

**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 read with Article 17  
of the Constitution of the Democratic  
Socialist Republic of Sri Lanka.***

Weheragedara Ranjith Sumangala,

No. 137/2, Beliaththawila,

Kindelpitiya, Millewa.

**SC (FR) Application No.107/2011**

**PETITIONER**

vs.

Bandara, Police Officer,

Police Station, Mirihana.

**1<sup>st</sup> RESPONDENT**

Inspector Bhathiya Jayasinghe,

Officer-in-Charge – Emergency Unit,

Police Station, Mirihana.

**2<sup>nd</sup> RESPONDENT**

Egodawele, Chief Inspector,

Head Quarters' Inspector,

Police Station, Mirihana.

**3<sup>rd</sup> RESPONDENT**

Ajith Wanasundara,

No. 255, Malagala, Padukka.

**4<sup>th</sup> RESPONDENT**

M.W.D. Tennakone,

Superintendent of Police,

Nugegoda Division,

Office of the Superintendent of Police,

Nugegoda.

**5<sup>th</sup> RESPONDENT**

Mahinda Balasuriya,

Inspector General of Police,

Police Headquarters,

Colombo 01.

**6<sup>th</sup> RESPONDENT**

Hon. Attorney General,

Attorney General's Department,

Hulftsdorp,

Colombo 12.

**7<sup>th</sup> RESPONDENT**

**BEFORE : S. THURAIRAJA, PC, J**

**KUMUDINI WICKREMASINGHE, J**

**K. PRIYANTHA FERNANDO, J**

**COUNSEL:**

Viran Corea with Sarita de Fonseka and Thilini Vidanagamage for the Petitioner.

Sandamal Rajapakshe with Laknath Seneviratne for the 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> Respondents.

Nalin Ladduwahetti, PC with Kavithri Ubeysekara instructed by Ms. Lilanthi De Silva for the 3<sup>rd</sup> Respondent.

Induni Punchihewa, SC for the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents.

**WRITTEN SUBMISSIONS:**

Written submissions on behalf of the Petitioner on 21<sup>st</sup> March 2012.

Written submissions on behalf of the 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> Respondents on 19<sup>th</sup> November 2013.

Written submissions of the Attorney-General on 26<sup>th</sup> September 2023.

**ARGUED ON** : 27<sup>th</sup> September 2023

**DECIDED ON** : 14<sup>th</sup> December 2023

**S. THURAIRAJA, PC, J.**

The Petitioner, namely Weheragedara Ranjith Sumangala (hereinafter sometimes referred to as “the Petitioner”), filed this application on 28<sup>th</sup> March 2011 against the 1<sup>st</sup> to 6<sup>th</sup> Respondents (hereinafter sometimes jointly referred to as “Respondents”) seeking relief in respect of the alleged infringement of his fundamental rights guaranteed by and under the Constitution of the Democratic Socialist Republic of Sri Lanka. Accordingly, on 26<sup>th</sup> April 2011, when the case was called for support, State Counsel representing the Respondents pleaded for time to be granted in order to expeditiously obtain instructions regarding the injuries purportedly sustained by the Petitioner. Thereafter, as the Respondents have not filed limited objections, on 30<sup>th</sup> May 2011, the Court granted leave to proceed for the alleged violation of Articles 11,

12(1), 13(1) and 13(2) of the Constitution in the manner and circumstances hereinafter described.

## **FACTUAL MATRIX**

As stated by the 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> Respondents in their Statement of Objections dated 6<sup>th</sup> December 2011, the facts and circumstances of the instant case take place in the course of an investigation under the direction and instructions of the 5<sup>th</sup> Respondent, founded on a complaint by an unknown party concerning several thefts which occurred in the Moragahahena-Padduka area during the period preceding the events of this case. As stated by the Respondents, the Petitioner was arrested on 17<sup>th</sup> December 2010 on the 'reasonable suspicion' that he was part of a thieving gang connected to these thefts. However, upon the perusal of the evidence presented to this Court by both parties, there appear to be several inconsistencies with the Respondent's narration of the incidents of this case, which I will address in the course of this judgment. Thus, for the sake of clarity, I will first consider in brief the facts as narrated by both the Petitioner and the Respondent separately as stated in the Petition and Statement of Objections, respectively.

### **Facts as stated by the Petitioner**

The Petitioner, who was at one time a soldier in the Sri Lankan Army, was discharged from military service on or about 7<sup>th</sup> September 2009, and at the time of this application was employed as a tinsmith and earned his living by doing motor vehicle repair work. On or about 15<sup>th</sup> December 2010 at around 9:15 a.m. the Petitioner was walking towards the 'garment junction' in Madagala to get into a three-wheeler of a friend named Chandana who was taking him to work at a house in Kahawala. At the said junction, the Petitioner noticed a motorcycle with the 4<sup>th</sup> Respondent and another. The Petitioner states that it was only after he was arrested in the manner elucidated hereinafter that he came to realise this other person with the 4<sup>th</sup> Respondent to be a police officer. The Petitioner got into the said three-wheeler and

proceeded towards Kahawala. A few minutes into the journey the Petitioner realized that they were being surrounded on all 4 sides by motor bicycles and the three-wheeler was forced to stop. The 1<sup>st</sup> Respondent together with another police officer forced themselves into the back seat of the three-wheeler on either side of the Petitioner. The 1<sup>st</sup> Respondent and the other police officer forcefully took custody of the Petitioner's mobile phone, threatening the Petitioner saying "දගලන්න එපා, මරණවා [Don't struggle, will kill you]".

The Petitioner was then taken to the Dambara Cemetery and was questioned by the Respondents about one Chinthaka. The Petitioner stated that he did not know anything of this person apart from the fact that he owned cattle and a bakery. Upon giving this response, the Respondents started kicking the Petitioner's thighs several times till he was numb. Thereafter, 1<sup>st</sup> Respondent made a phone call to another, and the Petitioner heard him say "සර්, අල්ල ගන්නා [Sir, we caught]". Thereafter, as per the instructions of this 'sir' over the phone, the Respondents removed the Petitioner's t-shirt and blindfolded him with it.

About 15 minutes later, the Petitioner, still blindfolded, was dragged and put into a van with his hands cuffed at the back, at which time there were several other Police officers present. The 2<sup>nd</sup> Respondent questioned the Petitioner whether he had retained his gun from the military, to which the Petitioner answered in the negative. The 2<sup>nd</sup> Respondent had threatened the Petitioner that he would bury the Petitioner alive in the cemetery, causing the Petitioner to fear for his life.

Thereafter the 2<sup>nd</sup> Respondent had asked the 1<sup>st</sup> Respondent to put Chillie powder into two shopping bags and to tie it over the Petitioner's head so as to compel him to breathe in the Chillie powder. While the Petitioner was caused to choke and suffocate by being compelled to inhale the Chillie powder, the Police officers had watched the Petitioner and had only removed it when it seemed as though the Petitioner was about to die. Once again, the Petitioner was questioned regarding the weapon and the Petitioner had answered in the negative just as he had done before. The entire process

of torture by Chillie powder was continued repeatedly while the other Police officers were striking the Petitioner's cheeks until he was bleeding out of his mouth and continued to beat him with what the Petitioner described as "three-wheeler belts".

The Petitioner states that during this process of torture, the 2<sup>nd</sup> Respondent further questioned the Petitioner about several other robberies he was purported to have been involved in, with a specific focus on the robbery said to have occurred at the house of the 4<sup>th</sup> Respondent whose house the Petitioner had overheard people say had been broken into a few days ago. When the Petitioner said he knew nothing about it, the entire process of torture continued. The Petitioner states that the torment came to a point that he could not bear it anymore, and, in fear for his life, he falsely admitted to robbing the said house of the 4<sup>th</sup> Respondent. In an attempt to be relieved of the torture, the Petitioner had fabricated a false incident, that, a person named Chaminda went into the house of the 4<sup>th</sup> Respondent while the Petitioner kept a lookout, and another named Nimal was also involved. The Petitioner also falsely admitted that he was given Rs.50,000 for having assisted in the robbery and that he did not know about the balance of monies stolen.

Thereafter, the beating stopped, and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents along with the other Police Officers went to have a meal at the "Hasthigiriya Hotel" in Meepe taking the Petitioner in the van along with them. The Petitioner was not given any food to eat. The Petitioner was thereafter blindfolded and handcuffed, and taken to a place to shower, and thereafter to a place which the Petitioner later learnt was the Mirihana Police Station. The Petitioner was further questioned at the Police station by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents with the aim of getting an admission from the Petitioner as to the robberies, to which he had previously admitted having succumbed to the torment caused by the Respondents. This time, however, the Petitioner was informed that he had 15 cases of Robbery against him in Padukka and was questioned further regarding this. Having answered in the negative, the Petitioner was once again subject to torture by way of Chillie powder as described above and additionally, two officers were

standing on his thighs and jumping until his legs were numb while continuing the questioning. Unable to bear the pain and agony, the Petitioner had once again succumbed to the pressure and had made various admissions, including that he had broken into the co-operative store, removed the rubber from a lorry, stolen some gold jewellery, broken into his brother-in-law's house and stolen the television, VCD player and cassette player.

The Petitioner states that once all the admissions were written down by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, the beatings ceased for a while. Thereafter, since the Petitioner had indicated that he could show the purportedly stolen goods in his house, he was put into a van and brought back to his house around 6:00 a.m. on or about 16<sup>th</sup> December 2010 by the 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> Respondents and about four other Police Officers. The 2<sup>nd</sup> Respondent thereafter went into the house and asked the Petitioner's wife whether the television and the pendant worn by the Petitioner's child were stolen. The Petitioner's wife responded that the said television had been purchased from Singer Sri Lanka on an easy-pay scheme and showed the receipts. The 2<sup>nd</sup> Respondent further inquired as to the whereabouts of the stolen gold jewellery, to which the Petitioner responded that it was buried near the plantain trees. However, upon searching the place the 1<sup>st</sup> and 2<sup>nd</sup> Respondents discovered that there were no such goods. The 2<sup>nd</sup> Respondent asked the Petitioner as to why he had lied, to which the Petitioner responded that he had no option but to lie because he was afraid, which resulted in the 2<sup>nd</sup> Respondent and another Police Officer beating the Petitioner mercilessly, subjecting him to such degrading treatment in front of the Petitioner's wife and two children of ages 09 and 02 years respectively, traumatising his wife and children so much so that his eldest daughter fainted upon witnessing her father mistreated in such a manner.

The Petitioner states that one Police Officer began assaulting his legs and back with a pole handed over by the 4<sup>th</sup> Respondent until the pole broke. The Petitioner was then dragged into the kitchen and questioned again about the purported stolen goods.

Since there were no such goods, the Petitioner was mercilessly assaulted over and over again with another "පොල්ලක" [club] until that, too, broke. The Petitioner states that thereafter the said Police Officers began trampling his face since he had fallen on the ground. The Petitioner states that at one point his wife and two children were taken to one of the rooms and were not permitted to come out, to prevent them from shouting, while the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and other Police Officers continued to assault the Petitioner.

Immediately thereafter, the Petitioner was taken in the van again to the Mirihana Police Station. The Petitioner was taken to the top floor of the said Mirihana Police Station, handcuffed and asked to sit on the floor beside the chair. The Petitioner then saw that Chandana, the driver of the three-wheeler, was permitted to make a statement and to leave thereafter. The Petitioner was thereafter taken to what appeared to be 'the torture chambers' of the Mirihana Police Station, where he was assaulted mercilessly. The Petitioner states that one of the Police Officers assaulted the Petitioner's thighs with a pole till he was numb and fell. Thereafter a Police Officer began assaulting him with a 'three-wheeler belt' and then he was hung on a beam upside down with his legs and kept suspended for a while. Eventually, when he was taken down, he was forced to have a bath. The Petitioner states that thereafter he was taken upstairs again and questioned by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as to details of the aforementioned Nimal and Chaminda and one Jayasena also known to the Petitioner. Then one of the Police Officers said that they, too, had been brought and that the Petitioner would see them in the morning. The Petitioner states that on or about 17<sup>th</sup> December 2010, he was taken to a place within the Mirihana Police Station, where the said Nimal, Chaminda and Jayasena were. It was apparent that they too had been subjected to torture. The Petitioner was questioned again about their involvement in the purported robbery of the 4<sup>th</sup> Respondent's house, and he answered in the affirmative as he could not endure being tortured anymore. However, the torture continued and all of them were beaten mercilessly. The Petitioner states that thereafter he was taken upstairs, and one hand and leg were cuffed together onto one leg of a table, as on several other occasions.



The Petitioner further states that even though the Petitioner had explained to the Consultant Judicial Medical Officer that he had been cuffed to a table, it had been erroneously recorded as him having been cuffed to a bed, as demonstrated in the Medico-Legal Report.

The Petitioner states that on or about 18th December 2010, he was taken down to the said 'torture chambers' again where he saw the said Nimal suspended on a beam with his hands. Then again, the Petitioner was questioned as to whether he was saying the truth and the Petitioner at that point, said that he was compelled to fabricate it previously, only because he was powerless to escape the torture and merely to gain relief from the pain. Thereafter, on the same day, i.e., on or about 18<sup>th</sup> December 2010, the Petitioner was hung by his hands and suspended on a beam, while the said Nimal was taken down. During this time the Petitioner was questioned repeatedly regarding all alleged cases and as he denied his involvement, the torture persisted. In a while, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents placed a chair on which the Petitioner was ordered to stand and yet again answer the questions posed at him with the sole purpose of manipulating him to secure an admission. However, the moment it was denied the chair was pulled away, causing the Petitioner to remain suspended by his hands. The Petitioner was left suspended in this manner for a while, causing him to suffer immense pain. The Petitioner states that eventually, when he could not bear it anymore, he admitted only to the robbery of the Co-operative Store and removing the rubber from the lorry and he also said that only Nimal, Chaminda and he were involved and that Jayasena was not. The Petitioner states that thereafter, the 2<sup>nd</sup> Respondent ordered that he (and others) be taken down, made to bathe, given Panadol and eventually given some food. The Petitioner states that even though he had been initially arrested on or about 15<sup>th</sup> December 2010, until such time (on or about 18th December 2010) he had not been given even a morsel of food. The Petitioner states that even then, the torture did not stop as they were taken upstairs and all of them except for Jayasena were beaten mercilessly with three-wheeler 'belts'. In fact, the Petitioner claims that he was beaten with a 'three-wheeler belt' by the 2<sup>nd</sup> Respondent about 25-30

times until he was in unbearably excruciating pain. Thereafter, Nimal and Chaminda were questioned as to what was stolen and where the goods were. Subsequently, Nimal's wife brought an oven claiming that it was one of the 'stolen goods' and thereafter eventually the beatings ceased and they were handcuffed.

The Petitioner states that he came to know that his wife, on coming to learn that he was detained at the said Mirihana Police Station, had on several occasions come to the Police Station, but was refused access on every such instance. In fact, on one such occasion, when the Petitioner's wife was desperately searching for the Petitioner, she was informed by one of the female Police Officers at the Mirihana Police Station that the Petitioner was there but that she had been instructed not to grant access to him. The Petitioner further states that on or about 19<sup>th</sup> December 2010, all of them were confined to a cell and at around 6:40 p.m., were taken to the residence of the Acting Magistrate of Awissawella to obtain a detention order for 48 hours under the pretext of having to conduct further investigations. Accordingly, the detention was extended, and the suspects were to be produced in Court at 9:00 a.m. on 21<sup>st</sup> December 2010. The Petitioner however further states that the 2<sup>nd</sup> Respondent obtained such detention order by stating that the Petitioner and others had been arrested only on 18<sup>th</sup> December 2010.

The Petitioner further states that when the said Acting Magistrate questioned the Petitioner as to whether any injuries were inflicted while in custody, the Petitioner had said there had not been such. The Petitioner states that the reasoning for answering in this manner despite all the torture he had undergone over the past days was due to the fact that he feared for his life, being fully aware of the consequences he was likely to face and what further suffering he would be made to endure by the Police while being detained if he had informed the learned Acting Magistrate of the treatment meted out to him by the Respondents. The Petitioner further states that in the circumstances, the learned Acting Magistrate too, without any examination of the Petitioner, recorded that there were no injuries, as borne out by the said record.

The Petitioner states that he (and others) was not produced before the Court on 21<sup>st</sup> December 2010, in contravention of the said detention order.

Therefore, the learned Magistrate, on 22<sup>nd</sup> December 2010 declared that such detention was unlawful and ordered the Registrar of Court to call for a report from the Deputy Inspector General - Nugegoda on the matter. The Petitioner states that later that evening, they were produced before the learned Magistrate at which point, he informed the learned Magistrate about the torture endured. Consequently, the Petitioner was enlarged on personal bail of Rs. 50,000.00 and the learned Magistrate ordered that he (and others) be given necessary medical attention and that the case record be placed in the safe.

The Petitioner states that after his release, on or about 25<sup>th</sup> December 2010 the Petitioner was admitted to the Matale Hospital as it was not safe for him to remain at his residence. Thereafter, on or about 27<sup>th</sup> December 2010, he was examined by the Consultant Judicial Medical Officer, Matale who concluded that the nature and pattern of the injuries sustained by the Petitioner were consistent with the history given by him and he was further referred to a Neurologist and a Physiologist for further examination.

The Petitioner states that he made a complaint to the Human Rights Commission on or about 6<sup>th</sup> January 2011 concerning the aforesaid conduct and actions of the said Respondents and/or other persons set out in this application involving torture, inhuman and degrading treatment of the Petitioner and the infringement of the Petitioner's fundamental rights as guaranteed under the Constitution. However, on or about 10<sup>th</sup> March 2011 when the matter was taken up for Inquiry, the said 2<sup>nd</sup> Respondent was not represented and therefore the Inquiry has been postponed indefinitely.

The Petitioner states that on or about 28<sup>th</sup> January 2011 the Petitioner (as well as the said Nimal, Chaminda and Jayasena) received notice to be present in the Horana Magistrate's Court in respect of certain charge(s) against him. On such occasion, the Petitioner was once again unlawfully remanded and refused bail purportedly on the

basis that there was a probability that he would continue to commit such offences if released on bail, even though the Petitioner had never had charges against him except the purported charges as elucidated above.

The learned Magistrate further ordered the Officer-in-Charge of the Moragahahena Police Station to submit a report on the purported stolen goods. However, as demonstrated by such report dated 11<sup>th</sup> February 2011, none of the charges against the Petitioner could be sustained and the Petitioner was consequently released on bail.

### **Facts as stated by the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents**

The 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> Respondents by their Joint Statement of Objections, in denying all the averments of the Petition, stated that they were conducting investigations on the instructions and directions of the 5<sup>th</sup> Respondent, acting on an anonymous public complaint as to several thefts in the area, and that Petitioner and the 3 others were suspected to be involved in these thefts as a gang. Respondents are of the position that the arrest and taking into custody of the Petitioner and the subsequent detention were during these investigations as per the instructions given by the 5<sup>th</sup> Respondent. The Respondents also deny that the Petitioner was arrested on 15<sup>th</sup> December 2010 and state that he was arrested on 17<sup>th</sup> December 2010 with minimum force used only because there was resistance on the part of the Petitioner. The Respondents further hold the position that no injury or torture was caused to the Petitioner in the course of the custody, which allegedly was from 17<sup>th</sup> to 22<sup>nd</sup> December 2010.

### **Facts as stated by the 3<sup>rd</sup> Respondent**

In summarizing the Affidavit by the 3<sup>rd</sup> Respondent denying the averments of the Petition, while the 3<sup>rd</sup> Respondent does affirm that he is the Head Quarters Inspector of the Mirihana Police area, and that he is unaware as to the other building referred to by the Petitioner where the torture had taken place. He also claims to be unaware of the other circumstances of the instant application. While being generally unaware of the torturous conduct which transpired according to the Petitioner, he affirms that no

such torture or injury was caused to the Petitioner by the Respondents, and thus states that he cannot be held responsible for any of the aforementioned conduct.

### **Written Submissions on behalf of the 7<sup>th</sup> Respondents**

The 7<sup>th</sup> Respondent makes an identical narration to that of the 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> Respondents, and goes a step further in the Written Submissions filed on their behalf to state that the Petitioner was arrested and investigated under and in accordance with the provisions of the *Code of Criminal Procedure (Special Provisions) Act, No. 15 of 2005*, and have rightly obtained an order from the Magistrate to extend the period of investigation accordingly, and thereby the Respondents are not in violation of the fundamental rights guaranteed under Articles 11, 12(1), 13(1) and 13(2) of the Constitution. At this instance, I wish to reiterate the fact that the events of the instant case occurred within the period beginning from 15<sup>th</sup> December 2010 until 22<sup>nd</sup> December 2010.

### **Affidavit of the 5<sup>th</sup> Respondent dated 05<sup>th</sup> October 2023**

I wish to place on record that there was no Statement of Objections, nor any Written Submissions filed by and on behalf of the 5<sup>th</sup> Respondent up until 26<sup>th</sup> September 2023, on which date the 5<sup>th</sup> Respondent had tendered an Affidavit, which did not challenge much of the averments in the Petition dated 28<sup>th</sup> March 2011 nor the Counter Affidavit of the Petitioner. The said Affidavit only makes reference to the fact that the Respondents had sought permission from the learned Magistrate to further detain the Petitioner and several other suspects for the purposes of further investigations into a complaint made with regard to several incidents of thefts. The 5<sup>th</sup> Respondent states that permission was sought and granted pursuant to section 2 of the *Code of Criminal Procedure (Special Provisions) Act, No.2 of 2013*.

### **ANALYSIS**

I wish to first place on record that the subject matter and the issues surrounding the instant case do not concern the guilt of the Petitioner with regard to the criminal

allegations levelled against him. The instant case concerns only and is limited to considering whether there has been a violation of the Petitioner's fundamental rights guaranteed under Articles 11, 12(1), 13(1) and 13(2) of the Constitution, by the Respondents for the manner in which they conducted themselves towards the Petitioner.

Even the reconvicted criminals of the most notorious kind are entitled to their fundamental rights. No number of allegations or even past convictions can abrogate or limit one's fundamental rights except as permitted by the Constitution under Article 15. The presumption of innocence as enshrined within Article 13(5) of the Constitution, being a cornerstone of the due process of law, must at all times be upheld by investigating officers with the utmost conviction.

As such, needless to say, the allegations against the Petitioner, of which the Respondents invited this Court's attention, matter only insofar as to determine whether there is a reasonable suspicion or reasonable complaint against the Petitioner in considering Article 13(1). Such allegations matter nought in respect of all other fundamental rights—especially Article 11, for torture, inhuman and degrading treatment are absolutely abominable in law under all circumstances.

### **Article 13(1): Arrest**

Article 13(1) of the Constitution provides as follows:

*"No person shall be arrested except according to procedure established by law.  
Any person arrested shall be informed of the reason for his arrest."*

This Article insists upon two fundamental requirements in making an arrest. Firstly, it provides in no uncertain terms that an arrest may only be made "according to procedure established by law". Secondly, it further requires that a person be given reasons for his arrest. Section 23(1) of the *Code of Criminal Procedure Act, No. 15 of 1979* once again insists upon this Constitutionally recognized requirement of giving reasons for the arrest.

Police officers are required to act strictly within the parameters of law in effecting arrests. Here, the words 'according to procedure established by law' means, of course, according to the procedure set out in any specific written law established for the purposes of regulating the manner in which an arrest can be made, and, primarily with regard to the instant case, the *Code of Criminal Procedure Act, No. 15 of 1979*.

Before deciding whether there had been an illegal arrest, it is necessary to determine whether there had, in fact, been an arrest.

It is well established in our law by cases such as ***Namasivayam v. Gunawardena* [1989] 1 Sri LR 394** and ***Piyasiri v. Fernando, ASP* [1988] 1 Sri LR 173**, that an arrest can take place even without physical confinement. In the instant case, this question does not trouble us as the Respondents themselves have not denied arresting the Petitioner. The position held by the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents was that they had arrested and detained the Petitioner according to the provisions of the law using minimum force. [Paras 5 and 6 of the Statement of Objections of 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> Respondents dated 6<sup>th</sup> December 2011].

The procedure with regard to arresting a person without a warrant is set out in Chapter IV B (Sections 32-43) of the *Code of Criminal Procedure Act, No. 15 of 1979*. Section 32 therein states as follows:

- (1) *"Any peace officer may without an order from a Magistrate and without a warrant arrest any person -*
- (a) who in his presence commits any breach of the peace;*
  - (b) who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned;*
  - (c) having in his possession without lawful excuse (the burden of proving which excuse shall lie on such person) any implement of house-breaking;*
  - (d) who has been proclaimed as an offender;*

- (e) *in whose possession anything is found which may reasonably be suspected to be property stolen or fraudulently obtained and who may reasonably be suspected of having committed an offence with reference to such thing;*
- (f) *who obstructs a peace officer while in the execution of his duty or who has escaped or attempts to escape from lawful custody;*
- (g) *reasonably suspected of being a deserter from the Sri Lanka Army, Navy or Air Force;*
- (h) *found taking precautions to conceal his presence under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence;*
- (i) *who has been concerned in or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in any act committed at any place out of Sri Lanka, which if committed in Sri Lanka would have been punishable as an offence and for which he is under any law for: the time being in force relating to extradition or to fugitive persons or otherwise liable to be apprehended or detained in custody in Sri Lanka."*

The Respondents insisted that there had been a reasonable complaint made and reasonable suspicion against the Petitioner, placing reliance upon the letter dated 10<sup>th</sup> October 2010, written by the villagers to the office of Deputy Inspector General, but bearing the name of the 5<sup>th</sup> Respondent, Deshabandu Tennakoon as the recipient—who was, in fact, a Superintendent of Police at the time material, as per his own admission by his Affidavit dated 05<sup>th</sup> October 2023 at paragraphs 1 and 5.

As held in ***Walahangunawewa Dhammarathana Thero v. Sanjeewa Mahanama*** SC FR 313/09, SC Minutes of 03.07.2013 at p. 89,

*"In order to arrest a person under this subsection [subsection (1) of section 32] there should be a reasonable complaint, credible information or a reasonable suspicion. Mere fact of receiving a complaint or information does not permit a*



peace officer to arrest a person. Police Officer upon receipt of a complaint or information is required to commence investigations and ascertain whether the complaint is a reasonable complaint, the information is credible or the suspicion is reasonable before proceeding to arrest a person." (Emphasis added)

In **Channa Pieris v. Attorney-General [1994] 1 Sri LR 1 at p. 46**, His Lordship Amerasinghe J states as follows,

*"A reasonable suspicion may be based either upon matters within the officer's knowledge or upon credible information furnished to him, or upon a combination of both sources. He may inform himself either by personal investigation or by adopting information supplied to him or by doing both, as the third respondent suggests he did in the matters before us, and as it was the case in Ragunathan v. Thuraisingham [SC Application 158/88 - SC Minutes of 23.08.89] A suspicion does not become "reasonable" merely because the source of the information is creditworthy. If he is activated by an unreliable informant, the officer making the arrest should, as a matter of prudence, act with greater circumspection than if the information had come from a creditworthy source. However, eventually the question is whether in the circumstances, including the reliability of the sources of information, the person making the arrest could, as a reasonable man, have suspected that the persons were concerned in or committing or had committed the offence in question"*

It was held by Kulatunga J in **Gamlath v. Neville Silva and Others [1991] 2 Sri LR 267 at p. 274**, citing **Muttusamy v. Kannangara 52 NLR 324 at 327** that,

*"[A] suspicion is proved to be reasonable if the facts disclose that it was founded on matters within the police officer's own knowledge or on the statements made by other persons in a way which justify him giving them credit"*

Having referred to some of the aforementioned authorities, Aluwihare J in **Ganeshan Samson Roy v. M.M. Janaka Marasinghe and Others S.C (F/R) 405/2018, SC Minutes of 20.09.2023 at p. 11** opined as follows:

*"Police officers cannot mechanically make an arrest upon a mere complaint received, without forming the opinion that the allegation is credible. Thus, a police officer is required to make necessary investigations, unless the facts are obvious, to verify whether the complaint is credible or whether the information provided is reliable. An arrest upon a general or vague suspicion would lead to significantly abridging the personal liberties guaranteed to a person by the Constitution..."*

However, if we were to stretch this logic irrationally, that could prove counterproductive and pernicious towards the legitimate goals of the criminal justice system. In this regard, Amerasinghe J in **Channa Pieris v. Attorney-General [1994] 1 Sri LR 1 at p. 46** further explicated as follows:

*...the officer is not required to have reasonable grounds to believe. As Dias J. pointed out in Buhary v. Jayaratne [(1947) 48 NLR 224] "believe" is much stronger than "suspect" and involves the necessity of showing that a reasonable man must have felt convinced in his mind of the fact in which he believed. (See per Seneviratne J. in Withanachchi v. Cyril Herath and others [SC 144-45/86 - SC Minutes 01.07.88]. However the officer making an arrest cannot act on a suspicion founded on **mere** conjecture or **vague** surmise. His information must give rise to a **reasonable** suspicion that the suspect was concerned in the commission of an offence for which he could have arrested a person without a warrant. The suspicion must not be of an uncertain and vague nature but of a positive and definite character providing reasonable ground for suspecting that the person arrested was concerned in the commission of an offence."*

It is to be noted that the aforementioned letter dated 10<sup>th</sup> October 2010 addressed by name to the 5<sup>th</sup> Respondent marked 'Rx(1)' is an anonymous letter. It is signed by the "aggrieved villagers/neighbours". As such, the credibility of the information contained

therein is most certainly questionable. The officers must in such instances be prudent to conduct an investigation so as to confirm such information before acting on the same. However, the Respondents have failed to produce sufficient evidence to satisfy this Court that they had conducted an appropriate investigation prior to instigating the arrest of the Petitioner.

It was most certainly reasonable for then Superintendent of Police, T.M.W.D. Tennakoon, to direct an investigation with regards to the complaint so received, as it is the duty of a police officer to duly respond to such complaints, even when they are anonymous. However, once such an order or direction is made by a senior police officer, as I shall discuss in detail later on, they are duty-bound to ensure that such directions are properly carried out, with due regard to the procedure established by law.

It appears in the instant case that the Respondents have failed to sufficiently investigate the anonymous complaint made. I do not wish to state, by any means, that police officers should refrain from acting on anonymous complaints, but rather that an officer must take some steps to confirm the legitimacy of such complaints. While wide powers are vested with police officers to carry out their investigations, when it comes to any act which may impinge upon the individual liberties of a person, officers must observe utmost caution. The officers in question could have, at the least, interviewed some persons living in the area and recorded their statements so as to verify the veracity of the allegations levelled against the Petitioner and several others by the anonymous letter and the unnamed informant. However, no evidence has been produced before this Court by the Respondents to establish that such actions have been taken. Therefore, in my view, it cannot be said that the Respondents have acted upon a *reasonable* complaint or upon *reasonable* suspicion as required by section 32 of the *Code of Criminal Procedure Act, No. 15 of 1979*.

## **Informing the Reasons for Arrest**

Apart from Article 13(1) itself, section 23(1) of the *Code of Criminal Procedure Act, No. 15 of 1979*. Section 23(1) provides as follows:

*"In making an arrest the person making the same shall actually touch or confine the body of the person to be arrested unless there be a submission to the custody by word or action and shall inform the person to be arrested of the nature of the charge or allegation upon which he is arrested.*

As Sharvananda J, as His Lordship was then, stated in ***Mariadas Raj v. Attorney-General FRD(2) 397 at pp. 402-404,***

*"The law is solicitous for the freedom of the individual and has therefore enacted that the person who is arrested is entitled to know the reason for his arrest and has elevated this right into a fundamental right with the attendant sanctions for its breach... Article 13(1) embodies a rule which has always been regarded as vital and fundamental for safeguarding the personal liberty in all legal systems where the Rule of Law prevails... The purpose of this rule is to afford the earliest opportunity to the arrested person to remove any mistake, misapprehension or misunderstanding in the mind of the arresting official and disabuse his mind of the suspicion which actuated the arrest."*

I unreservedly echo this astute observation of His Lordship. As apparent from the rationale so set out, the requirement of informing the reasons for one's arrest also marks a vital step in the investigation process. Even where an officer arrests the correct person, who is subsequently convicted by a court of law, if such person is not informed of the reason for his arrest at the time of arrest, that amounts to a violation of Article 13(1) of the Constitution, without prejudice to such conviction. Misidentifications are common enough that it is vital for law enforcement authorities to afford any person being arrested an opportunity to explain themselves.

In the instant case, as stated by the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents in their joint Statement of Objections dated 06<sup>th</sup> December 2011, the Petitioner and 3 others were arrested by the 2<sup>nd</sup> Respondent [para 6] while the Respondents were on police patrol, pursuant to the investigation which commenced under the order and instructions of the 5<sup>th</sup> Respondent [para 4].

As relayed by the Petitioner, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, while the three-wheeler was in motion, forced themselves into the same three-wheeler in which the Petitioner was travelling compelling the driver to take them to the cemetery, where the first acts of torture were recorded and was continuously questioned and compelled to admit to having committed or been associated with the several thefts in the area, particularly the theft of the house of the 4<sup>th</sup> Respondent. The law requires police officers to inform a person being arrested of the reason for the arrest with such precision so as to enable the arrestee to offer an explanation. There is no indication of such reasons being provided to the Petitioner as the three-wheel driver was compelled to drive towards the cemetery.

For the aforementioned reasons, the Court finds that there has been a violation of the Petitioner's fundamental rights as guaranteed under Article 13(1).

### **13(2): Subsequent Detention and Production Before Magistrate**

To address the question as to whether the Petitioner has been produced before a Magistrate within the legally prescribed time period, it is vital to determine the exact time of arrest. The version of events submitted by the Petitioner and the Respondents greatly differed in this regard.

### **Irregularities as to the date of arrest**

The Petitioner states in his Petition that he was taken to the Dambara Cemetery where the chain of torturous acts began, as narrated by the Petition dated 15<sup>th</sup> December 2010. However, all Respondents, particularly the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents by their Statement of Objections and Written Submissions and the 5<sup>th</sup> Respondent by his

Affidavit dated 05<sup>th</sup> October 2023, strongly held the position that the arrest was in fact made on 17<sup>th</sup> December 2010. The only evidence presented by the Respondents to substantiate this position is the copies of the “හඳිසි ඇමතුම් අංශයේ දෛනිකව පවත්වාගෙන යනු ලබන හඳිසි ඇමතුම් තොරතුරු පොත” submitted as part and parcel of the Statement of Objections, marked ‘Rx(2)’.

However, I wish to place on record that, having perused the said true copies of the purported ‘Information Book’ submitted by the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents marked ‘Rx(2)’, it is observable that the arrest of the Petitioner was, in fact, recorded to have been made on 18<sup>th</sup> December 2010, and not on 17<sup>th</sup> December 2010 as claimed in the Statement of Objections of the Respondents. This in itself is sufficient to construe that there are irregularities in the Respondent’s narration of the facts and circumstances of the instant case, significantly weakening their position.

*Per contra*, the Petitioner relied on the affidavits of several other persons to substantiate his position, which provided this Court with a broader picture of what had transpired.

Accordingly, reproduced below [*verbatim* for accuracy] are several of the averments in the Affidavit of the Patrick Aarachchige Nimal Perera (hereinafter referred to as “Nimal Perera”), produced marked ‘P12’, annexed to the Counter Affidavit of the Petitioner, which concern the factual matrix of the instant case, along with an approximate translation of each averment. Nimal Perera was another who was subjected to torture along with the Petitioner during the period in question and was a party previously known to the Petitioner.

“3. 2010. 12.15 වන දින රාත්‍රී 9.00-10.00 පමණ මගේ ජංගම දුරකථනයට රංජිත් සුමංගල යන අයගේ දුරකථනයෙන් ඇමතුමක් ලැබුණා. කතා කළ අය පවසා සිටියේ මට ටිකක් වැඩිවෙලා රබර් වත්තේ වැටිලා ඉන්නවා. පොඩ්ඩක් වරෙන් මාව ගෙදරට දන්න යනුවෙනි. නමුත් ඒ කටහඬ රංජිත්ගේ නොවන බව මා හඳුනා ගත් බවත්, ඒ නිසා මම ත්‍රිවිල් පාර්ක් එකේ ඉන්න මගේ යාච්චනට කෝල් කරලා ඒ බව දැනුම් දුන් බවත් ප්‍රකාශකර සිටිමි.

*[3. I state that on 2010.12.15 around 9:00-10:00 p.m. I received a phone call from one Ranjith Sumangala, stating that he had a little too much to drink and had fallen down in the Rubber estate. I was asked to come and take him home. However, I noticed that the voice was not that of the said Ranjith, and therefore I called my friends at the three-wheel park informed them of this.]*

4. එවිට ඔවුන් කිව්වේ, අපි දැන් පොලිසියට ඇවිල්ලා ඉන්නේ, රංජිතයි වන්දනයි නෑ ඒ ගැන පැමිණිලි කරන්න. පොඩ්ඩක් ඉන්න අපි රඹර් වත්තට එන්නම්, කවුද ඉන්නේ කියලා බලන්න කිව්වා. ඊට පස්සේ මමත් ත්‍රිවිල් පාර්ක් එකේ යාච්චෝත් රඹර් වත්තට ගිය බවත්, කවුරුත් හිට්ගේ නැති බවත්, පසුව මම ගෙදර ගොස් නිදා ගත් බවත් ප්‍රකාශකර සිටිමි.

*[4. I state, thereafter what they said was that they were at the police station at that point, Ranjith and Chandana were missing, and have come to file a complaint about it. I was told to wait for a while and that they would come to the rubber estate to see who is there. After that, I went to the rubber estate with my friends of Three-wheel Park, and no one was there, and after that I went home and slept.]”*

Upon Nimal Perera informing his friends at the three-wheel park, the same informed Nimal Perera that they were down at the Police station to file a complaint, as the said Ranjith and one Chandana were missing—Chandana being the driver of the three-wheel which the Petitioner had travelled in the same morning. The friends at the three-wheel park informed Nimal Perera that they would come to Rubber Estate in a short while. When they had arrived at the Rubber estate, there was no one to be found. Nimal Perera had gone home afterwards.

Varusha Hannedige Suwinitha Kumari (hereinafter referred to as “Suwinitha Kumari”), the wife of the Petitioner, in her Affidavit dated 25<sup>th</sup> March 2011, produced marked ‘P3’, annexed to the Petition of the Petitioner, states as follows:

“3. 2010. 12. 15 වන දින මාගේ ස්වාමිපුරුෂයා වැඩට යන බව පවසා උදේ නිවසින් පිටව ගිය බව ප්‍රකාශකර සිටිමි.

*[3. I state that on 15.12.2010 my husband left the house in the morning saying that he was going to work.]*

4. එදින රාත්‍රී 9.00 ට පමණ ස්වාමිපුරුෂයාගේ මිතුරෙකු දුරකථනයෙන් කතාකර, ස්වාමිපුරුෂයා ගෙදර ආවාද කියා විමසා සිටියා. මා නැතැ කිව්වා. පසුව මා සෑම තැනම ස්වාමිපුරුෂයා පිළිබඳව සෝදිසි කළ බවත්. නමුත් ඔහු පිළිබඳ තොරතුරක් දැනගැනීමට නොහැකි වූ බවත් ප්‍රකාශකර සිටිමි.

*[4. I state that on the same day at about 9:00 p.m., a friend of my husband called over the phone questioning if my husband had come home after work that day. I said no. Thereafter I went everywhere to inquire regarding my husband's whereabouts but was not able to find anything.]*

5. නැවත එදින රාත්‍රී 11.00 පමණ වන්දන යන අයගේ මල්ලි ඇතුළු තිදෙනෙකු අපගේ නිවසට පැමිණියා. රංජිත් ආවාද කියා විමසා සිටියා. වන්දන යන අයදු නිවසට පැමිණියේ නැති බව ඔවුන් පවසා සිටි බවත්, මාගේ ස්වාමිපුරුෂයා වැඩට ගොස් ඇත්තේ වන්දන නමැති අයගේ ත්‍රීරෝද රථයෙන් බවත් ප්‍රකාශකර සිටිමි.

*[5. I state that on the same day at around 11.00 p.m. 3 others including the younger brother of one Chandana came to our house. They asked whether Ranjith had come home. Also mentioned that said Chandana too had not come home. I also state that my husband had gone to work that morning in said Chandana's three-wheeler.]*

6. 2010. 12. 16 වන දින උදේ 6.00 පමණ ගෙදර කවුදු කියා කතා කරනවා ඇසී. මා බලන විට පිරිසක් දොරකඩ සිටියා. පොලිස් නිල ඇඳුමින් තිදෙනෙකු පමණ සිටි අතර, සිවිල් ඇඳුමින් තවත් සිව් දෙනෙකු පමණ සිටියා. එම පිරිස සමග අසල්වාසී අයෙකු වන අපිත් වනසුන්දර නමැති අයත් සිටි බවත් ප්‍රකාශ කර සිටිමි.

*[6. I state that on 16.12.2010 at 6.00 a.m. having heard someone calling asking 'who is home'. I found a group of people at our doorstep when checked. In police uniform there were around three and in civil clothing there were around four. With that group a neighbour named Ajith Wanasundara was also there.]*



7. ඒ අතර. මාගේ ස්වාමීපුරුෂයාද සිටි අතර, ඔහුගේ අත් පිටුපසට කර අත්වලට මාංවු දමා තිබුණි. අඳුනා ගන්න බැරි තරමට ඔහුගේ මුහුණ ඉදිමි තිබුණි. කෙළින් සිටගැනීමට නොහැකි තත්වයේ ඔහු සිටි බවත්, හරිහැටි සිහි කල්පනාව නොතිබුණු බවත් ප්‍රකාශ කර සිටිමි.

*[7. I state that my husband was also present among them. His hands were handcuffed behind his back. His face was swollen to the point of being unrecognizable. He was unable to stand straight and did not seem to be fully conscious.]”*

*[Approximate translation and emphasis added]*

Furthermore, Devanarayanage Rathna Deshapriya (hereinafter referred to as “Rathna Deshapriya”), the employer of the Petitioner, under whom the Petitioner was employed at the time material, in his Affidavit dated 04<sup>th</sup> March 2011, produced marked ‘P1’ annexed to the Petition of the Petitioner, states as follows:

“5. රංජිත් රිංකරිත් වැඩ පුරුදු වීමට මා සමග එක්වූයේ 2004 වසරේදී පමණය. එතැන් පටන්, ඔහු මා සමග එක්ව අඛණ්ඩව වැඩ කරන බවත් ප්‍රකාශ කර සිටිමි.

*[5. Ranjith initially joined to train under me as a tinsmith in 2004, and from then onwards he continued to be consistently employed under me.]*

6. 2010. 12. 14 දිනදී, ඔහු මා සමග වැඩ කරනු ලැබුවේ කහවල, ගොරොක්ගොඩ නිවසක කැරවැන් වැනි රථයක රිංකරිත් වැඩ කළ බවත්, ඔහුට දෛනික වැටුපක් ලබාදුන් බවත් ප්‍රකාශ කර සිටිමි.

*[6. I state that on 14.12.2010, Ranjith did some work with me on a caravan at a house in Kahawala, Gorokgoda, and was paid daily wages.]*

7. 2010. 12. 15 වන දින රංජිත් වැඩට ඒමට පරක්කු වූ බවත්, ඒ අවස්ථාවේ ඔහුට මා දුරකථනයෙන් කතා කළ බවත්. එවිට ඔහු පවසා සිටියේ පරක්කු වුණා, ඊළඟ බස්වකේ හරි ඉක්මණින් එන බව පවසා සිටි බව ප්‍රකාශ කර සිටිමි.

*[7. I state that on 15.12.2010, Ranjith got late to work, and at that instance, I called him on the phone and he stated that he got late and assured me that he would try to arrive at work as soon as possible at least in the next bus.]*

8. 2010. 12. 15 වන දින රාත්‍රියේ වන්දන යන අයගේ මල්ලි මට දුරකථනයෙන් කතා කර, රංජිත් හා ඔහුගේ සොහොයුරා පැමිණ ඇති බවත් නමුත් රෑ වනතුරු ගෙදර පැමිණ නැති බවත්, මංජුල එගොල්ලන්ව කොතේ හරි යැව්වද කියා මගෙන් විමසා සිටි බවත් ඒ අවස්ථාවේ මා ඔහුට අද රංජිත් වැඩට ආවේ නැති බව ඔහුට කියූ බව ප්‍රකාශ කර සිටිමි.

*[8. I state that on the night of 2010.12.15 the younger brother of one Chandana spoke to me over the phone, stating that though Ranjith and his brother had come from there, they had not returned home till late, and asked me whether Manjula had sent them somewhere. At that point, I told him that Ranjith didn't come to work today.]*

9. පසුව මා හා අනෙකුත් මිතුරන් රංජිත් හා වන්දන ගැන සෙවූ බවත්, පාදක්ක පොලිසියටද ගොස් මොවුන් ගැන සොයා බැලූ බවත් නමුත් තොරතුරක් දැනගන්නට නොලැබුණු බවත් පසුව, මිරිහාන පොලිසිය විසින් රංජිත්වත් වන්දනවත් අත්අඩංගුවට ගෙන ඇති බව වන්දනගේ මල්ලිගෙන් දැනගන්නට ලැබුණු බවත් ප්‍රකාශකර සිටිමි

*[9. I state that thereafter some of my other friends and I went on a search for Ranjith and Chandana, and even went to the Padukka Police Station but were unable to find any information. Later, we got to know from the brother of the said Chandana that Ranjith and Chandana had been arrested by the Mirihana Police.]*

10. 2010.12.16 වන දින උදේ මා රංජිත්ගේ නිවසට පැමිණි බවත්, එදින උදේ 6.00 විතර රංජිත්ව ගෙදරට ගෙනවිත් නැවත පොලිසිය රැගෙන ගිය බව ඔහුගේ බිරිඳගෙන් දැනගන්නට ලැබුණු බව ප්‍රකාශකර සිටිමි.

*[10. I state that on 16.12.2010, I visited Ranjith's house, and I got to know from his Wife that around 6.00 a.m. Ranjith was brought to the house and taken away again by the Police.]"*

The Petitioner had also mentioned at his medical examination by the Judicial Medical Officer on 27<sup>th</sup> December 2010, that he was taken into custody on 15<sup>th</sup> December 2010, and was subjected to torture since then. The Judicial Medical Officer concludes in his report that the injuries are consistent with this history narrated by the Petitioner.

Therefore, having considered the totality of the above evidence presented by both Parties, the affidavits of the Petitioner which corroborate the fact that the Petitioner was taken in by the Police on 15<sup>th</sup> December 2010, and the irregularities in the “හදිසි ඇමතුම් අංශයේ ලෛනිකව පවත්වාගෙන යනු ලබන හදිසි ඇමතුම් තොරතුරු පොත” excerpts submitted by the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents, it can be concluded that the Petitioner was, in fact, taken into custody by the Police on 15<sup>th</sup> December 2010, and was thus in police custody up until 22<sup>nd</sup> December 2010, on which date he was presented before the Avissawella Magistrate.

#### **Code of Criminal Procedure, Act Nos. 15 of 2005 and 42 of 2007**

In this regard, it is also necessary to duly appraise the position taken by the Respondents in defence.

*Article 13(2) states that “[e]very Person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent court according to procedure established by law and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law.”*

Sections 36, 37 and 38 of the *Code of Criminal Procedure Act, No. 15 of 1979* deal with the detention of persons arrested without a warrant.

Section 36 states that,

*"A peace officer making an arrest without warrant shall **without unnecessary delay** and subject to the provisions herein contained as to bail **take or send the person arrested before a Magistrate** having jurisdiction in the case."*

*[Emphasis added]*

Section 37 provides that,

*"Any peace officer **shall not detain in custody or otherwise confine** a person arrested without a warrant **for a longer period than under all the circumstances of the case is reasonable**, and such **period shall not exceed twenty-four hours** exclusive of the time necessary for the journey from the place of arrest to the Magistrate."*

*[Emphasis added]*

The core issue of law which arises in the instant case is what was raised in the Written Submissions of the Attorney-General on behalf of the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents, and by the 5<sup>th</sup> Respondent in his Affidavit tendered on 27<sup>th</sup> September 2023.

The position thus held by Respondents is that the act of arresting the Petitioner was done pursuant to the *Code of Criminal Procedure Act, No. 15 of 2005*, particularly section 2 which provides as follows:

*"Notwithstanding anything contained in the Code of Criminal Procedure Act, No. 15 of 1979 other than the provisions of section 43(A) of that Act, any peace officer shall not detain in custody or otherwise confine a person **arrested without a warrant** for a longer period than under all the circumstances of the case is reasonable, and **such period shall not exceed twenty - four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate:***

*Provided that where the arrest is in relation to an offence as is specified in the Schedule to this Act, such period of detention in police custody may, on production before him of the person arrested and on a certificate filed by a police officer not below the rank of the Assistant Superintendent of Police submitted prior to the expiration of the said period of twenty - four hours, to the effect that it is necessary to detain such person for the purpose of further investigations, **be extended upon an order made in that behalf by the Magistrate for a further period not exceeding twenty - four hours, so however that the aggregate period of detention shall not exceed forty-eight hours.**"*

*[Emphasis added]*

As mentioned previously, the Respondents state that the Petitioner was arrested in the course of a purported investigation into the thefts in the Moragahahena-Padukka area, and such investigations were under the order and instructions of the 5<sup>th</sup> Respondent, and accordingly, the Respondents contend that the Petitioner was taken into custody in compliance with the abovementioned provisions.

Before considering whether the above provisions have been complied with, I wish to place on record that the *Code of Criminal Procedure Act, No. 15 of 2005* which came into effect from 31<sup>st</sup> May 2005, by virtue of section 7 provides for the time frame within which the Act would be effective as follows.

*"The provisions of this Act shall be in operation for **a period of two years from the date of its coming into operation.**"*

*[Emphasis added]*

Thus, the *Code of Criminal Procedure Act, No. 15 of 2005* remained valid only until 31<sup>st</sup> May 2007, unless further extended by any preceding written law or Gazette Extraordinary under the Order of the Minister of Justice. Accordingly, the duration was further extended by another two years by the *Code of Criminal Procedure (Amendment) Act, No. 42 of 2007* which came into effect on 09<sup>th</sup> October 2007, by virtue of section 7(1) read along with section 8 of the said Act, as provided below.

*"7. (1) The provisions of this Act shall be in operation for **a period of two years** commencing from the thirty-first day of May, 2007.*

*8. Any act or thing done for which enabling provision is made under this Act, during the period commencing on the thirty-first day of May, 2007 and ending on the date of the coming into operation of this Act, shall be deemed to have been done validly."*

*[Emphasis added]*

Thus, the *Code of Criminal Procedure (Amendment) Act, No. 42 of 2007* was to remain valid only until 31<sup>st</sup> May 2009, unless further extended by any preceding written law or Gazette Extraordinary under the Order of the then Minister of Justice. Thereafter, it was not renewed nor extended up until the events of the instant case transpired which was on 15<sup>th</sup> December 2010. During this period, there was no such Act in operation which would validate the acts done during 15<sup>th</sup>-22<sup>nd</sup> December.

The next extension was done by **Gazette Extraordinary No. 1708/5 - 30<sup>th</sup> May 2011**, which further extended the duration of application of the *Code of Criminal Procedure (Amendment) Act, No. 42 of 2007* to a further period of two years, commencing from 31<sup>st</sup> May 2011. Thereafter, the *Code of Criminal Procedure (Special Provisions) Act, No. 02 of 2013* came into effect from 06<sup>th</sup> February 2013, which provided for an amended provision under section 2, as follows.

*"Notwithstanding anything contained in the Code of Criminal Procedure Act, No. 15 of 1979 other than the provisions of section 43 A of that Act, any peace officer shall not detain in custody or otherwise confine a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable and such period shall not exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the presence of the Magistrate:*

*Provided that, where the arrest is in relation to an offence as is specified in the Schedule to this Act, such period of detention in police custody may, on production before him of the person arrested and on a certificate filed by a police officer not below the rank of the Assistant Superintendent of Police submitted prior to the expiration of the said period of twenty-four hours, to the effect that it is necessary to detain such person for the purpose of further investigations, **be extended upon an Order made in that behalf by the Magistrate for a further period not exceeding twenty-four hours, so however that the aggregate period of detention shall not exceed forty-eight hours:***

*Provided further, that any person arrested and **detained for a further period shall be afforded an opportunity to consult an Attorney-at-Law of his choice and to communicate with any relative or friend of his choice** during the period of such detention."*

*[Emphasis added]*

However, the law as it stands today under the *Code of Criminal Procedure (Special Provisions) Act No. 02 of 2013*, section 8 provides as follows.

*"8. Where during the period commencing on May 31, 2009 and ending on the date of the coming into operation of this Act, any power, duty or function was exercised, performed or discharged by any person to whom such power, duty or function was assigned by or under Criminal Procedure (Special Provisions) Act, No. 42 of 2007, such power, duty or function which was so exercised, performed or discharged, shall, notwithstanding that the provisions of the said Criminal Procedure (Special Provisions) Act, No. 42 of 2007 was not in operation during the that period, be deemed to have been validly exercised, performed or discharged, as if the said Act was in operation during such period:"*

The effect of the above provision is to retrospectively give effect to any acts between 31<sup>st</sup> May 2009 to 6<sup>th</sup> February 2013, despite there not being any express written law to extend the time duration at the time in suit in the instant case. The 5<sup>th</sup> Respondent by

his Affidavit tendered on 27<sup>th</sup> September 2023, relies on the aforementioned provisions to justify the detention of the Petitioner from 15<sup>th</sup> to 22<sup>nd</sup> December 2010, or, as was fabricated by the Respondents, from 17<sup>th</sup> to 22<sup>nd</sup> December 2010. This Court accepts that the Respondents have relied upon the correct legal provisions, but they have failed in its application in the instant case. Regardless of whichever date the arrest was made on, by virtue of section 2, no person can be detained in the custody of the police without being presented before the Magistrate for a time duration exceeding 24 hours.

In the instant case, the first time in which the Petitioner and the 3 others tortured and kept in custody were presented before the Acting Magistrate was on 19<sup>th</sup> December 2010 which was well over the 24-hour time limit. It was thereafter that a further extension was granted by the Acting Magistrate, to another 48 hours, during which period the Petitioner was not allowed to consult an Attorney, nor was he allowed to communicate with his wife and friends who had arrived at the Mirihana Police station but were denied access to him. This is a clear violation of the procedure set out above.

As such, it is palpably clear that the Petitioner has not been produced before the Magistrate as required by law. Therefore, I find that the Petitioner's fundamental rights under Article 13(2) of the Constitution have also been violated by the conduct of the Respondents.

### **Article 11: Torture, Inhuman and Degrading Treatment**

Article 11 of the Constitution provides that,

*"No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."*

Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights, and Article 3 of the European Convention on Human Rights similarly prohibit torture and cruel, inhuman or degrading treatment or punishment in virtually identical terms.



Amerasinghe J, in **W.M.K. De Silva V. Chairman, Ceylon Fertilizer Corporation (1989) 2 SLR 393 at p. 405**, explains the ambit of Article 11 of the Constitution as follows:

*"In my view Article 11 of the Constitution prohibits any act by which severe pain or suffering, whether physical or mental is, without lawful sanction in accordance with a procedure established by law, intentionally inflicted on a person (whom I shall refer to as 'the victim') by a public official acting in the discharge of his executive or administrative duties or under colour of office, for such purposes as obtaining from the victim or a third person a confession or information, such information being actually or supposedly required for official purposes, imposing a penalty upon the victim for an offence or breach of a rule he or a third person has committed or is suspected of having committed, or intimidating or coercing the victim or a third person to do or refrain from doing something which the official concerned believes the victim or the third person ought to do or refrain from doing, as the case may be."*

This is in line with Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to which Sri L is a State Party since 1994. Accordingly, Article 1 provides for the definition of Torture as follows:

*"...torture means any act by which severe pain or suffering, whether physical or mental is intentionally inflicted on a person for such purposes as **obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed**, intimidating or coercing him or a third person, or any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person*

*acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”.*

*[Emphasis added]*

Atukorale J, in ***Amal Sudath Silva v. Kodituwakku Inspector of Police and Others*** (1987) 2 SLR 119 at p. 126, observing the universality of this right, states,

*“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 torture some, 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”.*

*[emphasis added]*

As has clearly been set out by His Lordship, this right is one which applies universally, without restrictions, to all persons, from saints to the most notorious. Article 11 encapsulates one of the most basic elements of human dignity, the principle which underpins all fundamental rights. As there can never be a justification for torture, this Court is only troubled with deciding whether the Petitioner has been subjected to such

treatment which can be construed as torture, cruel, inhuman or degrading as contemplated in Article 11 by the Respondents.

In making these decisions, the evidence presented by the Petitioner must be considered in light of other corroborative evidence—primarily the medical reports assessing the physical and mental well-being of the Petitioner after the incident in question.

To summarize what has been provided in the factual matrix above, the Petitioner provides within the averments of the Petition dated 28<sup>th</sup> March 2011 a detailed description of the physical harm caused by the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents, primarily having hit him on several occasions with ‘three-wheeler belts’, handcuffed and tied to beams, suffocating him, beaten him physically, and having tied a bag of chilli powder over the Petitioner’s head and compelling him to inhale it.

In his Medico-Legal Report of the Petitioner, Dr. Ajith Jayasena, Judicial Medical Officer, of the District General Hospital, Matale, makes note under Section 2.1 of the said Report of the Injuries identified having examined the Petitioner on 27<sup>th</sup> December 2010 which was a few days after the incident in question. Accordingly, the JMO makes note of several healing abrasions along the back of the Petitioner’s neck and chest, and across his arms, and of several resolving contusions on the Petitioner’s arm, back of his chest and abdomen. The report concludes that the injuries identified are consistent with the medical history as narrated by the Petitioner, and special attention was drawn to the injuries noted under section 2.1 No. 11 and 13 which are consistent with the Petitioner being suspended with a ligature at wrist joint. This medical report most certainly corroborates the averments as to the torturous acts committed against the Petitioner.

Furthermore, the said report concludes that the injuries identified in the medical examination are clearly consistent with the history given by the Petitioner. The Petitioner has further been diagnosed as suffering from Post Traumatic Stress Disorder with depressive features, having left ulnar claw with both ulnar and median nerve

damage, suffering from injury to spinal nerves and has restricted movement of the neck and also the possibility of left-side mild ulnar nerve lesion without gross axonal degeneration and neuropraxia, all of which clearly indicate the gravity of the injuries suffered by the Petitioner at the hands of the said Respondents as complained of through this application.

Once again, I wish to place emphasis on the Affidavit of Nimal Perera, marked "P12", annexed to the Counter Affidavit of the Petitioner, which also establishes the torture endured by the Petitioner and other 3 detainees in the hands of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents. Nimal Perera was taken in by the Police on 16<sup>th</sup> December 2010. The said affidavit states as follows:

“15. පසුදු උදේ එනම් 2010. 12. 17 වන දින උදේ එම ගොඩනැගිල්ලේ පිටුපස තිබෙන පරණ ගොඩනැගිල්ලකට මාව ගෙන ගියා. එක ඇතුළේ ගුවන්ඩි එකක් තිබුණා. ගුවන්ඩි එක වටේ කොන්ක්‍රීට් කාමර තිබුණා. පොලිස් නිලධාරීන් 6-7 ක් එතර හිටියා. ජනේලෙයි උළුවස්සයි අතරින් පරාලයක් දොලා බැඳලා නිරුවත් කර මාව එල්ලුවා. මගේ මල්ලි, රංජිත් හා නිශාන්ත එතන හිටියා. එතන රබර් හෝස් එකක්. ත්‍රිවිල් රබර් පටියක්. පොල්ලක් ද තිබුණු බවත් ප්‍රකාශකර සිටිමි.

*[15. I state that the next morning, that is, on the morning of 17.12.2010, I was taken to an old building located behind the said building. Inside of the said building, there was a ground. There were concrete rooms around the ground. There were about 6-7 police officers. **They strung a rafter between the windows and the door and stripped me naked and suspended me.** My younger brother, Ranjith and Nishantha were there. There was a rubber hose, a three-wheel rubber band and also a stick.]*

16. භාතිය ජයසිංහ නිලධාරියා මට කිව්වා, වේලාසනින් කියන්නේ. ගූට් කන්නෙ නැතුව කේස් 21 තියෙනවා භාර ගනින් කියලා. මම කිව්වා මම මුකුත් දන්නෙ නෑ කියලා. එවිට එහි සිටි අනෙක් නිලධාරීන් 6 දෙනාම වරින් වර ත්‍රිවිල් රබර් පටියෙන් පහර දුන්නා. පහර දෙන ගමන් කිව්වා, දැන් ධාර ගනින් කියලා. මම කිව්වා රංජිත් කිව්වා

නම් එයා ගිහින් ඇති. මම දන්නේ නෑ කියලා. එවිට භාතිය ජයසිංහ, ගුටි නොකා ඇත්ත කියපං කියලා පවසා සිටි බව ප්‍රකාශ කර සිටිමි.

*[16. I state that the officer namely, Bhathiya Jayasinghe told me, I am telling you this earlier, there are 21 cases, admit them without getting beaten. I said I don't know anything. Then the other 6 officers who were there, thrashed me with a three-wheel rubber band. While thrashing, they kept asking to admit. I said that if Ranjith had told them anything, he must have gone and that I don't know. Then Officer namely, Bhathiya Jayasinghe asked to tell the truth without getting beaten]*

17. ඊට පස්සේ රංජිත්වත් එතනට ගෙනාවා. දැන් මෙයාගෙන් අහපන් කියලා මට කිව්වා. මම රංජිත්ගෙන් ඇහුවා ඇයි බොරු කියන්නේ කියලා. මෙයා ගිහින් ඇති සර් මම දන්නෙහැ මෙයාගෙන්ම අහගන්න කියලා මම කිව්වා. පසුව රංජිත්වත් නිරුවත් කර, මාව බිමට බස්සවා රංජිත්ව එල්ලුව බව ප්‍රකාශකර සිටිමි.

*[17. I state that Ranjith was also brought there. They told me to ask him then. I asked Ranjith why he was lying. I said, "Sir, I don't know, if he has gone, ask him". Later, Ranjith was also stripped naked and I was taken down while Ranjith was suspended.]*

18. මගේ කකුල්දෙක බැඳලා ඔලුව පහතට දමලා එතන තිබුණු වතුර පොන්ඩ් එකට ඔබමින් හුස්ම ගන්න බැරුව දැගලන විට ගොඩට ගත්තා. නැවතත් එසේ කළා. මේ ආකාරයට අපි හතර දෙනාවම වරින්වර දැමීම බවත්, සවස 4.00 පමණ වන තුරු මේ ආකාරයෙන් අපට නොයෙක් වධහිංසා කළ බවත් ප්‍රකාශකර සිටිමි.

*[18. I state that, my legs were tied; my head was sunk and I was pressed into the pond of water and taken out when I was struggling to breathe. The same was repeated. I state that the 4 of us were repeatedly sunk into the water in turn in this way and we were subjected to various forms of torture in this manner until around 4:00 in the evening.]*

19. මිරිස් කුඩුයි. පෙට්‍රල් හා ෂොපින් බෑග් ගෙනාවා. ෂොපින් බෑග් වලට පෙට්‍රල් දෙලා මුණට ඇල්ලුවා හතර දෙනාටම ඒ විදිහට කලා. පසුව හතර දෙනාවම නිරවත් කොට, ලිංගේන්ද්‍රි වලට මිරිස්කුඩු දමා. හතර දෙනාටම මාරුවෙන් මාරුවට ලිංගික අපයෝජනයට ලක්කළ බවත් ප්‍රකාශ කර සිටිමි.

*[19. I state that chilli powder, Petrol and shopping bags were brought. Petrol was poured into the shopping bags and was held to all 4 of our faces. Then all four were stripped naked and our genitals were covered with Chillie Powder. All four were sexually abused in turn in this manner.]*

20. ඊට පසුව මාව නැවතත් එල්ලා බණ්ඩාර නමැති පොලිස් නිලධාරියාත් තවත් සුදු මහත උස වයසින් අවු: 25 ක් 30 ක් පමණ වන නිලධාරියෙකු කැමරා ෆෝන් දෙකකින් වීඩියෝ කලා, බණ්ඩාර නමැති නිලධාරියා ඔහුගේ ගර්ල් ෆ්‍රෙන්ඩ්ට එම වීඩියෝ බැලීමට යැවූ බවත්. එවිට ඇය දුරකථනයෙන් අනේ පව් මොනවද ඔය කරන වැඩ කියලා කිව්ව බවත් එවිට ඔහු මොකක්ද පව් කියලා විමසා සිටි බවත් ප්‍රකාශ කර සිටිමි.

*[20. I state that, thereafter, I was suspended again and the police officer namely, Bandara, and another well-built officer who had a fair complexion and was about 25 to 30 years old took videos with two camera phones. I state that the officer namely, Bandara sent such videos to his girlfriend. Upon seeing the videos, she said on the phone, "What a pity, what are you doing?" and then he responded by asking what was pity.]*

21. ඊට පසු මාව නැවතත් බිමට දමා හතර දෙනාටම ව්‍යායාම කරන්න කිව්වා. වටේ දුවන්න කිව්වා. දුවලා නාන්න කිව්වා. මම කිව්වා මට නම් බෑ මාව මැරෙයි කියලා. එවිට ඔහු කිව්වා. උඹ නෑවේ නැත්තං උඹව නාවනවා කියලා. පසුව අපිව වතුර ටැංකිය ප්‍රභව අරගෙන ගිහිල්ලා අපිට නාන්න කිව්වා. අපි අමාරුවෙන් නෑවා රංජිත්ගේ අතින් වතුර උස්සන්න බෑ කියලා කිව්ව බවත්, පසුව ඔහුව අපි නෑව්ව බවත්, නැවතත් ගුවන්ඩී එක ප්‍රභව ගෙනල්ලා අපිට ඇඳුම් වේලගන්න කිව්ව බවත් ප්‍රකාශකර සිටිමි.

*[21. I state that, after that, I was taken down and all four were asked to exercise and run around naked. Thereafter, we were asked to take a bath. I said that I couldn't, and it would kill me. Then he said. " If you don't bathe, we will forcefully*

*bathe you". Then they took us to the water tank and asked us to take a bath. we bathed with much difficulty. I do state that Ranjith told him that he could not lift the water from his hands, then we bathed him and they brought us back to the ground and ordered us to dry our clothes.*

22. ඇදුම් වේලාගත්තට පසු නැවතත් අර බිල්බිමට රැගෙන ගිහින් මාංචු දූලා මේසවල් යට වාඩිකර තැබුවා. එදා දවසේ අපට කන්න බොන්න කිසිම දෙයක් දුන්නේ නැහැ. පැනඩෝල් පෙත්ත ගානේ විතරක් දුන්නා. එදා රැන් අපි මේස යටට වෙලා හිටියා. එසේ සිටින විට උසස් නිලධාරියෙකු අපි සිටි තැනට ආවා. ඔහු එම නිලධාරීන්ගෙන් මොවුන් කවිද කියා විමසා සිටියාවිට එම නිලධාරීන් කිව්වා සර් මේ අර සාජන් මේජර්ගේ කේස් එකේ එවුන්. මෙතන හරක් හොරෙකුත් ඉන්නවා කියා කිව්ව බවත් ප්‍රකාශකර සිටිමි.

*[22. I state that, after drying the clothes, we were taken back to the previously said building. Thereafter, we were handcuffed and they made us sit under the tables. We were not given anything to eat or drink that day. Each received a panadol tablet. We stayed under the table that night too. While we were there, a higher-ranked police officer came to the place where we were. He asked those officers who we were, and then those officers said, " Sir, these are the fellows of the Sergeant Major's case. There is a cattle thief too among them.".]*

23. එවිට එම නිලධාරියා අපිව නිරාවත් කොට එකා පිටුපස එකා නියා. ත්‍රිවිල් රබර් පටියකින් අපි තතරදෙනාටම ඇඟපුරාවටම පතරදුන්නා එසේ පතරදෙන ගමන් සිද්ධාලේප අපේ ලිංගේන්ද්‍රියවල ගාගන්නා ලෙස අණ කළා. අපි අපහසුවෙන් ගාගන්නා. පසුව ඒ විට ඔහු නැවත නැවතත් පතර දුන් බවත් ප්‍රකාශ කර සිටිමි. දැවිල්ලත් සමග වේදනාවෙන් සිටින.

*[23. I state that, then the said higher-ranked officer stripped us naked and kept us in order. All four of us were beaten around the entire body with a three-wheel rubber band and while being beaten, we were ordered to rub Siddhalepa on our genitals. We applied it with difficulty. He repeatedly thrashed us when we were in pain with smarting.]*

24. ඒ අවස්ථාවේ ඔහුට දුරකථන ඇමතුමක් ආවාඔහු කිව්වා මුන්ට ඇඳගන්න දෙන්න එපා. පැය 2ක් විතර මෙතෙම තියන්න. මම ආයෙත් එනවා කියා ඔහු ගියා. පසුව එහි සිටි නිලධාරියෙකු කිව්වා. එයා වෙනදා මිනිස්සුන්ට ගහන කෙනෙක් නෙමෙයි. ඒත් උඹලගේ කරමෙට තමයි. එයත් උඹලට ගැහුවේ කියලා කිව්වා. එම නිලධාරියා පොලිස් අධිකාරී දේශබන්දු තෙන්නකෝන් නිලධාරියා බව පසුව මම දැනගත් බවත් ප්‍රකාශකර සිටිමි.

*[24. I state that, at that moment, he received a phone call. He ordered the other police officers not to let us dress, and to keep us in this manner for about 2 hours, stating that he would be back again. Then an officer who was there said that he was not the type of officer who usually hits people, but he too thrashed us due to our ill fate. I came to know later that the said police officer was Superintendent of Police Deshabandhu Tennakoon.]*

25. ඊට පසුදින එනමි. 2010. 12. 18 වන දින උදේ නැවතත් අපි එක එක්කෙනාව කලින් දින වධහිංසා කළ තැනට ගෙන ගොස් පෙර දින පහරදුන් ආකාරයටම පහරදුන්නා. සැරින් සැරේට පහරදෙමින් එම නිලධාරීන් බීම ගෙනවිත් බිබි දෙන්නා දෙන්නා මාරු වෙව් අපට පහර දී නැවතත් රාත්‍රියේ තැබූ ගොඩනැගිල්ලට ගෙනවිත් මේසවලට තබා මාංචු දැමීම බව ප්‍රකාශකර සිටිමි.

*[25. I state that, on the day after that i.e., on the morning of the 18th of December 2010, we were taken again to the place where we were tortured previously and beaten the same way as the previous day. The officers brought drinks after hitting us again and again and they beat us in turns and brought us back to the building where we were kept at night and placed us on the tables and handcuffed us.]*

26. පසුදින එනමි 2010.12.19 වන දින උදේ අපව රඳවා තිබුණු ගොඩනැගිල්ලේ පිටුපස බැල්කනිය වෙත ගෙන ගොස් එදින සවස්වන තුරු එහි රඳවා තබා යකඩ පොල්ලකින් බණ්ඩාර, දිසානායක ඇතුළු නිලධාරීන් 6 දෙනෙකු පමණ අපිට වරින් වර පහරදුන්නා. පහරදෙන ගමන් මුණට මිරිස්කුඩු දැමීමා. එසේ කරමින් වනසුන්දරගේ ගෙදර මංකොල්ලකාපු සල්ලි කෝ කියලා ඇහුවා. අපි කිව්වා අපි මංකොල්ල කෑවේ නෑ කියලා. නෑ කියන කියන පාරට අපිට නැවතත් පහරදුන්නා. එතන අවිවේ අපි 4 දෙනාවම වාඩි කරලා තිබ්බා. සවස 5.00 වන තුරුම අපව එසේ තිබ්බා. එදින එම



ගොඩනැගිල්ලට උසස් නිලධාරියෙකු පැමිණෙන බව එතන හිටපු පොලිස් නිලධාරීන්ගේ කතා බහෙන් අපි දැනගත්තා. ඔහුට පෙනෙන එක වැළැක්වීම සඳහා එහි රඳවා තැබූ බව ප්‍රකාශකර සිටිමි.

*[26. On the following day, December 19, 2010, in the morning, we were escorted to the rear balcony of the building where we were being held and detained there until the evening and six officers including Bandara and Dissanayake repeatedly attacked with an iron rod. While there were attacking, they also threw chilli powder at our faces. While they were doing so, they asked where is the money that was looted from the house of Wanasundara. We said that we didn't loot. At all the times we said 'no', they repeatedly assaulted us. They made us all sit down under the hot sun until evening 5.00. We learned from the conversation of the police officers there that a senior official was coming to that building that day. We were kept in this secure location so as to prevent the higher ranked official from seeing it.]*

27. එදින සවස උසාවි යන්න ලැස්ති වෙන්න කිව්වා. හැන්දෑවේ 7.00 පමණ අවස්සාවේදී අධිකරණයේ වැඩබලන මහේස්ත්‍රාත්වරයාගේ පුවත්පිටියේ තිබෙන නිවසට අපව රැගෙන ගිය බවත් ප්‍රකාශකර සිටිමි.

*[27. I state that he ordered me to get ready to go to the courts that evening. I do state that around 7.00 in the evening we were taken to the house of the Acting Magistrate of Avissawella Court in Puwakpitiya.]*

Affidavit of Thilakarathna Aarachchige Chaminda Nishan (hereinafter referred to as "Chaminda Nishan"), marked "P10", annexed to the Counter Affidavit of the Petitioner corroborates the version of the Petitioner as follows:

“3. 2010. 12. 15 වන දින රාත්‍රී 9.30-10.00 පමණ, අප නිවසේ සිටියදී "වමින්දා දෙර අරින්න" කියා කවිදේ කතා කළා. මගේ බිරිඳ දෙර ඇයා. එවිට නිල ඇඳුම් ඇඳගත් පොලිස් නිලධාරියෙකු හා සිවිල් ඇඳුම් ඇඳගත් දෙදෙනෙකු නිවස ඇතුළට පැමිණි බවත් ප්‍රකාශ කර සිටිමි.

*[3. I state that on 15.12.2010 around 9.30-10 p.m., when we were at home, someone called saying "Chaminda, open the door". My wife opened the door. At that point, a police officer in uniform and two others in civilian clothing came inside]*

4. නිල ඇඳුමෙන් සිටි නිලධාරියා, "චමින්ද කෝ" කියා ඇහුවා. මම මොකද සර් කියලා ඇහුවා. චච්ච, "අපිට ගෙනියන්න ඕනා ඕනා" කීවා. මට ඡර්ටි එකක් දුගෙන එන ලෙස කීව්ව බවත්, පසුව මා ඡර්ටි එකක් දුලාගෙන පැමිණි බවත් ප්‍රකාශ කර සිටිමි.

*[4. I state that, the officer in uniform asked "where is Chaminda". When I asked why, sir, he said "we need to take him" and asked me to put on a shirt and come, thereafter I put on shirt and went.]*

5. මාව මිදුලට ගෙන යන විට තවත් සිවිල් ඇඳුමින් සිටි තිදෙනෙකු නිවස පිටුපස සිට පැමිණි බවත්, කොහේටද ගෙනියන්නේ කියා මගේ බිරිඳ විමසුව ද කිසිවක් නොකී බවත්, පසුව මාවත් රැගෙන පාරට ගිය බවත් ප්‍රකාශ කර සිටිමි.

*[5. I state that when I was being taken to the garden three more persons in civilian clothing came from behind the house and, even when my wife asked where I am being taken, they kept silent and thereafter took me to the road.]*

6. පසුව සිවිල් ඇඳුමින් සිටි නිලධාරීන් දෙදෙනෙකු මා ඇඳුමෙන් සිටි ඡර්ටි එක ගලවා මගේ ඇස් බැන්ද, ටික දුරක් ගෙන ගොස් මාව වාහනයකට දැමීමා. පසුව මගෙන් ඇහුවා, රංජිත්ව අඳුනනවාද කියලා. මම ඔව් කියූ බවත්, චච්ච එම නිලධාරියා "එහෙනම් යං, රංජිත් අපි ළග ඉන්නවා" කියා පවසා සිටි බවත් ප්‍රකාශකර සිටිමි...

*[6. I state that, thereafter the two officers in civilian clothing took off the shirt I was wearing and blindfolded me with it. They put me in a vehicle after taking me some distance. Thereafter asked me if I knew Ranjith. I said yes, and then that officer said "In that case lets go, we have Ranjith"]*

8. පසුව මාව එක්කගෙන ගොස් වාහනයෙන් බස්සවා මගේ ඇස් බැඳ තිබූ ඡර්ටි එක ගැලව්වා. චච්ච මා සිටියේ මිරිහාන පොලිසියේ බවත්, ඒ අවස්ථාවේ, රංජිත්

සුමංගලවත්, අප ප්‍රදේශයේ ජයසේන නමැති අයවත් රැගෙන ඇවිත් ඇති බව මා දුටු බවත් ප්‍රකාශ කර සිටිමි...

*[8. Thereafter, they took me and removed the blindfolded shirt after getting me off the vehicle. I state that, at that point, I saw that I was at Mirihana Police, and that Ranjith Sumangala and one Jayasena in our area were also there brought in.]*

...

11. එවිට එම නිලධාරීන් දෙන්නා, රංජිත් එක්ක කරපු දේවල් කියප. කියමින් අතේ තිබුණු ත්‍රිවිලි බෙල්ට් වලින් මට පහරදුන් බවත්, මා කිසිවක් නොදන්නා බව පවසා සිටි බවත්, පසුව නැවතත් මා කලින් සිටි කාමරයට ගිහින් දැමූ බවත් ප්‍රකාශ කර සිටිමි...

*[I state that, then those two officers beat me with three-wheel belts which they had taken with them, commanding me to tell them what I did with Ranjith. I said that I knew nothing and I was dragged into the room where I was previously kept.]*

14. මා කලින් සිටි කාමරයට මාව දැමූ බවත්, එදින රාත්‍රී 10.00 පමණ මාව දිසානායක නමැති නිලධාරියා වෙනත් කාමරයකට ගෙනගිය බවත්, බණ්ඩාර නමැති නිලධාරියා ජයසේනව රැගෙන ආ බවත්, පසුව මගෙන් හා ජයසේනගෙන් රංජිත් එක්ක කරපු දේවල් කියප. කියමින් ප්‍රශ්න කළ බවත්, අප කිසිවක් නොදන්නා බව පවසා සිටි විට, අපට වධ හිංසා කරමින් ප්‍රශ්න කළ බවත් ප්‍රකාශ කර සිටිමි.

*[14. I state that I was kept in the room I was in before and around 10:00 p.m. of that night, officer namely, Dissanayake brought me to another room, the officer namely, Bandara brought Jayasena, and then Jayasena and I were questioned by asking what we did with Ranjith, when we said that we did not know anything, they tortured and interrogated us.]*

15. 2010. 12. 17, 18 හා 19 වන දින වල දී අප 4 දෙනාම ඉහත ආකාරයට පොලිස් අත්අඩංගුවේ තබාගෙන වධහිංසා කළ බවත්, 2010. 12. 19 වන දින හන්දෑවේ අවිස්සාවේල්ල අධිකරණයේ මහේස්ත්‍රාත්වරයා වෙත ඉදිරිපත් කර නැවතත් රැගෙන ආ බවත්, අපව රඳවා තබා ගැනීමට පැය 48 ක රැඳවුම් නියෝගයක් ලබාගෙන තිබූ බවත් ප්‍රකාශ කර සිටිමි.

*[15. I do state that on the 17th, 18th and 19th of December, 2010, the 4 of us were kept in police custody and tortured in the above manner, and on the evening of the 19.12.2010, we were brought before the Magistrate of Avissawella Court and we were detained for 48 hours. I do also state that a detention order had been obtained to detain us.]*

16. 2010. 12. 19 වන දින සිට නැවතත් 2010. 12. 22 වන දින සවස් වන තෙක් අපව මිරිහාන පොලිසියේ රඳවා තබාගත් බවත්, අපව රඳවාගත් කාලය තුළදී බණ්ඩාර, දසනායක, හානිය ජයසිංහ හා තෙන්නකෝන් ඇතුළු නිලධාරීන් 7 දෙනෙකු පමණ වධහිංසා කළ බවත් ප්‍රකාශ කර සිටිමි.

*[I do state that, from 19. 12. 2010 until the evening of 22. 12. 2010, we were detained at the Mirihana police station, and during the time we were detained, we were tortured by nearly 7 officers including Bandara, Dasanayake, Bhathia Jayasinghe, and Thennakoon]*

Furthermore, the Petition of the Petitioner states that he was taken back to his house at one point during his detention looking for the goods he was alleged to have stolen. At this point, he further states that he was beaten in front of his family mercilessly, so much so that it caused his eldest daughter to faint, out of sheer agony, unable to witness her father being treated in such a cruel manner.

The affidavit of Petitioner's wife, Suwinitha Kumari, produced marked 'P3' attached to the Petition of the Petitioner states, in this regard, as follows:

“7. ඒ අතර. මාගේ ස්වාමිපුරුෂයාද සිටි අතර, ඔහුගේ අත් පිටුපසට කර අත්වලට මාංචු දමා තිබුණි. අඳුනා ගන්න බැරි තරමට ඔහුගේ මුහුණ ඉදිමී තිබුණි. කෙළින් සිටගැනීමට නොහැකි තත්වයේ ඔහු සිටි බවත්, හරිහැටි සිහි කල්පනාව නොතිබුණු බවත් ප්‍රකාශ කර සිටිමි.

*[7. I state that my husband was also there among others. His hands were handcuffed behind his back. His face was swollen to the point of being*

*unrecognizable. He was unable to stand straight and did not seem to be fully conscious.]*

...

10. ඒ අවස්ථාවේ මා ඒවායේ රිසිට් පෙන්වා සිටියා. එවිට එතැන සිටි කෙනෙකු මිදුලේ තිබුණු දුරට ගෙනා පොල්ලක් ගෙන ස්වාමිපුරුෂයාගේ කකුල්වලට හා පිටට පහරදුන් බවත්. එම පොල්ල කැඩෙන තුරු ඔහුට පහරදුන් බවත් ප්‍රකාශකර සිටිමි.

*[10. I showed the receipts for having obtained the TV and the "panchayudha". Thereafter, they found a stick brought in for firewood in the garden and used it to beat my husband's legs and spine until the stick broke]*

11. පසුව ස්වාමිපුරුෂයාට කුස්සියට ඇදගෙන ගියා. එතැනදී හොරකම් කරපු බඩු විමසා සොයා ගැනීමට කිසිවක නොතිබුණු හෙයින්. කුස්සියේ දොරටු දැන පොල්ල ඇරගෙන එම නිලධාරීන් යම් යම් දේවල් කියන ලෙස බලපෑම් කරමින් ස්වාමිපුරුෂයාට පහරදුන් බවත්, එම පොල්ල කැඩුණාට පසුව බිම වැටී සිටි සැමියාගේ මුහුණ ද පැහැ බවත් ප්‍රකාශකර සිටිමි.

*[11. Thereafter, they dragged my husband into the kitchen to look for the alleged stolen goods, and since they couldn't find anything, they took a wooden bar used for the kitchen door and beat my husband commanding him to answer them. After the wooden bar broke, they trampled my husband's face who fell down at that moment]*

12. ඒ අවස්ථාවේ මා හා දරුවන් දෙනෙකු කැනැස්සු බවත්. ස්වාමිපුරුෂයාට පහර දෙනවා දැක. ලොකු දුව සිහි නැතින වැටුණු බවත්. අප කෑ ගසන එක වළක්වන්න අප තිදෙනාට කාමරයකට දමා. ඒ දොර ප්‍රභව දෙන්නෙක් මුරට සිටි බවත්. එවිට මට ස්වාමිපුරුෂයා කෑගසන ශබ්දය පමණක් ඇසුණු බවත් ප්‍රකාශ කර සිටිමි.

*[12. At this moment, I and my children started screaming seeing the manner in which my husband was being beaten, and my eldest daughter fainted at the sight of her tortured father. To prevent us from further screaming, they locked us three*

*in a room, they had placed two persons to stand outside guarding the entrance. We could only thereafter hear the shouts of my husband.]*

...

14. ස්වාමිපුරුෂයාට ඇඳගෙන යන අවස්ථාවේ කැඩුණු දොර පොල්ලේ ඉතිරි කැල්ලෙන් ස්වාමිපුරුෂයාට නැවතත් ගතගෙන ගතගෙන ගියා. එසේ පහර දෙමින් ඔහුව ඇඳගෙන ගියා. මා හා දරුවන් දෙදෙනා පස්සෙන් යන විට, අපිට එන්න එපා කියා පන්නා දැමූ බවත්. අපි බියෙන් නැවත හැරී නිවසට ගිය බවත් ප්‍රකාශකර සිටිමි.

*[14. I state that, as my husband was being dragged away, He was beaten again with the remaining piece of the broken doorpost. He was beaten and dragged. When I and the two children followed, we were chased away and told not to come, so we turned back and went home in fear.]*

...

21. 2010. 12. 21 වන දින අවිස්සාවේල්ල උසාවියට ගෙනගිය බවත් ඒ අවස්ථාවේ මාගේ ස්වාමිපුරුෂයා සමඟ අත්අඩංගුවේ සිටි අයගේ ශ්‍රේණි මට දැනුම් දුන්නා උසාවි ගෙනියන බව. ඒ නිසා මා අවිස්සාවේල්ල උසාවියට ගියා. නමුත් සවස 2.00 වන තෙක් ස්වාමිපුරුෂයාට අධිකරණයට ගෙනාවේ නැති බවත්. එබැවින් නැවත අප මිරිහාන පොලිසියට ගිය බවත්. ඒ අවස්ථාවේ ස්වාමිපුරුෂයා කැඩුව තුළ සිටි බවත් ප්‍රකාශකර සිටිමි.

*[21. I state that I come to know that my husband was brought to the Avissawella Court on or about 21. 12. 2010 through the relatives of those who were in custody with my husband at that time. Therefore, I went to the Avissawella Court. Yet, the husband was not brought to the court until 2.00 p.m. which made us go to the Mirihana police again. I also state that the husband was in the cells at that time.]*

22. ස්වාමිපුරුෂයාට ඉතා අමානුෂික ලෙස පහරදී තිබුණු බවත්. ඔහුගේ මුහුණ. අත් පා රතු වී තිබුණි. නැගිට ගැනීමටවත් නොහැකිව සිටියා. වධ දහ අටම දුන්නා යැයි මා සමඟ ඔහු පවසා සිටි බවත් ප්‍රකාශකර සිටිමි.”

*[I state that the husband was brutally beaten. His face & limbs were swollen red. He couldn't even stand up. He told me that he had been harassed in every possible way.]*

[Emphasis added]

However high the threshold of proving torture may be, the Respondents in the instant case have unfortunately cleared it with much ease. The instant case is a glowing testimony as to the almost prophetic prudence of Sir Fitzjames Stephen in making admissions made to a police officer inadmissible when drawing the Indian Evidence Act—which we went on to adopt in our own Evidence Ordinance.

In view of the aforementioned, it is clear that the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents have all been directly associated with the torturing of the Petitioner. What the Petitioner has had to endure, without a shred of doubt, amounts to torture as contemplated under Article 11 of the Constitution. Furthermore, the narration of the incidents of torture by Nimal Perera as noted above is consistent with the narration as provided by the Petitioner. Thus, this Court concludes that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents have violated the fundamental rights of the Petitioner as enshrined under Article 11 of the Constitution.

### **Violation of Article 12(1) of the Constitution**

Article 12(1) of the Constitution provides that “[a]ll persons are equal before the law and are entitled to the equal protection of the law.”

Article 12(1) of the Constitution serves as an umbrella provision which governs the fundamental right to equality, against class discrimination of persons, and to uphold equality in the application of law. Within Article 12(1) of the Constitution is enshrined the doctrine of Rule of Law, thereby affording equal protection before the law to all persons. Above all, Article 12(1) of the Constitution further embraces the all-important

notion of human dignity, the golden thread running through the fabric of fundamental rights.

Article 12(1) of the Constitution stands an absolute bar against arbitrariness for it imposes a duty on all public officials regardless of their rank to uphold the law and only exercise the powers as have been vested upon them by law, thus establishing the supremacy of law above all other considerations. Public Officials—which most certainly includes police officers—cannot adopt a practice of selective application of laws, nor can there be arbitrary decisions, assuming the role of judge, jury and executioner.

In the instant case, the Respondents are of the position the arrests and detention were made under the direction and instructions of the 5<sup>th</sup> Respondents during an investigation regarding several thefts in the area acting on a complaint made by an unknown party to the 5<sup>th</sup> Respondent. In the Written Submissions of the Attorney General dated 26<sup>th</sup> September 2023 and the Affidavit of the 5<sup>th</sup> Respondent dated 05<sup>th</sup> October 2023, it was contended that the arrests and detention were lawful under section 2 of the Code of Criminal Procedure (Special Provisions) Act No. 2 of 2013. The Respondents further contended the arrests to be in accordance with the procedures set out by law and that minimum force was used on the Petitioner during the arrests.

The question here is by no means the amount of force used at the time of effecting the arrest. As has been discussed above, the Petitioner was arrested and detained without a warrant and held and tortured in custody for more than 24 hours. There is an absolute and non-derogable prohibition against torture in all circumstances, even during times of armed conflict or states of emergency, for it is a sign of absolute lawlessness.

The arrestees, including the Petitioner, were only presented before the Magistrate to extend the period of custody for the purposes of the so-called investigations on 19<sup>th</sup>



December 2010, by which date 4 days had already passed. This, as established, is absolutely obnoxious to the 'special provisions' the Respondents themselves relied on.

Persons in detention, regardless of the charges or accusations against them, are entitled to the fullest protection of their human dignity and physical integrity. State institutions and those who serve the State are sternly reminded of their obligation to ensure that persons in detention are treated not only within the bounds of legality but with an uncompromising adherence to the principles of humanity. This stance is not only a legal mandate, but also a relentless moral imperative.

The manner in which the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Respondents, being officers of the law, have conducted themselves, in concert with the 4<sup>th</sup> Respondent, is a stark betrayal of the Rule of Law. They have acted in a manner entirely repugnant to the virtues of a democratic republic.

In these circumstances, I have no qualm holding the treatment the Petitioner had undergone to be a gross violation of his fundamental rights recognised under Article 12(1) of the Constitution.

## **CONCLUSION OF THE COURT**

Considering the inconsistencies in the Respondents' version of events and the fact that the Petitioner's version of events is corroborated by the Medical Report issued by the Judicial Medical Officer of the District General Hospital of Matale as well as the affidavits of those who were detained and tortured with him, this Court is left with no other option but to reject the position of the Respondents *in toto* and accept the Petitioner's version of events as true.

The Petitioner's fundamental rights under Articles 11, 12(1), 13(1) and 13(2) have been blatantly violated by the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents. The kind of conduct on display, judged even by the lowest of standards, amounts to a magnificent failure of all that the Rule of Law stands for.

This Court has time and time again made pronouncements setting out guiding principles as to how law enforcement officers must act. But all such attempts continue to fall on deaf ears. Violations of the kind we have observed in this case are, unfortunately, all too common. These are by no means isolated one-off events but are symptoms of longstanding institutional failures. When the Evidence Ordinance was first enacted in 1895, police officers were deemed too unreliable to make confessions made before them admissible. Lamentably, after well over a dozen decades, nought has changed.

In the words of Aluwihare J., as expressed in ***Mohammed Rashid Fathima Sharmila v. K.W.G. Nishantha SC. FR Application, No. 398/2008, SCM of 03rd February 2023***, the matters are disturbing, to say the least. His Lordship further expressed concerns therein vis-à-vis the *modus operandi* of Sri Lanka Police:

*"...Sri Lanka Police established in 1806, has a history of over two centuries and one would expect it to develop into a body that comprises of professional law enforcement personnel. I am at a loss to understand, in the present day and time as to why such an established law enforcement entity is incapable of affording due protection to a citizen who is in their custody. Unfortunately, it is not rare to hear instances of suspects dying in the hands of the police. It only highlights the utterly unprofessional approach to duty by the personnel who man it and as a consequence, people are increasingly losing trust in the police. It had lost the credibility it ought to enjoy as a law enforcement agency. The incident relevant to this application had taken place in 2008, however, this court observes that instances of death of suspects in police custody are continuing to happen, even today. It appears that the hierarchy of the administration had paid scant attention to arrest this trend which does not augur well for the law enforcement and the rule of law."*

Having expressed these worries, his Lordship directed the Inspector General of Police to formulate, issue and implement guidelines to the police elaborating as to how the standards may be improved.

Years prior to these observations, in ***Landage Ishara Anjali (Minor) v. Waruni Bogahawatte, SC (FR) Application No. 677/2012, SCM of 12.06.2019*** Aluwihare J. has similarly raised concerns with regards to the growing number of incidents of abuse of power. There, too, the Inspector General of Police was directed to issue guidelines regarding the same. In addition to such direction, his Lordship has further postulated guiding principles to be included in any such guidelines to be issued.

Following the directions of His Lordship in ***Mohammed Rashid Fathima Sharmila v. K.W.G. Nishantha (supra)***, the Inspector General of Police has issued IGP Circular 2747/2023 dated 25<sup>th</sup> March 2023. While this circular has specifically referred to this case, I cannot help but notice that it has not sufficiently encompassed the guiding principles Aluwihare J. postulated in ***Landage Ishara Anjali (Minor) v. Waruni Bogahawatte (supra)***. In particular, the elements concerning human dignity, non-discrimination, proportionality and rights of children.

As such, we direct the National Police Commission and the relevant authorities to give due recognition to these principles in formulating any future guidelines. Moreover, we direct the National Police Commission to see to it that these guidelines—including Circular 2747/2023 and the principles I have noted it to have omitted—are properly implemented and are integrated into the training of police officers.

## **LIABILITY OF THE RESPONDENTS**

The 3<sup>rd</sup> Respondent, Madiwaka Adikari Mudiyanseelage Egodawele Wallauwe Senerath Adikari Egodawele, the Head Quarters Inspector, Mirihana Police Station, at the time material to this case, by his Affidavit dated 5<sup>th</sup> October 2011, averred that the conduct in question did not take place under his direct supervision. In view of the facts disclosed therein, the Counsel appearing for the Petitioner informed this Court on 11<sup>th</sup>

October 2017 that he does not intend to pursue any relief against the 3<sup>rd</sup> Respondent. Considering this, I make no pronouncements against the 3<sup>rd</sup> Respondent [Journal Entry dated 11.10.2017].

### **1<sup>st</sup> and 2<sup>nd</sup> Respondents**

It is clear from the foregoing discussion that the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents have played a central role in the fundamental rights violations in the instant case. Upon perusal of the facts and circumstances of the instant case, it is apparent that most of the torture was in fact carried out by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, and it was they who had abducted the Petitioner on 15<sup>th</sup> December 2010 and took the Petitioner to the Cemetery.

The Petition of the Petitioner explains, in great detail, the role played by the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents in the violations in question. The Petition of the Petitioner very clearly claims the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to have been instrumental in the arrest and the subsequent prolonged torture of the Petitioner.

Corroborating the same, the Affidavit of Chaminda Nishan, produced marked 'P10' attached to the Counter Affidavit of the Petitioner, specifically mentions officers Bandara (1<sup>st</sup> Respondent) and Bhathiya Jayasinghe (2<sup>nd</sup> Respondent) to have tortured the arrestees by various means.

Further corroborating, the Affidavit of Nimal Perera, produced marked 'P12' attached to the Counter Affidavit of the Petitioner, explicates how the officers Bandara and Bhathiya Jayasinghe tortured them in numerous despicably imaginative ways.

The Petition of the Petitioner also avers that he was tortured at his own home in front of his family, to such a grave extent that his elder daughter fainted at the sight of it. Affidavit of the Petitioner's wife dated 25<sup>th</sup> March 2011, produced marked 'P2' attached to the Petition, corroborates the acts of torture that took place at the Petitioner's home.

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents themselves have not rejected their involvement in effecting the arrest, but rather argue the arrest to have been carried out according to the procedure established by law. All that they have produced in support are the documents marked 'Rx(1)', 'Rx(2)' and 'Rx(2)'. Said documents are titled “නුගේගොඩ හදිසි ඇමතුම් අංශයේ දෛනිකව පවත්වාගෙන යනු ලබන හදිසි ඇමතුම් තොරතුරු පොතේ උපුටා ගන්නා ලද සත්‍ය පිටපතකි.” I am not able to provide a proper translation of the same as this purported “හදිසි ඇමතුම් අංශයේ දෛනිකව පවත්වාගෙන යනු ලබන හදිසි ඇමතුම් තොරතුරු පොත” is not an Information Book that is generally in use. Given the incongruities found between the aforementioned documents and the Respondents’ own averments, this Court cannot attribute any probative value to the same. As such, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are no doubt liable for the violations of Articles 13(1) and 13(2) more fully dealt with earlier in the judgement.

In response to these clear and grave allegations set out in the aforementioned averments with regards to Articles 11 and 12, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, in their joint Objections with the 4<sup>th</sup> Respondent dated 06<sup>th</sup> December 2011 and their Written Submissions dated 19<sup>th</sup> November 2013, have merely offered a simple denial of the contents therein.

However, the Medico-Legal Report of the Petitioner issued by the Consultant Judicial Medical Officer of the District General Hospital, Matale strongly corroborates the version of events set out before this Court by the Petitioner. The history given by the Petitioner to the Judicial Medical Officer reflects what he has averred before this Court and the Judicial Medical Officer concludes and opines the history so given to be consistent with the 16 different injuries recorded in the Medico Legal Report.

The position of the 1<sup>st</sup>, 2<sup>nd</sup> [and the 4<sup>th</sup> Respondent, as the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents have filed joint Objections and Written Submissions] with regards to the Medico-Legal Report is to simply claim the injuries therein to be non-corroborative of the history recorded.

Such a simple and feeble denial cannot, by any means, displace an expert opinion. As such I have no qualm holding the 1<sup>st</sup> and 2<sup>nd</sup> Respondents liable for the violation of Petitioner's fundamental rights under Articles 11, 12(1), 13(1) and 13(2).

#### **4<sup>th</sup> Respondent**

With regards to the 4<sup>th</sup> Respondent, Petition of the Petitioner as well as the aforementioned Affidavits marked 'P2' [at para 6], 'P10' [at para 13] and 'P12' [at para 13] confirm the participation of the 4<sup>th</sup> Respondent in the conduct in question. In this regard, it is pertinent to note that the 4<sup>th</sup> Respondent is not a police officer, and moreover, he had not denied the contents of the aforementioned affidavits.

However, in the joint Written Submissions dated 06<sup>th</sup> December 2011, it was contended that his actions do not amount to executive and administrative action on account of the fact that he is not a public officer. At the very outset, I wish to note that this contention has no bearing on this Court's jurisdiction, as several other public officers are involved in the violations in question. Furthermore, as held in ***Faiz v. Attorney-General and Others [1995] 1 Sri L.R. 372***, whether an act is executive and/or administrative is not conclusively dependent upon the colour of the actor's office. In appropriate cases, even the acts of a private individual may amount to executive and administrative action.

In ***Faiz v. Attorney-General (Supra)*** at p. 383, His Lordship Mark Fernando J held as follows:

*"Article 126, speaks of an infringement by executive of administrative action; it does not impose a further requirement this action must be by an executive officer. It follows at the act of a private individual would render him liable, if in the circumstances that act is "executive or administrative". The act of a private individual would be executive if such act is done with the authority of the executive such authority; transforms an otherwise purely private act into executive or administrative action; such authority may be express, or implied from prior or*

concurrent acts manifesting approval, instigation, connivance, acquiescence, participation and the like (including inaction in circumstances where there is a duty to act); and from subsequent acts which manifest ratification or adoption. While I use concepts and terminology of the law relating to agency, and vicarious liability in delict, in my view responsibility under Article 126 would extend to all situations in which the nexus between the individual and the executive makes it equitable to attribute such responsibility. The executive, and the executive officers from whom such authority flows would all be responsible for the infringement. Conversely, when an infringement by an executive officer, by executive or administrative action, is directly and effectively the consequence of the act of a private individual (whether by reason of instigation, connivance, participation or otherwise) such individual is also responsible for the executive or administrative action and the infringement caused thereby. In any event this Court would have power under Article 126(4) to make orders and directions against such an individual in order to afford relief to the victim."

[Emphasis added]

The aforementioned was cited with approval by His Lordship Aluwihare J in **Ganeshan Samson Roy v. M.M. Janaka Marasinghe and Others S.C (F/R) 405/2018, SC Minutes of 20.09.2023 at p. 21**. The 6<sup>th</sup> Respondent of the **Samson Roy Case** was a private citizen, whose false complaint instigated an arbitrary arrest. The said 6<sup>th</sup> Respondent was directed to pay compensation to the Petitioner in view of his involvement in the violation of fundamental rights.

Hence, I do not see any jurisdictional impediment on account of the 4<sup>th</sup> Respondent's civilian status at the time material. As the 4<sup>th</sup> Respondent has interestingly opted to file joint Objections and Written Submissions with the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, his contentions, too, suffer the same infirmities, which I have adverted to above. In view of this, I find the 4<sup>th</sup> Respondent liable for the violation of Petitioner's fundamental

rights under Articles 11, 12(1), 13(1) and 13(2) for the same reasons as the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

### **5<sup>th</sup> Respondent**

With regards to the 5<sup>th</sup> Respondent, it is clear from paragraphs 22, 23, 24 and 25 of the aforementioned Affidavit of Nimal Perera dated 08<sup>th</sup> June 2011, produced marked 'P12', he, then a Superintendent of Police, has paid a visit to the place where the Petitioner and several others were detained on 17<sup>th</sup> December 2010. The affidavit further states that the 5<sup>th</sup> Respondent himself beat the Petitioner with a 'three-wheel rubber band' after stripping him naked and ordering him to rub Siddhalepa on his genitalia. The 5<sup>th</sup> Respondent is specifically referred to therein by his name and rank, as it was then.

The Counter Affidavit of the Petitioner along with the aforementioned affidavits marked 'P10', 'P11' and 'P12', was filed before this Court on 02<sup>nd</sup> March 2012. Written Submissions of the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents was filed on 19<sup>th</sup> November 2013, almost 20 months later. Even at that point, nothing was filed on behalf of the 5<sup>th</sup> Respondent.

In the interest of justice, on 19<sup>th</sup> May 2020, the Court directed the Registrar to serve notices on the 3<sup>rd</sup> and 5<sup>th</sup> Respondents informing them of the next date of hearing. The notice sent to the 5<sup>th</sup> Respondent was not returned. Written submissions of the Attorney-General on behalf of the 5<sup>th</sup> and 6<sup>th</sup> Respondents was filed on 26<sup>th</sup> September 2023.

As can be seen, the Respondents of the instant case were afforded ample opportunities to plead their cases before this Court. Upon direction by the Court, the 5<sup>th</sup> Respondent, too, filed Affidavit dated 05<sup>th</sup> October 2023. The said Affidavit only related to the *Code of Criminal Procedure (Special Provisions) Acts*. The 5<sup>th</sup> Respondent, represented by the Attorney-General, has not at any point during the proceedings rejected or objected to the allegations against him hereinbefore set out.



Therefore, I find the 5<sup>th</sup> Respondent to have tortured the Petitioner in violation of his fundamental rights guaranteed under Article 11 of the Constitution. For this very reason, and by the very fact, I find the 5<sup>th</sup> Respondent to have further violated the Petitioner's rights under Article 12(1) of the Constitution.

It is also revealed by the Minute on the document marked 'Rx(1)', the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents' Statement of Objections and the excerpts from the “හදිසි ඇමතුම් අංශයේ දෛනිකව පවත්වාගෙන යනු ලබන හදිසි ඇමතුම් තොරතුරු පොත” annexed thereto marked 'Rx(2)' that the 5<sup>th</sup> Respondent himself ordered the investigation and that he has had intimate knowledge of the investigation.

With regards to the violation of Articles 13(1) and 13(2) of the Constitution, from the aforementioned facts, it is clear that the 5<sup>th</sup> Respondent had knowledge of the Petitioner's detention on account of his visit on 17<sup>th</sup> December 2010 for a brief session of torture. The 5<sup>th</sup> Respondent had received the anonymous complaint describing the involvement of the Petitioner and 3 others by name only 5 days before the arrest, and, when the 5<sup>th</sup> Respondent arrived at the torture chamber on 17<sup>th</sup> December 2010, he had inquired from another Police Officer “මොවුන් කවිද [who are they]”, to which the other Police Officer replied “සර් මේ අර සාපන් මේපර්ගේ කේස් එකේ එවුන් [Sir, this is the parties involved in that Sargent Major's case]”. Such a loose reference to a matter alludes to the fact that not only did the 5<sup>th</sup> Respondent have knowledge of the arrest of the Petitioner and the 3 others, but that he was kept updated on the events that transpired after the arrest on 15<sup>th</sup> December 2010. As such, it appears that the Petitioner was kept detained without producing before a Magistrate within the legally stipulated time frame with full knowledge of the 5<sup>th</sup> Respondent. Therefore, I hold the 5<sup>th</sup> Respondent, too, to have violated the fundamental rights of the Petitioner enshrined under Articles 13(1) and 13(2) of the Constitution.

While findings of fundamental rights violations are ample, the wrongdoers—especially the big fish in the pond—are seldom held duly accountable. Senior officers, under whose authority and direction their subordinates may act, have a special duty to ensure

that they do not abuse such authority or go beyond such direction. Senior officers cannot merely give orders and thereafter sleep on this duty. They are to closely scrutinize the conduct of their subordinates. The stars that adorn their uniforms are not ornaments of power, but rather, reminders of the immense responsibility that comes with their authority.

Gross neglect of this duty would render them complicit in the actions of their unruly subordinates. The concept of commission by omission is well recognized in our constitutional jurisprudence by cases such as the ***Easter Sunday Cases, SC/FR/163/2019, SC Minutes of 12th January 2023.***

I am of the view that supervising officers are to be directly held liable for the conduct of their subordinates in appropriate instances, even in the absence of direct participation. Supervising officers can be held liable where there is affirmatory participation or participatory presence on the part of such supervising officers; or, where they have, directly or indirectly, implemented or enabled unconstitutional policies by turning a blind eye towards unconstitutional practices directly under their authority.

What is revealed to us in the instant case, apparent from what I have cited above from the affidavits, is a pattern of grave derelictions, which has persisted for a considerable period of time. Where such a pattern is observable, what other inference are we to draw than, either the wrongdoings have taken place with the blessings of the direct supervisors or that such supervisors have slept on the wheel? In either case, such supervisors are directly complicit in the actions so enabled.

From the circumstances established in the instant case, it is clear that the 5<sup>th</sup> Respondent has enabled, through his actions as well as inaction, the conduct of the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents, making him directly liable for the fundamental rights violations hereinbefore established. No material has been produced before this Court by the 5<sup>th</sup> Respondent so as to distance himself from such violations.

Therefore, I hold the 5<sup>th</sup> Respondent to have violated the fundamental rights of the Petitioner guaranteed under Articles 11, 12(1), 13(1) and 13(2) of the Constitution.

### **ORDERS OF THE COURT**

Although relief is granted principally against the State in fundamental rights jurisdiction, in appropriate cases, *cursus curiae* with regards to awarding compensation has been to direct culpable officers to personally make amends. This appears to me a fit case to make such orders.

In cases of this nature, where the violations are grave, while the State must absolutely take responsibility, I do not see it sufficient to merely impose the liability on the State. I do not see it just and equitable to impose upon the taxpayer the burden of compensating for the transgressions of errant officials. Having borne the burden of their earnings over the years, must the taxpayer compensate for their misdeeds as well?

Furthermore, the amount of compensation awarded must sufficiently reflect the gravity of the offences as well as the audacity of the offenders. Especially where violations of Article 11 are to be found, it is necessary to award compensation in such amounts adequate to deter such degenerates.

Therefore, we direct the National Police Commission and other relevant authorities to take appropriate disciplinary action against the officers we have found to be responsible.

The Respondents are ordered to pay compensation to the Petitioner in the following manner:

1. The State is ordered to pay as compensation a sum of Rs. 100,000/- (Rupees Hundred Thousand) out of the funds allocated to the Police Department, given the institutional issues observed;
2. The 1<sup>st</sup> Respondent is ordered to pay as compensation a sum of Rs. 500,000/- (Rupees Five-Hundred Thousand);

3. The 2<sup>nd</sup> Respondent is ordered to pay as compensation a sum of Rs. 500,000/- (Rupees Five-Hundred Thousand); and
4. The 4<sup>th</sup> Respondent is ordered to pay as compensation a sum of Rs. 500,000/- (Rupees Five-Hundred Thousand).
5. The 5<sup>th</sup> Respondent is ordered to pay as compensation a sum of Rs. 500,000/- (Rupees Five-Hundred Thousand).

The 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents are to pay the aforementioned sums, within six months from the date of judgement, out of their personal funds.

***Application allowed.***

**JUDGE OF THE SUPREME COURT**

**KUMUDINI WICKREMASINGHE, J**

I agree

**JUDGE OF THE SUPREME COURT**

**K. PRIYANTHA FERNANDO, J**

I agree

**JUDGE OF THE SUPREME COURT**