

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

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

PKW Wijesinghe
No. 120/A, Anura Publications,
Kudugala Road, Wattaegama,
Kandy.

Petitioner

SC/Spl. 19/2007

Vs

1. Upali Chandrasiri
Sub Inspector of Police,
Police Station
Wattegama.
2. Thilakaratne
Police Sergeant
Police Station
Wattegama.
Colombo 01.
3. Officer-in-Charge,
Police Station,
Wattegama.
4. DIG Central Province-West
Police Headquarters,
Kandy.
5. Inspector General of Police
Police Head Quarters,
Kandy.
6. Hon. Attorney General
Attorney General's Department,
Colombo 12.

Respondents

- Before : Sisira J de Abrew J
Nalin Perera J
Prasanna Jayawardena PC J
- Counsel : A.S.M. Perera President's Counsel with P. Kumarawadu
for the Petitioner
Ronalad Perera President's Counsel for the
1st and the 2nd Respondents
S. Herath SSC for the 3rd to 6th Respondents
- Argued on : 16.1.2018
- Decided on : 21.6.2018

Sisira J De Abrew J.

The petitioner in his petition has stated the following facts. On 15.1.2007, the petitioner was summoned to Wattegama Police Station on a complaint made by his niece regarding an allegation that had he obtained jewellery and a loan of Rs.100,000/- from the said complainant. The petitioner with his Attorney-at-Law Saman Ratnayake and one Jayawardena who is one of his friends went to the Police Station. At the Police Station Saman Ratnayake Attorney-at-Law explained to the 1st Respondent who conducted the inquiry that the complaint of the complainant was regarding a civil dispute and left the Police Station. Thereafter when the petitioner tried to sit on a chair to make a statement the 1st Respondent shouted at him saying 'who asked you to sit' and started slapping the petitioner. At this stage the 2nd Respondent too slapped the petitioner. Thereafter the petitioner's hands were tied together at his back with a rope by the 1st and the 2nd Respondents and they started slapping the petitioner again. When the petitioner requested the two Police Officers (the 1st and the 2nd Respondents)

not to assault him as he is a heart patient they did not listen and threaten to kill him. Thereafter he was hand cuffed and put to a police jeep. Thereafter Saman Ratnayake Attorney-at-Law and Abeyratne Attorney-at-Law came to the Police Station and spoke to the 1st Respondent. On the same day the petitioner was taken to the Wattegama hospital and later to Yakgahapitiya hospital as the doctor attached to Wattegama hospital was not available. The petitioner told the doctor at the Yakgahapitiya hospital that he was suffering from a pain due to the police assault. On the same day (15.1.2007), the Police produced the petitioner before the Magistrate Teldeniya on an allegation of obstructing duties of Police Officers. The learned Magistrate remanded the petitioner and further ordered that the petitioner be given medical treatments through Prison Hospital. On 17.1.2007 the learned Magistrate enlarged the Petitioner on bail. On 18.1.2017 the petitioner got himself admitted to Kandy General Hospital.

On 19.2.2007, when the petitioner was taking his daughter to the school, the 2nd Respondent who came on a motor cycle tried to knock him down. Thereafter on the same day when the petitioner was passing the Police Station, the 1st Respondent threateningly raised his finger at him. Thereafter the 1st Respondent filed another B Report against the petitioner in the Magistrate's Court alleging that the petitioner on 20.2.2007 tried to knock down the 1st Respondent by his vehicle.

The above facts are narrated in the amended petition filed by the petitioner in this court. Learned President's Counsel for the petitioner at the hearing before us submitted that he does not claim relief in respect of the incident alleged to have taken place on 19.2.2007. In order to support the incident alleged to have taken place on 15.1.2007 at the police station, the petitioner has annexed an affidavit from Maldeniya Gedera Jayawardena

who went with him to the Police Station on the said date. Maldeniya Gedera Jayawardena in his affidavit states that the 1st Respondent assaulted the petitioner when he tried to sit on a chair saying 'who asked you to sit'; that the 2nd Respondent too assaulted the petitioner; that on a request made by the petitioner, he informed Saman Ratnatake Attorney-at-Law; and that later Saman Ratnatake Attorney-at-Law and Abeyratne Attorney-at-Law came and spoke to the 1st Respondent. Saman Ratnatake Attorney-at-Law in his affidavit marked P3 states that on 15.1.2007 he with the petitioner came to the Police Station and after explaining to the 1st Respondent that matter complained of was a civil dispute he left the Police Station. Later on hearing that the petitioner had been assaulted by the police, he came to Wattegama Police Station and saw the petitioner crying inside a police jeep. He further states in his affidavit that the petitioner was handcuffed and that he learnt from the petitioner that the petitioner was assaulted by the 1st and the 2nd Respondents.

The 1st Respondent in his affidavit filed in this court has taken up the position that after Saman Ratnatake Attorney-at-Law left the Police Station, the petitioner started shouting at him and as a result he could not perform his duty; and that therefore he produced the petitioner before the learned Magistrate.

The petitioner complains that his fundamental rights guaranteed by Articles 11,12(1),13(1) and 13(2) of the Constitution have been violated by the Respondents. This court by its order dated 1.11.2007 granted leave to proceed for alleged violations of Articles 11 and 12(1) of the Constitution. This court has made an order directing the Judicial Medical Officer (JMO) to submit Medico Legal Report (MLR) relating to the petitioner. The JMO has produced the MLR. According to the MLR there were abrasions on both

wrist joints of the petitioner It has to be noted here that the JMO Kandy examined the petitioner on 19.1.2007. The petitioner after being enlarged on bail got himself admitted to General Hospital, Kandy. When the doctor at Yakgahapitiya hospital examined the petitioner at 1.45 p.m. on 15.1.2007, he did not observe the above injuries of the petitioner. The said doctor has certified in the Medico Legal Examination Form (MLE Form) that the petitioner did not have any injuries (vide document marked 4R3). The incident described by the petitioner took place on 15.1.2007. Therefore, the question that arises is whether the injuries observed by the JMO were caused while in police custody or after the petitioner was released on bail. When I consider the above matters, I feel that it is difficult to conclude with certainty that the said injuries were caused while he was in the custody of police.

Although the petitioner in his amended petition takes up the position that he complained to the doctor at Yakgahapitiya hospital that he was suffering from a pain due to the assault or torture by the Police Officers, the said doctor in the MLE Form does not support the said version of the petitioner.

The version of the petitioner that he was kept in a police jeep after being handcuffed has been corroborated by the affidavits of two lawyers. Thus, allegation appears to be true. But the Police had reasons to use minimum force to control him as he was obstructing police duties. Although Saman Ratnatake Attorney-at-Law in his affidavit marked P3 states that he told the learned Magistrate that the petitioner had been assaulted by the police, according to the proceedings of the Magistrate's Court dated 15.1.2007 no such submission had been made by Saman Ratnatake Attorney-at-Law who represented the petitioner before the learned

Magistrate. The learned Magistrate had made an order to the effect that the petitioner should be given medical treatments through Prison Hospital. The learned Senior State Counsel pointed out that this order may have been made as the 1st Respondent in his B Report had stated that he used minimum force towards the petitioner when he obstructed the police duties. Further the 1st Respondent had moved in the said B Report that the petitioner be produced in the Mental Hospital and to obtain a report through Prison Hospital. In my view there is merit in the above contention of learned Senior State Counsel.

When I consider all the above matters, I am unable to place reliance on the story of the petitioner. If court can't place reliance on the story narrated by the petitioner it cannot declare that the petitioner fundamental rights guaranteed by the the Constitution have been violated. This view is supported by the the judgment of this court in the case of Channa Peiris Vs Attorney General [1994] 1 SLR 1 wherein this court held as follows.

“In regard to violations of Article 11 (by torture, cruel, inhuman or degrading treatment or punishment), three general observations apply:

- (i) The acts or conduct complained of must be qualitatively of a kind that a Court may take cognizance of. Where it is not so, the Court will not declare that Article 11 has been violated.
- (ii) Torture, cruel, inhuman or degrading treatment or punishment may take many forms, psychological and physical.
- (iii) 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.”

For the above reasons, I hold that there is no merit in story narrated by the petitioner in his amended petition. I therefore dismiss the amended petition of the petitioner. Considering the facts of this case I do not make an order for costs.

Judge of the Supreme Court.

Nalin Perera J

I agree.

Judge of the Supreme Court.

Prasanna Jayawardena PC J

I agree.

Judge of the Supreme Court.