

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

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

SC. FR. No. 56/2012

Suppiah Sivakumar
No. 51/2, Pinnakatiya Watte,
Ellepola, Senerathwela,
Theldeniya.

Petitioner

Vs.

1. Sergeant 6934 Jayaratne,
Theldeniya Police Station,
Theldeniya.
2. Civil Security Constable Pathirana,
24324,
Theldeniya Police Station,
Theldeniya.
3. Civil Security Constable 12243 Abeyratne,
Theldeniya Police Station,
Theldeniya.
4. Office-in-Charge,
Theldeniya Police Station,
Theldeniya.

5. ASP. T.M.S.T. Tennakoon,
Theldeniya Police Station,
Theldeniya.

6. N. K. Illangakoon,
Inspector General of Police,
Police Headquarters,
Colombo 01.

7. Hon. Attorney General,
Attorney General's Department,
Hulftsdorp,
Colombo 12.

Respondents

Before: Buwaneka Aluwihare PC. J
L.T. B Dehideniya J
Murdu N. B. Fernando PC J.

Counsel: Mrs. Ermiza Tegal with T. Piyadasa and Shalomi
Daniel for the Petitioner
P.L. Gunawardena for the 1st to the 3rd Respondents
Mrs. Suharshie Herath for the 4th to the 7th
Respondents

Argued on: 30. 05. 2018

Decided on: 26.07.2018

Aluwihare PC. J.,

The Petitioner has filed the present application seeking a declaration;

- (a) That the actions and/or conduct of the 1st to 3rd Respondents and/or the State have resulted in the infringement of the Petitioner's fundamental rights under Article 11 of the Constitution
- (b) That the actions/inactions and/or conduct of the 1st to 3rd Respondents and/or the State have resulted in the infringement of the Petitioner's fundamental rights under Article 12 (1) of the Constitution
- (c) That the actions/inactions and/or conduct of the 4th and 5th Respondents and/or the State have resulted in the infringement and continuous infringement of the Petitioner's fundamental rights under Article 12 (1) of the Constitution
- (d) That the actions/inactions and/or conduct of the 1st to 4th Respondents and/or the State have resulted in the infringement of the Petitioner's fundamental rights under Article 13 (1) of the Constitution

Leave to proceed was granted for the alleged violation of Article 11, 12 (1) and 13 (1) of the Constitution.

The relevant facts can be stated as follows:

On 15th May 2011 around midnight, the Petitioner had been in the vicinity of the Bambaragala Junction with his wife and his daughter to watch Theru celebrations. Around 1.30 am, a riot had broken out in the area and as the Petitioner made haste to take his wife and daughter to safety, he alleges that he was assaulted by the 1st to 3rd Respondents with a club. The Petitioner had also alleged that he was subjected to continuous verbal and physical abuse for about 20 minutes by the said Respondents.

During this time, one Sanjika Tharanga had come forward and informed the 1st to the 3rd Respondents that the Petitioner was not a party to the riot. He also provided the names of those who were in fact involved. Despite these interventions, however, the Respondents had continued to beat the Petitioner. He was thereafter dragged down the road towards the Nethulmada Kovil which was, approximately, 8 km away. The Petitioner alleges that the beating continued during this period.

At the Kovil, the 1st Respondent had publicly claimed that he arrested one of the rioters. The Petitioner was made to wait outside the Kovil for over an hour during which time he noticed that there were several of his relatives gathered in the Kovil ground. The Petitioner has averred that he felt humiliated to be treated like an offender in front of his relatives and the general public.

Meanwhile, the Petitioner's wife has gone to the Theldeniya police station to lodge a complaint that her husband was arrested by the police officers without any basis. The officers at the police station, however, had turned her away saying no complaint against a fellow police officer would be entertained by them.

The Petitioner and the Respondents remained at the Kovil till about 6.30 am. Around 6.30 am, a police jeep had arrived and the Petitioner was forcibly mounted on the jeep and taken to the Police station.

Upon arriving, the Petitioner had observed that his family members were already waiting outside the police station. While inside the Police Station, the Petitioner had been asked to sign a statement narrating that he was assaulted by three private individuals during

the course of the riot. The Petitioner had refused to sign the statement and maintained that he was assaulted by Police Officers and not by private individuals. The Petitioner's wife too opposed the idea of signing the statement giving a different account of the incident. At this point, the 1st Respondent had chased her out scolding in foul language and threatening that they could not only beat but could kill as well.

Thereafter, the Petitioner states, that the 1st Respondent coercively obtained his signature to the statement written in Sinhala. He was then locked up in the cell. Around 2 pm, he was joined by two other people. The Petitioner got to know from them that they were involved in the riot and that upon being brought to the Police Station they informed the Police that the Petitioner had nothing to do with the riot.

Around 5 pm, the Petitioner was taken before the 4th Respondent, who directed one sergeant Upali to take a statement and release the Petitioner.

The Petitioner states that he could not walk properly and had to receive assistance from his family members to walk out of the Police station. The family members thereafter had taken him to the Menikhinna government Hospital. He was admitted to the hospital and had been treated for contusions and swellings. On 16th May around 2 pm, a policeman had visited the Petitioner at the hospital and had obtained a statement regarding the incident. At the hospital, the Petitioner alleges that he suffered bouts of vomiting and was thereafter transferred to Kandy General hospital on 18th May. He was admitted to ward No. 10 and subjected to several medical tests and investigations. On 19th May he had been discharged with instructions to attend the clinic on the 24th May.

On the 29th of May, the Petitioner became very ill and admitted himself to the Menikhinne hospital. He was admitted and treated as an 'in patient' there till the 31st. He had got himself discharged to attend his next clinic at the Kandy hospital. After attending the clinic, he was again admitted to the Kandy general hospital and stayed there till the 17th of June.

In between the hospitalization, the Petitioner's wife had complained to the Human Rights Commission, Kandy about the incident. The said complaint is produced marked "P2".

The Petitioner had also written letters of complaint to the Chief Justice, the Attorney General, the Inspector General of Police, Deputy Inspector General of Police, and the National Human Rights Commission Office in Colombo.

On 23rd June, by letter marked “P4 (b)”, the Human Rights Commission informed him that the Commission had initiated an investigation into his complaints.

Two days later, the Assistant Superintendent of Theldeniya Police through the letter marked “P5 (a)” had informed the Petitioner to present himself before the Theldeniya police station for an inquiry. On that day, statements were obtained from him and his daughter. On 8th July similarly, statements were made by the Petitioner’s wife’s sister as a witness corroborating the complaint of the Petitioner.

Thereafter, the Officer-in-Charge of the Special Investigation Unit of the Central Province through the letter marked “P5 (B)” informed the Petitioner to present himself before the Police office Asgiriya on the 23rd of July to give a statement about the incident. The Petitioner had duly complied and he was informed that appropriate action would be taken.

On 22nd June 2011, the Human Rights Commission informed the Petitioner to respond to the statement filed by the Respondents. He was further asked to file an affidavit of his wife on 18th of July.

As these investigations were progressing, three people had visited the Petitioner’s house on 5th September 2011 and had hurled abuses and physically assaulted the Petitioner. When the Petitioner threatened to complain, the assailants had claimed that it was the Police itself, which asked them to attack the Petitioner. Again, on 23rd September when the Petitioner’s wife was alone in the house, the said three persons visited the house and had abused the residents. When a complaint was lodged, the Petitioner and the family were asked to come for an inquiry. He was informed that the persons were charged with affray and were discharged subsequently by the Magistrate’s Court.

On 23rd September 2011, the National Human Rights Commission requested the Petitioner to present himself for an inquiry into his complaint on 13. 10. 2011. At the

said inquiry, the parties were advised to come to a settlement. In pursuance, on 15th October 2011 the Petitioner alleges that sergeant Upali along with several others called over at his house and offered money as a settlement. The Petitioner had refused this offer stating that he wants the 1st to the 3rd Respondents to admit their fault.

Thereafter, on 3rd February, the Petitioner was informed by the National Human Rights Commission that they found a violation under Article 11 of the Constitution. The commission has ordered each Respondent to pay Rs.5000 to the Petitioner and has instructed the Attorney General to take steps with regard to the recommendations.

In their objections, the 1st to the 3rd Respondents have claimed that they arrested the Petitioner pursuant to a complaint received at the Police Station about the riot. Upon arriving at the place, they had observed the Petitioner being restrained by several people. The Respondents were further told by the people gathered in the area that it was the Petitioner and several others who were responsible for the riot. In these circumstances, the Respondents claim that they had to use ‘minimum force’ on the Petitioner to apprehend him. The 1st Respondent has produced ‘in-and-out’ entries and extracts of the information book marked “1R1 (a)”, “1R1 (b)”, and “1R2” as proof in this regard.

Before turning to the violation under Article 11, I wish to first address the alleged violation of the Petitioner’s rights under Article 12 (1) of the Constitution by the 4th and 5th Respondents. I observe that the facts do not support a finding of Article 12 (1) violation by the 4th and 5th Respondents. Documents filed by the Petitioner marked “P5 (a)” and “P5 (b)” show that the authorities have conducted investigations into the Petitioner’s complaint. It is also brought to the attention of the Court that disciplinary action has been taken against the 1st to the 4th Respondents pursuant to those investigations. As such there is no compelling ground to found a violation of Article 12 (1) by the 4th and 5th Respondents.

With regard to Article 13 (1), I observe in both the Petitioner’s and Respondents’ version, that on the day of the incident there had been a commotion. The incident had taken place past midnight and the place was swarming with people. Given the context in which the arrest took place, I am not inclined to hold that there is a violation of Article 13 (1). The

Respondents had to act according to the exigencies of the situation. They had the onus of maintaining peace and bring order upon in an essentially chaotic situation. In those circumstances, errors in judgment could take place.

However, such errors in judgement cannot under any circumstance condone the subsequent conduct adopted by the Respondents. The prohibition in Article 11 of the Constitution against degrading treatment is absolute and the guarantees therein must be protected irrespective of the victim's conduct. Even if the Respondents had their grounds for suspecting the Petitioner of being involved in the riot, the Respondents could have resorted to the procedure established by law to dispel their suspicion without physically and verbally assaulting the Petitioner. According to 1R1(b), the Petitioner was already restrained by people gathered at the said place.

The entry marked 1R1(b) makes no reference to the fact that the Petitioner attempted to flee or acted uncooperatively. According to the Respondents' own documents, there was no basis or ground whatsoever to use force on the Petitioner. The act of assaulting and verbally abusing the Petitioner was malicious and completely unwarranted.

In **Abeywickrema v Gunaratna** [1997] 3 SLR 225 the Court expressed the view that an aggravated form of treatment or punishment could satisfy the requirements under Article 11. In that case the Police assaulted and arrested a three-wheel driver who had come to the Police station on a hire on the pretext that he reeked of alcohol. It was later revealed the petitioner had not consumed any liquor, and that there were no reasons at all to suspect the petitioner of having committed any offence.

Citing with approval a passage from **Justice A. R. B. Amerasinghe's Our Fundamental Rights of Personal Security and Physical Liberty**, that: "*Something might be degrading in the relevant sense, if it grossly humiliates an individual before others, or drives him to act against his will or conscience*", the Court held that the Respondents in that case violated the Petitioner's rights under Article 11 of the Constitution.

In the present case, the Petitioner was an ordinary citizen out there enjoying Theru celebrations with his family when the Respondents assaulted him. He was dragged along the road and proclaimed to be an offender in front of his relatives and the general public. When a man is assaulted, taken into custody, and locked up in a cell, simply because he happened to be in the vicinity of a riot, in my view, he has been subjected to "degrading treatment". The medical reports forwarded by the Kandy Hospital corroborates the physical suffering the petitioner had to undergo on account of the Respondents' actions. The affidavits filed by his wife and the relatives further confirm that they witnessed the Petitioner being treated like an offender in front of the public. There can be no question that such a conduct caused humiliation to the Petitioner.

Moreover, until this petition was filed in this Court, the Petitioner had complained to persons in authority and followed up on those complaints. He has gone to great lengths to take action against the injustice that was caused to him. Proof of these actions are before us. I do not believe that an ordinary person would go to such lengths of canvassing grievances unless he was in fact wronged by the authorities.

In light of these evidence, I could only conclude that the Respondents heedlessly assaulted the Petitioner. I have no hesitation in holding that the 1st, 2nd and 3rd Respondents have violated the Petitioner 's rights under Article 11 and 12 (1) of the Constitution by subjecting him to degrading treatment.

The Petitioner is entitled to the declaration that his fundamental rights of freedom from torture and cruel, inhuman and degrading treatment guaranteed to him by Article 11 and the right to equal protection of law under Article 12 (1) of the Constitution have been violated by the 1st to 3rd Respondents.

I allow the Petitioner's application and direct the State to pay Rs. 20,000/- , and the 1st, 2nd and 3rd Respondents to pay Rs. 25,000/- each as compensation to the Petitioner.

Judge of the Supreme Court

Justice L.T.B. Dehideniya

I agree

Judge of the Supreme Court

Justice Murdu N. B. Fernando P.C

I agree

Judge of the Supreme Court