

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

*In the matter of an application under  
Articles 17 read with 126 of the  
Constitution of the Democratic  
Socialist Republic of Sri Lanka*

L.W. Sameera Sampath,  
Katukurundu Gahalanda,  
Pothuwila, Payagala.

**PETITIONER**

**SC FR Application No: 127/2012**

**Vs.**

1. Pathmakumara  
Officer-in-Charge (Crime),
2. Chaminda Kulasinghe  
Officer-in Charge

The 1st and 2nd Respondents  
of : Police Station, Payagala

3. PC 73440, Hospital Police  
Post, Panadura Base Hospital  
, Panadura
4. Inspector General of Police;  
Sri Lanka Police Department,  
Police Head Quarters,  
Colombo 01.
5. Hon. The Attorney General,  
Attorney General's  
Department, Hulfsdrop,  
Colombo 12.

**RESPONDENTS**

**BEFORE:**

**Hon. A.H.M.D. Nawaz, J.**

**Hon. K. Kumudini Wickremasinghe J.**

**Hon. M. Sampath K.B. Wijeratne, J.**

**COUNSEL:**

Pulasthi Hewamanna with Fadhila Fairoze  
instructed by Suraj Rajapakse for the Petitioner.

Nagitha Wijesekera with ADG Rubasinghe for  
the 1st Respondent.

Chamara Nanayakkarawasam with Ms. Patali  
Abaarathna instructed by Sampath Yalewatta for  
the 2nd Respondent.

Ms. Lakmali Karunanayake, SDSG for 3rd, 4th  
and 5th Respondents.

**WRITTEN SUBMISSIONS:**

By the Petitioner on 07.09.2018.

By the 1st Respondent on 16.07.2025

By the 2nd Respondent on 13.09.2018

By the 3rd, 4th and 5th Respondents on  
26.10.2018.

**ARGUED ON:**

16.06.2025

**DECIDED ON:**

06.03.2026

**K. KUMUDINI WICKREMASINGHE, J.**

This is an Application filed under Article 126(1) of the Constitution by the Petitioners seeking, *inter alia*, declarations of infringement of their fundamental rights guaranteed under Article 11, Article 12(1), Article 13(1), Article 13(2) and Article 13(5) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

On 12.06.2012, having heard the Learned Counsel for the Petitioners in support of this Application, this court granted leave to proceed under Article 11, Article 12(1), Article 13(1), Article 13(2) and Article 13(5) of the Constitution.

## **Factual Matrix**

### **Petitioner's version of facts**

This application concerned alleged violations of the Petitioner's fundamental rights arising from his arrest, detention, and treatment at the hands of police officers attached to the Payagala Police Station, including the 1st Respondent, the Officer-in-Charge (Crime), and other officers acting in concert with him.

According to the version presented by the Petitioner, on 27.01.2012 at approximately 12.30 p.m., he had been travelling by omnibus to the Katukurunda Hailapperuma Vegetable Market with one Srinath Silva for the purpose of selling vegetables. During the journey, a white van had overtaken the omnibus and forced it to stop. Two individuals in civilian attire had boarded the omnibus, approached the Petitioner, and one of them had seized him by the neck, brandished a pistol, and ordered him to stand up. When he inquired as to their identity, no explanation had been provided. He had been accused of stealing money from a house where he was alleged to have performed masonry work. The Petitioner had denied the allegation, maintaining that he was a vegetable vendor and had not committed any theft. Notwithstanding his denial, he had been forcibly removed from the omnibus and taken into the white van, causing him humiliation in the presence of passengers and bystanders.

It was averred that the van had been driven by the 1st Respondent, who had been in uniform, and that the two men in civilian clothing were police officers, though their identities were unknown to him. While being transported, he had been handcuffed. Upon arrival at the Payagala Police Station, the van had been

parked in the police yard. Whilst still inside the vehicle, the 1st Respondent had slapped him and demanded that he return money and gold jewellery allegedly taken during a housebreaking on 21.01.2012. The Petitioner had denied any involvement and had informed the 1st Respondent that he had been on a religious pilgrimage in Kataragama on that date, which could have been verified by his companions. However, no steps had been taken to verify that explanation.

The Arresting Officers had also assaulted him and questioned him regarding two individuals named Chandana and Chaminda residing near his home. Although the 1st Respondent had initially driven towards his residence, the vehicle had returned to the police station upon receipt of a telephone call. At approximately 14.30 hours, the Petitioner had been taken inside the station and into a room where the 1st Respondent had demanded a confession. He had been slapped and thereafter handcuffed to a bed in a nearby room.

At about 15.00 hours, the Arresting Officers had entered, handcuffed his hands behind his back, and taken him to a room near the kitchen. He had been ordered to remove his clothes and had complied. The Petitioner's case was that he had then been suspended by his wrists from a ceiling beam using a rope, under the supervision of the 1st Respondent, causing severe pain to his shoulders, wrists, and thumbs. While so suspended, he had been repeatedly assaulted and questioned about the alleged theft. A coconut husk containing a burning substance had been brought and the smoke held close to his face, causing intense irritation to his eyes, nose, and throat and inducing severe coughing. After approximately 20 to 30 minutes, he had been taken down and again handcuffed to a bed.

At about 19.30 hours, another officer, who appeared intoxicated, had entered the room and assaulted the soles of his feet with a boot for approximately 20 to 30 minutes while demanding a confession, resulting in severe pain, particularly in his left foot.

At approximately 22.00 hours, the Petitioner had been taken to a large room where his mother and other family members were present. He had not been permitted to converse with them and had been returned to detention. It later transpired that his mother had visited the station earlier that evening and had been given inconsistent information regarding his presence. Following a complaint made to the Human Rights Commission, she had been permitted to see him briefly, though he had not been allowed to speak. His family had observed that he appeared to be in pain.

At about 22.30 hours, he had received his first meal since his arrest and had again been handcuffed to the bed. During the night, an officer had awakened him, assaulted him, and demanded a confession.

On 28.01.2012 at about 07.00 hours, an officer wearing a blue shirt had assaulted him and ordered him to sit on the floor instead of the bed. At about 11.00 hours, he had been taken to a room where his mother and family members were present and had been permitted to speak briefly in the presence of officers. The 1st Respondent had informed his mother that he had committed serious offences. At approximately 14.00 hours, he had been taken to the 1st Respondent's office where his mother and an Attorney-at-Law were present, though he had been unable to speak freely due to the presence of police officers.

At around 17.00 hours, a statement had been recorded from him concerning Chandana and Chaminda, and he had been required to sign it without being afforded an opportunity to read its contents. He had been informed that the police intended to arrest those individuals and had been provided with a mobile telephone number with instructions to inform the police of their whereabouts.

At approximately 20.30 hours, he had been taken to the office of the 2nd Respondent, the Officer-in-Charge of the station, photographed, and ordered to be released on police bail. As he was leaving, the 1st Respondent had warned

him not to seek hospital treatment and to have his mother withdraw the complaint made to the Human Rights Commission, which was perceived as a threat of reprisals. No charges had been filed against him.

On 29.01.2012, owing to pain allegedly resulting from the assault, the Petitioner had sought treatment at the Panadura Base Hospital and had remained there until 31.01.2012. He had complained of shoulder pain and numbness in his thumbs. A Medico-Legal Examination had been conducted and medical records had been issued. While hospitalised, he had been informed by an officer attached to the hospital police post that a Medico-Legal Examination form could be issued only after notifying the Payagala Police Station, which caused him apprehension in light of the earlier threats. On 31.01.2012, a police officer from Payagala had visited him, recorded a statement, and suggested that the matter be settled amicably. He had not been permitted to read the statement prior to signing it.

Following his discharge, the Petitioner had remained at a relative's residence out of fear. He had later learnt that, on the night of 31.01.2012, several police officers had forcibly entered his home inquiring into his whereabouts, and that further inquiries had been made the following day. His mother had lodged complaints with the Human Rights Commission and the Inspector General of Police.

It was the Petitioner's contention that, as a consequence of these events, he had been unable to return to his home or resume his vegetable business and had lived in fear of further reprisals. It was further averred that his brother had been arrested on 27.02.2012 by the Dodangoda Police in connection with efforts to locate him.

On the basis of the foregoing, the Petitioner alleged violations of his fundamental rights guaranteed under Articles 11, 12(1), 13(1), 13(2), and 13(5) of the Constitution, contending that his arrest had been arbitrary and

malicious, that he had been subjected to torture whilst in police custody, and that his detention had been unlawful.

### **Respondent's version of facts**

#### **1st Respondent's View**

The 1st Respondent, Pathmakumara, Crime Officer-in-Charge of the Payagala Police Station, did not file any affidavit or Statement of Objections. The 1st Respondent, through his Learned Counsel, maintains that while the Petitioner was indeed arrested, the precise location of arrest was disputed. According to the Respondent, the Petitioner was taken into custody from his residence at Katukurundugahalanda, and not while travelling on a bus, as alleged by the Petitioner.

The 1st Respondent does not deny the Medico-Legal Report [marked P5(b)], but no explanation or admission was made regarding the cause of the injuries. No further evidence or affidavits were submitted to clarify the circumstances of the alleged arrest, detention, or treatment.

#### **2nd Respondent's View**

The 2nd Respondent's position was that he had been on official leave on 27.01.2012, the date on which the Petitioner was arrested. It was maintained that the Petitioner had been taken into custody in connection with an allegation of housebreaking. The 2nd Respondent acknowledged that the Petitioner had advanced an alibi to the effect that he had been on a religious pilgrimage on the relevant date and confirmed that the Petitioner had thereafter been released on police bail.

The 2nd Respondent disclaimed any knowledge of assault or torture having been inflicted upon the Petitioner whilst in custody at the Payagala Police Station. It was asserted that he had no direct involvement in the arrest,

detention, or the alleged treatment of the Petitioner. In view of his absence on official leave, he had not conducted any inquiry into the allegations at that time.

### **3rd-5th Respondents' View**

The position of the 3rd Respondent, Police Constable No. 73440 attached to the Hospital Police Post, was that the Petitioner had received medical treatment at the hospital following an alleged assault. It was contended that the 3rd Respondent's official notes, marked 3R1, recorded that the Petitioner had been treated for abrasions caused by a blunt instrument. Reliance was placed on the Medico-Legal Examination Form (MLEF), marked 3R2, which confirmed the presence of such injuries.

The 3rd to 5th Respondents maintained that the issuance of the MLEF had been in accordance with standard hospital procedure. Any assertion by the Petitioner that the Form had "not been released" to him was characterised as an issue of administrative handling rather than a denial of medical treatment or documentation. In their view, the fact that the MLEF had been issued demonstrated that the Petitioner's medical condition had been properly recorded and attended to, and there was no material to suggest that any of the Respondents had interfered with the medical process or withheld documentation.

It was further contended that the Petition contained no specific allegation of misconduct, assault, or violation of fundamental rights against the 3rd to 5th Respondents. Their role had been confined to hospital security and administrative support, and they had not been involved in the arrest, detention, or alleged torture of the Petitioner. Any injuries reflected in the medical records were matters of clinical documentation and had not arisen from acts carried out under their authority or supervision.

The 3rd to 5th Respondents also emphasised that the complaint made by the Petitioner to the Human Rights Commission did not directly implicate them, and no formal allegation of wrongdoing had been advanced against them in any complaint or document placed before the Court. On that basis, they disclaimed liability for the alleged violations and contended that the Petitioner's reliance on the MLEF could not properly be construed as evidence of wrongdoing on their part.

### **Legal Analysis**

#### **Alleged Violation of Fundamental Rights**

In the case of ***Velmurugu v. The Attorney General and Another [1981] 1 SLR 406***, it was held that the standard of proof that is required in cases filed under Article 126 of the Constitution for infringement of fundamental rights is proof by a preponderance of probabilities as in a civil case and not proof beyond reasonable doubt.

It was further held in ***Gunawardene v. Perera and Others [1983] 1 SLR 305 at 313 by Soza J.*** that:

*“...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.”*

## **Alleged Violation of Article 13(1) and 13(2)**

**Articles 13(1) and 13(2)** of the Constitution of Sri Lanka states:

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

*(2) 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"*

Article 13(1) of the Constitution guarantees that no person shall be arrested except in accordance with the procedure established by law and that any person so arrested must be informed of the reason for such arrest. This provision embodies a fundamental safeguard against arbitrary arrest and serves to protect individual liberty by ensuring that law enforcement authorities act within the bounds of legal authority. Accordingly, in determining whether there has been a violation of Article 13(1), this Court must examine whether the arrest of the Petitioner was carried out in compliance with lawful procedure and whether the Petitioner was promptly and adequately informed of the reasons for his arrest.

In considering the meaning of “arrest” within the scope of Article 13(1), it is necessary to distinguish between a lawful arrest and a de facto arrest. In ***Sirisena and Others v. Earnest Perera and Others* [1991] 2 Sri L.R.97** the Court clarified this distinction in the following terms:

*“Dr. Glanville Williams was not dealing with the concept of an ‘arrest’ in relation to fundamental rights; he was not even purporting to define an ‘arrest’ for the purpose of the criminal law. Rather, he was seeking to clarify the requisites of a valid arrest. Thus the intention of the arrestor, and its communication to the arrestee, are not ingredients of an arrest; rather, they are the conditions essential to the validity of an arrest. ‘Arrest’ in Article 13(1) does not refer to a valid arrest, but rather to a de facto arrest; indeed, it is difficult to conceive of situations in which an arrest which is valid would contravene Article 13(1).”*

Article 13(1) is engaged whenever there is a factual deprivation of liberty, irrespective of whether the arrest is later asserted to be lawful.

In ***Mahanama Tilakaratne v Bandula Wickremasinghe, Senior Superintendent of Police and Others [1999] 1 Sri L.R. 372, at page 382***, Dheeraratne J stated,

*“Issuing a warrant is a judicial act involving the liberty of an individual and no warrant of arrest should be lightly issued by a Magistrate simply because a prosecutor or an investigator thinks it is necessary. It must be issued as the law requires, when a Magistrate is satisfied that he should do so, on the evidence taken before him on oath. It must not be issued by a Magistrate to satisfy the sardonic pleasure of an opinionated investigator or a prosecutor.”*

In ***Ven. Dharmarathana Thero and Another v Sanjewa Mahanama and Three Others [2013] 1 Sri L.R. 81 at page 89*** Dep J(as he then was) stated,

*“[I]n order to arrest a person under this subsection there should be a reasonable complaint, credible information or a reasonable suspicion.*

*Mere fact of receiving a complaint or information does not permit a peace officer to arrest a person. Police Officer upon receipt of a complaint or information is required to commence investigations and ascertain whether the complaint is a reasonable complaint, the information is credible, or the suspicion is reasonable before proceeding to arrest a person.”*

Kulatunga, J in ***Dissanayaka v Superintendent Mahara Prison and others [1991] (2) SLR 247, 248-249*** stated the following to highlight the importance of examining the material to decide the validity of the arrest.

*“Nevertheless, it is for the Court to determine the validity of the arrest objectively. The Court will not surrender its judgement to the executive for if it did so, the fundamental right to freedom from arbitrary arrest secured by Article 13(1) of the Constitution will be defeated. The executive must place sufficient material before the Court to enable the Court to make a decision, such as the notes of investigation, including the statements of witnesses, observations etc. without relying on bare statements in affidavits”.*

In determining whether the arrest of the Petitioner was effected in accordance with the procedure established by law, this Court must consider the totality of the evidence placed before it.

The Petitioner described the circumstances of his arrest in his affidavit where on 27.01.2012 at about 12.30 p.m., he was forcibly removed from an omnibus by persons in civilian clothing. Such persons did not identify themselves and did not inform him of the reason for his arrest. He further averred that a firearm was displayed and that he was seized by the neck and taken into a white van in the presence of passengers and bystanders. If accepted, this account demonstrates that the Petitioner was not informed of the reason for his arrest at the time it was effected.

The affidavit of **P1** supported the Petitioner's account. **P1** was present in the omnibus at the time of the arrest. P1 confirmed that persons in civilian attire took the Petitioner away without giving any explanation. This independent evidence strengthens the credibility of the Petitioner's version.

The 1st Respondent does not deny that the Petitioner was arrested. The dispute relates only to the location of the arrest. The 1st Respondent has not filed an affidavit explaining the circumstances of the arrest. There is no explanation of the legal basis for taking the Petitioner into custody. There is also no evidence that the reason for arrest was communicated to him. This absence of evidence is significant.

The Respondents rely on document [2R3], which stated that the Petitioner was taken into custody on suspicion of housebreaking. However, the recorded statement dated 28.01.2012 shows that the questioning extended to matters unrelated to that offence. The Petitioner was questioned about individuals named Chandana, Chaminda and Kumara. There are no questions addressing the essential elements of the alleged housebreaking. This raises doubt as to whether the arrest was based on a genuine reasonable suspicion.

The 2nd Respondent admitted that the Petitioner was in police custody and was later released on police bail. This confirms that the Petitioner was deprived of his liberty. However, no material has been produced to show that he was informed of the reason for his arrest, as required by Article 13(1).

The Respondents have failed to produce contemporaneous records demonstrating compliance with lawful arrest procedures. There is no note or entry showing that the reason for arrest was communicated to the Petitioner. In fundamental rights applications, once deprivation of liberty is established, the burden shifts to the Respondents to justify the legality of the arrest.

Considering the affidavit, together with document [2R3], this Court finds that the Petitioner was subjected to a de facto arrest and deprivation of liberty without being promptly informed of the reason for his arrest.

Article 13(2) of the Constitution guarantees that any person deprived of personal liberty must be produced before a judge of the nearest competent court without unnecessary delay. It further requires that no person may continue to be held in custody except under an order of such judge, made in accordance with the procedure established by law. This safeguard ensures that deprivation of liberty is subject to judicial scrutiny and protects against arbitrary detention.

In ***Channa Pieris and Others v Attorney General and Others (Ratawesi Peramuna Case) [1994] 1 Sri LR.1 at page 76, Amerasinghe, J.***, held that in general, the purpose of Article 13(2) is to enable a person arrested without a warrant by a non-judicial authority to make representations to a judge who may apply his "judicial mind" to the circumstances before him and make a neutral determination on what course of action is appropriate in relation to his detention and further custody, detention or deprivation of personal liberty.

The purpose and scope of Article 13(2) have been judicially explained in ***Farook v. Raymond and Others [1996] 1 Sri L.R. 217***, where Justice Amarasinghe observed:

*“The object of Article 13(2) of the Constitution is to afford a person who has been deprived of his personal liberty by executive action, to have the benefit of placing his case before a neutral person - a judge - so that a judicial mind may be applied to the circumstances and an impartial determination made in accordance with the applicable law. The provision is designed to eliminate arbitrariness in depriving a person of his liberty, and this extends to the exclusion of arbitrariness on the part of a judge who orders that a person brought before him be*

*further held in custody, detained or deprived of personal liberty. If in depriving a person of his liberty a judge does not act according to procedure established by law, there is a contravention of the guarantee enshrined in Article 13(2) of the Constitution”.*

This statement underscores that the constitutional safeguard is not a mere procedural formality. It ensures judicial oversight over executive detention and guards against arbitrary deprivation of liberty.

In **Senaratne v Punya De Silva and others [1995] 1 Sri L.R. 272 at page 296** Amarasinghe J observed that

*“In Mahinda Rajapakse and Vasudeva Nanayakkara v. Chief Inspector Karunaratne and Others (supra), Bandaranayake, J. said that Article 13(2) is not concerned with the lawfulness of the arrest but with the question of ensuring the ‘containment of executive power’. His Lordship said that in considering Article 13(2), ‘No distinction ought to be drawn between lawful and unlawful custody, detention or deprivation of liberty in considering this Article ... The need for such an enquiry should not be read into this Article. This Article is not concerned with this. The Article is plain enough and provides that executive 20 detention cannot extend beyond 24 hours without judicial intervention.’ The twenty-four hour period is the maximum period (exclusive of the time necessary for the journey from place of arrest to the Magistrate) permitted by section 37 of the Code of Criminal Procedure in the case of an arrest without a warrant. It cannot, as Bandaranayake, J. said, ‘extend beyond 24 hours without judicial intervention.’ However, the fact that a person is in such a case produced before a Magistrate within twenty-four hours does not necessarily satisfy the constitutional requirement prescribed in Article 13(2). Article 13(2) of the Constitution provides, among*

*other things, that '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.'* ”

The material marked **[2R2]** indicates that the Petitioner was arrested on **27.01.2012 at 05.30 hours** and released on **28.01.2012 at 19.00 hours**. This demonstrates that the Petitioner was detained for a period exceeding twenty-four hours.

In terms of Sections 36 and 37 of the Code of Criminal Procedure Act, a person arrested without a warrant must be produced before the nearest Magistrate without unnecessary delay. Detention beyond twenty-four hours, in the absence of judicial authorization, is inconsistent with the procedure established by law.

As observed by this Court in ***Senaratne v. Punya de Silva [1995] 1 Sri LR. 272***, even a delay of a few hours in producing an arrested person before a Magistrate, where no reasonable explanation is offered, does not satisfy the constitutional safeguard embodied in Article 13(2) read with the relevant provisions of the Code of Criminal Procedure.

There is no evidence that the Petitioner was produced before a Magistrate at any time during his detention. The Respondents have failed to produce any court records, detention orders, or notes of production to demonstrate compliance with Article 13(2).

The affidavits marked [P1], [P2(a)], and [P2(b)] stated that the Petitioner was taken into custody by police officers and later released. These affidavits do not indicate that he was produced before a judicial officer. Instead, they support the position that he remained in police custody until his release.

The Respondents rely on the grant of police bail to justify the Petitioner's release. However, police bail does not cure a failure to comply with the constitutional requirement of prompt production before a Magistrate. Police bail presupposes lawful custody. Where custody itself is not shown to be in accordance with constitutional safeguards, such release does not negate the violation.

The failure to produce the Petitioner before a Magistrate, coupled with the absence of any explanation for such omission, leads to the inference that he was held in custody otherwise than in accordance with the procedure established by law.

**Alleged violation of Article 13(5)**

Article 13(5) of the Constitution guarantees the presumption of innocence and provides that every person shall be presumed innocent until proven guilty according to law. This protection extends to all stages of the criminal process, including arrest, detention, investigation, and public treatment by State authorities. The provision prohibits the State authorities from treating a suspect as though guilt has already been established and guards against conduct that undermines the dignity and reputation of the individual.

In examining whether this guarantee has been violated, the Court must consider whether the conduct of the authorities, viewed objectively, conveyed an assumption of guilt or subjected the Petitioner to treatment inconsistent with the presumption of innocence.

In ***Korawage Ranjith alias "Shantha" v Rukman Kumara, Officer in Charge, The Police Station, Urubokka [SC FR 338/2017] decided on 06.03.2025*** at page 22, stated as follows,

*"Police officers should respect the right of every person to be presumed innocent until proven guilty as guaranteed by Article 13(5)*

*of the Constitution. This requirement is designed to provide the arrested person with the opportunity to challenge the arrest promptly. While there is no need for a specific form or a detailed description of the charges, it is essential that the arrested person is informed in straightforward, non-technical language that they can understand, outlining the fundamental legal and factual grounds for their arrest as soon as reasonably possible. Where a person is arrested on suspicion that he or she has committed an offence, such suspicion must be reasonable.”*

In ***Dumbell v. Roberts [1944] 1 All ER 326*** Scott LJ observed:

*“The principle of personal freedom, that every man should be presumed innocent until he is found guilty, applies also to the police function of arrest.....For that reason it is of importance that no one should be arrested by the police except on grounds which in the particular circumstances of the arrest really justify the entertainment of a reasonable suspicion.”*

### **Alleged violation of Article 11**

**Article 11** of the Constitution of Sri Lanka states:

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

The prohibition contained in Article 11 is absolute and admits of no exception.

It is well settled that a petitioner alleging an infringement of Article 11 bears the burden of proof on a balance of probabilities, with a high degree of probability commensurate with the gravity of the allegation.

In the present case, the medical evidence consists of the Medico-Legal Examination Form marked **[3R2]**, the medical report marked **[P5(a)]**, and the Medico-Legal Report marked **[P5(b)]**.

The Medico-Legal Examination Form [3R2] records abrasions caused by a blunt weapon and classifies the injuries as non-grievous. The medical report [P5(a)] noted complaints of hand pain, numbness of the hands, head injury, chest pain, nausea, vomiting, and bleeding from the ear, nose, and throat. The Medico-Legal Report [P5(b)] records tenderness over the right wrist joint, an abrasion measuring 2 cm × 1 cm at the base of the left thumb, tenderness over the left sole and mild swelling and tenderness over the outer aspect of the left forearm.

The 1st Respondent contended that the injuries are non-grievous and that the Petitioner has therefore failed to establish an infringement of Article 11. The constitutional protection under Article 11 is not contingent upon the gravity of the injury. The unlawful infliction of physical force, pain, or suffering by a State officer upon a person in custody may amount to cruel, inhuman, or degrading treatment irrespective of whether the injuries are classified as grievous.

It is not disputed that the Petitioner sustained injuries while in police custody. Having considered the totality of the evidence, including the medical records and the surrounding circumstances of custody, this Court is satisfied that the Petitioner has established, to the requisite standard, that he was subjected to cruel and degrading treatment while in police custody.

In ***Goonewardene v Perera and others* [(1983) 1 Sri LR 305 at page 313]**, Soza, J observed thus:

*“Before I deal with the facts a word about the burden of proof. 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 another and held that the standard of proof that is required in cases filed under Article 126 of the Constitution for infringement 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.” [emphasis added]*

**Wimalaratne, J In Kapugeekiyana v Hettiarachchi and Two Others [(1984) 2 Sri LR 153 at page 165]** stated that,

*“In deciding whether any particular fundamental right has been infringed I would apply the test laid down in Velmurugu 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.”*

In **Channa Pieris and Others v Attorney General and Others (Ratawesi Peramuna Case) [1994] 1 Sri LR.1 at page 1**, referring to the third general observation made with regard to an Article 11 infringement, Amerasinghe, J stated as follows:

*“... 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 endeavouring to discharge his burden of proving that he was subjected to torture or to cruel, inhuman or degrading treatment or punishment; and unless the Petitioner has adduced sufficient evidence to satisfy the Court that an act in violation of Article 11 took place, it will not make a declaration that (a violation of) Article 11 of the Constitution did take place.” [emphasis added] ( ... ) “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.” [emphasis added]*

Murdu N. B. Fernando, PC, J in ***Ratnayaka Weerakoonge Sandya Kumari v Weerasinghe, Sub Inspector of Police [SC (FR) Application No. 75/2012; SC minutes of 18th December 2019 at page 10]*** where, having considered the above cases, it was concluded that,

*“The foregoing judicial decisions of this Court has clearly identified and laid down that a high degree of certainty is required before the balance of probability would tilt in favour of a petitioner endeavoring to discharge the burden of proof with regard to an allegation of torture or cruel, inhuman or degrading treatment.”*

In ***Edward Sivalingam v Sub Inspector Jayasekara & Others (SC (FR) Application No. 326/2008; SC minutes of 10th November 2010)***, which has been referred to with approval by Shiran Gooneratne, J in

***Kumarihami v Officer-in-Charge, Mahiyanganaya Police Station and Others* [(2021) 2 Sri LR 464 at page 469]**, Tilakawardane, J held that,

*“When considering the allegations made by the Petitioner against officers of the CID it is important to bear in mind that the burden of proving these allegations lies with the Petitioner. This court has held repeatedly that the standard required is not proof beyond reasonable doubt but must be of a higher threshold than mere satisfaction. The standard of proof employed is on a balance of probabilities test and as such must have a high degree of probability and where corroborative evidence is not available it would depend on the testimonial creditworthiness of the Petitioner.” [emphasis added]*

Amerasinghe, J however added a word of caution in ***Samanthilaka v Ernest Perera* [(1990) 1 Sri LR 318; at page 319]**, which he reiterated in ***Channa Pieris and Others v Attorney-General and Others (Ratawesi Peramuna Case)* [supra; at page 108]**, when he stated that he is conscious of the difficulties faced by a petitioner in proving allegations of torture and that therefore, due regard must be had to the circumstances of the particular case so as not to impose an undue burden on a petitioner, and thereby impede access to justice. As correctly acknowledged in ***Weerasinghe v Premaratne, Police Sergeant and Others* [(1998) 1 Sri LR 127 at page 133]**, this Court must also be alert to the tendency of State officials to act in an ‘esprit de corps’ in protecting their own and covering up their wrongs, such as through falsified medical reports and police records. Thus, while the burden of proof of establishing allegations of torture or cruel, inhuman or degrading treatment or punishment shall remain with a petitioner to be satisfied on a balance of probability with a high degree of certainty, the Court must be guided by the

facts of the particular case and the difficulties and disadvantages that a petitioner could face in proving such allegations.

### **Alleged violation of Article 12(1)**

Article 12(1) of the Constitution guarantees that all persons are equal before the law and are entitled to the equal protection of the law. This provision imposes a duty on State authorities to act fairly, reasonably and without arbitrariness in the exercise of their powers.

The guarantee of equal protection is violated where executive action is arbitrary, capricious, or devoid of lawful justification. An arrest or detention carried out without adherence to lawful procedure, or accompanied by selective or abusive treatment, falls within the scope of such arbitrariness.

The fundamental aim of Article 12(1) is to protect individuals from arbitrary, capricious, irrational, unreasonable, discriminatory, or vexatious actions by executive or administrative bodies. In its Full Bench decision in ***Sampanthan et al. v. Attorney-General et al.* [SC FR 351-356 & 358-361/19, SC Minutes of 13.12.2018]**, this Court affirmed that the right guaranteed by Article 12(1) also includes the protection of the 'Rule of Law,' referencing jurisprudence established in ***Jayanetti v. Land Reform Commission* [1984] 2 Sri LR 172** and ***Shanmugam Sivarajah v. OIC Terrorist Investigation Division and others* [SC FR 15/2010, SC Minutes of 27.07.2017]**.

In the case of ***Rajapaksha v. Rathnayake and Ten Others* [2016] Sri L.R 1 119, at page 130**, His Lordship Justice Sisira de Abrew stated that;

*“When the 1<sup>st</sup> Respondent arrested the petitioner without any reasons and fabricated a false charge against him, can it be said that he got equal protection of law and that the 1<sup>st</sup> Respondent applied the principle that 'all persons are equal before the law' to the petitioner? This question has to be answered and is answered in the negative. It is now proved that the petitioner was arrested and detained in the*

*police station without any reason and the charge framed against him was a fabricated charge. Thus the principle that 'all persons are equal before the law and are entitled to the equal protection of the law' has not been applied to the petitioner by the 1<sup>st</sup> Respondent.”*

In the present case, the conduct of the Respondents demonstrated a clear departure from the guarantees enshrined in Article 12(1), as the Petitioner was subjected to arrest and continued detention in a manner that was arbitrary, unreasonable, and devoid of lawful justification. The failure to adhere to mandatory procedural safeguards, the absence of any credible basis for the arrest, and the prolonged detention beyond the period permitted by law collectively disclose executive action that is capricious and inconsistent with the equal protection of the law.

In ***Suppaiah Sivakumar Vs Sergeant Jayaratne SC(FR)56/2012 S.C.M. 26.07.2018 Aluwihare P.C. J*** in holding that the Respondents violated the Petitioner’s rights under Article 11 and 12 (1) of the Constitution stated,

*“the Petitioner was an ordinary citizen out there enjoying Theru celebrations with his family when the Respondents assaulted him. He was dragged along the road and proclaimed to be an offender in front of his relatives and the general public. When a man is assaulted, taken into custody, and locked up in a cell, simply because he happened to be in the vicinity of a riot, in my view, he has been subjected to “degrading treatment”. The medical reports forwarded by the Kandy Hospital corroborates the physical suffering the Petitioner had to undergo on account of the Respondents’ actions. The affidavits filed by his wife and the relatives further confirm that they witnessed the Petitioner being*

*treated like an offender in front of the public. There can be no question that such a conduct caused humiliation to the Petitioner.....”*

### **State Liability**

In **Faiz v Attorney General and others [1995] 1 Sri LR 372, at page 376**, Mark Fernando J emphasised that,

*“Article 126 speaks of an infringement by executive or administrative action; it does not impose a further requirement that such action must be by an executive officer. It follows that the act of a private individual would render him liable, if in the circumstances that act is “executive or administrative”. The act of a private individual would be executive if such act is done with the authority of the executive: such authority, transforms an otherwise purely private act into executive or administrative action; authority may be express, or implied from prior or concurrent acts manifesting approval, instigation, connivance, acquiescence, participation, and the like (including inaction in circumstances where there is a duty to act); and from subsequent acts which manifest ratification or adoption. While I use concepts and terminology of the law relating to agency, and vicarious liability in delict, in my view responsibility under Article 126 would extend to all situations in which the nexus between the individual and the executive makes it equitable to attribute such responsibility. The executive, and the executive officers from whom such authority flows would all be responsible for the infringement. Conversely, when an infringement by an executive officer, by executive or administrative action, is directly and effectively the consequence of the act of a private individual (whether by reason of instigation, connivance, participation or otherwise) such individual is also responsible for the executive or*

*administrative action and the infringement caused thereby. In any event this court would have power under Article 126(4) to make orders and directions against such an individual in order to afford relief to the victim.”*

Considering the liability of the State, the Police force is an organ of the State and the State should respect the duty and responsibility to protect the fundamental rights of the citizens. In ***Amal Sudath Silva v Kodituwakku Inspector of Police and Others [1987] 2 Sri LR, at page 119*** stated that,

*“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.”*

The State is liable for all the violations of the Petitioner's fundamental rights, as they resulted from actions taken by the state authorities. In ***Landage Ishara Anjali (Minor) and another v. Waruni Bogahawatte and Others [SC (FR) No.677/2012 SC Minutes of 12.06.2019], at page 21***, Justice Aluwihare, PC,J stated that,

*“This Court also takes an opportunity to note with concern the increasing number of incidents of abuse of power by law enforcement authorities. There is no doubt that what is brought before Courts is a fragment of the totality of incidents taking place across the country...”*

Furthermore, in ***Rannula Sugath Mohana Mendis v D.K.A.Sanath Kumara and others [SC (FR) No 100/2022 decided on 06.10.2023], at page 14***, Thurairaja, PC, J emphasised that,

*“If this Court were to criticise the actions of the Police Force, it need not look further than the police motto itself; “ධම්මෙඤ්ඤ භවෙඤ්ඤ ජනකඤ්ඤ ධම්මවාටී” which states “those who live by the Dhamma are protected by the Dhamma”. One would expect that the Police force of Sri Lanka would*

*follow this motto when carrying out their duties, without mala fide. However, we observe, they have failed to stick to the basics of their code of conduct and the principles of natural justice.”*

For the foregoing reasons, this Court holds that the Petitioner has established, on a balance of probabilities with the requisite degree of certainty, that his fundamental rights guaranteed under Articles 11, 12(1), 13(1), 13(2), and 13(5) of the Constitution have been infringed.

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

1. The **1st Respondent** is ordered to pay a sum of **Rs. 750,000/-** (Rupees Seven Hundred and Fifty Thousand) as compensation.
2. The **2nd Respondent** is ordered to pay a sum of **Rs. 250,000/-** (Rupees Two Hundred and Fifty Thousand) as compensation.
3. The **State** is ordered to pay a sum of **Rs. 100,000/-** (Rupees One Hundred Thousand) as compensation.

The above sums shall be paid within six (6) months from the date of this judgment. The compensation payable by the 1st and 2nd Respondents shall be paid out of their personal funds, in view of their respective responsibility for the violations established.

With regard to the 3rd and 4th Respondents, the material evidence before this Court does not disclose direct participation in the arrest, detention, or assault of the Petitioner. Their involvement was limited to hospital security and administrative functions connected with the Petitioner's medical treatment. In the absence of specific evidence establishing personal culpability or a failure to perform a legal duty contributing to the violation of the Petitioner's fundamental rights, this Court does not impose personal liability on the 3rd and 4th Respondents.

The State [5th Respondent] shall ensure prompt compliance with this Order and may take such administrative measures as are necessary in accordance with law.

***Application allowed.***

**JUDGE OF THE SUPREME COURT**

**A.H.M.D.NAWAZ, J**

**I agree.**

**JUDGE OF THE SUPREME COURT**

**M. SAMPATH K. B. WIJERATNE, J**

**I agree.**

**JUDGE OF THE SUPREME COURT**