

**SC(FR) No. 222/2014**

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

In the matter of an application under and in terms of  
Article 17 read along with Article 126 of the Constitution  
of the Democratic Socialist Republic of Sri Lanka.

**SC(FR) No. 222/2014**

Herath Mudiyansele Jayantha Aberathna,  
No.102, Dehiketiya Watta,  
Wegala, Medamahanuwara.

**Petitioner**

**-Vs-**

1. Chief Inspector B.W.C. Dharmaratna,  
Head Quarter's Inspector,  
Officer-in-Charge,  
Police Station,  
Teldeniya.
2. Sub-Inspector Wijerathna,  
Officer-in-Charge, Miscellaneous  
Complain Division,  
Police Station,  
Teldeniya.
3. Deputy Inspector General of Police,  
Office of the Deputy Inspector,  
General of Police,  
Central Province, Kandy.

4. Inspector General of Police,  
Police Head Quarters,  
Colombo-01.
5. The Director General,  
Civil Security Division,  
Ministry of Defense,  
No.23, Station Road,  
Bambalapitiya.
6. Hon. Attorney-General  
Attorney-General's Department,  
Colombo-12.

**Respondents**

**Before:**                   **Sisira J.de Abrew, J**  
  
                                  **Anil Gooneratne, J &**  
  
                                  **Vijith K.Malalgoda, PC, J**

Counsel:                Suren D. Perera for the Petitioner.  
  
                                  Thishya Weragoda with Chinthaka Sugathapala for the 1<sup>st</sup> and 2<sup>nd</sup>  
                                  Respondents.  
  
                                  Ms. Nishara Jayaratne SC for the A.G.

Argued &  
Decided on:            31.08.2017

**Sisira J. de Abrew, J**

Heard both Counsel in support of their respective cases. Learned State Counsel also made submissions.

The Petitioner in this case complains that he was arrested on 21.06.2013 by the 1<sup>st</sup> Respondent who is the Officer-in-Charge of the Police Station, Teldeniya. He was later produced before the Magistrate, Teldeniya as a suspect for stealing eleven pieces of sandalwood from the Magistrate's Court of Teldeniya. He was a Civil Security Guard attached to Teldeniya Police Station. The Petitioner further complains that after the arrest he was assaulted by the 1<sup>st</sup> Respondent. Petitioner tries to support the assault launched by the 1<sup>st</sup> Respondent by his wife's affidavit marked as P8. Petitioner's wife Renuka Malkanthi Wickramasinghe in the said affidavit states that on 21<sup>st</sup> of June 2013 around 4.00 p.m she received a telephone call from her husband to the effect that he (her husband) was in police custody and after the receipt of the said telephone call she proceeded to Teldeniya Police Station. She, in her affidavit, further states that at Teldeniya Police Station she saw her husband being assaulted by the 1<sup>st</sup> Respondent. She further states that her husband's face, hands and two sides of the body were swollen. This observation suggests that the Petitioner had sustained injuries in the said areas. But in the petition and affidavit filed by the Petitioner in this Court, he does not state that the 1<sup>st</sup> Respondent gave blows to the said areas of the body. This discrepancy itself raises certain doubts about the truth of the Petitioner's story. We further note that the Petitioner's wife has not annexed her affidavit to the original petition filed

by the Petitioner in this Court. The affidavit filed by the Petitioner's wife marked P8 has been annexed only with the counter affidavit of the Petitioner.

The Petitioner also tries to support the assault launched by the 1<sup>st</sup> Respondent by an affidavit given by Charuka Iroshana Ratnayake marked P9. According to P9, he was arrested by Police officers attached to Teldeniya Police Station around 4.30 p.m on 21.06.2013 and was brought to the Police Station, Teldeniya. We note that the said affidavit has also been marked only along with the counter affidavit of the Petitioner. The said affidavit has not been annexed to the original petition and affidavit of the Petitioner. Thus the truth of the material stated in P8 and P9 is doubtful.

After he was arrested he was produced before the Magistrate and he was granted bail on 24.06.2013. Thereafter he got himself admitted to Teldeniya Hospital. He had complained to the Doctor at Teldeniya Hospital that he was assaulted by the 1<sup>st</sup> Respondent in his genital region, lower abdomen, neck and right hand. But the Doctor has observed contusion only on left thigh. Although the Doctor observed a contusion on the left thigh, the Petitioner had not complained to the Doctor that he was assaulted by the O.I.C in his left thigh. When we consider the above material, we observe that there is a discrepancy between his complaint to the Doctor and the observations made by the Doctor.

This Court by its order dated 25.08.2014 has granted leave to proceed for alleged violation of Article 11 of the Constitution. When a person makes an allegation of torture under Article 11 of the Constitution, a high degree of certainty of his story is required. This view is supported by the judicial decision in *Channa Pieris and others Vs The Attorney-General -*

*1994(1) SLR page 01* wherein His Lordship Dr. Justice A.R.B. Amarasinghe held thus:- “  
Having regard to the nature and gravity of the issue, a high degree of certainty is required,  
before the balance of probability might be said to tilt in favour of a Petitioner endeavouring to  
discharge his burden of proving that he was subjected to torture or to cruel, inhuman or  
degrading treatment.”

We have earlier pointed out that the story narrated by the Petitioner is doubtful. When we  
consider all the above matters, we are unable to place high reliance on the story narrated by the  
Petitioner. Therefore we hold that the Petitioner has not proved his case with high degree of  
certainty. When we consider all the above matters, we are unable to believe the story narrated by  
the Petitioner. For the above reasons, we dismiss the Petitioner’s case. Considering the facts of  
this case, we do not make an order for costs.

Petition is dismissed.

**JUDGE OF THE SUPREME COURT**

**Anil Gooneratne, J**

I agree.

**JUDGE OF THE SUPREME COURT**

**Vijith K.Malalgoda, PC, J**

I agree.

**JUDGE OF THE SUPREME COURT**

kpm/-