

**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.

**SC.Application FR. No
319/2012**

Gangodagama Perumarachchige Jayalath Perera
No. 500, Madampitiya Road,
Colombo 14.

PETITIONER

-Vs-

1. Jagath Nishantha,
Sub Inspector of Police,
Divisional Crime Investigations Unit,
Police Station,
Negombo.
2. Saman Kumara,
Sub Inspector of Police,
Divisional Crime Investigations Unit,
Police Station,
Negombo.
3. Sudath Gunawardena,
Police Seargent 5315,
Divisional Crime Investigations Unit,
Police Station,
Negombo.
4. Police Seargent 32586 Dissanayake,
Divisional Crime Investigations Unit,
Police Station,
Negombo.
5. Police Constable Buddika,
Divisional Crime Investigations Unit,
Police Station,
Negombo.
6. Wimalakeerthi,
Sub Inspector of Police,
The Officer in Charge, Police Station,
Kotadeniyaya.

7. Inspector General Of Police,
Office of the Inspector General of Police,
Colombo 01.
8. Hon. Attorney-General,
Attorney-General's Department,
Colombo 12.

RESPONDENTS

Before: : **Sisira J. de Abrew, J**
Nalin Perera, J &
Prasanna Jayawardena, PC, J

Counsel: : Walter Perera for the Petitioner.
Saliya Pieris with Lisitha Sachindra for the 1st, 3rd and 5th
Respondents.
Ms. Induni Punchihewa SC for the A.G.

Argued &
Decided on: : 17.01.2017

Sisira J. de Abrew, J

Heard counsel for both sides in support of their respective cases. The Petitioner by his amended petition alleges that his fundamental rights guaranteed by Article 11 and 12(1) of the Constitution have been violated by the Respondents. This Court, by its order dated 21.11.2013, granted leave to proceed for the alleged violation of Article 11 of the Constitution against the 1st, 3rd and 5th Respondents. We note that the Court did not grant leave to proceed

for alleged violation under Article 12(1) of the Constitution. Petitioner in his amended petition states that the 1st, 3rd and 5th Respondents arrested the Petitioner in front of his business establishment and assaulted the Petitioner. The Petitioner further states that this assault was witnessed by the members of the general public. We note that no member of the general public has tendered an affidavit to this Court supporting the above position taken up by the Petitioner.

The Petitioner, in his amended petition, further states that he was assaulted and tortured by the 1st, 3rd and 5th Respondents at the Divisional Crime Investigation Unit. He, in paragraph 10 of the affidavit filed in this Court, states that the assault/torture at the said Divisional Crime Investigation Unit was witnessed by G.A. Hemantha Perera and G.A. Rathnasiri Perera who were his brothers. But surprisingly the said Hemantha Perera and Rathnasiri Perera in their affidavits marked P8 and P9 do not support the said version of the Petitioner.

They in their affidavits state that they came to know from his brother who was at the police station that he was assaulted and tortured by the police officers. When we consider the paragraph 10 of his affidavit filed in this Court and the two affidavits tendered by Hemantha Perera and Rathnasiri Perera, we hold that the Court can't place any reliance on the amended petition of the petitioner filed in this Court. The Petitioner has tendered a report by the Judicial Medical Officer. In the said report the said JMO states the following facts under the heading of 'opinions and recommendations'.

- 1) He had blunt force trauma to his right loin region in a form of a contusion (Bruising)
- 2) Such a bruising can be sustained due to a blow from a fist as well as hitting with a blunt

object.

- 3) That injury is compatible with the blow given to him as described by him in the history.
- 4) Such an injury can also be caused if his loin was hit against a blunt object too.
- 5) The injury was non grievous in nature.
- 6) It can heal without any further treatment.
- 7) As he is said to be a person with high blood pressure and diabetes, he has to continue his medications and has to take his diabetic foods.
- 8) If he develops any new complains, he has to be taken to a hospital without delay.
- 9) He has to be revived periodically by his doctor for his high blood pressure and diabetes.

We note that the JMO also made the following observations.

“Contusion, 3cmx 2 cm over the right loin area on lower ribs. There was no pain elicited while pressing the ribs away from the contusion. No other fresh injuries were found elsewhere in the body.”

The said JMO had examined the Petitioner at 4.30 p.m. on 04.05.2012. The arrest was also on the same day around 11 a.m. Thereafter the Petitioner was produced before the learned Magistrate. On submissions made by his counsel, the learned Magistrate has made an order to obtain a medical report from the Prison Doctor of Negombo Prison. The Prison Doctor attached to Negombo Prison has submitted a report dated 07.05.2014 marked P4. The said Doctor had stated in the said report that there were no external injuries or visible contusion on the body of the Petitioner.

When we consider all the above matters, we are unable to conclude that the

Petitioner had been assaulted and tortured by the Police Officers. Petitioner's version stated in paragraph 10 of his affidavit is not supported by his own brothers' affidavits.

For the above reasons, we hold that there is no concrete evidence before this Court to conclude that the Petitioner had been assaulted by the 1st, 3rd and 5th Respondents as alleged by the Petitioner. We therefore hold that there is no merit in the petition of the Petitioner.

For the above reasons, we dismiss the Petition of the Petitioner. No costs.

JUDGE OF THE SUPREME COURT

Nalin Perera, J

I agree.

JUDGE OF THE SUPREME COURT

Prasanna Jayawardena, PC, J

I agree.

JUDGE OF THE SUPREME COURT

kpm/-