

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 of the Constitution of Sri
Lanka

SC FR No. 859/2009

W.N.D. Gunasekara
378/10/B, Rathnarama Road,
Hokandara – North,
Hokandara.

Petitioner

-Vs-

1. Police Constable Chandana
(PC 25410)

Grandpass Police Station,
Grandpass

2. Anton Jayasinghe,
Police Transport Division,
Sub Garage,
Kundasale.

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

4. Hon. Attorney General

Attorney General's
Department

Colombo 12

Respondents

Before : Hon. Priyasath Dep PC, CJ
Hon. S.E.Wanasundara PC, J and
Hon. Prasanna Jayawardena PC, J

Counsel : Sanjeewa Ranaweera for the Petitioner
Kamran Aziz for the 1st Respondent
Indunil Bandara for the 2nd Respondent
Malik Azeez SC for the 3rd & 4th Respondents

Argued on : 17th of January 2018

Decided on : 08.10.2018

Priyasath Dep PC, CJ

The Petitioner in this application has invoked the fundamental rights jurisdiction of this Court alleging that 1st and 2nd Respondents have violated his fundamental rights guaranteed by Article 11 of the Constitution. Leave to proceed was granted under Article 11 of the Constitution on 17.11.2009.

Version of the Petitioner

The Petitioner at the time relevant to this application was serving as an Instructor at the Automobile Engineering Training Institute (hereinafter referred to as the "Institute") of Orugodawatta on contract basis. On 25.06.2009 the Petitioner boarded a bus at Borella at or about 7.35 a.m to reach his work place which is located near the

Toyota Junction in Orugodawatta. Petitioner got off the bus around 7.50a.m and has tried to cross the road by walking on the pedestrian crossing at the said junction along with a group of people with the object of reaching the Institute located on the other side of the road. Petitioner avers that after he reached the island on the center of the road he waited for a while along with the said group of people for traffic to be cleared and thereafter crossed the road. At this point, Petitioner alleges that, 1st Respondent (PC 25410) who was directing the traffic at the said Toyota Junction rushed towards him and grabbed him by his shirt and shouted at him in an abusive language stating that he failed to comply with his directions. 1st Respondent has further dealt several blows to the Petitioner's head with his fist which has caused severe pain to the Petitioner. Despite Petitioner's repeated cries for help, 1st Respondent has continued to beat the Petitioner and has also lashed out at the Petitioner with his own umbrella until it has fallen apart.

In the course of the said assault by the 1st Respondent, Petitioner's shirt pocket was ripped off causing the ink pen which was kept inside the pocket to break apart and spill ink all over the Petitioner's shirt.

Thereafter the 1st Respondent has ordered the Petitioner to get into a red coloured three-wheeler. When the Petitioner failed to follow the said order, he was beaten again and was taken towards the middle of the road where the 2nd Respondent who was directing the traffic from the middle of the road joined him. Thereafter both Respondents have forced the Petitioner to get into a green coloured three-wheeler that was parked by the side of the road. However Petitioner refused to get into the three-wheeler. At this point the Petitioner has lost consciousness and several students and instructors of the Institute who have witnessed the incident had come to his help and have rescued him from the onslaught of the Respondents. The Petitioner who was taken to the Institute and thereafter was admitted to the National Hospital of Colombo. Petitioner has filed four affidavits from the Instructors and students of the said Institute who were at that time at the place of the incident to prove that the said incident took place as stated by him. Having received treatment from the National Hospital for the injuries sustained, on the following day was discharged from the hospital. Copies of Diagnosis Ticket, medical certificate, bed head ticket, treatment sheets and all medical reports have been filed as proof thereof.

The Petitioner has also lodged a complaint bearing No. 5/745698 with the Police Post at the hospital police, a copy of which he has been unable to obtain. By a letter dated 29.06.2009 marked P4 Petitioner has also written to the then Inspector General of Police requesting him to take necessary actions, however Petitioner has not received any reply to this date.

Thereafter, Petitioner has averred that he made a complaint to the Human Rights Commission (hereinafter referred to as the “HRC”) alleging that the said attack by the Respondents amounted to a violation of his Fundamental Rights. By an Order dated 09.06.2010 this Court has directed the HRC to conclude the said inquiry (Inquiry no. HRC 3037/09) expeditiously and submit a report within three months and the same has been submitted to this court.

It is the contention of the Petitioner that his version of events is consistent with the medical evidence which was not challenged. As per the diagnosis ticket P3 (a) and the medical certificate P3 (b), history was given as ‘assault to the head and chest by a policeman. Petitioner had complaint of ‘ faintishness +nausea +severe head ache+ chest pain+ contusion’ He was under observation and he was given treatment accordingly. The Petitioner stated that the Respondents have not presented any evidence to controvert the aforementioned medical evidence or made any attempt to explain how the Petitioner has suffered from the said injuries. It is the contention of the Petitioner that Petitioner’s version is consistent with the medical evidence produced.

During oral submissions, Counsel on behalf of the 1st Respondent argued that the affidavits P2 (a) to P2 (d) tendered by the Petitioner along with his petition were inconsistent with the Petitioner’s version. The Petitioner whilst refuting the above submission submitted that the 1st Respondent could not pinpoint any material inconsistency between the said affidavits and the averments in the amended Petition. In response to 1st Respondent’s contention that the said affidavits were not from independent witnesses as the said affidavits were given by the students and instructors of the Petitioner’s work place, the Petitioner submits that the incident took place during the morning rush hour at the Toyota Junction and the people who witnessed this incident were people who were travelling to work. Petitioner became unconscious after the assault and was taken to the hospital. It is the contention of the Petitioner that in such circumstances he could not have ascertained the identity of the people who witnessed the incident except for those who were known to him. It is therefore practically impossible for him to obtain affidavits from people who were not from the Petitioner’s work place. In support of his stance, Petitioner relies on *Rule 44 (1) (c) of the Supreme Court Rules 1990* which requires a Petitioner to tender *in support of such petition such affidavits and documents as are available to him...*”

Therefore, Petitioner submitted that he complied with the Supreme Court Rules by tendering such affidavits and documents that are available to him.

Petitioner alleged that the aforesaid attack on him by the Respondents have caused severe physical and mental pain to the him. He has further averred that the cruel, inhuman and degrading treatment meted out to him by the Respondents amounted to a

violation of his fundamental rights guaranteed under Article 11 of the Constitution. Petitioner has cited the Article 11 of the Constitution which reads thus;

“No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”

Petitioner submits that the medical evidence placed before the court establishes that an assault took place and that it caused severe physical and mental pain to the Petitioner. He stated that the said assault was carried out as a form of punishment for not complying with the directions of the 1st Respondent. Therefore, Petitioner submits that the assault complained of in this application clearly comes within the ambit of “torture” within the meaning of Article 11 of the Constitution.

Petitioner stated that he was humiliated as the said assault took place in public during morning rush hour whilst people were travelling to their work places including Petitioner’s colleagues and students.

It is the contention of the Petitioner that the assault which was carried out on him in public clearly amounts to ‘degrading treatment’ within the meaning of Article 11”.

Version of the 1st Respondent

The 1st Respondent in his statement of objections dated 22.01.2010 had stated that on 25.06.2009 he was on duty along with Police Constable 65190 G.L. Thilakeratne (who is not a Respondent) at the pedestrian crossing on Baseline Road, Orugodawatta near the Toyota Junction to direct the traffic between 7.00a.m to 8.30 a.m. He had been on the side where vehicles moved towards Colombo and Constable G.L. Thilakeratne on the opposite side of the road where vehicles moved out of Colombo. According to the 1st Respondent, at around 8.20 a.m Petitioner has crossed the road from the side where Constable G.L. Thilakeratne was on duty, signaling by hand to moving vehicles to stop and has walked towards the side where 1st Respondent was on duty. At that point 1st Respondent has told the Petitioner that he is not supposed to signal the moving vehicles to stop when a police officer is on duty to direct the traffic. The 1st Respondent states that thereafter Petitioner has started to reprimand the 1st Respondent by stating that he is delaying him further from reporting to work and has dragged him by his uniform to a side and has tried to walk away. Then the 1st Respondent has informed the Petitioner that his conduct amounted to obstructing the discharge of his official duties which is punishable in law and asked him to report to the police station. It was only at this point that the 1st Respondent was told that the Petitioner was a lecturer at the said Institute. Petitioner was allowed to go after a lecturer named K.W. Perera of the Institute came and gave an undertaking to produce

the Petitioner at the police station. The 1st Respondent has filed a certified copy of the notes made at the Police Station regarding the said incident, an affidavit by Constable G.L. Thilakaratne and an affidavit marked 1R3 by one of the motorists who witnessed the said incident as proof thereof.

1st Respondent submits that the Affidavit marked 1R3 is the only independent eye-witness evidence that has been presented to the Court. The said affidavit has been submitted by one Kulathunga Mudiyansele Chandima in which he has affirmed that on 25.06.2009, the Petitioner abruptly crossed the road signaling the motorists to stop and that the affirmant barely managed to stop his motor bicycle and avoided injuring the Petitioner. He has then seen 1st Respondent and Petitioner speaking and that the Petitioner pushed the 1st Respondent aside and tried to walk away after which 1st Respondent has held the Petitioner's hand and had mentioned something to him. The affirmant has also stated he had not seen the 1st Respondent assaulting the Petitioner.

Petitioner on the other hand submitted that the affidavit marked 1R3 furnished by the 1st Respondent which is purported to be from an 'independent witness is false. The 1st Respondent has not provided any explanation as to how he ascertained the identity of the said motorcyclist. According to the Petitioner, the said motorcyclist does not say that he was known to the 1st Respondent nor does the 1st Respondent state in his statement of objection that he had any prior knowledge of the motorcyclist. The motorcyclist also did not have any interaction with the 1st Respondent/Petitioner or anyone else who were present at that time and has left the scene after witnessing the said incident. 1st Respondent has also not made any reference to the said motorcyclist in the other documents relied upon by him (i.e. 1R1 and 1R2)

1st Respondent in his Statement of Objections has specifically denied that he assaulted the Petitioner and has further averred that the affidavits marked P2(a) to P2(d) filed by the Petitioner are not from independent witnesses as they all belong to the said Institute and that the sequence of events set out in the affidavits are contradictory to the events set out in the Petition.

1st Respondent had submitted that there are several inconsistencies between the petition and the affidavits. In the Petition it is averred that the Petitioner was beaten with an umbrella and then forced to get into a red coloured three- wheeler whereas in the Affidavits it is stated that the Petitioner was taken to the other side of the road first and then beaten with the umbrella before being forced into a green coloured three-wheeler.

It is the contention of the 1st Respondent that when there are several contradictions and inconsistencies in the case presented by the Petitioner which cannot be reconciled, this court should reject the version given by the Petitioner.

1st Respondent further submitted that even the medical reports does not indicate the name of the 1st Respondent and that Petitioner has failed to establish that any assault took place and that there was a violation of Article 11 of the Constitution. Even if there was an assault 1st Respondent denies that it amounts to a violation of Article 11.

It is the contention of the 1st Respondent that the Petitioner committed a traffic offence by interfering with the duties of a police officer when he tried to push aside the 1st Respondent and walked away. It was submitted that in such circumstances 1st Respondent was entitled to take appropriate actions under the law against the Petitioner. 1st Respondent has cited Section 23(2) of the Criminal Procedure Code which reads thus;

“If such person forcibly resists the endeavor to arrest him or attempts to evade the arrest, the person making the arrest may use such means as are reasonably necessary to effect the arrest”

1st Respondent has then cited the case of *Wijayasiriwardene Vs Kumara* 1989 (2) SLR 312 . In this case Mark Fernando J held that:

‘the Police are not entitled to lay a finger on a person being arrested even if he be a harden criminal in the absence of attempts to resist or escape. However in the circumstances of the petitioner’s attempt to go back to the sanctuary of the school premises the 1st Respondent dealt a blow on the face. While the use of some force was justified in the circumstances, , this was a quite excessive use of force”

“The use of excessive force may well found in an action for damages in delict, but does not per se amount to cruel, inhuman or degrading treatment; that would depend on the persons and the circumstances. A degree of force which would be cruel in relation to a frail old lady would not necessarily be cruel in relation to a tough young man; force which would be degrading if used on a student inside a quiet orderly classroom, would not be so regarded if used in an atmosphere charged with tension and violence.”

In *Lucas Appuhamy Vs Matura and Others* 1994 (1) SLR 401 where the Petitioner offered resistance, and where ‘minimum force’ had to be used to bring the Petitioner under control it was deemed justified in the said circumstances.

1st Respondent has cited the case of *Subasinghe Mudiyanseelage Kumarasinghe Vs Attorney General and Others*, SC Application No. 54/82 where it has been observed as follows;

“The force that may be used under section 23(2) of the Code of Criminal Procedure Act to effect the arrest of a person who resists or evades arrest ought not therefore to be disproportionate to the purpose to be achieved. It may not be possible on the spur of the moment to determine what amount of force is proportionate for the purpose of effecting the arrest. Accordingly a police officer who exceeds this proportion without being vindictive or maliciously excessive cannot be said to violate the suspect’s fundamental right guaranteed by Article 11”

Therefore it is the contention of the 1st Respondent that even if force or excessive force was used by the 1st Respondent it does not amount to a violation of Article 11 and will only form basis for an action in delict.

1st Respondent alleged that the wrongful act of the Petitioner in the first instance which gave rise to the incident and that the tremendous pressure that was faced by him at the relevant time where he was directing traffic into Colombo at one of the most busiest road intersection in the country cannot be disregarded.

The Petitioner raises a question as to why action was not taken against the Petitioner in regard to allegation that the Petitioner did not comply with the directions given by 1st Respondent and crossed the road signaling the moving vehicles to stop and that the Petitioner tried to walk away by pulling the 1st Respondent aside from his uniform.

If the 1st Respondent’s position is correct, the Petitioner could have being charged under section 183 of the Penal Code for obstructing a public servant in the discharge of his functions and under section 323 of the Penal Code for voluntarily causing hurt to a public servant in the discharge of his duties.

At the inquiry held by the Human Rights Commission, the Ist Respondent had given an explanation. He stated that the head of the institute met the Officer in Charge of Grandpass Police, Chief Inspector Wickremasekera and settled the matter. Page 3 of the report of the Human Rights Commission dated 25.08.2010 states as follows:

“රාජකාරියට බාධාවක් සිදු කළේ නම් මෙම පුද්ගලයාට අත්අඩංගුවට නොගැනීමට හේතු විමසීමේදී වගඋත්තරකරු පිළිතුරු ලබා දෙමින් ප්‍රකාශ කරන්නේ පැමිණිලිකරුගේ සේවා ස්ථානයේ ප්‍රධානියා පැමිණ ග්‍රැන්ඩ්පාස් පොලිස් ස්ථානාධිපති පු. පො.ප.සී. ඩබ්. වික්‍රමසේකර මහතා සමග සාකච්ඡා කර දෙපාර්ශවය සමථයකට එලඹුණු බවයි. පැමිණිලිකරුට සිදු කල බව කියන පහරදීම සම්බන්ධයෙන් කරුණු විමසීමේදී වගඋත්තරකරු සඳහන් කරන්නේ ඔහු සඳහන් කරන ආකාරයෙන් පහරදීමක් තම විසින් සිදු නොකළ බවයි.”

Version of the 2nd Respondent

Petitioners Application is time Barred.

The 2nd Respondent at the stage of hearing took up the position that the application is time barred. The incident had taken place on 25-06-2009. The Complaint to the Human Rights Commission was made on 16-07.2009 within one month of the violation. The Fundamental Rights Application was filed on 4th November 2009.

The 1st Respondent Police Constable 25410 Chandana filed his statement of objections on 22.01.2010. 2nd Respondent was cited as Police Constable PC 62688 in the original Petition. In the amended petition filed on 13 December 2011, filed nearly two years after the original Petition his name Anton Jayasinghe was included as the 2nd Respondent for the first time. The Petitioner in the original Petition has stated that ‘The Petitioner is not aware of the full names of the 1st and the 2nd Respondents and respectfully reserve his right to amend the caption to the Petition accordingly once their full names are ascertained’. The amended caption giving the name of the 2nd Respondent was filed on 13.12.2011. The 2nd Respondent filed his statement of objections on 24-09-2012.

The Petitioner submitted that 2nd Respondent’s objection that this application is time barred is untenable for the reason that at the time this action was instituted, an inquiry was pending before the Human Rights Commission consequent to a complaint made by him on 16.07.2009 bearing No.3037/09. Therefore, the Petitioner submits that by virtue of Section 13(1) of the Human Rights Commission of Sri Lanka Act No.21 of 1996, his application has been instituted within time. The submission made on behalf of the 2nd Respondent on 17.01.2018 when the case was argued before this court was that this application was time barred as the complaint to the Human Rights Commission was made only against the 1st Respondent. However Petitioner states that this was an argument put forward for the first time by the 2nd Respondent and that in his statement of objections he did not raise this objection.

The Petitioner has cited the following two cases in support of his position that the question of time bar is a threshold issue which should have been taken as a preliminary objection to the maintainability of the action.

In the case of *Lewla Thiththapajjalage Ilangaratne V Kandy Municipal Council and Others* 1995 BLR Vol VI Part 1 at p10 where Supreme Court has held that the question of time bar is a relevant matter to be considered when granting leave to proceed as if an application is out of time the Court has no jurisdiction to entertain it.

In *Romesh Cooray v Jayalath, Sub-Inspector of Police and Others* 2008 2 Sri L. R. 43 the question of time bar has been raised for the first time at the stage of argument and the statement of objection was completely silent on the said objection similar to the present case. Supreme Court having examined the Supreme Court Rules at page 51 held as follows:

“Accordingly on a consideration of the aforementioned Rules, it is evident that a preliminary objection should be raised at the time the objections are filed and/or should be referred to in the written submissions that has to be tendered in terms of the Rules. The objective of this procedure is quite easy to comprehend. The whole purpose of objections and written submissions is to place their case by both parties before Court prior to the hearing and when the Petitioner’s objections are taken along with the objections/written submissions filed by the Respondents prior to the hearing, it would not come as a surprise either to the affected parties or to Court and the application could be heard without prejudice to any one’s right. Therefore, as correctly pointed out by the Learned President’s Counsel for the Petitioner, the earliest opportunity the 6th Respondent had of raising the aforementioned preliminary objection was at the time of filing of his objections and written submissions in terms of the Supreme Court Rules, 1990; as the objections and/or the written submissions should have contained any statement of fact and/or issue of law that the 6th Respondent intended to raise at the hearing”)

I hold that the question of time bar should have been taken up as a preliminary objection at the time of filing objection or in the written submissions filed before the hearing .There is no merits in the objection raised by the 2nd Respondent and the objection overruled.

Involvement of the 2nd Respondent

2nd Respondent in his Statement of Objections dated 24.09.2012 has stated that he was not in any manner involved in the alleged incident described by the Petitioner in his amended Petition. According to him, at the time of the alleged incident he and other officers who accompanied him were near the Atomic Energy Authority and they have signed the relevant record book placed at the said Atomic Energy Authority at 7.50 a.m. 2nd Respondent has filed certified copies of the said entries marked 2R1 and two affidavits from two Police Constables who accompanied him at that time marked 2R2 and 2R3 respectively as proof thereof.

The affidavits marked 2R2 and 2R3 given by two police officers attached to the Grandpass police station stating that the 2nd Respondent was not on duty along with the 1st Respondent on 25.06.2009 but he was on duty with them near Atomic Energy Agency. The 1st Respondent in his objections stated that he was on duty along with a constable named G.L. Thilakeratne. The said Thilakeratne has given an affidavit marked 1R2 stating that he was on duty along with the 1st Respondent on 25.06.2009.

However the Petitioner submits that the 2nd Respondent’s contention that he was not present when the incident took place is untenable given that the documents marked

2R1, 2R2 and 2R3 on which the 2nd respondent relies upon to prove his alibi suggests otherwise.

Petitioner states that 2R2 and 2R3 are non-descriptive affidavits. It is the submission of the Petitioner that the entries in 2R1 suggest that at the time of the incident in question the 2nd Respondent was patrolling in close proximity to the place of the incident.

It is the contention of the Petitioner that there are several discrepancies in the affidavit marked 2R1 submitted by the 2nd Respondents therefore it raises serious doubts about the authenticity of the entries made in the Information Book and that it gives the impression that 2R1 is a document specifically prepared for the purpose of this case.

2nd Respondent further stated that his name was not mentioned in the letter sent by the Petitioner to Inspector General of Police marked P4 and nor was he made a Respondent nor any allegation leveled against him in the complaint made by the Petitioner to the Human Rights Commission.

I have considered the totality of the material placed before this Court and I am of the view that there is a serious doubt regarding the presence and participation of the 2nd Respondent in the incident. He may have arrived at the scene after the incident and his regimental number was given by mistake as that of the 2nd Respondent and in the amended Petition filed after two years his name was added. It is probable that this is a case of mistaken identity. Further the allegations regarding his participation is vague. Therefore I hold that the 2nd Respondent is not guilty of violating Article 11 of the Constitution as alleged by the Petitioner.

Submissions on behalf of the 3rd Respondent (Inspector General of Police) and 4th Respondents (Attorney General)

Counsel for the 3rd and 4th Respondents have only made submissions in respect of the disciplinary action that has been taken against the 1st and 2nd Respondent.

3rd Respondent has submitted that the document marked P-04 was received by the 3rd Respondent and that a further complaint was received by the relevant Assistant Superintendent of Police who is the superior officer of the 1st Respondent. It has been submitted that consequent to the complaints a preliminary investigation has been conducted under the supervision of the Senior Superintendent of Police, Colombo North and accordingly the said Superintendent has recommended disciplinary action against the 1st Respondent in relation to the present fundamental rights application.

Further disciplinary action has been stayed until the decision of this court is pronounced.

Moreover it has also been submitted that no disciplinary action has been taken against the 2nd Respondent regarding these complaints. However disciplinary action has been taken against him for failing to mention about the present fundamental rights application in the application submitted by him for promotion which is a violation of a police department circular. The 1st Respondent is currently attached to the Pandarikulam police station in the Vavuniya division and the 2nd Respondent is currently attached to the Narahenpita Police Transport Division.

Conclusions and Findings:

In this case the main issue is whether the 1st Respondent subjected the Petitioner to torture or cruel, inhumane and degrading treatment and thereby violated Article 11 of the Constitution. However, I find that torture charge cannot be maintained. The main issue is whether the 1st Respondent subjected the Petitioner to cruel, inhumane and degrading treatment.

There are two different versions given by the Petitioner and the 1st Respondent. As regards to the proving of the allegations the burden is with the Petitioner. According to the Petitioner's version when he was crossing the road, without any provocation the 1st Respondent assaulted him repeatedly and dragged him and tried to put him into a three wheeler. However, due to the intervention of the staff members and students of the Institute he was allowed to go. It will be difficult to believe that without any provocation the 1st Respondent has assaulted the Petitioner. According to the Petitioner when crossing the road 1st Respondent was abusing the persons who were crossing the road. This being the rush hour where people are hastily rushing to the workplaces before the drawing of the redline. It is a common scene in our busy roads that during rush hour pedestrian crossing the road from various points. It is probable that the Petitioner with other pedestrians were crossing the road without waiting for the signals or directions of the police officer. There is no doubt there would have been a confrontation between the Petitioner and the 1st Respondent.

Even if the Petitioner crossed the road without obeying the directions of the 1st Respondent there is no justification in assaulting the Petitioner.

The 1st Respondent whilst denying the assault stated that even if he has used force on the Petitioner he had used minimum force to arrest the Petitioner for violating the law which he is entitled to use under section 23 of the Code of Criminal Procedure Act. He has cited several authorities. in *Wijayasiriwardene Vs Kumara* 1989 (2) SLR 312, *Lucas Appuhamy Vs Matura and Others* 1994 (1) SLR *Subasinghe Mudiyansele Kumarsinghe Vs Attorney General and Others*, SC Application No. 54/82

Therefore, the 1st Respondent had submitted that he has not violated Article 11 of the Constitution.

On the other hand Petitioner states that the 1st Respondent abused and assaulted him. He had described the incident in the following manner. The 1st Respondent (PC 25410) grabbed him by his shirt and shouted at him in an abusive language stating that he failed to comply with his directions. 1st Respondent has further dealt several sharp blows to the Petitioner's head with his fist which has caused severe pain to the Petitioner. Despite Petitioner's repeated cries for help, 1st Respondent has continued to beat the Petitioner and has also lashed out at the Petitioner with his own umbrella until it has fallen apart.

There is no doubt that an assault could be a basis for a criminal prosecution or a civil action. The question is whether it amounts to a cruel, inhuman or degrading treatment or not. He had cited cited the case of *Subasinghe V Police Constable Sandun and Others* 1999 2 Sri L.R. 23 wherein the Petitioner in that case was taken handcuffed in a private vehicle to the Dankotuwa Junction by the Police and was made to walk with the handcuffs across the Dankotuwa junction. In that case Shirani A. Bandaranayake J has observed thus;

“the fact that the Petitioner was taken handcuffed in a private vehicle to the Dankotuwa town and ‘exhibited’ in the manner spoken to by the Petitioner in my view, is an affront to the Petitioner’s dignity as a human being and amounts to ‘degrading treatment’ within the meaning of Article 11”.

As there are two versions to this incident it is a difficult task to arrive at a decision. This was emphasised in *Wijayasiriwardene v. Inspector of Police, Kandy & two others* (supra) where the facts are somewhat similar.

“To decide whether the force used was in violation of Article 11 is something like having to draw a line between night and day; there is a great duration of twilight when it is neither night nor day; but on the question now before the Court, though you cannot draw the precise line, you can say on which side of the line the case is”. In that case it was held that the “ case is on the right side of any reasonable line that could be drawn. The excessive force used does not amount to cruel, inhuman or degrading treatment”.

I have considered the totality of evidence and I find that the Petitioner’s version is supported by several witnesses and his complaint is prompt and consistent . He had made a complaint to the Police Post and also informed the Doctor that he was assaulted by the police. He followed up with a complaint to the Human Rights Commission, the Inspector General of Police and thereafter filed this Fundamental Rights Application. I find that 1st Respondent had subjected the Petitioner to degrading treatment and thus violated Article 11 of the Constitution .

I order the 1st Respondent to pay Rs. 50,000/- to the Petitioner as compensation .

Chief Justice.

S.E.Wanasundera P.C, J

I agree.

Judge of the Supreme Court

Prasanna Jayawardene P.C., J

I agree.

Judge of the Supreme Court

