

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

W.N.L.K.Fernando
No.6, Kankale Watte
Pahala Mawila
Naaththandiya

Petitioner

S.C.F.R.Application No.612/09

Vs.

1. Police Inspector Ranjith
2. Police Sergeant Dissanayake (23311)
3. Sub Inspector Chamara P.Wijesinghe
4. A.M.Weerakkodi, Officer-In-Charge
All of Police Station, Wennappuwa
5. S.Peters
Proprietor
Tata Global Engineering Pvt Ltd.
Wennappuwa
6. Sunil Appuhamy, Watcher
Tata Global Engineering Pvt.Ltd
Wennappuwa
7. Hon.Attorney General
Attorney General's Department
Colombo 12.

Respondents

BEFORE : PRIYASATH DEP PC, J.
K.T.CHITRASIRI, J.
PRASANNA JAYAWARDENA PC, J.

COUNSEL : J.C.Weliamuma with Pulasthi Hewamanne and
Sulakshane Senanayake for the Petitioner
J.Joseph for the 1st to 4th Respondents
Madhawa Tennakoon SSC for the Attorney General

ARGUED ON : 04.07.2016

WRITTEN : 06.09.2016 by the Petitioner

SUBMISSIONS ON : Not filed by the Respondents

DECIDED ON : 21.09.2016

CHITRASIRI, J.

In this petition, the petitioner introduces himself, as a married person with 3 children. He further states that he being a businessman is the chairman of two companies registered under the Companies Act. Petitioner then states that he was assaulted, arrested and detained unlawfully by the 1st to 4th respondents. Accordingly, he alleges that his fundamental rights guaranteed under Articles 11, 12 (1), 13 (1) and 13 (2)

were violated by the 1st to 4th Respondents. However, having heard the parties, this Court on 09.09.2011 granted leave to proceed, only with the application for the alleged violation of the rights guaranteed in terms of Articles 11 and 13(1) of the Constitution.

1st to 4th respondents are police officers attached to the Wennappuwa Police Station while the 4th respondent is the Officer in Charge of that Police Station. According to the petitioner, 6th respondent is an employee of the 5th respondent. Petitioner states that he verily believes that the 5th and the 6th respondents were privy to the fundamental rights violation alleged by him. 6th respondent is the person who made the complaint to the police against the petitioner. It is pursuant to that complaint the petitioner was arrested, according to the 1st to 4th respondents.

The petitioner in his affidavit dated 11.08.2009 states that at or around 10.00 a.m. on 14.05.2009, 1st to 3rd and the 5th & 6th respondents have entered the premises belonging to him in Marawila having come in a double cab, at a time he was away from home. Upon being informed by his wife over the telephone, of the arrival of the police, he has returned home around 10.45 in the morning. He further states that the 1st and the 2nd respondents were in uniform and were armed with guns. 3rd respondent was in civilian clothes holding a gun. Petitioner then has identified the 5th respondent who was present there, as the person who had bought sand

from him on an earlier occasion and the 6th respondent as the watcher of the said 5th respondent.

Having stated so, the petitioner has mentioned that upon his arrival at his premises as mentioned before, the 1st respondent wanted him to get into the vehicle by which the police officers came, in order to record a statement from him. According to him, he and his wife were abused at that point of time, in derogatory language by the 1st to 3rd respondents who threatened him to get into the said vehicle in which the police came. Then the petitioner is supposed to have told the police that his premises where they were at that point of time, come under the purview of Marawila Police and not under Wennappuwa Police to which police station the officers were attached to. The 1st respondent then has grabbed him by his shirt. Petitioner further alleges that thereafter all the three officers began assaulting him repeatedly with hands and feet and rifle butts even after he fell on the ground as a result of the said assault. (Vide paragraph 5 (f) of the affidavit of the petitioner)

The petitioner then states that he was hand cuffed and dragged along the floor of the garden and put him into the said private vehicle. [double cab] The petitioner also states that several passersby on the road witnessed this incident. Thereafter the petitioner alleges that he was taken to the Wenappuwa Police Station along with the 5th and the 6th respondents. The petitioner further states that he was assaulted even

inside the said vehicle by the 1st to 3rd respondents whilst being taken to the police station. He alleges that he was also threatened with death if he contemplates complaining of the said assault. Accordingly, the petitioner states that he sustained several injuries to upper arms, chest, face and left thigh amongst other injuries as a result of the said assault. The petitioner further states that he fainted in the night on 14.5.2009, at or around 9.00 p.m. whilst being detained at the police station, as a result of the injuries suffered by him. The petitioner further states that he vomited several times and also suffered a chest pain whilst being detained at the said police station.

The petitioner then states that he explained to the 4th respondent that the alleged complaint made against him by the 6th respondent that led for him been arrested, was a fabricated one and that the said complaint had been lodged for personal reasons, when he was produced before him at the Police Station. The petitioner then states that thereafter a statement was recorded from him and he was directed to sign the book in which the statement was written though he was unaware of the contents therein.

He then states that the 2nd respondent and two other police officers escorted the petitioner to the Lunuwila hospital on the following day namely on 15.05.2009. While he was taken to the hospital, his wife is also supposed to have accompanied him as she had come to the Police Station by then. However, the petitioner was not treated at the Lunuwila

hospital but was brought before the Negombo District Medical Officer for further steps and for treatment.

The 1st to 4th respondents have filed four separate affidavits which are dated 07.11.2009 explaining the position taken by them as to the alleged incident complained of by the petitioner. The defence of the police officers contained in all those 4 affidavits is almost similar in its facts. They all admit that they were on duty on 14.05.2009. According to them, the 1st to 3rd respondents along with 5th and the 6th respondents have left the police station around 11.35 a.m. to an area coming under the purview of Marawila Police Division in a private vehicle in search of the petitioner against whom a complaint had been made by the 6th respondent on the same date, i.e. 14.05.2009. The complaint was regarding a theft of a rear bucket of a Backhoe loader which had been disconnected from the front section of the vehicle and also of two galvanized pipes valued at Rs.25,000/- alleged to have owned by the 5th respondent. They have come to the petitioner's house and have arrested him in respect of the complaint made by the 6th respondent. They admit that the 2nd respondent carried a fire arm.

In their affidavits, the first three respondents have stated that the petitioner resisted arrest and rolled on the ground. However, they further state that they were able to overpower him and to take him into their custody. Thereafter, having brought the petitioner to the Police

Station, he was handed over to Police Sergeant 37188 Fernando at the police station Wennappuwa. The police officers in their affidavits allege that the injuries found on the petitioner are superficial and those may have been caused due to the petitioner's violent behavior and for his own conduct when he resisted the arrest. They also have stated that injuries found on the petitioner may have been caused due to him rolling on the ground. Finally, they have denied the assault alleged by the petitioner.

Considering the material contained in the affidavits filed by both the parties, it is clear that the 1st to 3rd respondents have taken the petitioner into their custody at or about 10.45 a.m. on 14.05.2009 consequent upon a complaint made against the petitioner of a theft of a Backhoe loader and of two galvanized pipes. It is also not in dispute that the petitioner was produced before the Magistrate on the following day, on the instructions of the 4th respondent. He had been produced before the Marawila Magistrate on 15.05.2009 under the case bearing No.531/09.

In the circumstances, it is clear that there had been a valid reason for the Police to take the petitioner into their custody on that particular day. Therefore, I do not see anything wrong or illegal had taken place, as far as the arrest of the petitioner is concerned since it was an arrest made in the course of an investigation commenced, consequent

upon a serious complaint made by the 6th respondent to the Police. Therefore, the allegation by the petitioner as to the violation of Article 13(1) of the Constitution is not sustainable.

Remaining issue is the alleged violation of Article 11 of the Constitution. Hence, it is necessary to ascertain whether or not there had been any torture inflicted on the petitioner by the 1st to 4th respondents. 4th respondent is the Officer-In-Charge of the Police Station, Wennappuwa. No allegation of torture inflicted on the petitioner had been made against the 4th respondent. Neither is there any evidence as to any assault effected by the 4th respondent. Indeed, the evidence shows that he has taken steps to produce the petitioner before the Magistrate according to law. Therefore, I decide that the 4th respondent is not liable for infringement of fundamental rights of the petitioner guaranteed under Article 11 of the Constitution as well.

It is now necessary to examine whether the injuries found on the body of the petitioner were consequent to any assault been effected by the acts of the 1st to 3rd respondents, as alleged by the petitioner. Hence, I will now refer to the injuries found on the body of the petitioner as a result of the incident occurred on the 14th May 2009.

When the petitioner was produced before the learned Magistrate, he has made the following notes in the case record. It reads thus:

බ. 531/09

2009.05.15

සැක./ ඩබ්. නොයෙල් ලාල් කෙනෙඩි ප්‍රනාන්දු සිටි.

වෛද්‍ය අසනීප තත්වයෙන් සිටින බව දන්වයි.

වෛද්‍යගේ ශරීරයේ තැලීම් ඇති බව දන්වයි. එම තැලීම් වෛද්‍යව

අත්අඩංගුවට ගැනීමට යාමේදී ඇති වූ තැලීම් බව දන්වයි.

වෛද්‍ය ර.බ. ගත කරමි.

වෛද්‍ය රජයේ රෝහලකට ඉදිරිපත් කර වෛද්‍ය වාර්තා ඉදිරිපත්

කිරීමටත්, අවශ්‍ය ප්‍රතිකාර බන්ධනාගාර අධිකාරී මගින් ලබා දීමට

නියම කරමි.,

කැද. 20.05.09

අ.ක. / මහේ.

Upon a perusal of the above notes made by the learned Magistrate on 15.05.2009, it is seen that there were injuries on the body of the petitioner at the time he was produced before the Magistrate. The document P3 is the Medico Legal Report issued in respect of the petitioner by the Judicial Medical Officer, Dr.S.D.Channa Perera attached to the District Hospital, Negombo upon examining the petitioner on the 15-05-2009. In that report, he has stated that the petitioner has vomited once on the 15th May 2009. The petitioner has also complained to the Doctor of body ache, headache, shoulder pain, pain of hands. The history of the

incident as mentioned by the Doctor confirms the version given by the petitioner. He also has told the Doctor of an assault by a police officer named I.P. Ranjith along with other police officers. Said I.P. Ranjith is the 1st respondent in this case. In the cage meant to indicate conclusions and opinions of the doctor, he has stated that the petitioner is a 25-year-old person and there were several soft tissue injuries though no fractures were found on his body. Doctor has also stated that the injuries found on the body of the petitioner are consistent with the given history of the incident.

The Doctor has clearly identified four injuries on the body of the petitioner and those are as follows:

- 1. There is a 5 x 5 cm recent contusion on the upper portion of the right biceps muscle area*
- 2. There is a 6 x 5 cm abraded contusion on the left supra – spinatus area.*
- 3. There are at least three 1 cm, 1.5 cm abrasions on the back of the upper chest on mid line.*
- 4. There is tenderness of the following areas.
Both wrists, back of left thigh, vertex, face, both shoulders*

The explanation given by the 1st to 3rd respondents as to the injuries of the petitioner was that he had resisted the arrest. They state that they were using minimum force. When looking at the injuries above, it is difficult for a reasonable person to think that those injuries would

have been caused by rolling on the ground or even by trying to get away from the arrest, as stated by the respondents in their affidavits.

The doctor who examined the petitioner had stated that the injuries of the petitioner are consistent with the history given by him of the incident. He, in his report too, has mentioned exactly the story of the petitioner which the petitioner has stated in the affidavit filed with his petition. Manner in which the petitioner describes the injuries in his affidavit is consistent with the opinion of the doctor who examined him. Indeed, the story of the petitioner confirms by the Doctor's report.

Therefore, it is abundantly clear that the petitioner had serious injuries on his body as stated in his affidavit though those injuries do not fall within the category of grievous hurt referred to in the Penal Code. Also, it must be noted that there were five persons including 3 Police officers who have come in search of the petitioner. Under such circumstances, it is unlikely that there would be such a number of injuries when resisting the arrest unless there had been an assault as alleged by the petitioner.

Therefore, having considered the consistencies of the events connected with the incident complained of and all the probabilities thereto, I am inclined to accept the story of the petitioner and to reject the version

of the 1st to 3rd respondents. Therefore, it is clear that the aforesaid injuries found on the body of the petitioner have been caused by the acts of the 1st to 3rd respondents when they arrested the petitioner or during the period the petitioner was in the custody of the 1st to 3rd respondents. Therefore, I hold that the 1st to 3rd respondents are personally liable for the violation of the petitioner's fundamental rights guaranteed under Article 11 of the Constitution. Accordingly, I make order directing each of the three respondents, namely 1st, 2nd and the 3rd respondents to pay the Petitioner Rs.35,000/- separately, amounting it to become Rs.105,000/- out of their own funds.

JUDGE OF THE SUPREME COURT

PRIYASATH DEP PC, J.

I agree

JUDGE OF THE SUPREME COURT

PRASANNA JAYAWARDENA PC, J.

I agree

JUDGE OF THE SUPREME COURT