

KONESHALINGAM**v****MAJOR MUTHALIF**

SUPREME COURT
SARATH N. SILVA, C.J.
SHIRANI BANDARANAYAKE, J.
EDUSSURIYA, J.
SC 555/2001
NOVEMBER 5, 2002
DECEMBER 10, 12, 2002

Fundamental rights – Constitution Article 12(1), Article 13(1), Article 13(2) – Reasons for the arrest not revealed? – Kept in custody without detention order – Torture – Injuries – Code of Criminal Procedure Act, section 37.

The petitioner complains that the army arrested him on 19.4.2001 and kept him in detention in the army camp till 21.5.2001, and that during this period he was assaulted. Thereafter he was handed over to the Special Investigation Unit where he was kept in detention until 26.6.2001 - and assaulted. The petitioner complained of violation of Articles 11, 13 (1) and 13 (2).

Held:

- (1) The Officer-in-Charge of the Special Investigation Unit- 6th respondent has not revealed the reasons for the arrest of the petitioner. The 1st respondent who had initially taken the petitioner into custody did not make any submission nor has he tendered any written submissions.
- (2) The silence of the 1st respondent and his officer and the non availability of any material indicating the reasons for the arrest, only leads to the conclusion that no acceptable reasons were available at the time he was arrested.
- (3) It appears that the petitioner was taken into custody on a vague suspicion, without there being any reasonable ground for such arrest. The arresting officer could not have possibly informed the petitioner the reason for his arrest - Article 13(1) violated.
- (4) No detention order was issued until 22.5.2001 and admittedly the petitioner was kept in custody from 19.4.2001 until 22.5.2001, without a

valid detention order; he was produced before the Magistrate only on 26.6.2001- Article 13 (2) violated.

- (5) The petitioner was in the custody of the army and the Special Investigation Unit for over two months. Except for the injury he had sustained a few years earlier, (loss of the lower left limb) there is no evidence to indicate that he had any injuries at the time of arrest. The observations of the AJMO substantiate the version that the petitioner was assaulted whilst being interrogated by the officers of the Special Investigation Unit.

APPLICATION under Article 126(1) of the Constitution.

Case referred to:

- (1) *Vinayagamoorthy (AAL) on behalf of Wimalentharan v the Army Commander and others* - 1997 1 Sri LR 113

V. Yogeswaran for the petitioner.

Riyaz Hamza SC for 3rd to 5th respondents.

K. R. M. Abdul Raheem for 6th respondent.

February 10, 2003.

SHIRANI BANDARANAYAKE, J.

The petitioner is 26 years of age and married with 2 children. 01
According to him, in 1991 he had accidentally stepped on a land
mine, which cost him his lower left limb. He claimed that he is a
labourer and that he is the sole breadwinner of his family. The
petitioner submitted that the personnel of the JOOSSP Army Camp
arrested him on 19.04.2001 and kept him in detention in the said
Camp until 21.05.2001. During this period the petitioner claims that
he was assaulted with batons and sticks. Thereafter he was
handed over to the Special Investigations Unit of the Police Station,
Vavuniya, where he was kept in detention until 26.06.2001. The 10
Petitioner submitted that during this period he was interrogated
from time to time and during the time of interrogation, he was
assaulted and was forced to admit that he was a member of the
Liberation Tigers of Tamil Eelam (LTTE). On occasions when he
attempted to explain his innocence, he was further assaulted and
was forced to place his signature on documents of which the
contents were neither read nor explained to him. His position is
that, in fear of further torture, he signed the said documents as

ordered. The petitioner was produced before the Magistrate, Vavuniya on 25.06.2001, who ordered him to be sent to Remand Prison, Kalutara. 20.

During the time he was under detention, the petitioner claims that he was tortured and treated in a cruel, inhuman and degrading manner and his submission is that his arrest and detention are both wrongful and illegal thereby violating his fundamental rights. This Court granted leave to proceed for the alleged infringement of Articles 11, 13(1) and 13(2) of the Constitution.

The 06th respondent, who is the Officer-in-Charge of the Special Investigation Unit of the Police Station, Vavuniya, concedes that the petitioner was arrested, but he refutes the period of detention given by the petitioner. His position is that the petitioner was handed over to the Police Station, Vavuniya only on 22.05.2001 and the Special Investigation Unit, Vavuniya had taken over the petitioner and the investigation on 23.05.2001. Further he submitted that the petitioner was produced before the Magistrate, Vavuniya on 25.05.2001. He further submitted that the petitioner was detained in terms of 2 detention orders dated, 22.05.2001 and 27.06.2001 for 30 days and 28 days respectively, for the purpose of investigation. The 6th respondent denies that the petitioner was assaulted while he was in custody. 30
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Article 13(1) of the Constitution provides as follows :

“No person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest.”

The 6th respondent has not revealed the reasons for the arrest of the petitioner. He has taken the position, as referred to earlier, that he was handed over to him only on 22.05.2001.

The 1st respondent, who had initially taken the petitioner into custody, did not make any submissions nor has he tendered any written submissions. The two detention orders (6R5 and 6R5A), issued by the Deputy Inspector General of Police for Wanniaraja Range, regarding the petitioner stated as follows: 50

“A member of the LTTE who had received training in the use of arms and thereby committed an offence punishable under

Regulation 3(a) of the Emergency Regulations published in the Government Gazette Extraordinary, bearing No. 1012/16 of 27.01.1998.”

However, it is to be noted that they were issued only on 22.05.2001 and 21.06.2001, respectively and that the petitioner was taken in to custody on 19.04.2001. Amerasinghe, J., in *Vinyagamorthy, AAL (on behalf of Wimalenthiran) v The Army Commander and others* has held that, in deciding whether the arrest was in accordance with the ‘procedure established by law’, the matter in issue is not what subsequent investigations revealed, but whether at the time of the arrest the person was committing an offence, or that there were reasonable grounds for suspecting that the person arrested was concerned in or had committed an offence. 60

In the instant case, although the detention orders refer to the petitioner as “a member of the LTTE”, no material was produced before this Court to show that at the time of the arrest of the petitioner, the arresting officers had such information prior to the decision to arrest the petitioner. The 6th respondent’s version only relates to the position after he was handed over to his custody on or about 22.05.2001. The silence of the 1st respondent and his officers and the non-availability of any material indicating the reasons for the arrest of the petitioner, only leads to the conclusion that, no acceptable reasons were available at the time he was arrested. 70

It appears that the petitioner was taken into custody on vague suspicion, without there being any reasonable grounds for such arrest. The arresting officer could not have possibly informed the petitioner the reason for his arrest. 80

I therefore hold that the petitioner’s fundamental right guaranteed under Article 13(1) of the Constitution was violated.

The respondents have not disputed the date of arrest. Their position is that the petitioner was kept in the custody of the JOOSP Army Camp until 21.05.2001 on which date he was handed over to the Special Investigation Unit, Vavuniya. The 6th respondent, who is the OIC of the said unit, submitted that immediately after concluding the investigations of 25.05.2001, the petitioner was 90

produced before the Magistrate, Vavuniya and two detention orders referred to above and dated 22.05.2001 (6R5) and 21.06.2001 (6R5A) were issued for 30 days and 28 days respectively.

In the circumstances, it is evident that the petitioner was kept in custody from 19.04.2001 to 22.05.2001, without producing him before the magistrate. No material was produced before the Court to indicate that there was a valid detention order to detain him during this period. Article 13(2) of the Constitution provides that,

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“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; and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law.”

The established procedure regarding persons arrested, according to section 37 of the Code of Criminal Procedure Act, is as follows:

“Any peace officer shall not detain in custody or otherwise 110
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.”

It is not disputed that no detention order was issued until 22.05.2001 and admittedly the petitioner was kept in custody from 19.04.2001 until 22.05.2001, without a valid detention order. He was produced before the Magistrate only on 26.06.2001.

In the circumstances, I am of the view that the detention of the 120
petitioner for a period of over one month without a valid detention order is in violation of the petitioner’s fundamental right guaranteed by Article 13(2) of the Constitution.

The petitioner complained of torture during the period he was in detention, initially at the JOOSP camp and later at the Special Investigation Unit, Vavuniya. Based on an order made by this

Court, the petitioner was examined by the Assistant Judicial Medical Officer, Colombo on 13.11.2001. The relevant contents of the Report given by the Medical Officer is reproduced below:

"Examination of Scars of the Injuries

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1. Obliquely placed scar (4 x 1/4") on the back of the right shoulder.
2. Obliquely placed scar (3 x 1/4") on the back of the left shoulder.
3. Obliquely placed scar (7 x 1/4") on the back of the right shoulder.
4. Obliquely placed scar (7 x 1/4") on the back of the left shoulder.
5. Obliquely placed scar (4 x 1/4") on the back of the lower part of the back of the chest, left side. 140
6. Obliquely placed scar (6 x 1/4") on the lower part of the back of the chest right side.
7. Obliquely placed scar (5 x 1/4") on the back of the chest and loin on left side.
8. Transversely placed scar (5 x 1/4") on the right loin.
9. Circular burn scar (3/4 in diameter) on the dorsum of the right wrist.
10. Circular burn scar (1/4 in diameter) on the dorsum of the right hand.
11. Circular burn scar (1/4 in diameter) on the dorsum of the right index finger. 150
12. Circular burn scar (1/4 in diameter) on the dorsum of the right ring finger.
13. Two burn scars (1/4 in diameter) on the right palm.
14. Circular burn scar (1/4 in diameter) on the right thigh laterally.
15. Two circular burn scar (each 1/4 in diameter) on the middle of the right thigh.
16. Circular burn scar (1/4 x 1/4) on the dorsum of the right foot.
17. Scar (3/4 x 1/2") on the middle of the right leg."

It is to be noted that the AJMO has not referred to the probable 160:
period of time the assault on the petitioner would have taken place.
However, in concluding the Report, the AJMO stated that,

“Scar No. (1) to (8) and 17 were not inconsistent with caused by
blunt weapons (sic)

Scar No. (9) to (16) were consistent with history of burns with
cigarette butts.”

The 6th respondent submitted that the petitioner was produced
before the Medical Officer of the Base Hospital, Vavuniya on
23.06.2001. Although detailed descriptions are not available, that
Medical Officer too, has referred to the presence of a number of 170:
scars on the petitioner, at the time of the physical examination.

Admittedly, the petitioner was in the custody of the JOOSP Army
Camp and the Special Investigation Unit for a period of over two
months. Except for the injury he had sustained a few years earlier,
which cost him his lower left limb, there is no evidence to indicate
that he had any injuries at the time of his arrest. This fact, combined
with the observations of the AJMO, in my view, substantiate the
version of the petitioner that he was assaulted while being
interrogated by the officers of the Special Investigation Unit.

For the aforementioned reasons, I hold that the petitioner's 180:
fundamental rights guaranteed by Articles 11, 13(1) and 13(2) were
violated by the officers attached to the 6th respondent's office. I
accordingly, direct the State to pay to the petitioner a sum of Rs.
15,000/- as compensation and costs. This must be paid within three
months from today.

SARATH SILVA, C.J. – I agree.

EDUSSURIYA, J. – I agree.

Relief granted.