

**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.

Puwakketiyaage Sajith Suranga
Bogahawatta, Lellkada, Ginimalgaha.

Petitioner

SC (FR) Application No. 527/2011

Vs

1.Prasad

Sub-Inspector of Police Station,
Thelikada.

2.Sunil

Sergeant
Thelikada Police Station
Thelikada.

3.Sugath Palitha

Sergeant

Thelikada Police Station,

Thelikada.

4.Samantha

Civil Defence Officer,

Thelikada Police Station,

Thelikada.

5.Inspector of Police Nalaka

Officer-in-Charge,

Thelikada Police Station,

Thelikada.

6.N.K.Illangakoon,

Inspector General of Police

Police Head Quarters,

Colombo 1.

7.Hon.Attorney General

Attorney General's Department,

Colombo 12.

Respondents

BEFORE:- SISIRA J.DE ABREW, J

M.H.M.U.ABEYRATHNE, J and

H.N.J.PERERA, J.

COUNSEL:-Shantha Jayawardene with Chamara Nanayakkarawasam

For the Pettioner

Hiran de Alwis with Chanaka Jayamaha for the 1st to 5th

Respondents

Madhawa Tennkoon SSC for the 6th and 7th Respondents

Argued On:-28.03.2016

Decided On:-22.07.2016

H.N.J.PERERA, J.

The Petitioner complained that the 1st to 5th Respondents had violated his fundamental rights guaranteed by Article 11 and/or 12(1), and/or 13(1) and/or 13(2) of the Constitution. Supreme Court granted leave to proceed for the alleged infringements of Article 11 and 13(1) of the Constitution.

The Petitioner who was 17 years and 10 months old at the time of the incident was following a full time 1 ½ year vocational training program in Gas Welding, Arc Welding, Flame/Gas cutting and related aspects, conducted by the Vocational Training Authority of Sri Lanka at the Vocational Training Centre at Vidyananda Vidyalaya, Ginimallagaha.

The Petitioner states that on 23.08.2011 he left his house at around 8.30 p.m. to go to the house of a friend of his named Ranga situated about 400 meters away from the Petitioner's house, with the aim of accompanying Ranga to go and view the procession (perahera)of the

Seenigama Devalaya. When the Petitioner arrived at the house of Ranga, he found that Ranga was not at home as he had gone to collect his motor-bicycle which had been lent by him to a person called Susantha alias Kalu mama alias Kalu Mahattaya. The Petitioner thereafter borrowed a motor-bicycle from a neighbour of Ranga named Ajith Jayasekera and proceeded to the house of Susantha with the hope of meeting Ranga. However, the inmates of Susantha's house informed the Petitioner that Susantha had gone to the house of one Pelis (the Petitioner's father's uncle) situated about one kilo meter away from the Petitioner's house and that Ranga had followed Susantha to Pelis's house.

Therefore the Petitioner proceeded to the house of Pelis and when he went there he came to know that Ranga was not there, but met Susantha and the Petitioner engaged in conversation with Susantha and Pelis.

At that time around 10.p.m four police officers attached to the Thelikada police station namely 2nd to 4th Respondents and one other officer whose name is not known to the Petitioner arrived at the house of Pelis on two motor-bicycles and without informing him of any reason for acting so, slapped him thrice and arrested him and Susantha. The 2nd and the 3rd Respondents were in uniform and the other two dressed in civilian attire.

Hearing the commotion many gathered at Pelis's house and were witnesses to this incident. The two officers who were dressed in civilian clothing pointed out the Petitioner to the crowd and told them that the Grease Devil had been arrested and thereafter the Petitioner and Susantha were taken on the motor bicycles to the Thelikada police station.

The Petitioner states that at the Thelikada police station he was kept near the side door to the police station with another officer while Susantha was taken into the police station. Thereafter the 4th Respondent held the Petitioner's hands and the other police officer by

his neck. The 2nd and the 3rd Respondents thereafter started assaulting the Petitioner with batons on the Petitioner's chest, face and legs. The Petitioner states that thereafter, the 4th Respondent put the Petitioner's hands around a pillar and the 1st, 2nd and the 3rd Respondents assaulted him on various areas of his body for about one hour.

The Petitioner further states that due to the assault the Petitioner cried out in pain and that a neighbour of the Petitioner named Ajith Jayasekera who came to the police station saw the Petitioner being subjected to torture and he queried from the 1st to 4th Respondents and from the other police officer who were beating the Petitioner whether they intend to kill the small fellow and eat him. The 1st to 4th Respondent then scolded Ajith and chased him away. Thereafter another police officer brought a book and kept it on the Petitioner's head and the 1st to 4th Respondents and the other police officer repeatedly and forcefully hit the book with a baton causing severe physical pain to occur in the Petitioner's head and neck areas. The Petitioner states that he felt dizzy and requested for water but was not given any water to drink.

The Petitioner was thereafter taken inside the police station by the 1st Respondent who kicked the Petitioner forcefully on his lower back and he was thrown forward into the remand cell. The Petitioner found Susantha and another person inside the cell.

It is the Petitioner's position that he was lying prostrate on the floor of the cell as he was in severe pain and his father came to see him around 12.p.m to the remand cell and he informed his father about the assault and stated that he was in severe pain and wanted to vomit. The petitioner's father thereafter informed about it to the reserve police officer who was there and he was asked to go and meet another police officer. The said Reserve police officer gave a bottle of 'Siddhalepa' balm to Susantha and told him to apply it on the Petitioner. Later the

Petitioner heard the other police officer abusing his father and ordering him to leave the police station.

The following day morning at about 6 a.m his mother N.P.A.Laxshmi and sister Priyanka Kumari came to the police station to see him and he informed them about the whole incident and he got to know from them that he had been arrested on suspicion based on a complaint made by one W.M.Nilanthi Priyadarshini that a suspicious individual had been seen near her house. It is the Petitioner's position that the said Priyadarshani's family members are well known to the Petitioner's family members and her husband Jayantha is a friend of the Petitioner's father.

Having learnt that the Petitioner had been arrested by the police pursuant to the complaint made by her, around 7.30 a.m the said Nilanthi Priyadarshani came to the police station and informed the 5th Respondent Officer-in-Charge that she did not name the Petitioner in her complaint and that the Petitioner was not involved in the incident regarding which she had made the complaint and that she wants to withdraw her complaint, if the police is trying to implicate the Petitioner. Thereafter the 5th Respondent took her near the cell and showed the Petitioner, Susantha and the other suspect who was inside the cell, and asked her to identify the 'grease devil'. Thereupon, the said Nilanthi Priyadarshani told the 5th Respondent that she cannot verify as to the other two but it was certainly not the Petitioner who was near the window of her house that night.

Thereafter the 5th Respondent told the Petitioner's mother and the sister that the Petitioner was going to be released on police bail and they left the police station to go home to bring their identity cards.

In the meantime many people arrived at the police station to see the purported 'grease yaka' and the 5th Respondent took the Petitioner out

of the remand cell and showed him to the assembled crowd stating that this is the 'grease yaka'. And when the petitioner sat down on a chair as he was in severe pain, the 5th Respondent ordered him to stand and assaulted him on his face and head in front of the crowd.

Thereafter around 12.00p.m he was handcuffed and taken along with Susantha to the Baddegama District Hospital by two police officers attached to the Thelikada police station and was produced before a Doctor who examined him. Petitioner states that he informed the Doctor that the police assaulted him. The Petitioner further states that one of the police officers who took them to the Hospital telephoned the 5th Respondent and informed him that the Petitioner had told the Doctor about the assault and that they were taken back in the three wheeler and it was stopped near the Baddegama Magistrates Court where his parents and relatives were gathered and he informed them that as he has told the Doctor about the assault he was being taken back to the police station and the policemen who accompanied them in the three wheeler kept on shouting that they were taking the 'grease yaka'. The three wheeler was stopped at various places and he was displayed to passers-by as the 'grease yaka' and when they arrived at the police station he noticed that a massive crowd had gathered at the police station to see the 'grease yaka ' and that he was displayed to the crowd as the 'grease yaka'.

The Petitioner further alleges that on the same day at about 3.30 p.m they were taken to the Magistrate's Court Baddegama and on their way to the Baddegama courts at Dodangoda Junction and Sandarawala Junction the jeep was stopped and he was shown to the people as the 'grease yaka'.

The petitioner was produced before the Magistrate Baddegama and remanded. An identification parade was held and the petitioner was not

identified. The B-report filed in court alleged that the Petitioner and Susantha had committed offences punishable under section 434 (House Trespass) and section 486 (Criminal intimidation) of the Penal Code. The Petitioner states that he was treated in Galle Prison Hospital on 25.08.2011 while in remand custody on the orders of the Magistrate.

The Petitioner was released on bail, on 08.09.2011 at about 7.p.m got himself admitted to Ward 10 of the Karapitiya Teaching Hospital. The Petitioner informed the doctors at the said Hospital about the assault on him by the Thelikada Police. On 09.09.2011 a statement was recorded from him by the police post of the Karapitiya Teaching Hospital. On 10.09.2011 the petitioner was examined by the Judicial Medical Officer and he complained about the assault by the Thelikada police to him and he was discharged from Karapitiya Teaching Hospital on 10.09.2011. The Petitioner states that when he was returning home with a friend at Dodangoda Junction the 5th Respondent and a few other police officers accosted the Petitioner and asked him whether he got himself admitted to hospital with the intention of creating trouble for the police and threatened the Petitioner saying that the Petitioner will be locked up for three months.

The Petitioner's father complained to the Human Rights Commission of Sri Lanka on 01.09.2011 regarding the arrest, assault, torture, and inhuman and degrading punishment meted out to the Petitioner by the Thelikada police. The Petitioner too made a written complaint to the Human Rights Commission of Sri Lanka on 09.09.2011. The Petitioner's father made a complaint to the 6th Respondent regarding the same on 01.09.2011. The Petitioner too has made a complaint to the 6th Respondent against the Thelikada Police on 19.09.2011.

The Petitioner states that on 21.09.2011 The Human Rights Commission of Sri Lanka referred the Peitioner to the Chief Judicial Medical Officer,

Colombo and Dr. Ananda Samarasekera examined him on 21.09.2011 at the National Hospital Colombo and referred him to Dr. Neil Fernando, Consultant Psychiatrist at the Forensic Psychiatry Unit of the Mental Hospital (Teaching) Angoda. The Petitioner states that Dr. Neil Fernando directed the Petitioner to attend the Psychiatric Clinic at the Psychiatric Unit of the Karapitiya Teaching Hospital for further treatment and is presently still undergoing treatment at the said Hospital.

The Petitioner states that he was held by the 1st to 5th Respondents as 'grease yaka', the Petitioner has been subjected to severe humiliation in the eyes of the public, and in particular his colleagues at the Vocational Training Centre and as a result the Petitioner was compelled to abandon his vocational training program. The Petitioner states that whenever he came out in public, he was ridiculed and humiliated as 'grease yaka' and some went to the extent of hooting at him when they see him.

According to the Respondents the Petitioner had been taken into custody and produced before the Baddegama Magistrates Court on 24.08.2011 in case No 57044 based on a complaint by a Montessori Teacher. It is submitted that the Petitioner was arrested subsequent to the complaint made by a Montessori Teacher and that the Petitioner has been arrested according to the procedure established by Law and properly produced before the Magistrate and thereafter an identification parade was held. According to the B report marked R3(a) around 7.30 p.m on 23.08.2011 the Baddegama police had received a telephone message from the complainant that when she went to close the window around 7.30 she had seen some person near the window of the house and had screamed and the said person has run away. According to the complainant the said person was wearing an orange coloured T shirt and a Sarong. The said person was about 5-5 1/2 feet tall dark and could be identified if seen again. The neighbours had arrived

and searched the place and had found a Motor bicycle bearing No.YPWD 5677 parked on the road leading to her Uncle's house. According to the B report marked R3(a) on receipt of the said complaint a police team was sent to look into the matter and had found an abandoned Motor Bicycle bearing registration No. YPWD 5677 and has brought the same to the police station. Again the Baddegama police has received another telephone message around 11.45 p.m informing that the said suspect is around the place and had sent another team of police officers to search the area and has arrested a person wearing an orange coloured T shirt and a Brown coloured Sarong with another person who was with him on suspicion. On consideration of the aforementioned affidavits and documents it is apparent that the police officers attached to Baddegama police station have arrived at the scene in question on the information they had received by way of a telephone message that has been given by the complainant. According to the complainant the person whom she saw near the window that night was wearing an orange coloured T shirt and a Sarong. The police officers found the accused wearing an orange coloured T shirt and a Brown coloured Sarong and was arrested with the other person on suspicion. The other person who was found with the petitioner was also taken into custody along with the Petitioner as he could not establish his identity. As the complainant has described the person she saw near her window and has stated that she would be able to identify the said person if seen again, the petitioner was produced before the Magistrate for the purpose of holding an Identification parade. It is common ground that the Petitioner was arrested by the officers of the Baddegama police. It was contended on behalf of the Respondents that the petitioner was arrested on a complaint received that night on suspicion.

Section 32 of the Code of Criminal Procedure Act No.15 of 1979 describes the instances where peace officers could arrest persons without a warrant. According to section 32(1) (b)

“ Any peace officer may without a warrant arrest a 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 exist of his having been so concerned.”

It is common ground that the Petitioner was arrested by the officers of the Baddegama police on the night of 23.08.2011. Considering the circumstances of this matter, it is clear that the Respondents have arrested the Petitioner as he was apprehended near the area on reasonable suspicion on a complaint made to the police and had taken necessary steps against the Petitioner and criminal proceedings were instituted against him. In such a situation the arrest of the Petitioner cannot be regarded as an illegal arrest and therefore the Petitioner’s claim with regard to Article 13(1) of the Constitution should fail.

The Petitioner has complained that the 1st to 5th Respondents had assaulted him at the Baddegama police station. The brutal assault on him by the 1st to 5th Respondents caused him severe physical pain and the public humiliation caused to him by being displayed to the general public as a ‘grease yaka’ by the 1st to 5th Respondents caused him severe mental pain and suffering and thereby he has alleged that the 1st to 5th Respondents had violated his fundamental rights guaranteed in terms of Article 11 of the Constitution.

Article 11 of the Constitution refers to freedom from torture and states as follows:-

“No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

According to the complaint made by the Petitioner, when he was at Palis's house, four police officers attached to the Thelikada police station, namely the 2nd to 4th Respondents and one other officer whose name is not known to the Petitioner, arrived at the house of Palis on two motor bicycles and without informing him of any reason for so acting, slapped him thrice and arrested him and Susantha. The petitioner has not named the officer who had slapped him. But he states that at the police station 1st to 4th Respondents assaulted him. After Susantha and he were taken to the Thelikada police station, the Petitioner was kept near the side door to the police station. The 4th Respondent held the Petitioner's hands while the other officer whose name is not known to the Petitioner held him by his neck. The 2nd and 3rd Respondents thereafter started assaulting the Petitioner with batons on the Petitioner's chest, face and legs. He states that thereafter, the 4th Respondent put the Petitioner's hands around a pillar and the 1st to 3rd Respondents assaulted him on various areas of his body for about one hour. The Petitioner further states that while the Petitioner was holding on to the pillar, another police officer brought a book and kept it on the Petitioner's head and that the 1st to 4th Respondents and the other officer repeatedly and forcefully hit the book with a baton causing severe physical pain to occur in the Petitioner's head and neck areas. The Petitioner has tendered affidavits from one Ajith Jayasekera, Lelkada Balage Chamika Manaranga and Getammanarchchi Wasantha marked P2A, P2B and P2C. Apart from his petition and affidavit, the Petitioner has produced the said affidavits marked P2A, P2B and P2C and medical

evidence to substantiate his allegations against the 1st to 4th Respondents.

The 2nd and the 4th Respondents have taken up the position that they were wrongfully named as Respondents to this application and that they were never present at the police station during the times alleged by the Petitioner. The 2nd Respondent has pleaded that he reported to work at 6.00a.m on the 20th of August and was on official duty at a Perahera and thereafter reported back to the police station on the 24th August 2011 at 5.35 p.m.

The 4th Respondent states that he reported to work at 3.05 p.m and thereafter left work at 8.22p.m.on the 23.08.2011. He thereafter reported to work as usual on 24.08.2011 morning. He states that he was not on night duty the previous night.(23.08.2011).

The 2nd and the 4th Respondents have annexed documents marked R1a to R1h to substantiate the same. But on perusal of the said documents it is clear that the said documents do not establish that the 2nd and the 4th Respondents could not have been at the police station at the time material to this incident. The Petitioner has clearly identified the 2nd and the 4th respondents among the four officers who arrived in two motor bicycles on 23.08.2011 around 10.00 p.m at Palisa's house and arrested him and Susantha.

Again the Petitioner has clearly identified the said 2nd and 4th Respondents as the two persons who assaulted him at the police station with batons. The Petitioner has very clearly identified the 4th Repondent as the officer who first held him by his hands and later as the person who put his hands around a pillar. The Petitioner has categorically stated that the 2nd and the 4th Respondent too hit him with batons on the book which was kept on top of his head. According to the Petitioner the 1st to 4th

Respondents assaulted him on the night of 23.08.2011. The following day morning the 5th Respondent who was the Officer-in-Charge of the police station Thelikada took him out of the remand cell and showed him to the assembled crowd saying 'this is the grease devil'. When the Petitioner sat down on a chair as he was in severe pain, the 5th Respondent ordered him to stand and assaulted him on his face and head in front of the crowd. This is the only time the Petitioner implicates the 5th Respondent to this incident. In addition to the assault the Petitioner alleges that it was the 5th Respondent who humiliated him by showing the Petitioner to the crowd saying 'this is the grease devil'. Thereafter the Petitioner was taken before the Medical Officer Baddegama District hospital before producing to the Magistrate, Baddegama.. According to the Petitioner he was taken in a three wheeler and he informed the Doctor that the police have assaulted him. This was brought to the notice of the 5th Respondent and he was taken back to the police station. And on their way to the police station the three wheeler was stopped at various places and he was displayed to passers-by as the 'grease yaka'. At the police station he noticed a massive crowd was gathered there and he was again shown to the crowd stating that he is the 'grease yaka'. On the same day (24.08.2011)at about 3.30 p.m he was taken to Baddegama Courts and again on their way to courts at Dodangoda and Sandarawala Junctions the police jeep was stopped and he was shown to the people as the 'grease yaka'.

The allegation against the 1st to 5th Respondents made by the Petitioner is based on the alleged infringement of Article 11 of the Constitution. The fundamental rights guaranteed in terms of article 11 are not restricted to mere physical injury. The words used in Article 11, viz., 'torture, cruel, inhuman or degrading treatment or punishment would take many forms of injuries which could be broadly categorized as physical and psychological and would embrace countless situations that could be

faced by the victims. Accordingly, the protection in terms of Article 11 would not be restricted to mere physical harm caused to a victim, but would certainly extend to a situation where a person had suffered psychologically due to such action.

In *W.M.K. De Silva Vs Chairman, Ceylon Fertilizer Corporation* (1989) 2 Sri.L.R 393, Amerasinghe J. ., said,

“I am of the opinion that the torture or cruel, inhuman or degrading treatment or punishment contemplated in Article 11 of our Constitution is not confined to the realm of physical violence. It would embrace the sphere of the soul or mind as well.”

In *Kumarasena Vs SI Sriyantha and Others* S.C Application No.257/93 SCM of 23.05 1994, it was held that the ‘suffering occasioned was of an aggravated kind and attained the level of severity to be taken cognizance of as a violation of Article 11 of the Constitution’.

In *Adhikary V. Amerasinghe* [2003] 1 Sri.L.R 270 Shirani Bandaranayake, J with Edussuriya and Yapa JJ agreeing, stated that the protection of Article 11 is not restricted to the physical harm caused to a victim, but would certainly extend to a situation where a person has suffered psychologically due to such action. Therefore the test which has been applied by our courts is that whether the attack on the victim is physical or psychological, irrespective of the fact that, a violation of Article 11 would depend on the circumstances of each case. Accordingly, it would be necessary to consider the circumstances of this case and the nature of the acts complained of to decide whether there is a violation of Article 11 of the Constitution.

It is to be noted that the incident of showing the Petitioner to the other people as ‘grease yaka’ took place mainly at public places. Apart from

being assaulted the Petitioner was first shown or displayed to the crowd that was gathered at the police station by the 5th Respondent himself. The 5th Respondent was the Officer-in Charge of the police station Thelikada. When one considers the affidavit filed by the petitioner it gives the impression that the other officers were encouraged by the act of the 5th Respondent and the 5th Respondent has done nothing to prevent it. It is the Petitioner's position that when he was produced before the Doctor he complained about the assault to him. This was conveyed to the 5th Respondent by the other officers who brought the Petitioner to Doctor and they were instructed by the 5th Respondent to bring the Petitioner back to the police station without producing him before the Magistrate. Thereafter on the way back to the police station he was shown or displayed as 'grease yaka' to people at various places. Then again at the Thelikada police station and on the way from the police station to Courts the Petitioner was again displayed to the people at the Dodangoda Junction and Sandarawala Junctions as the 'grease devil'. The ordeal faced by the petitioner undoubtedly is of an aggravated nature. He was made to face the public as though he was a criminal. There is no evidence placed before this court as to who was referred to by the people of this particular area as 'grease yaka'. But the court was made to understand that the people in the said area especially the young girls and ladies were frightened by a man who came to their premises and peeped into their rooms and houses in the dark especially when they were alone in their houses. In short people in the area referred to a pervert who peeped into the rooms of the ladies at night when they were alone for sadistic pleasure. The very purpose of showing the petitioner as 'grease yaka' at such highly crowded places was to identify and label the Petitioner as the said pervert to the public and humiliate the petitioner. And this was done several times. The Petitioner has stated that the 1st to 4th Respondents showed him as 'grease yaka' to the people gathered

near the house of Pali's at the time of his arrest. The petitioner has very clearly identified the 5th Respondent as one of the officers who displayed him as the 'grease devil' to the public. The petitioner has not named or specifically identified the other police officers who displayed him to the public as 'grease yaka' at various other places. But he has very clearly stated that the fact that he complained to the Doctor about the police assault was conveyed by the said officers who took him to the Hospital to the 5th Respondent. And thereafter he was shown or displayed at various places as 'grease devil' by the said officers who took him back to the police station. The psychological trauma faced by the petitioner while in the custody of the 5th Respondent would add to the severity of the actions by the 1st to 5th Respondents. In my opinion the conduct of the 1st to 5th Respondents would certainly amount to cruel, inhuman or degrading treatment of the Petitioner.

In Channa Peiris and Others Vs Attorney General (1994) 1 SLR 1 Amerasinghe , J. held that there three general observations apply to in regard to violations of Article 11:-

(i)The acts or conduct complained must be qualitatively of a kind that a Court may take cognizance of. Where it is not so, the Court will not declare that Article 11 has been violated.

(ii)Torture, cruel, inhuman or degrading treatment or punishment may take many forms, psychological and physical;

(iii)Having regard to the nature and gravity of the issue, a high degree of certainty is required, before the balance of probability might be said to tilt in favour of a Petitioner endeavoring to discharge his burden of proving that he was subjected to torture or to cruel, inhuman or degrading treatment.

Thus it is clear that though alleged infringements of fundamental rights have to be proved by the Petitioner on a balance of probability, the Court requires a high degree of proof within the standard, commensurate with the nature of the allegations made, while at the same time ensuring that no undue burden is placed upon a Petitioner.

The Respondents have produced the Medico-Legal Report dated 24th August 2011 marked R4. R4 very clearly establishes the fact that the petitioner has informed the Doctor who examined him that he was assaulted by the police. The Petitioner has tendered three affidavits from one Ajith Jayasekera, L.B.C. Manaanga, G. Wasantha marked P2a, P2B and P2C to substantiate the same. These three persons had witnessed the ordeal faced by the Petitioner at the hands of the police. Petitioner has tendered an affidavit from his father marked P3 to substantiate the fact that he informed his father about the police assaulting him when he came to the police station to see the Petitioner. The father of the petitioner P Sumanasiri has confirmed the fact that he saw the Petitioner inside the cell lying on the ground and in severe pain. It is stated in P3 that the Petitioner complained about the assault by the police officers and that he was in severe pain and feeling vomitish and pleaded that he be taken before a Doctor. It was contended by the Counsel for the Petitioner that the said Medical Report marked R4 is false and that an attempt has been made by the medical officer to protect the Respondents.

In the B report marked P6 the police have not stated anywhere that the Petitioner had injuries in his person or has moved court that he be produced before a medical officer. It is clearly stated that the Petitioner with another person was arrested by the police on information received by the police that there are suspicious persons in the vicinity where the incident took place. The petitioner has stated that he was slapped three

times by the police officers at the time of arrest. Thereafter he was assaulted by the respondents again at the police station. The B report marked p6 does not state anywhere that the petitioner was handed over to the police by the villagers or that the villagers had manhandled the petitioner. It is very clear from the said B report marked P6 that the police have arrested the petitioner and another on suspicion and were taken to the police station thereafter. But the Respondents in their Objections have stated that the petitioner was accosted by the villagers that night and that he was manhandled by the villagers before the petitioner was handed over to the police.

According to the document marked R3b the 3rd respondent has very clearly recorded the fact that he arrested the petitioner and brought him to the police station. He has handed over the suspects to the P.C 88153 Abeykoon. He has recorded that he found nothing in the possession of the two suspects and that they had no injuries. Even the P.C 88153 Abeykoon has recorded the fact that the two suspects including the petitioner was handed over to him by the 3rd respondent and that the suspects had no injuries to be seen.

But the respondents in their objections have taken up the position that the petitioner was handed over to them by the villagers. According to the objections filed by them there was a big crowd gathered at the time of the arrest of the petitioner. According to para 13 of the objections it is stated that the petitioner was accosted by several villages upon the scream of a female inhabitant of a house which he was trespassing and thereafter had been manhandled by some villagers. According to affidavit marked R2b, the affirmant one K.H.Chandana has stated that about 40 villages were gathered and they assaulted a person with hands and poles shouting 'grease yaka' and after informing the police on 119 and on arrival of the police he was handed over to the police by them.

He has come to know that it was the petitioner and one Arabage vithange Susantha that was handed over to the police. Ambagahaduwege Dinesh Chinthaka too has stated in his affidavit marked R2c that the villagers assaulted the petitioner and the person called Susantha and the police tried to protect the suspects from being assaulted. G.K. Ruwan Kumara in his affidavit marked R2d has also stated that the villagers assaulted the petitioner and Susantha and the police with some difficulty was able to protect them from the crowd. Balagamage Nimal too has stated the same in his affidavit marked 2Rf.

All these affidavits had been marked and produced by the Respondent s to show that the petitioner had been severally assaulted by the villagers before he was handed over to the police by the villagers. These affidavits clearly contradicts the position stated by the 1st respondent in his B report to the Magistrate marked P6 dated 24.08.2011. Nowhere in the said B report the 1st respondent has stated that the petitioner was handed over to the police by the villagers and that the said villagers have assaulted the petitioner. It doesn't speak of any injuries caused to the petitioner. No application has been made to produce the petitioner to the J.M.O. And the document marked R3b clearly establish the fact that the petitioner with another was arrested by the police and that they were not handed over to the police by the villagers. The document R3b clearly establishes the fact that the petitioner did not have any injuries when he was brought and handed over to the other officer PC 88163 Abeykoon in the early hours of the 24.08 2011 by the 3rd Respondent. In the B report marked P6 the 1st Respondent has not informed the Magistrate that the Petitioner had been produced before a Doctor. The Respondents had admitted the fact the Petitioner was taken before the Doctor on 14.08.2011. According to the Petitioner he has informed the doctor that he was assaulted by the police whilst in police custody. In fact the Medical Report R4 shows that the doctor has recorded the said

fact in the history given by the Petitioner. This clearly supports the story of the Petitioner that he was assaulted and produced before a doctor prior to being produced before the Magistrate.

It is clear from these documents that the Respondents had made an attempt to show that the petitioner had been assaulted by some villagers on the night of the day he was arrested by the police and that it is possible that the said injuries to the Petitioner would have been caused by the public at the time of his arrest. When one considers the conflicting versions placed before court by the Respondents, there is considerable doubt as to the truth of the Respondents version.

On a perusal of R4 it is clearly seen that the petitioner has very clearly informed the doctor about the police assaulting the petitioner whilst he was in the police custody. The report of the Medical Officer Baddegama is, in my view, valueless and unworthy of acceptance. I therefore reject the report of the Doctor Piyaratne as unacceptable.

In *Ansalin Fernando V. Sarath Perera* (1992) 1 Sri L.R 411, it was held that “...depending on the circumstances, an allegation of a violation of Article 11 could be proved even in the absence of medically supported injuries”.

It was the Petitioner’s position that after he was released on bail on 08.09.2011 at around 7.p.m he got himself admitted to Ward 10 of the Karapitiya Teaching Hospital. The Medico-Legal Report 12.12.2011 has been issued by the Assistant JMO Karapitiya Dr.Nisansala lakmali Gamage states that the petitioner has been examined on 10.09.2011 at 10.15 am. In the short history given by the patient it is stated that:-

“On 23.08.201, time I am not sure; five police men came by motor bikes while I was going with a friend .They caught me by my neck at Palis Seeya’s house. Two police men were in uniforms and three in civil. They

did not assault me on arrest. They brought me by a motorbike to police. At police I was assaulted by hand and feet and by batton poles. I was asked to grab a pillar by both hands and they assaulted my back by batten poles. Then they kept a book on my head and hit it by batten poles. I lost my consciousness and got throat bleeding following that. When I fell down one of them hit my knee by foot and kicked my abdomen.-----“

In the colomn C it is stated that an averagely built teenager. Conscious and rational. Not in depressive mood. No abnormalities found in systemic examination.

1) Abrasion over the right knee 0.5 cm in size over the lateral aspect of the joint.

Skull X-ray, Chest X-ray, X-ray right knee –no fractures.

Dr. Nisansala Lakmali Gamage who examined the Petitioner on 10.09.2011 has stated that the said injury is compatible with applying blunt force trauma. The given history of allegation cannot be excluded.

This opinion of the AJMO Teaching Hospital Karapitiya dated 12.12.2011 materially supports the Petitioners position that the injuries on him were inflicted on him at a time when he was being held in police custody.

While the petitioner was held in remand custody, the petitioner’s father has complained to the Human Rights Commission of Sri Lanka on 01.09.2011 regarding the arrest, detention, assault, torture and inhuman and degrading punishment meted out to the petitioner by the Thelikada Police Reference No HRC/2790/11/G P7. The petitioner himself made a written complaint to the Human Rights Commission on 19.09.2011 regarding the arrest, detention, assault, torture and inhuman and degrading punishment meted out to him. (P8). The Petitioner and his

father had also complained about the treatment meted out to him by the Thelikada Police to the 6th Respondent the Inspector General of Police. (P9, P10). On 21.09.2011 the Human Rights Commission of Sri Lanka referred the Petitioner to the Chief Judicial Medical Officer, Colombo (P11), who thereafter referred the Petitioner to Dr. Neil Fernando of the Forensic Psychiatry Unit of the Mental Hospital (Teaching) Angoda. Dr. Neil Fernando has examined the Petitioner on 26.09.2011. In his report submitted to the Human Rights Commission he has stated that the Petitioner showed many psychological consequences of trauma.

1. Reliving experiencing of aspects of the stress events and intrusive memories;
2. Recurrent distressing dreams;
3. Behaviors to avoid reminders of the incident;
4. Difficulties in falling to sleep;
5. Difficulties in concentration ;
6. Hyper vigilance;
7. Exaggerated startled response;
8. Social withdrawal;
9. Depressed mood and suicidal ideas;
10. Loss of self esteem;
11. Has lost the faith about the goodness of man kind;
12. Emotional numbness;
13. Depressive recognitions like worthlessness, helplessness,
Hopelessness

Dr.Fernando has very clearly stated that the Petitioner is experiencing distress, disability and dysfunction. Clinical information indicates that the Petitioner has a mental disorder which fall in to the category of reaction to severe stress and adjustment disorders (according to the ICD-10 Classification of Mental and Behavioral Disorders) cannot be ruled out Post Traumatic Stress Disorder, Need to be followed up to detect features of Post Traumatic Stress Disorder and depressive disorder. In his opinion the Petitioner needs psychological support in the form of traumatic counselling needs to be followed up as an outpatient at psychiatric clinic Teaching Hospital Karapitiya. The Petitioner has accordingly attended the Psychiatric Clinic at the Psyhiatric Unit of the Karpitiya Teaching Hospital for further treatment as directed by Dr.Neil Fernando. It is his position that he is still undergoing treatment at the said Psychiatric Unit at the Karapitiya Teaching Hospital. The Petitioner has annexed the relevant pages of the clinic book marked as P12 to substantiate the same.

The Petitioner as he was held out by the Respondents as a 'grease yaka', has been subjected to severe humiliation in the eyes of the public and in particular his colleagues at the Vocational Training Centre and as a result he was compelled to abandon his vocational training program. He has further stated that whenever he came out in public he was ridiculed and humiliated as a 'grease devil' and some went into the extent of hooting at him when they saw him.

The Petitioner has clearly identified the 1st to 4rd Respondent as the persons who assaulted him at the Thelikada police station. The Petitioner has submitted affidavits from one Ajith Jayasekera marked P2(A), L.B.Chamika Manaranga marked P2(B), G.A.Wasantha marked P2(C) who have stated that they saw the 1st to 3rd Respondents assaulting the Petitioner when he was in police custody. The Petitioner and the said

above witnesses had clearly identified the 4th Respondent as the person who held the Petitioners hands around the pillar and states that the 4th Respondent too who was in civil joined the 1st, 2nd and the 3rd Respondents and assaulted the Petitioner thereafter.

The Petitioner's father too has given an affidavit stating that he saw the Petitioner lying in the floor of the police station in pain and has stated that the petitioner complained to him that the police officers has assaulted him severely and that he complained of having a stomach pain and was feeling vomitish. (P3) He has further stated in the affidavit that he retained a lawyer for his son and was waiting for the police to arrive near Baddegama Courts and saw the Petitioner being taken towards Baddegama at about 12 pm by some police officers in a three wheeler and they came back in a three wheeler and the Petitioner put his head out and informed him that as he had informed the Doctor that he was assaulted by the police and as such he was being taken back to the police station.

P.Priyanka kumara the sister of the Petitioner too has given an affidavit stating that people came to the police station to see the Petitioner who was shown to the public as 'grease yaka'. (P4).Rathnasiri Wickrema Gunaratne in his affidavit marked P5 has stated that On the 24.08.2011 morning when he went to the town he came to know that the 'grease yaka' has been caught and went to the police station to see what was happening. He has stated that he knew the 5th Respondent who was the officer-in charge of the Thelikada police station and saw that a big crowd had gathered at the police station to see the 'grease yaka' and he requested the 5th Respondent to show the 'grease yaka' to him. The 5th Respondent has thereafter stated that he will show the 'grease yaka' to all the people who had gathered at the police station to see, and has brought the Petitioner out the Petitioner who was inside the cell and

showed him to all the people gathered there as 'grease yaka". This witness clearly corroborate the version given by the Petitioner that he was taken out from the cell and shown to the people gathered at the police station again by the 5th Respondent on the morning of 24.08.2011.

The Petitioner has very clearly stated that the 5th Respondent showed him as 'grease yaka' to the people gathered at the police station on 24.08.2011. It is very clear from the evidence placed before this court by the Petitioner that the 5th Respondent was clearly responsible for showing or displaying the Petitioner as 'grease yaka' to the people of the area and the other officers of the said police station who took the Petitioner in a three wheeler and displayed him as the 'grease yaka' did so with the clear encouragement and approval of the 5th Respondent who was the Officer-in Charge of the police station at the time of the incident. There is nothing to show that the 5th Respondent did anything to prevent the Petitioner being assaulted or been shown or displayed as 'grease yaka' to the public.

The public humiliation caused to the Petitioner by being displayed to the general public no doubt has caused him severe mental pain and suffering. The report issued by Dr.Neil Fernando Consultant Psychiatrist at the Forensic Psychiatry Unit of the Mental Hospital (Teaching) Angoda clearly establish the same. The Petitioner has been subject to severe humiliation in the eyes of the public, and in particular his colleagues at the Vocational Training Centre and as a result the Petitioner has been compelled to abandon his vocational training program.

The Respondents in their objections in paragraph 19 has stated that they have been involved in several raids in relation to the brewing and sale of illicit liquor in the said police division. The Petitioners parents have been caught in several such raids brewing and/or selling illicit liquor and that

the Petitioner's parents have been produced before the Magistrate's Court on several occasions and have been fined and/or sentenced accordingly. The Respondents also have stated that the brothers of the Petitioner have been involved in several brawls subsequent to the 23rd of August 2011 wherein they have assaulted several villagers. The Respondents have annexed documents marked R5a to R5d substantiate the same.

The Petitioner was only a young boy of 17 years and 10 months old at the time of the incident. He was a student at the Vocational Training Authority of Sri Lanka. The documents marked by the Respondents does not show that the Petitioner was involved with the activities of his parents. The documents annexed marked R5a to R5d do not indicate any involvement of the Petitioner in brewing or selling illicit liquor. In any case the conduct of the parents or their previous convictions does not in any manner permit the Respondents to subject the Petitioner to torture or to cruel, inhuman or degrading treatment or punishment. The allegation of the Respondents that the Petitioner has been instigated by such persons involved in such illicit activities and sponsors of such unauthorized liquor outlets to impede the performance of the duties of the Respondents cannot be believed and is unacceptable.

In *Amal Sudath Silva V. Kodituwakku, Inspector of Police and Others* [1987] 2 Sri.L.R. 119 Atukorale,J observed:-

"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 torturous, 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.

The petitioner may be a hard-core criminal whose tribe deserve no sympathy. But if constitutional guarantees are to have any meaning or value in our democratic set-up, it is essential that he be not denied the protection guaranteed by our Constitution.”

The fundamental rights guaranteed in terms of Article of the Constitution are not restricted to mere physical injury. As held in W.M.K.de Silva V. Chairman Fertilizer Corporation by Amerasinghe ,J. it would embrace the sphere of the soul or mind as well. Apart from been assaulted at the Thelikada police station, it is to be noted that the Petitioner was shown or was displayed to the public as ‘grease yaka’ at the Thelikada police station, and at various other places including Dodangoda and Sandarawala Junctions. The ordeal faced by the Petitioner was undoubtedly of an aggravated nature. The conduct of the 5th Respondent and later with his blessings by the other police officers attached to the Thelikada police station at the times and places would certainly amount to degrading treatment of the Petitioner. The psychological trauma faced by the Petitioner can be understood.

The Petitioner has in this case led sufficient evidence to prove his allegations against the Respondents to the satisfaction of court.

For the foregoing reasons I hold that the 1st to 5th Respondents had violated the Petitioner’s fundamental rights guaranteed under Article 11 of the Constitution. I therefore direct the 5th Respondent personally to pay Rs.100,000/= and also the 1st to 4th Respondents each to personally pay a sum of Rs.50,000/- to the Petitioner as compensation and costs. All payments to be made within three months of today.

I direct the Inspector General of Police to investigate into the allegation levelled against the 1st to 5th Respondents by the Petitioner and forward

the investigation report to the Attorney General. Hon. Attorney General is directed to take necessary action.

The Registrar of this court is directed to send a copy of this brief to the Inspector General of Police.

JUDGE OF THE SUPREME COURT

SISIRA J.DE ABREW,J.

I agree.

JUDGE OF THE SUPREME COURT

M.H.M.UPALI ABEYRATNE, J.

I agree.

JUDGE OF THE SUPREME COURT

Relief granted.

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