

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

*In the matter of an Application under and in
terms of Article 17 and 126 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.*

SC (FR) Application No. 104/2016

Kasthuri Achchilage Chamarie Samaradisa
No. 1, Algamawatta,
Danowita

PETITIONER

VS.

1. Prasantha Welikala
Chief Inspector of Police
Officer in Charge
Police Station
Nittambuwa
2. P.C. 39009 Priyantha
3. P.C. 67518 Ranil
4. P.C. 77184 Dinuka
5. P.C. 40134 Ruwan
6. Tharindu Kokawala
Sub Inspector

All of Nittambuwa Police Station
Nittambuwa

7. N.K Ilangakoon

7A. Pujith Jayasundara
Inspector General of Police
Police Headquarters
Colombo 01

8. Hon. Attorney General
Attorney General's Department
Colombo 12

RESPONDENTS

BEFORE : P. PADMAN SURASENA J.

S. THURAIRAJA, PC, J.

MAHINDA SAMAYAWARDHENA, J.

COUNSEL : Mr. W. Dayaratne, PC, with Mr. Hirantha Namal Perera for the
Petitioner

Mr. Kamal Perera for the 1st - 6th Respondents

Ms. Induni Punchihewa, SC, for the 8th Respondent

ARGUED ON : 24th February 2021

WRITTEN SUBMISSIONS : 1st - 6th Respondents on 18th September 2020

8th Respondent on 21st September 2021

Petitioner on 19th February 2021 and 3rd March 2021

DECIDED ON : 6th August 2021

S. THURAIRAJA, PC, J.

Kasthuri Achchilage Chamarie Samaradisa; a 30-year-old, 3 months pregnant woman who claims to have a history of an unstable mental condition is the Petitioner to the current case, whose fundamental rights are alleged to have been violated. (Herein after referred to as the **Petitioner**)

The **1st Respondent** is Prasantha Welikala, who is the Chief Inspector of Police, Officer in Charge of the Nittambuwa Police Station; the Police Station that conducted the arrest of the Petitioner. The **2nd-5th Respondents** are Police Constables attached to the Police Station of Nittambuwa and are namely Priyantha Herath, Ranil Bandara, Dinuka Prabath Rathnayake and Ruwan Chamara Amarasinghe respectively, who conducted the arrest together with the **6th Respondent**; Tharindu Kokawala who is a Sub Inspector of Police attached to the Nittambuwa Police Station.

The 1st - 6th Respondents are alleged to have directly violated the Fundamental Rights of the Petitioner while, the **7th Respondent** N.K Illangakoon was the Inspector General of Police at the time of the incident, while **7A the added Respondent** Pujith Jayasundara was the Inspector General as of 19th October 2016, and the **8th Respondent** is the Hon. Attorney General.

The Petitioner filed an application under Articles 17 and 126 of the Constitution alleging infringement of her Fundamental Rights guaranteed under Articles 11,12 (1) and 13 (1) of the Constitution against the 1st – 6th Respondents. This

Court granted Petitioner leave to proceed under Articles 11,12 (1) and 13 (1) of the Constitution as pleaded.

The Facts

Considering the significant variances of the facts laid down by both parties, I will first lay down the facts stipulated by the Petitioner, followed by that of the Respondents.

On the 6th February 2016, while the Petitioner was on her way to pick her daughter from a tuition class in the Godawela town, a group of men have approached her in a red three-wheeler and attempted to arrest her. As she was hesitant to cooperate, the said individuals have called for the assistance of another group. With the assistance of the second group the Petitioner has been handcuffed and forced into a three-wheeler. The Petitioner claims that she was assaulted by two men who abused her using filthy language while she was being transported. The Petitioner was then brought to the Nittambuwa Police Station.

However, till this point the Petitioner claims that she was unaware of the fact that the said individuals who are the 2nd - 6th Respondents to the case, were Police Constables as they were dressed in civil attire, and further claims that the arrest was taken place without the presence of a Woman Police Constable.

In the Nittambuwa Police Station, the Petitioner has been threatened by the 2nd - 6th Respondents to sign a document informing her that the same was for the purpose of obtaining bail. The Petitioner also claims that she is a psychiatric patient and when her prescribed medication was brought to her by her father-in-law, the 1st - 6th Respondents have not permitted it to be given to her.

The Petitioner states that she had then been taken before the 1st Respondent in the night, who had threatened to destroy her house while addressing her in foul language.

In the afternoon of 7th February 2016, the Petitioner was presented to the Magistrate of Attanagalla for the possession of 7500 ml of illicit liquor, an offence

punishable under Section 46 (e)/ 47 of the Excise Ordinance No. 36 of 1957 as Amended read with The Increase of Fines Act No. 12 of 2005.

The Petitioner states that she was presented before the Magistrate of Attanagalla by the 1st Respondent by a B-Report. Upon examination of the report, it appears to bear the signature of the 6th Respondent. The B Report was under the name and address, '*Wijayalath Pedige Damayanthi Darsha*' of '*Ellakade, Puhulegama*'. However, when the Petitioner informed that the above was not her name and address as per her National Identity Card (NIC), the B- Report was amended to also state, '*alias Kasthuri Achchilage Chamarie Samaradisa of No. 20/4, Keenadeniya, Ambepussa*' as stipulated in the NIC of the Petitioner.

The Magistrate enlarged the Petitioner on bail on 7th February and fixed the case for the 16th February 2016, on which date a charge sheet was served on her and she pleaded not guilty for the said charges.

Following being released on bail by the Magistrate, the Petitioner admitted herself to the Warakapola Base Hospital for treatment for the injuries sustained and for the fear of terrible trauma which could affect her pregnancy. Thereafter, the Petitioner was transferred to the District General Hospital of Kegalle to be examined by the Judicial Medical Officer (JMO).

The husband of the Petitioner on 7th February 2016 had lodged a complaint to the Warakapola Police against 1st- 6th Respondents and the Petitioner states that the above complaint was however recorded only on the following day. The husband of the Petitioner had also made a complaint to the Human Rights Commission on 11th February 2016 for inhuman and degrading treatment suffered by the Petitioner.

The Petitioner claims that the brutal assault on her caused her severe physical pain and resulted in bruises and lacerations on her body and further states that the illegal arrest, remand, and false allegation made against her and the prosecution in the Magistrate Court of Attanagalla caused her humiliation in the eyes of the public, mental pain and resulted in cruel, inhuman, and degrading punishment by 1st - 6th Respondents.

Having observed the facts laid down by the Petitioner, the sequence of events as submitted by the Respondents are as follows,

On 6th February 2016, the 2nd - 6th Respondents, along with a Woman Police Constable named Niluka Liyanage (8453) (Hereinafter sometimes referred to as WPC Niluka) had conducted a raid and arrested three suspects including the Petitioner. The other two suspects namely, Hewa Gajamange Milan Chamara was arrested for the possession of Goda (A form of illicit liquor) and Nissanka arachchilage Chandrani was arrested for the possession of Kasippu (illicit liquor). During the raid, while the 2nd – 5th Respondents had been in civil attire, 6th Respondent; the leader of the team had been in Police uniform.

The Respondents state that the arrest of the Petitioner took place as follows. Following intel received from a Private Informer of the 6th Respondent, the Petitioner has been located not at the Godawela town but at Weragoda road near the Kahatagala water tank, which is approximately one Kilometer off the main road, being seated on a blue plastic container (can).

The 6th Respondent had informed the Petitioner of the need to inspect the plastic container and has proceeded to inspect the same. Following the inspection, the 6th Respondent had detected Kasippu (illicit liquor) in the container. He had then informed the Petitioner that she is being arrested for the possession of illicit liquor and had taken steps to arrest her. He had proceeded to measure the container; and has measured 7500 ml of Illicit liquor out of which 750 ml have been separated as a sample. Both the container with the remaining illicit liquor and the sample bottle had been sealed with wax and the official seal had been placed. Additionally, the fingerprint of the Petitioner was also obtained on the wax. The sample had later been sent to The Government Analyst's Department through the Magistrate Court of Attanagalla and the report dated 31st March 2016 finds the contents to be illicit liquor.

After the sealing procedure was completed, the Petitioner was instructed to get into the van, but she refused to do the same and instead laid on the ground

screaming and pulling out her hair in a restless manner, thereafter on the instruction of the 6th Respondent WPC Niluka has taken the Petitioner to the van.

The 2nd - 6th Respondents deny any allegations of assault during the arrest and transportation of the Petitioner and have tendered an affidavit by WPC Niluka stipulating that the due procedure was followed during the arrest and while transporting the Petitioner to the Police Station of Nittambuwa, hence no assault had taken place.

The Respondents state that the Petitioner was brought to the Police Station where WPC Niluka had inspected the Petitioner for injuries, and no injuries were found. Since the Petitioner did not have her NIC, the name and address given by her had been entered in the Police Records. The 5th Respondent had recorded a statement by the Petitioner, read it over to her and had taken her signature.

Further, the 2nd - 6th Respondents and WPC Niluka state that they were unaware of any medical condition of the Petitioner or that she was dependent on regular medicine as neither the Petitioner nor her husband had informed the Respondents of the above. Contrary to the claim of the Petitioner, the Respondents further state that no one had visited the Petitioner with medicine during police custody and no one has requested the permission of the police to give any such medication to the Petitioner.

In regard to the allegation made against the 1st Respondent threatening the Petitioner, according to the 2nd – 6th Respondents, the Information Book (IB) Records of the Police Station stipulate that the 1st Respondent had left to the Katana Police College at 3.40 pm and had returned to the Nittambuwa Police Station at 8.20 pm following which he had reported off from duty and left to his official residence. Accordingly, the Respondents submit that the 1st Respondent was not present on the night of 6th February 2016 and deny the allegation made of the Petitioner being produced before him.

Contrary to the statement of the Petitioner that she was presented before the Magistrate of Attanagalla by the 1st Respondent, the 2nd – 6th Respondents state that

the Petitioner was presented before the Magistrate by Police Sergeant Perera (27532) accompanied by WPC Niluka. This has been confirmed by the Police Information Book (IB) records. The Petitioner was produced before the Magistrate Court of Attanagalla, on a B Report which contained her name as provided by her initially. However, three Attorneys at Law who appeared for the Petitioner informed the court that the real name of the Petitioner was not '*Wijayalath Pedige Damayanthi Darsha*' but '*Kasthuri Arachchilage Chamarie Samaradisa*' of '*No. 1, Algamawatta, Danowita*' and that she's pregnant and under medical treatment. Subsequent to it being indicated that the Petitioner has deliberately lied to the Police about her real name and identity the police had proceeded to file an action under Section 402 of the Penal Code against the Petitioner for cheating by impersonation.

Having discussed the sequence of events as per both parties, I will now consider the alleged infringement of the Fundamental Rights of the Petitioner.

Alleged infringement of Article 11 of the Constitution

Article 11 of the Constitution reads,

"No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment"

As stipulated prior, it is the contention of the Petitioner that she was assaulted by two male police officers while she was being transported to the Police Station of Nittambuwa. According to the Petitioner the male police officers have been seated on either side of her and have abused her using filthy language. The Petitioner claims that the assault caused her severe physical pain and resulted in bruises and lacerations while the incident following the arrest caused her mental distress. In order to establish the same, the Petitioner has produced extracts from a book maintained for the treatment given at the Warakapola Base Hospital, where the Petitioner was

admitted following the incident. The record states that the Petitioner was suffering from 'Acute Psychological distress following trauma' following the arrest.

It is well recognized that the term 'Torture' in international Conventions and in the Constitution of Sri Lanka, in Article 11 is broadly defined to encompass both injuries in the form of physical and mental nature. However, in establishing torture in terms of Article 11 of the Constitution a higher burden lies on the Petitioner to prove the alleged torture. The standard of proof required in a case of Torture is a balance of probability with a higher level of certainty weighing towards the case of the Petitioner. In the case of **Channa Pieris and Others V. Attorney General and Others (1994) 1 SLR 1** Amarasinghe J commented on the standard of proof as follows,

*'... 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 or punishment; and **unless the petitioner has adduced sufficient evidence** to satisfy the Court that an act in violation of Article 11 took place, it will not make a declaration that Article 11 of the Constitution did take place.'*

(Emphasis Added)

This has been confirmed and followed by this court in many instances. In order for the scale of probability to tilt in favour of the Petitioner, it is imperative that the Petitioner corroborate their allegation of torture with credible evidence, in particular, official medical evidence which operate as an unbiased and independent source of evidence.

Reverting to the incident at hand, on 7th February 2016 when the Petitioner was produced to the Magistrate of Attanagalla following the arrest on 6th February 2016, the Petitioner had been represented by a senior counsel and two junior counsels where the counsels have made submissions on the difference in the name of the

Petitioner. However, the counsels have not informed the Magistrate of any assault or injury. Had the magistrate been informed, he would have referred the Petitioner to immediate medical attention including a referral to a Judicial Medical Officer (JMO). Accordingly, if the injuries of the Petitioner were as serious as she claimed them to be, this should have been brought to the attention of the Magistrate. The failure to do so imposes a question on the credibility of the claim of the Petitioner.

However, the Petitioner has later admitted herself to the Warakapola Base Hospital on 7th February 2016. Thereafter she has been transferred to the District General Hospital of Kegalle and had been admitted on the following day for JMO and psychiatric referral. Accordingly, she has been duly examined by the Consultant JMO and the Medico – Legal Report (MLR) of the Petitioner as per an examination conducted on the 10th February 2016 was submitted before this Court. According to the said MLR the Petitioner has had three injuries which were categorized as non – grievous injuries. The non- grievous injuries were;

- " 1. ... a healing linear abrasion measured 1 cm over upper front middle region of the right side of the chest, just below the inner end of right collar bone
2. ... a healing oblique linear abrasion measured 6 cm over left side upper region of the chest
3. ... a healing linear abrasion measured 10 cm over upper outer region of left fore arm "

The JMO opined those injuries as follows;

- " • Injury No.1,2, and 3 due to blunt force trauma
- Amount of healing of injuries consistent with given history of date of injuries
 - Injuries are non-specific as such cannot be confirmed or ruled out the possibility of history indicated incident (sic)
 - Opinion given by the Consultant General Hospital Kegalle revealed her current mental state is normal and she is fit to give evidence in court "

Accordingly, in contrast to the allegations of the Petitioner where she claims that the assault caused her '*severe physical pain and resulted in bruises and lacerations*', the MLR only recognizes non-grievous injuries. Further the injuries are not categorised as consistent nor inconsistent with the timeline of the incident, and the injuries cannot be specifically attributed nor ruled out from the incident.

Further, it is the contention of the 1st - 6th Respondents that there is a possibility of the Petitioner self-inflicting the injuries during the time from her release on bail and voluntary admission to the hospital as the Petitioner was not directly referred to a JMO or to the hospital from police custody or by the Magistrate. In addition to the above, there is a possibility that the non-grievous injuries of the Petitioner were a result of her conduct while she resisted arrest by the 2nd – 6th Respondents.

When considering the nature of injuries stipulated in the MLR and the narration of the incident by the Petitioner, the apparent inconsistencies create a certain doubt in my mind. Accordingly, I find that the Petitioner has not adduced sufficient evidence to satisfy the required threshold to prove the existence of torture on her body.

In assessing the torture in mental form, the Mental State Report issued following the examination on 13th February 2016 by the Consultant Psychiatrist of the District General Hospital of Kegalle annexed to the above MLR proves the non – existence of any severe psychological trauma following the incident. It reads,

*"Her current mental state is stable. No Psychological Distress at this movement. She has **No** feature of **Depressive Disorder** or **Learning Disability or P.T.S.D.**" (sic)*

Accordingly, while the Petitioner would have had a history of Psychiatric illness, as per the above MLR the Petitioner has not faced any severe psychological distress as a result of the arrest.

Further, the counsel for the 1st – 6th Respondents submit that a patient of this nature if faced by police torture, the MLR, especially the Mental State Report would have been very serious. Therefore, the Respondents submit that there is no evidence of torture present, which in turn creates a serious doubt in the minds of this Court.

Contrary to the statement of the Petitioner, the findings of this Court in particular the psychiatric report of the Petitioner is adverse to the claim made by her. Considering all above factors, I find that there is no credible evidence of torture. Accordingly, I dismiss the claim under Article 11 of the Constitution.

Alleged infringement of Article 13 (1) of the Constitution

Article 13 (1) of the Constitution reads,

“No person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest ”

It is the contention of the Petitioner that she was forcibly handcuffed by the 2nd - 6th Respondents and taken to the Nittambuwa Police Station in a Three-Wheeler without the presence of a female police officer and without any reasoning being given.

However contrary to the above, according to the Police Information Books (IB) of the Nittambuwa Police Station, the Petitioner was arrested by a police squad which included a Woman Police Constable; WPC Niluka while on a raid to seize illicit liquor. As per the evidence submitted before this court, the 6th Respondent who was attired in uniform has informed the Petitioner of the need to inspect the plastic container (can) beside her. Following the detection of illicit liquor in the plastic container, the 6th Respondent has explained the reason for arrest; being in possession of 7500 ml of illicit liquor and has instructed the Petitioner to enter the van to be transported to the Police station.

However, since the Petitioner resisted arrest, the WPC named Niluka Liyanage (8453) has taken the Petitioner to the van on the instruction of the 6th Respondent. Further, according to the affidavit of WPC Niluka and 2nd – 6th Respondents, WPC Niluka had been seated with the Petitioner alongside the other female suspect who was arrested during the same raid when the Petitioner was transported to the Nittambuwa Police Station. The above conduct of the 2nd – 6th Respondents have been duly recorded in the police records of the Nittambuwa Police Station and was produced before this court.

Accordingly, when assessing the Police records it is evident that the arrest has been conducted in accordance with the due procedure with a WPC on duty.

Further, in response to a complaint lodged by the Petitioner at the Deputy Inspector General (DIG) DIG Office, Peliyagoda Western Province Office, an inquiry had been held by the DIG Western Province (North), under inquiry reference No. DIG/WPN/4G/NIT/7/16 to determine whether the conduct of the 2nd – 6th Respondents was lawful. Accordingly, it has been found that the 2nd – 6th Respondents have acted in accordance with the law and made a lawful arrest in respect of the Petitioner and that there are no grounds for a disciplinary inquiry to be held against the said Respondents.

Considering all available material in this regard there is no evidence to support that the arrest and the transportation of the Petitioner occurred as claimed by the Petitioner. In contrast, the Respondents have submitted sufficient evidence to prove that the Petitioner was arrested in accordance with the law and standard procedure. In light of above I find that there is no violation of Article 13(1) of the Constitution.

Alleged infringement of Article 12 (1) of the Constitution

Article 12(1) of the Constitution reads as follows,

“ All persons are equal before the law and are entitled to the equal protection of the law”

Article 12(1) of the Constitution ensures that individuals despite their status in a given circumstance are entitled to equal treatment and equal protection guaranteed by the law. In this context, it is the duty of the executive body; the Police officers to carry out the arrest within the limits of the law, and as stipulated by the law. The executive would also have a duty to ensure that the individual rights of the accused are protected during detention, investigations, searches etc. conducted following the arrest and ensure that the person is dealt with according to the law.

In the instant case, the Petitioner claims that her right to equal protection of the law was violated as she was subject to an illegal arrest. However, as discussed prior, it is established that the arrest of the Petitioner was conducted in accordance with the law.

In considering the events following the arrest, Section 30 of the Code of Criminal Procedure Act No. 15 of 1979 (as Amended) stipulates the right of a woman to be searched by another woman with strict regard to her decency. In the current instance, once the Petitioner was brought to the Nittambuwa Police Station, the Petitioner had been searched by WPC Niluka and had been in the observation of the same WPC and thus had been given the protection guaranteed under the law.

Further the Petitioner, in her Petition claims that her father-in-law who came to visit her at the Police Station with her required medication was denied access to her. The 2nd – 6th Respondents and the WPC deny the claim stating that no such person was present at the Police Station and no person had informed the Respondents of any health condition of the Petitioner.

Further, it is important to note that in the item 10 of the complaint dated 11th February 2016 made by the husband of the Petitioner to the Human Rights Commission, in the slot reserved for persons visited the victim during police custody, there is no reference made to the father-in-Law of the Petitioner having visited the Nittambuwa Police Station. Thus, there are discrepancies between the account of events provided by the Petitioner and the evidence before this court which diminishes the credibility of the Petitioner and her claim.

Finally, the Petitioner had been transported to the Magistrate Court of Attanagalla by a Police Sergeant along with the WPC. It is evident that the Petitioner has been treated according to the law and had been given equal protection as stipulated by the law. Accordingly, all her rights have been appropriately safe guarded and there is no violation of rights and inequal treatment.

Decision

I have carefully considered all material before this Court and find that the police have documented all incidents from the moment of arrest until producing the Petitioner before the Magistrate and I have no reason to create a doubt in those official records.

Therefore, by the said records and evidence submitted before this Court it is evident that the **1st Respondent**; Prasantha Welikala has conducted himself in accordance with the law in his capacity as the Officer in charge of the Nittambuwa Police Station and the **2nd Respondent** Priyantha Herath, **3rd Respondent** Ranil Bandara, **4th Respondent** Dinuka Prabath Rathnayake, **5th Respondent**; Ruwan Chamara Amarasinghe being Police Constables and the **6th Respondent** Tharindu Kokawala being the Sub Inspector who participated in the raid, have carried out the arrest and their duties following the arrest in accordance with the law, securing the rights of the Petitioner.

Therefore, I find that there is no violation of Articles 11, 12(1) and 13 (1) of the Constitution by the 1st – 6th Respondents.

Further, I find that the State has acted promptly in this regard by inquiring into the actions of the 1st – 6th Respondents under inquiry reference No. DIG/WPN/4G/NIT/7/16 following the complaint received by the DIG Western Province.

Considering all, I find that there is no merit in this application, hence I dismiss the application and award no costs.

Application dismissed.

JUDGE OF THE SUPREME COURT

P. PADMAN SURASENA J.

I agree

JUDGE OF THE SUPREME COURT

MAHINDA SAMAYAWARDHENA J.

I agree

JUDGE OF THE SUPREME COURT