

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 and read with
Article 17 of the Constitution of the
Democratic Socialist Republic of Sri Lanka*

Samaraweera Arachchige Wasantha
Niroshan,
Tharuna Seva Mawatha,
Moronthuduwa,
Milleniya.

S.C. (FR) Application No. 598/2011

PETITIONER

-Vs-

1. Police Constable, 82255,
Police Station,
Moronthuduwa.
2. Police Constable, 82306,
Police Station,
Moronthuduwa.
3. Police Constable, 83934,
Police Station,
Moronthuduwa.

4. Nandana, Police Sergeant,
Police Station,
Moronthuduwa.
5. Liyanarachchi,
Officer in Charge,
Police Station,
Moronthuduwa.
6. Abeyratne Dissanayake,
Assistant Superintendent of Police II,
Office of the Assistant Superintendent
of Police,
Panadura.
7. Sumith Edirisinghe,
Senior Superintendent of Police,
Office of the Senior Superintendent of
Police,
Panadura.
8. N. K. Illangakoon,
Inspector General of Police,
Police Headquarters,
Colombo 01.
9. Hon. Attorney General,
Attorney General's Department,
Hulftsdorp,
Colombo 12.

RESPONDENTS

BEFORE: Buwaneka Aluwihare PC, J.
Vijith K. Malalgoda PC, J.
Murdu N. B Fernando PC, J.

COUNSEL: Viran Corea for the Petitioner
Malik Azeez SC, for the 6th to the 9th Respondents

ARGUED ON: 12.12.2018

DECIDED ON: 07.03.2019

Aluwihare PC, J.

The Petitioner was a printing technician employed at Screen Printing Division of Lanka Brush Exports (Pvt) Limited since 2005. On 1st January 2011, as he was celebrating the New Year at his workplace, around 9 a.m the 1st Respondent in civvies had visited his workplace and ordered the Petitioner to come with him to the Police Station to record a statement. Even though the Petitioner queried as to the reasons for the sudden turn of events, the 1st Respondent has disregarded the same and ordered the Petitioner to come to the Police station. At this point, the Petitioner's supervising officer Mr. Lal Ratnayake had intervened to inquire as to which Police station the Petitioner would be taken. He was informed that the Petitioner would be taken to the Panadura Police Station.

However, as it later transpired the Petitioner was taken to the Moronthuduwa Police Station. Inside the three-wheeler which took him to the said police station

were 2nd and the 3rd Respondents. The Petitioner further states that on the way the 2nd Respondent took into custody the Petitioner's mobile phone.

Upon arriving at the Police Station, the Petitioner was produced before the 5th Respondent who threatened the Petitioner to confess about an alleged Cannabis trade he was involved in. Furthermore, the 5th Respondent had taken out from the drawer four parcels and asked the Petitioner in the presence of the 1st to the 4th Respondents "isn't it you who traffic these?" (මේවා උඹ නේද ගෙතියන්නේ?)

When the Petitioner denied the allegations and attempted to offer an explanation, the 5th Respondent had motioned a blow threatening him to remain silent. Thereafter, the Petitioner had been taken to a house in the Millagashandiya area with a view to further interrogate the Petitioner. However, as the house was unattended at that point, the Petitioner had been taken back to the Police Station.

No sooner than he was brought back, the Petitioner's father and the supervising officer Lal Ratnayake arrived at the Police Station to see the Petitioner being detained in the cell. At that point the 5th Respondent had not been present. Later, on the following day, *i.e.* on the 2nd January 2011, when the Petitioner's father again came to the Police Station to meet the 5th Respondent, the 5th Respondent has informed the father that the Petitioner was arrested with the aforesaid 4 parcels; ("මේවන් එක්ක තමයි ගන්නේ"). The Affidavit by the Petitioner's father affirming to the veracity of these facts is produced marked "P1".

On 3rd January 2011, at about 3 pm, the Petitioner was forced to place his fingerprint on a parcel and on an envelope. When he resisted, the 4th Respondent threatened to assault him. Thereafter, he was further questioned to divulge the names of those who were involved in the alleged drug peddling. Even though he honestly responded that he knew of no such business let alone the names of any such persons, it was to no avail. He was informed by the 4th Respondent that a case

has been filed against him and that it would be taken up at the Magistrate's Court of Panadura the following day.

On 4th January, as informed, the Petitioner was produced before the Magistrate's Court of Panadura in a case bearing No. 96749. In Court, the Petitioner learnt that he was charged for possessing 500 grams of Cannabis (Ganja). The 5th Respondent produced a B report containing false information wherein it was stated that the Petitioner was arrested near a bridge in the vicinity of Kalapugama on the 3rd of January while transporting the said quantity of Ganja in a motorcycle.

A true copy of the case record bearing no. 96749 in Magistrate's Court Panadura is produced in these proceedings marked "P2".

The Magistrate's Court ordered him to be placed in protective custody till the 14th of January. On the next calling date, Petitioner's counsel presented to the Court an affidavit of Lal Ratnayake, who affirmed that the arrest took place on the 1st of January 2011 at the workplace. In view of the discrepancies between the B-report and the affidavit, the Magistrate ordered the Superintendent of Police Panadura to conduct an investigation and to report to Court the exact circumstances surrounding the arrest. The Petitioner's term of protective custody was further extended till 28th January 2011. On 28th January, as there was no report by the 6th and/or 7th Respondents before the Court, the Magistrate re-issued the same order and further extended the remand period upto 11th February 2011. The same state of inaction by the 6th and 7th Respondent prevailed on 11th February 2011 as well and on account of their failure to report to the Court the circumstances as to the arrest, the Magistrate was compelled to confine the Petitioner to remand custody till 25th February 2011. On 25th February 2011, the 7th Respondent finally confirmed to the Court the veracity of the Petitioner's position. Thereafter the learned Magistrate ordered the 7th Respondent to report on 11th March 2011 whether there were sufficient grounds to proceed with the case against the Petitioner, and on the said day, being apprised of the absence of any circumstance

warranting further custody, the learned Magistrate discharged the Petitioner from the proceedings. The Petitioner had been on remand custody for a period of 2 months and 7 days.

This is an offence where an accused could be charged either under Section 78(5) or under Section 54A of the Poisons and Dangerous Drugs Ordinance. In terms of section 83 of the said Act, the jurisdiction to grant bail in respect of an offence coming under Section 54 A is vested with the High Court thus the magistrate was helpless with regard to considering bail and in fairness to the learned magistrate, he directed the Senior Superintendent of Police to inquire and report with regard to the discrepancy that had arisen as to the date of arrest of the petitioner, even that the respondents were dragging their feet.

8 days after the discharge, the Petitioner lodged a complaint at the Human Rights Commission against the Moronthuduwa police station over the arrest, detention and filing of false charges. The matter was called for inquiry on or about 27th June 2011 at which point the 5th Respondent informed the Commission that steps were being taken to institute fresh action against the Petitioner. In view of this, the Commission decided to postpone the inquiry and the Petitioner states that even up to the point of filing the present application (22nd December 2011), no steps have been taken to institute fresh action against the Petitioner.

The Petitioner has come before this Court alleging that his fundamental rights under Article 12 (1), 13 (1), 13 (2) and 14 (1) (h) were violated by the 1st to the 8th Respondents. The Court has granted leave to proceed on all counts except on Article 14 (1)(h).

On 14.06.2012 the learned Senior State Counsel informed Court, that the Hon. Attorney General will not be appearing for the 1st to the 5th Respondents.

In the objections filed on behalf of the 1st to the 5th Respondents, they have taken up the position that they arrested the Petitioner in a raid conducted on the 3rd

January 2011. According to extracts (marked “4R1” and “5R2”) from the information book of Moronthuduwa Police Station, the 1st to the 5th Respondents have arrested the Petitioner and taken into custody his black motorcycle near Pelpola bridge and his mobile phone bearing number 072 ****86, after they found Cannabis weighing 500 grams in his possession. The Respondents have further attached investigation notes, in-and-out entries made during the course of the day and the B reports produced to the Magistrate.

However, the gamut of evidence before us does not attach even the slightest degree of truth to their version. A cursory glance at the Magistrate’s Court case record marked “P2” exposes the blatant falsehood and *mala fide* demonstrated by the 1st to the 5th Respondents. The said proceedings also place in great jeopardy the veracity of the Information Book (IB) extracts, the content therein and the other documents produced by the 1st to the 5th Respondents. I need only quote the proceedings before the Magistrate’s Court on 3rd March 2011 to cut across the entire version presented by the 1st to the 5th Respondents.

“මෙම නඩුවේ 11. 2. 25 දින සහකාර පොලිස් අධිකාරීවරයා විසින් ගොනු කර ඇති වාර්තාවේ ඇත්තේ මෙම නඩුව සැ /කරු පොලිසිය මගින් අත්අඩංගුවට ගෙන ඇත්තේ 11.01.01 දින බව තහවුරු වේ. ඒ අනුව, මෙම නඩුව පොලිසිය විසින් ගොනු කර ඇති වාර්තාවේ නඩුවේ සියලුම කරුණු අසත්‍ය බව පැහැදිලිව පෙනී යයි. ඒ අනුව මෙම නඩුවේ සැ/කරු ඊ/භාරයට පත් කිරීමට කරුණු නොමැති බව පෙනී යයි. එසේම සැ /කරුට එරෙහිව මෙම නඩුව තවදුරටත් පවත්වාගෙන යාම නොහැකි බව ද පෙනී යයි. ඒ අනුව, අ. න. වී. ස. 115 (2) වග. ප්‍රකාරව වූ/නිදහස් කරමි.

අ./කලේ.
මහේස්ත්‍රාත්/පානදුර
.”

Thus, there could be no doubt as to the illegality of the arrest and detention of the Petitioner. Even if this Court were to disregard the said order of the Magistrate's Court, the affidavits produced by the Petitioner's father ("P1"), his friends ("P3 (a), P3 (b), P3 (c), P3 (d), and P3 (e)") and manager of the Petitioner's company ("P4") unequivocally establish that the 1st to the 5th Respondent arrested the Petitioner at their whim. Thereafter, they planted evidence on him, forcibly obtained his fingerprints on the productions which had nothing to do with him and caused the Petitioner to remain in custody for over 2 months for an alleged act which he was completely innocent of. The Petitioner's motorcycle which the 1st to the 5th Respondents claim they seized at the point of arrest had been later released to its original owner by the Magistrate's Court itself in August that year (order marked "P5").

In those circumstances, I am firmly of the view that the Petitioner has established his innocence and I have no hesitation in declaring that the 1st to the 5th Respondents violated the Petitioner's rights under Article 12 (1), 13 (1) and 13 (2) of the Constitution.

In addition to the malicious conduct of 1st to the 5th Respondents, the Petitioner also claims that the 6th Respondent's delay in promptly inquiring and reporting true facts to the Magistrate's Court resulted in extending the term of protective custody. The Petitioner claims that the delay amounts to culpable inaction and that the 6th to the 8th Respondents are therefore liable for violating the Petitioner's right to equality under Article 12 (1) of the Constitution.

He further alleges that the 6th Respondent has failed to conduct an 'adequate' and 'impartial' inquiry into the matters, and that he has failed to take any disciplinary action against the 1st to the 5th Respondents for their *mala fide* exercise of powers. Furthermore, he contends that the 6th Respondent has not issued a charge sheet against the 3rd and 4th Respondents despite clear evidence of misfeasance.

In his objections the 6th Respondents has admitted to the delay caused in conducting the investigation and has stated that the delay was caused on account of the need to conduct a complete inquiry. He has produced to this Court copies of three charge sheets issued against the 1st, 2nd and 5th Respondents. He has further attached “6R1” a letter forwarded to the Director Legal of Police apprising him of the veracity of the Petitioner’s version of the incident.

However, the said “6R1” has been sent on 03rd May 2012, after almost a year’s lapse since the illegal arrest and detention of the Petitioner. Although the 6th Respondent states in paragraph 7 (e) in his objections dated 16th July 2014 that he recommended to the 7th Respondent (Senior Superintendent of Police, Panadura) disciplinary actions against the 1st to the 5th Respondents, I fail to see any such recommendation on the face of the document. No evidence has been produced before this Court to indicate that any disciplinary action has been taken against the 1st to the 5th Respondents.

The Petitioner has drawn this Court’s attention to the dicta in **Deshapriya v. Captain Weerakoon, Commanding Officer, Sri Lanka Navy Ship "Gemunu" And Others [2003] 2 SLR 99** where Justice Mark Fernando attached liability to the Commanding Officer for, *inter alia*, want of care and failure to take prompt action against his subordinates for committing illegal acts.

“I turn now to the question of the 1st respondent's liability. Learned Counsel on his behalf urged that there was no evidence that he had participated in, authorized, or had knowledge of any act of torture or cruelty, and stressed that no one had complained to him about any such act. He contended that the 1st respondent would not be liable for whatever his subordinates might have done unless it was proved that he had knowledge thereof and neverthe-less refrained from taking remedial action.

The 1st respondent's responsibility and liability is not restricted to participation, authorization, complicity and/or knowledge. His duties and responsibilities as the Commanding Officer were much more

onerous. In the Forces, command is a sacred trust, and discipline is paramount. He was under a duty to take all reasonable steps to ensure that persons held in custody (like the petitioner) were treated humanely and in accordance with the law. That included monitoring the activities of his subordinates, particularly those who had contact with detainees. The fact that the petitioner was being held in custody under his specific orders made his responsibility somewhat greater.

In his affidavit the 1st respondent merely denied participation, authorization and complaints. He did not claim that he had taken any steps, either personally or through responsible subordinates, 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. It is not clear whether the petitioner did receive medical treatment. But that makes little difference to the liability of the 1st respondent. If the petitioner did receive medical treatment, then the 1st respondent ought to have known that he had been ill-treated. If the petitioner did not receive medical treatment for his injuries, the denial of medical treatment was itself inhuman treatment violative of Article 11, for which the 1st respondent shares responsibility.

If indeed the 1st respondent really did not know how the petitioner was being treated, that was willful ignorance due to want of care, and not a genuine lack of knowledge.”

This Court adopted a similar line of thinking in **Sriyani Silva v Iddamaloda, OIC Payagala [2003] 2 SLR 63**.

While taking due cognizance of these judgments, it is my considered view that the circumstances of the present case do not meet the high threshold established in the aforesaid cases. There is evidence that the 6th Respondent in the present application did conduct an inquiry and inform the Magistrate’s Court which paved way the Petitioner’s discharge. Nevertheless, I note with disapproval, the marked failure by the 6th Respondent to pursue these actions to any meaningful conclusion. As

pointed earlier, there is no indication that any disciplinary action has been taken against the 1st to the 5th Respondents despite clear evidence of illegal conduct.

Having regard to the facts and circumstances of the case, which do not meet the same gravity elucidated in the previous cases, I desist from issuing a declaration that the 6th to the 8th Respondents' conduct amounts to an infringement of Article 12 (1). However, I place on record my strong disapproval of the delay and lethargy demonstrated by the 6th and the 7th Respondents in inquiring into the matter. It has been brought to the attention of the Court that the 6th Respondent has retired from service during the pendency of this Application. In view of this, I direct the 7th and 8th Respondents or the present incumbents of the office of Senior Superintendent of Police Panadura and Inspector General of Police to promptly inquire and report to this Court the actions against the 1st to the 5th Respondents for their illegal exercise of powers not later than three months from the date of the delivery of this judgement.

No doubt, the enthusiasm to combat crime on the part of the police is to be appreciated, however, what the Respondents have done in the instant case is quite serious in that; not only they foisted a trumped up charge against the Petitioner, the Respondents physically introduced Cannabis and produced it with a report containing a false statement before the learned magistrate thereby misleading the court. The Respondents in fact had practiced a deception on the court. Police are vested with wide powers for the purpose of conducting investigations into crime, and it's needless to say that those powers are vested to be used with utmost honesty and integrity for the betterment of the society in order to protect the society from criminal elements and certainly not to their detriment. This court cannot condone the callous disregard the Respondent displayed towards the applicable legislative provisions and the conduct of the Respondents amounts to an offence under section 193 of the Penal Code.

The mental trauma the Respondents by their conduct, had subjected the petitioner and his family, would have been immeasurable.

The Petitioner is entitled to a declaration that rights guaranteed to him by Article 12 (1), 13 (1) and 13 (2) of the Constitution have been violated by the 1st to the 5th Respondents. I partially allow the Petitioner's application and direct the State to pay a sum of Rs 40,000/- to the Petitioner and direct 1st, 2nd, 3rd and the 4th Respondents to pay Rs. 35, 000/- each as compensation to the Petitioner and the 5th Respondent to pay Rs. 50,000/- as compensation to the Petitioner.

Application partly allowed.

Judge of the Supreme Court

Justice Vijith K. Malalgoda PC.

I agree

Judge of the Supreme Court

Justice Murdu N. B. Fernando PC.

I agree

Judge of the Supreme Court

