

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

In the matter of an application  
under and in terms of Articles 17  
and 126 of the Constitution of the  
Democratic Socialist Republic of  
Sri Lanka.

SC /FR 126 / 2008

1. Uspatabendige Buddhi Iwantha  
Gunasekera,  
Dommie Jayawardena Mawatha,  
Eranavila, Meetiya goda.
2. Uspatabendige Jayantha  
Gunasekera,  
Dommie Jayawardena Mawatha,  
Eranavila, Meetiya goda.

Petitioners

Vs.

1. Sub Inspector Athukorala  
Crime Division,  
Police Station, Meetiya goda.
2. Inspector Nissanka,  
Officer in Charge,  
Police Station, Meetiya goda.
3. Home Guard Soysa,  
Police Station, Meetiya goda.

4. W. T. Siripala,  
Domanvila,  
Meetiyagoda.
5. The Inspector General of Police,  
Police Headquarters,  
Colombo 1.
6. Hon. Attorney General,  
Attorney General's Department  
Colombo 12.

Respondents

BEFORE : B. P. ALUWIHARE, PC, J.  
UPALY ABEYRATHNE, J.  
K. T. CHITRASIRI, J.

COUNSEL : Viran Corea with Sarita de Fonseka for the  
Petitioner  
Indunil Punchihewa SC for the 5<sup>th</sup> and 6<sup>th</sup>  
Respondents  
The 1<sup>st</sup> to 4<sup>th</sup> Respondents are absent and  
unrepresented

ARGUED ON : 03.05.2016

DECIDED ON : 11.07.2017

UPALY ABEYRATHNE, J.

The Petitioner has complained that his fundamental rights to equality guaranteed by Article 12(1) of the Constitution of Sri Lanka has been infringed by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

At the time of the alleged incident, the 1<sup>st</sup> Petitioner was a 14-year-old student in Grade 10, Nindana Maha Vidyalaya, Ambalangoda, and the 2<sup>nd</sup> Petitioner was the father of the 1<sup>st</sup> Petitioner. On 7<sup>th</sup> March 2008, around 3.30 p. m. when the 1<sup>st</sup> Petitioner was at home with his mother the 1<sup>st</sup> to 4<sup>th</sup> Respondents with two other Police Officers had come to their compound with a sniffer dog and inquired as to the whereabouts of the 2<sup>nd</sup> Petitioner. Since the 2<sup>nd</sup> Petitioner was in his paddy field the 1<sup>st</sup> Petitioner, having obliged to assist the Police to find the way to the paddy field which was about seven kilometres away from his house had got in to the Respondents' vehicle. Thereafter the 1<sup>st</sup> Petitioner was taken to Meetiyagoda Police Station.

At the Police Station the 2<sup>nd</sup> Respondent had grabbed the 1<sup>st</sup> Petitioner by his hair and assaulted him asking in sinhala 'badu deepan'. Thereafter the 2<sup>nd</sup> Respondent who was wearing shoes, had pulled the 1<sup>st</sup> Petitioner on to the ground and trampled the 1<sup>st</sup> Petitioner whilst kicking him. At that time, the 2<sup>nd</sup> Respondent had received a telephone call and had ordered the 1<sup>st</sup> Respondent to move the 1<sup>st</sup> Petitioner out of the room. Upon the said directions, the 1<sup>st</sup> Respondent had taken the 1<sup>st</sup> Petitioner to the Crime Division and had assaulted him again.

At this point, the 3<sup>rd</sup> Respondent, who brought a club had assaulted the 1<sup>st</sup> Petitioner on his buttocks whilst the 1<sup>st</sup> Respondent was holding the 1<sup>st</sup> Petitioner by the shoulders. Thereafter the 1<sup>st</sup> and 3<sup>rd</sup> Respondents had taken the 1<sup>st</sup> Petitioner to a room and tied his hands behind his back with a rope while the other end of the rope was thrown over a beam which was pulled by the 3<sup>rd</sup> Respondent. The 1<sup>st</sup> Respondent had raised the 1<sup>st</sup> Petitioner by his legs and the 3<sup>rd</sup> Respondent had tied the other end of the rope to a nearby concrete pillar. Thereafter the 1<sup>st</sup> Petitioner had been beaten by the 3<sup>rd</sup> Respondent whilst questioning him about the jewellery and money taken by him breaking a house.

At about 8.00 p. m. the 2<sup>nd</sup> Respondent arrived at the Police Station and directed the 1<sup>st</sup> Respondent to keep the 1<sup>st</sup> Petitioner in the cell. At this moment, the Petitioners had noticed that a Police Officer was taking down statements of the 4<sup>th</sup> Respondent's sister-in-law, her husband and her son.

On the following day, the 1<sup>st</sup> Petitioner had been produced before the Magistrate, Balapitiya, and was bailed out. On the following day, the 1<sup>st</sup> Petitioner had been admitted to the Balapitiya Base Hospital and discharged from the Hospital on the 13<sup>th</sup> March, 2008. Thereafter, on the next day the 1<sup>st</sup> Petitioner had been re-admitted to the same Hospital and warded till the 24<sup>th</sup> of March 2008. On 14<sup>th</sup> of March 2008, the 1<sup>st</sup> Petitioner had been examined by the Judicial Medical Officer.

On the 11<sup>th</sup> March 2008, the 2<sup>nd</sup> Petitioner has made a complaint to the ASP Elpitiya, and on 27<sup>th</sup> March 2008 the ASP has recorded the statements. Also, by letter dated 19<sup>th</sup> of March 2008, the 2<sup>nd</sup> Petitioner has complained to the Human Rights Commission about the assault to the 1<sup>st</sup> Petitioner by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

The Petitioners have averred that the traumatic and brutal acts of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have caused a great physical pain and grave psychological distress and trauma to the 1<sup>st</sup> Petitioner. As a result of the torturous acts the 1<sup>st</sup> Petitioner was unable to attend to his day to day work for more than three weeks. The Petitioners have complained to this court that the 1<sup>st</sup> Petitioner was subjected to torture and to cruel, inhuman and degrading treatments by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and the Petitioners' fundamental rights guaranteed under Article 12(1) of the Constitution has been infringed by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

The 1<sup>st</sup> to and 3<sup>rd</sup> Respondents were absent and unrepresented at the hearing of this case. Journal Entries of the original docket indicates that the Said Respondents have been represented by a counsel until 21.09.2015. They have been duly noticed by this court to attend and defend their case.

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have filed their statement of objections dated 21<sup>st</sup> July 2008. In the said statement of objections the 1<sup>st</sup> to 3<sup>rd</sup> Respondents have not specifically denied the several allegations levelled against them in paragraphs 4, 6, 7, 8, 9 and 10 of the petition dated 07.04.2008. They have merely stated that they are unaware of the said allegations contained in the said paragraphs. Also, the 1<sup>st</sup> to 3<sup>rd</sup> Respondents have neither denied nor answered the allegations levelled against them in paragraphs 13 to 18 of the said petition.

It is very important to note that in paragraph 14 of the petition it is averred that the conduct of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents and their failure to afford equal protection of the law, have resulted in the Petitioner's rights guaranteed under Article 12(1) of the Constitution being violated. Also, in paragraph 16 of the petition it is stated that due to the aforesaid violations the Petitioners have suffered substantial and grave physical, psychological and financial harm, damage and loss and therefore the Petitioners entitled to substantial compensation in a sum determined by court. Since the 1<sup>st</sup> to 3<sup>rd</sup> Respondents have not denied and/or answered to the said allegations levelled against them by the Petitioners the said allegations will have to be considered on the facts and circumstances pleaded by the Petitioners.

The 1<sup>st</sup> Petitioner had been examined by the JMO and the Medico Legal Report dated 05.02.2009 has been filed of record. According to the Medico-Legal Report the 1<sup>st</sup> Petitioner had been examined by the JMO on 13.03. 2008 and

14.03.2008. The JMO has found 08 non-grievous injuries on the body of the 1<sup>st</sup> Petitioner.

The 1<sup>st</sup> to 3<sup>rd</sup> Respondents answering the averments contained in paragraph 5(viii) of the Petition, in paragraph 7 of their statement of objections has stated that one M. Tennyson who was in the police cell on 07.03.2008, had seen the 2<sup>nd</sup> Petitioner reprimanding the 1<sup>st</sup> Petitioner and also beating him. Said M. Tennyson in his affidavit has stated that when he was in the police cell he noticed bringing a child to the Police Station. On 07.03.2008, at about 07.00 p.m. when the said child was seated in a plastic chair in front of the police cell, father of the said child came to the police station and proceeded to the child after obtaining permission of the Reserve Police Officer and reprimanded the child whilst beating him on his back and shoulders.

It is surprising to note that the said Reserve Police Officer has not made minutes with regard to the said assault took place in the Police Station. With regard to such an assault the best evidence would have been the said Reserve Police Officer. But the 1<sup>st</sup> to 3<sup>rd</sup> Respondents have failed to adduce such evidence in defending their case.

In cases where the fundamental rights have been infringed, a burden lie on the Petitioner to adduce evidence to the satisfaction of court since the court will look for a high degree of probability in deciding which of the facts alleged have been established. That does not mean that an undue burden is placed on a Petitioner in his mission for access to justice, by court. When Respondents remain silent on the matters that have to be explained by them, then such conduct of the Respondents will ease the burden cast on the Petitioner. At such situations, the court will act on the materials placed before court by the Petitioner.

Needless to reiterate the duty cast upon the police towards a person taken in to custody that the Police are not entitled to lay a finger on a person arrested, even if he is a hardened criminal, unless the suspect resist the arrest or attempts to escape.

In view of the custodial relationship between the 1<sup>st</sup> to 3<sup>rd</sup> Respondents and the 1<sup>st</sup> Petitioner their conduct was high handed and in deliberate disregard of the 1<sup>st</sup> Petitioner's rights. The 1<sup>st</sup> Petitioner has been severely assaulted when he was in police custody and his right to the equal protection of law has been denied by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents. Therefore, I hold that the 1<sup>st</sup> Petitioner's fundamental rights guaranteed under Article 12(1) of the Constitution have been violated by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents. Hence the 1<sup>st</sup> Petitioner is entitled to compensation for the injuries sustained, hospitalisation and pain suffering and humiliation suffered by him.

Accordingly, I make order that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents shall pay a sum of Rs. 300,000/= (Rs. 100,000/- per each) as compensation and a sum of Rs 75,000/= (25,000 per each) as costs to the 1<sup>st</sup> Petitioner.

Judge of the Supreme Court

B. P. ALUWIHARE, PC, J.

I agree.

Judge of the Supreme Court

K. T. CHITRASIRI, J.

I agree.

Judge of the Supreme Court