

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

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

Wasana Niroshini Wickrama,
School Road,
Dodampapitiya,
Uthungama,
Mathugama.

Petitioner

SC (FR) Application No. 349/2014

Vs.

1. **Nalaka,**
Acting Officer-in-Charge.
2. **A. A. K. S. Adhikari,**
Officer-in-Charge.

Both of;
Welipenna Police Station,
Welipenna.

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

- 3(A). **Pujith Jayasundara,**
Inspector General of Police,
Police Headquarters,
Colombo 01.

4. **Hon. Attorney General,**
Attorney-General's Department,
Colombo 12.

Respondents

Before :

E. A. G. R. Amarasekara, J
Achala Wengappuli, J
K. Priyantha Fernando, J

Counsel :

Pulasthi Hewamanne with Harini
Jayawardhana for the Petitioner.

Chula Bandara for the 1st and 2nd
Respondents.

Lakmali Karunanayake, DSG for
the 3rd and 4th Respondents.

Argued on : 08.08.2023

Decided on : 16.10.2023

K. PRIYANTHA FERNANDO, J

1. The petitioner in this case is a 33-year-old who has been arrested by the police pursuant to a warrant being issued against her. The petitioner alleges that, the manner in which the respondents carried out her arrest and the events following such arrest have violated the fundamental rights guaranteed to her under Articles 11, 12(1), 13(1) and 13(2) of the Constitution. At the hearing of this application, this Court granted leave on the alleged violations of Articles 11 and 12(1) of the Constitution.

2. The Petitioner's Position.

On 19.05.2014 at around 5.15 p.m. the acting Officer in Charge of the *Welipenna* police station (hereinafter referred to as the 1st respondent) has arrived at the residence of the petitioner in a police jeep along with four other police officers. According to the petitioner, at the time the 1st respondent and the other police officers arrived, the petitioner and her family has been inside their house. The petitioner states that she has been breastfeeding her youngest child who was seven months of age at the time. The four police officers have walked towards the petitioner's husband and has informed him that a warrant has been issued against the petitioner and her mother for failing to appear before the Magistrate of *Mathugama* in case No. 7653/14.

3. The petitioner's husband has requested the 1st respondent that he be permitted to bring the petitioner to the *Welipenna* police station the next day or to be permitted to have the petitioner produced directly to Court. However, the 1st respondent has denied this request, and has tried to arrest the petitioner in executing the warrant.
4. Upon hearing the conversation between her husband and the 1st respondent, she has come out of her house carrying her youngest child in her arms, accompanied by her daughter who was two-and-a-half years of age. After getting to know that she was to go to the police station, she has requested for a woman police officer to accompany her to the police station.
5. The 1st respondent has denied her request for a woman police officer to be present and has grabbed the petitioner by her left upper arm and pushed her into the police jeep. She alleges that, when she was pushed into the police jeep along with the child that she was carrying, she was partially denuded. She further alleges that, she suffered intense humiliation as the neighbours also witnessed the treatment that was meted out to her. Thereafter, the mother of the

petitioner has been arrested and the 1st respondent has also grabbed the daughter of the plaintiff and pushed her into the police jeep.

6. It is averred that, although she and her husband requested that the children be left at home, the 1st respondent has refused such request and has directed the petitioner's husband that if he wished to collect the children, he should come to the *Welipenna* police station. The petitioner further alleges that, she was not informed of the fact that a warrant has been issued and no copy of the warrant has been shown to her.
7. At about 7.00 p.m. on the same day, the petitioner's husband, along with her family and some neighbours have come to the *Welipenna* police station to request the 1st respondent to release the children. The 1st respondent has informed the petitioner's husband to come on the following day to collect his children.
8. On the next morning (20.05.2014), the 1st respondent has directed the petitioner's husband to come to Court and informed him that the children will be released in Court. Thereafter, the petitioner's husband has complained to the National Child Protection Authority (NCPA). However, the petitioner states that no steps have been taken regarding the same.
9. According to the petitioner, at about 11.45 a.m., the petitioner has been produced before the Magistrate's Court of *Mathugama*. The petitioner and her children have been immediately released. The petitioner whilst stating that she was not permitted to make any statement in Court regarding the treatment that was meted out to her, has further stated that she did not wish to make such complain due to fear of repercussions from the police.

10. On 21.05.2014, the petitioner's husband has submitted a complaint to the Assistant Superintendent of Police (ASP) of *Kalutara* on behalf of the petitioner. Thereafter on 27.05.2014, a further complaint has been made to the Deputy Inspector General of Police (DIG) of *Kalutara*. Since no action was taken, on 13.06.2014 the petitioner's husband has submitted a complaint to the Inspector General of Police (IGP) (3rd respondent) regarding the events that had transpired. Although a complaint bearing No. IGP/PAC/O/673/2014 has been recorded, the petitioner alleges that she is unaware of any action being taken regarding the same. On 17.06.2014, the petitioner's husband has also submitted a complaint on behalf of the petitioner to the Human Rights Commission of Sri Lanka, regarding the arrest that took place on 19.05.2014 and an inquiry is pending.

11. The Respondents' Position

The 1st respondent in his response, denying the allegations against him states that, on 19.05.2014, he has reached *Dodampapitiya* along with his team to arrest the petitioner and her mother in terms of the order bearing No. 658/14 on a warrant issued against them in case No. 7653/14 in the Magistrate's Court of *Mathugama*. However, when the petitioner was informed about the warrant and shown the warrant, the petitioner has resisted arrest and has clung on the 1st respondent's hand and has also started shouting in a threatening manner and stated “මම යන්නේ නැහැ යමකෝ”. She has also yelled at the police in abusive language. The petitioner has also refused to part with the child and has refused to wear appropriate clothing to go to the police station. In the backdrop of these circumstances, the subordinate police officers have pushed her into the police jeep as she was resisting arrest. Both the petitioner and her mother has been taken into custody. The 1st respondent also states that, he did not pull the petitioner's jacket causing it to tear. Thereafter, at the police station, the 1st respondent has directed a matron to attend to the petitioner and her mother

and they were searched and detained under the supervision of the matron.

12. Contrary to what the petitioner states, the 1st respondent states that, the mother of the petitioner, the petitioner, and her youngest child who she refused to let go, had been taken into custody and were taken to the police station. Thereafter, at around 9.00 p.m. on the same day, the petitioner's husband has come to the police station and has forcibly left the older child in the custody of the petitioner without the permission of the 1st respondent.
13. The 1st respondent stated that, he had every authority to make the arrest as there was a warrant issued on the petitioner and her mother. He denies the allegations made by the petitioner of ill treatment and assault and states that, he had to use reasonably necessary force to effect the arrest as the petitioner had been acting in a violent manner. The 1st respondent states that, he had not acted in a manner which would violate the fundamental rights of the petitioner. A copy of the extract from the day book maintained at the *Welipenna* police station has been produced as [A-6].
14. The 2nd respondent, who is the Officer in Charge of the *Welipenna* police station stated in his affidavit in response, that on 19.05.2014 which was the day the petitioner was arrested, the 2nd respondent has been on official duty appearing before the High Court of Anuradhapura in case No. 129/13.
15. **Alleged violation of Article 11 of the Constitution.**

The learned Counsel for the petitioner on behalf of the legal aid commission, submitted in her written submissions that, in the case of ***W.M.K. de Silva v. Chairman, Ceylon Fertilizer Corporation [1989] 2 S.L.R. 393*** it was recognized that Article 11 of the Constitution is not confined to physical violence and encompasses protection against emotional or psychological harm as well. The claim in the instant case is also based on psychological harm that was

suffered by the petitioner. It was submitted that the petitioner has suffered immense psychological harm when she was berated in the presence of her family and neighbours, when she was arrested demeaning her dignity, her clothes been torn and being partially denuded and having to travel to the police station in such torn clothing in the presence of male police officers, being pushed into the police jeep while carrying her child, witnessing her daughter being manhandled into the police jeep. She has also suffered immensely for not being able to provide protection for her children and fearing for their safety.

16. The learned Counsel for the petitioner relied on the case of ***W. Nandasena v. U.G. Chandradasa, Officer-in-Charge Police Station Hiniduma and Two Others [2006] 1 Sri.L.R. 207*** and submitted that allegations of the violation of Article 11 can be proven by way of affidavits even in the absence of medical evidence where the suffering was of an aggravated kind. Even in the instant case, the affidavits of the petitioner's family and neighbours corroborate the evidence of the petitioner being subjected to degrading treatment by the respondents.
17. The learned Counsel for the petitioner further submitted that, in the case of ***Adhikary and Another v. Amerasinghe and Others [2003] 1 S.L.R. 270*** the Courts recognized the plight of a mother and her little child whose allegations were not physical injuries, where there was no evidence of physical injury and no submission was made as to medical evidence. However, the Court in the above case recognized the psychological harm suffered by the wife who was torn between the safety of her husband and her child and the feelings of the husband who could not protect his wife and his child from the respondents when he was being arrested. It was submitted that the above case has glaring similarities with the instant case.

18. It was further submitted that, the petitioner in the instant case too undeniably faced immense humiliation in the presence of neighbours and male officers when she was partially denuded by the 1st respondent, further she was in anguish as she was unable to protect her infant son who was in her arms when she was pushed into the police jeep. She has also feared for the safety of her two-and-a-half-year-old daughter when she was pushed into the police jeep.
19. The learned Counsel submitted that, as Article 11 of the Constitution has several limbs, in the event the conduct of the respondents in respect of the petitioner and her family does not amount to torture, it would at least fall within the second limb which is “cruel, inhuman or degrading treatment.”
20. The learned Counsel for the petitioner further submitted that, the police have got angered when the petitioner’s family requested if she could be brought directly to police station the next morning and when she requested time to dress herself. It was submitted that, the acts of the police in making the petitioner’s children spend the night at the police station while being denied the safety of their home was to punish the petitioner by placing her children through unnecessary trauma. This has caused anguish to the petitioner. This is an unnecessary and disproportionate response by the police. Therefore, it violates Article 11 of the Constitution.
21. It was further submitted by the learned Counsel that, in the case of **Subasinghe V Police Constable Sandun [1999] 2 S.L.R. 23** the Court has recognized that the conduct of police in causing an affront to an individual’s human dignity as being violative of Article 11 of the Constitution. It was submitted that the petitioner was stripped off of her human dignity by the actions or inactions of the respondents. Therefore, her rights guaranteed under Article 11 of the Constitution has been violated.

22. It was submitted by the learned Counsel for the 1st respondent that, the documents tendered to this Court by the petitioner in support of her petition does not establish the veracity of averments made by the petitioner in her application to establish a violation of the said Articles.
23. The learned Counsel for the 1st respondent submitted that, as laid out in the case of ***Velmurugu v. AG [1981] 1 S.L.R. 406***. The standard of proof in deciding whether any fundamental right has been infringed is the standard of proof in Civil matters. Further in ***Channa Pieris v. AG [1994] 1 S.L.R. 1*** it has been held that having regard to the gravity of the matter in issue, a high degree of certainty is required before the balance of probability might tilt in favour of the petitioner to discharge his burden of proof that he was subject to torture, cruel inhuman degrading treatment or punishment. The petitioner must adduce sufficient evidence to satisfy Court that Article 11 has been violated. Further in ***Jeganathan v. AG [1982] 1 S.L.R 294*** it was held that when public officers are accused of violating Article 11 of the Constitution such allegation must be strictly proved.
24. The learned Counsel for the 1st respondent further submitted that, section 12 of the Convention Against Torture and other Cruel, Inhuman or Degrading treatment or Punishment Act, No. 22 of 1994 defines 'torture' and therefore, it must be ascertained whether the allegations made by the petitioner falls within such criteria in determining if Article 11 of the Constitution has been violated.
25. The learned Counsel for the 1st respondent further submitted that, the police officers who were performing a legal duty in executing a warrant, have used minimum force when she was held by her shoulder and pushed into the police jeep as the petitioner was vehemently against the arrest and refused such arrest.

26. It is further submitted by the learned Counsel that, the petitioner has failed to provide cogent evidence with regard to the alleged torture, inhuman and degrading treatment by the respondents.

27. When considering the instant application, it is alleged that the petitioner has been subjected to torture or cruel, inhuman or degrading treatment by the 1st respondent. It is also alleged that, such violations have taken place at the time of arrest of the petitioner and also while in the custody of the police. The petitioner alleges that her rights under Article 11 of the Constitution is violated by the acts of the respondents and it is furthered by the anguish she had to undergo as a mother for not being able to protect her children from the actions of the respondents causing her psychological torture. Article 11 of the Constitution of Sri Lanka provides that,

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

28. In the case of ***Amal Sudath Silva v. Kodituwakku, Inspector of Police and Others [1987] 2 Sri.L.R 119*** Atukorale J said that,

“Article 11 of our Constitution mandates that no person shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment. It prohibits every person from inflicting torturous, cruel or inhuman treatment on another. It is an absolute fundamental right subject to no restrictions or limitations whatsoever. Every person in this country, be he a criminal or not, is entitled to this right to the fullest content of its guarantee. Constitutional safeguards are generally directed against the State and its organs. The police force, being an organ of the State, is enjoined by the Constitution to secure and advance this right and not to deny, abridge or restrict the same in any manner and under any circumstances. Just as much as this right is enjoyed by every member of the police force, so is he prohibited from denying the same to

others, irrespective of their standing, their beliefs or antecedents. It is therefore the duty of this court to protect and defend this right jealously to its fullest measure with a view to ensuring that this right which is declared and intended to be fundamental is always kept fundamental and that the executive by its action does not reduce it to a mere illusion.”

29. When considering the above case, it is evident that the protection provided under Article 11 of the Constitution, unlike other fundamental safeguards, provides for absolute protection to an individual. It is recognized as an absolute right, which guarantees absolute protection. This means that, the freedom from torture cannot be tampered with, limited, or restricted under any circumstances. As it is observed in the case of *Amal Silva(supra)* the Courts of Sri Lanka have acted as guardians to ensure that this right is protected to its fullest measure.

30. In case of ***W.M.K. de Silva v. Chairman, Ceylon Fertilizer Corporation [1989] 2 S.L.R. 393*** it was stated that,

“I am of the opinion that the torture or cruel, inhuman or degrading treatment or punishment contemplated in Article 11 of our Constitution is not confined to the realm of physical violence. It would embrace the sphere of the soul or mind as well.”

31. In light of the above case, it can be observed that Article 11 of the Constitution is not restricted to physical torture, it also includes mental torture within its realm. The instant case is striking as it relates to a lawful arrest carried out pursuant to a warrant being issued against the petitioner. Admittedly, a warrant has been issued against the petitioner and her mother for failing to appear before the Magistrate of *Mathugama* in case No. 7653/14. The petitioner and her mother have had a long-standing land dispute with a neighbour. When the police officers tried to inquire into the dispute on 10.03.2014 at the *Welipenna* police station, the

parties have behaved in an unruly manner inside the police station.

32. Pursuant to this unruly behaviour of the parties, the police have made an application and produced both the parties including the petitioner and her mother to Court in terms of section 81 of the Code of Criminal Procedure Act. The parties were required to show cause as to why they should not be ordered to execute a bond for keeping the peace in terms of section 81. However, the petitioner who was on bail failed to appear in the Magistrate's Court on the date she was required to show cause. As a result, the said warrant has been issued by the Magistrate's Court.
33. In the instant case, the petitioner has resisted lawful arrest. This is evident through the affidavit of the petitioner as well as the affidavits of the several witnesses marked [P-8(a)] and [P-8(b)]. Accordingly, when the husband of the petitioner has asked the petitioner to go to the police station with the police officers, she has resisted stating that, she cannot get into to the police jeep unless a woman police officer accompanies her. When a warrant has been issued, the person against whom the warrant is issued is expected to comply with such warrant. The petitioner could have avoided this entire course of events that allegedly caused her immense psychological torture if she had complied with the said police officers who were engaging in their official duty. One cannot make allegations of mental torture for the acts which are incidental to lawful actions of officials acting within their power.
34. When considering the allegations that the petitioner was berated and thereafter manhandled into the police jeep, it can be observed that the 1st respondent in his affidavit has also admitted that he did push the petitioner into the police jeep as she was resisting lawful arrest. Attention must be drawn to section 23(2) of the Code of Criminal Procedure Act No. 15 of 1979. It sets out that,

“If such a person forcibly resists the endeavour 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.”

35. It is clear that the petitioner in this case has resisted lawful arrest. Further, when perusing the document marked [A-6] and the affidavit of the 1st respondent where it has clearly been deposed that, when the petitioner was informed of the arrest, she has vehemently refused to comply with the warrant and has refused to part with her child. She has also refused to wear appropriate clothing and started shouting at the police in a threatening manner. Thereafter, the police officers have pushed her into the police jeep. When considering these circumstances, it seems to me that the conduct by the police officers in pushing the petitioner into the police jeep was reasonably necessary for the police to effect the arrest of the petitioner who was resisting arrest. Police officers are duty bound to comply with the warrant of arrest. Therefore, it is clear that in the circumstances of this case, the police officers have acted within the power conferred to them under section 23(2) of the Code of Criminal Procedure Act No. 15 of 1979.
36. It has also been alleged by the petitioner that, the acts of the 1st respondent have caused her clothes to be torn and she has been partially denuded and she has also had to travel to the police station in such torn clothing in the presence of male police officers. This has been denied by the 1st respondent in his affidavit. When perusing the affidavits of the witnesses on behalf of the petitioner, it can be observed that, most of the witnesses have deposed that the petitioner was partially denuded when the police officer carrying out the arrest grabbed her in order to effect the arrest. However, in the affidavit of the witness marked [P-8(c)] it has been deposed that, one of the police officers from the *Welipenna* police station have ripped off the upper garments of the petitioner, so as to completely denude her before she was pushed into the police jeep. This is patently an exaggeration.

Therefore, the veracity of such documents submitted by the petitioner is questionable.

37. Further, it is observed that the petitioner while resisting arrest was carrying her seven-month-old child in her hands. When the police used minimum force to push her inside the police jeep, the petitioner has been carrying the child in her hands. In a situation such as this, separating the infant child from the mother would be more traumatic to the mother and the child rather than allowing the child to be in the mother's arms. Therefore, it is the petitioner's resistance to lawful arrest, that has led to these events.
38. With regard to the two-and-a-half-year-old daughter, the notes made by the officer at the police reserve [A-6] clearly sets out that, the daughter had been subsequently brought to the police station by relatives and kept within the custody of the petitioner. The 1st respondent in his affidavit has also stated that the said daughter was not taken in the police jeep when the petitioner was arrested but that she was subsequently brought to the police station by her family. Therefore, the conduct of the police in respect of the petitioner's children cannot be considered as an unnecessary and disproportionate response.
39. The petitioner in paragraph 15 of her petition states that, when she was produced before the Magistrate's Court of *Mathugama* on the day after the arrest, she has not informed the Magistrate as to what had transpired. The petitioner claims that, she was not permitted to make any statement in Court, nor could the petitioner complain of the ill-treatment that was meted out to her by the police. The same position is taken by the husband of the petitioner in his affidavit [P-7]. However, the learned Magistrate has recorded that the petitioner has explained her absence in Court on the previous occasion. She had explained how she had been in the wrong Court room when the case was being called. Therefore, it is evident that the petitioner had sufficient opportunity to inform the learned Magistrate as to what had transpired and the alleged violations that took place if she so

wished. It is also clear that the petitioner has been insincere when she stated that she was not given the opportunity to speak in Court.

40. In case of ***Nandasena v. Chandradasa, O.I.C., Police Station, Hiniduma and Others. [2006] 1 Sri.L.R. 207*** it was stated that,

“When there is an allegation based on violation of fundamental rights guaranteed in terms of Article 11 of the Constitution, it would be necessary for the petitioner to prove his position by way of medical evidence and/or by way of affidavits and for such purpose it would be essential for the petitioner to bring forward such documents with a high degree of certainty for the purpose of discharging his burden. Discussing this position, Amerasinghe, J. in Channa Peiris and others vs Attorney General and others had clearly stated that,

“Having regard to the nature and gravity of the issue a high degree of certainty is required before the balance of probability might be said to tilt in favour of the petitioner endeavouring to discharge his burden of proving that he was subjected to torture or to cruel, inhuman or degrading treatment”.”

41. When perusing the several affidavits that have been filed on behalf of the petitioner, it can be observed that all the affidavits except for [P-8(c)] are verbatim. While statements that were made and incidents that occurred at the scene of arrest could nevertheless be verbatim, the use of the exact same words in describing matters incidental to the main incident raises a doubt in my mind as to the possibility of concoction or exaggeration. Further, the only affidavit that is not verbatim [P-8(c)] seems to be a clear exaggeration of the events that transpired (more fully described in paragraph 35 of this judgment). Therefore, when considering the probability in the sequence of events, I am inclined to accept

the version of the 1st respondent. Although the petitioner asserts that allegations of the violation of Article 11 can be proven by way of affidavits, where the affidavits in question creates a doubt as to concoction or exaggeration it would be unsafe to act upon them.

42. It can be observed that, while the case of ***Adhikary and Another v. Amarasinghe and Others [2003] 1 S.L.R. 270*** seems to have certain factual similarities to the instant case, it has important and striking dissimilarities as to the points of law. The petitioner in the above case was assaulted by the respondents who were security officers of a minister without any authority. However, in the instant case, a warrant has been issued by the Magistrate and the respondent police officers were exercising their lawful authority in arresting the petitioner in the instant case. Therefore, the rationale of that case cannot be applied in the instant case.

43. In light of the above findings, it is my view that, there has been no violation of the rights guaranteed to the petitioner under Article 11 of the Constitution. I cannot comprehend how effecting an arrest by the use of minimum force, while the person against whom a warrant has been issued is resisting arrest, would amount to a violation of Article 11 of the Constitution by the police. If this is allowed, the police officers would be obstructed from carrying out their official duties.

44. **Alleged violation of Article 12(1)**

The petitioner also alleges that the rights guaranteed to her under Article 12(1) of the Constitution is affected by the arrest, detention and the arbitrary and malicious conduct of the respondents.

45. The learned Counsel for the petitioner submitted that, as recognized in **Wickramasinghe v. Ceylon Petroleum Corporation [2001] 2 S.L.R. 409** the essence of Article 12(1) is reasonableness as opposed to arbitrariness. It was submitted that the police in the instant case have not acted reasonably but in fact they have acted arbitrarily. Therefore, the rights guaranteed to the petitioner under Article 12(1) of the Constitution has also been violated.
46. Further, it was submitted that the petitioner has not been shown the warrant as required by section 53 of the Criminal Procedure Code. It was submitted that this has violated the equal protection which has constitutionally been provided for in Article 12(1) of the Constitution.
47. When considering the alleged infringement of Article 12(1) of the Constitution it is clear that, as clearly explained previously in this judgment, the police in arresting the petitioner has not acted in an unreasonable or arbitrary manner as they have only used reasonable force in arresting the petitioner. The police have acted within the bounds of their authority in accordance with the power conferred to them under section 23(2) of the Code of Criminal Procedure Act No. 15 of 1979.
48. Article 12(1) encompasses two concepts, 'equality before the law' and 'equal protection of the law'. This is explained in the case of **Satish Chandra v. Union of India [1953] A.I.R. 250** where it was stated that all persons and things similarly circumstanced should be treated alike in the matter of privileges conferred and liabilities imposed.
49. As it was explained in the case of **Leo Fernando v. Attorney-General [1985] 2 S.L.R. 341**, 'equal protection of the law' does not mean that the same law should identically apply to all persons. What it stipulates is that, the law should apply similarly and without discrimination to all persons similarly situated. Thus, the petitioner in the instant case cannot claim that she has been treated arbitrarily as her circumstances are similar to a person against whom a

warrant has been issued and the police officers acting within their lawful authority has in my view, not denied the petitioner the equal protection of the law.

50. It has been deposed in the affidavit of the 1st respondent that the petitioner was informed of and shown the warrant. In any event, the petitioner should have been aware that a warrant would be issued against her and her mother for not appearing before the Magistrate of *Mathugama* in case No. 7653/14.
51. The petitioner has stated that, a female police officer has been absent while the petitioner was being arrested. She further states that, this has not been contradicted by the respondents. In light of this position, it is my view that, generally it is proper to accompany a female police officer when the person against whom a warrant has been issued is a woman. However, there is no rule of procedure requiring the same.
52. Section 30 of the Code of Criminal Procedure Act No. 15 of 1979 sets out that,

“Whenever it is necessary to cause a woman to be searched the search shall be made by another woman with strict regard to decency.”

The above rule of procedure relates to a situation where a search is carried out. When considering the facts of this case, there is no evidence of a search being carried out at the scene of arrest. Therefore, the fact that a woman constable was absent at the scene of arrest does not violate any rules of procedure. Therefore, this position advanced by the petitioner has no merit.

53. In a practical sense, the police officers intending to arrest a person against whom a warrant has been issued would generally expect that, the person against whom the warrant has been issued would comply with such order. Further, one

cannot expect the police officers to go back to the police station to bring a woman constable when the woman against whom the court has issued a warrant resists arrest.

54. In the circumstances of this case, it is my view that the rights guaranteed to the petitioner under Article 12(1) of the Constitution has not been infringed by the respondents as they have acted reasonably in exercising their lawful authority. Further, there exists no violation of rules as to procedure by the police officers.

55. Liability of the 2nd respondent.

At the argument of this appeal, the learned Counsel for the petitioner submitted that, the 2nd respondent who was the Officer in Charge of the *Welipenna* police station would also be liable for the actions of the police officers that carried out the arrest. It was stated that the OIC must take reasonable steps including the monitoring of subordinates. The Counsel for the petitioner relied on the cases of ***Ukwatta v. Sub Inspector Marasinghe S.C. F.R. Application No. 252/2006 S.C. Min. 15.12.2010, Sharmila v. K.W.G. Nishantha S.C. F.R. Application No. 398/2008 S.C. Min. 03.02.2023*** and the case of ***Sriyani Silva v. Iddamalgoda [2003] 2 Sri.L.R. 63.***

56. The learned Counsel for the 2nd respondent submitted that, on 19.05.2014, he was on official duty appearing before the High Court of Anuradhapura in case no. 129/13. The record book maintained by the *Welipenna* police station also confirms that the 2nd respondent was in Anuradhapura on official duty on that day [B-1].

57. In *Ukwatta(supra)* the petitioner has been brutally assaulted at the police station by the 1st respondent and other police officers. The 2nd respondent OIC in the above case has also been made liable as the illegal detention and torture of the petitioner could have been prevented by him and on the basis that alteration of information books by the 1st respondent could not have been carried out without the authority of the

OIC. When considering the facts and circumstances of the instant case, the alleged torture has taken place outside the police station. The arrest that was carried out by the 1st respondent and the subordinate officers was a lawful arrest carried out on the basis of a warrant and the 2nd respondent had been away on official duty and in a practical sense there is nothing that the 2nd respondent could have done to prevent these events. Therefore, due to the striking dissimilarities in the instant case when compared with the above case, the rationale in that case cannot be applied to the instant case.

58. Further, in the case of *Sriyani Silva(supra)* the courts found that the officer-in-charge was under a duty to take reasonable steps to ensure that persons held in custody were treated humanely and in accordance with the law. And that included monitoring the activities of his subordinates. However, in the instant case there has been no ill-treatment carried out against the petitioner in the police premises and neither has the 2nd respondent seen the petitioner. Therefore, as the above cases have no applicability to the instant case, the 2nd respondent OIC could not have been held liable in the circumstances of this case.

59. Liability of the 3rd respondent.

The petitioner in paragraph no.16 of the petition dated 28.11.2014 stated that, she is unaware of any action being taken by the 3rd respondent even after the complaint bearing No. IGP/PAC/O/673/2014 was recorded.

60. The learned Deputy Solicitor General (DSG) for the 3rd respondent contended that, the document marked [3R-1] as reported on 12.09.2014 clearly demonstrates that an inquiry has been conducted regarding the alleged violation. However, neither the petitioner nor her mother have appeared at the inquiry even after they were informed to be present. Thus, in light of the document [3R-1] it is my view that the 3rd respondent IGP has acted promptly and the petitioner has patently been insincere to Court in stating that she was unaware of any action being taken by the 3rd respondent.

Therefore, it is evident that the petitioner has not come to Court with clean hands.

61. Declaration.

In the above premise, for the reasons that I have elaborated above, I declare that the fundamental rights that have been guaranteed to the petitioner under Articles 11 and 12(1) of the Constitution has not been violated by the actions of the 1st to 4th respondents. I make no order with regard to costs.

JUDGE OF THE SUPREME COURT

JUSTICE E. A. G. R. AMARASEKARA,

I agree

JUDGE OF THE SUPREME COURT

JUSTICE ACHALA WENGAPPULI,

I agree

JUDGE OF THE SUPREME COURT