

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

*In the matter of an Application
under and in terms of Articles 11,
12, 13 and 17 of the Constitution
read together with Article 126 of
the Constitution of the Democratic
Socialist Republic of Sri Lanka.*

SC/ FR Application 411/2012

Herath Mudiyansele Indika
Kanchana Hemantha.

Unagaswewa,
Nagollagama.

PETITIONER.

Vs.

1. Karunaratne Mudiyansele
Abeyasinghe.
Police Officer, Maho Police
Station,
Maho.
2. H.R. Samansiri Dharmapala.
Police Officer, Maho Police
Station,
Maho.
3. Channa Abeyratne.
Officer-in-Charge,
Maho Police Station,
Maho.
4. I. Ratnayake,
Crime Branch Officer-in-Charge,
Maho Police Station,

Maho.

5. N.K. Illangakoon,
Inspector General of Police,
Police Head Quarters,
Colombo 01.
6. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

BEFORE : **PRIYANTHA JAYAWARDENA, PC, J.,
P. PADMAN SURASENA, J. AND
S. THURAIRAJA, PC, J.**

COUNSEL : Senaka De Saram for the Petitioner.
Saliya Pieris, PC with Anjana Rathnasiri for the 1st and 2nd
Respondents.
Chrisanga Fernando, SC for the 3rd, 4th, 5th and 6th Respondents.

ARGUED ON : 22nd May 2019.

WRITTEN SUBMISSIONS : Petitioner- 31st May 2019.
1st and 2nd Respondents- 31st May 2019.

DECIDED ON : 13th November 2019.

S. THURAIRAJA, PC, J.

The Petitioner had filed this petition stating that his fundamental rights have been infringed by the Respondents. On the 27th of August 2012, the matter was supported before this Court and the Court granted leave to proceed against the 1st and 2nd Respondents for the alleged violation of Articles 11, 12(1), 13(1) and 13(2) of

the Constitution. Further, the Court granted leave to proceed against the 3rd, 4th and 5th Respondents for the alleged violation of Articles 12(1), 13(1) and 13(2) of the Constitution.

Both parties filed objections and counter objections and produced several documents. The Counsel for the Petitioner and the Counsel for the Respondents made their oral submissions and filed additional written submissions.

According to the Petitioner, on the 26th of June 2012, he was arrested by a four member team which included the 1st and 2nd Respondents, who are both police officers attached to the police station of Maho. The Petitioner claims that he was initially taken to the rear part of the Maho police station and was later moved to another room, where he was questioned about the theft of two ladies' bags containing Rs. 300,000/- and Rs. 120,000/ from female passengers in a train, which was bound to Trincomalee.

The Petitioner submits that his hands were tied behind his back with a T-shirt and he was hung by his hands with a large rope to the roof of the said room, following which he was assaulted excessively with a wooden pole by the 1st and 2nd Respondents while they questioned him about the whereabouts of the two bags. He states that at one point, he was made to lie down on the floor and two police officers stood on the petitioner's knees for about 30 minutes while the 1st Respondent began beating the soles of the petitioner. He submits that he was unable to identify two of the other police officers who were involved in the assault but that he could clearly identify the 1st and 2nd Respondents.

The Petitioner states that the officers continued to assault him on the day following his arrest, as well. The petitioner claims that, he had visible bruises and that he was suffering from pain but was not provided any medical attention.

The Petitioner states that on the night of the 27th of June 2012, a police constable had provided him a mobile phone through which the petitioner had managed to call his mother and informed her that he had been detained in a room

on the rear end of the police station of Maho. Thereafter, it is claimed that the Petitioner's wife and father had come to the police station to make a complaint but the police had denied any such arrest.

The Petitioner states that on the 28th of June 2012, while he was at the canteen of the said police station, the 1st Respondent had brought in a woman, whom the Petitioner identified to be a Muslim. The Petitioner stated that the 1st Respondent questioned the woman whilst pointing towards the Petitioner and she had nodded her head in the negative. The Petitioner claims that, he was then taken back to the room allotted to him and was hand-cuffed to the bed, following which he was informed by the 1st and 2nd Respondents that they were considering his release, but he was instead placed in the police cell of the Maho police station.

The Petitioner recalls that, on the 29th of June 2012, he was produced before the Magistrate of Maho by the 4th Respondent. He also claims that, he had been forced to sign a statement, which he was not allowed to read.

The Petitioner claims that the Magistrate of Maho had ordered for a medical examination of the Petitioner and had instructed that the Petitioner be present for an identification parade.

The Petitioner submits that on the 3rd of July 2012, he was produced before the Judicial Medical Officer (JMO) of Kurunegala Hospital for a medical examination. He had reported the incident to the JMO who had affirmed that his injuries were compatible with the history given by him. The report has been produced in this Court (document marked as 'P6'). The identification parade was held on the 4th of July, 2012 and the Petitioner was not identified by any of the witnesses.

On the 11th of July 2012, he was granted bail by the Magistrate of Maho, following which, the Petitioner states he was re-admitted to the Kurunegala Hospital where he underwent treatment from the 12th of July 2012 to the 15th of July 2012. The particulars of the complaint recorded by the Hospital have been produced before this Court (document marked as 'P9').

The Counsel for the 1st and 2nd Respondents submits that, the Petitioner was arrested on the 28th of June 2012 by Police Sergeant 24771 Dharmadasa, an officer attached to the Maho Police Station.

The Counsel for the 1st and 2nd Respondents had produced the Medico-Legal Examination Form (MLEF) dated 29th June 2012 (document marked as 'R-2E') given by the Medical Officer of the District Hospital at Maho. According to the report, the patient was examined at 9.50 am at the Maho Hospital. Apart from ticking all boxes, no observations were made in the Report. As per the contents of R-2E, there is no injury observed by the doctor. However, P6 reveals 6 injuries, which are consistent with the complaints made by the Petitioner. Therefore, R-2E contradicts P6.

1st and 2nd Respondents had denied the involvement of the said Respondents in the arrest and assault of the Petitioner.

On careful perusal of the materials before this Court, I have come to the conclusion that, the Respondents have not properly responded to the allegations made against them.

The Petitioner states that, there were four people involved in his arrest and that he can clearly identify two of them as the 1st and 2nd Respondents. On the other hand, the 1st and 2nd Respondents state that the Petitioner was arrested by Police Sergeant Dharmadasa. Other than the mere suspicion that the Petitioner was responsible for the theft of the bags, 1st and 2nd Respondents were unable to submit any evidence of a genuine reason to carry out the arrest. Moreover, the Petitioner was not identified at the Identification Parade, which was held on the 4th of July 2012.

The Petitioner states that the date of arrest was the 26th of June 2012 while the Respondents claim that, as per the Police entry, he was arrested on the 28th of June 2012. The Medico-Legal Report (MLR) shows that, the petitioner had informed the JMO (while he was in fiscal custody) that, he was arrested on the 26th of June 2012 and had described the mode of torture and shown his injuries to the JMO, an independent Government medical officer who had examined and confirmed that the

injuries are compatible with the history given. This includes the nature of the injury, pattern of the injury and the duration of injuries.

It is noted that the MLR obtained from the Medical Officer of the District Hospital of Maho on 29th of June 2012 was not produced to the Magistrate at the time of producing the Petitioner before the Magistrate.

It has been brought to the notice of the court that, the said Medical Examination was done by 9.50 am on the 29th of June 2012. At the same time, according to R-2D, an entry made by Police Officers in the information book maintained at the Police Station shows that, at 8.29 am, the Petitioner was taken to the Doctor of Maho hospital for a Medical Examination and another entry made with the MLR reveals that he was brought back at 10.00 am. The Counsel for the Petitioner had stated that it is peculiar to observe that a person who was subjected to examination at 9.50 am had been examined and brought back along with the report to the Police Station within 10 minutes. The Counsel argued that the report cannot be accepted. I have also observed the said infirmities in the available documents.

In the written submissions made on behalf of the 1st and 2nd Respondents, the Counsel has repeatedly relied on authorities to state that the allegations on torture must be strictly proved. In pursuance of this argument, the Counsel for the 1st and 2nd Respondents, in their written submissions had cited the case of **Edward Sivalingam v. Sub Inspector Jayasekara and Others** S.C. (F/R) No. 326/2008 Decided on: 10.11.2010:

"The standard required must be of a higher threshold than mere satisfaction."

However, in the same case, as quoted in Page 11 of the said written submissions, the Court had observed that the presence of documents would mitigate against the presumption in favor of the validity of the official acts and help the Court reach a verdict in favor of the Petitioner on the cumulative value.

In the present case, the MLR dated 04.07.2012, (document marked as 'P6') as produced by the Counsel for the Petitioner discloses injuries consistent with the alleged assault and torture suffered by him during his unlawful detainment. Considering the materials before the court, I find that, the claim of the Petitioner is amply corroborated, especially by the said MLR. Moreover, as previously stated and elaborated, there exists infirmities observed in the documents of the Respondents.

Therefore, on analysis of the documents produced by the Petitioner and the infirmities that arise out of the documents submitted by the 1st and 2nd Respondents, I find that, the 1st and 2nd Respondents have violated the Petitioner's fundamental rights stipulated under Articles 11, 12(1), 13(1) and 13(2) of the Constitution.

With regard to the liability of an Officer-in-charge, Fernando J, in the case of **K.D.S. Silva v. Chanaka Iddamalgoda**, SC No. 471/200 (FR) – Minutes of 8th August, 2003, while discussing the liability of the Respondent who was an Officer-in-Charge, stated that:

"As the officer-in-charge, he was under a duty to take all reasonable steps to ensure that persons held in custody (like the deceased) were treated humanely and in accordance with the law. That included monitoring the activities of his subordinates. He did not claim to have taken any steps to ensure that the petitioner was being treated as the law required. Such action would not only have prevented further ill-treatment, but would have ensured a speedy investigation of any misconduct as well as medical treatment for the petitioner. The 1st respondent is, therefore, in any event liable for his culpable inaction."

In the present case, the 3rd Respondent is the Officer-in-Charge of Maho Police Station while the 4th Respondent is the Officer-in-Charge of Crimes Division, Maho Police Station. Any Officer-in-charge of a police station, as part of his duty as superior officer is expected to monitor and be aware of the activities of his delegates

or subordinates. Merely being present for duty does not amount to fulfilment of the responsibility attached to the designation.

I find that the omission of duty on the part of the 3rd and 4th Respondents arising out of their negligence has caused considerable harm to the Petitioner and I therefore, find that the 3rd and 4th Respondents have violated the Petitioner's fundamental rights guaranteed under Articles 12(1), 13(1) and 13(2) of the Constitution.

The nature of the violation is serious and therefore, I find that the 1st to 4th Respondents are liable to pay compensation.

In conclusion, I hold that, the 1st and 2nd Respondents have violated Articles 11, 12(1), 13(1) and 13(2) while the 3rd and 4th Respondents have violated Articles 12(1), 13(1) and 13(2). Therefore, I order the 1st and 2nd Respondents to pay to the Petitioner, a compensation of Rs. 50,000/- each from their personal funds. I order the 3rd and 4th Respondents to pay to the Petitioner, a compensation of Rs. 25,000/- each from their personal funds. In addition to this, I direct the State to pay compensation of Rs. 100,000/- to the Petitioner.

Application allowed.

JUDGE OF THE SUPREME COURT

PRIYANTHA JAYAWARDENA, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

P. PADMAN SURASENA, J.

I agree.

JUDGE OF THE SUPREME COURT