

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

In the matter of an application under and in terms
of Articles 17 and 126 of the Constitution of the
Democratic Socialist Republic of Sri Lanka

Galapita Hene Gedara Nandani Kumari,
Kahakotuwe Gedara,

Borgambara, Kaikawela,

Matale.

Petitioner

SC /FR/ Application No 599/2009

Vs,

1. Padma Kumari Ekanayake,
Kahakotuwe Gedara,
Borgambara, Kaikawela,
Matale.
2. H.M. Ekanayake,
Office-in-Charge,
Matale Prison,
Matale.
3. Office-in-charge,
Police Station,
Raththota.
4. PS 12862 Wasantha,
Police Station,
Raththota.
5. Superintendent of Prison,
Bogambara Prison,
Kandy.

6. B.M. Amunugama,
Female Guard,
Bogambara Prison,
Kandy.
7. L.D. Wijesingha,
Female Guard,
Bogambara Prison,
Kandy.
8. M.S. Kumari Subasingha,
Female Guard,
Bogambara Prison,
Kandy.
9. N.P. Somapala,
Female Guard,
Bogambara Prison,
Kandy.
10. Commissioner General of Prisons,
Department of Prisons,
Baseline Road,
Colombo 09.
11. The Inspector General of Police,
Police Headquarters,
Colombo 01.
12. Hon. the Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

**Before: Sisira J. de. Abrew J
 Vijith K. Malalgoda PC J
 Murdu N.B. Fernando PC J**

Counsel: Shantha Jayawardena with Dinesh de. Silva, Hirannya Damunupola and Chamara Nanayakkarawasam for Petitioner
 Saliya Peiris, PC with Thenuka Nandasiri for 2nd Respondent
 Rasika Balasuriya with Dulanga Kumari for 4th Respondent
 Asthika Devendra with W. Sandaruwan for 6th to 9th Respondents
 Varunika Hettige, DSG for 10th, 11th and 12th Respondents

Argued on: 26.09.2018

Judgment on: 23.11.2018

Vijith K. Malalgoda PC J

Petitioner to the present application Galapita Hene Gedara Nandani Kumari had come before this court alleging the violation of her Fundamental Rights guaranteed under Articles 11, 12 (1) and 13 (2) of the Constitution by the Respondents. When this matter was supported on 18.11.2009, the court granted leave to proceed,

- a) For the alleged violation of Article 11 of the Constitution against 2nd, 4th, 6th, 7th, 8th and 9th Respondents and,
- b) For the alleged violation of Article 12 (1) of the Constitution against 2nd and 4th to the 11th Respondents.

The Petitioner who is a housewife, was married to one S.M. Abeyrathne a graduate teacher, and was 45 years of age and a mother of 3 children, at the time the alleged incident referred to in the petition was taken place.

According to the Petitioner, an incident had taken place near her house on 27th June 2008 around 2.00 pm with one Padma Kumari Ekanayake when she was trying to dispose the garbage which was collected near her house, which ended up by the said Padma Kumari assaulting the Petitioner with a club. The son and the brother of the Petitioner rescued her from the said assault but her son had received a blow at that time. The Petitioner admits giving few blows to the said Padma Kumari with the Eacle broom she had in her hand to escape from the assault but denies that she had a knife with her at that time. On the same day around 3.30 pm two women Police Constables accompanied by two male Police Constables came to her house in a private vehicle and arrested her and taken to the Raththota Police Station in the same vehicle.

The Petitioner narrates the events that took place thereafter as follows;

- a) At the Police Station the Petitioner got to know that there was a complaint lodged by the said Padma Kumari of cutting her with a knife by the Petitioner which she denied to the Police.
- b) The Petitioner informed Police of the assault by the said Padma Kumari but the Police refused to entertain her complaint
- c) The said Padma Kumari had got herself admitted to Raththota Hospital
- d) A statement was recorded from the Petitioner by an officer, but the said statement was never read over to her by the said officer. She was forced to sign the statement saying “තමුසේ කවුද කියවලා බලන්න. තමුසෙගේ කට වැඩියි. මට ගෙදර යන්න පරක්කු වෙනවා මෙන්න මේකට අත්සන් කරනවා.”
- e) The Petitioner was kept at the Police station the whole night and was sent to courts around 12.00 noon by the 3rd Respondent through 4th Respondent PS 12862 Wasantha.

- f) When the Petitioner was produced before court, the 4th Respondent objected for bail informing that the complainant is critically injured and hospitalized. Court remanded the Petitioner for fiscal custody until 30.11.2008
- g) With the said remand order the Petitioner was taken to the Matale Remand Prison where the 2nd Respondent, the husband of the said Padma Kumari functioned as the Officer-in-Charge by the 4th Respondent
- h) When she was produced at the Remand Prison, the Petitioner saw the 4th Respondent greeting the 2nd Respondent by holding his hand and saying, “ඔන්න මවං අපේ වැඩේ හරි”
- i) The same evening around 5.30 pm the Petitioner was taken to Kandy Remand Prison. At that time the Petitioner heard the female officer accompanied her to Kandy, saying, “මේක මාතලේ බන්ධනාගාරයේ මී. අයි. සී ගෙ එකක්”
- j) Following morning, the Petitioner was taken to a room by several female prison guards including the 7th and 9th Respondents and assaulted her for some time. Even though the Petitioner pleaded with them not to assault, they continued to assault her until the 6th and the 8th Respondents wanted her to be taken to their room
- k) While the Petitioner being taken to the new room, she was pushed by an officer from her behind. When she fell into the room, she was kicked by the officers, she was assaulted inside room by 6th to 9th Respondents and during the said assault, she was slapped several times on her ears, knocked her head on the wall several times. During the said assault, she heard either the 6th or the 8th Respondent saying, “කෝව බාගෙට මරන්න කියලයි මී. අයි. සී මහත්තය අපිට කිව්වෙ”

- l) Since the Petitioner started vomiting after the said assault, she was taken before a medical officer but, due to the presence of the 6th Respondent the Petitioner refrained from complaining against those who assaulted her little while ago.
- m) Before taking her to Matale on the following day morning, at Kandy she was threatened not to divulge the assault to anybody, saying that she will be subject to assault once again if she returned
- n) At Matale Remand the 2nd Respondent threatened her with death if she continues to make trouble and warned her not to talk to anybody as to what happened to her at the Remand
- o) Even though the Petitioner requested her Attorney-at-Law to inform court with regard to the brutal assault on her at the Remand Prison, the Attorney-at-Law did not inform court of the assault, but only moved bail on her. The Petitioner was granted bail on that day

As revealed above the Petitioner had not complained to anybody except to her Attorney-at-Law, of the assault on her until she was bailed out from courts, but, the Petitioner explain the reason for not complaining the assault to the prison doctor but had taken up the position that her Attorney-at-Law did not make use of the opportunity to inform the Magistrate when she was produced before court. However it is transpired from the material placed before this court that, the Petitioner got herself admitted to the Matale hospital immediately after her release on the 30th itself.

The Consultant Judicial Medical Officer Matale who examined the Petitioner at the Matale hospital had recorded the short history given by the patient as follows;

“Alleged assault by four female prison officers at Bogambara Remand Prison on 29.06.2008 after the victim had been remanded. Earlier the examinee was arrested by

Raththota Police following a quarrel with neighbor, wife of a prison officer H.M. Ekanayake.”

During his examination the Consultant Judicial Medical Officer had observed five injuries, out of which the 5th injury, “high frequency hearing impairment” had been found as a grievous injury and under explanatory remarks he had remarked, that there is a “Permanent impairment of hearing on both ears”

In support of the above observation, a copy of the G.H.T including the tests carried out and the examination notes of the Consultant E.N.T Surgeon were also placed before this court marked P-3A.

As further observed by me the Petitioner made a detailed statement before the learned Magistrate Matale on 17.10.2008 when the case against her was called before the Magistrate for the 1st time after enlarging her on bail. However prior to 17/10, the Petitioner on 08.08.2008 had made a complaint to Women and Children Unit of Kandy Police and to the Human Rights Commission on 04.07.2008 through her husband.

Whilst challenging the above position taken up by the Petitioner, the Respondents, specially the 2nd and the 6th to the 9th Respondents heavily relied on the subsequent inquiries carried out by the prison authorities and the affidavit given by the Chief Jailer and the statement made by Medical Officer attached to the Kandy Remand Prison on the day in question to an official who conducted an inquiry.

In his affidavit the Chief Jailer had submitted that there was no possibility of assaulting a prisoner during the day time as complained by the Petitioner, without the knowledge of the

others and had further submitted that the Petitioner did not complained of such assault to him when he visited the new prisoners around 3.30 pm on 29.06.2008 (8R4)

In her statement made at the Prison Inquiry, produced marked 6R2 the Prison Doctor A. Hairu Nisha had stated that she examined the new admissions between 10.00 -11.00 including the Petitioner. The Petitioner did not complain of any assault to her and she was found to be in fit condition. Therefore she entered fit in front of her name in the admissions register but when the prisoner informed that she is taking treatment for some condition in both her hands form Kandy Hospital, the doctor had cut the previous entry by drawing a line and recorded that the prisoner is taking "treatment for numbness of both hands GHK"

As observed by me earlier, the Petitioner had explained the reasons for not making a complaint to the Prison Doctor, specially in the presence of the 6th Respondent, and she had to continue to be in remand prison until the following morning. One cannot expect a person who has neither been to a prison before nor had a criminal record to come out with a complainant against the lady Prison Officers under whose custody she had to be until the following morning. This position is explained by the Petitioner in the following terms in her counter affidavit;

"I being a new remandee was retained within the premises while the others were taken for an event. I was produced before the Medical Officer by the 6th Respondent who gestured threatening me not to reveal the assault. I did not reveal the assault accordingly as I feared reprisals and instead cried before the doctor due to the mental and physical pain I was suffering"

I have no reason to reject the above position taken by the Petitioner. The reserve officer at Raththota Police Station had not made any adverse comments with regard to the conditions of

the Petitioner when she was produced at the reserve at 16.40 hours by PS 6502 Premachandra who recorded the statement of the Petitioner. The Petitioner makes no complaint of assault against the officers at Raththota Police Station. The Petitioner who was remanded for Fiscal Custody on 28.06.2008 was enlarged on bail on 30.06.2008 and on 30th itself she got herself admitted to Matale Hospital, and was in hospital until 8th July, until she was discharged. As referred to above the Consultant Judicial Medical Officer had observed 5 injuries including one grievous injury, permanent impairment of hearing of both ears.

When referring to the assault, the Petitioner had taken up the position that she was pushed inside the room of the 6th and 8th Respondents by some body from behind and when she fell inside the room, she was first kicked and thereafter pulled her up and assaulted by the 6th to 9th Respondents where she was slapped on her ears several times and knocked her head against the wall.

In the absence of any other material to establish that the Petitioner had received the injuries referred to in the Medico Legal Report including the 5th injury, at a different place, either prior to being arrested or after the release from the custody, I have no reason to disbelieve the Petitioner as to how she received those injuries. In this regard I am further mindful of the fact that the Petitioner is a house wife with three children and was taken into custody for an altercation between two village women over disposing some garbage. She is neither being in the prison custody previously, nor charged before a Court of Law on criminal charges.

The next issue to be considered by this court is whether there was any undue influence on the officers of Raththota Police Station in conducting investigations in the present case.

As revealed before this court, the first complaint into this incident had been made by one Padma Kumari to Raththota Police Station on 27.06.2008 at 15.00 hours (R-1) but a police party consist of PS 6502 Premachandra, PS 28766 Jayakody, WPC 6011 Kumari and WPC 4623 Shalika had left the Police Station in order to arrest the petitioner on the instructions of the Office-in-Charge at 14.30 hours (R-2 out entry) in a private van, i.e. 30 minutes prior to the first complaint being recorded. The Petitioner was arrested by the said team at her place at 15.10 hours six kilometers away from the Police Station for the alleged offence of assault to the complainant Kumari (R-2 return entry)

According to the first complaint, (R-1) the complainant had taken up the position that she received a cut injury in one of her finger due to the attack by the Petitioner with a knife.

The complainant, who was issued with a MLE form, had got herself admitted to the Raththota Hospital on the same day. The said MLE form is produced marked R-9 and it confirm that the complainant had a non-grievous cut injury inflicted by a sharp weapon, but under the remarks column the Medical Officer District Hospital Raththota had observed that “Possibility of self-inflicted cannot be excluded”

When the Petitioner was produced before the Magistrate’s Court, the Police had requested the learned Magistrate to remand the suspect for 14 days. An application was made on behalf of the suspect (Petitioner) for bail by an Attorney-at-Law. In the journal entry the learned Magistrate had recorded the day’s proceedings as follows;

“සැකකාරිය බී වාර්ථාවක් සමගින් P.S 12862 වසන්ත විසින් ඉ/කරයි. සැ. නි. බී.
ගුණසේකර මිය පෙනී සිටිමින් ඇප අයැද සිටී.

කුමාරකාරිය තව දුරටත් රෝහලේ නේවාසිකව ප්‍රථිකාර ලබන බැවින්ද, පිහියෙන් කපා කුමාර කර ඇති බවට බී වාර්ථාවෙන් කරුණු වාර්ථා කර ඇති බැවින්ද, වැ. විමර්ශන අවසන්වනතුරු සැකකාරිය 2008. 06. 30 දින දක්වා රිමාන්ඩ් බන්ධනාගාර ගත කරමි.

කැඳවනු 2008. 06. 30”

When considering matters already referred to above, it is observed that this is a complaint received by police over an altercation between two women in a village over disposing garbage in a compound but, for some reason the police had taken an undue interest in arresting the suspect in the manner as discussed. The police team had left the station in a private vehicle, even prior to a first complaint being recorded. The complainant was hospitalized over a non-grievous injury inflicted on a finger but the medical officer who examined the patient, had not ruled out the possibility of self-inflicted injury. At the Magistrate’s Court, bail was objected to for the reason that;

- a) Injury inflicted by a knife
- b) Complainant is receiving treatment at the hospital.

Even though the police, when reporting facts before the Magistrate had taken up the position that the suspect (Petitioner) had used a knife to inflict the injury, no investigation was carried out to recover the knife used by the suspect at the time of her arrest or during subsequent investigation. (R-2)

When the above facts are taken into consideration with the position taken up by the Petitioner that she heard the 4th Respondent who took her to the Remand Prison informing the 2nd Respondent that “ඔන්න මව් අපේ වැඩේ හරි” is a clear indications that the investigations

said to have conducts by Raththota Police, was not carried impartially but it was carried with the intention of remanding the Petitioner due to some influence on them.

During the argument before this court, the learned counsel who represented the Respondents had challenged the position taken up by the Petitioner with regard to certain statements said to have made by some of the Respondents and argued that it is unsafe to act purely on the affidavit of the Petitioner and come to a conclusion that those Respondents have made such statements in the presence of the Petitioner, in the absence of any corroboration.

I do agree with the submission of the counsel that there is no corroboration by way of another affidavit before this court, but I cannot agree with the rest of the argument since the position taken up by the Petitioner is corroborated from independent material placed before this court. The statements said to have made by the 2nd, 4th and 6th to the 9th Respondents reveal the interest taken by the 2nd and 6th to the 9th Respondents in this matter. The 4th Respondent was not involved in the initial investigation and therefore it is not safe to make him liable for the interest the police had taken in conducting the investigation as referred to in this judgment. During the argument it was brought to the notice of court, the death of 5th Respondent whilst pending the present application.

When considering the matters referred to above in this judgment, I observe that the officers of Raththota Police Station had arrested the Petitioner even prior to a first complaint being received from Padma Kumari the wife of the 2nd Respondent who was the Officer-in-Charge of Matale Remand Prison. Bail was objected to by Raththota Police when they filed the 'B' Report before court. The learned Magistrate based on the 'B' Report before him, remanded the Petitioner for Fiscal Custody considering the fact that,

- a) Injury inflicted by a knife
- b) Injured is receiving treatment at Hospital.

However the only injury the Medical Officer found with the complainant was a non-grievous cut injury on a finger, which cannot be ruled out the possibility of self-inflicted injury.

At Kandy Remand Prison the Petitioner was subjected to physical assault by 4 lady prison guards whom the Petitioner identified as 6th to 9th Respondents. They kicked her, slapped her on her ears and her head was knocked against the wall. The Consultant Judicial Medical Officer Matale, had observed 5 injuries including a grievous injury, "a high frequency hearing impairment," which he identified as a permanent disability.

When considering all these matters I observe that the investigations said to have carried out by the Raththota Police and the subsequent incidents took place both at Matale Remand Prison and Kandy Remand Prison by the 2nd, 6th to the 9th Respondents are in violation of the Fundamental Rights guaranteed under article 11 and 12 (1) of the Constitution.

The Petitioner who is a housewife with 3 children was subject to cruel and inhuman treatment in the hands of the prison officials when she was remanded for causing a simple cut injury on a finger of the wife of the 2nd Respondent, the Officer-in-Charge of the Remand Prison Matale. As further revealed before us, the Petitioner was acquitted and discharged from the case filed against her on the said complaint before the Magistrate's Court of Matale, but she suffer from a permanent disability due to the said brutal assault on her during the time she was in Remand Prison.

The said conduct of the 2nd and 6th to the 9th Respondents can only be explained in the following word used by *Atukorale J* in the case of ***Amal Sudath Silva V. Kodituwakku (1987) 2 Sri LR 119,***

“Nothing shocks the conscience of a man so much as the cowardly act of a delinquent police officer who subjects a helpless suspect in his charge to depraved and barbarous method of treatment within the confines of the very premises in which he is held in custody.....

The Petitioner may be a hard-core criminal whose tribe deserves no sympathy, but if constitutional guarantees are to have any meaning or value in our democratic set-up, it is essential that he be not denied the protection- guaranteed by our constitution.”

In the said circumstances, I hold that the Fundamental Rights guaranteed under Article 11 had been violated by the 2nd and 6th to the 9th Respondents and Article 12 (1) had been violated by the 2nd, 6th to 11th Respondents.

In determining the relief to be granted to the Petitioner I am mindful of the following observations made by *Kulatunge J* in the case of ***Gamlath V. Nevil Silva and others (1991) 2 Sri LR 267 at 278*** to the effect that;

“..... violations of Article 11 of the Constitution which symbolizes man’s inhumanity to man continue. Such infractions make the state primarily liable. In awarding just and equitable relief we are mindful of the fact that the state has to pay compensation out of public funds; but this court cannot on that ground resile from making an appropriate order. The state has to pay in view of the principle of state responsibility for executive and administrative action. If payment of compensation in default is a burden on public funds, it cannot be helped. In any event compensation ordered is payable to the citizen whose rights are violated and Constitutes a just levy on public funds in favour of the citizen....”

When considering all the matters referred to above in this judgment I grant the Petitioner,

- a) A declaration that her Fundamental Rights guaranteed under Article 11 of the Constitution have been infringed by the 2nd, 6th to the 9th Respondents
- b) A declaration that her Fundamental Rights guaranteed under Article 12 (1) of the Constitution have been infringed by the 2nd, 6th to the 11th Respondents
- c) Compensation in a sum of Rupees five hundred thousand (500,000/-) together with cost in a sum of Rupees fifty thousand (50,000/-) payable by the state
- d) Compensation in a sum of Rupees two hundred thousand (200,000/-) payable by the 2nd Respondent from his personal funds
- e) Compensation in a sum of Rupees seventy five thousand (75,000/-) by each of the 6th to 9th Respondents [Total Compensation payable by the 6th to the 9th Respondents is Rupees three hundred thousand (300,000/-)] from their personal funds

I further direct the 12th Respondent, Attorney General to consider prosecuting the Respondents who are liable to be prosecuted under the provisions of the Torture Act if no steps had been taken so far to prosecute them before the relevant Magistrate's Court.

Application allowed.

Judge of the Supreme Court

Sisira J. de. Abrew J

I agree,

Judge of the Supreme Court

Murdu N.B. Fernando PC J

I agree,

Judge of the Supreme Court