

**SENADEERA, INSPECTOR OF POLICE,
PULMUDDAI POLICE STATION
vs
LT. SIYASINGHE AND OTHERS**

SUPREME COURT
WEERASURIYA, J.
UDALAGAMA, J. AND
FERNANDO, J.
SC APPLICATION No. 263/2001 (FR)
20th JANUARY, 2005

Fundamental Rights – Articles 11, 12(1) and 12(2) of the Constitution – Weak and contradictory evidence – Weight of evidence to satisfy court – Balance of evidence.

The petitioner police officer complained that when he and his wife (President, Police Seva Vanitha Movement) were having lunch, the first and second respondents (army officers of the Kokilai Camp) together with soldiers of the Kokilai Camp arrived, kicked their plates and took the petitioner away in a truck, assaulted him and later chased him away. In his counter affidavit the petitioner said that there were other uniformed police officers accompanying him but there was no affidavit from any officer to support this, except his wife's affidavit. The 3rd to the 5th respondents were soldiers and the 6th respondent was the Army Commander.

The evidence was contradictory except that there appears to have been a clash between the police and the army when the police were stopped from entering Kokilai village. The petitioner was produced before a medical officer according to whose report there were no major injuries. The petitioner decided not to enter the hospital for further treatment.

The 1st and 5th respondents and 10 others were prosecuted before a Magistrate, but the case was withdrawn on the advice of the Attorney-General. In the course of the Supreme Court proceedings, the 3rd, 4th and 5th respondents were discharged.

The petitioner complained of infringement of his rights under Articles 11, 12(1) and 12(2) of the Constitution.

HELD:

Per Udalagama, J.

- (1) " This court in order to consider granting relief to the petitioner needs to be satisfied on a balance of probabilities as to whether the petitioner had discharged his burden of establishing the allegation made out in the petitioner's petition and affidavit "
- (2) The case for the petitioner is exaggerated and unsupported by independent evidence.

APPLICATION for relief for infringement of fundamental rights.

Upul Jayasuriya for petitioner.

K. S. Tilakaratne for 1st, 2nd, 4th and 5th respondents.

S. L. Gunasekera for 3rd respondent.

Hashika de Silva. State Counsel for 6th and 7th respondents.

April 01st, 2005

UDALAGAMA, J.

The petitioner, an Inspector of Police, who was the officer-in-charge of Pulmuddai Police Station alleges in his petition dated 01.05.2001 *vide* paragraph 4 of same that on the 16th April, 2001 which obviously appears to have been erroneously referred to as "the day prior to the Sinhala New Year" that *inter alia* the 1 and 2 respondents together with soldiers in the Kokilai Army Camp subsequent to abusing the petitioner and his wife, the latter of whom was referred to as the President of the Police Seva Vanitha Association kicked their plates whilst having lunch and smashed same on the ground, pulled the petitioner by his collar using obscene language and was ordered to be dragged and put in a truck and further assaulted by at least 15 soldiers whilst in the said truck and later dropped off and ordered to run. This appears to be the second incident after a Corporal attached to the said Army Detachment is said to have abused the petitioner in obscene language and refused entry to the Kokilai village.

The latter also complains that notwithstanding his introducing himself as the officer-in-charge of Pulmuddai Police Station that the 1st respondent assaulted him in the presence of his wife.

It is also alleged that he and his wife and two Reserve Sub-Inspectors of Police were produced before the Government Medical Officer of Padaviya but they chose not to be admitted to the hospital for further treatment. The petitioner also refers to documents P3a, P3b, P3c and P3d, the medical reports dated 16.04.2001 (Medical Legal Examination reports).

The petitioner is said to have thereafter informed the Assistant Superintendent of Police of Kebitigollewa, the Superintendent of Police (Operations) Padaviya and the Divisional Superintendent of Police, Anuradhapura, subsequent to which the 1, 2 and 5 respondents and 10 others were produced before the Magistrate of Kebitigollewa on a B report filed of record bearing No. 3134/2001 dated 23.04.2001 (P4). It is observed from the averments of paragraph 42 of the affidavit of the petitioner dated 04.11.2001 that the Magistrate discharged the accused from the proceedings on the advice of the Attorney General. The petitioner also by his averment in paragraph 48 of the same affidavit alleges *inter alia mala fides* on the part of the then Additional Solicitor General but significantly unsupported.

The petitioner in paragraph 35 of the petition alleges that his fundamental rights to liberty, the freedom to engage in a profession and equal protection

of the law guaranteed under Articles 12(1), 13(1), 13(2), and 14(1)(g) had thus been infringed and in the above circumstances prays for relief against the 1 to 6 respondents.

By a second petition which is undated the petitioner had also claimed an infringement of his fundamental rights recognized by the provisions of Article 11 of the Constitution.

On 31.08.2001 this court has granted leave to proceed only for the violation of Articles 11, 12(1) and 12(2) of the Constitution.

It must be also mentioned here that the petitioner having not claimed relief against the 3rd respondent had no objection to the discharge of the latter and this court had on 20.05.2004 discharged the 3rd respondent accordingly.

The affidavit of the petitioner filed with the original petition dated 01.05.2001 does not refer to any allegations of arrest, detention, torture or abuse against the 4th respondent and as no violation of the petitioner's fundamental rights by the 4th respondent appears to have been established this court has no alternative but to discharge the 4th respondent.

The 4th respondent is accordingly discharged.

The only evidence against the 5th respondent, *vide* paragraph 23 of the aforesaid affidavit of the petitioner appears to be the former's mere presence with the 1st and 2nd respondents and no allegation of a violation by the 5th respondent of any of the petitioner's fundamental rights as alleged. In the circumstances the 5th respondent is also discharged from these proceedings.

The 6th respondent who is the Commander of the Sri Lanka Army had been made a party as the 1 to 5 respondents are under the latter's administrative control and general supervision and the 7th respondent, the Attorney General, is made a party to comply with the rules of court.

Considering the averments in the objections filed by the 1st respondent and also as admitted to by the petitioner the latter at the time of the alleged incident was not in uniform. The 1st respondent appears to have refused a request for a boat made by the petitioner and considering the

submissions of the learned Counsel for the petitioner at the hearing and also the contents of the affidavits of the petitioner and his wife together with the averment in the affidavits of the 1 and 2 respondents it is reasonable to assume that a confrontation between the Police party and the Army personnel had occurred on the date of the incident and that in all probability a violent confrontation had also occurred. Considering also the averments as contained in the affidavit of the petitioner supported by those of his wife together with those of the 1 and 2 respondents it is apparent that the version of the incident as submitted to court by both parties are at variance except for the fact that an incident had occurred. This court, in order to consider granting of relief to the petitioner needs to be satisfied on a balance of probability as to whether the petitioner had successfully discharged his burden of establishing the allegation made out in the petitioner's petition and affidavit:

I am however, inclined to the view that the petitioner has in fact failed to do so for the following principal reasons :

1. The uncertainty as to the date of the incident in view of the averments in paragraph 4 of the petitioner's affidavit wherein the date is referred to as the 16th of April, 2001 and also referred to as the day prior to the Sinhala New Year which undoubtedly are two separate and different dates.
2. Admittedly the petitioner embarked on a journey accompanied by a number of Police officers from the Pulmuddai Police station, and none of the junior Police officers had affirmed or sworn to of such incident. The only averments in support of the purported incident as related to by the petitioner was those as contained in the affidavit of his wife.
3. The petitioner's averments *vide* paragraph 5 of his counter affidavit that the other Police officers accompanying him were in uniform is significantly unsupported by affidavit from any of those officers. Undoubtedly affidavits from those Police officers who accompanied the petitioner or importantly by those who received injuries, would have certainly added value in comparison to the solitary averments in the affidavit of his wife.
4. The injuries described by the Medical Officer, *vide* Medico Legal reports filed marked P5A and P5(C) appear to be mild and incompatible with

the alleged severity as complained of by the petitioner and his wife which included assault with weapon butts.

The petitioner also complained of being dragged along the ground to a truck and assaulted by 15 soldiers whilst inside the truck. The assault as described by the petitioner in my view appears exaggerated when considering the injuries in reference to the aforesaid Medico Legal Reports.

5. P5d, a Medico Legal Report with reference to a Sub-Inspector of Police who is said to have accompanied the petitioner and who was also stated to have been assaulted is not supported by an affidavit from that officer, which if done undoubtedly would have added credence to the petitioner's version of the incident as described by him.
6. The position of the petitioner that his wife was the President of the Seva Vanitha Association is also unsupported by independent evidence.
7. The criminal proceedings instituted in the Magistrate's Court of Kebithigollewa, *vide* B report bearing No. 3134/2001 and suspects including the 1 and 2 respondents who had been charged with offences under the provisions of sections 128, 129, 141, 145, 183, 186, 324, 332, 344, 345, 348, 356, 410 and 438 of the Penal Code had been concluded by the learned Magistrate by his order dated 15.10.2001 discharging all suspects on the orders of the Attorney General.

The allegation made by the petitioner against the Additional Solicitor General of *mala fides* as stated above is without supportive evidence and needs to be rejected.

It must be noted and understood that such discharge of the suspects including the 1 and 2 respondents from the serious allegations made out on the complaint of the petitioner points to the fact of an obvious lack of material to proceed on the complaint of the petitioner apparently rendering the version of the petitioner supported by the averments in the affidavit of his wife to be unworthy of consideration.

Accordingly on a careful consideration of the aforesaid circumstances I am inclined to the view that the petitioner has not succeeded in establishing on a balance of probability that the petitioner was subjected to cruel,

inhuman and degrading treatment thereby infringing the provisions of Article 11 of the Constitution or that the respondents infringed the petitioner's rights to equal protection as contemplated in the provisions of Article 12(1) of the Constitution or that the petitioner was subjected to any discrimination as provided for in Article 12(2) of the Constitution.

This application is accordingly dismissed without costs.

WEERASURIYA, J. — I agree.

FERNANDO, J. — I agree.

Application dismissed.
