

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

In the matter of an application under
the Articles 11, 17 and 126 of the
Constitution of the Democratic
Socialist Republic of Sri Lanka.

Nanayakkara Gamage Don Kashyapa
Sathyapriya De Silva
No. 6B, Silvan Lane,
Panadura.

Petitioner

SC/FR Application No. 502/12

Vs.

1. Manoj,
Police Constable (P.C. 5778),
Traffic Police,
Mt. Lavinia Traffic Division,
Mount Lavinia.
2. J.P.D. Jayasinghe
Sub Inspector of Police/Traffic,
Mt. Lavinia Traffic Division,
Mount Lavinia.
3. Officer in Charge,
Mt. Lavinia Traffic Division,
Mount Lavinia.

4. Inspector General of Police
Police Headquarters,
Colombo 01.
5. Hon. Attorney General
Attorney General's Department,
Colombo 12.

Respondents

Before : Priyantha Jayawardena PC, J
Murdu N. B. Fernando PC, J
P. Padman Surasena, J

Counsel : Chandimal Mendis with S. Paranamanna for the Petitioner.

Upul Kumarapperuma with Radha Kuruwitabandara and Shellomy
Gunaratna for the 1st Respondent.

Induni Punchihewa, SC for the 5th and 6th Respondents.

Argued on : 13th October, 2021

Decided on : 29th February, 2024

Priyantha Jayawardena PC, J

The petitioner filed the instant application alleging that his Fundamental Rights guaranteed by the Constitution were infringed by the 1st to 4th respondents. After considering the said application, the Supreme Court granted leave to proceed for the alleged infringement of Article 11 of the Constitution of Sri Lanka.

Facts of the Application

The petitioner stated that when he was returning home with his two sons on the 28th of July, 2012, at around 11:30 p.m. after watching the Indo-Lanka limited overs day-night cricket match held at the R. Premadasa Cricket Stadium, the three-wheeler in which they were travelling came to a halt when it was on the Dehiwala flyover. Upon inquiry, the three-wheeler driver had informed the petitioner that the front tyre was punctured, and it was not possible to push the three-wheeler as it would damage the rim of the wheel.

The petitioner further stated that the 1st respondent who was a Police Constable attached to the Traffic Police of the Mt. Lavinia Traffic Police Division (hereinafter referred to as the “1st respondent”), along with two other police officers, came and made inquiries as to why the three-wheeler was stopped on the flyover as it was causing a traffic congestion. Thereafter, they asked them to move the vehicle from the flyover. At that stage, the petitioner responded by saying that pushing the three-wheeler would damage the rim of the wheel which was punctured. Later, with the help of the said policemen, they started to push the vehicle to the main road.

The 1st respondent accused the petitioner stating that he was not helping to push the vehicle and it led to a verbal altercation between the two. The petitioner further stated that he requested the 1st respondent to be mindful of his language as his two children aged 10 and 13 were inside the three-wheeler. At that stage, the 1st respondent accused the petitioner of being drunk. The petitioner had informed him that he was not drunk, nor was it relevant as he was not driving.

The petitioner further stated that he told the 1st respondent that he had no sympathy towards the three-wheeler driver. Furthermore, the petitioner stated that he informed the 1st respondent that he was not taking another three-wheeler as he felt sympathetic towards the driver being alone at that time of the night with a tyre puncture and was helping the driver to change the tyre.

Moreover, after the three-wheeler was taken to the road, the tyre was changed. Thereafter, the policeman told the petitioner to get into the vehicle, but he refused to get into the vehicle as he was waiting till the driver started the vehicle. The 1st respondent then threatened him and held him by his collar, squeezed his neck and slapped him on the face.

Further, the petitioner stated that his sons, aged 10 and 13, were terrified after witnessing the assault and were in a state of shock. Moreover, his older son and the three-wheeler driver pleaded with the police officers not to assault him. The petitioner stated that due to the assault, he sustained injuries to his face, mouth, the right side of his neck and was bleeding from his ear.

Furthermore, the petitioner stated that he was not aware of the names or numbers of the other police officers who were involved in the incident. Hence, it was not possible to make them as parties to the instant application.

The petitioner further stated that after the assault, he went to the Mount Lavinia Police Station in the same three-wheeler in order to lodge a complaint. However, one of the police officers who was on duty at the Police Station informed him that since the incident took place in the jurisdiction of the Dehiwala Police area, he should make the complaint to the Dehiwala Police Station. Nevertheless, the petitioner had requested for his complaint to be recorded due to the fact that his sons were in shock after the incident. Thereafter, the said complaint bearing CIB No. 73/483 dated 29th of July, 2012, was recorded at 12:05 a.m. at the Mount Lavinia Police Station.

The petitioner stated that once he made the said statement, he left the Police Station and dropped his children at his residence in Panadura. Thereafter, he went in the same three-wheeler to the Panadura hospital to obtain treatment for his injuries sustained in the said assault. The petitioner further stated that after the doctors examined the petitioner's wounds, he was admitted to the hospital. His bedhead ticket dated 29th of July, 2012 was produced marked as P2 along with the petition. Moreover, the Medico – Legal Examination Report, dated 29th July, 2012 produced in court described the injuries that he suffered at the said incident. He also stated that his sons did not attend school for a few days as they were traumatised after witnessing the assault and inhuman treatment of the petitioner.

Moreover, the petitioner stated that after receiving treatment for five days for his injuries at the hospital, he was discharged from the hospital. Thereafter, on the 3rd of August, 2012, he had complained to the 4th respondent, the Inspector General of Police, against the 1st respondent. Accordingly, the 2nd respondent, the Assistant Superintendent of Police, Traffic Division, Mt. Lavinia, by a letter dated 19th August, 2012, informed the petitioner that as per the investigation carried out by him, the police officer who had assaulted the petitioner was warned and

disciplinary action has been taken against him. Further, the petitioner stated that on the 14th of August, 2012, he made a complaint to both the Secretary of Defence and the Human Rights Commission of Sri Lanka.

Objections of the 1st respondent

The 1st respondent filed his objections denying the averments in the petition and stated that he joined the Sri Lanka Police Department as a Police Constable on the 5th of May, 1996 and is presently attached to the Mount Lavinia Traffic Police Division. He further stated that he has an unblemished service record in the Police Department.

It was stated by the 1st respondent that on the 28th of July 2012, he was on duty, attached to the Emergency Mobile Unit of the Mount Lavinia Traffic Police Division with two police constables. While on duty, at around 11:30 p.m. he received information regarding a traffic congestion on the Dehiwala flyover and came to know that a three-wheeler was stopped on the flyover due to a tyre puncture. Thereafter, he along with two other police constables went to the place where the three-wheeler was stopped and noticed that the said three-wheeler was on a hire at that time, and the petitioner and his two sons were in the three-wheeler.

The 1st respondent stated that he took steps to move the three-wheeler from the flyover. Accordingly, he requested the petitioner to get down from the three-wheeler and help them to move the three-wheeler from the flyover. However, the petitioner refused to get down from the three-wheeler and verbally abused him and the other two police constables. Nevertheless, the driver of the three-wheeler and two other persons who were in the vicinity helped them to move the three-wheeler from the flyover to the main road.

Furthermore, as the three-wheeler was being taken to the main road, the two children of the petitioner were allowed to be in the three-wheeler. The 1st respondent further stated that it was difficult to move the vehicle to the main road from the top of the flyover as the petitioner did not cooperate with them. However, once the three-wheeler was brought to the main road, the driver of the said three-wheeler changed the tyre.

The 1st respondent stated that while they were moving the three-wheeler to the main road, the petitioner was continuously verbally abusing them and stated that he was connected to the

government and that he was a close friend of a Minister. Moreover, the 1st respondent stated that the petitioner threatened them, stating that he would take action against them.

The 1st respondent further stated that the petitioner accused them of failing to give due respect to him even after disclosing his connections to the government and the Minister. Furthermore, it was stated the petitioner was under the influence of alcohol at the time of the said incident. Moreover, while the petitioner was verbally abusing them, one of the petitioner's sons got down from the three-wheeler and pushed the petitioner back into the three-wheeler.

The 1st respondent further stated that he never assaulted the petitioner. Furthermore, he is a right hander and the description given by the petitioner regarding the alleged assault is inconsistent with the injuries of the petitioner.

Moreover, the 1st respondent stated that he later came to know that the petitioner had lodged a complaint against him at the Mount Lavinia Police Station. Further, the officer who recorded the complaint observed that the petitioner had consumed alcohol. In fact, in his statement to the Police, the petitioner had admitted that he had consumed alcohol.

The 1st respondent further stated that as a complaint was made against him at the Police Headquarters, an inquiry was held against him by the 2nd respondent, the Assistant Superintendent of Police, Traffic Division, Mount Lavinia. After the inquiry, the 2nd respondent concluded in the report dated 18th of August, 2012, which was produced marked as '1R4', that there was no evidence to issue a charge sheet against the 1st respondent in respect of the alleged assault. Further, the petitioner was intoxicated at the time of the incident. However, the Assistant Superintendent made a 'bad entry' in the 1st respondents service record stating that he failed to take steps against the petitioner for his unlawful behaviour.

Hence, the 1st respondent stated that there was no violation of the Fundamental Rights of the petitioner. In any event, it was stated that the petitioner's application is misconceived in law and the application should be dismissed with costs.

Was the Fundamental Right guaranteed to the petitioner by Article 11 of the Constitution infringed?

After the alleged assault, the petitioner has made a statement to the Mount Lavinia Police. Thereafter, he was admitted to the hospital on the 29th of July, 2012 and was in hospital for 5 days. The bedhead ticket stated that the history given to the doctor by the petitioner was that he was assaulted by the Police “to face by hand”, “manual strangulation”, “right ear pain”, “difficult to open the mouth” and “bleeding through mouth”. Moreover, it stated that the examination revealed a soft tissue injury.

Further, the Medico – Legal Examination Report filled in the instant application, stated that the petitioner had abrasion, contusion, and laceration. These medical reports corroborate the petitioner’s assertion that he suffered injuries as a result of the assault by the 1st respondent. Moreover, he had made prompt complaints to the Police and the Human Rights Commission regarding the said assault.

The objections filed by the 1st respondent stated that the petitioner’s son pushed him to the three-wheeler and at that time he suffered the injuries. However, it is not possible to accept the said version as the petitioner’s older son was only 13-years-old at the time of the incident. Moreover, the facts and the circumstances of the incident and does not reveal any reason for the son to use force against the petitioner.

Consequent to the complaints made by the petitioner to the Mount Lavinia Police and to the 4th respondent, the Inspector General of Police, an inquiry was held by the 2nd respondent, the Assistant Superintendent of Police Traffic Division, Mount Lavinia. The inquiry report dated 18th of August, 2012, stated concluded that there was no evidence to issue a charge sheet against the 1st respondent in respect of the alleged assault. Nevertheless, he recommended a ‘bad entry’ be recorded in the 1st respondent’s service record as he had failed to take steps against the petitioner for his unlawful behaviour.

Contrary to the above recommendation in the inquiry report, by the letter dated 19th of August, 2012, marked and produced as ‘P5’, the 2nd respondent had informed the petitioner that, as per the inquiry carried out, disciplinary action was taken against the police officer (the 1st respondent) who assaulted the petitioner, and he had been warned not to cause an inconvenience to the public in the future. Thus, the findings in the inquiry report and the said

letter contradict each other. In view of the aforementioned vital contradiction, the 1st respondent's denial that he assaulted the petitioner cannot be accepted.

Taking into consideration all the materials filed in the instant application, I accept the version of the petitioner with regard to him being assaulted by the 1st respondent. Further, his assertion was corroborated by the prompt complaint made to the Mount Lavinia Police Station and by the medical evidence. Accordingly, I hold that the 1st respondent has violated the Fundamental Rights of the petitioner guaranteed by Article 11 of the Constitution by assaulting the petitioner.

In the circumstances, I order the 1st respondent to pay a sum of Rs. 50,000/- to the petitioner within 2 months from the date of this judgment. Further, the State is directed to pay a sum of Rs. 25,000/- to the petitioner.

Registrar of this court is directed to send a copy of this judgment to the 1st respondent and to the Director (legal) of Sri Lanka Police to act in terms of the law.

Judge of the Supreme Court

Murdu N. B. Fernando PC, J

I agree

Judge of the Supreme Court

P. Padman Surasena, J

I agree

Judge of the Supreme Court