

**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.

Tuduge Achalanka Srilal Perera,
'Isura', Wellarawa,
Wellarawa.

S.C. (F/R) Application
No: 198/2011

Petitioner

Vs.

- (1) Police Sergeant Ananda,
Police Station,
Madampe.
- (2) Inspector of Police Indrajith,
Officer-in-Charge,
Police Station,
Madampe.
- (3) Inspector-General of Police,
Police Headquarters,
Colombo 01.
- (4) Hon. Attorney-General,
Attorney-General's Department,
Colombo 12.

Respondents

BEFORE: Buwaneka Aluwihare, PC, J.
Priyantha Jayawardena, PC, J. &
H.N.J Perera, J.

COUNSEL: Shyamal A. Collure with Rassim Hameed for
Petitioner.
Anura Meddegoda with Nadeesha Kannangara for
the 1st and 2nd Respondents.
Madhawa Thennakoon, SSC for the 3rd and 4th
Respondents.

ARGUED ON: 21.03.2017

DECIDED ON: 22.02.2019

Aluwihare PC. J.,

This is an application under Article 126 of the Constitution and the court granted leave to proceed for the alleged violations of Articles 11, 12 (1), 13 (1) and 13 (2) of the Constitution against the 1st and 2nd Respondents.

The facts that gave rise to the violations alleged, are as follows:

According to the Petitioner, on the 24th April, 2011 four persons in civvies had come to the meat stall he runs at the Willaththewa Sunday fair. Handcuffed and blindfolded, the petitioner had been taken away in a vehicle by the four persons. The Petitioner was taken to a thicket and had been subjected to assault intermittently. Sometime later in the day, he had been brought to a building and the blindfold had been removed. At that point the Petitioner had realized that he was at a police station.

1st and 2nd respondents as well as the other three persons who accompanied the 1st Respondent to his meat stall had been present.

The Petitioner alleges that he was assaulted by the 1st Respondent with a club that resembled a walking stick. The Petitioner further alleges that

the blows alighted on his shoulders and the head. In addition, the Petitioner alleges that the 1st Respondent took him to the Crimes Branch of the Police Station and was assaulted again with the club.

Around 8.00 in the evening, again, the Petitioner had been taken in a vehicle, handcuffed and blindfolded, and they had demanded him to hand over the 'items that he had stolen'. This routine had been repeated on the following day i.e. 25th April, 2011. The Petitioner alleges that he was subjected to assault during these journeys, in spite of his denial of any involvement in the alleged incidents of burglary. According to the Petitioner, he had been forced to spend the nights of both 24th and 25th April at two houses, he gathered, which had been burgled. On the 26th morning while travelling in the vehicle the 1st Respondent had received a telephone call from the 2nd Respondent who had told the 1st Respondent not to assault innocent people and bring the Petitioner back to the police station. The Petitioner claims that as instructed by the 2nd Respondent, he was brought back to the police station and put in the police cell. According to the Petitioner, the 1st Respondent had intermittently taken the Petitioner out of the cell and had subjected him to assault.

On 27th April, the 1st Respondent had recorded his statement and, on 28th April, he had been produced before a Medical Officer at the Madampe District Hospital. As he had been threatened by the 1st Respondent who accompanied him, not to divulge the fact that he was assaulted, he had kept silent when he was questioned by the doctor. After having the Petitioner brought back from the hospital, he had been released on police bail on the same day (i.e. 28th April) that was four days after his arrest. According to the Petitioner, he had not been produced before a magistrate from the point of his arrest up to the release.

The Petitioner further alleges that the 1st Respondent handed over to him a piece of paper on which the telephone number of the 1st Respondent was written and demanded that he be paid Rs.50, 000/-if charges are not to be pressed against him. A copy of the said document is marked and produced as P3 which carries the numbers 0779864774 and the writing in Sinhala the name “Ananda”. It appears that the number and the letters were scribbled on a piece of paper torn from a prescribed form used by the Police Department, in their official work.

On the very day he was released, he had gone to the Police Head Quarters and had lodged a complaint and the acknowledgement issued by the Police Headquarters is pleaded in these proceedings as P4.

On the following day (i.e. 29th April) the Petitioner had also complained to the Inspector General of Police (the 3rd Respondent) who had directed the Superintendent of Police Chilaw, to conduct an inquiry into the complaint lodged.

On 29th of April, the Petitioner had got himself admitted to the Chilaw General Hospital and on 1st May had been examined by the Judicial Medical Officer. The fact remains that the Petitioner had neither been produced before a court in relation to any offence alleged to have been committed by him, nor had he been charged in relation to any criminal offence.

On a direction given by this court, the Director of the General Hospital, Chilaw had forwarded the Medico Legal Report (MLR) and other medical records pertaining to the Petitioner.

According to the MLR, the Petitioner had given a history identical to the narration of events he had placed before this court by his Petition. In the

history given, however, the Petitioner had not referred to the 2nd Respondent as a person who assaulted him, but had said “Ananda and another policeman hit him.”

The doctor had observed, apart from hand cuff marks, seven contusions and one abrasion. The doctor had opined that the injuries are non-grievous in nature and probably caused with a blunt weapon. When one considers the seat of the injuries coupled with the medical opinion; that the injuries have resulted due to blunt trauma, the injuries are undoubtedly compatible with the version of the Petitioner. The Bed Head Ticket indicates that the Petitioner had been rational at the time of admission and no signs of any impairment of the limbs nor had there been any chest or abdominal trauma. The doctor also had noted that the Petitioner had no external injuries.

The 1st Respondent had admitted that he placed the Petitioner in custody because he could not satisfactorily explain his presence at the location where he was arrested and the contradictory answers given by him with regard to his identity and the place of residence. Although the 1st Respondent alleges that he arrested the Petitioner in accordance with the procedure established by law, the 1st Respondent had failed to disclose the alleged offence or offences for which he took the Petitioner into custody.

Every arrest by a police officer, attracts Section 23 (1) of the Code of Criminal Procedure Act and it is mandatory that the person arrested should be informed of the nature of the charge or allegation upon which he is arrested. A bare assertion that the arrest is in accordance with the procedure established by law, falls far short of the standard expected of the applicable legal provision.

In the case of *Malinda Channa Pieris* 1994 1 SLR pg. 1, it was pointed out by the Court;

“a reason for arrest, a reason to deprive a person of his personal liberty within the meaning of Article 13 (1) of the Constitution must be ‘a ground for arrest’. There can be no such ground other than a violation of the law or a reasonable suspicion of the violation of the law. Furthermore, personal liberty of a citizen of this country is guaranteed by the Constitution and State has an obligation towards its subjects to ensure that citizens are free to enjoy that right without any fetters, subject, however, to exceptions laid down under the law where that freedom can be restricted and as such, strict compliance of the law is required if the freedom guaranteed under the Constitution is to be curtailed; and there cannot be any derogation from the requirements laid down in the Code of Criminal Procedure Act. The right to be informed of the reasons to arrest is one of the principles of ordinary law which is restated in the second part of Article 13 (1) of the Constitution and provides that “Any person arrested shall be informed of the reason for his arrest”.

Former Chief Justice Sharvananda, in his treatise on **Fundamental Rights in Sri Lanka** (page 141) observed as follows;

“The requirement that the person arrested should be informed of the reason for his arrest is a salutary requirement. It is meant to afford the earliest opportunity to him to remove any mistake, misapprehension or misunderstanding in the mind of the arresting authority and to disabuse the latter’s mind of the suspicion which triggered the arrest and also for the arrested person to know exactly what the allegation or accusation against

him is so that he can consult his Attorney-at-Law and be advised by him..... A bold statement that the arrestee is a terrorist falls far short of the required standard.”

The 1st Respondent has taken up the position that he took the Petitioner into custody on 27th April as opposed to the 24th, the date the Petitioner alleges that he was arrested. In support of the Petitioner’s contention, both Sunil Jayantha and A.S. Mohamed Rizvi who were running meat stalls at the same Sunday fair along with the Petitioner, had sworn affidavits (P1 and P2) to the effect that the Petitioner was arrested on the 24th April by four persons around 1.30 p.m. and that they had taken him in a white van which did not carry a Registration plate. Both have stated that the Petitioner was handcuffed and blindfolded.

Interestingly, the 1st Respondent takes up the position that the Petitioner is a person prone to criminal disposition. The position of the 1st Respondent is that he was investigating into a series of cases relating to house breaking and theft that had taken place on the 20th and 21st of April and he was conducting investigations in order to ascertain the identity of the persons responsible for these crimes. In this backdrop, it is quite probable that the 1st Respondent entertained a suspicion with regard to the Petitioner, given the background knowledge the 1st respondent had of the Petitioner. Even if that may have been the case, yet the Respondent had no right to place the Petitioner in custody in the absence of any evidence indicative of any complicity on the part of the Petitioner in the alleged crimes. The Petitioner had pleaded in these proceedings, that he was repeatedly abused both physically and verbally calling upon him to hand over what he is alleged to have removed from the houses that were burgled. On the other hand the 1st Respondent was

conducting investigations into a series of house burglaries. In this backdrop, because of the 1st Respondent's notion that the Petitioner is a person who has a propensity towards criminality, it was very probable that the 1st Respondent would have taken the Petitioner into custody on the assumption that he was involved or had had some complicity in the instances of house breakings which were being investigated. The Petitioner's version that he was repeatedly questioned about the articles removed from the houses that were burgled and the fact that he was taken to a few houses that were burgled, blends with the very investigation the 1st Respondent was conducting at that point of time, thus giving credence to the version of the Petitioner.

On the other hand, if the Petitioner was merely taken into custody on suspicion and was released after questioning without being charged with an offence, rationally would one expect such a person to take the measures the Petitioner had followed? As referred to earlier, on the day he was released, he lodged a complaint with the Police Headquarters, the following day he made complaints to both the IGP the 3rd Respondent, and followed it by a prompt complaint to the Human Rights Commission. All these prompt measures cry the pleas of a person who had suffered at the hands of the police.

Over the years, this Court, in innumerable judgements, had laid down the legal requirements that a police officer is expected mandatorily to follow, when placing a citizen in custody. However, it is regrettable to note that even in this day, it is practiced in the breach. In this context, I wish to cite the case of *Christie v. Leachinsky 1947 AC 457* decided by the House of Lords more than half a century ago and which is very much relevant today.

In the case referred to Viscount Simon held:

“Police officers must at common law give a detained person a reason for his arrest at or within a reasonable time of the arrest. Under ordinary circumstances, the police should tell a person the reason for his arrest at the time they make the arrest. If a person’s liberty is being restrained, he is entitled to know the reason. If the police fail to inform him, the arrest will be held to be unlawful, with the consequence that if the police are assaulted as the suspect resists arrest, he commits no offence, and if he is taken into custody, he will have an action for wrongful imprisonment.”

In the said case, Viscount Simon summarised a police officer’s powers of arrest at common law: *“(1) If a policeman arrests without warrant upon reasonable suspicion of felony, or of other crime of a sort which does not require a warrant, he must in ordinary circumstances inform the person arrested of the true ground of arrest. He is not entitled to keep the reason to himself or to give a reason which is not the true reason. In other words, a citizen is entitled to know on what charge or on suspicion of what crime he is seized. (2) If the citizen is not so informed, but is nevertheless seized, the policeman, apart from certain exceptions, is liable for false imprisonment. (3) The requirement that the person arrested should be informed of the reason why he is seized naturally does not exist if the circumstances are such that he must know the general nature of the alleged offence for which he is detained. (4) The requirement that he should be so informed does not mean that technical or precise language need be used. The matter is a matter of substance, and turns on the elementary proposition that in this country a person is, prima facie, entitled to his freedom and is only required to submit to restraints on his freedom if he knows in substance the reason why it is claimed that this*

restraint should be imposed. (5) The person arrested cannot complain that he has not been supplied with the above information as and when he should be, if he himself produces the situation which makes it practically impossible to inform him, e.g., by immediate counter-attack or by running away. There may well be other exceptions to the general rule in addition to those I have indicated, and the above propositions are not intended to constitute a formal or complete code, but to indicate the general principles of our law on a very important matter.”

When the versions of the Petitioner and the 1st and 2nd Respondents placed before this Court are considered, I am firmly of the view that the version of the Petitioner is more probable and there is no cogent reason to reject it. Thus, I hold that the arrest of the Petitioner, which led to his detention are both illegal and that the Petitioner has established the violations of his fundamental rights guaranteed under Articles 13 (1) and 13 (2) of the Constitution.

The assertion of the Petitioner that he was assaulted with a staff is amply substantiated by the medical records pertaining to him, pleaded in these proceedings.

The history given by the Petitioner and the injuries sustained by him is compatible with the version of the Petitioner. Thus, I hold that the Petitioner was subjected by the police to physical and mental pain as amounted in law to inhuman and degrading treatment and consequently the Petitioner is entitled to a declaration that the State has acted in violation of his Fundamental Right under Article 11 of the Constitution.

It is alleged that it was the 1st Respondent who arrested the Petitioner, produced him at the police station for further detention and assaulted him on numerous occasions during the period he was kept in custody.

For the reasons set out above, I hold that the 1st Respondent has violated the Petitioner's Fundamental rights guaranteed under Articles 11, 13 (1) and 13 (2).

As far as the 2nd Respondent is concerned, he had taken no part in the arrest, however, the Petitioner would not have been detained at the police station from the 24th to the 28th if the detention was not sanctioned by the 2nd Respondent who was the Officer-in-charge of the Police Station and he was under a duty to satisfy himself that there were sufficient reasons to do so. In addition, the period of detention with the police exceeds the period prescribed by law to keep a person arrested in custody; As such I hold that the 2nd Respondent has violated the Fundamental right of the Petitioner guaranteed under Article 13 (2) of the Constitution.

At this point I wish to consider the material in respect of the 2nd Respondent in relation to violation of Article 11 of the Constitution.

The Petitioner in the history given to the Medico legal officer had stated that he was assaulted by a person called "Ananda" (the 1st Respondent) and another police officer, but had not disclosed the name or the credentials of the 'other officer'. According to the Petitioner, he was arrested by four persons. On the other hand, when the Petitioner, as alleged by him, was taken by the 1st Respondent in a vehicle, the 2nd Respondent had instructed the 1st Respondent 'not to assault innocent persons and to bring the Petitioner back to the police station' although

the Petitioner has pleaded in these proceedings that the 2nd Respondent assaulted him when he was taken to his cubicle.

According to the Petitioner, he had been severely beaten even before he was brought to the police station for about two hours with clubs and again when he was taken out of the police station subsequently, the 1st Respondent is alleged to have assaulted him repeatedly while travelling in the vehicle.

The Petitioner also states that after he was brought back to the police station and put in a cell, the 1st Respondent had taken him out and assaulted him with fists and a club.

However, the medical evidence does not support the Petitioner's version to that extent, specifically when one considers the few non-grievous contusions the Petitioner had sustained. This court has held that there should be substantial material before court, to hold a violation under Article 11 of the Constitution.

I am of the view that the Petitioner has failed to establish a violation under Article 11 of the Constitution as against the 2nd Respondent.

Accordingly, I grant the Petitioner the following reliefs:

- (1) A declaration that the fundamental rights of the Petitioner under articles 13 (1), 13 (2) and 11 were infringed by the **1st Respondent** by the reason of unlawful arrest on 24th April 2011 his detention from the 24th to the 28th April 2011 and degrading treatment;
 - (a) Compensation in a sum of Rs. 25, 000 to the Petitioner payable by the State
 - (b) Compensation in a sum of Rs. 75, 000 to the Petitioner payable by the 1st Respondent.

- (2) A declaration that the fundamental rights of the Petitioner under Article 13 (2) was infringed by the 2nd Respondent by reason of unlawful detention from 24th April 2011 to the 28th April 2011
- (a) Compensation in a sum of Rs. 30, 000 to the Petitioner payable by the 2nd Respondent.

Application allowed

JUDGE OF THE SUPREME COURT

JUSTICE H.N.J. PERERA
I Agree

CHIEF JUSTICE

JUSTICE PRIYANTHA JAYAWARDENA PC
I Agree

JUDGE OF THE SUPREME COURT

