

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

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

Hapugodage Jagath Perera
Petitioner

SC/FR 1006/2009

Vs

1. Gothami Ranasinghe
Inspector of Police,
Officer-in-Charge of the Minor Crime Branch,
Police Station,
Mirigama.
2. Milla Vitharana alias Millavithanachchi
Inspector of Police,
Officer-in-Charge of the Traffic Branch,
Police Station,
Mirigama.
3. Milinda Premanath Karunaratne,
Sub Inspector of Police,
Police Station,
Mirigama.
4. Inspector General of Police,
Police Head Quarters,
Colombo 1.
5. Hon. Attorney-General
Attorney General's Department
Colombo 12.

Respondents

Before : K Sripavan CJ
Eva Wanasundera PC J
Sisira J de Abrew J

Counsel : P K Prince Perera with Asanka Dissanayake for the Petitioner.
K G Jinasena with K Anurangi for the 1st, 2nd and 3rd
Respondents.
Yohan Abeywickrama SSC for the 4th and 5th Respondents.

Argued on : 29.9.2015
Decided on : 15.12.2015

Sisira J De Abrew J.

The Petitioner, by his petition dated 29.12.2009, seeks a declaration that his fundamental rights guaranteed by Articles 11,12(1),13(1) and13(2) of the Constitution of the Republic have been violated by the 1st 2nd 3rd Respondents. The 1st Respondent who is an Inspector of Police is the Officer-in-Charge of Minor Crimes Branch of Mirigama Police Station. The 2nd Respondent who also an Inspector of Police is the Officer-in Charge (OIC) of the Traffic Branch of Mirigama Police .On 19.11.2009 he acted as acting OIC of Mirigama Police Station. The 3rd Respondent is a Sub Inspector of Police attached to Mirigama Police Station. This Court, by its order dated 17.3.2010, granted leave to proceed for the alleged violation of the petitioner's fundamental rights guaranteed by Articles 11,13(1) and13(2) of the Constitution.

The Petitioner, inter alia, complains the following matters.
The Petitioner who is running a business called Ranga Sweet has employed several employees one of whom is Asanka Sanjaya Kumara. On 17.11.2009 he accompanied Asanka Sanjaya Kumara to Mirigama Police Station as the said

person had been noticed to appear at the Police Station for an inquiry on a complaint made by the wife of Asanka Sanjaya Kumara who was living in separation from her husband. It has to be noted here that the Petitioner had not been noticed by Mirigama Police Station but he went to the Police Station only to offer his assistance to his employee. In the course of the inquiry, the 1st Respondent who was conducting the inquiry instructed the said Asanka Sanjaya Kumara to hand over the dowry property to his wife who was working as a Home Guard at the Mirigama Police Station. At this stage the Petitioner requested the 1st Respondent to advise the parties to lead a peaceful marriage life as the future life of the child of the parties would be destroyed by the separation of the parties. At this stage the 1st Respondent left the inquiry room and brought the 2nd Respondent who questioned the Petitioner about the purpose for which he came. When the Petitioner started leaving the inquiry room, the 2nd Respondent took him inside the Police Station building and assaulted him as a result of which he fractured his teeth. In fact one tooth fell on the ground. Thereafter the Petitioner was put inside police cell. When Asanka Sanjaya Kumara came near the police cell, the Petitioner told him that the 2nd Respondent assaulted him and broke his teeth. Around 4.00 p.m. the Petitioner was produced before the Magistrate on a B report. The Petitioner complained to the Magistrate that the 2nd Respondent (Millavithana) assaulted and broke his teeth. The Magistrate remanded him and ordered the Superintendent of Prisons to produce him before the Prison Doctor and submit a report. The vehicle of the Petitioner which had been parked outside the Police Station was taken to the Police Station and parked inside premises of the Police Station by the 3rd Respondent. However the vehicle was later released to the wife of the Petitioner. The Petitioner was released on bail on 26.11.2009. The Petitioner

states that no sooner he was released on bail he got himself admitted to Ragama Hospital and was discharged on 2.12.2009.

Asanka Sanjaya Kumara has filed an affidavit in this Court marked P16 confirming the facts stated by the Petitioner.

The 1st, 2nd and 3rd Respondents in their statement of objections, inter alia, state the following matters. On 19.11.2009 around 11.30.a.m, whilst the 1st Respondent was conducting an inquiry at the Mirigama Police Station on a complaint made by the wife of Asanka Sanjaya Kumara (Niluka Chathurangi who is a Home Guard attached to the Police Station) the Petitioner without permission appeared before the 1st Respondent and demanded not to conduct the inquiry. When the 1st Respondent requested the Petitioner to leave the inquiry room, he refused to do so and started scolding the 1st Respondent in high voice. Having heard the commotion the 2nd Respondent approached the place where the inquiry was being conducted and ordered the Petitioner to leave the Police Station. However the Petitioner who did not obey the said order went up to the Traffic Branch of the Police Station and abused the 2nd Respondent in obscene language pulling from the uniform. In the circumstances the 2nd Respondent controlled the Petitioner using minimum force and as a result, he fell on the ground damaging his teeth. The 2nd Respondent further states that his left hand ring finger was bitten by the Petitioner during the incident. This was the story narrated by the 1st, 2nd and 3rd Respondents in their Statement of objections. The Respondents in their objections further states that the petition of the Petitioner has not been filed within one month of the alleged violation of fundamental rights and therefore the petitioner he cannot maintain his petition. Learned counsel who appeared for the 1st, 2nd and 3rd Respondents did not however support this objection at the hearing. However, it is noted that soon

after the Petitioner was discharged on bail on 26.11.2009, he got himself admitted to Ragama Hospital and was discharged only on 2.12.2009. It appears that before 2.12.2009 he was not in a fit condition to instruct his lawyers to file this petition. The petition was filed on 29.12.2009. When I consider these matters, I am of the view that there is no merit in the said objection.

I will now consider whether I can accept the position taken up by the 1st, 2nd and 3rd Respondents. Their position is that the Petitioner fractured his teeth as he fell on the ground when minimum force was being used. Have the Respondents taken up this position when 1st B report was filed on 19.11.2009? The answer is in the negative. If the position taken up by the 1st, 2nd and 3rd Respondents is true, the 2nd Respondent who filed the B report should have stated it in the B report. Failure to mention the above facts in the B report shows that said position is untrue. Part of the story of the Respondents is that when the Petitioner was ordered to leave the Police Station, he without obeying the command went to Traffic Branch and abused the 2nd Respondent by pulling from his uniform. Can this story be believed? There is no evidence to suggest that the Petitioner has a criminal record. In my view this story is fraught with falsehood. I therefore, hold that the position taken up by the 1st, 2nd and 3rd Respondents is not true and cannot be accepted. Assuming without conceding that the position taken up by the Respondents is true, what flows from it. Then the 1st, 2nd and 3rd Respondents admit that the Petitioner fractured his teeth as a result of his fall. How did he fall? He fell on the ground as a result of the minimum force used by the 2nd Respondent. In a Police Station where there is a platoon of police officers, a Police Officer does not have to use such a high force to control an unarmed man. This observation suggests that the 2nd Respondent when using the so called minimum force had severely assaulted the

petitioner. When I consider all the above matters, I arrive at a conclusion that 1st, 2nd and 3rd Respondents have, indirectly, admitted in their statement of objection that the petitioner sustained injuries in his teeth as a result of the assault launched by the 2nd Respondent to the petitioner. I will now consider whether the position taken up by the petitioner can be accepted or not. Soon after the alleged assault by the 2nd Respondent, the petitioner, inside the police cell itself, told Asanka Sanjaya Kumara that the 2nd Respondent assaulted him and broke his teeth. Asanka Sanjaya Kumara in his affidavit marked P16, inter alia, admits that the petitioner who was bleeding from his mouth told the above incident to him. He further states that he observed blood on the petitioner's shirt. Asanka Sanjaya Kumara further, in his affidavit, states that before the assault when the petitioner was leaving the inquiry room, the 2nd Respondent, ordering him to stop, forcibly took the petitioner inside the Police Station.

When the petitioner was produced before the learned Magistrate on 19.11.2009, he told the learned Magistrate that the 2nd Respondent assaulted him and broke his teeth. The learned Magistrate, in the B Report, made a note confirming the above facts. The learned Magistrate further ordered the Superintendent of Prisons to produce him before the Prison Doctor. The Prison Doctor, in his report dated 20.11.2009, confirms that the petitioner's teeth were fractured. This Court, before granting leave to proceed, called for the Medico Legal Report (MLR) of the petitioner from the Judicial Medical Officer (JMO) of Ragama Hospital. The JMO in his report confirms that the petitioner had suffered a fracture in his teeth. Therefore, without any hesitation I conclude that the position taken up by the petitioner is true and can be accepted. The petitioner, in his petition, states that as a result of the above incident he was in severe mental and physical pain. When I consider all the above matters, I hold

that the petitioner had suffered mental and physical torture and was subjected to cruel and inhuman treatment by the 2nd Respondent. At this stage I would like to consider a judicial decision of this court.

The petitioner in *Amal Sudath Silva Vs Kodituwakku Inspector of Police and others* [1987] 2 SLR 119 complained that he was arrested by the police on 9.10.1986 on suspicion of having committed theft of side mirrors from several motor vehicles; that he was thereafter, taken to the Panadura police station and kept in custody for 5 nights without being produced before a Magistrate; that during this period of 5 days he was severely beaten up by the 4 respondents with batons; that he was hung to a beam at the police station by his hands tied to a rope; that his penis was crushed as a result of it being put into a drawer and closed causing him unbearable pain and suffering and that when he asked for water he was given water mixed with chili powder which he was forced to drink.

Atukorale J (with Sharvananda CJ and LH de Alwis J agreeing) at page 126 and 127 held thus: “Article 11 of our Constitution mandates that no person shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment. It prohibits every person from inflicting torture some, cruel or inhuman treatment on another. It is an absolute fundamental right subject to no restrictions or limitations whatsoever. Every person in this country, be he a criminal or not, is entitled to this right to the fullest content of its guarantee. Constitutional safeguards are generally directed against the State and its organs. The police force being an organ of the State is enjoined by the Constitution to secure and advance this right and not to deny, abridge or restrict the same in any manner and under any circumstances. Just as much as this right is

enjoyed by every member of the police force, so is he prohibited from denying the same to others, irrespective of their standing, their beliefs or antecedents. It is therefore the duty of this court to protect and defend this right jealously to its, fullest measure with a view to ensuring that this right which is declared and intended to be fundamental is always kept fundamental and that the executive by its action does not reduce it to a mere illusion. This court cannot, in the discharge of its constitutional duty, countenance any attempt by, any police officer however high or low, to conceal or distort the truth induced perhaps, by a false sense of police solidarity. The facts of this case have revealed disturbing features regarding third degree methods adopted by certain police officers on suspects held in police custody. Such methods can, only be described as barbaric, savage and inhuman. They are most revolting to one's sense of human decency and dignity particularly at the present time when every endeavour is being made to promote and protect human rights. Nothing shocks the conscience of a man so much as the cowardly act of a delinquent police officer who subjects a helpless suspect in his charge to depraved and barbarous methods of treatment within the confines of the very premises in which he is held in custody. Such action on the part of the police will only breed contempt for the law and will tend to make the public lose confidence in the ability of the police to maintain law and order. The petitioner may be a hard core criminal whose tribe deserve no sympathy. But if constitutional guarantees are to have any meaning or value in our democratic set up, it is essential that he be not denied the protection guaranteed by our Constitution.”

It is the duty of the police to maintain law and order in the country. The police must take every step to instill confidence in the minds of the people in their day to day operation.

I have earlier held that the position taken up by the 1st, 2nd and 3rd Respondents was not true and could not be accepted. They state that the petitioner was arrested due to the acts committed by him at the Police Station. I have earlier rejected the stand taken up by them. Considering the totality of the circumstances, I hold the view that there were no reasonable grounds for the 2nd Respondent to arrest the petitioner and the arrest was illegal.

Applying the principles laid down in the above judicial decision and considering the facts of this case, I hold that the petitioner's fundamental rights guaranteed by Article 11 and 12(1) of the Constitution have been violated by the 2nd Respondent. But there is no material to conclude that the 1st Respondent has violated the fundamental rights of the petitioner. The allegation levelled against the 3rd Respondent is that he brought the petitioner's vehicle which had been parked outside the Police Station to the premises of the Police Station. This material is not sufficient to conclude that the 3rd Respondent had violated the fundamental rights of the petitioner. For the above reasons I hold that the 1st and 3rd Respondent are not guilty of violating the fundamental rights of the petitioner. There is no material before court to conclude that the petitioner's fundamental rights guaranteed by Article 13(2) of the Constitution have been violated.

The 2nd Respondent is now dead. The question that remains for consideration is whether the State should pay compensation to the petitioner for the violation of his fundamental rights by the 2nd Respondent. The 2nd Respondent violated the fundamental rights of the petitioner when he was

functioning as a Police Officer in the course of his official duties. I therefore hold that the State should pay compensation ordered by this Court. The petitioner has suffered permanent damages as he has lost his teeth. When I consider all the aforesaid matters, I hold that the petitioner is entitled to receive a sum of Rs.500,000/- from the State as compensation. I order that the State should pay this amount. I direct the Inspector General of Police (the 4th Respondent) to take steps to ensure the payment of this amount to the petitioner.

Judge of the Supreme Court.

K Sripavan CJ.

I agree.

Chief Justice

Eva wanasundera PC J

I agree.

Judge of the Supreme Court.