

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

In the matter of an application in terms of Article 17 and Article 126 which should be read with Articles 13(1), 12(1) and 14(1)g of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC. FR Application No. 350/2013

Amuhenkande Kankanamlage Jayasena,
Of No. 587, Lake Road, Borelesgamuwa
Now at

Colombo Remand Prison with
Remand No. 4116

Petitioner

Vs.

1. Kamal Perera
Chief Inspector of Police,
Officer in Charge
Unit No 4 – Fraud Bureau Colombo,
No. 5, Dharmarama Road,
Wellawatta,
Colombo 06.
2. Jayarathne,
Police Constable 30602,
Unit No 4 – Fraud Bureau Colombo,

No. 5, Dharmarama Road,
Wellawatta,
Colombo 06.

3. K.V.P. Fernando,
Senior Superintendent of Police
Director,
Fraud Bureau Colombo,
No. 5, Dharmarama Road,
Wellawatta,
Colombo 06.
4. S.A.D.S. Gunasekara
Deputy Inspector General of Police
Colombo
DIG's Office,
Colombo 11.
5. Anura Senanayake
Senior Deputy Inspector General of
Police,
Colombo
Police Headquarters,
Colombo 01.
6. N. Illangakoon
Inspector General of Police
Police Headquarters,
Colombo 01.
7. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before : Sisira J De Abrew J
Priyantha Jayawardene PC J
K T Chitrasiri J

Counsel : MTB Ekanayake for the Petitioner
Anupa de Silva SSC for the Respondents

Argued on : 6.5.2016

Decided on : 3.10.2016

Sisira J De Abrew

The Petitioner, by his petition, seeks a declaration that his fundamental rights guaranteed by Article 12(1), 13(1) and 14(1)(g) of the Constitution have been violated by the Respondents. This court by its order dated 22.10.2013, granted leave to proceed for the alleged violation of Article 12(1) and 13(1) of the Constitution by the 1st, 2nd and 3rd Respondents. The Petitioner states the following facts.

The Petitioner entered into an agreement to sell his house to Priyantha Fernando and Surupeeka Peiris who are husband and wife to a sum of Rs 7.5Million. Both parties signed an agreement bearing No.3636 (P3) attested by DC Peiris Notary Public and Attorney-at-Law on 20.8.2011 and the Petitioner accepted 2.5Million as an advance payment when he signed the said agreement P3 from Priyantha Fernando and Surupeeka Peiris. The Petitioner again accepted Rs.500,000/- as an advance payment from them on a subsequent occasion. He admits that he altogether accepted Rs 3.0Million from Priyantha

Fernando and Surupeeka Peiris as an advance payment to sell the house. He states that although the agreed amount to sell the house was Rs.7.5Million, the Notary Public in the deed marked P3 fraudulently stated that the agreed amount was 4.9Million. Although he states so, it has to be noted here that he signed the deed marked P3 (the agreement to sell bearing No 3636) dated 20.8.2011attested by DC Peiris Notary Public and Attorney-at-Law. The Petitioner, by the said deed, agreed to sell the house to Priyantha Fernando and Surupeeka Peiris within six months from 20.8.2011 upon accepting the balance amount. Thereafter on three occasions, by three deeds, parties agreed to extend this period up to 16.6.2013. The question that arises is that if the deed marked P3 was executed fraudulently with connivance of Priyantha Fernando and Surupeeka Peiris, as to why he signed subsequent three deeds on three occasions extending the time period specified in the deed marked P3. There is no answer to this question. Therefore the above allegation made by the Petitioner cannot be accepted. The Petitioner further states that Priyantha Fernando gave cheque No.072033 marked P4 for Rs 2.6Million to him but he did not deposit this cheque on the request of Priyantha Fernando. The Petitioner however tried to contend that the agreed amount was Rs.7.5Million. The question that arises is as to why Priyantha Fernando gave a cheque for Rs.2.6Million when he was only entitled to give Rs.2.4Million to the Petitioner. But Priyantha Fernando, in a subsequent statement marked P6 (produced by the Petitioner with his counter objections) has explained the handing over of the said cheque. According to Priyantha Fernando's statement, before the payment of 2nd advance (Rs.500,000/-), the petitioner had asked for a guarantee of the balance payment of Rs.2.4Million. Priyantha Fernando had

told him that if the house is handed over before the due date, he would pay Rs.200,000/-. This appears to be the reason for the additional payment of Rs0.2Million. This appears to be an additional payment. Therefore Priyantha Fernando gave a cheque for Rs.2.6Million (2.4Million-amount to be paid as per the agreement+0.2Million as an additional payment). As the petitioner did not sell the house as agreed, he (Priyantha Fernando) instructed the bank not to honour the cheque.

The petitioner says that he could not hand over the house as agreed since there were practical difficulties. Thereafter on a complaint made by Priyantha Fernando, the petitioner was arrested by the 1st Respondent. Paragraph 7 of P3 clearly stipulates how to deal with a situation if the seller fails to execute the deed of transfer. According to the said paragraph, if the seller does not fulfill his obligation, relief can be obtained through a court order. The Petitioner therefore contended that failure to perform his obligation was purely a civil transaction and as such the officers of the Fraud Bureau could not have arrested him and that the arrest and the filing of B Report against him violated his fundamental rights guaranteed under Article 12(1) and 13(1) of the Constitution.

This court on 19.9.2014 has observed that the Fraud Bureau has acted on a civil transaction and issued an interim order staying further proceedings in case No.7276/2013 in Court No.6 of the Magistrates Court, Colombo.

On the strength of the above material, the Petitioner contended that his failure to fulfill obligation under and in terms of P3 was a civil transaction and

that the officers of the Fraud Bureau could not have arrested and produced the Petitioner before the Magistrate as a suspect. The Magistrate remanded him.

Although one can contend that, on the strength of the above facts, the Petitioner's failure to fulfill obligation under and in terms of P3 was a civil transaction, court must consider whether there were reasonable grounds for the Police to arrest him. The 1st respondent, in his affidavit filed in this court, states that Priyantha Fernando made a complaint to the Fraud Bureau alleging that the Petitioner had defrauded him. The amount alleged was Rs.3Million. The Complaint of Priyantha Fernando made on 12.9.2013 has been produced as 1R1. After investigation, on 27.9.2013 the Petitioner was arrested. He was produced before the learned Magistrate on 28.9.2013. The Magistrate remanded him. Priyantha Fernando, in his statement marked 1R1, states that the agreement to sell bearing No.3636 attested by DC Peiris Notary Public and Attorney-at-Law was signed by both parties on 20.8.2011; that the Petitioner, by the said agreement, agreed to sell the house to him within six months upon the payment of balance amount; that the Petitioner, on 20.8.2011, accepted Rs.2.5Million from him; that as the Petitioner had a practical difficulty in handing over the vacant possession of the house, the period of six months was extended by deed No.3902 up to 20.5.2012; that even on 20.5.2012 the Petitioner could not hand over the vacant possession of the house due to his daughter's wedding and the time period was again extended up to 20.12.2012 by deed No.4011 attested by DC Peiris Notary Public and Attorney-at Law; that even on 20.12.2012 as the Petitioner could not hand over the vacant possession of the house, the time period was again extended up to 16.6.2013 by deed No. 4138 attested by DC Peiris Notary Public and Attorney-at Law; that

on 7.5.2013 on the request of the Petitioner, he paid further sum of Rs.500,000/- to the Petitioner; that even on 16.6.2013 the Petitioner did not hand over the vacant possession of the house; that the Petitioner did not respond to his telegram; that the Petitioner avoided answering the telephone; that although they (Fernando and Peiris) were waiting for the Petitioner at the lawyer's office, he did not turn up; that later the Petitioner told him that he would not sell the house and threatened him not to trouble him (the Petitioner); that he, on several occasions, told the Petitioner that the balance was ready and to finalize the transaction; and that he felt that the Petitioner had cheated him.

As I pointed out earlier, the Petitioner too admits that he accepted Rs.3Million as an advance from Priyantha Fernando and Surupeeka Peiris to sell the house but he did not execute the transfer deed.

The main complaint of the petitioner to this Court is that the arrest of the Petitioner by the Police was unjustified and wrong.

In this connection it is relevant to consider Section 32 (1) of the Code of Criminal Procedure Act which reads as follows:

“Any peace officer may without an order from a Magistrate and without a warrant arrest any person.....

- a) who in his presence commits any breach of the peace;
- b) 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;
- c) omitted.

- d) omitted.
- e) omitted.
- f) omitted.
- g) omitted.
- h) omitted.
- i) omitted.”

When a police officer decides to arrest a person on a complaint, he is not, at the time of the arrest, required to decide that the alleged offence is proved or can be proved beyond reasonable doubt. What is necessary is that, at the time of the arrest, there were reasonable grounds for him to believe that an offence had been committed or that he had reasonable grounds to act under Section 32(1) of the Code of Criminal Procedure Act.

In such a situation the police officer cannot be found fault with for arresting the alleged offender. This view is supported by the judgment of Wanasundera, J. in the case of Joseph alias Bruten Perera Vs. The Attorney General [1992] 1 SLR page 99 wherein His Lordship remarked thus; “The power of arrest does not depend on the requirement that there must be clear and sufficient proof of the commission of the offence alleged. On the other hand for an arrest, a mere reasonable suspicion or a reasonable complaint of the commission of an offence suffices.”

In this connection I would like to consider the judicial decision in the case of Roopechand and another Vs The State [1966] Cri.L.J 1367 (Vol.72, C.N.411) at page 1368 wherein it was held: “The argument that the breach of agreement committed by the accused gave rise only to a civil liability and the complainant should have taken recourse to civil proceedings to enforce his

right is, in my opinion, wholly misconceived. Money obtained by a person through deception may give rise to civil liability, but that does not and cannot mean he is immune from a criminal charge even if the prosecution succeeds in proving that he intended to dishonestly obtain money by misappropriation.”

It is undisputed in this case that the Petitioner signed the agreement to sell the house to Priyantha Fernando and Surupeeka Peiris; that the Petitioner accepted Rs.3.0Million as an advance; that the Petitioner did not return Rs.3.0Million to Priyantha Fernando and Surupeeka Peiris; and that he (the Petitioner) did not execute the deed of transfer. Priyantha Fernando was ready with the balance amount and requested the Petitioner to execute the deed of transfer. If the Petitioner did not have a dishonest intention, he would have and should have, by now, returned Rs.3.0Million to Priyantha Fernando and Surupeeka Peiris or he should have agreed to return Rs.3Million. At this stage one should not forget what the Petitioner told Priyantha Fernando when the request was made to finalize the transaction. The petitioner told Priyantha Fernando that he would not sell the house. The Petitioner even threatened Priyantha Fernando not to trouble him. However it is matter for the Magistrate, after hearing evidence, to decide whether or not the Petitioner entertained dishonest intention. I am making this observation as a case has been filed against the Petitioner in The Magistrate’s Court by the Fraud Bureau. When I consider the facts of this case and the above legal literature, I hold that there were reasonable grounds for the Police to believe that the Petitioner had cheated Priyantha Fernando and Surupeeka Peiris and thereby committed a criminal offence. In my view, in a case of breach of agreement by one party, although the party affected has recourse to civil remedy, if the police have

reasonable grounds to believe that the violating party in violating the contract had entertained dishonest intention, the Police, on a complaint made by the affected party, has the right to take legal action against the violating party under and in terms of the Criminal Procedure Code including the arrest and producing the violating party in the Magistrate court. Later it becomes the duty of the learned Magistrate to decide whether or not the charge is proved beyond reasonable doubt. In such a situation Police cannot be found fault with for arresting and producing the violating party in court.

I have earlier held that there were reasonable grounds for the Police to believe that the Petitioner had cheated Priyantha Fernando and Surupeeka Peiris and committed a criminal offence. If a Police officer has reasonable grounds to believe that a criminal offence had been committed by a person, he has a right under the Criminal Procedure Code to arrest the offender. In such a situation the arrest of the offender is justified. For the above reasons, I hold that that the Police Officers of the Fraud Bureau had reasonable grounds to arrest and produce the Petitioner before the Magistrate Court and that the contention of the petitioner that his arrest was wrong and unjustified cannot be accepted.

For the aforementioned reasons, I hold that the 1st to 6th Respondents have not violated the fundamental rights of the Petitioner guaranteed by Article 12(1) and 13 (1) of the Constitution.

I therefore dismiss the petition of the Petitioner. I therefore vacate the interim order of this court dated 19.9.2014 staying further proceedings in case No.7276/6/2013 in court No.6 of the Magistrate's Court of Colombo and direct the learned Magistrate to expeditiously conclude the said case. The Registrar of

this Court is directed to forward a certified copy of this judgment to the Magistrate of Colombo drawing his attention to the vacation of the said interim order.

In all the circumstances of this case, I do not order costs.

Petition dismissed

Judge of the Supreme Court.

Priyantha Jayawardene PC J

I agree.

Judge of the Supreme Court.

KT Chitrasiri J

I agree.

Judge of the Supreme Court.