

**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,  
14(1)(g), 17 and 126 of the  
Constitution.*

**SC/FR APPLICATION 242/2010**

1. Hondamuni Chandima  
Samanmalee de Zoysa Siriwardena,  
No. 235/A, Station Road,  
Balapitiya.
  
2. Sudusinghe Liyanage Pubudu  
Kumara,  
No. 21/3 B, Viharagoda,  
Wathugedara.

**PETITIONERS**

**Vs**

1. Inspector Malaweera,  
Police Station,  
Ambalangoda.
  
2. Sub Inspector Chandrarathna,  
Police Station,  
Ambalangoda.

3. Inspector Prashantha,  
Headquarters Inspector,  
Police Station,  
Ambalangoda.
4. Palitha Fernando,  
Superintendent of Police,  
Ambalangoda Division,  
Ambalangoda.
5. Mahinda Balasooriya,  
Inspector General of Police,  
Police Headquarters,  
Colombo 01.
6. Hon. Attorney – General,  
Attorney – General’s Department,  
Hulftsdorp Street,  
Colombo 12.

**RESPONDENTS**

**BEFORE** : **B.P. ALUWIHARE, PC, J.,**  
**L.T.B. DEHIDENYA, J., and**  
**S. THURAIRAJA, PC, J.**

**COUNSEL** : Viran Corea with Sharmaine Gunaratne, Sarita de Fonseka and Pathum Pramoda for the Petitioners.

Induni Punchihewa, SC with S. Fernando, SC for the 3<sup>rd</sup> – 6<sup>th</sup> Respondents.

**WRITTEN SUBMISSIONS** : 3<sup>rd</sup> – 6<sup>th</sup> Respondents on 25<sup>th</sup> June 2020.

Petitioners on 20<sup>th</sup> May 2011.

**DECIDED ON** : 30<sup>th</sup> April 2021.

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

The 1<sup>st</sup> Petitioner, Ms. Hondamuni Chandima Samanmalee de Zoysa Siriwardena (Hereinafter referred to as the 1<sup>st</sup> Petitioner), and Mr. Sudusinghe Liyanage Pubudu Kumara (Hereinafter referred to as the 2<sup>nd</sup> Petitioner), are Attorneys-at-Law of the Supreme Court of Sri Lanka. The Petitioners have made the instant application seeking relief in respect of the infringement of their fundamental rights guaranteed under and in terms of the Constitution, in the manner hereinafter more fully set out, against the Respondents.

The 1<sup>st</sup> Respondent, Mr. Don Saman Harishchandra Malaweera (as affirmed by his affidavit dated 15<sup>th</sup> August 2010, hereinafter referred to as the 1<sup>st</sup> Respondent), was an Inspector attached to the Ambalangoda Police Station at the time of the purported incident. The 2<sup>nd</sup> Respondent, Mr. Liyana Arachchege Chandrarathna, was Sub-Inspector attached to the Ambalangoda Police Station, while the 3<sup>rd</sup> Respondent is referred to as Inspector Prashantha, who was Headquarters Inspector of Police Station of Ambalangoda. The 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents respectively are Palitha Fernando, Superintendent of Police of the Ambalangoda Division, Mahinda Balasuriya Inspector

General of Police of the Police Headquarters and the Hon. Attorney General, hereinafter referred to as the 4<sup>th</sup> Respondent, 5<sup>th</sup> Respondent and 6<sup>th</sup> Respondent respectively.

When this application was supported by the learned Counsel for the Petitioners this Court granted leave to proceed for the alleged violation of fundamental rights guaranteed under Article 12(1) and 14(1)(g) of the Constitution by the 1<sup>st</sup>-5<sup>th</sup> Respondents and also for the alleged violation of Article 11 of the Constitution by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

Subsequent to leave being granted, the Attorney General appeared for the 3<sup>rd</sup>-6<sup>th</sup> Respondents only and refused to appear for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

The Petitioner in by the Petition dated 26<sup>th</sup> March 2010 asserts the following incident. On 1/1/2010, a person called Bodhiyabaduge Ariyapala (hereinafter referred to as the 'Petitioner's Client') met her with his daughter Bodhiyabaduge Nishanthi (hereinafter referred to as the 'mother of the child') and his grand-daughter, Hewawasam Attanayakage Nethmi Nivarthana (the daughter of the said Bodhiyabaduge Nishanthi (hereinafter referred to as the 'Petitioner's Client's granddaughter') intending to file an application for maintenance against Hewawasam Attanayakage Sumith Chinthaka Sandaruwan who is the husband of the said Bodhiyabaduge Nishanthi and the father of her daughter Hewawasam Attanayakage Nethmi Nivarthana (hereinafter referred to as the 'father of the child).

The said maintenance application bearing no. 24261 was supported on 26/02/2010 and the learned Magistrate ordered the Petitioner's client to show the child to her mother who was at the Hospital because of a cancer and gave temporary custody of the said child to the Petitioners client. On the same day the father of the child had attempted to forcibly remove the said child from the custody of the Petitioner's client, while still at the court premises, and upon the failure to achieve this objective, had lodged a complaint in the Police Station to the effect that the Petitioner's client had

kidnapped the said child. Thereafter the Petitioner's client and the child had been summoned to the Ambalangoda Police Station, and upon the police officers handed over the custody of the child to the Petitioner's client after being made aware of the order of the Magistrate for temporary custody of the said child.

Subsequently, on 28<sup>th</sup> February 2010 the Petitioner was informed by the Petitioner's client that the mother of the child (daughter of the Petitioner's client), had passed away on 27<sup>th</sup> February 2010 due to cancer. The 1<sup>st</sup> Petitioner was further informed by her client, that his other daughter namely Bodhiyabaduge Shanthi and her husband had been arrested and taken to the Ambalangoda Police Station upon a complaint that the said persons had kidnapped the Petitioner's client's granddaughter and that the Petitioner's client was asked to come to the Police Station with his granddaughter at 5.00 pm regarding the matter, effectively depriving them of attending the funeral of the mother of the child being held that day.

Immediately, the 1<sup>st</sup> Petitioner informed the officers of the Human Rights Commission (HRC) regarding the situation, and an officer there named Rupasinghe made inquiries from the Police and informed the 1<sup>st</sup> Petitioner that the officers of the Ambalangoda Police Station had informed him that no such arrest had been made and to visit the said Police Station for further details. Upon this, the 1<sup>st</sup> Petitioner proceeded to the Ambalangoda Police Station together with her client and the 2<sup>nd</sup> Petitioner and they went to make inquiries as to the whereabouts of the said Bodhiyabaduge Shanthi and her husband.

Upon reaching the Ambalangoda Police Station at around 5.00 pm, the 1<sup>st</sup> Petitioner confronted a crowd of persons who had gathered with the father of the child at the Police Station and the said Bodhiyabaduge Shanthi and her husband were seated on a bench at the Police Station. When the 1<sup>st</sup> Petitioner inquired as to the reason for

the arrest of the two said persons, the 1<sup>st</sup> Petitioner was notified that there was no arrest as such, nor a record of arrest at the Police Station.

Importantly, the Petitioners admit that they were informed that the 3<sup>rd</sup> Respondent was away pertaining to a meeting during this day.

Upon the Petitioner reaching the entrance of the Police Station the father of the child approached them and started to verbally abuse the 1<sup>st</sup> Petitioner saying,

*“ඔයගොල්ලො ආවේ සල්ලිවලටද? සල්ලි ඕනෙද? අපි සල්ලි දෙන්නම්. අම්මා කෙනෙක් නේද? ලැජ්ජ නැද්ද මේ වගේ වැඩ වලට එන්න?”*

*(“Did you come for the money? Do you need money? We will give you money. Aren't you a mother? Aren't you ashamed to come for work of this kind?”)*

Thereafter, the 1<sup>st</sup> Respondent together with the 2<sup>nd</sup> Respondent took the Petitioner's client inside the Minor offences branch of the Police Station. The 1<sup>st</sup> Respondent menacingly said,

*“ආ උඹ ආවද? මම අද හොඳට සලකන්නම්. වරෙන් යන්න.”*

*(“ah, you came here? Today, I will treat you well. Come with me.”)*

The Petitioners state that even after having been informed that the Petitioners were Attorneys-at-Law, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents continued yelling and threatening them. Thereafter, the 2<sup>nd</sup> Respondent pointed at the 1<sup>st</sup> Petitioner in a derogatory manner and shouted because she had a mobile phone in her hand, saying,

*“ඕෆ් කරනවා ඔය ෆෝන් එක. ඕෆ් කරනවා. මෙතන ෆෝන් නියාගන්න බැහැ. තේරෙන්නේ නැද්ද?”*

*(“Switch off the phone. Switch it off. You cannot keep phones here. Don't you understand”.)*

The Petitioner also alleges that no objections were raised to the mobile phones carried by the crowd accompanying the father of the child. The 1<sup>st</sup> Petitioner at this point, started recording the verbal abuse by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents using her mobile phone. When the 1<sup>st</sup> Respondent repeatedly interrogated the 1<sup>st</sup> Petitioner's client as to his right to the custody of his granddaughter, the Petitioners intervened and stated that such custody was given temporarily by the Magistrate's Court to the grandfather and that the father of the child who was present at the police station was aware of such events. Petitioner stated that even at that point, the 1<sup>st</sup> Respondent shouted at the 1<sup>st</sup> Petitioner in derogation by stating that,

*“මට ඒ වාර්තාව දෙන්න. මට මහේස්ත්‍රාත්තුමියගෙන් එහෙම වාර්තාවක් එවලා නෑ. නඩුවේ ඒවා මහේස්ත්‍රාත්ට කියන එකයි ඇත්තේ”.*

*(“Give me that report. I have not received such a report from the Magistrate. Tell that to the magistrate at court, not to me.”)*

Despite all the efforts of the Petitioners, the Petitioners state that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were determined to frame charges on the basis that the 1<sup>st</sup> Petitioner's client had kidnapped the grandchild and the 1<sup>st</sup> Respondent even went so far as to further shout at the Petitioner,

*“ළමයා පැහැර ගෙන යාමට වැරදි උපදෙස් දීම ගැන ඔයගොල්ලන්ට විරුද්ධවත් මම පියවර ගන්නවා. මමත් උසාවියට එනවා. එතකොට බලාගන්න පුලුවන් ඔයගොල්ලෝ මේ නඩුවට ජේන්තේ කොහොමද කියලා.”*

*(“I will also take action against you for giving wrong instructions for child abduction. I'm coming to court too. Then we can see how you face this case.”)*

and continued to shout saying,

*“දරුවා නොදුන්නොත් දැන්ම නමුත්ලව අත්අඩංගුවට අරගෙන හෙට උදේ උසාවි දානවා.”*

*“If you don't hand over the child, you will also be arrested immediately and produced before the court tomorrow morning.”*

The Petitioners state that the 2<sup>nd</sup> Respondent then humiliated and intimidated the Petitioners by saying that,

*“කතා කරකර ඉන්නේ මොකටද මේ දෙනෙටත් පැමිනිලිලක් සටහන්කරලා නඩු දාන එකයි ඇත්තේ.”*

*“Why just stay here talking, we might as well lodge a complaint against these two and sue them as well”*

The 1<sup>st</sup> Respondents then turned towards the party accompanying the father of the child and stated that,

*“සාක්ෂි දෙන න ඕනෑ මේ කට්ටිය ලමයා පැහැරගත් බවට ඔය ගොල්ලෝ... මම මේ අයට විරුද්ධව පියවර ගන්නවා.*

*“you all need to give evidence saying that they kidnapped the child... I will take action against them”.*

At the same time the 2<sup>nd</sup> Respondent asked and wrote down the Petitioner's names and addresses.

Thereafter the 1<sup>st</sup> Petitioner's client's daughter Bodhiyabaduge Shanthi stated that,

*“අපි ලමයා දෙන්නම් සර්. අපිට කරදර වෙන්න බැහැ. මට ලමයි දෙන්නෙක් ඉන්නවා. මට ගෙදර යන්න ඕනෑ.”*

*“We will give you the child, sir. We can't face such trouble. I have two children. I want to go home.”*

Following which she brought the child to the police station. The 1<sup>st</sup> Petitioner inquired from her client if he was consenting to handing over the child and upon hearing

this, the 1<sup>st</sup> Respondent continued to attempt to intimidate the 1<sup>st</sup> Petitioner by claiming that the child needs to be produced or that he will take legal action against them and shouted at the 1<sup>st</sup> Petitioner.

Furthermore, when the 1<sup>st</sup> Petitioner tried to explain the fact that the father of the child had failed to maintain the child, the 1<sup>st</sup> Respondent rudely interrupted the 1<sup>st</sup> Petitioner and continued yelling,

*“මට උගන්වන්න එන්න එපා නඩත්තු නඩු පවරන හැටි..”*

*(“Don’t try to teach me about maintenance suits”).*

When the Petitioners sought to explain the circumstances as Attorneys-at- Law, the 1<sup>st</sup> Respondent simply yelled at them, shouted at the 1<sup>st</sup> Petitioner saying,

*“මේ මිනිහා මේ ළමයා ව දූෂණය කලොත්, කරදර කලොත් ඔයගොල්ලො මොකද කරන්නේ? ළමයාගේ වගකීම බාරගන්නවද?”*

*(“What will you do if this man rapes or abuses this child? Do you take responsibility for the child?”)*

The Petitioners states that, then in the most degrading manner, the 2<sup>nd</sup> Respondent told the 1<sup>st</sup> Petitioner in total sarcasm:

*“මහලොකුවට මේ නෝනා ළමයෙකුගේ නඩුවකට පෙනුනා. අම්මා නර්ස්, තාත්තා ජේලර් ගාඩ්, නමුත්ගෙ දුව දූෂණය කරලා අද. මොකද අද ඇවිත් ඒ වගේ තව නඩුවක් ඇති කරන්න කතා කරනවා. නීතිඥයෝ අසාධාරණ ලෙස මුදල් හම්බ කරගන්නවා.”*

*(“Today there was a rape case where the mother was a nurse, and the father of a child was a jailer guard who had raped his child. Are you here to create another such case? Lawyers earn money in such unfair ways”)*

at which point the Police officers and the members of the public who were present there laughed, causing the Petitioners severe embarrassment and humiliation and to the legal profession at large.

Additionally, The Petitioners submit that it was evident that the 1<sup>st</sup> and 2<sup>nd</sup> Respondent were under the influence of alcohol during this encounter due to the strong smell emanating from them and the manner in which they were behaving. However, the 1<sup>st</sup> Respondent in his affidavit dated 19<sup>th</sup> August 2010 denies being under the influence of alcohol and submits that he discharged his duties in good faith according to law and consciously believed to be doing the right thing to administer justice. He alleges that the Petitioner strives to construe their words out of context in a different manner to strengthen their feeble case. He further states in objection that he had only assisted the father of the child of that case, to obtain access to the child for him to take the child with him to attend the funeral of the mother of the child together and denies any knowledge of alleged violations. He states that they were polite in requesting the 2<sup>nd</sup> Petitioner to switch off the mobile phone.

The 2<sup>nd</sup> Respondent in his affidavit dated 16<sup>th</sup> June 2010, states his objection by largely adopting a position in line with the stance of the 1<sup>st</sup> Respondent as above, and he further states that as he suffers from epilepsy, he refrains from taking alcohol and thus denies the allegation that he was intoxicated during the confrontation.

Both the 1<sup>st</sup> and 2<sup>nd</sup> Respondent in their affidavits alleges that the reasoning behind the incident on 28<sup>th</sup> February 2010 whereby the Petitioner's client and his granddaughter were summoned to the Police Station and the alarming phone call by them stating that the Petitioner's client's other daughter as well as her husband were under arrest for kidnapping his grandchild was based on a complaint lodged at the police station by a person bearing the name of the father of the child, but however, the facts of the complaint attached as 'R1', is in contradiction to the narration of accounts

by the Petitioner. In this complaint the father of the child is stated to be a disabled ex-soldier. He admits to that he and his wife were living separately, but states that this is purely owing to the conduct of her parents in having kept her with them on most occasions. He states that upon his request at the magistrate, which was based upon the request of the mother of the child, the Magistrate ordered for him to take the child accompanied by the Petitioner's client (grandfather), to visit her mother at the hospital.

He further purports that the Petitioner's client thereafter refused to do so and had forcefully taken the child with him. Additionally, he states that he files this complaint in order for his child to be able to be at her mother's funeral, which he states is not possible as the grandfather and the mother's family are withholding the child in a very unreasonable manner. This rendition of accounts does not align with the facts put forward by the Petitioners or the affidavit provided by the Petitioner's client.

However, I must note that this extract is dated 28<sup>th</sup> February 2010, but the time recorded is 6:50 PM of the same date. In the Petition, it is stated that the Petitioner and the Petitioner's client were called to the Police station at 5 PM and they were present at this time. Even if minor room for error is allowed in timing, it is evident that this complaint has been recorded following the initial call ordering the Petitioner's client and the child to be present at the Police Station. In light of the above, it aligns with the statements of the Petitioner in that there were no valid complaints filed on this date authorizing for any such procedure to commence at the time the Petitioner's Client was ordered to present himself and his grandchild to the Police Station.

Further, at no point in 'R1', does this complainant provide any testament specifically against his sister-in law or brother-in-law who were the persons taken to the Police Station initially based on this purported crime of kidnapping. Their names, connection to this incident, nor their existence is acknowledged in this complaint as it is only the Petitioner's Client as well as the phrase "family of his wife" who are mentioned

by the complainant. For the above reasons, I must note that the procedure intended to be followed has simply been disregarded in the conduct of the Police in attempting to solve this incident. Thus, despite the 1<sup>st</sup> and 2<sup>nd</sup> Respondent stating that they merely acted in good faith in order to administer justice, they have not done so according to law as this disregard for procedure is a dangerous manner in which to exercise the powers bestowed upon them as police officers, who are guardians of society.

In addition to the above, the 1<sup>st</sup> Petitioner submits in her Written Submission that she was subject to further incidents of harassment and intimidation following the granting of leave to proceed by this court. There had been an incident where an unknown group of persons had arrived late at her house in a jeep on the 19<sup>th</sup> of March 2010. She states that they kicked on their front door at which point the family had switched off all lights and called the Police Emergency number. She states that after about 15 minutes the group of persons left in the same vehicle. The next day her and her brother had been asked to write down their statements in regards to this event by the Ambalangoda Police. Further on the 1<sup>st</sup> of June, there had been a vehicle similar to the one in the previous incident passing by their house several times and parked near her house. A person had gotten out of the vehicle saying "is this the place?". Her neighbor in her statements affirm that the vehicle had a print depicting "Ambalangoda Police"

Additionally, she states that these acts were continued particularly in the form of allegedly having received numerous phone calls harassing her and her family. She states that calls were received from a caller claiming to be from the Ahungalla Police Station, further calls which the CID later traced to be from the same Police station and multiple other calls requesting to settle the case. There have also been persons coming to her house and causing disturbance to her and her family. Given these incidents she states that she has taken steps to keep away from her residence in order to avoid any harm to

herself and to save her family from the harassment and trouble they have undergone due to the instant case. She states that despite the instructions given for the Senior Superintendent and Headquarters Inspector of the Ambalangoda Police Station to give suitable instructions to prevent any interference to the rights of the Petitioners, the Respondents have conducted themselves disregarding all such instructions.

Thus, the Petitioners allege that the behavior of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents during the primary incident described and the harassment afterwards caused them severe pain of mind and humiliation. Thus, the Petitioners submits that such treatment meted out to the Petitioners amounts to cruel, inhuman and degrading treatment and is a clear violation of the rights guaranteed under Article 11, 12(1) and 14(1)(g) of the Constitution.

In the instant case, following the granting of leave, it was informed to the Court by the State Counsel that the Police Department has taken several measures and some of them are reproduced for the purpose of completeness.

The Attorney General refused to appear on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. Initially, this Court took cognizance of the impending disciplinary inquiry against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents initiated by the Inspector General of Police and directed him to conclude the said disciplinary inquiry within one month and report the findings of the inquiry through the Attorney General. The disciplinary inquiry held against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and the Petitioner had successfully led evidence to establish the allegations levelled against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, especially the use of abusive language and they were found guilty, thereafter, disciplinary orders were made and punishments were imposed.

The Counsel for the 3<sup>rd</sup>-5<sup>th</sup> Respondents further drew the attention of Court to that the fact that on the date in question, the 3<sup>rd</sup> Respondent was not at the Ambalangoda Police Station where the incident took place (as admitted by the

Petitioners' themselves). The 3<sup>rd</sup> Respondent was away on official duty at the time and was therefore not privy to the incident pertaining to the Petitioners. Further, it was submitted that while the Respondents were cognizant that the 3<sup>rd</sup>-5<sup>th</sup> Respondents are superior officers of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent, the 3<sup>rd</sup>-5<sup>th</sup> Respondents stated that they have taken all steps required and necessary in law to take disciplinary action against the alleged conduct of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

The 4<sup>th</sup> Respondent was directed by the Deputy Inspector General (Southern Province), to record a complaint of the 1<sup>st</sup> Petitioner in relation to an alleged incident that had taken place at the Ambalangoda Police Station involving the alleged conduct of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents who were attached to the Ambalangoda Police Station at the time. Accordingly, this Court observed that, 4<sup>th</sup> Respondent acted in accordance with the direction and recorded the statements of the Petitioners. Thereafter, on 16.03.2010, through the assistance of the 3<sup>rd</sup> Respondent, the 4<sup>th</sup> Respondent took steps to record the statements of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. The 4<sup>th</sup> Respondent also obtained a statement from WPC 7622 Sujewani who was on duty at the minor offences branch at the Ambalangoda Police Station on the day of the alleged incident.

Pursuant to the complaint of the Petitioners to the Inspector General of Police, the then 5<sup>th</sup> Respondent had directed that 4<sup>th</sup> Respondent to conduct an inquiry pertaining to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. Thereafter, the 4<sup>th</sup> Respondent had warned the officers and personally called the Petitioners and apologized for the incident that had occurred at the Ambalangoda Police Station. The findings of the inquiry were communicated to the Police Headquarters by a letter dated 22/04/2010 marked as '4R9'. Further by the letter annexed as '4R10' the 4<sup>th</sup> Respondent has communicated the charge sheet, in which he clarifies that as per the findings of his investigation it is established that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have shouted at the two Attorneys-at-law, and thus has disrespected their integrity and disregarded their dignity as persons and

professionals. Based on the above he further states that the officers are convicted of the violation of Schedule 2 of the Establishments Code, for disreputable behavior, disobedience and intimidation.

The 4<sup>th</sup> Respondent had recommended that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents be charged at a departmental level in respect of the findings of the inquiry and the same was communicated to the Petitioners by letter dated 20/04/2010. Upon the actions taken by the 4<sup>th</sup> Respondent, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were interdicted from service. The final determination (disciplinary order) of the disciplinary inquiry against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents was submitted to this Court by way of motion dated 08/03/2016. Accordingly, the inquiry report pertaining to the 1<sup>st</sup> Respondent stated that he had been dispossessed of two salary increments, ordered to follow a capacity building program and had also been ordered to pay a sum of Rs. 30,000/- (in 24 instalments). The inquiry report pertaining to the 2<sup>nd</sup> Respondent indicates that he was found guilty of an offence under the second schedule of offences committed by public officers' in the Establishment Code, and accordingly, he was reprimanded and a stoppage of all salaries and allowances was ordered.

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

Having referred to the factual matrix of this application as given by the parties, let me now consider the said facts pertaining to the incident in order to ascertain whether the Petitioners' fundamental rights guaranteed under Article 11,12(1) and 14(1)(g) of the Constitution have been violated by the Respondents.

The Petitioners apply to this court under Article 11 of the Constitution for an alleged violation of the Petitioners' fundamental rights, the provision which reads as follows:

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

Article 12(1) states that,

*"All persons are equal before the law and are entitled to the equal protection of the law.."*

Article 14(1) (g) states that,

*"(1) Every citizen is entitled to-*

*(g) the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise."*

In regards to the violation of the constitutional rights of the Petitioners particularly by the 1<sup>st</sup> and 2<sup>nd</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, the trauma caused is a form of mental suffering inflicted intentionally by public officials in the discharge of his duties. Thus, it is imperative that such action should be condemned by this Court.

It is my view that the treatment meted out to the Petitioners by the 1<sup>st</sup> and 2<sup>nd</sup> Respondent is a violation of their rights under Article 11 of the constitution. Further it

is a violation of the Petitioners rights under Article 12 and 14 (1) (g) of the constitution as it is an interference with their freedom to engage in their occupation, particularly given that this incident was an occurrence during their exercise of duties as are demands of their occupation, in the best interest of the 1<sup>st</sup> Petitioner's Client.

Additionally, the Counsel for the Petitioners in his submissions, relied on the ground that the Respondents' conduct was in violation of 'Police Rules 2012'. These rules were published in the gazette notification bearing no. 1758/36 dated 18-05-2012 and were produced before this Court together with the written submissions of the Petitioners. It is observed that these rules issued by the Inspector General of police under Section 55 of the Police Ordinance is cited as 'Appearance of Attorney-at-Law at police stations' and lays down certain guidelines to be followed. Clause two of the rules is reproduced below:

*"2. These rules shall be applicable to every police station established under the Police Ordinance (Chapter 53) and shall be followed by all police officers of whatever rank, serving in such stations within Sri Lanka. "*

Clause three clarifies how any Attorney at law must be treated by the Police stating that every Attorney at-Law shall be treated cordially and courteously and given a fair and patient hearing as follows:

*3. (1) Every Attorney-at-Law, who enters the precincts of a police station established under the Police Ordinance situated in any part of Sri Lanka, in his capacity of an Attorney-at-Law for the purpose of representing and watching the interests of a person who is the client of such Attorney-at-Law, shall be treated cordially and courteously and given a fair and patient hearing by the police officers attached to such Police Station, whatever their rank.*

*(2) Every police officer attached to a Police Station shall not at any time during which he is dealing with an Attorney-at-Law present in such police station for the purpose of representing and watching the interests of a person who is his client, use physical force on the person of such Attorney-at-Law or resort to the use of abusive language or any other form of intimidatory conduct.*

Clause four goes on to state that no police officer shall use physical force on an Attorney at-Law or resort to the use of abusive language or any other form of intimidatory conduct. Clause ten refers to the manner in which an officer of the police force who violates the rules should be dealt with viz. punishable under the provisions of Section 55 of the Police Ordinance and be subjected to a disciplinary inquiry conducted by the Department of Police.

However, the 'Police Rules 2012' were promulgated after the alleged incident. While these rules are valuable in relation to the expression of the conduct expected of police officers, I do not wish to place any reliance on the said rules in order to determine whether the Respondents breached the said rules or whether the Petitioners' fundamental rights were violated by the Respondents in view of the breach of these rules.

The Petitioners contention in respect of the 3<sup>rd</sup>-5<sup>th</sup> Respondents was that they should be responsible (vicariously or otherwise) for the alleged violations and further for failing to take remedial measures or steps required by law to secure the rights of the Petitioners.

Petitioners in their submissions relied on the view of Justice Perera's in **Faiz v Attorney- General and others** [(1995) 1 SLR 372 at page 403];

*"It is true that a denial of equal protection has hitherto been largely confined to affirmative acts of discrimination. The view that culpable, official state*

*inaction may also constitute a denial of equal protection has now been recognized by the United States Supreme Court as well. In Burton v. Wilmington Parking Authority et al (12) Justice Clark delivering the opinion of the Court, observed thus "by its inaction the Authority and through it the state, has not only made itself a party to the refusal of service but has elected to place its power property and prestige behind the admitted discrimination." In Lynch v. USA (13) the Federal Court of Appeal stated the opinion thus, "there was a time when the denial of equal protection of the law was confined to affirmative acts, but the law now is that culpable official inaction may also constitute a denial of equal protection."*

The counsel for the 3<sup>rd</sup>- 5<sup>th</sup> Respondents submitted that the 3<sup>rd</sup>-5<sup>th</sup> Respondents had not by way of action or inaction violated the fundamental rights of the Petitioners. The Respondents state that they have diligently carried out their functions and duties as required by their designations and further have taken disciplinary action against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents without delay in accordance with the rules binding them. As enumerated above, it is indeed clear that a thorough investigation regarding the incident and further retributory action has been taken by the 3<sup>rd</sup> to 5<sup>th</sup> Respondent in furtherance of the functions of the Respondents as superior officers of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

In light of all the aforementioned affirmative action taken by the 3<sup>rd</sup>-6<sup>th</sup> Respondents, I am of the view that satisfactory disciplinary action was taken against the 1<sup>st</sup> and 2<sup>nd</sup> Respondent as a response to their behavior, as was directed by this court and based on the complaint lodged by the Petitioners to the Inspector General of Police.

In addressing the conduct of the 1<sup>st</sup> and 2<sup>nd</sup> Petitioner, I believe that the views expressed by Justice Shirani A. Bandaranayake in the case of **Adhikary and Another v. Amarasinghe and Others (2003) 1 SLR 270** is of important. It was expressed that

*"When police officers, who are guardians of the law and whose duties include 'to prevent all offences, preserve peace and to apprehend disorderly characters', behave in an outrageous manner without paying heed to safe guarding and protecting the rights of the people, a dismal picture of such officers held in such high esteem emerges."*

It is indeed for the sake of upholding the integrity of the entire body of police officers that we must condone incidents of misconduct such that the reputation of the police forces may not be tarnished by the misdemeanors of a few. It would be great injustice if the actions of a few were to discredit the valuable services of the dedicated and disciplined officials dutifully ensuring the safety and peace of all citizens.

In the context of the services of police officers, we have seen that the police officers do not always work in optimal conditions to protect the people. That includes investigations, trial proceedings and even includes regularizing the motor traffic. Majority of the officers are acting in the pursuit of the betterment of the people and the country. Violation of rules, laws and standards have been noticed since a considerable period of time by the authorities and are informed to the Police Department and the Government. Unfortunately, in certain incidents there are no prompt and adequate measures taken to control or minimize the violations of errant officers.

However, in the instant case, the State and the Police Department should have taken necessary prevention measures to prevent this incident from happening. This Court has observed that in many cases that some of the violations are recurring, which directs towards a conclusion that the relevant authorities in the Police Department are not taking adequate preventive measures. In order to prevent such incidents from recurring and to protect the necessary parties, it is insufficient to take action in isolated events against the specified officers. There must be awareness raised through all ranks of officers throughout the country, this is given that blaming officers following violations

is not a deterrent to unfavorable practices and it does not build a sustainable method of maintaining proper conduct among officers.

Additionally, officers must be clearly aware of the laws governing them and the standard of conduct expected of each officer, as it is unfair to hold them against standards that they are not aware of. It is indeed a duty of the superiors in helping the subordinate officers to execute their duties to keep them informed of these regulations as they are published and amended. It is only through such practices that such conduct will be continued and will encourage a sense of self discipline among officers themselves. As in the instant case, if at least one of the officers present were aware and informed of the appropriate conduct, they may positively act in deterring other officers from creating such incidents, demoting the recurrence of offences.

Thus, it is imperative that Police Officers are given the necessary training through programs aimed at capacity building. Additionally, in order to restore and retain the faith of the public in regards to our Police Forces, the general public must be made aware of the training the officers undertake.

In the specific context of Police officers dealing with Attorneys-at-law, it must be noted that certain codes of conduct must be followed not only by Police Officers, but also by Attorneys at law. In deciding upon a similar matter Justice Murdu N.B Fernando, PC has expressed her opinion in the judgment of the case of **Ratnayaka Weerakoonge Sandya Kumari vs Lakshitha Weerasinghe, Sub Inspector of Police, Meegahatenna and Others SC FR 75/2012 S.C Minutes dated 18.12.2019** as follows:

*"Another factor that should be borne in mind is that the office of an Attorney at-Law is also governed by the Supreme Court (Conduct of and Etiquette of Attorney at-Law) Rules of 1988 where it is specifically stated that on Attorney at-Law must not conduct herself in any manner which would be*

*reasonably regarded as unworthy, disgraceful and dishonorable by Attorneys at Law of good repute.*

*When analysing the behavior of the petitioner and the 1st respondent based on the affidavits filed before Court, I am reminded of the oft quoted saying that, 'courtesy begets courtesy'."*

In the above case, a key difference was the conduct of the Attorney-at-Law of the case, who had shouted at the police officers in a degrading manner and displayed unprofessional conduct not befitting of an Attorney-at-Law. Thus, it is expected that Attorneys-at-Law are to respect the standards both written and unwritten, with emphasis on good manners, etiquette and good advocacy as highlighted by **A.R.B. Amerasinghe** in his book on **Professional Ethics and Responsibilities of Lawyers**. Indeed, the above referenced case is evidence to the fact that this court upholds such standard by expecting it of all Attorneys-at-Law of the Supreme Court, as the integrity of the legal profession rests in interpretations afforded to their behavior by members of the general public in their daily execution of tasks as a member of the legal profession.

However, while the above shall remain true. It is imperative that society at large, particularly members acting in the benefit of protection of the country respect the judicial system of the country, of which Attorneys-at-Law play a fundamental role. As in the instant case, when an Attorney-at-Law acts in a reasonable, non-provocative and rational manner, unruly behavior by a police officer directed towards her is an unacceptable response. Thus, in order for those of the legal profession to safeguard the dignity of their office, Police officers and other members bearing public office must be of assistance, exercising their duties by respecting codes of ethics as well as respecting the unwritten rules of human decency.

## **Decision**

Therefore, considering the present complaint by the Petitioners, this Court is mindful of that incidents of this nature should be considered to be serious in nature and it should be condemned. Taking all above matters into consideration, I find that the State through their agents, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, have violated the Petitioners Fundamental Rights enshrined in Article 12 and 14(1)(g) of the constitution as the 1<sup>st</sup> and 2<sup>nd</sup> Respondents during the incident were acting in the colour of their office and it is indeed the State responsible for the officers and their conduct. Thus, I find that the 1<sup>st</sup> to 5<sup>th</sup> Respondents have violated the Petitioners Fundamental Rights as enshrined in Article 12(1) and 14(1)(g) of the constitution. Taking all the material before us into consideration I find that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have also violated the Petitioners Rights as enshrined in Article 11 of the Constitution.

I find that the 4<sup>th</sup> Respondent in charge of the division has taken meaningful action with the assistance of the 3<sup>rd</sup> Respondent in the form of an inquiry and subsequent retributory action. Therefore, I find that the 5<sup>th</sup> Respondent, through the 4<sup>th</sup> and 3<sup>rd</sup> Respondent, has taken appropriate action. Hence, I order no compensation by the state. However, I have observed as in many other Fundamental Rights cases the State, especially the 5<sup>th</sup> Respondent must take steps to adequately train and supervise all police personnel whether gazetted or non-gazetted to adhere to the laws practiced in this country, to show professionalism in policing and to be trained to provide people friendly police service to the public of this country.

In terms of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, I find that they have violated the Rights of the Petitioners enshrined in the Constitution. As enumerated above, the 3<sup>rd</sup> to 5<sup>th</sup> Respondents have taken appropriate action and handed down adequate punishment. Since this court is condemning the actions of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent, I order the 1<sup>st</sup> Respondent to pay, from his personal resources, compensation of Rs. 30,000/- to each

of the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners and a further sum of Rs.10, 000/- to each of the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners as litigation costs. I further direct the 2<sup>nd</sup> Respondent to pay compensation of Rs. 30,000/- to each of the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners and a further sum of Rs.10, 000/- to each of the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners as litigation costs. All of which must be paid from his personal resources.

***Application allowed.***

**JUDGE OF THE SUPREME COURT**

**L.T.B. DEHIDENIYA, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**B.P. ALUWIHARE, PC, J.,**

I had the benefit of reading the judgment in draft of my brother, Justice Thurairaja PC, however I wish to express my own opinion in this matter.

This court granted leave to proceed for the alleged violation of fundamental rights guaranteed under; -

[A] Articles 12 (1) and 14 (1) (g) of the Constitution against the 1<sup>st</sup> to the 5<sup>th</sup> Respondents

and

[B] Article 11 of the Constitution against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

The facts, albeit briefly, are as follows;

Both the petitioners are Attorneys-at-Law and were engaged in their profession at the Balapitiya Bar.

Although it might not be directly relevant to the issue before us, in order to appreciate the incident, it would be relevant to narrate the background to the incident.

According to the 1<sup>st</sup> Petitioner Samanmalee Siriwardena, one of her clients, Ariyapala, had sought her legal assistance to file a maintenance case on behalf of his daughter [Nishanthi] and the grandchild [Nivarthana] against her daughter's estranged husband [Sandaruwan]. At the point Samanmalee Siriwardena's services were sought, Ariyapala's daughter had been terminally ill due to cancer. When the maintenance application was supported, the learned magistrate, having considered the facts and circumstances of the case had handed over the custody of the grandchild to Ariyapala instead of the girl's father, Sandaruwan.

Probably infuriated by losing the custody of his daughter, Sandaruwan had made and attempt to take custody of the child forcibly and followed it by lodging a complaint against Ariyapala to the effect that he [Ariyapala] kidnapped the child. Consequently, being summoned, Ariyapala had had to go the Ambalangoda police station with the grandchild. Upon hearing this, two lawyers had rushed to the Ambalangoda Police station to explain matters to the police and had secured the release of Ariyapala. [Affidavits of Sampath Wimalarathne (P2a) and Nujith De Silva (P2 b) Attorneys-at-Law].

Sometime in February, Ariyapala's daughter Nishanthi had passed away at the Karapitiya Hospital as a result of the terminal illness she was afflicted with.

**sd**

## **The Incident Germane to the Alleged Violations**

The day after his daughter's [Nishanthi] death, Ariyapala had contacted the 1<sup>st</sup> Petitioner over the phone and in addition to conveying the news of Nishanthi's death had also told her that his other daughter, Shanthi and her husband, Aruna Shantha had been taken into custody by the Ambalangoda police on a complaint made by Sandaruwan to the effect that they kidnapped Nivarthana, the grandchild of Ariyapala.

The 1<sup>st</sup> Petitioner had visited the Ambalangoda police station in the company of the 2<sup>nd</sup> Petitioner and Ariyapala and found both Shanthi and her husband seated on a bench in the police station. They had also observed a crowd of people, including Sandaruwan [the son-in-law of Ariyapala] gathered in front of the police station. It is alleged that Sandaruwan had made disparaging remarks directed at the Petitioners. According to the 1<sup>st</sup> Petitioner, when she inquired from the police as to the reasons for the arrest of the two, she was informed that the couple was not arrested but being kept until the arrival of the HQI, the 3<sup>rd</sup> Respondent.

At the police station, the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents had forced Ariyapala into the police station and the 1<sup>st</sup> Respondent is supposed to have addressed Ariyapala rudely, to wit; *"come, ... Today I will treat you decently"*. Even after the 1<sup>st</sup> and the 2<sup>nd</sup> Petitioners introduced themselves as lawyers, it is alleged that both the 1<sup>st</sup> and 2<sup>nd</sup> Respondent had made a series of disparaging utterances to the Petitioners. I do not wish to repeat them here as his Lordship Justice Thurairaja PC had reproduced the utterances alleged to have been made by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, in his opinion.

From the discussion that ensued between the 1<sup>st</sup> and 2<sup>nd</sup> Respondent, the Petitioners had gathered that the police were contemplating preferring a charge of Kidnapping. Although the 1<sup>st</sup> Petitioner had informed the Respondents that the child is in the custody of Ariyapala pursuant to a court order, the Respondents have paid scant regard to it. Further, the 1<sup>st</sup> Respondent had threatened to file action against the

Petitioners for offering 'wrong advice regarding the kidnapping of the child'. The 1<sup>st</sup> Respondent had demanded that the child be produced immediately, failing which the Petitioners would be arrested and kept in custody overnight, until they are produced in court the following day.

In desperation, Ariyapala's daughter Shanthi had acquiesced to surrender the child stating that she cannot undergo further harassment. To this the 1<sup>st</sup> Respondent had replied that if the child was not surrendered charges would be filed against them. Attempts by the 1<sup>st</sup> Petitioner to explain the circumstances under which the custody of the child was given to Ariyapala had been cut short rudely by the 1<sup>st</sup> Respondent with the 2<sup>nd</sup> respondent chipping in.

At this juncture, Ariyapala had handed over the custody of the child to Sandaruwan, his son-in-law. The Petitioners have taken up the position that Sandaruwan's statement was recorded only at this point.

If that was the case, then it appears that even when Ariyapala's daughter [Shanthi] and son-in-law [Aruna Shantha] were summoned to the police station there had been no complaint with regard to the commission of a crime, for the police to investigate or to act upon.

According to the Petitioners, they had rushed to the Ambalangoda police station around 2.45 in the afternoon. The complaint of Sandaruwan had been recorded at 6.30 in the evening. Thus, the action taken by the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents on this occasion does not seem to be in accordance with the procedure established by law.

### **The Version of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents**

Both the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents have filed objections in this matter.

The position of the 1<sup>st</sup> Respondent is that he took action pursuant to a complaint made by Sandaruwan [the 1<sup>st</sup> Respondent had referred to Sandaruwan as 'Moratuwa

Badahalage Aruna Shantha whereas his name is Hewawasam Atthanayakage Sumith Chinthana Sandaruwan according to the documents filed by the 1<sup>st</sup> Respondent himself.] To the effect that his daughter had been kidnapped and that he needs assistance from the police to take his child to his wife's funeral.

He also asserts that the Petitioners represented a suspect [presumably a reference to Ariyapala], his daughter and son-in-law, against whom the complaint of kidnapping was made. It must be said that this assertion is totally incorrect in that the only allegation Sandaruwan has made in his complaint is that his father-in-law did not allow him to take his daughter to his wife's funeral. Nowhere has he said in his complaint that the family members of his deceased wife were involved in preventing the daughter from being taken to the place where the wife's funeral was to take place, save for Ariyapala.

I do not wish to delve into the manner in which the 1<sup>st</sup> and 2<sup>nd</sup> Respondent dealt with the complaint made by Sandaruwan, for the reason that the issue before us is to consider whether their actions had violated the rights of the petitioners.

There is no dispute that the Petitioners had visited the Ambalangoda police station on that day with the objective of representing Ariyapala and getting his daughter and son-in-law released from the custody of the police, a constitutional right guaranteed to them under Article 14 (1) (g). There is no evidence whatsoever that the Petitioners had entertained any animosity towards the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

All what the 1<sup>st</sup> Respondent had said was that *"it is a well-known fact that my voice is a little louder than that of a normal person"* [Paragraph 30 of the 1<sup>st</sup> Respondent's affidavits]. The 1<sup>st</sup> respondent had gone on to state that the Petitioners attempted to constantly interfere with their duties [Paragraph 31 of the affidavit].

The 1<sup>st</sup> Respondent, other than stating that the complaint against him is false, had not referred to any ill feelings between the Petitioners and him. The 2<sup>nd</sup> Respondent also had filed objections which is a general denial of the allegations made against him by the Petitioners. The 2<sup>nd</sup> Respondent has averred that it was the Petitioners who obstructed the performance of the duties of the 1<sup>st</sup> Respondent. Here too, the 2<sup>nd</sup> Respondent had made no allegation that the Petitioners entertained any animosity towards him.

In the circumstances there could not have been any reason for the Petitioners to 'fabricates' an allegation against the 1<sup>st</sup> and the 2<sup>nd</sup> Respondent. Considering the material placed before this court, I hold that the version of the Petitioners is credible and is safe to act upon.

### **Infringements of Fundamental Rights**

Article 11 of the Constitution endows every person with absolute protection from torture, or cruel, inhuman or degrading treatment or punishment. Article 12 (1) stipulates that everyone is equal before the law and is entitled to the equal protection of the law. It needs no reiteration that the primary responsibility of upholding these fundamental protections lies with the State. As reminded over and over again by this Court, 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 dealt with should have no bearing whatsoever on the fair and courteous treatment that they are entitled to, as of right. Police officers are bound to treat every person with dignity and respect.

In **D. W. C. Mohotti v. Upul Seneviratne, OIC, Bambalapitiya and Others, SC FR 527/08 SC** minutes 27. 04. 2009 which involved an incident where an Attorney-at-Law was obstructed by a police officer in representing his client at the police station, a settlement was reached between the parties. The terms of the settlement were to the effect that the IGP would issue formal rules under Section 55 of the Police Ordinance delineating the manner in which the police should interact with persons at police stations, police Headquarters and/or any other permanent unit, base, post or such like that have been established by the Sri Lanka Police. By Rule No. 3 it was stated that "*No officer of the Police Force shall in any manner or circumstances whatsoever, use, physical force, abusive language or resort to any other intermediary conduct in respect of any person.*" Regarding the treatment of Attorneys-at-Law who may enter such place for the purpose of representing and/or watching the interests of their clients who are suspects or otherwise, it was stated by Rule No. 1 that their right to represent their clients should be fully recognized. Rule No. 2 required that every officer of the Police Force shall at all times, treat such Attorney-at-Law within the above-mentioned places "*cordially, and courteously, and shall afford to such Attorney-at-Law all reasonable assistance during the course thereof.*" Any officer who acts in violation of those rules, or aids and abets the violation of those rules is to be dealt with severely, according to the available procedures and may be liable to any other disciplinary inquiry/proceedings and punitive sanctions.

Although the present case was anterior to the publication of the 'Police (Appearance of Attorneys-at-Law at Police Stations) Rules, 2012' in Gazette Extraordinary No. 1758/36 of 18. 05. 2012 which provided guidelines to the Police regarding interacting with Attorneys-at-Law within the precincts of police stations, the rules agreed upon in the **Mohotti** case (*supra*) would be applicable to the present case. In my view the Rules referred to have only restated the Fundamental Rights enshrined in the Constitution and referred to them expansively with the objective of enlightening the police officers of the need to respect Fundamental Rights. The effect of the said rules

is that every person who enters a police station or similar premises should be treated with dignity and politeness by the police. Attorneys-at-Law who represents the interests of their clients and are in the exercise of their professional duties too are entitled to courteous and proactive treatment. Needless to say, even in the absence of any binding rules, these are basic human decencies any public servant owes a fellow citizen, in their interactions. This was an occasion where a death had occurred in the family and the grieving family members were summoned to the police while the last rites of the deceased family member was yet to be done. In this backdrop, the conduct of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents who were officers, remunerated by the public funds, to maintain law and order cannot be condoned and deserves only abhorrence. Police officers are required to take extra care in the discharge of their duties in view of the fact that they are endowed with coercive powers to perform their functions. In the instant case, they had paid scant regard to the predicament of the bereaved family members.

As far as the Petitioners are concerned, the conduct of the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents had resulted in an infringement of Article 14 (1) (g) of the Constitution- which entitles every citizen the "*freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise.*" Obstructing an Attorney-at-Law from representing or looking into the interests of a client or surrendering a client to the police, which are duties that a lawyer is professionally entitled to carry out, is certainly a violation of that right.

Considering the aforesaid, I hold that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are liable for the infringement of the fundamental rights of the Petitioners, enshrined in Articles 12 (1) and 14 (1) (g) of the Constitution.

There is no material before this court to hold the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents liable for any infringement of the fundamental rights of the Petitioners.

I direct the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents to pay a sum of Rs. 30,000/- each of the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners. In addition, I also direct the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to pay a sum of Rs.10, 000/- each as costs.

***Application allowed.***

**JUDGE OF THE SUPREME COURT**