

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

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

SCFR Application No:26/2009

Dodampe Gamage Asantha Aravinda,
No,466, Madawalamulla,
Galle.
(Presently detained at the Welikada
Remand Prison)

Petitioner

Vs.

1. Atapattu (21899)
Police Sergeant,
Police Station,
Pitabeddara.
2. Bandu Saman (64017)
Police Constable,
Police Station,
Pitabeddara.
3. Jinadasa (24187)
Police Sergeant,
Police Station,

Pitabeddara.

4. Hemachandra (22331)
Police Sergeant,
Police Station,
Pitabeddara.
5. Edirisinghe (25156)
Police Sergeant,
Police Station,
Pitabeddara.
6. Karunarathne (858)
Police Sergeant,
Police Station,
Pitabeddara.
7. Gamini (58881)
Police Constable,
Police Station,
Pitabeddara.
8. Wajira (14705)
Police Constable,
Police Station,
Pitabeddara.
9. Jayawardane (62785)
Police Constable,
Police Station,
Pitabeddara.

10. Sugath (3089)
Police Constable,
Police Station,
Pitabeddara.
11. Officer in Charge,
Police Station,
Pitabeddara.
12. P.V. Chandrasiri,
Naththawila Road,
Tennahena,
Pitabeddara.
13. Deputy Inspector General of
Police of Southern Range,
Office of the Deputy Inspector
General
of Police of the Southern Range,
Galle.
14. Inspector General of Police,
Sri Lanka Police Head Quarters,
Colombo 01.
15. Honourable Attorney General,
Department of the Attorney
General,
Colombo 12.

Respondents

Before : Eva Wanasundera PC, J
Sisira J de Abrew J
K T Chitrasiri J

Counsel : Upul Kumarapperuma for the Petitioner

Rasika Dissanayake for the 1st to 10th Respondents
Yohan Abeywickrama SSC for the 13th, 14th and 15th
Respondents

Argued on : 10.3.2016

Decided on : 2.8.2016

Sisira J De Abrew J.

The Petitioner, by this petition, inter alia, seeks a declaration to the effect that his fundamental rights guaranteed under Article 11,12(1),13(1) and 13(2) of the Constitution have been violated by the Respondents . This Court by its order dated 11.2.2009, granted leave to proceed for alleged violation of Article 11 and 12(1) of the Constitution. The Petitioner in his petition alleges the following facts.

When the petitioner on 28.2.2008 riding his motor cycle with his friend Thushara Chaminda on the pillion in Pitabeddara (name of a village) area, lorry driven by the 12th Respondent knocked his motor cycle and as a result of this accident both fell on the road with the motor cycle. The Petitioner however states that the 12th Respondent deliberately did the said act due to an argument that took place little prior to this incident between the two of them. After the said accident the 12th Respondent fled the scene. Thushara Chaminda sustained serious injuries due to the accident. Thereafter Officer-in-Charge of Pitabeddara Police Station late Mr.Karunasena with the 1st to the 9th Respondents and 12th Respondent arrived at the scene of incident. Thereafter the said officers started assaulting the Petitioner and his friend without any reason. Whilst the Petitioner was being assaulted he pleaded for some water then the 12th Respondent opened the mouth of the Petitioner and poured some liquid into his mouth. The Petitioner having realized

that this liquid was acid threw it away. At this stage the 12th Respondent threw the balance portion of the liquid in the cup to the Petitioner's face. The Petitioner sustained acid burns on his face and the left eye. The petitioner and his friend Thushara Chaminda were later taken to the police Station. The Officer-in- Charge (OIC) of Pitabeddara Police Station late Mr.Karunasena and several other police officers assaulted the Petitioner and Thushara Chaminda at the Police Station. Later they were locked up in the police cell. At the police station, the police officers and the 12th Respondent started consuming liquor and the OIC opened police cell and asked the 12th Respondent to assault the Petitioner and Thushara Chaminda. Thereupon 12th Respondent threw liquor to the Petitioner's face. The Petitioner's father and the brother of Thushara Chaminda on 29.2.2008 visited the Police Station Pitabeddara, but they were not permitted to speak to the Petitioner and Thushara Chaminda.

On 1.3.2008 around 8.00p.m the Petitioner and Thushara Chaminda were taken to Morawaka hospital by the police and the Medical Officer who examined them transferred them to the general Hospital Matara. The Petitioner states that due to the acid burns his left eye is permanently blind. This is the story narrated by the Petitioner in his petition.

The 1st and the 10th Respondents have filed a joint statement of objections. They have annexed investigation notes to the statement of objections. Their story is somewhat different from that of the Petitioner. They state the following facts in their statement of objections.

On 29.2.2008 (not on 28.2.2008) around 17.25 hours, the OIC Pitabeddara late Mr.Karunasena received an information that two people on a motor cycle after shooting the 12th Respondent fleeing from the scene. On receiving this information,

the OIC Pitabeddara late Mr. Karunasena and 1st to 10th Respondents rushed to the scene. According to the investigation notes of the OIC Pitabeddara, he had arrived at the scene around 17.35 hours on 29.2.2008 and had found an empty T 56 cartridge and a motor cycle. He, with the assistance of the police officers and the villagers, searched the areas and around 22.30 hours villagers shouted saying that the suspect was coming to the road. At this stage somebody in the crowd threw some liquid to the said person (the person who was coming to the road) and then the OIC Pitabeddara late Mr.Karunasena arrested the said person. According to the National Identity Card found in his trouser pocket, this person is the petitioner in this case. The OIC Pitabeddara late Mr.Karunasena found a live hand grenade in his trouser pocket. The other person who was later identified as Thushara Chaminda was arrested in a nearby jungle when he was aiming a gun at late Mr. Karunasena. Late Mr. Karunasena took the said gun into his custody and on searching the suspect he found a live hand grenade and three live T56 cartridges in his possession. The petitioner, in his counter objections, denied the said facts.

The 12th Respondent, in his affidavit filed in this court, has stated that on 29.2.2008 a motor cycle overtook his lorry; that the pillion rider who is the petitioner in this case opened fire at his lorry; that the motor cycle collided with his lorry; that he stopped his lorry; that in fear he fled the scene and went into hiding in a nearby tea estate; and that later came to the scene of offence after the police arrived at the scene.

Learned Counsel for the 1st to the 10th Respondents submitted that the petition of the petitioner should be dismissed as it had not been filed within one month of the alleged incident. Learned Counsel for the petitioner submitted that within one month of the incident the petitioner's father had complained to the

Human Rights Commission (HRC). P8 reveals that the petitioner's father had made an oral complaint to the Matara office of the HRC on 28.3.2008. It appears that his complaint was not in the approved form although the approved form was handed over to him. However the Document marked P8 reveals that the petitioner's father had made a complaint to the HRC. In this regard I would like to consider Section 13(1) of the HRC Act No.21 of 1996 which reads as follows.

“Where a complaint is made by an aggrieved party in terms of section 14, to the Commission, within one month from the alleged infringement imminent infringement of a fundamental right by executive or administrative action, the period within which the inquiry into such complaint is pending before the Commission, shall not be taken into account in computing the period of one month within which an application may be made to the Supreme Court by such person in terms of Article 126(2) of the Constitution.”

P8A reveals the Petitioner's written complaint dated 8.4.2009 was receiving attention of the HRC. When I consider the documents marked P8 and P8A, I am of the opinion that the Petitioner's father had made a complaint to the HRC within one month of the alleged incident and it was receiving attention of the HRC. Learned counsel for the 1st to the 10th Respondents submitted that the Petitioner's father cannot be considered as an aggrieved person. I now advert to this contention. The Petitioner received acid burns on his face and the left eye and was in hospital. On two B reports filed by the Police against the petitioner, he was remanded. He was granted bail on 21.11.2008. Under these circumstances, the petitioner's father too can be considered as an aggrieved person. Since the complaint made by the petitioner's father is receiving attention of the HRC, it can be said that the inquiry regarding the complaint is pending in the HRC. When the above matters are

considered, I hold that the objection raised by learned counsel for the 1st to 10th Respondents has no merit and therefore overrule the same.

The main complaint of learned counsel for the Petitioner was that the Petitioner was not taken to the hospital immediately after he received acid burns (injuries). According to the MLR of the Petitioner, he had received acid burns on the left side of the face, left shoulder, right shoulder, left side of the chest and scrotum. Thus the fact that the petitioner had received acid burns has been proved. The OIC Pitabeddara late Mr. Karunasena at page 3 of 1R1 (investigation notes) had admitted the arrest of the Petitioner which took place around 22.30 hours on 29.2.2008; that soon after the arrest somebody threw some liquid to the Petitioner's body; and that he shouted in pain. The medical report confirms that the Petitioner had received acid burns. Thus the OIC Pitabeddara late Mr. Karunasena, in his notes, had admitted that the Petitioner received acid burns on 29.2.2008. PS 21899 Atapattu, in his notes – page 5 of 1R1, admits that the petitioner and Thushara Chaminda were detained at the Police Station Pitabeddara and he ,on the instructions of the OIC, took them around 18.45 hours on 1.3.2008 to Morawaka Hospital. Why did the OIC Pitabeddara late Mr. Karunasena keep the Petitioner in the custody of the Police from 22.30 hours on 29.2.2008 to 18.45 hours on 1.3.2008 knowing very well that the Petitioner had sustained acid burns? There is no answer to this question. If a person, after receiving acid burns, is not taken to the nearest hospital immediately and kept in the custody of Police, I hold the view that such person has been subjected to cruel, inhuman and degrading treatment by the Police. For the above reasons, I hold that the OIC Pitabeddara Police Station late Mr. Karunasena has violated the fundamental rights of the Petitioner guaranteed by Article 11 of the Constitution. Further when I consider the above matters, I hold that the Petitioner had not received equal protection of the law and

the OIC Pitabeddara late Mr. Karunasena has violated the fundamental rights of the Petitioner guaranteed by Article 12(1) of the Constitution.

I will now discuss steps taken by PS 21899 Atapattu. As I pointed out earlier when the Petitioner was arrested at 22.30 hours on 29.2.2008, he had already received acid burns (he received acid burns soon before the arrest). PS 21899 Atapattu (the 1st Respondent) at page 7 of 1R1(his investigation notes) admits that around 23.50 hours on 29.2.2008, he, at the place of arrest itself, on the instructions of the OIC Pitabeddara late Mr. Karunasena, recorded the statement of the Petitioner. The Petitioner, in his statement made to the Police, admits that at the time of arrest villagers threw some liquid to his face and he felt that it was acid. It can be contended that PS Atapattu should have taken the Petitioner to the nearest hospital before and after recording the statement of the Petitioner. But one must not forget the fact that PS Atapattu was under instructions of OIC Pitabeddera to record the statement of the Petitioner. It appears from the facts of the case, that OIC Pitabeddera late Mr. Karunasena had taken charge of the investigations and that the Petitioner was detained at the Police Station on the instructions of the OIC. Thus PS Atapattu could not have gone against the instructions of the OIC. I have earlier held that the OIC Pitabeddara late Mr. Karunasena had violated the fundamental rights of the Petitioner guaranteed by Article 11 and 12(1) of the Constitution. In my view he has violated the said fundamental rights of the Petitioner whilst discharging his duties as a Police Officer. I therefore hold that the State should pay compensation to the Petitioner. I make order that the State should pay Rs.200,000/- to the Petitioner. I direct the Inspector General of Police (IGP) to take steps to ensure the payment of this amount to the Petitioner.

In my view the other Police Officers (1st to 10th respondents) have assisted the OIC Pitabeddara late Mr. Karunasena in discharging his duties and when the OIC took a decision to detain the Petitioner in his custody they could not have gone against the decision of the OIC. For the aforementioned reasons, it is difficult to conclude that the 1st to 10th Respondents have violated the fundamental rights of the Petitioner. I therefore hold that the 1st to 10th Respondents are not guilty of violating the fundamental rights of the Petitioner.

The OIC Pitabeddara late Mr. Karunasena has violated the fundamental rights of the Petitioner guaranteed by Article 11 and 12(1) of Constitution.

The 1st to 10th Respondents have not violated the fundamental rights of the Petitioner

Judge of the Supreme Court

Eva Wanasundera PC J

I agree.

Judge of the Supreme Court

K T Chitrasiri J

I agree.

Judge of the Supreme Court

