

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 the Democratic Socialist Republic of Sri Lanka

SC (FR) Application No. 266/2014

S.D. Nirmala Janaki Malkanthi Weerasinghe,
No. 86A, Medemulla,
Minuwangoda.

PETITIONER

Vs.

1. The Director,
Women and Children Bureau of the Police,
Colombo 14.
2. Inspector of Police, Samson Fernando,
The Officer-In-Charge,
Women and Children Bureau of the Police,
Colombo 14.
3. Mrs. Anoma Dissanayake
- 3A. Dr. Natasha Balendra
- 3B. Mrs. Marini de Livera
- 3C. Professor Mudhitha Vidanapathirana,

3rd – 3A, 3B and 3C Respondents being the
Chairperson/Chairman,
National Child Protection Authority,
30, Thalawatugoda Road, Madiwela,
Sri Jayawardanapura , Kotte.

4. Inspector of Police Bopitigoda,
The Officer-In-Charge,
Special Investigations Unit,
National Child Protection Authority,
No. 30, Thalawatugoda Road, Madiwela,
Sri Jayawardanapura , Kotte.
5. The Officer-In-Charge,
Police Station, Marawila.
6. The Inspector General of Police,
Police Headquarters, Fort, Colombo 1.
7. Shermil Nayan Satharasinghe,
No. 25, Sagaragama, Naththandiya.
8. The Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: P. Padman Surasena, J
Kumudini Wickremasinghe, J
Arjuna Obeyesekere, J

Counsel: Kalyananda Thiranagama for the Petitioner

Induni Punchihewa, Senior State Counsel for the 1st, 2nd and 8th Respondents

Argued on: 9th September 2024

Written Submissions: Tendered by the Petitioner on 21st October 2019 and 27th September 2024

Tendered by the 1st, 2nd and 8th Respondents on 15th June 2020 and 10th October 2024

Decided on: 25th November 2024

Obeyesekere, J

The Petitioner was 40 years of age at the time this application was filed on 17th September 2014. She is the mother of two children, now aged 28 and 31 from her first husband. In 2005, the Petitioner had married the 7th Respondent who was employed at the Pradeshiya Sabha, Marawila. She had two more children from her marriage to the 7th Respondent. These two children are now 17 and 20 years of age.

The Petitioner claims that since 2004, the 7th Respondent had sexually abused the younger daughter of the Petitioner from her first marriage as well as the two children from their marriage. Details of such abuse that the Petitioner claims took place over the years are set out in the petition. The petition also includes details of the steps taken by the Petitioner to bring the said incidents to the attention of law enforcement authorities and the several complaints that she made to the Children and Women Bureau of the Sri Lanka Police and to the National Child Protection Authority. The Petitioner admits that pursuant to such complaints, the children who are said to have been abused by the 7th Respondent have been produced before Judicial Medical Officers on several occasions and facts have been reported by the Police to the Magistrate's Court, Marawila and the Juvenile Magistrate's Court, Battaramulla.

The Petitioner's complaint to this Court is that the 1st, 2nd and 4th Respondents, they being the Director, Children and Women Bureau of the Police Department, its Officer – in - Charge Inspector of Police Samson Fernando, and the Officer – in - Charge of the Investigation Unit at the National Child Protection Authority, Inspector of Police Bopitigoda, respectively, colluded with the 7th Respondent and as a result:

- (a) the investigations that were carried out were neither impartial nor independent;
- (b) the reports filed in the Magistrate's Court did not disclose the correct circumstances;
- (c) false and distorted reports were submitted to the Attorney General which resulted in the Attorney General advising the Police that the material available is insufficient to maintain criminal proceedings against the 7th Respondent.

The Petitioner has claimed that by the above action/inaction, the 1st, 2nd and 4th Respondents have infringed her fundamental rights guaranteed under Article 12(1).

Pursuant to this application being filed, but prior to leave being granted, the Attorney General had called for the case records of the two cases pending before the Magistrate's Court of Marawila and the Juvenile Magistrate's Court, Battaramulla and directed the 6th Respondent, the Inspector General of Police to record fresh statements of the three children who were said to have been abused by the 7th Respondent and that they be examined by Medical Consultants.

While action was being taken by the 6th Respondent in terms of the above direction of the Attorney General, leave to proceed was granted on 9th November 2015 for the alleged violation by the 1st, 2nd and 4th Respondents of the fundamental rights of the Petitioner guaranteed by Article 12(1). This Court had at the same time directed the 6th Respondent to investigate the allegations leveled by the Petitioner on the conduct of the 2nd and 4th Respondents and to submit a report to Court.

An investigation had accordingly been carried out by an Assistant Superintendent of Police and the report filed on 1st February 2016 in compliance with the said order sets out in detail the steps that had been taken by (a) the Children and Women Bureau during the period 12th May 2010 – 31st December 2010 when the Officer – in – Charge was Chief Inspector Balachandra, who is not a respondent to this application, (b) the Children and Women Bureau during the period 1st January 2011 – 13th November 2013 when the Officer – in – Charge was the 2nd Respondent, and (c) the National Child Protection Authority during the period that the 4th Respondent was the Officer – in – Charge of the Special Investigation Unit of the said Authority.

According to the said report, although the Children and Women Bureau had recorded the statements of the children, submitted them for multiple medical examinations and reported facts to both Magistrate's Court, in view of (a) the contradictory nature of the statements of the children from the second marriage, and (b) the younger daughter of the Petitioner from her first marriage denying that she had been abused by the 7th Respondent, the Children and Women Bureau had sought the advice of the Attorney

General on 4th June 2011. Similar steps had been taken by the National Child Protection Authority which too had sought the advice of the Attorney General on 29th February 2012. Thus, not only have investigations been carried out and the children been medically examined, the advice of the Attorney General too had been sought long before this application was filed. In this background, the complaint of the Petitioner that the Respondents did not act independently cannot be accepted.

The learned Senior State Counsel submitted that the Attorney General had considered the relevant material, including a statement made to the Magistrate by the younger daughter of the Petitioner from her first marriage where she is said to have denied having been abused by the 7th Respondent and that a decision had been taken only thereafter that the material available is insufficient to file charges against the 7th Respondent. Accordingly, by his letter dated 27th January 2014, the Attorney General had advised the Director, Children and Women Bureau to inform the relevant Magistrate's Courts that legal proceedings shall not be instituted against the 7th Respondent. This application was filed pursuant to the advice of the Attorney General.

The learned Senior State Counsel submitted further that after having received the case records of the two Magistrate's Court cases, the Attorney General had directed the National Child Protection Authority to record fresh statements from the three children who the Petitioner claimed had been sexually abused by the 7th Respondent and to have them examined by Medical Consultants. In their statements and in the medical reports, copies of which have been tendered to Court, the three children had once again denied having been abused by the 7th Respondent. The children had further stated that it is the Petitioner who physically abused them and that they were instigated by the Petitioner to make false allegations against the 7th Respondent.

The learned Senior State Counsel submitted that the Attorney General had considered the material afresh and arrived at the conclusion that the material is insufficient to file criminal charges against the 7th Respondent. While the necessity for the Attorney General to provide any further advise to the Police had therefore not arisen, the aforementioned statements of the three children do not support the complaint of the Petitioner to this

Court that the 1st, 2nd and 4th Respondents colluded with the 7th Respondent or that the 1st, 2nd and 4th Respondents distorted facts in their reports to the Attorney General.

Having considered the material presented by the learned Counsel for the Petitioner and the learned Senior State Counsel, I am of the view that the Petitioner has failed to substantiate the allegation that the 1st, 2nd and 4th Respondents did not carry out an impartial and independent investigation. I must state that although the report prepared at the direction of this Court identifies certain instances where the investigating officers could have acted expeditiously, this is not the complaint of the Petitioner to this Court. To the contrary, it is clear that the 1st, 2nd and 4th Respondents have proceeded cautiously, reported facts to the Magistrate's Court and sought the advice of the Attorney General before proceeding to prosecute the 7th Respondent.

In these circumstances, I am satisfied that the 1st, 2nd and 4th Respondents have not acted in an arbitrary manner nor have they violated the fundamental rights of the Petitioner guaranteed by Article 12(1) of the Constitution.

This application is accordingly dismissed without costs.

Judge of the Supreme Court

P. Padman Surasena, J

I agree

Judge of the Supreme Court

Kumudini Wickremasinghe, J

I agree

Judge of the Supreme Court