

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

In the matter of an application under and
in terms of the Article 126 read with the
Article 17 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.

P.A.C. Madushan,
No. 129/2/1,
Sadagiriyaagama,
Bambarawana Road,
Mattaka.

Petitioner

SC FR Application No: 378/2019

Vs.

1. Harith,
Officer in Charge,
Uragasmanhandiya Police Station,
Elpitiya.
2. Hiran,
Crime OIC,
Uragasmanhandiya Police Station,
Elpitiya.
3. Mr. Daluwatta,
Daluwatta Stores,
Mahawila,
Ranthotuwa,
Benthara.

4. The Inspector General of Police,
Police Headquarters,
Colombo 01.
5. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before: **Justice S. Thuraiaraja, PC**
 Justice A.H.M.D. Nawaz
 Justice A.L. Shiran Gooneratne

Counsel: Shantha Jayawardena with Hirannya Damunupola, Azra Basheer
 and Wihangi Tissera instructed by Dinesh De Silva for the
 Petitioner.

Geeth Karunaratna with Bojaya Kasun instructed by R. Bhagya
A. Peiris for the **1st and 2nd Respondents.**

Induni Punchihewa, SC instructed by Ira Kalansuriya, SASA for
the **4th and 5th Respondents.**

Argued on: 29/01/2025

Decided on: 18/06/2025

A.L. Shiran Gooneratne J.

Factual Background

- [1] The Petitioner, in a Petition dated 01/10/2019, has alleged that the acts of arrest, detention, and torture by the first and second Respondents to this application have violated his Fundamental Rights guaranteed under Articles 11, 12(1), 13(1), and 13(2) of the Constitution. The Petitioner, as stated in paragraph 4 of the Petition, was employed as a sales representative engaged in retail grocery distribution, attached to a distributor/agent based in Miriswatta, Benthota.
- [2] Petitioner's duties typically involved product deliveries via a distribution vehicle driven by an individual named Sampath and accompanied by a helper employed by the agency.
- [3] On 21/06/2019, around 3:30 p.m., after completing the invoicing of goods at Daluwatta Stores, a business owned by the 3rd Respondent, driver Sampath and the Petitioner returned to the distribution agency around 5:30 p.m.
- [4] The following day, 22/06/2019, the Petitioner proceeded with his routine distribution work. At around 6:30 p.m., he received a phone call from Sampath, who informed him that they were suspected of having stolen jewellery from the 3rd Respondent's store.
- [5] On 23/06/2019, driver Sampath informed the Petitioner that he had been taken into custody by the Police. Shortly thereafter, the 2nd Respondent informed the Petitioner to report to the Uragasmanhandiya Police Station. The Petitioner accordingly informed Mr. Jeewan, the distribution center manager, who advised him to seek legal representation from Attorney-at-Law Damith Sanjeewa, a lawyer known to the manager.
- [6] At approximately 2:00 p.m. on the same day, the Petitioner arrived at the Police Station accompanied by the said Attorney. The 2nd Respondent informed the

Attorney that the Petitioner would be released following the recording of a statement, upon which the Attorney departed. Thereafter, the Petitioner was interrogated by the 2nd Respondent concerning the alleged theft of jewellery from the 3rd Respondent's store. The Petitioner was threatened and accused of being responsible for the stolen jewellery, which he had vehemently denied.

- [7] Subsequently, the Petitioner was taken to the 3rd Respondent's grocery store, where he observed the 2nd Respondent entering the premises.

The alleged illegal arrest, detention, and torture of the Petitioner on 23/06/2019.

- [8] The Petitioner alleges that upon arriving at the Uragasmanhandiya Police Station on 23/06/2019, he was subjected to exhaustion, abuse, and unbearable pain during the interrogation.
- [9] According to the Petitioner, he was dragged into a room located behind the Crime Branch, assisted by an unidentified officer, where he was handcuffed with his arms drawn over his shoulders and secured behind his back. He was then repeatedly slapped on both ears and punched in the lower abdomen with a clenched fist. The 2nd Respondent also had got hold of his genitalia, inflicting excruciating pain that the Petitioner almost fainted.
- [10] Thereafter, he was dragged back to the Crime Branch, where the handcuffs were removed, and he was once again questioned regarding the alleged theft. When the Petitioner continued to deny any involvement, he was shown a bottle containing a hand grenade and was threatened to confess to the crime, or else be charged with the offence of possessing a hand grenade.
- [11] The Petitioner states that the second ordeal commenced shortly thereafter, when the Petitioner was taken to the same room again, handcuffed, tied at the wrists with a nylon rope, and suspended from a beam without any support beneath him. While

being in this position, the 2nd Respondent repeatedly punched him in the abdomen, causing extreme pain and leaving his hands numb and lifeless. Due to the Petitioner's persistent denial of the theft allegations thrust upon him, the torture continued for a third time, as before.

- [12] Following these acts of torture, the Petitioner was once again dragged to the 1st Respondent's office, inflicting further cruelty by the 2nd Respondent. He was subsequently detained in a cell until the following morning. The Petitioner states that he saw driver Sampath in the same cell, showing visible signs of assault.
- [13] On the morning of 24/06/2019, at approximately 7:00 a.m., the Petitioner was visited at the Police Station by his mother, Jagodage Hemalatha, and the Area Sales Manager Mr. Yohan Gunerathne.
- [14] The Petitioner further states that he was approached by the 1st Respondent to be told that he should pay a sum of Rs. 300,000/- to the 3rd Respondent to arrive at a settlement. The Petitioner was kept in the Police Station for a second night and released on police bail on 25/06/2019 at or around 7:30 p.m.
- [15] On the following morning, 26/06/2019, the Petitioner was admitted to the 'SCU' Unit of General Hospital, Nagoda, at approximately 9:20 a.m. He was examined by a Judicial Medical Officer (JMO) on 27/06/2019 and subsequently transferred to the National Hospital, Colombo, the same day. He was discharged on 08/07/2019 and was instructed to attend medical clinics regularly for further treatment.
- [16] The Petitioner's allegations are corroborated by affidavits filed by his mother, Jagodage Hemalatha, and Mr. Yohan Gunerathne.
- [17] In her affidavit, Mrs. Hemalatha, the mother of the Petitioner, affirms that, on the morning of 24/06/2019, she saw her son at the rear section of the Police Station showing visible signs of assault on his body. She further states that at or around

4:00 p.m., she was informed that her son would be released on bail at or around 9:00 a.m. on 25/06/2019.

- [18] When she visited the Police Station on 25/06/2019, the Petitioner pleaded with her to give the complainant whatever compensation they demanded, so that he would be released. The Petitioner was eventually released at or around 7:30 p.m. on 25/06/2019.
- [19] In his affidavit tendered to this Court, Yohan Gunerathne states that a sales agent informed him that the Petitioner and driver Sampath were summoned to the Police Station on the morning of 23/06/2019.
- [20] He further states that on 24/06/2019, between 9:00 a.m. and 10:00 a.m., he visited the Police Station and saw the Petitioner in pain, with his arms hanging lifelessly and showing visible signs of assault.
- [21] Upon inquiry, the 1st Respondent informed him that the Petitioner and driver Sampath had been taken into custody on a complaint of theft and would be produced before the Court on the next day. He further states that, fearing that the Petitioner would endure further abuse, he agreed to pay the complainant a sum of Rs. 300,000/- as a settlement to secure the Petitioner's release. Based on that undertaking, the Petitioner was released on bail and handed over to his mother on 25/06/2019, around 7:30 p.m.
- [22] He further states that the Petitioner was admitted to the hospital and that after being discharged from the hospital, the Petitioner was required to attend clinics regularly for treatment by an occupational therapist and was unable to resume his employment as a sales representative.
- [23] The chronology of events pleaded in the Petition *inter alia*, is well noted in the context of promptness in grievance complaints that, between the date of discharge from hospital, i.e. 08/07/2019 to 19/07/2019, a period less than two weeks, the Petitioner had lodged formal written complaints to the Human Rights

Commission, the 4th Respondent, the Inspector General of Police, the ‘Police Sahana Madiriya’, the Chairman, National Police Commission, and the 5th Respondent, Hon. Attorney General detailing his ordeal of alleged abuse, illegal arrest, detention, and torture at the hands of the 1st and 2nd Respondents.

Medical evidence in support of the injuries caused to the Petitioner.

[24] The Petitioner’s account of having been subjected to physical abuse while in police custody is corroborated by contemporaneous medical documents, including hospital records and the Medico-Legal Report (MLR) issued by the Judicial Medical Officer (JMO).

[25] Upon admission to the General Hospital, Nagoda, on 26/06/ 2019, the treatment sheet attached to the patient admission form dated 26/06/2019 records the following, in verbatim:

‘assaulted by Police on last Sunday (23/6/2019)’, *“tighted [sic] the patient by a rope & hang. Assaulted by hands. Impact abdomen & chest”*

[26] Subsequently, diagnostic ticket dated 27/06/2019 issued by the same hospital states that the Petitioner was under investigation and receiving treatment for “assault by police.” It further notes symptoms indicative of nerve root stretching and refers to an MRI scan conducted on 28/06/2019, which has documented the patient's history of “hanging by the hands for two hours.” The Petitioner was also referred to an Occupational Therapist for further evaluation.

[27] The Petitioner was examined by the Judicial Medical Officer (JMO) and according to the Medico-Legal Report (MLR) dated 29/06/2019, the short history given by the patient reads as follows;

“An incident of police assault at Uragasmanhandiya police station. Incident date 23.06.2019 and day following. He was hung with hands on his back in two incidents, each lasting for two hours. He was assaulted by crime OIC to the face

and abdomen. The patient complained both his upper limbs were powerless after the incident.”

[28] In the above circumstances, it would be prudent to describe the injuries in more detail, as indicated on page 2 of the MLR;

- Injuries Nos. 1 and 2 are abrasions with underlying contusions, 0.5 cm x 6 cm over the wrist of both left and right hands, both back and outer aspects.
- Injury No. 3 is an abrasion of 1x4 cm on the back of the left hand. Injury No. 4 is classified as a Grievous Injury within sections 311(e) and 311(g) of the Penal Code
- Injury No. 4 is described as: *“Total loss of power in shoulder joint, elbow joint, wrist and fingers of all movements in both upper limbs. According to the MRI report there was evidence of stretching of bilateral C₅₋₈ nerve root and trunks. There was no evidence to suggest nerve avulsion.”*

The opinion of the JMO reads thus;

- a) “Injury No. 1 to 4 are non-accidental type injuries*
- b) the injury pattern is consistent with the given history of hang by hands*
- c) The injuries have caused total earnings lost until the date I have examined*
- d) The recovery of injury No. 4 has to be re-evaluated”.*

The version of the 1st and 2nd Respondents.

[29] According to the Police, the initial complaint lodged by the 3rd Respondent was recorded on 23/06/2019, regarding a theft of jewellery items on 21/06/2019 by the Petitioner and one Sampath during the unpacking of grocery items to be placed on the shop racks. Acting on this complaint, the 2nd Respondent, together with Police Sergeant No. 28634, arrested driver Sampath near the Kobeiduwa junction

at approximately 19:35 hours on 24/06/2019. The Petitioner was allegedly arrested soon thereafter, following a chase and a struggle.

[30] Thereafter, the Petitioner was handcuffed and driver Sampath, with no restraints were taken to the Police Station and handed over to the sub-service to be detained. According to the 2nd Respondent, driver Sampath was released on Police bail at 20:45 hours on the same day.

[31] The Petitioner was released on 25/06/2019 at 18:50 hours. The delay in releasing the Petitioner is attributed to the clearance from the VPN network.

[32] In the above progression of events, what is important to note is that, according to the Police notes, the Petitioner was arrested on 24/06/2019 and not on 23/06/2019 as stated by the Petitioner.

- **Response to Allegations of Torture**

[33] Apart from a general denial of the illegal arrest, detention, and torture of the Petitioner, the following positions have been specifically taken by the 1st and 2nd Respondents.

- a) The 2nd Respondent claims that he departed the Police Station on official duty at 21:45 hours on 24/06/2019 to give evidence before the Kaytes Magistrate's Court in Case Nos. 10935 and 10497. He further asserts that he returned to the police station on 27/06/2019 at 13:10 hours. The Court attendance certificate is filed of record.
- b) An affidavit tendered by driver Sampath, together with the joint affidavit of the 1st and 2nd Respondents (marked 'R9'), states that driver Sampath and the Petitioner were arrested on 24/06/2019 around 7:30 p.m.
- c) Attorney-at-Law Mr. Damith Sanjeewa, in a statement made to the Police, states that on instructions received from an agent of CBL, he visited the

Police Station on the night of 24/06/2019. He stated that he observed one suspect in a cell and another seated outside. He had spoken to them and given the required legal advice. He was informed that the suspects were taken into custody for an alleged theft of gold jewellery and that they would be produced before the Magistrate's Court on 25/07/2019.

d) Statements recorded by two other detainees (marked 'R11' and 'R12') state that while they were in custody, no detainees were taken out of the remand cell or subjected to assault.

e) The following day, an agent of CBL informed the Attorney-at-law that the suspects had been released on bail by the Police.

[34] Based on the statement given by the said Attorney at Law, the learned Senior State Counsel argued that contrary to the Petitioner's version, the suspects were taken into custody on 24/06/2019 at 19:30 hours and according to the joint affidavit filed by the 1st and 2nd Respondents, driver Sampath was enlarged on bail on the same day at 20.45 hours and the Petitioner was enlarged on bail on 25/06/2019 at 18:50 hours.

[35] The learned State Counsel relied on the Police Information Book (PIB) extracts and the 'Prisoners Detained' Register to substantiate the position that the Petitioner and driver Sampath were taken into custody on 24/06/2019.

[36] The fact that the 2nd Respondent left the Police Station on official duty to give evidence in the Kaytes Magistrate's Court at 21:45 hours on 24/06/2019 and returned to the Station on 27/06/2019 was weighed heavily in favor of the Respondents to propound the credibility of the stand taken.

[37] In paragraph 9 of the affidavit, the 2nd Respondent states that he left the Police Station on 24/06/2023 at 21:45 hours. on official duty to give evidence in the Kaytes Magistrate's Court in Cases bearing Nos. 10935 and 10497. The attendance certificate marked 'R10', issued by the Registrar of the Magistrate's Court of Kaytes

dated 26/06/2019, has no reference made to the 2nd Respondent being present in Court to give evidence.

[38] Furthermore, the Attorney's statement to the Police (marked 'R14(a)') does not specify the date on which he was instructed or when the suspects were taken into custody. It merely affirms his presence at the Police Station on the night of 24/06/2019.

“මා හට දුරකථනයෙන් දැනුම් දීමක් ලැබුණා. CBL ආයතනයේ නියෝජිත මහතෙකු දුරකථනයෙන් කතාකර පවසා සිටියා එම ආයතනයේ සේවකයින් දෙදෙනෙකුට විරුද්ධව සොරකමක් සම්බන්ධයෙන් උගරගත පොලිස් ස්ථානයේ නිලධාරීන් සොයන බව”

- **Facts that enhance the credibility of the Petitioner's version as against the version of the 1st and 2nd Respondents.**

[39] As observed earlier in this Judgment, it is undisputed that the Petitioner was granted police bail on 25/06/2019 around 18:50 hours. From there onwards, the Petitioner has placed before this Court the chronology of events;

Commencing from the morning of 26/06/2019, when the Petitioner was admitted to the Nagoda General Hospital, examined by the JMO on 27/06/2019, the transfer to ward No. 72 of the National Hospital Colombo, and re-examined by the JMO of the National Hospital Colombo on 05/07/2019. According to the Medico-Legal Report, the Petitioner sustained non-accidental type injuries, and the injury pattern was consistent with a history of hanging by hands.

[40] Given the grievous nature of injury No. 4 as referred to above, the 1st and 2nd Respondents have offered no credible explanation regarding the origin of these injuries, despite the Petitioner having been in their custody during the relevant period.

[41] The Petitioner has annexed the diagnostic tickets issued by the National Hospital Colombo, daily records maintained by the hospital, X-ray, and MRI scan reports

issued by the General Hospital as medical evidence. None of these documents have been challenged, nor has any explanation been given by the 1st and the 2nd Respondents in their defence.

- [42] The Petitioner was discharged from the hospital on 08/07/2019, after 12 days from the date of admission. What is extraordinary to note is that, whilst the Petitioner was in hospital, the mother of the Petitioner complained to the Human Rights Commission and the Hon. Attorney General requesting an investigation into the alleged assault and torture of the Petitioner.
- [43] The Petitioner's claim that he was arrested on 23/06/2019 is consistently reflected in all complaints made to the relevant authorities by the Petitioner and in the medical history provided by the Petitioner during his examination by the JMO. In his complaint to the Human Rights Commission, the Petitioner explicitly named and identified the 1st and 2nd Respondents, including the positions they held at the time of his arrest.
- [44] The arrest notes indicate that at the time of the arrest of the Petitioner, the 2nd Respondent was patrolling the area in a three-wheeler, and upon getting down from the said vehicle, one of the suspects began to flee. The 2nd Respondent then chased and apprehended the individual. Upon requesting identification from both individuals and receiving none, he proceeded to arrest them.
- [45] The arrest notes further state that after bringing the two suspects to the police station, the 2nd Respondent made inquiries regarding an alleged theft of jewellery based on a complaint received at the police station.
- [46] The above version of the 2nd Respondent is inconsistent to the extent that the Petitioner was not arrested on suspicion of involvement in a theft of jewellery, but rather on account of failure to provide proof of identity and an alleged attempt to commit an unspecified offence.

- [47] Regarding the language used in the affidavit by driver Sampath, the learned counsel for the Petitioner submits that the contents of the affidavit had been made entirely at the dictates and instructions of the 1st and the 2nd Respondents. It is also noted that the affidavit of driver Sampath dated 20/07/2019 was signed before the date of filing of this Petition, and made approximately 4 years before the date of filing the statement of objections by the Respondents.
- [48] In assessing the opposing contentions taken by the Petitioner and the Respondents, this Court is mindful of the consistency and promptness of the Petitioner's account. The Petitioner from the outset has maintained a consistent position that he was arrested on 23/06/2019 and subjected to acts of torture while in the custody of the 1st and 2nd Respondents.
- [49] The Petitioner's version is further substantiated by the medical documentation and the Medico-Legal Report, which record injuries of such gravity for which no plausible alternative explanation has been offered by the Respondents.
- [50] It is pertinent to observe that, despite the subsequent contradictory accounts provided by the Attorney-at-Law and driver Sampath, the Petitioner had, at the very first available opportunity, identified and listed both the said individuals as potential witnesses in support of his version.
- [51] Had the Petitioner intended to mislead or misrepresent the circumstances of his arrest and detention, it is highly unlikely that he would have voluntarily identified persons as witnesses whose accounts may potentially differ from his version.
- [52] In the absence of any credible explanation on injuries sustained by the Petitioner while in the custody of the 1st and 2nd Respondents, and considering the consistent narrative provided by the Petitioner from the beginning, this Court finds the Respondents' version to be highly improbable.

Alleged Violations of Article 11,12(1), 13(1) and 13(2) of the Constitution against the 1st and 2nd Respondents.

Violation of Article 11

[53] Article 11 of the Constitution guarantees that: ’

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

[54] The Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (commonly referred to as CAT) was adopted by the United Nations in 1987.

Under Article 1 of the CAT, “torture” is defined as:

“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 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 or 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.”

[55] This definition is recognized by Dr. A. R. B. Amarasinghe J. in **W. M. K. De Silva vs. Chairman, Ceylon Fertilizer Corporation**¹ where it was held that Article 11 of

¹ (1989) 2 SLR 396, 405

the constitution prohibits any kind of acts that fall within the ambit of the above definition.

- [56] Sri Lanka acceded to the CAT in 1994. Concerning its obligations under Article 2(1) of the Convention, which mandates that each State Party shall “...*take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction*”, the Convention was incorporated into domestic law through the ‘Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994’.

Section 12 of the said act interprets ‘torture’ as follows;

“ ‘torture’ with its grammatical variations and cognate expressions, means any act which causes severe pain, whether Physical or mental, to any other person, being a net which is

(a) done for any of the following purposes that is to say

(i) obtaining from such other person or a third person, any information or confession; or

(ii) punishing such other person for any act which he or a third person has committed, or is suspected of having committed ; or

(iii) intimidating or coercing such other person or a third person ; or

(b) done for any reason based on discrimination

and being in every case, an act which is done by, or at the initiation of, or with the consent or acquiescence of, a public officer or other person acting in an official capacity.”

- [57] The European Commission on Human Rights clarified the overlapping yet distinct elements of torture, inhuman, and degrading treatment in ***The Greek Case***², where it observed:

² European Commission of Human Rights, Denmark, Norway, Sweden and the Netherlands v Greece (The Greek Case) (1969) 12 Yearbook of the European Convention on Human Rights 1 (Commission Report).

“All torture must be inhuman and degrading treatment, and inhuman treatment also degrading. The notion of inhuman treatment covers at least such treatment as deliberately causes severe suffering, mental or physical, which, in the particular situation, is unjustifiable... Torture... has a purpose, such as the obtaining of information or confessions, or the infliction of punishment, and it is generally an aggravated form of inhuman treatment. Treatment or punishment of an individual may be said to be degrading if it grossly humiliates him before others or drives him to act against his will or conscience.”

[58] The Supreme Court in ***Channa Pieris and Others vs. Attorney General and Others***³, sets out a domestic framework for evaluating Article 11 violations. The Court in that case held *inter alia*:

- The conduct complained of must be of such qualitative severity that it attracts judicial cognizance.
- Torture or inhuman treatment may be physical or psychological.
- The burden of proof lies on the Petitioner to establish, with sufficient evidence, that the treatment endured falls within the scope of Article 11.

In this regard, Amarasinghe J. observed in the above case that;

“Would ‘the guarded discretion of a reasonable and just man lead him to the conclusion’? is the test I would apply in deciding the matter. If I am in real and substantial doubt, that is if there is a degree of doubt that would prevent a reasonable and just man from coming to the conclusion, I would hold that the allegation has not been established.”

³ [1994] 1 Sri LR 1, 105.

- **Application to the present case**

[59] In paragraphs 24 to 27 of the Petition, the Petitioner describes the events by which severe pain and suffering were intentionally inflicted by the 1st and the 2nd Respondents to obtain a statement to confess to a crime. The Petitioner was continuously threatened and interrogated by the 2nd Respondent and intimidated of being charged with the offence of possession of a hand grenade.

[60] Having failed to drive the Petitioner to act against his will or conscience, the Petitioner was hanged by the wrists onto a beam causing unbearable pain and this act of physical and mental assault was repeated with more severity when the 1st Respondent ordered the 2nd Respondent to hang the Petitioner for the second time which has caused the Petitioner physical impairment and disability.

[61] The Petitioner states that he overheard the 2nd Respondent speaking to the 1st Respondent over the phone, saying;

“ඒත් මු ඇත්ත කියන්නේ නැහැ, මොකද කරන්නේ?”

Thereafter, the 2nd Respondent turned to the Petitioner and said;

“ලොකුකා කියනවා ආයෙත් එල්ලන්න කියලා”

[62] From the narration of the Petitioner, it is clear that the torturous acts were done deliberately and repetitively. The nature of such acts reflects what Judge Matscher, spoke of in his separate opinion in **Ireland vs. United Kingdom**⁴, where he observed;

“...torture is the systematic, calculated (hence deliberate) and prolonged application of treatment the aim of which maybe to extort confessions, to obtain information or simply to break a person’s will...”

⁴ (1978) 2 EHRR 25, 126 (opinion of Judge Matscher).

Therefore, this degree of premeditated cruelty clearly falls within the international understanding of torture.

- [63] When the 2nd Respondent failed to obtain an admission to the alleged theft, the Petitioner was threatened by the 2nd Respondent to be subjected to interrogation with extreme application of torturous techniques to obtain information or a confession.

In this regard, it is pertinent to consider the observations of Lord Phillips in **OO (Jordan) vs. Secretary of State for the Home Department**⁵, where he stated:

“...the prohibition on receiving evidence obtained by torture is not primarily because such evidence is unreliable or because the reception of the evidence will make the trial unfair. Rather it is because the state must stand firm against the conduct that has produced the evidence.”

- [64] This signifies that the obligation of a State does not end with the prevention of torture. It extends to its absolute rejection in all its manifestations, including the use of such evidence in legal proceedings. A legal system that tolerates such conduct, whether actively or passively, foregoes its duty to uphold the law and protect the dignity of the individual. It is not merely a question of reliability of evidence, but a matter that goes to the roots of Fundamental Rights enshrined in the Constitution.

- **Corroboration by Medical Evidence**

- [65] When examining allegations of assault or ill-treatment by the police, this Court has not required that a victim must produce medical evidence in order to establish a violation. It has been consistently held that whether any treatment constitutes a violation of Article 11 of the Constitution depends on the specific facts and circumstances of each case. Accordingly, such an allegation may be established

⁵ [2008] EWCA Civ 290, [2008] 3 WLR 798

even in the absence of medically supported injuries. [*Ansalin Fernando vs. Sarath Perera, Officer-In-Charge, Police Station, Chilaw and Others*⁶]

[66] The medical evidence in this case is supported, well-reasoned, and documented. The opinion of the JMO *inter alia*, is that the injury pattern is consistent with the given history of hanging by the wrists. Injury No. 4 is consistent with the total loss of mobility in the shoulder joint, elbow joint, wrist, and fingers of all movements of both upper limbs.

- **Is the burden of proof satisfied?**

[67] In *Kapugeekiyana Vs. Hettiarachchi*⁷ Wimalarathna J. observed that;

“In deciding whether any particular fundamental right has been infringed I would apply the test laid down in Velmuguru⁸ that the civil, and not the criminal standard of persuasion applies, with this observation, that the nature and gravity of an issue must necessarily determine the manner of attaining reasonable satisfaction of the truth of that issue.”

[68] This principle has been reaffirmed in *Gunawardena Vs. Perera and Others*⁹, with reference to *Velmuguru vs. AG*¹⁰, where it was held:

“There can be no doubt that the burden is on the petitioner to establish the facts on which she invites the court' to grant her the relief she seeks. This leads to the next question. What is the standard of proof expected of her? Wanasundera, J. considered the question in the case of Velmurugu v. the Attorney-General and another¹¹ (1) and held that the standard of proof that is required in cases filed under Article 126 of the Constitution for infringement

⁶ [1992] 1 Sri LR 411, 419.

⁷ [1984] 2 Sri LR 153.

⁸ Velmuguru v Attorney-General SC Application 74/81, SC Minutes of 9 November 1981.

⁹ [1983] 1 Sri LR 305, 313.

¹⁰ (n 4)

¹¹ *ibid*

of fundamental rights is proof by a preponderance of probabilities as in a civil case and not proof beyond reasonable doubt.

I agree with Wanasundera, J. that the standard of proof should be preponderance of probabilities as in a civil case. It is generally accepted that within this standard there could be varying degrees of probability. The degree of probability required should be commensurate with the gravity of the allegation sought to be proved. This court when called upon to determine questions of infringement of fundamental rights will insist on a high degree of probability as for instance a Court having to decide a question of fraud in a civil suit would. The conscience of the court must be satisfied that there has been an infringement.”

- [69] When an allegation of torture is made, it is fundamental to conclude that the Petitioner's version of events is made truthfully before concluding that the relevant Article is held to have been violated.
- [70] In the instant case, the Petitioner has produced the required medical evidence to prove and corroborate the intense physical and mental abuse caused to him. The medical evidence corroborates the Petitioner's version of the acts, the manner, and the method of its commission. The Court possesses of substantial and sufficient medical evidence that is consistent with the acts complained of to support the Petitioner's version of physical abuse.
- [71] The Court also possesses the affidavits marked ‘P2’ and ‘P3’, where the Petitioner's mother and Yohan Gunarathna, the Area Sales Manager, affirm that the Petitioner was in immense pain and temporary disability whilst in police custody on 24/06/2019 and observed the same the following morning when they visited the Petitioner in hospital. The relevant portions of the affidavits are produced below;

Mother's affidavit:

“ඒ අවස්ථාවේදී පුතාගේ මුහුණ ඉදිමී තිබූ අතර, අත් දෙක අප්‍රාණිකව එල්ලා වැටෙනු මා දුටු බවත්, පුතාට වධහිංසා කර ඇති බවත් මට වැටහී ගිය බවත්, පුතාව දුටු මා අඬා වැළපන්නට වූ අතර, ඒ අවස්ථාවේ තමාට පහර දුන් බව පවසා, අම්මේ අඬන්න එපා මාව ආයෙන් ඇතුළට දායි යනුවෙන් පුතා පවසා සිටි බවත් ප්‍රකාශ කර සිටිමි.

මේ වන විටත් මාගේ පුතාගේ දෑත් අප්‍රාණිකව, ආබාධිත තත්ත්වයට පත්ව, තම රැකියාව කර ගැනීමට නොහැකිව, මානසිකව හා ශාරීරික වශයෙන් දැඩි පීඩාකාරී තත්ත්වයක පසු වන බවත් ප්‍රකාශ කර සිටිමි”

Yohan Gunarathna's affidavit:

“ඒ අනුව එදින මා (24 දින) උදේ 9-10 පමණ උෟරගහ පොලිසියට ගිය බවත්, මා යන විට පොලිසිය තුළ කාමරයක වන්දිම මදුණන් සහ සම්පත් පුටුවල ඉදගෙන සිටි බවත්, වන්දිම මදුණන් ඉතාමත් අපහසුවෙන් සිටි බව මා දුටු බවත්, ඔහුගේ දෑත් බිමට එල්ලෙමින් තිබූ අයුරු මා දුටු බවත්, ඔහු සිටි ආකාරයෙන් ඔහුට පහර දී ඇති බව මට හැඟී ගිය බවත් ප්‍රකාශ කර සිටිමි.

පසුව මා වන්දිම මදුණන් සමග කතාකළ බවත්, ඔහු සිටියේ ඉතාමත් අපහසුතාවයෙන් බවත්, ඔහුගේ අත්දෙක ඔසවා ගැනීමටවත් ඔහුට හැකියාවක් නොතිබුණු බවත්, අත් දෙකේ මැණික්කටුව ගැටගසනු ලැබූ පාරවල් තිබුණු බවත්...”

[72] In the nature and context of the arrest and the subsequent detention of the Petitioner, the burden now shifts to the 1st and the 2nd Respondents to explain or clarify the cause of the medically supported injuries. However, no reasonable explanation was afforded to this Court other than a bald denial.

[73] In ***Pitakandage Gamini Jayasinghe vs. P.C Samarawickrama and Others***¹². Kulathunga J observed:

“It is to be noted that at the time the petitioner was handed over to that Police, he had no injuries and was in perfect health. But when he was admitted to the

¹² [1994] 2 Sri LR 18.

hospital... he was a physical wreck and almost comatose. I therefore hold that the allegation of torture has been established”

- [74] The above finding aligns with the reasoning adopted by the European Court of Human Rights in **Gäfgen vs. Germany**¹³, where it was held that:

“...where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention.”

- [75] Where injuries are sustained while in the exclusive custody of law enforcement officers, and no cogent or credible explanation is provided as to how such injuries came about, this Court can draw an adverse inference against such officials. In the present case, the 1st and 2nd Respondents have failed to offer any explanation for the grievous injuries documented in the Medico-Legal Report or the hospital records.

- [76] The acts attributed to the 1st and 2nd Respondents namely, the repeated infliction of physical violence upon the Petitioner, including suspension by the wrists for prolonged periods, assault to vulnerable parts of the body, the threat of fabrication of charges of possession of a hand grenade, in its totality, surpass the threshold contemplated under Article 11 of the Constitution.

- [77] The findings in this case raise serious concerns regarding the methods employed during police interrogation. If such practices are left unexamined, they may undermine constitutional protection and safeguards afforded to all persons. As Sir William Searle Holdsworth cautioned in his book titled ‘A History of English Law.’ where he stated;

¹³ App No 22978/05 (ECtHR, 1 June 2010) para 92, 25.

“Once torture has become acclimatized in a legal system it spreads like an infectious disease. It saves the labour of investigation. It hardens and brutalizes those who have become accustomed to use it”¹⁴

- [78] These acts were not incidental or discomforts of detention, but amounted to torture, as understood under both domestic Constitutional Law and international standards. Accordingly, this Court finds that the 1st and 2nd Respondents have violated the Petitioner’s Fundamental Right under Article 11 of the Constitution.

Violation of Article 13

- [79] Article 13(1) of the Constitution states:

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

Article 13(2) further provides:

“Every 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.”

The above constitutional guarantees operate as safeguards against arbitrary arrest and detention. Article 13(1) provides that an arrest must be lawful and should comply with procedures established by law, while Article 13(2) guarantees that any detention must not extend without judicial supervision beyond the timeframes stipulated by law.

¹⁴ W Holdsworth, A History of English Law, Vol. 5, 3rd edn (1945), pp. 194–195.

- **The Respondents' Version**

[80] The 1st and 2nd Respondents claim that the Petitioner was arrested at 19:30 hours on 24/06/2019. This is supported by the arrest note marked 'R2'.

[81] As discussed before, the learned Counsel for the Petitioner has argued that there are several contradictions in the Respondent's narration of events, which create serious doubts about their version of events leading to the arrest of the Petitioner. In particular, the attention of Court is drawn to the discrepancies arising out of the affidavit dated 23/06/2019 and the arrest note made by the 2nd Respondent marked 'R2'.

[82] The said affidavit states that the arrest of the Petitioner and driver Sampath near the Kobeiduwa junction at 19:35 hours was due to a complaint made by the 3rd Respondent and his wife, whereas the arrest note marked 'R2' states that the Petitioner and driver Sampath were arrested by the 2nd Respondent due to the failure to submit the required proof of identification and on suspicion of committing an offence. If the 2nd Respondent intended to arrest on suspicion of an offence being committed, it essentially contradicts the position taken in the affidavit.

- **The evidence in support of the Petitioner that he was arrested on 23/06/2019.**

[83] The fact that the Petitioner was held in the custody of the 1st and 2nd Respondents on 24/06/2019 is common ground. However, as noted earlier in this Judgment, the Petitioner's position is that he was arrested on 23/06/2019 and not on 24/06/2019.

[84] As discussed before, the consistent position taken by the Petitioner regarding the date of arrest is reflected in the various complaints made to the relevant

authorities. In all such complaints, the Petitioner also identifies the 1st and 2nd Respondents by name for all intents and purposes.

[85] To rebut this strong presumption that the Petitioner was arrested on 23/06/2019, the Respondents heavily relied on the statement made by the Attorney marked ‘R14 (a)’, on 07/07/2019, 14 days after the alleged arrest. [This position has been critically discussed above under Violation of Article 11.]

[86] In his statement, the Attorney did not refer to the date of arrest of the Petitioner, being informed by the CBL representative, nor did the Attorney refer to the date of arrest of the Petitioner. The Attorney only says he had seen the Petitioner in police custody on the night of 24/06/2019.

“CBL ආයතනයේ නියෝජිත මහතෙකු දුරකථනයක් කතාකර පවසා සිටියා එම ආයතනයේ සේවකයන් දෙදෙනෙකුට විරුද්ධව සොරකමක් සම්බන්ධයෙන් උගරගත පොලිස් ස්ථානයේ නිලධාරීන් සොයන බව, මා විසින් ඔවුන්ට උපදෙස් දුන්නා සැක තැනැත්තෙකු සිටිනම් උගරගස් හන්දියේ පොලිසියට ඉදිරිපත් කරන ලෙසට. ඒ අනුව මේ සම්බන්ධයෙන් ස්ථානාධිපතිතුමා හමුවී නියම තත්ත්වය පිළිබඳව සොයා බලා නියමිත නීති උපදෙස් ලබාදීමට මා වෙත උපදෙස් ලැබුණා. ඒ අනුව 24/06/19 වන දින රාත්‍රියේ මා විසින් උගරගස්මහන්දියට පැමිණි අතර, එක් සැකකරුවෙකු ස්ථානයේ සිරමැදිරිය අසල පුටුවක වාඩි වී සිටි අතර තවත් සැකකරුවෙකු සිර මැදිරිය තුළ සිටි බව දැක බලා ගතිමි.”

- **Procedural irregularities in the arrest**

[87] According to the arrest note marked ‘R2’, the 1st Respondent had carried out the arrest in the lawful exercise of his duties, acting on information received.

[88] Justice Dr. A.R.B Amarasinghe J in ‘Our Fundamental Rights of Personal Security and Physical Liberty’¹⁵ discussed Section 109 of the Criminal Procedure Code, where he says;

¹⁵ A R B Amarasinghe, Our Fundamental Rights of Personal Security and Physical Liberty (Sarvodaya Book Publishing Services 1995) 89.

“Section 109(5)(a) of the Criminal Procedure Code provides that if from information received or otherwise an officer in charge of a police station has reason to suspect the commission of an offence, provided the offence is a cognizable offence, or he has reason to apprehend a breach of the peace, submit a report to his immediate superior officer, and himself proceed or depute one of his subordinate officers to proceed to the spot to investigate the facts and circumstances of the case and to take such measures as may be necessary for the immediate discovery and arrest of the offender.”

- [89] The law requires what when a peace officer suspects the commission of a cognizable offence or anticipates a breach of peace, the arresting officer in charge of discovering and arresting the offender (the 1st Respondent) must submit a warrant. Alternatively, the 2nd Respondent may delegate the 1st Respondent to proceed to the scene, conduct an investigation, and take necessary measures for the discovery and arrest of the offender.

Therefore, it is the onus of the Respondents to establish that they are complied with the above requirement of the law to the satisfaction of this Court, which the Respondents have failed to do.

- [90] Dr. Amarasinghe, referring to the cases ***Jayakodi vs. Karunanayake***¹⁶, ***Kumarasena vs. Sriyantha and Others***¹⁷ and, ***Moramudalige podiappuhamy vs. Dyananda Liyanage and others***¹⁸ has stated as follows.

*“If an arrest is made without a warrant in contravention of the provisions of the procedure prescribed by law applicable to the particular circumstances of the case, the arrest will be declared to be violative of article 13(1)”*¹⁹

¹⁶ [1994] 2 Sri LR 264.

¹⁷ SC Application 257/93, SC Minutes of 31 May 1994.

¹⁸ SC Application 446/93, SC Minutes of 31 May 1994.

¹⁹ Amarasinghe (n 13)

[91] In the case of *Kapugeekiyana vs. Hettiarachchi and Two Others*²⁰ this Court has held that;

“In the context of the present case, ‘procedure established by law’ in the above Article cannot mean any other than the procedure established by the Code of Criminal Procedure Act, No. 15 of 1979. The two sections of that Code relevant for present purposes are sections 36 & 37.

"36. 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.

37. 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".

These valuable statutory rights enjoyed by suspects have now been made constitutional rights, and unless there are compelling reasons, they ought not to be cut down by judicial construction."

[92] According to the affidavit filed by the Petitioner's mother, Jagodage Hemalatha, the Petitioner was seen on 24/06/2019 morning, in the rear side of the police station. She observed the Petitioner with a swollen face and his arms hanging lifelessly. Soon after, having realized that the Petitioner had been subjected to torture and cruelty, she started weeping uncontrollably. At that moment the Petitioner had cautioned her by saying “අම්මේ අඬන්න එපා මාව ආයෙත් ඇතුලට දායි” She further states that the Petitioner had to be fed due to his inability to eat by

²⁰ [1984] 2 Sri LR 153, 166.

himself. She had been informed that the Petitioner would be released on bail on 25/06/2019.

- [93] By affidavit dated 19/7/2019, the Manager CBL adequately corroborates the version put forward by the mother of the Petitioner. He states that when he inquired about the arrest of the Petitioner and driver Sampath, the 1st Respondent, was vehemently convinced that they were responsible for the theft of jewellery belonging to the complainant. This witness observed swelling and blackening around the shoulder, which could have been the reason why the Petitioner could not raise his arms. It was also revealed that by accepting Rupees 300,000/-, the Complainant was willing to settle this matter.
- [94] For the reasons discussed earlier in this Judgment, the position taken by the 2nd Respondent that he left the Police Station on official duty on 24/06/2023 is not placed before this Court with convincing evidence. In the facts and circumstances of this case, it is my view that the abuse inflicted upon the Petitioner at the instance of the 1st and 2nd Respondents was committed on 23/06/2019, and therefore, I hold that the position taken by the 1st and 2nd Respondents is unrelatable, opportunistic, and self-serving.
- [95] In the context of the startling revelations of savagery meted out to coerce the Petitioner to admit to a crime, the Respondent's defence is mere window dressing to mitigate liability. Clear and cogent evidence found in the MLR and supporting affidavits of torturous conduct is to the required standard of proof. The evidence outlined and adduced by the Petitioner, the compelling statements by the witnesses, the mother of the Petitioner, and the manager CBL support the Petitioner's allegation that he was arrested on 23/06/2019. With that evidence, I am convinced that the Petitioner was arrested on 23/06/2019 and not on 24/06/2019.
- [96] Thus, it is evident that the arrest and subsequent detention of the Petitioner did not comply with the procedural safeguards laid down under Sections 36 and 37 of

the Code of Criminal Procedure Act, No. 15 of 1979. Section 36 requires that a person arrested without a warrant shall, without unnecessary delay, be produced before a Magistrate having jurisdiction. Section 37 further provides that such a person shall not be detained for a period exceeding twenty-four hours, exclusive of the time required for the journey from the place of arrest to court.

[97] As observed earlier, the Petitioner was taken into custody on 23/06/2019 and remained in detention until his release on 25/06/2019, without being produced before a Magistrate. In the instant case, the Petitioner was released from police custody with serious injuries. The expert medical opinion is that such injuries were a result of intentional violence. It certainly raises grave concerns regarding the legality of the continued detention.

[98] Consequently, the burden lies on the Respondents to establish that their actions conformed with the law, which they have failed to do. Thus, I conclude that there has been an infringement of the Petitioner's Fundamental Rights guaranteed by Article 13(1) and 13(2) of the Constitution by the 1st and 2nd Respondents.

Violation of Article 12(1)

[99] Article 12(1) of the Constitution provides that:

“All Persons are equal before law and are entitled to equal protection of the law”

[100] The objective of Article 12(1) is to guarantee that state action, whether legislative, executive, or administrative, shall not be arbitrary.

[101] The scope of application of Article 12(1) has been addressed in ***Wickremasinghe vs. Ceylon Petroleum Corporation and Others***²¹, where it was held;

²¹ [2001] 2 Sri LR 409, 414.

“Although the objective is to ensure that all persons, similarly circumstanced are treated alike, it is seen that the essence of this basic standard is to ensure reasonableness being the positive connotation as opposed to arbitrariness being the related negative connotation---

If the legislation or the executive or administrative action in question is thus reasonable and not arbitrary, it necessarily follows that all persons similarly circumstanced will be treated alike, being the end result of applying the guarantee of equality. As noted above, the effectiveness of the guarantee would be minimized if there is insistence that a failure of the end result should also be established to prove an infringement of the guarantee. If however there is such evidence of differential treatment that would indeed strengthen the case of a Petitioner in establishing the unreasonableness of the impugned action.”

[102] The Petitioner has contended that his arbitrary arrest, unlawful detention, and subjection to torture by the 1st and 2nd Respondents constitute a violation of his right to equal protection under the law.

In support of this contention, the Petitioner has cited ***Weheragedara Ranjith Sumangala vs. Bandara, Police officer and six others***²², where it was held that;

“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 absolute bar against arbitrariness for it imposes the 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

²² SCFR Application No 107/2011, SC Minutes of 14 December 2023.

establishing the supremacy of law above all other considerations. Public officials-which most certainly include 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.”

- [103] It is undeniable that public officials, especially those exercising coercive powers, are under a duty to act fairly, transparently, and in accordance with law. Their failure to adhere to these obligations erodes public trust in institutions tasked with upholding justice. Equality before the law also imposes a duty on law enforcement officers to act within the confines of the law and not to abuse or exceed the powers conferred upon them.
- [104] The material before this Court reveals that the Petitioner was treated in a manner that is in direct conflict with the accepted principles of the law. The Petitioner’s detention was prolonged beyond the constitutionally permitted duration. Acts of physical abuse, threats, coercion during detention were clearly contrary to established legal principles of equality enshrined in Article 12(1).
- [105] Aluwihare PC J. in his judgement in ***H. M. M. Sampath Kumara and others vs. Officer-in-Charge, Police Station, Katunayake***²³, cited with approval the case of ***Sanghadasa Silva vs. Anuruddha Ratwatte***²⁴ and stated as follows;
- “...it is now well settled law that powers vested in the state, public officers and public authorities are not absolute and unfettered but are held in trust for the people to be used for the public benefit and not for improper purposes.” Even though Police officers are charged with the duty of maintaining law and order they cannot exercise the power granted for that purpose in a manner that negates the equality provision.”*

²³ SCFR Application No 265/2011, SC Minutes of 5 April 2019.

²⁴ [1998] 1 Sri LR 350.

[106] I also wish to emphasize the opinion of Athukorala J. in ***Amal Sudath Silva Vs. Kodituwakku, Inspector of Police and Others***²⁵

“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...”

“...Nothing shocks the conscience of a man so much as the cowardly act of a delinquent police officer who subjects a helpless suspect in his charge to depraved and barbarous methods of treatment within the confines of the very premises in which he is held in custody. Such action on the part of the police will only breed contempt for the law and will tend to make the public lose confidence in the ability of the police to maintain law and order. The petitioner may be a hard core [sic] criminal whose tribe deserve no sympathy. But if constitutional guarantees are to have any meaning or value in our democractic [sic] set up, it is essential that he be not denied the protection guaranteed by our Constitution...”

[107] For these reasons, the Petitioner has established the violation of Article 12(1) by the 1st and 2nd Respondents, which guarantees the equal protection of the law.

[108] Positive judicial response to victim compensation was never an alien concept in the Fundamental Rights jurisdiction of this country. It is within the discretion of this Court to impose Respondents liability by way of compensation for restitution of victim’s woes without neglect. In the award of compensation, though within its discretion, the Court must be mindful to arrive at a fair and reasonable conclusion. In the facts and circumstances of this case, the Court can award compensation, and

²⁵ [1987] 2 Sri LR 119, 127

I find that compensating the victim is the obligation of the 1st and 2nd Respondents. In consonance with the said finding, the 1st and 2nd Respondents are directed to pay Rupees 1,000,000/- each, as compensation to the Petitioner through their personal funds. Payment of compensation in its entirety is due within 6 months from the date of this Judgment. The Petitioner will also be entitled to costs of this Application.

[109] The Registrar of the Supreme Court is ordered to forward a certified copy of this judgment to the Chairman of the National Police Commission for its consideration and for such action deemed appropriate with respect to the conduct of the 1st and 2nd respondents.

The Application is allowed.

Judge of the Supreme Court

S. Thuraiaraja, PC J.

I agree

Judge of the Supreme Court

A.H.M.D. Nawaz J.

I agree

Judge of the Supreme Court