

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

In the matter of an application under Articles 17 and 126 of the Constitution of the Democratic of Sri Lanka.

C. A. Piyadasa
Mithurugama Road, Malaboda,
Dodangoda

PETITIONER

S.C. (FR) No.629/2010

Vs.

1. **Mahinda Balasooriya**
Inspector General of Police,
Police Headquarters, Colombo 01.
2. **Udayakumara**
Headquarters Inspector of Police
Matugama
3. **Hon. Attorney General**
Attorney-General's Department,
Colombo 12.

RESPONDENTS

BEFORE: Buwaneka Aluwihare, PC, J,
Anil Gooneratne, J, &
K.T.Chitrasiri, J.

COUNSEL: Shantha Jayawardena with Chamara Nanayakkarawasam for Petitioner
Upul Kumarapperuma with Lahiru Galappaththige for 2nd Respondent instructed by K.V.Gunasekara.
Ms. Anoopa de Silva, SSC for 1st and 3rd Respondents.

ARGUED ON: 13.06.2016

DECIDED ON: 06.12.2017

ALUWIHARE, PC, J:

Leave to proceed was granted in this matter, on the alleged infringement of Articles 11, 13(1) and 13(2) of the Constitution.

The Petitioner alleges that in the early hours of 15th October, 2010 he opened the door of his residence in response to a sound of someone knocking at the door and had seen three persons outside his door and one had inquired whether he is “Podiputha Mudalali”. When he answered in the affirmative they had introduced themselves as officers from the Matugama Police. Having ordered the Petitioner to get into a three-wheeler, he had been driven some distance and ordered that he get off the vehicle. The Petitioner alleges that no sooner he got off the three-wheeler; he was kicked and assaulted by the 2nd Respondent, who had demanded the Petitioner to surrender a firearm, that the 2nd Respondent alleged, was in the possession of the Petitioner. Thereafter the Petitioner had been again driven in the three-wheeler to another location where he saw Muniandi Shankar, a person known to the Petitioner, in the

company of several others whom the Petitioner later came to know as Police Officers. Upon being questioned, Shankar had acknowledged that he knows the Petitioner. At this point the 2nd Respondent, again had assaulted the Petitioner with a club, whilst repeating the same demand with regard to the firearm.

Some of the officers had accompanied Shankar into the thicket whilst the Petitioner remained near the three-wheeler. A while later, the officers and Shankar had come out of the thicket carrying with them, a few barrels and plastic cans. Petitioner says that a photographer arrived at the scene and after arranging the utensils in a way, presumably to create a scene of brewing alcohol, pictures were taken by the photographer.

Thereafter the 2nd respondent had stopped a passing tractor, ironically driven by the Petitioner's own son Thilakaratne. The Petitioner, Shankar and the utensils referred to, were then transported to the Mathugama Police in the said tractor and the petitioner and Shankar had been kept overnight at the Police Station.

On the following day, 16th October, 2010 both the Petitioner and Shankar had been taken to "Weththewa" hospital. As the Petitioner alleges that neither he nor Sankar was examined by a doctor at the said hospital.

On the 16th October, 2010, he had been produced before the learned Magistrate of Mathugama and had been granted bail.

After obtaining his release, the Petitioner states that he got himself admitted to the General Hospital Kalutara on the same day. The Petitioner had been discharged from the hospital on 20th October, 2010.

According to the Medico-Legal Report pertaining to the Petitioner, the Assistant Judicial Medical Officer, Kalutara had observed two contusions and a grazed abrasion on the buttocks as external injuries and an x-ray had revealed a un-displaced fracture of the ulna bone of his left forearm. The Petitioner has given a history of assault by the H.Q.I. Udayakumara of Mathugama Police station with fists and a club on 15th October, 2010 at 5.30 a.m. The reference undoubtedly is to the 2nd Respondent. The Petitioner had complained to the Human Rights Commission and subsequently had invoked the fundamental rights jurisdiction of this Court.

The 2nd Respondent in his objection had referred to the version of the Police. Before I consider the objections, it is pertinent to note that there are a number of common grounds. According to both the parties, the arrest had taken place on the 15th of October 2010, and the Petitioner had been produced before the Magistrate on the following day, i.e. 16th October 2010 and the Petitioner had furnished bail only on the 18th October 2015, according to the journal entries of the relevant Magistrate's Court proceedings. This date synchronizes with the date on which the Petitioner had admitted himself to the Kalutara Hospital.

The 2nd Respondent admits the arrest of the Petitioner on 15th October 2010. His version is that, on a tip off, that the Petitioner is engaged in brewing and selling illicit liquor, a police party having arrived at the location, waited in ambush and around 7.40 a.m. on 15-10-2015, arrested Muniyandi Shankar when he was seen him coming out of the thicket carrying a container which had contained illicit liquor. Upon questioning Shankar, the 2nd respondent had extracted information that the Petitioner is in the jungle, brewing illicit liquor. On the directions given by Shankar, they had walked through the jungle, and had seen the Petitioner engaged in brewing illicit liquor. It is the position of the 2nd Respondent that when he attempted to arrest the Petitioner,

he had resisted and as a result the Petitioner fell on a couple of occasions and the 2nd Respondent states that he observed injuries on the Petitioner. The 2nd Respondent had taken an unusual step of summoning a private photographer to the location where the detection was made to photograph the scene, the photographs of which have been filed along with the 2nd Respondent's affidavit.

As averred by the Petitioner, the 2nd Respondent admits having produced both the Petitioner and Shankar before the Medical Officer of Weththewa hospital, but copies of the medical reports have not been produced.

It appears that two separate cases had been filed in respect of the Petitioner and Shankar before the learned magistrate. Shankar had pleaded guilty to the charges preferred against him, whilst the case against the Petitioner was pending even at the point of time this matter was argued.

The 2nd Respondent had averred that both the Petitioner and Shankar are persons habitually engaged in the trade of brewing illicit liquor. The 2nd Respondent has referred to a similar detection made in February 2011 and where again Shankar had pleaded guilty to the charges. It is pertinent to note that the incident relating to this application is anterior to the alleged other detection of illicit liquor referred to by the 2nd Respondent. There is no material furnished before this court, connecting the Petitioner to any similar violations prior to the instance referred to in these proceedings.

The position taken up by the 2nd Respondent is that he had been falsely implicated to discourage him from taking action against the Petitioner in order to deter the petitioner from engaging in illegal activities. It is further asserted that there had been a failure on the part of the Petitioner to disclose the

injuries the Petitioner had alleged to have sustained due to assault to the Magistrate, when he was produced before him; thus demonstrates that the allegation is not genuine.

Undoubtedly the 2nd Respondent has every right to apprehend and prosecute anyone who acts in breach of the law and he cannot be found fault with for arresting the Petitioner and Shankar if they were engaged in brewing and trafficking alcohol. Shankar had pleaded guilty to the charges preferred against him and the Petitioner's case is proceeding before the Magistrate's Court. Whether the Petitioner had had any complicity in the alleged breach is a matter for the learned Magistrate to decide. Thus, the consideration of violations under articles 13 (1) and 13 (2) of the constitution does not arise.

This Court at this point, is only called upon to decide as to whether any of the fundamental rights which every citizen of this country irrespective of his strata in life is entitled to enjoy by virtue of a constitutional guarantees had been violated or not.

As far as the detection is concerned, there is material placed on behalf of the 2nd Respondent to some extent buttressed by Shankar. In the affidavit filed by Shankar (P3 (a) in support of the Petitioner, he had admitted that he was arrested around 5.30 a.m. on the day in question when the police came to the location where he was brewing the substance and that he was arrested. He also admits that he showed the locations where the barrels of the brew were kept inside the thicket. Shankar also had admitted that he is engaged in brewing the stuff. Thus, there is no dispute as to the detection.

According to Shankar after he was arrested, he had seen the Petitioner in the company of the Police Officers and he alleges both he and the Petitioner were assaulted by the 2nd Respondent with a club. Shankar had denied any

involvement of the Petitioner as far as his brewing operation is concerned and says Petitioner had had no complicity whatsoever in his illegal activity.

Although the 2nd Respondent had asserted that he took steps to produce both the Petitioner and Shankar before the Medical Officer at Weththewa hospital, the medical reports have not been made available to this court. The only medical report filed in these proceedings is the Medico Legal Report of the Assistant Judicial Medical Officer of Government Hospital, Kalutara, who had referred to the contusions and the fracture sustained by the Petitioner and had expressed the opinion that the injury pattern is compatible with the history given by the Petitioner.

With regard to contemporaneity, the Petitioner had furnished bail on 18th October, 2010 and he had got himself admitted to hospital on the same day. I am mindful of the decisions of this court which had consistently held that to establish a violation under Article 11, the Petitioner has a heavy burden. When one considers the facts and circumstances of this case, I am of the opinion that the Petitioner had succeeded in establishing the violation alleged.

This court has held in innumerable number of cases where its fundamental rights jurisdiction has been invoked, that the freedom against torture or cruel, inhuman or degrading treatment, is a non-derogable right and that even the worst criminal is entitled to freedom against violation of Article 11.

For the foregoing reasons, I hold that the 2nd Respondent has violated the fundamental right guaranteed under Article 11 of the Constitution.

I direct the State to pay the Petitioner a sum of Rs.15, 000/- as compensation and a sum of Rs.10, 000/- as costs. I further direct the 2nd Respondent to pay a sum of Rs.20, 000/- as compensation to the Petitioner.

JUDGE OF THE SUPREME COURT

ANIL GOONERATNE, J

I agree.

JUDGE OF THE SUPREME COURT

K.T.CHITRASIRI, J

I agree.

JUDGE OF THE SUPREME COURT