

NANAYAKKARA

v.

HENRY PERERA, A.S.P. AND THREE OTHERS

SUPREME COURT.

WANASUNDERA, J., COLIN-THOMÉ, J., ATUKORALE, J., TAMBIAH, J. AND L. H. DE ALWIS, J.

S. C. APPLICATION No. 19/85.

JULY 15, 16 AND 17, 1985.

Fundamental Rights – Illegal arrest and detention – Regulations 18 and 19 – The Emergency (Miscellaneous Provisions and Powers) Regulations No. 1 of 1985 – Distribution of pamphlets without the I.G.P.'s permission by proscribed organization – Article 13 (1), (2) and (4) of the Constitution.

Vasudeva Nanayakkara on behalf of a proscribed organization, the Nawa Sama Samaja Party distributed leaflets in support of and inciting student protest against certain proposed amendments to the Universities Act. He was arrested by the 1st respondent on the orders of his superior on 17.2.1985 and detained at the Harbour Police Station.

The questions raised were that the 1st respondent who actually arrested Vasudeva Nanayakkara had of his own knowledge no reasonable grounds for suspecting him to be concerned in contravening the Emergency Regulations. The reason for the detention was not given and the detention was for search and not for investigation. Further the detention was mala fide and a punishment.

Held –

(1) The 1st respondent knew that the detenu had distributed leaflets and contravened the Emergency Regulations. There is no requirement in the Regulation that the knowledge should be first hand. It could be acquired on statements to others in a way which justifies a police officer giving them credit.

(2) The detention of a person arrested without a warrant under Regulation 18 can be justified only if the detention is for search. The expression search is synonymous with investigation. Hence the detention here for further investigation was lawful.

(3) The order by the Inspector General of Police (or Deputy Inspector General) to detain a person at a specified location under Regulation 19 (2) should be delivered to the detenu and state the reason for the detention so that the detenu could make a purposeful and effective representation for his release.

(4) While the effect of Regulation 18 in combination with Regulation 19 (making sections 36, 37 and 38 of the Code of Criminal Procedure Act not applicable) does not require a judicial order in regard to the duration of the detention (up to a maximum of 90

days) and the place of the detention, yet the requirement for production of an arrested person before a Magistrate within a reasonable time (not later than 30 days) remains under the proviso to Regulation 19 (1). The Constitutional requirement that a detained person shall be brought before the Judge of the nearest competent Court remains untouched. While the Magistrate is powerless to interfere with the arrest and detention of a suspect made under Regulation 18 read with Regulation 19 he is not powerless to investigate the reason for the detention and to notify the authorities if in his view the detention is a "punishment" infringing Article 13 (4) of the Constitution.

(5) Vasudeva Nanayakkara admitted that he distributed the impugned leaflets and that he incited the students. Hence, his detention was not mala fide and not a "punishment" infringing his rights under Article 13 (4) of the Constitution.

Cases referred to :

- (1) *Muthusamy v. Kannangara* (1951) 52 NLR 324.
- (2) *Corea v. The Queen* (1954) 55 NLR 457.
- (3) *Gunasekera v. De Fonseka* (1972) 75 NLR 246.
- (4) *Vimlabai Deshpande A.I.R.* 1945 Nagpur 8.
- (5) *King Emperor v. Deshpande* (1946) 47 Cr.L.J. 831.
- (6) *Edirisuriya v. Navaratnam* (1985) 1 S.L.R. 100.
- (7) *Christie v. Leachinsky* [1947] 1 All E.R. 567, 575 ; [1947] AC 583.
- (8) *Lallubhai Jegibhai v. Union of India A.I.R.* 1981 S.C. 728

APPLICATION for infringement of Fundamental Rights under Article 126 of the Constitution.

*Nimal Senanayake, P.C. with Kithsiri P. Gunaratne,
Miss S. B. Senaratne, Saliya Mathew, A. B. Dissanayake,
Taranga Silva and Miss A. D. D. N. Telespha* for petitioner.

*Sunil de Silva, Additional Solicitor-General with A. R. C. Perera, S.S.C. and Lal de Alwis,
S.C. for respondents.*

Cur. adv. vult.

August 9, 1985.

COLIN-THOMÉ, J.

This is an application under Article 126 of the Constitution. The petitioner is the brother of D. Vasudeva Nanayakkara. He avers that on the 17th February 1985 the 1st respondent and a party of Police officers armed with machine guns and rifles arrived at his brother's house at about 8.30 p.m. and took his brother into custody and detained him at the Harbour Police Station overnight.

The petitioner stated that the arrest and detention of his brother were illegal and mala fide for promoting the political interest of the United National Party and its leaders by eliminating effective political opposition and misusing the provisions of the Public Security Ordinance for that purpose.

He pleaded that the fundamental rights of Vasudeva Nanayakkara in Articles 12 (1), 12 (2), 13 (1) and 13 (2) of the Constitution have been infringed and he prays for a declaration that his arrest and detention were an infringement of his fundamental rights.

Vasudeva Nanayakkara in his affidavit stated that on the 17th February a Police party suddenly entered his house and the 1st respondent informed him that he had orders to take him into custody and that he would be detained at the Harbour Police Station under the Provisions of the Emergency Regulations.

The 1st respondent, he averred, did not inform him who gave him orders to take him into custody nor did the 1st respondent state under which Emergency Regulation he was arrested or was being detained. On the 18th February at about 10.30 a.m. he was given an order (marked 'A') by the Officer-in-Charge of the Harbour Police. At no time was he informed that he had violated any Emergency Regulations.

In paragraph 6 of his affidavit Vasudeva Nanayakkara stated that he verily believed that his arrest and detention was part of a plan of the United National Party to eliminate all opposition.

In paragraph 10 of the affidavit he stated :

"I state that I have been and I am the Organising Secretary of the Nava Sama Samaja Party which was proscribed under the Emergency Regulations from July 1983."

Henry Perera, A.S.P., the 1st respondent, stated in his affidavit that on 17.2.85 he received an order from A.C.A. Gaffoor, Senior Superintendent of Police, Colombo South, to arrest Vasudeva Nanayakkara for having distributed pamphlets on 13.2.85 in front of the Fort Railway Station, in contravention of Regulations 28 (1) and 68 (3) of the Emergency (Miscellaneous Provisions and Powers) Regulation No. 1 of 1985.

The 1st respondent was aware of the fact that Vasudeva Nanayakkara had distributed leaflets in Colombo on 13.2.85 in contravention of the Emergency (Miscellaneous Provisions and Powers) Regulations No. 1 of 1985.

On 17.2.85 at about 19.45 hours he went to the house of Vasudeva Nanayakkara accompanied by Inspector Fabian Mitchell, Officer-in-Charge of Narahenpita Police and other Police Officers. He tapped at the door. Vasudeva Nanayakkara came out and they exchanged greetings as they knew each other earlier. He informed Vasudeva Nanayakkara that he had come to take him into custody in connection with the allegation that he had distributed leaflets in contravention of the Emergency Regulations. Vasudeva Nanayakkara admitted having distributed the pamphlets and when the 1st respondent told him that a photograph depicting him distributing pamphlets in front of the Fort Railway Station had been published in the "Sun" newspaper, Vasudeva Nanayakkara said he had heard about it although he had not seen the newspaper. A photocopy of the "Sun" newspaper dated 14.2.85 carrying this photograph was produced marked 1R1.

He arrested Vasudeva Nanayakkara, with the assistance of Inspector Mitchell, in exercise of the powers vested in him by Regulation 18(1) of the Emergency Regulation No. 1 of 1985.

He informed Vasudeva Nanayakkara that he was taking him to the Harbour Police Station and gave him time to take a change of clothing and a bag containing toilet articles. He also told Vasudeva Nanayakkara's wife to contact the Commissioner of Police or him in case she wanted to ascertain her husband's whereabouts. He gave her his telephone number. On the way to the Harbour Police Station he allowed Vasudeva Nanayakkara to buy a parcel of food.

The 1st respondent averred that the Nava Sama Samaja Party had been proscribed under the Emergency Regulations and by virtue of such proscription the distribution of the pamphlet marked 1R2A, annexed to the affidavit of Inspector L. I. R. de Silva, Officer-in-Charge of the Fort Police Station, amounted to a contravention of Regulation 68(3) of the Emergency Regulations published in Gazette (Extraordinary) No. 332/12 dated 18.1.1985.

Inspector L. I. R. de Silva in his affidavit stated that on 13.2.85 he saw Vasudeva Nanayakkara distributing pamphlets in front of the Fort Railway Station. He annexed a specimen leaflet marked 1R2A. He

recorded Vasudeva Nanayakkara's statement at the Harbour Police Station on 18.2.1985. He showed Vasudeva Nanayakkara the leaflet 1R2A and he admitted that it was the leaflet distributed by him on 13.2.1985, in front of the Fort Railway Station. 1R2A was against the new Act of the Government concerning Higher Education. Vasudeva Nanayakkara signed his statement admitting that he distributed these leaflets on 13.2.1985. He also admitted inciting the students. A certified copy of his statement has been produced marked 1R2B.

Inspector Fabian Mitchell in his affidavit has stated that the 1st respondent informed Vasudeva Nanayakkara that he came to arrest him for distributing leaflets in contravention of the Emergency Regulations.

A. C. A. Gaffoor, Senior Superintendent of Police, has stated in his affidavit that Vasudeva Nanayakkara was arrested on 17.2.1985 by the 1st respondent on orders given by him. From about the 21st January, 1985, there was unrest among the students of the Colombo University over the amendments to the Universities Act. On several occasions the Police had to intervene to prevent the students from committing unlawful acts. As the Colombo University came within his area he carefully followed the developments in the protest campaign of the students and he received information that Vasudeva Nanayakkara was in constant touch with the student leaders and was using the student dissatisfaction to draw the school children into the protest campaign and to incite them to commit unlawful acts and to have confrontations with the Police.

In February 1985 there was an organised campaign to distribute leaflets in Colombo condemning the amendments to the Universities Act and alleging that the Government was attempting to repress the underprivileged.

On the 13th February, 1985, Vasudeva Nanayakkara and a large number of students had distributed leaflets in front of the Fort Railway Station and similar acts were done by other groups in various parts of the city. The timely intervention of the Police prevented the commission of unlawful acts and a serious breach of the peace was averted.

Superintendent Gaffoor averred that permission had not been obtained from the Inspector-General of Police for the distribution of pamphlets among the public and the said act of Vasudeva

Nanayakkara in distributing or conspiring with others to distribute or the abetment of others to distribute pamphlets was in contravention of Regulation 28 read with Regulation 45 of the Emergency (Miscellaneous Provisions and Powers) Regulations, No. 1 of 1985.

He stated that an examination of the leaflets distributed by Vasudeva Nanayakkara on 13.2.1985 revealed that the Nava Sarta Samaja Party which had been proscribed under Regulation 68 was among the groups supporting the campaign.

After carefully studying the situation and information compiled by Intelligence Agencies Superintendent Gaffoor formed the opinion that it was necessary to arrest Vasudeva Nanayakkara and investigate the offences of distributing leaflets without the I.G.P.'s permission and on behalf of a proscribed organization. Accordingly, he ordered the 1st respondent to arrest Vasudeva Nanayakkara for distributing leaflets among the public in contravention of the said Emergency Regulation and to produce him at the Harbour Police Station.

It appeared necessary to detain him in custody pending the conclusion of investigation as to his complicity in the student protest campaign. On 18.2.85 he made a report to D.I.G. Edward Gunawardene setting out briefly the information available to him and recommending the detention of Vasudeva Nanayakkara for the purpose of further investigation. The arrest of Vasudeva Nanayakkara and the recommendation of his detention for further investigation were made in good faith.

S. D. E. S. Gunawardena, D.I.G., Metropolitan Range, the 2nd respondent has averred that after he studied the report of Gaffoor and other reports he formed the opinion that it was necessary to detain Vasudeva Nanayakkara who had been arrested under the Emergency Regulations pending the completion of investigations. By virtue of his powers under Regulations 18 and 19 (2) of the Emergency Regulations he authorized the Officer-in-Charge of the Harbour Police to detain Vasudeva Nanayakkara at the Harbour Police Station. Vasudeva Nanayakkara was released from detention on the 18th March, 1985.

The virtual petitioner (hereafter called the petitioner) originally came into court on the basis of two complaints :

- (i) that his arrest was in circumstances which contravened Article 13 (1) of the Constitution

- (ii) that his detention was an infringement of Article 13 (2) of the Constitution.

At the hearing of this application learned President's Counsel confined himself to the submission that the arrest of the petitioner by Henry Perera was illegal and infringed Article 13 (1) as Henry Perera at the time of arresting the petitioner did not have a reasonable ground for suspecting the petitioner to be concerned in or to be committing or to have committed an offence under any Emergency Regulation. Henry Perera was merely carrying out the orders of Gaffoor, S.P., to arrest the petitioner. There was no material in Henry Perera's affidavit from which it could be inferred that he had "a reasonable ground" for suspecting the petitioner to have committed an offence under any Emergency Regulation. Learned Counsel submitted that the expression "reasonable ground" had to be treated as an objective fact to be proved by the 1st Respondent and to be determined by Court.

Learned Counsel cited *Muttusamy v. Kannangara* (1) (per Gratiaen, J.) where it was held that a peace officer is not entitled to arrest a person on suspicion under section 32 (1) (b) of the Criminal Procedure Code, except on grounds which justify the entertainment of a reasonable suspicion.

It was further held in this case that section 69 of the Police Ordinance does not authorise a police officer without a warrant to enter and search premises for alleged stolen property except on reasonable suspicion. A suspicion is presumed to be reasonable only if the facts disclose that it was founded on matters within the police officer's own knowledge or on statements by other persons in a way which justify him in giving them credit. See also *Corea v. The Queen* (2).

Learned President's Counsel also relied on the judgment in *Gunasekera v. De Fonseka* (3) which held that although Regulation 19 of the Emergency Regulation No. 6 of 1971, published in Gazette of 15th November, 1971, empowers any officer mentioned therein to arrest without a warrant a person whom he has reasonable ground for suspecting to be concerned in an offence punishable under any Emergency Regulation, a condition precedent for such arrest is that the officer who arrests should himself reasonably suspect that the person arrested had been concerned in some offence under the Emergency Regulation. Accordingly, where an Assistant Superintendent of Police has purported to arrest a person under

Regulation 19 merely because he had orders to do so from his superior officer, the Superintendent of Police, and was not personally aware of the actual offence of which the person arrested was suspected by the Superintendent of Police, such arrest is liable to be declared in habeas corpus proceedings to have been unlawful.

The Indian case of *Vimlabai Despande* (4) dealt with the interpretation of Rule 129 (1) of the Defence of India Rules which provided that –

R. 129 (1) "Any police officer. . . . may arrest without warrant any person whom he reasonably suspects of having acted. . . .

(a) in a manner prejudicial to the public safety or to the efficient prosecution of the war."

The High Court of Nagpur held that "under R. 129 all that the Provincial Government can do is to specify the place of detention and up to a limit of two months, its duration. The power to arrest or detain under R. 129 is not conferred on the Provincial Government. The only authority we are concerned with under R. 119 is the police officer who made the detention, and it is for him to show that he had reasonable grounds for suspicion The only affidavit we have on the side of the Crown is one which tells us about the suspicions entertained by the Provincial Government, not by the police officer making the arrest. But what we have to determine here is what were his suspicions, and were they reasonable, and not what the Provincial Government's suspicions are." This decision was affirmed by the Privy Council in *King Emperor v. Deshpande* (5).

Regulation 18 (1) of the Emergency Regulations published in Gazette No. 332/13 of January 18, 1985, states :

18 (1) "Any police officer, any member of the Sri Lanka Army, the Sri Lanka Navy or the Sri Lanka Air Force, or any other person authorised by the President to act under this regulation may search, detain for purposes of such search, or arrest without a warrant, any person who is committing or has committed or whom he has reasonable ground for suspecting to be concerned in or to be committing or to have committed, an offence under any emergency regulation, and may search, seize, remove and detain any vehicle, vessel, article, substance or thing whatsoever used in or in connection with the commission of the offence."

Regulation 18 (1) empowers anyone of the numerous persons mentioned therein to search, detain for purposes of such search or arrest without a warrant, any person :-

- (a) who is committing an offence under any Emergency Regulation ; or
- (b) who has committed an offence under any Emergency Regulation ; or
- (c) whom he has reasonable ground for suspecting to be concerned in or to be committing or to have committed, an offence under any Emergency Regulation.

In *Gunasekera v. De Fonseka (supra)* the affidavit of the Superintendent of Police, stated that the corpus Gunasekera had been arrested on 18th March, 1975 "on suspicion" of being concerned in a conspiracy to overthrow the Government. It was clear from the affidavits of the Superintendent of Police and the Assistant Superintendent of Police that the corpus was arrested because the Superintendent suspected that he had been concerned in some offence, and that the Assistant Superintendent who arrested him had no such suspicion and could not and did not inform the corpus of the particulars of the alleged offence.

In the instant case, however, although Henry Perera, A.S.P. was ordered by A. C. A. Gaffoor, S.P. to arrest the petitioner, both these police officers, according to their affidavits, were aware before the arrest that the petitioner had distributed leaflets on 13.2.85 in front of the Fort Railway Station in contravention of Regulation 28 of the Emergency Regulations. The evidence objectively examined went beyond a matter of suspicion. Both police officers had knowledge that the petitioner had committed an offence contravening the Emergency Regulations and so Henry Perera was able to inform the petitioner of the reason for his arrest on the 17th February 1985. Learned President's Counsel submitted that the knowledge of the police officer making the arrest had to be first hand. There is no such requirement in Regulation 18 (1). Knowledge may be first hand or acquired on statements by others in a way which justifies a police officer giving them credit.

On the material available in this case I hold that the procedure followed in the petitioner's arrest was lawful and did not infringe his fundamental rights under Article 13 (1).

Learned President's Counsel submitted further that Regulation 18 only provides for detention for purposes of search. He submitted that detention for the purposes of further investigation is not authorised by Regulation 19. The affidavit of S.P. Gaffoor makes it clear that the reason for the detention of the petitioner was "pending the conclusion of investigations as to his complicity in the student protest campaign"

Regulations 19 and 20 of the Emergency Regulations read as follows :-

"19. (1) The provisions of sections 36, 37 and 38 of the Code of Criminal Procedure Act No. 15 of 1979, shall not apply in relations to persons arrested under Regulation 18.

Provided that where any person has been arrested and detained under the provisions of Regulation 18 of these regulations, such person shall be produced before any Magistrate within a reasonable time, having regard to the circumstances of each case, and in any event, not later than thirty days after such arrest.

The production of any person in conformity with the provisions of these regulations shall not affect the detention of such person under paragraph (2).

(2) Any person detained in pursuance of the provisions of Regulation 18 in a place authorised by the Inspector-General of Police may be so detained for a period not exceeding ninety days reckoned from the date of his arrest under that regulation, and shall at the end of that period be released by the officer-in-charge of that place unless such person has been produced by such officer before the expiry of that period before a court of competent jurisdiction.

(3) Where a person who has been arrested and detained in pursuance of the provisions of Regulation 18 is produced by the officer referred to in paragraph (2) before a court of competent jurisdiction such court shall order that such person be detained in the custody of the Fiscal in a prison established under the Prisons Ordinance.

20. The provisions of section 115 of the Code of Criminal Procedure Act No. 15 of 1979, shall not apply in relation to any person who is produced before a Magistrate under the provisions of Regulation 19 (3) or appears before a Magistrate in any other manner and is detained or remanded in the custody of the Fiscal in any prison in respect of being suspected or accused of any offence under any emergency regulation. Such person shall remain in such

custody for a continuous period of three months and shall not be released at any time prior to the expiry of such period, except in accordance with the provisions of Regulation 64."

It has been held in *Edirisuriya v. Navaratnam* (6) that a person can be taken in for detention under Regulation 18 (1) either for purposes of search or by way of arrest without warrant and such a person can be detained up to a period of ninety days in a place authorised by the Inspector General of Police or by a Deputy-Inspector General of Police. Regulation 19 (2) applies to all persons arrested and detained under Regulation 18 and not to a limited class of persons "detained for the purposes of such search". I am in agreement with the dicta in this judgment.

The question arises whether a person who is arrested without a warrant can be detained under Regulation 19 for an unspecified and unknown purpose. Regulations 18 and 19 although they throw no light on this matter have to be read with Article 13 (4) of the Constitution. The relevant portion of Article 13 (4) reads :

"The arrest, holding in custody detention or other deprivations of personal liberty of a person, pending investigation or trial, shall not constitute punishment."

Under Article 15 (7) of the Constitution laws may be made in the interests of national security which modify certain articles of the Constitution. Emergency Regulations under the Public Security Ordinance are by Article 15 (7) equated to legislation. Under Article 15 (7) fundamental rights declared and recognised by Articles 12, 13 (1), 13 (2) and 14 shall be subject to such restrictions as may be prescribed by law in the interests of national security, but may not affect Article 13 (4).

It is manifest, therefore, that the detention of a person arrested without a warrant under Regulation 18 can be justified in law only if the detention is for further investigation. It would be unlawful to detain such a person for an unspecified and unknown purpose as this would be an infringement of Article 13(4). It necessarily flows from this that no sooner the further investigation is concluded the suspect is entitled to his release from detention without waiting for the duration of ninety days to be over.

It is now necessary to examine the expression "detain for the purposes of such search." Provisions for detention of a suspect in custody "pending further investigation" is specifically contained in section 115 (1) and (2) of the Code of Criminal Procedure Act No. 15 of 1979.

"115. (1) Whenever an investigation under this Chapter cannot be completed within the period of twenty-four hours fixed by section 37, and there are grounds for believing that further investigation is necessary the officer-in-charge of the police station or the inquirer shall forthwith transmit to the Magistrate having jurisdiction in the case a report of the case, together with a summary of the statements, if any, made by each of the witnesses examined in the course of such investigation relating to the case, and shall at the same time forward the suspect to such Magistrate.

(2) The Magistrate before whom a suspect is forwarded under this section, if he is satisfied that it is expedient to detain the suspect in custody pending further investigation, may after recording his reasons, by warrant addressed to the superintendent of any prison authorise the detention of the suspect for a total period of fifteen days and no more. The provisions of section 264 shall apply to every such warrant. If at the end of the said period of fifteen days proceedings are not instituted the Magistrate may subject to subsection (3) either discharge the suspect or require him to execute a bond to appear if and when so required."

Regulation 20 of the Emergency Regulations permits the period of such detention being extended from fifteen days provided in section 115 to three months. Article 13 (4) of the Constitution also authorises detention pending investigation provided it is bona fide and not a punishment.

According to the Shorter Oxford Dictionary the expression "search" is synonymous with "to investigate". This is demonstrably implicit in the scheme of Regulations 18 and 19 of the Emergency Regulations. The object of these regulations is to extend and not to attenuate the powers of a police officer in a state of emergency. I hold, therefore, that the expression "detain for purposes of such search" in Regulation 18 of the Emergency Regulation empowers a police officer to detain a suspect pending further investigation.

Learned President's Counsel also submitted that the detention of the petitioner was mala fide and an infringement of Article 13 (4) of the Constitution.

According to the affidavit of Gaffoor, S.P., he had received information that the petitioner and other anti-Government political elements were attempting to make use of the student dissatisfaction to draw the school children into the protest campaign and to incite them to commit unlawful acts and to have a confrontation with the Police. Accordingly, he recommended to Edward Gunawardena, D.I.G. that the petitioner should be detained pending the conclusion of investigations as the petitioner's complicity in the student protest campaign.

The petitioner has admitted in his signed statement to Inspector L.I.R. de Silva, recorded on 18.2.1985, that he distributed the impugned leaflets near the Fort Railway Station on 13.2.1985. He also admitted inciting the students.

I hold that there is no substance in the allegation that the petitioner's detention was mala fide and a "punishment" infringing his fundamental rights under Article 13 (4) of the Constitution.

Another question that arises for consideration of this Court is whether an order by the Inspector-General of Police (or Deputy Inspector-General) to detain a person at a specified location under Regulation 19 (2) should state the reason for the detention.

In the instant case the order of detention (3R1) reads as follows :

"By virtue of the powers vested in me under Regulation 19 (2) of the Gazette of the Democratic Socialist Republic of Sri Lanka, Extraordinary No. 332/13 of 18.01.1985, I, S. D. E. S. Gunawardena, Deputy Inspector-General of Police, Metropolitan Range, do hereby authorise, Officer-in-Charge, Police Station, Harbour, to detain Vasudeva Nanayakkara of No. 34/B, Fife Road, Colombo 5, who had committed offences in contravention of Regulation (blank) of the said Gazette Extraordinary, for a period of one month with effect from 18.02.1985 at Police Station, Harbour, Colombo 1.

Police Hdqrs,
Colombo.
18.02.1985.

Sgd. S. D. E. S. Gunawardena,

D.I.G., Metropolitan Range."

A person is arrested and detained by an officer exercising his powers under Regulation 18 (1). The duration of the arrest and detention in pursuance of the provisions of Regulation 18 is provided in Regulation 19.

Regulation 19 (2) merely authorizes the Inspector General of Police (or Deputy Inspector General of Police) to nominate the place of detention. It is in effect an authorization to the Officer-in-charge of a place of detention to hold a particular person in custody within the premises under his control.

This interpretation is fortified by an examination of Regulation 17 (1) which empowers the Secretary of the Ministry of Defence to make an order of preventive detention of any person who in his opinion is acting in any manner set out in Regulation 17 (1) (a) and 17 (1) (b). Once such an order is made Regulation 17 (2) authorizes a police officer or other member of the armed services to implement such an order using such force as is necessary for the purpose. Regulation 17 (3) provides that a person detained in pursuance of such an order shall be detained "in such place as may be authorized by the Inspector General of Police".

It is clear, therefore, that under Regulation 19 (2) and 17 (3) the Inspector General of Police merely nominates the place of detention. This provision also enables the family of a detenu to ascertain from the Inspector General of Police the exact location of such detention so that they can contact the detenu.

In the instant case the reason of the arrest, communicated by Henry Perera, A.S.P. to the petitioner was that the petitioner had distributed leaflets in contravention of Emergency Regulations. The offence had already been committed on 13.2.1985, four days prior to his arrest. The reason for his subsequent detention at the Harbour Police Station according to Gaffoor, S. P., was to facilitate further investigation into the petitioner's alleged complicity in the student protest campaign. This reason for his detention was not communicated to the petitioner with sufficient particularity. Although Regulation 19 (2) does not state that the order of the Inspector General of Police nominating a place of detention should state the reason for the detention we think that it is in the interest of natural justice that the reason should be communicated to the detenu in the written order and that he should be supplied with a copy of the order.

Arrest and detention are inextricably linked. Article 13 (1) of the Constitution states that "Any person arrested shall be informed of the reason for his arrest." The reason why the observance of this fundamental right is mandatory is succinctly explained in the House of Lords case of *Christie v. Leachinsky* (7) (per Lord Simonds) "Arrested with or without a warrant, the subject is entitled to know why he is deprived of his freedom, if only in order that he may without a moment's delay take such steps as will enable him to regain it". See also at p. 578 (per Lord Du Parcq) :

"The principles established by the authorities are agreeable to commonsense, and follow from the governing rule of the common law that a man is entitled to his liberty, and may, if necessary, defend his own freedom by force. If another person has a lawful reason for seeking to deprive him of that liberty, that person must as a general rule tell him what that reason, is, for, unless he is told, he cannot be expected to submit to arrest or be blamed for resistance".

In *Lallubhai Jegibhai v. Union of India* (8) it was held that Article 22 (5) of the Indian Constitution requires that grounds of detention must be communicated to the detenu. The whole purpose of communicating the ground to the detenu is to enable him to make a purposeful and effective representation.

There is one other matter which requires elucidation. While the effect of Regulation 18 in combination with Regulation 19 does not require a judicial order in regard to the duration of the detention and the place of detention, yet the requirement for production of an arrested person before a Magistrate remains under the proviso to Regulation 19 (1), "to ensure the safety and protection of an arrested person" (per Wanasundera, J. in *Edirisuriya v. Navaratnam*, (*supra*)). The arrested person "Shall be produced before any magistrate within a reasonable time having regard to the circumstances of each case, and in any event, not later than thirty days after such arrest".

Under Regulation 19 (1) the provisions of sections 36, 37 and 38 of the Code of Criminal Procedure Code Act No. 15 of 1979 shall not apply in relation to persons arrested under Regulation 18. These sections are as follows :-

"36. A peace officer making an arrest without warrant shall without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case.

37. 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 periods shall not exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate.
38. Officers in charge of police stations shall report to the Magistrate's Courts of their respective districts the cases of all persons arrested without warrant by any police officer attached to their stations or brought before them and whether such persons have been admitted to bail or otherwise."

While Regulation 19 (1) rules out the applicability of sections 36, 37 and 38 it leaves untouched Article 13 (2) of the Constitution, which states :

- "13 (2) 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 constitutional requirement that a detained person "shall be brought before the judge of the nearest competent court" remains untouched except that "any" has been substituted for "nearest" in Regulation 19 (1). While the Magistrate is powerless to interfere with the arrest and detention of a suspect made under Regulation 18 read with Regulation 19 he is not powerless to investigate the reason for the detention and to notify the authorities if in his view the detention is a "punishment" infringing Article 13 (4) of the Constitution.

On the material placed before this Court and for the reasons stated in this judgment I hold that the arrest and detention of the petitioner were lawful and did not infringe his fundamental rights under Article 13 (1), 13 (2) and 13 (4) of the Constitution. The complaint that the

petitioner's fundamental rights under Article 12 (1) and 12 (2) have been infringed has not been pressed. The application is dismissed but without costs.

WANASUNDERA, J. – I agree.

ATUKORALE, J. – I agree.

TAMBIAH, J. – I agree.

L. H. DE ALWIS, J. – I agree.

Application dismissed.
