

VELU ARASADEVI
v
PREMATILAKA AND OTHERS

SUPREME COURT
FERNANDO, J.
ISMAIL, J.
WIGNESWARAN, J.
SC FR 401/2001
JANUARY 24, 2002

Constitution – Article 126 – Fundamental Rights – Articles 11, 13 (1) – Raped by Police/Army personnel at check point – Violation of fundamental rights by executive action ?

The petitioner was stopped at a check point and allowed to go home. Later respondents (Police/Army Officers) had come home and ordered her to accompany them to the Maradana Police Station. She was not taken to the Police Station, but was forcibly taken to a place behind the check point and raped.

The petitioner complained of infringement of her fundamental rights guaranteed by Articles 11 and 13 (1) of the Constitution.

Held:

- (1) It is clear that the petitioner was raped by one or more persons near the check point while they were on duty at the check point and that she was subjected to an unlawful restraint on liberty
- (2) The State is responsible for the infringement of her fundamental rights.
- (3) Petitioner's fundamental rights under Articles 11 and 13 (1) have been infringed by executive action.

APPLICATION under Article 126 of the Constitution.

A. H. H. Perera with *Ms. M. C. Morawaka* for petitioner.

Ranjan Suwardaratne with *S. T. Gunawardane* for 3rd respondent.

Riyaz Hamza SC for the 4th, 5th and 6th respondents.

Cur.adv. vult.

January 24, 2002

FERNANDO, J.

The petitioner complains of the infringement of her fundamental rights guaranteed by Articles 11 and 13 (1) of the Constitution. 01

The petitioner states that soon after 11.00 p.m. on 23.06.2001, she was stopped at a check point at which the 1st and 2nd respondents were on duty. She states that at about 3.00 a.m. on 24.06.2001, the 1st and 3rd respondents came to the residence and ordered her to accompany them to the Maradana Police Station. She accordingly went with them. She was not taken to the Maradana Police Station, but was forcibly taken to a place behind the check point, away from the main road. There she was raped by more than one person, despite her pleas that she was menstruating. Mr. Hamza is directed to submit a copy of the medical report submitted by Dr. Peiris of the Department of Forensic Medicine, Faculty of Medicine, the original of which was shown to us. 10

Mr. Hamza SC states that the Attorney-General will take steps to file criminal proceedings against the 1st, 2nd and 3rd respondents and that they have been informed that the Attorney-General will not appear for them. The 1st and 2nd respondents are nevertheless absent and unrepresented despite notices having been sent to them. 20

In these circumstances, it appears to us that any determination as to the part played by the 1st, 2nd and 3rd respondents in regard to the rape of the petitioner would prejudice the criminal trial.

It is clear from the petitioner's version that she was raped by one or more persons near the check point while they were on duty at the check point, and that she was subjected to an unlawful restraint on liberty. The State is therefore responsible for the infringement of her fundamental rights. We hold that the petitioner's fundamental right under Articles 11 and 13 (1) have been infringed by executive action. 30

We award the petitioner a sum of Rs. 150,000.00 as compensation and costs payable by the State on or before 31.03.2002. This is without prejudice to her civil rights against the wrongdoers personally.

ISMAIL, J. – I agree.

WIGNESWARAN, J. – I agree.

*Relief granted,
Compensation awarded.*