

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

In the matter of an application
under Article 126 of the
Constitution of the Democratic
Socialist Republic of Sri Lanka.

Rajakaruna Herath Mudiyansele
Keerthirathna,
Surakkulama,
Mudalakkuliya.

Petitioner

**SC. FR. Application
No. 491/2011**

Vs.

1. Premarathna
Police Constable,
Police Station,
Anamaduwa.
2. Officer in Charge,
Police Station,
Anamaduwa.
3. Inspector General of Police,
Sri Lanka Police Headquarters,
Colombo 01.
4. Honourable Attorney General,
Department of the Attorney General,
Colombo 12.

Respondents

BEFORE : Sisira J. de Abrew, J.
Priyantha Jayawardena, PC, J. &
Nalin Perera, J.

COUNSEL : Upul Kumarapperuma with Shanaka Perera for the
Petitioner.

Varunika Hettige, DSG, for the Respondents.

**ARGUED &
DECIDED ON** : 25.06.2018

Sisira J. de Abrew, J.

Heard both Counsel in support of their respective cases.

The Petitioner in his petition states that the 1st Respondent, Police Constable, Premarathna attached to Anamaduwa Police Station, on 18/01/2011 came to his residence and wanted to arrest him on a warrant issued by the learned Magistrate of Anamaduwa; that the 1st Respondent on 18/01/2011 did not arrest when he was told that the Petitioner was suffering from an ailment called Epilepsy; that on 19/01/2011 when he (the Petitioner) went to the Anamaduwa Police Station with his father-in-law, he (the Petitioner) was arrested by the 1st Respondent and put him into the Police cell; and that thereafter on 19/01/2011 he was produced before the Magistrate and remanded him. The 2nd Respondent in his affidavit filed in this Court, admits that the Petitioner was produced in the Magistrate's Court in connection with M. C. Case No. MC/53886/10/A. Later on 05/04/2011 on an application made by the Police, the Petitioner was discharged by the learned Magistrate on the ground that the Petitioner was not the suspect in the Magistrate's Court Case No. 53886/10/A.

The 2nd Respondent, Inspector, Herath Mudiyansele Upul Priyalal in his affidavit admits that on 18/01/2011, he was the Officer-in-Charge of the Police Station of Anamaduwa and that the official identification Number of the police constable Premarathna is 23078. The 1st Respondent, police constable Premarathna hereinafter in this order will be referred to as police constable 23078 Premarathna.

The 2nd Respondent in his affidavit admits that the Petitioner in this case was arrested by a sub inspector attached to his Police Station. His name was SI Nisansala. However, the 2nd Respondent further states that the Petitioner was arrested on 18/01/2011. However, the Petitioner states that he was not arrested on 18/01/2011, but was arrested on 19/01/2011 when he went to the Police Station on a message given by PC 23078 Premarathna. However, the arrest of the Petitioner is admitted by the Officer-in-Charge of Police Station, IP. Herath Mudiyansele Upul Priyalal. He is the 2nd Respondent in this case. The said IP. Herath Mudiyansele Upul Priyalal further admits that after the arrest of the Petitioner, the Petitioner was produced before him and later the Petitioner was produced before the Magistrate. IP. Upul Priyalal however admits that he on 31/03/2011 by way of a motion informed the Magistrate that the Petitioner is not the suspect who was wanted in the said Magistrate's Court Case. The case was called on 05/04/2011 and the learned Magistrate discharged the Petitioner from the said Magistrate's Court case.

IP. Upul Priyalal in his affidavit dated 24/09/2012 admits that he informed the Magistrate that the Petitioner (R.H.M. Keerthirathna) was not the person who was required in the said

Magistrate's Court case. From the affidavit of IP. Upul Priyalal, it is clear that the Petitioner was arrested on 18/01/2011 and was produced before the Magistrate and that the Petitioner was on remand from 19/01/2011 to 05/04/2011. Although the IP. Upul Priyalal states that the Petitioner was arrested on 18/01/2011, Petitioner says that he was arrested on 19/01/2011.

From the affidavit of IP. Upul Priyalal, it is clear that the arrest of the Petitioner is wrong and producing the Petitioner as a suspect in the Magistrate's Court is also wrong. The Petitioner admits that before he was produced before the Magistrate he was in the custody of the Police. The fact that he was also in the custody of the Police can be seen from the affidavit of IP. Upul Priyalal.

It is clear from the affidavit of the 2nd Respondent, IP. Upul Priyalal that the Petitioner was arrested due to mistaken identity.

Considering all these matters, the following matters are clear;

1. The arrest of the Petitioner by police officers attached to Anamaduwa Police Station.
2. The fact that the Petitioner was in police custody on 19/01/2011.
3. The fact that the Petitioner was produced before the Magistrate as a suspect.
4. The fact that the Petitioner has to be on remand on an application made by the Police.

5. The Petitioner was discharged by the learned Magistrate on a motion filed by the 2nd Respondent.

Although IP. Upul Priyalal takes up the position that it was SI. Nisansala who arrested the Petitioner, there is no affidavit given by SI. Nisansala to the above effect.

Considering all these matters, we hold that the Petitioner has been arrested not on 18/01/2011, but on 19/01/2011 and the said arrest has been made by police constable 23078 Premarathna.

Considering all the above matters, we hold that the arrest of the Petitioner by the 1st Respondent, police constable 23078 Premarathna is wrong and without any reasons and keeping the Petitioner in the custody of the Police is also wrong.

The production of the Petitioner as a suspect in the Magistrate's Court is also wrong.

From the affidavit of IP. Upul Priyalal, it appears that he was the Officer-in-Charge of Anamaduwa Police Station on 18/01/2011 and 19/01/2011. There is no dispute on this matter.

It is also clear that after the arrest, the Petitioner was produced before the said IP. Upul Priyalal who is the 2nd Respondent.

When we consider all the above matters, it is clear that producing the Petitioner as a suspect in the Magistrate's Court has

taken place in the hands of IP. Upul Priyalal.

For the above reasons, we hold that keeping the Petitioner inside the Police Station and producing him before the Magistrate's Court as a suspect are wrong.

Considering all these matters, we hold that the 1st Respondent (police constable 23078 Premarathna) and Officer-in-Charge of the Police Station, Anamaduwa IP. Herath Mudiyansele Upul Priyalal who is the 2nd Respondent have violated the fundamental rights of the petitioner guaranteed by Articles 12(1) and 13(1) of the Constitution.

Considering the facts of this case, we direct the 3rd Respondent, the Inspector General of Police to conduct an inquiry about the wrongful arrest of the Petitioner and take necessary legal steps.

Considering all the above matters, we order the 1st Respondent, police constable 23078 Premarathna to pay Rs. 25,000/- to the Petitioner.

We also order the Officer-in-Charge of Police Station, Anamaduwa, Inspector Herath Mudiyansele Upul Priyalal who is the 2nd Respondent to pay Rs.50,000/- to the Petitioner. The 1st and the 2nd Respondents have acted in this case as State Officers. Therefore State is liable to pay compensation to the Petitioner. Considering all the above matters, we order the State to pay Rs. 500,000/- to the Petitioner. The said sum of money Rs. 500,000/- should be paid from funds of the Police Department.

We direct the 3rd Respondent to take all necessary steps to ensure the payment of the said sum within three months from today. Rs. 25,000/- ordered against the 1st Respondent, police constable 23078 Premarathna should be paid from his personal funds. Rs. 50,000/- ordered against the Officer-in-Charge of Police Station, Anamaduwa, Herath Mudiyansele Upul Priyalal should be paid from his personal funds.

We direct the 1st and 2nd Respondents to pay the said sum of money within 03 months from today.

The Registrar of this Court is directed to send certified copies of this judgment to all the Respondents.

JUDGE OF THE SUPREME COURT

Priyantha Jayawardena, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

Nalin Perera, J.

I agree.

JUDGE OF THE SUPREME COURT

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