

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

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

**SC/FR APPLICATION 46/2018**

Gurusinghe Senevirathnage  
Tharindu Priyan Akalanka.  
No.18, Missaka Mawatha,  
Mihinthale.

**PETITIONER**

**Vs**

1. Wijesinghe,  
Police Sergeant 26852  
Circuit Crime Investigation  
Division.  
Anuradhapura.
2. Dharmasiri,  
Police Sergeant 16876,  
Circuit Crime Investigation  
Division.  
Anuradhapura.
3. Wanninayake,

Police Constable 6998,  
Circuit Crime Investigation  
Division,  
Anuradhapura.

4. Asanka,  
Police Constable 39938,  
Circuit Crime Investigation  
Division,  
Anuradhapura.

5. Udayantha,  
Police Constable 38491,  
Circuit Crime Investigation  
Division,  
Anuradhapura.

6. Amila,  
Police Constable 48059,  
Circuit Crime Investigation  
Division,  
Anuradhapura.

7. Sirimal,  
Police Constable 62953,  
Circuit Crime Investigation  
Division,  
Anuradhapura.

8. Uddhika,  
Police Constable Driver 33601,  
Circuit Crime Investigation  
Division,  
Anuradhapura.
9. Nawarathne,  
Chief Inspector,  
Circuit Crime Investigation  
Division,  
Anuradhapura.
10. Thilina Hewapathirana,  
Superintendent of Police,  
Circuit Crime Investigation  
Division,  
Anuradhapura.
11. Sandun Gahawatte,  
Deputy Inspector General of  
Police,  
Office of Deputy Inspector  
General North Central Province,  
Anuradhapura.
12. Pujith Jayasundara,  
Inspector General of Police,  
Police Headquarters,  
Colombo 01.

13. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**RESPONDENTS**

**BEFORE** : **VIJITH K. MALALGODA, PC, J.,**  
**S. THURAIRAJA, PC, J. and**  
**MAHINDA SAMAYAWARDHENA, J.**

**COUNSEL** : Ruwanthi Doralagoda for the Petitioner.  
Manohara de Silva, PC with Keerthi Gunawardane and Boopathy  
Kahathuduwa for the 1<sup>st</sup> 3<sup>rd</sup> and 4<sup>th</sup> Respondents.  
Ganga Wakishta Arachchi, SSC with W.J.R. Fernando, SC for the  
Hon. Attorney General.

**WRITTEN SUBMISSIONS** : Petitioner on 25<sup>th</sup> January 2019 and 16<sup>th</sup> July 2021.  
1<sup>st</sup> and 3<sup>rd</sup> Respondents on 08<sup>th</sup> January 2021 and 16<sup>th</sup>  
July 2021.  
13<sup>th</sup> Respondents on 23<sup>rd</sup> March 2021 and 14<sup>th</sup> July 2021.

**ARGUED ON** : 09<sup>th</sup> July 2021.

**DECIDED ON** : 21<sup>st</sup> October 2021.

**S. THURAIRAJA, PC, J.**

The Petitioner namely, Gurusinghe Senevirathnage Tharindu Priyan Akalanka (hereinafter referred to as "the Petitioner") has made the instant application seeking relief in respect of the infringement of his fundamental rights guaranteed under and in terms of the Constitution, in the manner hereinafter more fully set out, against the 1<sup>st</sup> to 13<sup>th</sup> Respondents.

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents are Sergeants of Police attached to the Circuit Crime Investigation Division, Anuradhapura. The 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondents are Police Constables attached to the same unit. The 9<sup>th</sup> Respondent is the Chief Inspector attached to the Circuit Crime Investigation Division of Anuradhapura. The 10<sup>th</sup> Respondent is the Superintendent of Police of the Circuit Crime Investigation Division, Anuradhapura. The 11<sup>th</sup> Respondent is the Deputy Inspector General of North Central Province, Anuradhapura. The 12<sup>th</sup> Respondent is the Inspector General of Police. The 13<sup>th</sup> Respondent is the Attorney General who has been made a Respondent in compliance with the Constitution of the Democratic Socialist Republic of Sri Lanka.

This matter was supported before this court on 26<sup>th</sup> July 2018 and leave was granted under Article 11, 13(1) and 13(2) of the Constitution. On 26<sup>th</sup> July 2018, when this matter was supported for granting of leave, the Petitioner had submitted that he will be restricting this application to the reliefs prayed for against the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents to this case. On 31<sup>st</sup> October 2019 the learned Counsel for the Petitioner submitted that he will not be pursuing the matter against the 4<sup>th</sup> and 5<sup>th</sup> Respondents. Further, as the Petitioner had no objections to release the 4<sup>th</sup> and 5<sup>th</sup> Respondents from the proceedings, they were released from the proceedings accordingly. Presently, the case is against the 1<sup>st</sup> and 3<sup>rd</sup> Respondents.

I find it pertinent to refer to the factual matrix of this application as provided by the parties in order to ascertain whether the Petitioner's Fundamental Rights guaranteed under Article 11, 13(1) and 13(2) of the Constitution have been violated by

the 1<sup>st</sup> and 3<sup>rd</sup> Respondents. However, as there are substantial disparities between the narration of facts provided by the parties, I find it necessary to briefly narrate both positions.

### **Facts of the case as per the Petitioner**

The Petitioner states that on 20<sup>th</sup> September 2017 a group of men entered the Petitioner's residence in a disruptive and disorderly manner while the Petitioner was asleep. The Petitioner alleges that he was apprehended and manacled without production of a reason for the arrest. He states that he was subsequently removed from his residence and taken to the Circuit Crime Investigation Unit of Anuradhapura. The Petitioner acknowledged that the group of abovementioned people were assigned to the Circuit Crime Investigation Unit of Anuradhapura.

The Petitioner states that he was mercilessly assaulted while being transported from the Petitioner's residence to the Circuit Crime Investigation Unit of Anuradhapura and interrogated by any one or more or all the 1<sup>st</sup> - 8<sup>th</sup> Respondents on whether the Petitioner had been involved in the theft of a motor bicycle. The Petitioner states that the Petitioner provided them with the details of one Chanaka Sanoj Akalanka in Mihinthale as the Petitioner believed that the 1<sup>st</sup>- 8<sup>th</sup> Respondents were laboring under the misapprehension as to the Petitioner's complicity in the theft of a motor bicycle. The Petitioner further states that the Petitioner was coerced into conducting himself in such a fashion due to relentless physical assault on the Petitioner by any one or more or all the 1<sup>st</sup>-8<sup>th</sup> Respondents.

The Petitioner states that the above said Chanaka Sanoj Akalanka was taken into custody upon the Petitioner's statement on the same date and assaulted by any one or more or all the 1<sup>st</sup>- 8<sup>th</sup> Respondents. The Petitioner asserted that said Chanaka Sanoj Akalanka had not been complicit in the purported theft of the motor bicycle and consequently any one or all 1<sup>st</sup>-8<sup>th</sup> Respondents proceeded to assault the Petitioner ruthlessly until the Petitioner almost collapsed in agony. Thereafter the Petitioner states that his hands were handcuffed behind his back, and he was taken to Thisa

Wewa along with aforesaid Chanaka Sanoj Akalanka and two others, viz. Silva and Suranga.

The Petitioner further states that the Petitioner and aforesaid Chanaka Sanoj Akalanka, Silva and Suranga were carried into a teak woodland over the Thisa Wewa embankment where the Petitioner was hung on a teak tree and continuously assaulted by the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Respondent and other officers of the Circuit Crime Investigation Unit of Anuradhapura for a period of two hours. The Petitioner states that he was then brought back to the Circuit Crime Investigation Unit of Anuradhapura and was held for three days thereby depriving the Petitioner of medical care and treatment. The Petitioner alleges that he was indisposed physically and psychologically due to persistent assault and arbitrary detention.

The Petitioner states that he was set free by the officers of the Circuit Crime Investigation Unit of Anuradhapura at around 7.30 pm on the 23<sup>rd</sup> September 2017 and was handed over to the Petitioner's mother and father. The Petitioner was thereafter referred and admitted to the Teaching Hospital of Anuradhapura by the Petitioner's mother and father on the same day under the registration number (bed head ticket) of 17-115355. The Petitioner was attended to and treated at the Anuradhapura Teaching Hospital from 23<sup>rd</sup> September 2017 to 05<sup>th</sup> October 2017 at Ward No. 20 where the Petitioner was pronounced to have sustained six grievous injuries.

The Petitioner's mother and the Petitioner lodged complaints with the Anuradhapura branch of the Human Rights Commission of Sri Lanka concerning the arbitrary arrest, unlawful detention and the persistent assault, inhuman and degrading treatment of the Petitioner inflicted by any one or more or all the 1<sup>st</sup>-8<sup>th</sup> Respondents of the Circuit Crime Investigation Unit of Anuradhapura in terms of the reference numbers HRC/AP/430/2017(I) and HRC/AP/480/2017(W) on 26<sup>th</sup> September 2017 and 19<sup>th</sup> October 2017 respectively.

### **Facts of the case as per the 1<sup>st</sup> and 3<sup>rd</sup> Respondents**

1<sup>st</sup> and 3<sup>rd</sup> Respondents stated that a person named N.N. Vithanage had made a complaint to the DIG of North Central Province (11<sup>th</sup> Respondent) on 19<sup>th</sup> July 2017 regarding the theft of his motorcycle bearing the number NCWL 1657. The said N.N. Vithanage had also previously lodged a complaint to the Anuradhapura Crimes Division and had made the second complaint as suspects had not been apprehended notwithstanding the CCTV footage.

Consequently, the 11<sup>th</sup> Respondent had referred the matter to the Senior Superintendent of Police of Anuradhapura Division by way of a letter dated 19<sup>th</sup> July 2017 bearing reference No. DIG/ANP/Public/896/2017. Consequent to the above direction by the 11<sup>th</sup> Respondent, the OIC- District Intelligence Unit of the DIG office of Anuradhapura had written a letter to the 11<sup>th</sup> Respondent that he has perused the CCTV footage and has identified the suspect as one Jayamuni Dushan De Silva through private informant. He stated that he was submitting the report awaiting further instructions from the 11<sup>th</sup> Respondent to proceed. By way of a letter dated 20<sup>th</sup> July 2017, the Senior Superintendent of Police of Anuradhapura Division had referred this matter to the attention of the 9<sup>th</sup> Respondent and directed him to take necessary steps before the 12<sup>th</sup> August 2017.

Consequent to the above order, the 9<sup>th</sup> Respondent had referred the matter to the 2<sup>nd</sup> Respondent and had directed him to take necessary steps before 11<sup>th</sup> August 2017. The 2<sup>nd</sup> Respondent had thereafter informed the 9<sup>th</sup> Respondent that he was able to uncover details about several persons who were involved in the said incident of theft and had requested for an extension of time to further investigate and to arrest the suspects. Consequently, on 22<sup>nd</sup> September 2017 the 1<sup>st</sup>-7<sup>th</sup> Respondents left the Circuit Crime Investigation Division to arrest Jayamuni Dushan Chathuranga Silva, who was a suspect identified using the aforementioned CCTV footage. The Respondents stated that the said Jayamuni Dushan Chathuranga Silva alias Doctor alias Jabba, was arrested at 676, Sangamitta Mawatha, Anuradhapura. When inspecting the house, they

had found two side mirrors of a motor bike and one Pathirana Dasanayakalage Damith Niroshan Wijewardana alias Suranga who was also in the same house and was arrested. When questioning said Suranga, he had informed the Respondents that the stolen bike was given to one "Podi Akalanka".

The aforementioned suspects were taken into custody and the Respondents had identified the said "Podi Akalanka" as the Petitioner in the present action. The Respondents stated that when they attempted to question the Petitioner, he acted aggressively and created a commotion by attempting to flee. The Respondents state that in the said attempt to flee, the Petitioner fell down after hitting a nearby fence. The Respondents state that they held the Petitioner's hands behind his back and handcuffed him in order to control him. The Respondents state that even after the Petitioner was handcuffed, he struggled and attempted to remove and/or break the handcuffs. The Respondents state that the Petitioner's fear and his conduct also contributed to their suspicion.

Further, the Respondents were aware of that the Petitioner is a person who is addicted to "Kerala Ganja" (Cannabis) and was trying to flee for that reason. However, when questioning the Petitioner, it became apparent that the Petitioner was not involved in the offence under the investigation and since the Respondents did not find any Cannabis with the Petitioner at his residence, the Respondents did not arrest him. The Respondents state that the police officers had not assaulted the Petitioner but merely questioned him and denies the allegation of arbitrary arrest, unlawful detention and persistent assault, inhuman and degrading treatment of the Petitioner.

### **Alleged violations and steps taken by the Respondents**

As clearly enumerated above, the narration of events by the parties are vastly different and contradictory, as such I find it pertinent to identify the more important elements of the two narrations of the events prior to concluding on which narration has been admitted as fact.

According to the Petitioner, he was arrested on 20<sup>th</sup> September 2017 by a team of police officers which included the 1<sup>st</sup> and 3<sup>rd</sup> Respondents, all of whom were attached to the Circuit Crime Investigation Division, Anuradhapura and he was detained in the police custody for four days. During that period, the Petitioner states that he was subjected to torture, inhuman treatment which includes the being handcuffed, being hung with a rope in a teak tree, being assaulted etc. The Petitioner in his evidence states that, he was hung for about 2 hours and assaulted. The Petitioner submits that the Respondents then applied some oil and kept him at the police station. Subsequently, on the 23<sup>rd</sup> September 2017, the Petitioner was released from police custody. As per the submitted facts, the Circuit Crime Investigation Unit of Anuradhapura arrested aforesaid Silva and Suranga on the same date the Petitioner was arrested and though the aforesaid Silva and Suranga were produced before the Magistrate Court of Anuradhapura, the Petitioner was not produced.

Upon the Petitioner being released by the Circuit Crime Investigation Unit of Anuradhapura, the Petitioner was admitted to the Anuradhapura Teaching Hospital for medical treatments. The Petitioner was treated and discharged after 12 days. The Petitioner was examined by the Judicial Medical Officer (hereinafter referred to as "the JMO") of the Anuradhapura Teaching Hospital and was issued with the Medico-Legal Report (MLR) which is filed as "P5(a)". The MLR identified six grievous injuries which rendered the Petitioner unable to follow ordinary pursuits for more than 20 days. It identified a damage of brachial plexus at neck, which is a rupture caused by a forceful stretch causing the nerve to tear completely or partially. Further the diagnosis ticket of the Petitioner, marked and filed as "P5", referred the Petitioner for Neurophysiology. The ticket and the attached Reports further elaborate on the extent of injuries suffered by the Petitioner.

Contrary to the above position, the Respondents submit that the Petitioner was injured during the arrest when the Petitioner had struggled and tried to flee whereupon he injured himself by running into a fence. Further, the Respondents state

that they had handcuffed him with his hands behind his back as he continued to struggle. Taking the Respondents' narration of events into consideration, the Respondents had not harmed the Petitioner at any instance or taken him to police custody.

I am of the view that the MLR report and reports issued by the Neurophysiology Unit submitted to this Court establishes and supports the position taken by the Petitioner and not that of the 1<sup>st</sup> and 3<sup>rd</sup> Respondents in this matter. The Petitioner's recounting of the incidents is corroborated by the affidavits of his parents and the aforementioned medical reports. The Respondents have failed to provide adequate explanation as to how the Petitioner received such injuries on his neck, hands and the upper limbs of the body. The MLR strongly corroborates the fact that the Petitioner was hung for a considerable period of time as there were injuries on the upper part of the body including the neck. Further, the Respondents have not submitted any material before this Court to show that the Petitioner was a suspect in any case and to prove that he was ever produced before a Magistrate Court. Finally, I find that it is extremely unlikely for injuries of such severity to have been caused due to the Petitioner merely having run into a fence as explained by the Respondents.

Keeping the above discrepancies in mind, I now wish to examine the alleged Fundamental Rights violations. The Petitioner applies to this Court under Article 11 of the Constitution which reads as follows:

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

In regard to the violation of the Constitutional Rights of the Petitioner as guaranteed by Article 11 of the Constitution, particularly by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents, we may refer to the case of **Mrs. W. M. K De Silva v Chairman, Ceylon Fertilizer Corporation (1989) 2 Sri LR 393** at **405** in which Amerasinghe, J stated that,

*"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 by a public official acting in the discharge of his executive or administrative duties or under the colour of office"*

In the instant case it is apparent that the Petitioner was subject to severe physical pain inflicted by the Respondents acting in their official capacity. As enumerated above, I am disinclined to believe that the Petitioner running into a fence resulted in such grievous injuries disrupting ordinary life for a period of 20 days as evidenced by the JMO report. In light of the reports, it is apparent that the Petitioner was subject to grievous injury as well as substantial mental pain caused by the situation.

Taking the above discussed opinions and Article 11 of the Constitution into account, it is my view that the treatment meted out to the Petitioner by the 1<sup>st</sup> and 3<sup>rd</sup> Respondent is a violation of his rights under Article 11 of the Constitution.

The Petitioner states that the arrest and detention of the Petitioner was in contravention of the provisions of the Code of Criminal Procedure Act No.15 of 1979 (as amended) and the Respondents transgressed the provisions of the same code. Considering the arrest, we find that the police officers have completely misidentified the suspect. This court has on numerous occasions emphasized the importance of police officers or investigating officers conducting their arrest and searches in accordance with the procedure established by law with a proper fact finding and investigation process.

The Petitioner further states that his arrest is contrary to Article 13 of the Constitution which guarantees freedom from arbitrary arrest, detention and punishment.

In the case of **Sanjeewa, Attorney-At-Law (on behalf of Gerald Mervin Perera) V Suraweera, Officer-In-Charge, Police Station, Wattala and Others (2003) 1 SLR 317** in which a suspect was mistakenly identified, arrested without due reason and severely assaulted, Fernando J expressed the following views:

*“Further, had the Respondents been acting bona fide when they arrested the Petitioner, they would have promptly recorded his statement, and would then have either produced him before a Magistrate or released him. The fact that they failed to record a statement (or if the IB extracts are accurate, waited ten hours to do so) strongly suggests that they did not, even subjectively, believe that he had committed an offence, but were merely hoping that something would turn up. It is also probable that the Petitioner was not given a reason for arrest.”*

In the instant case the Petitioner was arrested without being given due reason as to his arrest. Additionally, the fact that there are no arrest notes made with regard to the arrest of the Petitioner arouses reasonable suspicion. It must be noted that the Information Book kept in the police station does not have any entry regarding the same.

The learned President’s Counsel for the Respondents argued that the arrest was conducted in pursuing the statements of an actual suspect who had disclosed that he had sold the stolen bike to one “Podi Akalanka” whom he insisted was the Petitioner and that for this reason there was reasonable suspicion in order to arrest the Petitioner. This Court observes that if there had been a reasonable suspicion that the Petitioner was in some manner involved in the alleged theft due to a name divulged by an arrested suspect, the officers should have followed the correct procedure and made an ‘official arrest’ of the Petitioner as prescribed by law. The blatant disregard of the relevant procedure by the Respondents leads to the finding that the Petitioner was illegally arrested and detained contrary to Article 13 of the Constitution.

## **State responsibility**

Article 11 of the Constitution endows every person with absolute protection from torture, or cruel, inhuman or degrading treatment or punishment. Article 13 (1) stipulates that no person shall be arrested except according to procedure established by law and Article 13 (2) states that every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent court according to procedure established by law, and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law. It needs no reiteration that the primary responsibility of upholding these fundamental protections lies with the State.

This Court has repeatedly upheld that police officers, being state officers tasked with law enforcement and the maintenance of law and order, have an utmost responsibility in respecting, safeguarding and advancing these rights. Police officers are expected to extend common courtesies at all times when dealing with the public. The identity or the status of the person whom the police is dealing with should have no bearing whatsoever on the fair and courteous treatment that a person is entitled to receive, as of right. Police officers are bound to treat every person with dignity and respect. As such, in the instant case, necessary prevention measures should have been taken by the State and the Police Department.

However, it must be noted that upon the alleged violation occurring to the Petitioner, the 1<sup>st</sup> and 3<sup>rd</sup> Respondent were indicted before the High Court of Anuradhapura under the case bearing no. HC 257/2019 for violation of Section 2(4) of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act No. 22 Of 1994. Therefore, I find that the State has fulfilled their obligations and I do not hold the State responsible for the alleged violations of Fundamental Rights of the Petitioner.

## **Decision**

Accordingly, I find that the 1<sup>st</sup> Respondent, namely Sirisenage Wijesinghe and 3<sup>rd</sup> Respondent, namely W. M Nilantha Priyadarshana Wanninayake, have violated the Fundamental Rights of the Petitioner guaranteed under Article 11, 13(1) and 13(2) of the Constitution and I direct the 1<sup>st</sup> and 3<sup>rd</sup> Respondents to pay Rs.500,000/- each from their personal resources to the Petitioner. I order the 1<sup>st</sup> and 3<sup>rd</sup> Respondents to pay a further amount of Rs.25,000/- each as cost of litigation to the Petitioner.

***Application allowed.***

**JUDGE OF THE SUPREME COURT**

**VIJITH K. MALALGODA, PC, J.,**

I agree

**JUDGE OF THE SUPREME COURT**

**MAHINDA SAMAYAWARDHENA, J.**

I agree

**JUDGE OF THE SUPREME COURT**