated above, are based on the averments of the petitioner; There is no contrary evidence at all except that the first respondent in paragraph 7 of his affidavit states: "I only admit that a message was conveyed to the Petitioner by the Superintendent of Police, Mr. Navaratnam through the officer-in-charge of the Parliament Police. By way of further answer, I state that the investigations revealed that Mr. Navaratnam had taken the above step as the workers, who were holding the executives of Prima Ceylon Limited as hostages, had demanded that the petitioner be summoned to the scene." Are not Police messages received and recorded in a prescribed manner in prescribed forms? They have been produced before this Court in other cases. (E.g. see the record in *Pieris v. A. G.* ⁽¹⁾), If what the petitioner said about the appeal to him to intervene in his capacity as the President of Nidahas Sevaka Sangamaya to secure the release of the hostages was not true, why were the copies of the Police messages not filed?

According to the petitioner, having arrived at the Bakery, the petitioner met the Secretary of the Nidahas Sevaka Sangamaya, Mr. D. A. Punchihetti and went to the place where Mr. Lin Sin Hui and Mr. Jayantha de Silva were being detained and spoken to them and to the workers "with a view to settling the dispute and the release of the two hostages. The petitioner, however, was not successful."

The First respondent however, states that "investigations revealed" that "according to both Ms. Lin and Jayantha de Silva the petitioner

had made no attempt whatsoever to settle the dispute, but [on] the contrary had demanded from Mr. Lyn that he acceded to the demands put forward by the workers if they want themselves released." In support of this, the First respondent filed the statements of Mr. Lin Sin Hui (1R1) and Mr. Jayantha de Silva, (1R2) recorded by the Police.

What Mr. Lin Sin Hui said was as follows :- "Mr. Rajitha Senaratne told me if you give (sic.) to their demands you will be released. Then I told (sic.) I do not know what are their demands and I cannot just agree on their demands. In response for my reply (sic.) he said that he cannot do anything to release me... After about 30 to 40 minutes Dr. Rajitha Senaratne...and others...left the roof top."

Mr. Lin Sin Hui had said in his statement that he did not understand the Sinhala Language. His was, therefore, not in a position to understand the discussion between the petitioner and the workers. Understandably, therefore, there is nothing in Mr. Lin Sin Hui's statement suggesting that that the petitioner "had made no attempt whatsoever to settle the dispute." Nor is there anything in his statement to suggest that the petitioner "demanded" or coerced him to accept the conditions laid down by the workers. All that the petitioner did was to convey what he had gathered after his discussions with the workers, namely that they would release him if he agreed to give into their demands. Mr. Lin Sin Hui could not agree because he did not know what the demands were. The petitioner at this stage could be of no further assistance in the matter of securing the release of the hostages since the workers were not prepared to release them unless their demands were granted, and the petitioner so informed Mr. Lin Sin Hui.

Nor does the statement, of Mr. Jayantha de Silva support the First respondent's averment that the petitioner "made no attempt whatsoever to settle the dispute" or that he "demanded" anything from Mr. Lin Sin Hui. In describing the events of the day Mr. de Silva states that certain workers told him that they would have their necks cut if their demands were not granted. When this was communicated to Mr. Lin Sin Hui, he had said that he did not know what their

demands were. Then one Vijitha had said that Dr. Rajitha Senaratne (petitioner) would be coming with their demands later in the day. At about 4.30 p.m. Dr. Senaratne accompanied by 20-30 people, including certain Members of Parliament, arrived. Dr. Senaratne spoke to him and said "Take a decision." However, Dr. Senaratne and those accompanying him did not inform him of the demands of the workers. Dr. Senaratne spoke to Mr. Lin Sin Hui but Mr. de Silva states that he is unable to say what Dr. Senaratne told him. How does Mr. de Silva's statement support the First respondent's statement that the petitioner "demanded" certain things from Mr. Lin?

Having failed in his attempt to settle the dispute, the petitioner went down and was about to get into his vehicle to leave the Bakery premises when Mr. Wickrema Perera, Assistant Superintendent of Police, Nugegoda, and Inspector Gunawardena, officer-in-charge of the Welikada Police Station, spoke to the petitioner and inquired whether he would meet Mr. Amaradasa Gunawardene, the Administrative Manager of Prima (Ceylon) Ltd., who was at the time in a police vehicle nearby. The petitioner agreed and walked up to that vehicle and spoke to Mr. Gunawardene. Mr. Gunawardene and the petitioner agreed to a suggestion made by Mr. Wickrema Perera that they should discuss the matter at the Welikada Police Station.

At the Welikada Police Station, Mr. A. Gunawardene had been unable to agree to two of the demands of the workers. The petitioner then informed Mr. A. Gunawardene and Mr. Lucien Wijekoon, Deputy Inspector-General of Police who was present, that he was going back to the Bakery to discuss the matter with the workers. Having spoken to them and ascertained their minimum demands for the release of the hostages, the petitioner returned to the Police Station along with officers of the Trade Union and indicated what the demands were. Mr. A. Gunawardene said that in respect of some of the matters in issue he needed instructions from Mr. Primus who was in Singapore and that he was unable to contact him. The officials of the Trade Union stated that the Personnel Manager, Mr. T. Samarasinghe, and the Accountant would be able to contact Mr. Primus. The Police Officers present there requested the Petitioner and the officials of the

Trade Union to bring Mr. Samarasinghe and the Accountant from the Bakery. The petitioner went to the Bakery and returned to the Police Station with Mr. Samarasinghe and the Accountant. On his return, the petitioner found Mr. R. Nash, Deputy High Commissioner of the British High Commission and two Executives of a sister company of Prima (Ceylon) Ltd. Mr. A. Gunawardene, Mr. Samarasinghe and the Accountant discussed the matter with the two Executives of the sister company who then contacted Mr. Primus using a cellular telephone. Mr. A. Gunawardene thereafter informed the petitioner that the minimum demands of the workers were acceptable.

The First respondent in his affidavit (paragraph 12) stated : "Mr. Amaradasa Gunawardene had categorically stated that he granted the demands of the workers put forward by the petitioner because of the danger to the lives of the hostages." In his affidavit (paragraph 10) he states that Mr. A. Gunawardene "had refused to accept 2 of the demands". He does not deny the Petitioner's averment that Mr. Gunawardene had stated that on some of the matters in issue he required instructions from Mr. Primus. The First respondent admits in paragraph 17 of his affidavit that the Executives spoke to Mr. Primus and that thereafter Mr. Gunawardene had agreed to the demands. It was Mr. Primus, for whatever his reasons were – there is no evidence with regard to that who agreed to the demands. Mr. Gunawardene was his mouthpiece. It is incorrect for the First respondent to state that it was Mr. Gunawardene who granted the demands and that he had done so because of the danger to the lives of the hostages. Where is Mr. Gunawardene's evidence on that matter? Had he been in a position to agree to the demands because of the danger to the lives of the hostages, he could and should have done so before Mr. Primus was contacted. In any event it was not the First respondent's case that the petitioner coerced Mr. Gunawardene.

When the Honourable Minister of Labour telephoned the petitioner at the Police Station the petitioner informed him that the management had agreed to accept the minimum demands of the workers and that the workers had assured him that the hostages would be released if their minimum demands would be met. The petitioner requested the

Honourable Minister to send the Commissioner of Labour to the Police Station. These matters are not denied by the First respondent.

Mr. A. Gunawardene prepared a draft agreement which was typed by a Police Constable. Obviously, this was the management's view of the matter. When it was shown to the petitioner, who as we have observed was the President of the Trade Union, and the officials of the Prima Bakery Branch of that Union, the petitioner and the officials suggested that the agreement should include two additional clauses: One of them was that those persons who were involved in the hostage incident should not be subjected to victimisation or disciplinary or legal action. The other was that the Bakery would resume normal functions from 8 December 1994. These matters were added by the petitioner, as he himself states in Paragraph 20 of his affidavit and confirmed by the First respondent in paragraph 10 of his affidavit, in the handwriting of the petitioner (see P1). They were agreed to by Mr. Gunawardene. Evidently, unlike the two clauses on which he required directions, he had sufficient authority to decide such matters without consulting anyone else. The agreement was signed on behalf of the workers by the petitioner in his capacity as President of the Trade Union and by Mr. T. Samarasinghe on behalf of Prima Lanka Ltd. The Commissioner of Labour, Mr. R. P. Wimalasena, and the Assistant Commissioner of Labour, Mr. Mahinda Madihahewa, certified that the agreement was signed in their presence. (see P1). The First respondent's averment that his investigations revealed that "the arrival of the officials of the Department of Labour had taken place only after the agreement was signed by the parties" is contradicted by the agreement. (P1).

After the agreement was signed, the petitioner along with the Trade Union officials and Mr. T. Samarasinghe, Mr. Nash, the Deputy High Commissioner, and the two Executives went to the bakery where the petitioner handed over the original of the agreement to the worker's who were on the ground floor and proceeded to the fifth floor. The workers took the agreement to the sixth floor. Some of them shouted down to the fifth floor for clarifications from the petitioner and then brought Mr. Lin and Mr. de Silva down to the fifth floor, where they shook hands with the petitioner and thanked him. Thereafter they all came down to the ground floor and the petitioner advised the workers to leave the premises peacefully.

The First respondent in his affidavit states that his investigations revealed that the release of the hostages “preceded the signing of the agreement between the petitioner and Mr. T. Samarasinghe”. What are the investigations that revealed that position? No evidence has been produced in support of that position. The agreement would have been of little or no use if the hostages had in fact been already released. In fact the statement of one of the hostages, Mr. Jayantha de Silva, which was produced by the First respondent (IR2), at folio 919682, supports the position that the petitioner returned with the agreement at about 9.30 p.m. and that he and Mr. Lin were released thereafter. The statement of the other hostage, Mr. Lin which was produced by the First respondent (IR1 at p. 5) also supports the view that the hostages were released after the signing of the agreement. Mr. Lin stated that at about 9.30 p.m. he heard something being read in Sinhala and he saw the workers clapping their hands. “Thereafter I with Mr. T. J. de Silva were unlocked and brought to the 4th floor ...” where he says he met the Deputy High Commissioner, the petitioner and others. Nor is the First respondent’s denial that the freed hostages thanked the petitioner and shook hands with him borne out by any of the documents filed by him. Although as we have seen the First respondent in several averments in his affidavit on the alleged basis that “investigations revealed” it, seeks to make out that the petitioner’s role was other than that of a peacemaker, he has failed to adduce evidence in support of his position. The evidence available, including evidence furnished by him, points in the opposite direction. One ought to assume that the evidence the First respondent did choose to file, if he did have other evidence also, was the best evidence he had. Or was the other evidence he had unfavourable to his case in some way?

In a statement to the Police (IR1) V. N. Selvaratnam – presumably an officer of the Bakery, for he refers to “Mr. A. Gunawardene our Administrative Manager” – clearly acknowledges the petitioner’s real role, namely that of a peacemaker. He states : “In the meantime negotiations were proceeding to obtain the release [of the] officers locked up inside [the] Prima premises with the assistance of Dr. Rajitha Senaratne, the Chairman of the Workers Union”.

In discharging the petitioner on 27 December 1994, the Magistrate had found that all that the petitioner had done was to have brought about a settlement in his capacity as the president of the Trade Union. (See P3D and E). And that is a finding that is justified by the evidence placed before this Court.

THE INTERROGATION OF THE PETITIONER BY THE POLICE ON 13.12.94

On 13 December 1994, the petitioner received a telephone call at his residence from the Director of the Criminal Investigation Department, Mr. O. K. Hemachandra, requesting him to call over at the Department on the next day to make a statement regarding the dispute at the Prima Bakery. When the petitioner arrived at the Department on 14 December 1994, he was directed by the First respondent to Mr. Mahesh Perera, Assistant Superintendent of Police, who interrogated him from about 10.20 a.m. till 6.15 p.m., about his family background, his political career and about the dispute at the Prima Bakery and the incidents of 7 December 1994. The statement recorded was filed in these proceedings (1R7) and will be referred to later in my judgment.

THE ARREST OF THE PETITIONER

On 23rd December 1994 at about 9 a.m. the First respondent, accompanied by other Police Officers, went to the residence of the petitioner and the First respondent informed the Petitioner that he had come there to arrest him. The petitioner was arrested and taken to the C.I.D. Office where he was interrogated about the dispute at the Bakery and the incidents of 7 December 1994. In his petition, the petitioner alleges that his arrest by the First respondent on 23 December 1994 was "a violation of his fundamental right to freedom from arbitrary arrest guaranteed to him by Article 13(1) of the Constitution inasmuch as the 1st respondent had no reasonable cause to arrest the petitioner." The petitioner prayed, *inter alia*, that the Court should declare that his fundamental right guaranteed to him by Article 13(1) of the Constitution had been infringed.

THE ALLEGED ABSENCE OF REASONABLE CAUSE FOR ARREST BY THE FIRST RESPONDENT:

The petitioner's case is that his right to freedom from arbitrary arrest guaranteed to him by Article 13(1) of the Constitution was violated because the First respondent had no reasonable cause to arrest him. Article 13(1) neither refers to "arbitrary arrest" nor to absence of "reasonable cause" for arrest. What it does say is that "no person shall be arrested except according to procedure established by law ..." The First respondent in his affidavit does not explain how or why the arrest should be regarded as being in accordance with procedure established by law. Having admitted that he arrested the petitioner on 23 December 1994, the First respondent states that "the petitioner was arrested as the statements recorded in the course of the investigations indicated that the petitioner was involved in the commission of offences" punishable under certain sections of the Penal Code. The sections are section 140, (being a member of an unlawful assembly), 300 (attempt to murder), 332 (wrongful restraint), 333 (wrongful confinement), 315 (voluntarily causing grievous hurt by dangerous weapons or means) 113(b) (conspiracy for the commission or abetment of an offence) and 102 (abetment).

Section 32(1) of the Code of Criminal Procedure provides that "Any peace officer may without an order from a Magistrate and without a warrant arrest any person" in the circumstances set out in that provision. It is provided in section 32(1) (b) that a person may be arrested "who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned."

"Cognizable offence" is defined in section 2 of the Code of Criminal Procedure to mean an offence for which a peace officer (which phrase includes a Police Officer) may in accordance with the First Schedule arrest without a warrant. In terms of the First Schedule, an arrest may be made without a warrant for abetment (section 102) or conspiracy or abetment (section 113) of the Penal Code "if arrest

for the offence abetted may be made without a warrant but not otherwise". The Schedule provides that offences specified in this case, namely, those punishable under sections 140, 300, 315, 332 and 333 of the Penal Code, are matters in respect of which an arrest may be made without a warrant. They are therefore "cognizable" offences.

The question then is whether the petitioner was concerned in, or against whom a reasonable complaint had been made or credible information had been received or a reasonable suspicion existed of his having been concerned in, the commission of the offences referred to. The First respondent alleged that the petitioner was "involved" in the commission of the specified offences. The learned Deputy Solicitor-General who represented him explained that the arrest was made because the petitioner was a person "concerned". Were there circumstances, objectively regarded – the subjective satisfaction of the officer making the arrest is not enough – that should have induced the First respondent to suspect that the petitioner was concerned in the commission of those offences? (See *Malinda Channa Pieris and Others v. A.G. and Others* ⁽¹⁾; *Elasinghe v. Wijewickreme* ⁽²⁾; *Kumara v. Rohan Fernando and Others* ⁽³⁾; *Wijenayake v. Chandrasiri and Others* ⁽⁴⁾). In other words, although the First respondent was not required to have proof of the commission of the offences and could have made the arrest on the basis of suspicion, the suspicion must not have 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. As Scott C.J. observed in *Dumbell v. Roberts* ⁽⁵⁾ (followed in *Muttusamy v. Kannangara* ⁽⁶⁾; *Faiz v. A. G.* ⁽⁷⁾ and in *Faurdeen v. Jayatilleke* ⁽⁸⁾). "The principle of personal freedom that every man should be presumed innocent until he is found guilty applies also to the police function of arrest ... For that reason 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 a reasonable suspicion."

Although the First respondent states that the "statements" (the emphasis is mine) "recorded in the course of investigations indicated

that the petitioner was involved in the commission” of the offences he mentioned, there is only one statement referred to or filed by him, namely, that of Mr. S. Wijeratne (1R5). At Folio 926373 of that statement Mr. Wijeratne states that at a meeting held on 15 November 1994 Dr. Rajitha Senaratne said: “Parliament would be sitting on December 7th and after that let us go near the premises and carry out a protest demonstration.” Dr. Senaratne also said that on the 7th, Managers would be taken up to the top floor near the water storage tanks. “We were so advised by Dr. Rajitha Senaratne and by Mr. Punchihetti.”

Learned Counsel for the First respondent submitted that Mr. Wijeratne was a member of the Trade Union of which the petitioner was the President and that an allegation of that nature would not have been lightly made. It is not without significance that the First respondent himself did not state in his affidavit that he considered the statement of Mr. Wijeratne to be credible because of these reasons. Was it because it was supposed that the question why Mr. D. A. Punchihetti, the Secretary of the Trade Union who was also said in Mr. Wijeratne's statement to have advised the taking of the persons to the top floor, was not arrested might have been averted? That question was nevertheless raised by the petitioner's Counsel. Would such an allegation be lightly made against the Secretary of his Union? Not a word of explanation was offered by learned Counsel for the First respondent on the failure to deal with Mr. Punchihetti in a similar manner. The petitioner in his affidavit dated 7 September 1995 states that Mr. Wijeratne's statement was a “fabricated statement” and filed an affidavit from Mr. Wijeratne to the effect that he was made to sign the statement 1R5 under duress; and that the contents of the statement were not read out to him. Mr. Wijeratne denies having said that either the petitioner or Mr. Punchihetti advised them to take the Managers up to the water tank area as hostages.

The First respondent did not have the benefit of reading either Mr. Wijeratne's affidavit or that of the petitioner at the time of making the arrest, and what is relevant for our purposes are the circumstances at the time of the arrest. At that time the First respondent did have access to the statement of the petitioner

recorded on 14th December 1994. In paragraph 17A of his affidavit, the First respondent states that "on 14.12.1994 the petitioner was questioned in detail about his involvement in the hostage crisis at the Prima Bakery and in the course of the statement his attention was drawn to the fact that the suspects who were already in custody in connection with the said incident had stated that he had advised the members of the Trade Union to wrongly confine the executives of the Prima Bakery. (A copy of the statement of the petitioner recorded on 14.12.94 is annexed hereto marked IR7 and the same is pleaded as part and parcel of this affidavit)." In paragraph 23 of his affidavit the First respondent admits he was "aware that a statement of the petitioner had been recorded by Assistant Superintendent of Police Mr. Mahesh Perera." This is to be expected, for as we have seen, when the petitioner went to the C.I.D. office on 14 December, it was the First respondent who directed him to Mr. Mahesh Perera for interrogation. Knowing that the petitioner's version was available, what would a reasonable man have done? He would have perused the statement or at least have asked Mr. Mahesh Perera what the petitioner had said in order to make up his mind as to whether there were reasonable grounds. However, the First respondent did neither of these things before he arrested the petitioner. He considered the petitioner's version only *after* he had arrested him and taken to the C.I.D. building in the Fort. The petitioner states in paragraph 37 of his affidavit that at that place he was interrogated by the First respondent about the dispute at the Bakery and the incidents of 7 December. The petitioner states: "I stated that I had already answered the same questions put to me by A.S.P. Mahesh Perera on 14.12.1994. The 1st respondent asked A.S.P. Mahesh Perera whether it was so and A.S.P. Perera replied in the affirmative. The 1st respondent *then perused the statement made by me to A.S.P. Perera*. The 1st respondent questioned me further. My statement was typed in my presence. I then signed the statement after having read it." (The emphasis is mine).

In reply, the First respondent in paragraph 23 of his affidavit states that he was "aware that a statement of the petitioner had been recorded by the Assistant Superintendent of Police Mr. Mahesh Perera." By way of "further answer" he states: "I did not question A.S.P. Mr. Mahesh Perera in regard to the said statement recorded

from the petitioner." Whether he did question Mr. Mahesh Perera or not, it seems to me that the First respondent was considering what the petitioner had said earlier on 14 December for the first time *after he had arrested the petitioner*.

The statement recorded by Mr. Mahesh Perera on 14 December 1994 was available to the First respondent, but he did not inform himself of what had been stated therein before he arrested the petitioner nine days later. Had he read that statement, he would have been put on his guard and required to investigate the matter further before coming to the conclusion that the statement of Mr. Wijeratne was credible or that there were reasonable grounds for suspecting the petitioner to have been concerned in the offences alleged.

Was there any evidence other than the statement of Mr. Wijeratne that could reasonably have persuaded the First respondent to come to the conclusion that the petitioner was concerned in the offences alleged? In Paragraph 17A of his affidavit the First respondent states that when the petitioner was interrogated on 14 December 1994 "his attention was drawn to the fact that the suspects who were already in custody in connection with the said incident had stated that he had advised the members of the Trade Union to wrongly confine the executives of the Prima Bakery." The First respondent filed the statement made by the petitioner to the Police in support of his averment that persons in custody had said that he had advised them to confine the Executives of Prima Bakery. That statement shows that the First respondent's averment is factually incorrect. According to folio 929347 of that statement the petitioner was asked whether (and not told that certain persons, whether in custody or not had said so) he had advised the taking of the hostages and holding them near the water storage tanks at a meeting held on 15 November 1994. The petitioner had denied attending any such meeting. Moreover, the statement made by the petitioner on 14 December 1994 was supposed to have been read by him only after the arrest. One begins to wonder whether he did in fact read that statement on that occasion or whether he had read that statement even by 18 March 1995 when he filed his affidavit in these proceedings. If there were statements from persons other than Mr. Wijeratne, implicating the petitioner, why

was the petitioner not questioned about them, and why have they not been produced?

In paragraph 23 (b) of his affidavit the First respondent explains the need for a "further statement of the petitioner" by reference to "the availability of fresh material implicating the petitioner at the time of his arrest." What is the "fresh material"? The First respondent has not filed any statements from any person or persons supporting the view that the petitioner was concerned in the offences alleged. However, our attention was drawn to the Police Report filed before the Magistrate (IR9) when the petitioner was produced before him on 23 December 1994.

What does document IR9 contain? It contains a paraphrase of the statements of Mr. P. Amaradasa Gunawardene and Mr. T. Samarasinghe (officials of Prima), and Mr. Lucien Wijekoon and Mr. C. Navaratnam (Police Officers) stating that the release of the hostages was obtained upon the signing of an agreement on behalf of the workers by the petitioner. We have seen that the petitioner did play a vital role in securing the release of the suspects and signed the agreement in his capacity as President of the Trade Union. What was it that transformed the peacemaker into a villain? One possible explanation is that there was a failure to ascertain the facts. Another is that there was a misinterpretation of the facts. There might also have been a misunderstanding of the law on the part of the First respondent. (See also paragraph 20 of the First respondent's affidavit read with paragraph 17 of the Petition which I shall discuss later below under the caption "Were Reasons For Arrest Given?").

In paragraph 17 (a) of his affidavit the First respondent claims that he arrested the petitioner because he was "involved" in the commission of certain offences. He was, learned Counsel for the 1st respondent submitted, therefore "concerned." Learned Counsel for the First respondent, over and over again stressed the fact that the Petitioner was "concerned" and therefore arrested in accordance with procedure prescribed by law. If "concerned" in section 32 of the Code of Criminal Procedure is to be given that meaning, some quite extra-ordinary and unexpected consequences must follow. Every

"interested" person could have been arrested, including especially the hostages for they were more "involved" in that sense than any others. Every Police Officer who investigated the matter, including the First respondent, the Police Officers, the Commissioner of Labour, the Assistant Commissioner of Labour and officials of the Bakery who, like the petitioner, attempted to settle the matter, could have been arrested. The petitioner was "concerned", as we have seen, in the sense that he, as the President of the Trade Union, was instrumental in bringing about an end to the hostage crisis. He went to the scene in response to an appeal from the Police to assist in the matter. Having failed, he was about to leave when he acceded to the request of the Police to play an intercessory role. He agreed because, admittedly, he was "concerned" in the sense that he was troubled by the events and showed concern in and was anxious to bring the crisis to an end. However, the fact that the crisis was brought to an end by the petitioner's intervention did not entangle him with and bring him into connection with the decisions of other persons to take hostages and to deal with them in various reprehensible ways.

The petitioner was not implicated in any cognizable offence. There was no reasonable complaint or credible information that he had committed or had conspired to commit or abetted the commission of such an offence. There were no grounds for reasonable suspicion that he had been "concerned" in any of the specified cognizable offences in the sense that he was one of the group of persons responsible for the criminal activities committed at the Bakery on 7 December 1994. I therefore hold the petitioner could not have been arrested in accordance with the provisions of Section 32(1) (b) of the Code of Criminal Procedure and that his arrest was not in accordance with the applicable procedure established by law and therefore that the First respondent violated Article 13(1) of the Constitution.

WERE REASONS FOR ARREST GIVEN?

Article 13(1) of the Constitution provides that "Any person arrested shall be informed of the reason for his arrest." The petitioner in

paragraph 45 of his petition and paragraph 46 of his affidavit maintains that his fundamental right to be informed of the reason for his arrest had been violated because he had not been informed of the reasons for his arrest.

In paragraph 28 of his affidavit the petitioner states that the First respondent informed him that he had come to arrest him. "I thereupon inquired from the 1st respondent what the charges against me were. The 1st respondent replied that I would be informed of the charges against me at the C.I.D. I then inquired whether the Hon. Speaker's permission had been obtained for my arrest and the 1st respondent replied that such permission was not necessary." In paragraph 30 of his affidavit the petitioner states that he contacted Mr. Paul Perera, President's Counsel, over the telephone and informed him of what had happened. "Mr. Perera wanted me to find out from the 1st respondent what the charges against me were. Mr. Perera also told me that it was my constitutional right to be informed of the charges against me. Mr. Perera advised me not to leave my house without being informed of the charges against me. I requested Mr. Perera to hold the line and informed the 1st respondent of what Mr. Perera had told me. The 1st respondent however informed me that the charges would be made known to me at the C.I.D. Thereupon, I informed Mr. Perera that the 1st respondent had told him that the charges would be made known to him at the C.I.D. Mr. Perera then asked me to inquire whether the Hon. Speaker's permission had been obtained. I informed Mr. Perera that the 1st respondent had told me that such permission was not necessary."

The petitioner's wife who had gone to work, had been informed by the petitioner's surgery assistant – the petitioner was a Dental Surgeon – of what was taking place. She returned home. In paragraph 33 of his affidavit the petitioner states: "My wife demanded from the 1st respondent to know why I was to be taken away. The 1st respondent replied that my statement would be recorded and that I would be produced before the Magistrate without delay." In paragraph 35 of his affidavit the petitioner states as follows: "... as I was getting into the 1st respondent's vehicle, ... Mr. Lakshman

Ranasinghe, Attorney-at-Law, contacted me on my mobile telephone. ... I informed Mr. Ranasinghe that I was being taken to the C.I.D. by the 1st respondent. Mr. Ranasinghe then wished to speak to the 1st respondent and I handed over the mobile telephone to the 1st respondent. The 1st respondent spoke to Mr. Ranasinghe and stated that I would be produced before the Magistrate after recording my statement." The averments contained in paragraphs 33 and 35 are confirmed by the petitioner's wife, Dr. Sujatha Senaratne, in her affidavit (P5).

The petitioner's statement was recorded at the C.I.D. However, despite the assurances he and his wife were given, the petitioner states in paragraph 37 of his affidavit that he "was never informed by the 1st respondent or by any other officer of the reason for my arrest."

With regard to the averments in paragraph 30 of the petitioner's affidavit concerning his conversation with Mr. Paul Perera, President's Counsel, the First respondent states in paragraph 18 (a) of his affidavit that he did not listen to the conversation. In paragraph 17(c) of his affidavit the First respondent states that he informed the petitioner that the Speaker's permission was "not necessary to arrest a Member of Parliament concerned in the commission of a criminal offence." If when Mr. Paul Perera had inquired whether the Speaker's permission had been obtained, the petitioner straight away informed him about what the First respondent had told him about the matter, it is difficult to understand why, if as the First respondent states in paragraph 23(c) of his affidavit that the petitioner had been also informed of the reasons for the arrest prior to being placed under arrest, the petitioner did not tell Mr. Perera what the reasons were or that he had been given reasons. It seems more probable than not that because he had not been given reasons for the arrest, the petitioner conveyed Mr. Perera's view that reasons for the arrest must be given and that the First respondent said that the charges would be made known to the petitioner at the C.I.D.

In paragraphs 20 and 21 of his affidavit the First respondent states as follows:

"20. With reference to the averments contained in paragraph 32 of the affidavit of the petitioner I state that I informed the wife of the petitioner the reasons for his arrest which are set out by paragraph 17 of the petition. I requested her to accompany the petitioner to the C.I.D.

21. With reference to the averments contained in paragraph 25 of the affidavit of the petitioner, I only admit having spoken to Mr. Ranasinghe, Attorney-at-Law over the cellular phone of the petitioner. By way of further answer I state that I informed Mr. Ranasinghe the reasons for the arrest of the petitioner and requested him to come to the C.I.D. if he wishes to meet the petitioner."

The First respondent's position is not that he gave the Petitioner reasons for arrest within a reasonable time thereafter for example, at the C.I.D., (which in certain circumstances might have been justified) but that he did so "prior to him being placed under arrest." (See paragraph 23(1) of the First respondent's affidavit). There was no dispute that the petitioner had been arrested before the arrival of his wife and before the telephone conversation with Mr. Ranasinghe. Giving them reasons for arrest in the presence of the petitioner was of no avail. There is no evidence with regard to reasons for arrest which the First respondent was supposed to have given the petitioner's wife or his lawyer. I will assume that what he told the wife and Mr. Ranasinghe were what he told the petitioner himself was too late. Moreover, it is the person arrested and not others even his wife or lawyer who must be given reasons for the arrest, but I will assume that what the petitioner overheard was a sufficient communication.

The First respondent states as follows in paragraph 20 of his affidavit: "I informed the wife of the petitioner the reasons for his arrest which are set out by para. 17 of the Petition, I requested her to accompany the petitioner to the C.I.D." Paragraph 17 of the petition states as follows: "Thereafter, Mr. Amaradasa Gunawardena informed the petitioner that the minimum demands of the workers were

acceptable to the management. Meanwhile, the Hon. Minister of Labour telephoned the Police Station and inquired from the petitioner about the situation. The petitioner informed the Hon. Minister of Labour that the management was agreeable to the minimum demands of the workers. He also informed the Hon. Minister that the workers had assured him that the hostages would be released if their minimum demands were met. The petitioner requested the Hon. Minister to send the Commissioner of Labour to the Police Station."

It will be observed that the First respondent did not suggest that on the basis of Mr. Wijeratne's statement (IR5), the petitioner was implicated in the events that took place at the Bakery as a conspirator or abettor. There was no reason for the petitioner to suppose that he was being arrested as a conspirator or abettor, for he had denied participation at the meeting referred to by Mr. Wijeratne and had no reason to believe that that was the way in which he had come to be implicated and arrested. All that he was told was that he was "being taken into custody for offences committed during the hostage crisis" on 7th December 1994 and not because of what he is supposed to have said or done, according to Mr. Wijeratne, on 15th November 1994. The conspiracy-abetment angle did not seem to have entered the First respondent's mind.

Assuming that it would have been sufficient for the purpose of Article 13 (1) for the reasons to have been given soon after the arrest, and that the First respondent stated everything in paragraph 17, were they "reasons" for arrest? The events referred to in paragraph 17 recalled some of the steps taken by the petitioner in his role as a facilitator in the process of bringing about the peaceful settlement of an industrial dispute, which a group of persons had attempted to resolve by criminal means. The First respondent at that time, and indeed as we have seen even at the time of the hearing of the matter before us, seems to have been of the opinion that because the petitioner had played an active role in the settlement of the dispute, he was "involved" and liable to arrest. However, as we have seen, there had to be reasons for supposing him to be "concerned" in the relevant way in the commission of cognizable offences to enable the

First respondent to arrest the petitioner and the petitioner had a right to be given those reasons. The so called "fresh material" he had gathered too, as we have seen, related to the part played by the petitioner on 7 December 1994 relating to the settlement of the hostage crisis and the industrial dispute which was the underlying cause of the crisis. The constitutional right only to be given the reasons for arrest is not satisfied by giving any kind of explanation. A reason for depriving a person of his personal liberty within the meaning of Article 13 (1) of the Constitution must be a *ground for arrest*. There can be no such ground other than the violation of the law or a reasonable suspicion of the violation of the law. (See *Pieris v. A.G. and Others* ⁽⁸⁾; *Selvakumar v. Douglas Devananda* ⁽⁹⁾). In *Gunasekera v. De Fonseka* ⁽¹⁰⁾, H.N.G. Fernando, C.J. said that a citizen has a right to resist an unlawful arrest, but he can exercise that right if he is informed of the "*grounds* upon which he is being arrested." It is, the Chief Justice said, "Only if a person is informed of the ground for his arrest, or in other words, of the offence of which he is suspected, that he will have the opportunity to rebut the suspicion or to show that there was some mistake as to identity."

In paragraph 17 (b) of his affidavit the First respondent states as follows: "I informed the petitioner that he was being taken into custody for offences committed during the hostage crisis at the Prima Bakery and that the petitioner was well aware at the time of arrest that he was being taken into custody in connection with the unlawful confinement of Ms. Lin and Jayantha de Silva who were held hostage at the Prima Bakery". (Notes of arrest are annexed hereto marked X.)

The relevant part of the notes of arrest marked X are as follows: "Dr. Senaratne is present and I explained the arrest. (sic.) He demanded for detailed reasons for the arrest and said that he should contact his lawyer. I explained to him that he is wanted for the crimes committed during the hostage crisis at the Prima Bakery on 7.12.94. His lawyer Mr. Lakshman Ranasinghe too spoke to me over the Cell Tel Telephone of Dr. Senaratne and he was informed of the reasons for the arrest and also told him (sic.) that the suspect would be taken to the C.I.D. and thereafter will be produced in Court."

Even if the petitioner had been told that he was "wanted for the crimes committed during the hostage crisis at the Prima Bakery on 7/12/94", how was he know the "grounds" upon which he was arrested? The petitioner may have known of certain circumstances relating to the crimes others may have committed on that occasion and may have been asked to assist as a witness, but how was he to know that he was himself suspected of being an offender? The fact that he was "well aware at the time of arrest that he was being taken into custody in connection with the unlawful confinement" of certain persons was not enough. The petitioner should have been informed of the offences of which he was suspected. It would not have been possible otherwise for the petitioner to have explained away the mistaken notions which the First respondent may have held and thereby regained his liberty. The underlying purpose of giving reasons for the arrest was thwarted by his reticence.

The petitioner was not informed of reasons for his arrest and I therefore hold that his fundamental right guaranteed by Article 13(1) of the Constitution in that regard was violated by the First respondent.

ALLEGED UNREASONABLE DETENTION PRIOR TO PRODUCTION:

Paragraph 46 of his petition states as follows: "The petitioner states that the 1st respondent, by keeping the petitioner in illegal custody on 23.02.1994 as aforesaid violated the petitioner's fundamental right to freedom from arbitrary detention guaranteed to him by Articles 13(1) and/or 13(2) of the Constitution."

"Merely describing an arrest or detention as being illegal does not amount to an allegation of an infringement of Article 13(1) or 13(2)." (Per Fernando J. in *Garusinghe v. Kadurugamuwa* ⁽¹¹⁾).

However, a person who is detained in the custody of the law beyond a specified prescribed maximum permissible time or beyond a reasonable time cannot be said to be a person arrested in

accordance with procedure established by law and such a detention in the words of H.A.G. de Silva, J. in *Piyasiri v. Fernando* ⁽¹²⁾ "for whatever the period may be" (See *Selvakumar v. Douglas Devananda and Others* ⁽⁹⁾ following *Pieris v. A.-G.*⁽¹¹⁾) subject to the principle of *de minimis*, would violate Article 13(1) of the Constitution. In order to avoid repetition a decision on the question whether Article 13(1) was violated by reason of detention beyond a prescribed or reasonable time will be made after a consideration of the averments in paragraph 46 of the petition in relation to Article 13(2) of the Constitution.

As far as Article 13(2) of the Constitution too is concerned, the question of the "legality" or "lawfulness" of the detention, which as Bandaranayake, J. pointed out in *Mahinda Rajapakse and Vasudeva Nanayakkara v. Chief Inspector Karunaratne and Others* ⁽¹³⁾ is "integral to the act of arrest", does not enter into the picture. In *Faiz v. A.-G.*⁽¹⁴⁾ followed in *Pieris v. A.-G.*⁽¹⁾; (see also per *Goonewardene, J. in Wijeratne v. Vijitha Perera*) ⁽¹⁵⁾ Goonewardene, J. observed that it is not only "unnecessary" to characterize any action that does not conform to the provisions of Article 13(1) as an "illegal arrest", it is perhaps hazardous to characterize a particular action as an 'illegal detention', an expression which carries certain overtones which may tend to colour and confuse and carry one away from an objective appraisal of a situation ... Upon a simple reading of its language uncomplicated by reference to the concept of "illegal detention" what do the provisions of Article 13(2) mandate or require to be done? It demands that any person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent court according to procedure established by law. ...When the period of time is exceeded before such person is brought before a judge, there would be a violation of Article 13(2), whereas if such period has not been exceeded, there would be no such violation and whether or not there has been an infringement of Article 13(1) is irrelevant.

In *Mahinda Rajapakse and Vasudeva Nanayakkara v. Chief Inspector Karunaratne and Others* (supra), Bandaranayake, J. said

that Article 13(2) is not concerned with the lawfulness of the arrest but with the question of ensuring the "containment of executive power". His Lordship said that in considering Article 13(2), "No distinction ought to be drawn between lawful and unlawful custody, detention or deprivation of liberty in considering this Article ... The need for such an enquiry should not be read into this Article. This Article is not concerned with this. The Article is plain enough and provides that executive detention cannot extend beyond 24 hours without judicial intervention."

The twenty-four hour period is the maximum period (exclusive of the time necessary for the journey from place of arrest to the Magistrate) permitted by section 37 of the Code of Criminal Procedure in the case of an arrest without a warrant. It cannot, as Bandaranayake, J. said "extend beyond 24 hours without judicial intervention." However, the fact that a person is in such a case produced before a Magistrate within twenty-four hours does not necessarily satisfy the constitutional requirement prescribed in Article 13(2). Article 13(2) of the Constitution provides, among other things, that "Every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent court according to procedure established by law ..."

In the matter before us, the petitioner was arrested without a warrant. The relevant procedure established by law was set out in sections 36 and 37 of the Code of Criminal Procedure. Section 36 requires a police officer making an arrest without a warrant to "without unnecessary delay and subject to the provisions contained as to bail to take or send the person arrested before a Magistrate having jurisdiction in the case." It was agreed by learned Counsel for the petitioner and respondents that once the arrest was made, the Police could not have released the petitioner on bail because the petitioner was arrested in connection with "non-bailable" offences. However, the requirement that the First respondent should, without "unnecessary delay", have sent the petitioner after his arrest before a Magistrate having jurisdiction in the case remained. Section 37 of the Code of Criminal Procedure provides that "Any peace officer shall not

detain in custody or otherwise confine a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate."

The petitioner was arrested at about 9 a.m. on 23 December 1994. He was taken to the C.I.D. He was produced before the Magistrate at about 2.45 p.m. and released on bail. He was produced as a suspect against whom further investigations were pending. It was not explained why the petitioner was not produced soon after his arrest. The interrogation was one that could have taken place after he was produced before the Magistrate. I am of the view that the delay in producing the petitioner was in the circumstances unnecessary and unreasonable and that his production at 2.45 p.m. was not in compliance with the provisions of sections 36 and 37 of the Code of Criminal Procedure. Admittedly, he was detained for only a few hours. Nevertheless such a detention being unnecessary and unreasonable was not according to procedure established by law and it was therefore in violation of the petitioner's fundamental right guaranteed by Article 13(2) of the Constitution. (See per Fernando J. *Faiz v. A.-G.* (supra); *Selvakumar v. Douglas Devananda* (supra); *Kumarasena v. Shriyantha and Others*)⁽¹⁶⁾. In *Kumara v. Rohan Fernando and Others*,⁽¹⁷⁾ where, as in the matter before us, there were no grounds for arrest, Perera J. said that "the time for production was limited to the time for travel between the home of the petitioner and the nearest Magistrate of the nearest competent court."

Attention is drawn to *Nallanayagam v. Gunatilleka*⁽¹⁸⁾. In that case Colin-Thome, J. observed that "Article 13(2) embodies a salutary principle safeguarding the life and liberty of the subject and must be exactly complied with by the executive. In our view this provision cannot be overlooked or dismissed as of little consequence or as a minor matter." In *Selvakumar* (supra) Fernando J. observed that "what is a 'reasonable time' for production before a Magistrate must necessarily be given a strict interpretation."

ORDER

For the reasons set out in my judgment, I declare that the First respondent violated the Fundamental Rights of the Petitioner guaranteed by Article 13(1) and 13(2) of the Constitution.

The petitioner has claimed a sum of Rs. 5,000,000/- as compensation and costs. Article 126 (4) of the Constitution empowers the Court to grant such relief or make such directions as it may deem just and equitable in the circumstances in respect of any petition for relief or redress relating to the infringement of a fundamental right. The award of compensation or costs is not automatic but a matter for the Court's discretion. I am of the view that no useful purpose would be served by awarding compensation in this case. Since I am of the view that it is not an appropriate case for holding the First respondent personally liable, punitive considerations do not have to be met by the award of compensation. As far as the expression of the disapproval of the Court is concerned, this is implicit in the declaration I have made of the violation of the petitioner's Constitutional rights. Nor is an award of any sum of money necessary to rehabilitate the petitioner. The sum of Rs. 5,000,000/- no doubt conveys the fact that the petitioner deemed the transgression of his fundamental rights of personal liberty to be of a gross and outrageous nature, but it should not be taken as an indication of a solatium that would assuage his wounded feelings. My finding of the violations of Articles 13(1) and 13(2) of the Constitution constitutes just satisfaction in that regard. However, I do not perceive any circumstances to warrant a departure from the general practice of this Court of recognizing claims in respect of costs incurred by a successful applicant for relief or redress in matters of this nature. I order the State to pay the petitioner a sum of Rs. 15,000/- as costs.

FERNANDO, J. – I agree

DHEERARATNE, J. – I agree

Relief ordered.