

**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.

1. Muthuwahennadi Roshan Koitex
No. 57, Thuduwegodawela, Hikkaduwa
2. Muthuwahennadi Harison alias Tennyson
Opposite Jananandaramaya, Hikkaduwa

Petitioner

SC/FR 158/2008

Vs

1. Sub Inspector Sanjeewa Seneviratne
Police Station, Hikkaduwa
2. Police Constable Suranga 64244
Police Station Hikkaduwa
3. Officer-in-Charge, Police Station Hikkaduwa
4. Keembiyage Susani Anjala, Opposite Hospital
Archchikanda, Hikkaduwa
5. The Inspector General of Police
6. Hon. Attorney General

Respondents

Before : K Sripavan CJ
Sisira J de Abrew J
Priyantha Jayawardene PC J

Counsel : Sarita de Fonseka for the Petitioner
D. Akuregoda for the 1st and 2nd Respondent
Madhawa Tennakoon SSC for the 3rd, 5th and 6th
Respondents
Chula Bandara for the 4th Respondent

Argued on : 23.10.2015
Decided on : 17.2.2016

Sisira J De Abrew J.

The Petitioners, in this application seek a declaration that their fundamental rights guaranteed under Article 11 of the Constitution have been violated by the 1st and the 2nd Respondent and /or the State; that their fundamental rights guaranteed under Article 12(1) of the Constitution have been violated by the 1st ,the 2nd , 3rd and 4th Respondents and/ or the State; and that their fundamental rights guaranteed under Article 13(1) of the Constitution have been violated by the 1st, 2nd, 3rd Respondents and/ or the State. This Court by its order dated 3.6.2008, granted leave to proceed for the alleged violations of Articles 11,12(1) and 13(1) of the Constitution. Facts set out by the petitioners in their petition may be briefly summarized as follows. The 1st petitioner is the son of the 2nd petitioner. The 1st petitioner has been cohabiting with the 4th respondent for over eight years. The 1st petitioner, who works as a fisherman, had built a temporary hut within 100 meters of the coastal line in close proximity to Police Station Hikkaduwa. His hut was destroyed by the tsunami in 2004. He was subsequently given a house two years after the tsunami by an organization called Kurier Aid Austria. The 1st petitioner and the 4th respondent who lived together for over six years had issues that turned into quarrels regarding various relationship that the 4th respondent was having with the men in the area and as a result of the said disputes the 1st petitioner could not live with the 4th respondent. The 1st petitioner states that the 1st respondent maintains intimate relationship with the 4th respondent. The 1st respondent, on the instigation of the 4th respondent, on several occasions came to arrest the 1st petitioner. As the 1st petitioner was living in fear of being arrested or assaulted, the 2nd petitioner who is the father of the 1st petitioner on 26.3.2008 took the 1st petitioner to the Police

Station Hikkaduwa in order to meet the 3rd respondent, the Officer-in-Charge of the said Police Station. However they could not meet him as he was not available at the Police Station. On 28.3.2008 the 1st petitioner met the 1st respondent at the Police Station Hikkaduwa and explained to him the behaviour of the 4th respondent. At this stage the 1st respondent instructed a person to bring the 4th respondent to the Police Station. The 1st respondent in the presence of the 4th respondent, suggested to the 1st petitioner that he leaves the house and allows the 4th respondent to remain in the house. The 1st petitioner states that even on this occasion the 1st respondent and the 4th respondent demonstrated intimate relations with each other. The 1st petitioner disagreed with this said suggestion and left the police station. The 1st petitioner states that at this time the 1st respondent was in the habit of visiting the 4th respondent in his house and even on the previous day (27.3.2008) around 11.30 p.m. when he came home the 1st respondent was in his house. In order to avoid encounter with the 1st respondent, he without entering the house went away and came back around 12.30 a.m.(the following day) by which time the 1st respondent had left the house.

On 2.4.2008 on hearing that the 4th respondent was loading the household items in his house to a tractor, the 1st petitioner came to his house and then saw the 1st respondent and the 2nd respondent who were in civvies present at home. On seeing the 1st petitioner, the 1st respondent ordered the 2nd respondent to apprehend the 1st petitioner saying ‘catch this man to give him two blows’. Thereupon the 2nd respondent assaulted the 1st petitioner. When the 1st petitioner ran to his father’s house (the 2nd petitioner’s house) the 1st respondent and the 2nd respondent followed the 1st petitioner to the 2nd petitioner’s house and assaulted the 1st petitioner in front of the 2nd petitioner

and neighbours. When the 2nd petitioner who is the father of the 1st petitioner asked the 1st respondent the reason for such assault, the 1st respondent assaulted the 2nd petitioner too. The 2nd respondent, at one stage, held the 1st petitioner enabling the 1st respondent to assault the 1st petitioner. Thereafter the 1st and the 2nd respondents dragged both petitioners to the Police Station Hikkaduwa and put them in the cell of the Police Station. Thereafter the 2nd respondent took the 1st petitioner out of the cell and hit his head several times on the floor. As a result of this assault, the 1st petitioner collapsed on the floor. After the 1st petitioner collapsed on the floor, the 2nd respondent turned the 1st petitioner face down, got on to the top of his body and assaulted him with hand and legs. The 1st and 2nd respondents assaulted the 1st petitioner at the Police Station for about 15 minutes. The 2nd petitioner pleaded with them not to assault the 1st petitioner. Thereafter the 1st and the 2nd respondents handcuffed the petitioners and took them to Archchikanda Hospital where they were examined by a doctor. The 2nd petitioner told the doctor that he and the 1st petitioner had been assaulted by the police. Thereafter 1st and the 2nd respondents took the petitioners near the house where the 4th respondent was living and scolded the petitioners in foul language also saying 'here both the father and son are handcuffed.' At this place too the 1st respondent slapped the 1st petitioner several times. Thereafter the petitioners were brought to the Police Station Hikkaduwa and put into the cell.

At the Police Station the 2nd respondent brought an envelope and a ganja cigar wrapped in a polythene bag; put it into the envelope and asked the 1st petitioner to place his thumb impression. When the 1st petitioner refused to do so, the 2nd respondent scolded and forcibly kept the 1st petitioner's thumb impression on it. On 3.4.2008 the 1st petitioner was brought before the 3rd

respondent who asked the petitioner what happened. When the 1st petitioner told the 3rd respondent that ganja had been falsely introduced on him, he told an officer who was standing near him ‘it is our people who have put this man into trouble’. Later the 1st petitioner was produced before the learned Magistrate Galle and the 1st petitioner pleaded not guilty to the charge. The number of the case is MC Galle 7568. The learned Magistrate released the 1st petitioner on bail. It is pertinent to mention here that the learned Magistrate, after trial, by order dated 9.6.2014, found the 1st petitioner not guilty and acquitted him of the charge. This order has been produced in this Court by motion dated 1.10.2014.

On 2.4.2008 itself the 2nd petitioner was bailed out by the Police and asked to be present in court on 8.4.2008. When the 2nd petitioner asked for the reasons to file charges against him he was told that he was drunk. On 8.4.2008 although he attended the Magistrate’s Court Galle as instructed by Police, he found that there was no such case filed against him on the said date. Later when he complained to the 3rd respondent about it, the 3rd respondent directed a police officer to give the correct case number without harassing people. Thereafter the said police officer informed the 2nd petitioner that case number 8049 filed against him would be called on 22.4.2008. It is pertinent to mention here that the learned Magistrate after trial, by order dated 28.4.2014, found him not guilty and acquitted him of the charge. The said judgment of the learned Magistrate was produced in this court by motion dated 1.10.2014.

The 1st petitioner who was on severe pain due to the assault on him by the 1st and the 2nd respondents got himself admitted to Karapitiya Teaching Hospital on the same day (3.4.2008) and was treated for his wounds until

5.4.2008 on which day he was discharged. While he was in the hospital he was examined by Judicial Medical Officer (JMO). A copy of his admission card has been produced as P3. On 6.4.2008 the 1st petitioner complained the said incident to the Senior Superintendent of Police Galle. The petitioners state that the 1st petitioner suffered severe body aches following the assault by the 1st and 2nd respondents. The 2nd petitioner being a sixty year old heart patient was also severely disturbed by the attack on him and his son and was deeply ashamed to have received blows by the police in front of his neighbours. The petitioners therefore state that the conduct of the 1st and the 2nd respondents amounts to not only torture but also degrading treatment. The petitioners state that the above conduct and/or actions of the 1st and the 2nd respondents constitute violation of their fundamental rights guaranteed under Article 11, 12(1) and 13 (1) of the Constitution. The petitioners have also complained this incident to the Human Rights Commission, National Police Commission, 5th and 6th respondents and the Deputy Inspector of Police (Legal). This was the story narrated by the petitioners in their petition and affidavits filed in this court.

The 1st and the 2nd respondents, in their affidavits filed in this court, have denied the entire incident complained by the petitioners. They have even annexed affidavits of Rev. Hikkaduwe Gnanarathana, the Chief Incumbent of Jananandarmaya, Baddgama Road, Hikkaduwa (1R1), Mayor of Urban Council Hikkaduwa (1R2), and the Leader of Opposition of Urban Council Hikkaduwa (1R3). They, in their affidavits, say that the 1st respondent is a very honest officer who has taken steps to eradicate the drug menace in the area. The 1st and the 2nd respondents in their statement of objections state that the petitioners are hirelings of heroin dealers. But the 1st and the 2nd

respondents have failed to produce any previous convictions of the 1st and the 2nd petitioners regarding drugs. Even at the time of arrest were there any pending cases against the 1st and the 2nd petitioners? If there were any such cases, the 1st and the 2nd respondents would definitely have produced details of such cases. Thus conclusion that can be reached is that they did not have any pending cases. The only drug case that was pending against 1st petitioner was the ganja case from which he was, after trial, acquitted by the Magistrate. Even that case was filed after the petitioners were arrested. In fact as I pointed out earlier, the 1st and the 2nd petitioners have been acquitted from the cases filed against them. The charge against the 1st petitioner was that he was in possession of five grams of ganja and the charge against the 2nd petitioner was that he had, under the influence of liquor, behaved at Hikkaduwa town in an indecent manner using filthy language. When I consider the above matters, I am of the opinion that said affidavit marked 1R1, 1R2 and 1R3 do not in any way affect allegations levelled against the 1st and the 2nd respondents by the petitioners.

Kuruwage Somasiri a neighbour of the 1st petitioner, in his affidavits, states the following facts. On 2.4.2008 he saw some people loading goods to a tractor from the house of the 1st the petitioner and also saw the 4th and 1st respondents and another police officer near the house of the 1st the petitioner. When the 1st the petitioner came to this place the 4th respondent pointed out him to the 1st respondent who uttered the following words ‘catch him to give two blows’. Then the other police officer apprehended the 1st the petitioner and assaulted him. When the 1st petitioner ran away, both police officers chased after him. Later the 1st and 2nd the petitioners were dragged to the police station by the two police officers.

Dedduwa Mahage Indrarathne a neighbour of the 2nd petitioner in his affidavit states the following facts. On 2.4.2008 on hearing shouts of somebody he came out to see what it was. He then saw the 1st the petitioner being assaulted by some people. The 1st the petitioner uttered the following words 'Father I am being assaulted'. The 2nd petitioner at this stage came out of his house and inquired reasons for the assault. When Indrarathne and other neighbours ran to the place of attack, he saw two people attacking the 1st petitioner and identified one of them as the 1st respondent. When he realized that the person assaulting the 1st the petitioner was a Sub Inspector attached to the Police Station Hikkaduwa, he did not go to rescue the 1st the petitioner from the assault. When the 2nd petitioner came to the place of attack, the 1st respondent uttering the following words 'catch him, he too is wanted' went and caught the 2nd the petitioner and assaulted him leaving the 1st the petitioner at the scene. Later both petitioners were dragged to the Police Station. Thereafter, when he and the wife of the 2nd the petitioners went to the Police Station Hikkaduwa, the 3rd respondent, the Officer-in-Charge of the Police Station made inquiries about their presence. When replied that he came to ask for bail for the 2nd petitioner, the 3rd Respondent instructed them to be seated and went out of the Police Station. Whilst they were in the Police Station, the 1st Respondent using offensive words addressed him (Indrarathne) in the following language. "Are you the one who came to ask for bail"? The 2nd petitioner was later bailed out by the Police. On the following day (3.4.2008) three of them (Indrarathne, the 2nd Petitioner and his wife) went to Magistrate's Court, Galle and the 1st Petitioner was released on bail by the learned Magistrate. This is the story revealed by Indrarathne in his affidavit filed in this court. When the above facts are considered it is clear that

Kuruwage Somasiri and Indrarathne corroborate the attack on the 1st Petitioner by the 2nd Respondent.

The Medico Legal examination Form (MLE form) of the 1st Petitioner has been produced by the 3rd Respondent as 3R3. This document has been signed by the Medical Officer-in-Charge of Government Hospital Hikkaduwa. According to this document, the 1st Petitioner did not have any injuries when he was examined by the doctor at 2.45 p.m. on 2.4.2008. Can this document be accepted as a true document? When leave to proceed was granted on 3.6.2008, this court called for the Medico Legal Report (MLR) and the Bed Head Ticket (BHT) of the 1st Petitioner from the Director of Karapitiya Teaching Hospital. These documents are now available in the case record. According to the MLR of the 1st Petitioner, the Judicial Medical officer (JMO) has certified that the 1st Petitioner was having an abrasion 2x1c.m in size and oval in shape situated on the left forehead. According to the MLR, this injury could have been caused by a blunt weapon and the patient has complained of headache and body aches. It is noted that the Petitioner was admitted to Karapitiya Teaching Hospital on 3.4.2008 and was examined by the JMO on 6.4.2008. It has to be noted here that the 1st Petitioner was released on bail by the learned Magistrate only on 3.4.2008. Thus there was no opportunity for him to get himself admitted to a hospital prior to 3.4.2008. When the contents of the MLR are considered, can the MLE Form signed by the Medical Officer of Government Hospital Hikkaduwa be accepted? This question has to be answered in the negative. When I consider the above matters I am of the opinion that the contents of the MLE form cannot be accepted as true. The 1st and the 2nd Respondents have denied the allegation leveled against them by the petitioners.

Article 11 of the Constitution reads as follows.

“No Person shall be subjected to torture cruel, inhuman or degrading treatment or punishment.”

At this stage it is relevant to consider certain judicial decisions of this court.

In *Amal Sudath Silva Vs Kodituwakku Inspector of Police and others* [1987] 2 SLR 119 at 126 Athukorale J (with whom Sharvananda CJ and LH de Alwis J agreeing) held as follows.

“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.”

In *Mrs WMK de Silva Vs Chairman Ceylon Fertilizer Corporation* [1989] 2 SLR 393 at 405 this Court held as follows.

“In my view Article 11 of the Constitution prohibits any act by which severe pain or suffering, whether physical or mental is, without lawful sanction in accordance with a procedure established by law, intentionally inflicted on a person (whom shall refer to as 'the victim') by a public official acting in the discharge of his executive or administrative duties or under colour of office, for such purposes as obtaining from the victim or a third person a confession or information, such information being actually or supposedly required for official purposes, imposing a penalty upon the victim for an offence or breach or a rule he or a third person has committed or is suspected of having committed, or intimidating or coercing the victim or a third person to do or refrain from doing something which the official concerned believes the victim or the third person ought to do or refrain from doing, as the case may be.”

I would like to quote the following passage from the book titled “Fundamental Rights in Sri Lanka” 2nd edition by Dr. Jayampathy Wickramaratne pages 215 to 216.

“The petitioners in *Adhikary Vs Amarasinghe* [2003] 1 SLR 270 were husband and wife. The first petitioner was an Attorney-at-Law while the second petitioner was a teacher. They were travelling in their car

with their infant child and close relatives. At a traffic jam, the respondents, all security officers of a Minister, prevented the vehicle from proceeding any further and the first and the second respondents punched the car with their fists. When the first petitioner questioned them as to why they were preventing petitioners from proceeding, the first and second petitioners abused and humiliated the petitioners and their family. The first petitioner was pulled out and slapped. The second petitioner, who came to the rescue of her husband with the child in her arms, was slapped and abused. The first and second respondents shouted, saying that they were security officers of a particular Minister and that they could shoot and kill the petitioners.

Shirani Bandarnayake J, with Edussuriya and Yapa JJ agreeing, held that “the protection of Article 11 is not restricted to the physical harm caused to a victim, but would certainly extend to a situation where a person who has suffered psychologically due to such action. The learned Judge had no hesitation in holding that the ordeal faced by the petitioners was of an aggravated nature. The anguish faced by the wife was sufficient to prove the required level of severity needed for an act to be violative of Article 11. The psychological trauma faced by the innocent child added to the severity of the actions of the first and second respondents.”

Considering the facts of this case and applying the principles laid down in the above legal literature, I hold that the first petitioner has been subjected to inhuman and degrading treatment by the 1st and the 2nd respondents. For the above reasons I hold that the 1st and the 2nd respondents have violated the

fundamental rights of the 1st petitioner guaranteed by Article 11 of the Constitution.

The next point that must be considered is whether there is sufficient evidence to conclude that the 1st and the 2nd respondents assaulted the 2nd petitioner. The 1st petitioner got himself admitted to Karapitiya Teaching Hospital soon after he was released on bail by the learned Magistrate. According to the evidence the 2nd petitioner too was present in the Magistrate Court of Galle when the 1st petitioner was released on bail. But the 2nd petitioner chose not to enter the Karapitiya Hospital. When I consider these matters, I feel that there is no sufficient evidence to conclude the 1st and the 2nd respondents have violated the fundamental rights of the 2nd petitioner guaranteed by Article 11 of the Constitution.

The petitioners allege that their fundamental rights guaranteed by Article 12(1) of the Constitution have been violated by the 1st, 2nd, 3rd and 4th respondents. I now advert to this contention. 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”

The allegation of the petitioners is that the 1st and the 2nd respondents fabricated two cases against them and the 1st and 2nd respondents have produced arresting notes marked 1R9. According to 1R9, on 2.4.2008 around 1.30 p.m. when the 1st and the 2nd respondents were travelling in a private vehicle the 1st petitioner came to the road on a bicycle. When he was getting ready to stop his bicycle he (the 1st petitioner) ran away leaving the bicycle.

The 2nd respondent chased after him and arrested him. The Police Officers found a packet of ganja weight of which was about 5 grams hidden in his trouser pocket. Little prior to this arrest (twenty minutes before) the 1st and the 2nd respondents have arrested the 2nd petitioner. If a packet containing five grams of ganja was hidden in his trouser pocket, it could not be seen by anybody. Then the question that arises is whether the evidence of two police officers could be accepted when they said that the 1st petitioner ran away on seeing the police officers. The 1st petitioner was charged for being in possession of five grams of ganja. According to the judgment of the Magistrate both petitioners have given evidence under oath. After considering the above question and the evidence of the case, the learned Magistrate acquitted the 1st petitioner of the charge leveled against him. The most important thing that must be taken into consideration is that the failure on the part of the police to take the bicycle into custody as a production. Normally if a person is detected with ganja or heroin in a vehicle such vehicle is taken into custody as a production. Surprisingly the police did not take the bicycle of the 1st petitioner. When the above matters are considered I have to ask the following question. Is the story narrated by the police true?

The 1st and the 2nd respondents also filed a case against the 2nd petitioner who is the father of the 1st petitioner, for behaving in an indecent manner and using filthy language under the influence of liquor near Hikkaduwa bus stop. Both petitioners have given evidence under oath and denied the charge. The learned Magistrate has observed that the 2nd petitioner was arrested twenty minutes prior to the arrest of the 1st petitioner. The 2nd petitioner was arrested at 1.10 p.m. and the 1st petitioner was arrested at 1.30 p.m. The learned

Magistrate after considering the evidence led at the trial has acquitted the 2nd petitioner of the charge. It has to be stated here that both the petitioners were acquitted after trial. It appears from the facts of this case and from the judgment of the learned Magistrate that these two cases were fabricated by the 1st and the 2nd respondents. If the two police officers arrested the petitioners on a complaint which was subsequently proved false, then they (the police officers) cannot be blamed. But it has to be stressed here that the case filed against the 2nd petitioner was not a case where the two police officers went and arrested the petitioners on a complaint which was subsequently proved to be false. According to the two police officers (1st and 2nd respondents) they arrested the 1st petitioner as they found ganja in his possession and the 2nd petitioner was arrested as the two police officers observed that the 2nd petitioner was, under the influence liquor, behaving in an indecent manner using filthy language. If the two petitioners were arrested and produced before the Magistrate on false charges fabricated by the two police officers, can't it be construed to say that two police officers have taken away their (petitioners) liberty to live peacefully and their happiness in life? Yes it can. In this country people should have the liberty to live peacefully and are entitled to their happiness to live peacefully. Police can't take away this right of the people. If the police take away this right of the people, then their Fundamental Rights namely that all persons are equal before the law and are entitled to the equal protection of the law are violated by the police action. In the present case it appears that the 1st and the 2nd respondents have filed two cases against the two petitioners in order to justify the wrongful arrest of the petitioners made by them (the 1st and the 2nd respondents). In my view, if a police officer in order to justify his wrongful arrest of a person files a false

case in court, he violates Fundamental Rights of that person guaranteed by Article 12(1) of the Constitution. Primary duty of the police is to maintain law and order. In doing so police officers must work as true public servants. In this country, police officers must impress the principle that they serve and protect the people. I have earlier pointed out that the 1st and the 2nd respondents have filed two false cases against the petitioners in order to justify their wrongful arrest of the two petitioners. For the above reasons, I hold that the 1st and 2nd respondents have violated the fundamental rights of the two petitioners guaranteed by Article 12(1) of the Constitution.

The petitioners allege that their fundamental rights guaranteed by Article 13(1) of the Constitution have been violated. I will now deal with this contention. According to the respondents, the 1st petitioner was arrested for being in possession in five grams of ganja and the 2nd petitioner was arrested as he was, under the influence of liquor, behaving in an indecent manner and using filthy language in a public place (Hikkaduwa Town). I have earlier held that both cases have been fabricated by the 1st and 2nd respondents. Article 13(1) of the Constitution reads as follows.

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

In this connection it is relevant to consider the judgment in *Channa Peiris and Others Vs Attorney General and Others* [1994] 1 SLR 1 at page 47 wherein Supreme Court held thus:

“However the officer making an arrest cannot act on a suspicion founded on mere conjecture or vague surmise. His information must

give rise to a reasonable suspicion that the suspect was concerned in the commission of an offence for which he could have arrested a person without a warrant. The suspicion must not be of an uncertain and vague nature but of a positive and definite character providing reasonable ground for suspecting that the person arrested was concerned in the commission of an offence”.

If the charges levelled against petitioners have been fabricated by the Police then the arrest has been made on false grounds. Then the arrest itself is illegal and wrong. It cannot therefore be contended that the arrest was made according to the procedure established by law. In the present case the 1st and the 2nd respondents fabricated false charges against the petitioners and arrested them. Therefore the two petitioners had been arrested not according to the procedure established by law. I thus hold that the 1st and the 2nd respondents have violated the fundamental rights of the petitioners guaranteed by Article 13(1) of the Constitution. This situation would have been different if a police officer, on a complaint made by a person regarding commission of an offence which was subsequently proved to be false, arrested the person against the allegation was made. I have, in this judgment, held that the 1st and 2nd respondents have violated fundamental rights of the 1st petitioner guaranteed by Articles 11,12(1) and 13(1) of the Constitution and that the 1st and the 2nd respondents have violated the fundamental rights of the 2nd petitioner guaranteed by Articles 12(1) and 13(1) of the Constitution. Thus both petitioners are entitled to receive compensation. As I pointed out earlier the 1st and the 2nd respondents fabricated two cases against the petitioners and arrested them. This is not a case where the two police officers, in discharging

their duty to protect state property and/or to protect National Security, have arrested the petitioners. When I consider all these matters I hold that the 1st and the 2nd respondents are personally liable to pay compensation to the petitioners. I direct that the 1st respondent to pay Rs. 75,000/- to the 1st petitioner and Rs.50,000/- to the 2nd petitioner. The 2nd respondent is directed to pay Rs.75,000/- to the 1st petitioner and Rs.50,000/- to the 2nd petitioner. However the 1st and the 2nd respondents, at the time of the arrest of the petitioners and filing of two cases against the petitioners, have functioned as police officers. Therefore the State too is liable to pay compensation to the petitioners. I order the State to pay Rs.100,000/- to the 1st petitioner and Rs.50,000/- to the 2nd petitioner. The 5th respondent is directed to ensure the said payments from the State funds.

The next question that must be considered is whether the 3rd respondent who was the Officer-in-Charge of Hikkaduwa Police Station has violated the fundamental rights of the petitioners. He did not participate in the arrest of the petitioners. There is no allegation that he assaulted the petitioners. In fact when the 1st petitioner informed the 3rd respondent when he was brought to the police station that ganja had been falsely introduced, he (the 3rd respondent) told another police officer that it is our people who have put this man into trouble. When the 2nd petitioner complained to the 3rd respondent that a wrong date of the case in MC Galle was given to him, the 3rd respondent instructed a police officer to give the correct case number and the date without harassing people. These facts must be considered in favour of the 3rd respondent. The only evidence available against the 3rd respondent is that he as the Officer-in-Charge of the Police Station signed the B Report of the 1st

petitioner. By doing this has he violated the fundamental rights of the 1st petitioner? I now advert to this question. When the 1st and the 2nd respondents who are subordinate officers of the 3rd respondent complained to him that a person had been arrested for being in possession of ganja, can he refuse to sign the B Report. He was, at that time, was unaware of the falsity of the charge. For the above reasons, I hold that the 3rd petitioner has not violated the fundamental rights of the petitioners.

The next question that must be considered is whether the 4th respondent has violated the fundamental rights of the petitioners. The 4th respondent, in her affidavit, says that she was living with the 1st petitioner for about eight years in a hut built by her parents and that this hut was destroyed by tsunami. Thereafter a NGO donated the present house for both of them and some furniture too was given by the said NGO to be used by both of them. She denies that she came in a three wheeler with the 1st respondent. The person to whom the ownership of the house was donated by the NGO has not been decided by any State Officer. The complaint of the 1st petitioner was that the 4th respondent was loading the household items of the said house to a tractor. If the house and the furniture were given to the 1st petitioner and the 4th respondent, the 4th respondent cannot be blamed for removing some household items when they could not live together. One must not forget that both of them were living in this house but could not live together after some time. Under these circumstances it is not possible to conclude that the 4th respondent have violated the fundamental rights of the petitioners. Accordingly I hold as follows:-

The 3rd and the 4th respondents have not violated the fundamental rights of the petitioners.

The 1st and 2nd respondents have violated the fundamental rights of the 1st petitioner guaranteed by Articles 11, 12(1) and 13(1) of the Constitution.

The 1st and 2nd respondents have violated the fundamental rights of the 2nd petitioner guaranteed by Articles 12(1) and 13(1) of the Constitution.

The 1st respondent is directed to pay Rs.75,000/- to the 1st petitioner and Rs. 50,000/- to the 2nd petitioner personally.

The 2nd respondent is directed to pay Rs. 75,000/- to the 1st petitioner and Rs. 50,000/- to the 2nd petitioner personally.

The State is directed to pay Rs.100,000/- to the 1st petitioner and Rs 50,000/- to the 2nd petitioner.

The aforesaid sums should be paid within two months from today.

The Registrar of this court is directed to send a certified copy of this judgment to the Inspector General of Police for necessary action.

Judge of the Supreme Court

K Sripavan CJ

I agree.

Chief Justice

Priyanth Jayawardene PC, J

I agree.

Judge of the Supreme Court

