

**In the Supreme Court of the Democratic Socialist Republic of Sri Lanka**

In the matter of an Application under  
and by virtue of Articles 17 and 126 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka

Malka Denethi  
Attorney-at-Law  
No. 305/11, Janatha Mawatha,  
Werahera,  
Boralasgamuwa.

**Petitioner**

**SC FR Application No. 411/2021**

**Vs.**

1. K.S.K. Rupasinghe  
Senior Superintendent of Police,  
Nugegoda Police Division,  
Nugegoda.
2. Police Officer No. 48513  
C/O Deputy Inspector General  
(Western - South),  
DIG Office - Western Province  
(South),  
Nugegoda.
3. K.G. Wijerathne

Inspector of Police,  
Officer-in-Charge,  
Police Station,  
Boralesgamuwa.

4. Asiri Jayasooriya  
Sub-Inspector,  
Miscellaneous Complaints Unit (MO  
Branch),  
Police Station,  
Boralesgamuwa.
5. C.D. Wickramarathna  
Inspector General of Police,  
Sri Lanka Police Headquarters,  
Colombo 1.
6. Rajeev Amarasooriya  
Attorney-at-Law,  
Secretary,  
Bar Association of Sri Lanka,  
No. 153, Mihindu Mawatha,  
Colombo 12.
7. Dona Anushka Dilani Kannangara  
No. 192/3, 2<sup>nd</sup> Lane,  
Egodawaththa,  
Boralesgamuwa.

8. Attorney General  
Attorney General's Department,  
Colombo 12.

**Respondents**

**Before:** Hon. Yasantha Kodagoda, PC, J.  
Hon. A.L. Shiran Gooneratne, J.

**Appearance:** Naveen Mahaarachchi with Chanuka Ekanayake for the Petitioner.

Varunika Hettige, Senior Deputy Solicitor General for the 1<sup>st</sup> to 8<sup>th</sup>  
Respondents, excluding the 7<sup>th</sup> Respondents.

7<sup>th</sup> Respondent absent and unrepresented.

Saliya Pieris, PC, President of the Bar Association of Sri Lanka  
appeared as amicus.

**Supported on:** 3<sup>rd</sup> November, 2022

**Order delivered on:** 22<sup>nd</sup>, November, 2022

**Order of Court**

The Petitioner is an Attorney-at-Law, engaged primarily in criminal practice. In his Petition to this Court, he complains that one or more of the Respondents have infringed his Fundamental Rights guaranteed in terms of Articles 11, 12(1) and 14(1)(g) of the Constitution.

Albeit brief, the Petitioner's narrative is as follows:

On 13<sup>th</sup> November 2021, the 7<sup>th</sup> Respondent sought his professional services to represent her at the Boralesgamuwa Police Station at an 'inquiry' (No. MCR 2237/21) into a 'land dispute' among her family members scheduled for the same day. The Petitioner agreed to provide his professional services. Accordingly, along with the 7<sup>th</sup> Respondent, the Petitioner proceeded to the Boralesgamuwa Police Station for the purpose of representing his client (7<sup>th</sup> Respondent) at the afore-stated 'inquiry'. He had been dressed in a white long-sleeves shirt, black trousers and had worn a black tie, which he has stated is the usual attire an Attorney-at-Law wears when going to a Police Station to perform professional services. At the Police Station, both of them had been directed to the office-room of the Officer-in-Charge of the Police Station (3<sup>rd</sup> Respondent) in which the 1<sup>st</sup> Respondent had been seated in the chair of the 3<sup>rd</sup> Respondent. The other disputant (being the mother of the 7<sup>th</sup> Respondent) had also come into the room. The 1<sup>st</sup> Respondent had inquired from the Petitioner who he was, and he had introduced himself and explained that he was representing the 7<sup>th</sup> Respondent. The 1<sup>st</sup> Respondent had immediately directed the Petitioner to move out and stay outside the room. The Petitioner refused to do so. The Petitioner alleges that from this point onwards the 1<sup>st</sup> Respondent acted in a hostile manner towards him. The Petitioner had insisted that he had a professional entitlement to represent the 7<sup>th</sup> Respondent at the 'inquiry' that was to take place. The Petitioner claims that during the ensuing interaction with the 1<sup>st</sup> Respondent, the latter (i) threatened the Petitioner that action will be taken against him for obstruction of the 1<sup>st</sup> Respondent's duties, (ii) threatened that he will be put into the cell, (iii) informed that the Police will object to his appearance in Court in related court proceedings, (iv) instructed other Police Officers to take into their possession the Petitioner's mobile phone, and (v) was abusive and hostile towards the Petitioner.

A transcript of what happened inside the room with references to what was said by the Petitioner, the 1<sup>st</sup> Respondent and some of the other Respondents, is attached to the Petition. Learned counsel for the Petitioner drew the attention of the Court to excerpts

from it. The transcript emanates out of an audio recording, which the Petitioner had surreptitiously recorded using his mobile phone. When the Petition was Supported, learned Counsel for the Petitioner submitted that he agreed with Court that an Attorney-at-Law while discharging his professional services should not engage in the surreptitious recording of a conversation, notwithstanding its possible evidential value.

Learned Counsel for the Petitioner submitted that the conduct of the 1<sup>st</sup> Respondent Senior Superintendent of Police was in violation of the Petitioner's professional entitlements arising out of Rules made by the Inspector General of Police under section 55 of the Police Ordinance, published in Gazette No. 1758/36, of 18<sup>th</sup> May 2012. He further submitted that the 1<sup>st</sup> Respondent had acted in a degrading manner towards the Petitioner. He stressed that the 1<sup>st</sup> Respondent had infringed the Petitioner's Fundamental Right guaranteed in terms of Articles 11, 12 and 14(1)(g) of the Constitution.

In response to the submissions made by learned counsel for the Petitioner, learned Senior Deputy Solicitor General submitted that what the Respondent Police Officers had attempted to engage in, was an 'inquiry' into a dispute of civil nature between the 7<sup>th</sup> Respondent and her mother. She further submitted that the Police had not conducted an 'investigation' into the committing of an offence or the occurrence of a breach of the peace. She did not contest the authenticity of the transcript pertaining to the events that are alleged to have taken place inside the office-room of the Officer-in-Charge of the Boralesgamuwa Police Station. When inquired by Court, learned Senior DSG submitted that as at now, the Police do not have any legal, regulatory or administrative framework based upon which such 'inquiries' are to be conducted, though engaging in dispute resolution was aimed at preventing disputes being aggravated and resulting in the committing of offences and the occurrence of possible breach of the peace. She submitted that therefore the conduct of such 'inquiries' was most desirable, as it was aimed at the settlement of disputes.

When this matter was Supported, the President of the Bar Association of Sri Lanka was present in Court with regard to another matter. As the core allegation submitted by the Petitioner relates to the discharge of professional services by Attorneys-at-Law and the conduct of Police Officers towards Attorneys-at-Law, and as it was felt that his submissions would also be useful to enable the Court to decide on a suitable course of action to be taken with regard to the Petition, Mr. Pieris was invited to assist Court as amicus. He submitted that there were similar instances that had been brought to his attention, where Attorneys-at-Law who went to Police Stations had to encounter various forms of harassment and difficulties, which prevented or obstructed them from discharging professional duties towards their clients. He said that such obstructions resulted in the Fundamental Rights of suspects being infringed and Attorneys-at-Law being prevented from discharging their professional services which also amounts to the infringement of the Fundamental Right of such Attorneys-at-Law guaranteed under Article 14(1)(g). He submitted that in August 2022, he had the occasion to write to the Inspector General of Police calling upon him to ensure that the arrest of suspects is carried out strictly in terms of the law, and that rights of suspects arrested to have access to Attorneys-at-Law be respected and facilitated by Police Officers.

On a consideration of the submissions made by all three learned counsel and the material placed before this Court, it is observable that the 1<sup>st</sup> Respondent has acted towards the Petitioner in an offensive, improper and undignified manner and that his conduct has hampered the Petitioner from discharging his professional services on behalf of his client - the 7<sup>th</sup> Respondent.

When Court inquired from the learned counsel for the Petitioner whether his client would be content if the Inspector General of Police were to be directed to conduct an inquiry into the matter and also put in place a comprehensive, legally enforceable regulatory framework (a) with regard to the conduct of 'inquiries' into disputes between parties, (b) to ensure that persons who are called upon to participate at such 'inquiries' in the nature

of the 'inquiry' referred to in the Petition, have the entitlement to be represented by an Attorney-at-Law of their choice, (c) that would enable Attorneys-at-Law receive an appropriate opportunity of representing their clients at such 'inquiry', and (d) to ensure that Attorneys-at-Law receive an effective opportunity to make representations to the Police on behalf of suspects who are arrested and or interviewed by the Police, learned Counsel responded in the affirmative. Both the learned Senior Deputy Solicitor General and the President of the Bar Association of Sri Lanka submitted that it would be most appropriate for the Inspector General of Police to be directed to issue such a legally recognized comprehensive regulatory framework.

Court notes that the afore-mentioned Gazette notification bearing No. 1758/36 containing Rules, is also the outcome of an Order made by this Court relating to certain proceedings similar to the present Application.

In view of the foregoing, without granting leave to proceed at this stage, in the form of interim orders, the Inspector General is hereby directed to comply with the following:

- (i) Conduct an independent, impartial and comprehensive inquiry into the incident referred to in the Petition, and submit such inquiry proceedings together with his findings and recommendations to the National Police Commission, for necessary action.
- (ii) Report to this Court on the action taken by him with regard to the above directive and the subsequent action taken by the National Police Commission.
- (iii) Establish a Committee comprising of senior Police Officers, nominees of the Honourable Attorney General and nominees of the President of the Bar Association of Sri Lanka, to formulate a regulatory framework regarding the following:

- a. Conduct of inquiries into disputes (disputes specified in such framework) for the purpose of securing amicable settlement of such disputes through fact finding mechanisms such as inquiry and dispute resolution mechanisms such as mediation and conciliation, with the view to preventing the escalation of such disputes into a breach of the peace or the committing of offences.
  - b. Participation of Attorneys-at-Law representing disputant parties at such inquiries.
  - c. Permitting a suspect who is under investigation by the Police for having committed an offence and in the custody of the Police, to have access to an Attorney-at-Law while such suspect is in Police custody.
  - d. Providing for the entitlement of an Attorney-at-Law to ascertain from the Officer-in-Charge of a Police Station the following information pertaining to his client who is suspected of having committed an offence, and to make appropriate representations on behalf of such suspect:
    - i. The allegation against his client.
    - ii. If the suspect has been arrested and is in Police custody, the date, approximate time and place at which the client of the Attorney-at-Law (who is suspected of having committed an offence) is to be produced before a Magistrate.
  - e. Providing specific opportunity to Attorneys-at-Law to make representations on behalf of their clients to Officers-in-Charge of Police Stations / Police Investigation Officers.
- (iv) The Committee should be invited to consider receiving views of the general Public and representations by concerned civil society organizations, so that their views regarding the framework to be developed by the Committee could be taken into consideration.

- (v) Upon the finalization of the applicable legal and regulatory framework by the Committee and presentation of their Report to the Inspector General of Police, should the Inspector General of Police be agreeable with the recommended framework, to take necessary steps to promulgate and publish them in the form of Rules made in accordance with section 55 of the Police Ordinance.
- (vi) On or before 31<sup>st</sup> March 2023, report to this Court on action taken in terms of this Order.

The Registrar is directed to forthwith forward copies of this Order to the following:

- (i) Honourable Attorney General
- (ii) Inspector General of Police
- (iii) President, Bar Association of Sri Lanka
- (iv) Petitioner and to his Counsel

The Registrar is directed to have this matter Mentioned on 3<sup>rd</sup> April 2023, at 9.45am before this bench.

**Yasantha Kodagoda, PC**  
Judge of the Supreme Court

**A.L. Shiran Gooneratne**  
Judge of the Supreme Court