

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

In the matter of an Application under
Articles 17 and 126 of the Constitution of
the Republic of Sri Lanka.

Ravindra Lasantha Pathinayaka
No. 314, Kaduwela Road,
Koswatta,
Thalangama North,
Battaramulla.

Petitioner

S.C. F.R. Application No. 367/10

Vs.

1. Bandara
Police Sergeant (26433)
Police Emergence Calling Unit,
No. 03, Mihindu Mawatha,
Colombo 12.

2. Thennakoon
Police Constable (30032)
Police Emergence Calling Unit,
No. 03, Mihindu Mawatha,
Colombo 12.

3. Anura Silva
Assistant Superintendent of Police,
Motor Traffic Division (Colombo
North),
No. 03, Mihindu Mawatha,
Colombo 12.
4. Kapilarathne
Officer-in-Charge,
Police Emergence Calling Unit,
No. 03, Mihindu Mawatha,
Colombo 12.
5. The Inspector General of Police
Police Headquarters,
Colombo 01.
6. Hon. Attorney General
Attorney General's Department,
Colombo 12.

Respondents

BEFORE : **TILAKAWARDANE, J.**
SRIPAVAN, J. &
EKANAYAKE, J.

COUNSEL : Sanath Singhage for the Petitioner.
Shanaka Wijesinghe, SSC, for the Attorney General.

ARGUED ON : 04.04.2013

DECIDED ON : 03.05.2013

TILAKAWARDANE, J

This application was supported on 24.01.2011 and this Court has granted Leave to Proceed on an alleged violation of Article 12(1) of the Constitution.

The Petitioner states that on Saturday 22nd May 2010 at about 10.15 am he was driving motor vehicle bearing Registration Number WP-PA 5709 along the Ananda Coomaraswamy Mawatha (Green Path) from Kollupitiya towards Horton Place when he observed the red traffic signal at the Horton Place-four way Junction and stopped his vehicle. As he stopped the vehicle at the traffic light, the Petitioner observed Police Constable Darshana (PC 38832), attached to the Motor Traffic Division of the Cinnamon Garden Police Station, who was stationed near the roundabout, signaling the Petitioner to proceed despite the red light signal. This is a fairly common occurrence in Colombo particularly when roads are cleared due to the heavy traffic load or for security reasons.

Accordingly the Petitioner started to cross the four-way junction (round-about) to proceed towards Borella along Horton Place. While crossing the round-about the Petitioner noticed a white police car approximately 30 meters away on the Petitioners right side, driving towards the round-about from Torrington along C.W.W. Kannangara Mawatha. Soon after the Petitioner entered Horton Place, the said police car, which was driven by the 1st Respondent, drove parallel to the Petitioner and the 2nd Respondent signaled the Petitioner to stop his vehicle.

The Petitioner states that he parked his vehicle on the left side of Horton Place and approached the police car which was stopped behind his vehicle. The 1st and 2nd Respondents had got down from their car and the Petitioner noticed the 2nd Respondent writing something on a notebook on the instructions of the 1st Respondent.

The Petitioner states that the 2nd Respondent asked the Petitioner for his Driving License alleging that the Petitioner had crossed the four way junction disobeying the red signal on the traffic lights. The Petitioner states that the 1st and 2nd Respondents refused to listen to his explanation that he had crossed the traffic light based on the hand signals of the police officer (Darshana PC 38832) referred to above.

Despite his explanation the Petitioner's driving license bearing No. A005719664 was taken into the custody of the 2nd Respondent and he was issued a temporary driving permit bearing Number 692290 (hereinafter referred to as "the permit") signed by the 1st Respondent. The 2nd Respondent also ordered the Petitioner to obtain a spot fine ticket and pay the spot fine at the Police Station at No. 03, Mihindu Mawatha, Colombo 12, where the 1st to 4th Respondents were stationed. A copy of the permit issued by the 1st Respondent was marked as P2 and produced in this application.

It is significant to note that the permit, P2, is valid for a period of 11 days from 22.05.2010 to 01.06.2010. On the face of the permit, the Petitioner was required to appear in Court on 10.06.2010, which comes 8 days after the expiry of the permit P2 on 01.06.2010. Therefore the Petitioner would not have a valid driving license or a temporary permit from 01.06.2010 onwards.

By failing to issue a permit which is valid up to the Court date, the 1st and 2nd Respondents have deprived the Petitioner of the right to obtain a valid temporary driving license until 10.06.2010 and precluded the right to right of the Petitioner to the 14 day period, granted under law for payment of the fine, from the date on which the offence was committed. The Petitioner also states that the name of the Court in which he should appear had been left blank deliberately, to inconvenience him.

The Petitioner states that although he went to the Police Station on the following day, 23rd May 2010 and obtained a spot fine ticket, he did not pay the fine as he wished to prove his innocence in Court. The spot fine ticket obtained by the Petitioner is marked as P3.

The Petitioner states that he returned to the Police Station on 03.06.2010, with the intention of meeting the 4th Respondent to get the temporary permit amended, but that the 4th Respondent was not in his office. While the Petitioner was standing outside the 4th Respondent's office, he met the Deputy Inspector General of Police (hereinafter referred to as "DIG"), who listened to his grievance and apologized for the incident and instructed another officer nearby to attend to the Petitioner's matter.

The Petitioner states that the 1st Respondent who had overheard his conversation with the DIG approached the Petitioner and asked him why he was at the police station. On hearing the petitioners narration of the incident the DIG had apologized and ordered an officer standing close by to attend to the matter. The 1st Respondent had overheard the Petitioner's complaint to the DIG, however when the Petitioner requested the 1st Respondent to attend to the matter, both the 1st and the 2nd Respondent had categorically refused to amend the permit, or to take him to a superior officer to attend to the

matter. This resulted in the Petitioner to be compelled to use the same permit and to be derived of the name of the Court in which he had to appear, causing him great inconvenience.

Subsequently, the Petitioner met the 3rd Respondent and brought the above stated short comings in the temporary permit P2 to his attention and explained that such was in violation of Sections 135(4), 135(5) and 135(6) of the Motor Traffic Act.

The Petitioner also explained that the permit, P2, did not accord with the law as it did not state the name of the Court in which the Petitioner was to appear. Further, the Petitioner's Driving License had been retained by the Police beyond the date of the temporary permit P2, which did not cover the period up to the date on which he was due to appear in Court. The 3rd Respondent having listened to the Petitioner allegedly informed him that while he did have the power to correct the permit, he would not do so as the Petitioner knows and relies on the law too much.

Under the circumstances, the Petitioner claims the violation of his right to equal protection of the law protected under Article 12(1) of the Constitution. The Petitioner specifically claims that the acts of the 1st, 2nd and 3rd Respondents are tainted with malice and are unreasonable, discriminatory and arbitrary and therefore constitute an infringement of the petitioners Rights to equal protection under the law.

The Petitioner also states that the aforesaid Respondents had connived to place him in a position where he was unable to prove his innocence in Court, by deliberately omitting to state the name of the Court before which he was due to appear.

The Petitioner also pleaded that his rights under Article 14(1) (h) of the Constitution were also violated this matter was not argued in detailed before the Court perhaps on the ground that he was not precluded the opportunity to exercise his right of movement but merely deprived of the right of driving his motor vehicle and the Court accordingly does not see that there has been a violation in terms of Article 14(1) (h). In any event leave has not been granted for an alleged violation of this article of the Constitution.

It is interesting to note that whilst objections have been filed by the 1st and 2nd Respondents, the 2nd Respondent's statement is merely a bald denial of the Petitioner's allegations and supporting the contentions contained in the 1st Respondent's objections. Specifically, the 2nd Respondent denied the presence of the Police Constable 38832, Darshana, at the traffic signal as stated by the Petitioner.

In the counter affidavit filed by the 1st Respondent dated 17.11.2011, he denies the version of the Petitioner and states that the Petitioner had informed him that he would pay a fine within 14 days and that he had orally informed the Petitioner that the temporary permit would be valid until 10.06.2010 which was the date on which he had to appear in the Court.

When considering the evidence by way of affidavits several anomalies in the evidence of the Respondents specially the 1st Respondent is apparent. In this context, the Petitioner submitted the proceedings of the criminal case instituted against him in the Magistrate's Court of Colombo bearing No. 59586/7. It is to be noted that at the end of the trial the Petitioner had been acquitted on the charges preferred against him under Section 214 (1) (a) read with Sections 190 and of the Motor Traffic Act as amended by Act No. 40 of

1984 and Regulation 32(1 (a)) of the Gazette bearing No. 444/18 dated 13.03.1987, pertaining to the disobedience of traffic signals.

Even a cursory glance at the Proceeding reveals that whilst the Petition refers to the location where he had been apprehended as the Horton Place junction, the 1st Respondent's evidence given at the Magistrate's Court contradicts the place of apprehension of the petitioner in his own affidavit, and significantly in doing so, his version given in the Magistrate's court as to the place of apprehension supports the location as given by the Petitioner.

This is a material aspect of this incident and by giving evidence that is contrary to what he has filed in this Court in the Magistrate's Court of Colombo in the Motor Traffic Case the credibility of the 1st Respondent has been assailed in as much as such contradictory evidence given on affidavit to this Court on a material fact challenges the testimonial creditworthiness of the 1st Respondent. As the 2nd Respondent has also in his affidavit supported the 1st Respondent his evidence on affidavit too therefore becomes tainted.

Another important fact to be noted in this case is that in the submissions on behalf of the Respondents, the 1st Respondent accepts that the permit was not issued in conformity with the Motor Traffic Act in that the Petitioner was granted less than the 14 days provided under the Act to pay the fine or appear in Court.

The Senior State Counsel submitted that the disparity in the dates on P2, the Temporary Permit was due to an administrative mistake when it was prepared by the 1st Respondent. It is difficult for this Court to accept this position in view of the overall behavior of the 1st and 2nd Respondents as

alleged by the Petitioner which has not been challenged in any significant manner by the evidence placed before this Court by the 1st and 2nd Respondents. If it was in fact a single mistake, the same dates would not have appeared in the original Information Book Extracts, concerning this incident on 22.05.2010, which was produced to Court. This supports the contention of the Petitioner that this was a deliberate act, especially when it is considered in conjunction with the fact that the relevant Court was not mentioned on the permit. It therefore rules out any question of mistake and indeed supports the contention of malice by the 1st Respondent which was further evidenced by the 1st Respondent's response when he met the Petitioner at the Police Station on 03.06.2010. That is no doubt whatsoever that the permit had been issued by the 1st Respondent as the permit carries his name as the Officer who issued the temporary permit.

Failure to extend the permit beyond 01.06.2010 up to the Court date, deprived the Petitioner of his rights in terms of Section 135(4) of the Motor Traffic Act which provides that whilst a Police Officer may take charge of a license for the time being, he must issue to such a person a permit under his hand in the prescribed form setting out the prescribed particulars.

In the instant case, despite clear law, the 1st Respondent has failed to act within the law and follow the prescribed procedures as explained above.

With respect to the 3rd Respondent, strong allegations have been made in paragraph 25 of the Petition against his conduct. However, the 3rd Respondent has failed to file objections and he has not contested these facts. By failing to act on the complaint of the Petitioner regarding the violation of Section 135(4) of the Motor Traffic Act, the 3rd Respondent has violated the right of the Petitioner under Article 12(1) of the Constitution.

Therefore the conduct of the 1st, 2nd and 3rd Respondents, as per the reasons given above deliberately precluded the extension of the permit up to the date on which the Petitioner had to appear in Court namely 10.06.2010 thereby depriving the Petitioner his right to equal protection of the law under Article 12(1) of the Constitution.

The submission that the 1st Respondent had made a mistake is not supported as he appears to have entered the same date both on the Information Book Extracts as well as on the temporary permit. Even a cursory reading of the permit would disclose that permit lapsed prior to the date on which the Petitioner was due in Court. Additionally the failure of the 1st Respondent to enter the name of the relevant Court on the permit and the conduct of the Police Officers when the Petitioner presented himself at the Cinnamon Gardens Police Station to extend his permit taken cumulatively clearly discloses malice on the part of the 1st and 2nd Respondents.

The Petitioner has specifically stated that he tried to obtain the extension of the permit from the 1st and 2nd Respondents but that both Respondents ignored his requests. This rules out the position taken by the 1st Respondent that this was a bona fide mistake. Court finds that 1st, and 2nd Respondents have acted maliciously to deprive the Petitioner of the equal protection of the law guaranteed under Article 12(1) of the Constitution and that this has been proved before Court by strong cogent evidence. Having had the duty to rectify the permit and by deliberately refraining and/or omitting to do so, and by acting in the manner described by the Petitioner-facts not refuted or challenged by the 3rd Respondent- he too has deprived the petitioner of the equal protection of the Law.

This Court accordingly declares that the Fundamental Rights of the Petitioner guaranteed under Article 12(1) to have been infringed. The Courts has also considered their independent and collective actions in apportioning compensation. This Court grants compensation in a sum of Rs. 150,000/- (One Hundred and Fifty Thousand Rupees) to be paid personally by the 1st, and 2nd Respondents in equal shares of Rs 75,000/- each, to the Petitioner. A sum of Rs 25,000/- is to be to be paid by the 3rd Respondent to the Petitioner.

Application is accordingly allowed with costs in a sum of Rs.10,000/- (Ten Thousand Rupees) to be paid by the 1st, 2nd , and 3rd Respondents to the Petitioner.

The compensation and the costs amounting to Rs 185,000/- is to be paid within three months (03 months) from date of this Judgment.

JUDGE OF THE SUPREME COURT

SRIPAVAN, J.

I agree.

JUDGE OF THE SUPREME COURT

EKANAYAKE, J.

I agree.

JUDGE OF THE SUPREME COURT

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