

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

In the matter of an Application in terms of
Articles 17 and 126 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

1. Alawaladewage Titus Kumara
Karunaratne,
No. 446/C, Nilpanagoda,
Wagowwa.

2. Pingamage Jayasoma,
No. 286/C/02, Nilpanagoda,
Wagowwa.

Petitioner

SC FR Application No. 186/2019

V.

1. Athapaththu Mudiyansele
Priyantha Bandara Athapaththu,
Police Constable, Katunayake
Police Station, Katunayake.

New Address: No. 151/6,
Mullegama, Abathanna.

2. Inspector of Police,
Katunayake Police Station,
Katunayake.

3. Senior Superintendent of Police

(SSP), Western Province,
Colombo.

4. Inspector General of Police,
Police Head Quarters, Colombo
01.

5. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before : **A. L. SHIRAN GOONERATNE, J.**
 ACHALA WENGAPPULI, J.
 K. PRIYANTHA FERNANDO, J.

Counsel : Lakshan Dias with S. Asvinijaa instructed by Dayani
 Panditharatne for the Petitioners.

Induni Punchihewa, SC for the 5th Respondent.

Argued on : 15.10.2025

Decided on : 15.12.2025

K. PRIYANTHA FERNANDO, J

1. The 1st and 2nd Petitioners in this application are residents of the *Nilpanagoda* area. They allege that the 1st Respondent, who is a Police Constable attached to the *Katunayake* Police Station subjected them to mental and physical torture on the 10.02.2019. Accordingly, they allege that the 1st Respondent violated their fundamental rights guaranteed under Article 11 of the Constitution.
2. At the stage of granting leave, this Court granted leave to proceed with the alleged violations of Articles 11 and 12(1) of the Constitution.

The Facts

3. According to the 1st Petitioner, on 10.02.2019, as he was returning home on his motorbike bearing Registration No. WP-BCS 8989, he has seen an accident on the side of the road near the White House Hotel, *Minuwangoda*. The 1st Petitioner has stopped to his motorbike upon seeing this.
4. He claims that he saw two motorbikes, one fallen further away on the right side and the other stopped behind his own motorbike. The victim of the accident has also been on the side of the road, trying to fix the motorbike. As per the 1st Petitioner, at this moment the 1st Respondent, dressed in a white shirt and black trousers, has appeared at the scene and assaulted the victim. The Petitioner has heard the victim shout “*Don’t shoot me*” as well.
5. Then, the 1st Respondent has asked the 1st Petitioner for the keys to his motorbike. Upon the 1st Petitioner inquiring the reasons for this, the 1st Respondent has assaulted the 1st Petitioner as well. The 1st Petitioner has sustained injuries on the head as a result of falling when he was attacked. He claims that he was further struck on the face with the butt of a pistol by the 1st Respondent. This has led to injuries on the lip as well. The 1st Respondent has also demanded a ransom of Rs. 200,000 and has forcefully grabbed the keys of the motorbike. He was further pushed to the adjoining road and was threatened to be shot and killed.

6. The 2nd Petitioner, who is the Uncle of the 1st Petitioner, lives near the White House Hotel, *Minuwangoda* and runs a business near it as well. He was leaving his shop on 10.02.2019, when the 1st Petitioner, who was injured by that time, came and inquired about the victim of the accident.
7. According to the 2nd Petitioner, as the 2nd Petitioner was answering the said question, the 1st Respondent has attacked him from behind. The 1st Respondent has struck his head on a wall and squeezed his neck. He claims that the 1st Respondent was drunk at the time. Upon the 2nd Petitioner's son's arrival at the scene, the 1st Respondent has shown his gun and threatened the son by demanding a ransom of Rs. 500,000.
8. The 1st and 2nd Petitioners have thereafter got themselves admitted to the *Minuwangoda* Hospital on the same day at about 9.30 p.m. and 9.00 p.m. respectively due to the wounds and injuries caused by the assault of the 1st Respondent. The 1st Petitioner has also lodged a complaint to the Police prior to admitting himself in the Hospital.
9. According to the 1st Petitioner, Police Officers from the *Minuwangoda* Police Station have visited him at the hospital for an inquiry. Upon discharging himself from the *Minuwangoda* Hospital on 13.02.2019, he has admitted himself to the *Gampaha* Hospital the same day. He remained being treated at the *Gampaha* Hospital until 14.02.2019.
10. The 2nd Petitioner has got discharged from the *Minuwangoda* Hospital on 13.02.2019 and got admitted to the *Gampaha* Hospital on the same day. He remained being treated at the *Gampaha* Hospital until 18.02.2019.
11. The 1st Petitioner has submitted Medico Legal Reports (MLR) marked "P-7", "P-8" and "P-9". The MLRs of the 2nd Petitioner are marked as "P-10" and "P-11". The MLR of the 1st Petitioner marked "P-9" and dated 22.02.2019, states that the 1st Petitioner has suffered a laceration on the back of the head which was sutured and another laceration on the right lower lip. It further states that the injuries are consistent with blunt trauma. As per the 2nd Petitioner's MLR marked "P-10", he has sustained a contusion around the neck and an abrasion on the lower back.

12. Further, the said victim of the accident, in his Affidavit marked “P-3”, has stated that as he was riding his motorbike, another motorbike which came at a very high speed from the other side of the road has collided with his. He states that his right leg was damaged due to this and that his motorbike also sustained several damages. Upon inquiring about damages and repair of the motorbike from the 1st Respondent, he has showed him a pistol and assaulted the victim on his head and neck.
13. He further states that around 20 minutes after the incident the *Minuwangoda* Police has arrived at the scene and arrested the 1st Respondent. The motorbike of the victim of the accident was also taken by the Police as he was unable to ride it due to the injuries sustained on his right leg. At around 10.00 p.m. on the same day the officers of the *Minuwangoda* Police have visited the victim and asked him to come to the Police Station to record a statement.
14. After the said statement was recorded he was directed to the Motor Traffic Unit, where his driving license was taken by the Police. He has then admitted himself to the *Minuwangoda* Hospital on 11.02.2019. A person who claimed to be part of the Intelligence Unit of the *Minuwangoda* Police has visited him during this time to inquire about the incident as well.
15. The victim of the accident has also lodged a complaint at the *Minuwangoda* Police Station on 12.02.2019 after getting discharged from the Hospital. The following day two Police Officers of the *Minuwangoda* Police Station has visited his house and informed him that the two Petitioners of the instant case have agreed to settle the matter with compensation and had inquired whether he was willing to do the same. The victim has told the Officers that he will reach a decision after discussing it with the Petitioners.
16. The Petitioners state that the behaviour of the 1st Respondent has also attracted the attention of the residents of the *Nilpanagoda* area. According to the document marked “P-14” the *Nilpanagoda Janatha Ekamuthuwa* has directed a letter to the authorities informing the lack of Police investigation on the incident and the trouble caused by the 1st Respondent to the villagers. The Petitioners have also filed a complaint at the Human Rights Commission

of Sri Lanka as well.

17. As per the statements of the witnesses contained in the B Report of the case number 89427 dated 11.02.2019 and marked as “P-6”, the 1st Respondent has stated that he is a Police Officer and had shown an Identity Card while assaulting the victims.

18. It further states the following in relation to the pistol, bearing registration number 1101806, which the 1st Respondent was in possession:

“සැකකරු සම්බන්ධ විමර්ශනයේදී සැකකරු කටුනායක පොලීස් ස්ථානයට අනුයුක්තව රාජකාරි කරන අයකු වන අතර ඔහු වෙත නිකුත් කර ඇති සේවා අවියක් බවට අනාවරණය වන අතර...”

19. In these circumstances, the Petitioners allege that on the totality of the facts and circumstances as herein described, the 1st Respondent in this case, subjected them to several acts of violence and torture. Accordingly, it is the Petitioners’ position that the 1st Respondent has violated their fundamental rights guaranteed under Article 11 of the Constitution. However, as mentioned in paragraph 2 of this judgment, at the stage of granting leave this Court was inclined to grant leave to consider the violations of both Articles 11 and 12(1) of the Constitution against the 1st Respondent.

20. As per the Journal Entry dated 07.08.2019 the notice sent to the 1st Respondent has returned undelivered with the endorsement “නිලධාරියා දැනට මෙම සේවා ස්ථානයේ සේවයේ නැත”. Thereafter notices have been sent to the 1st Respondent on several other occasions as well.

21. The 5th Respondent, the Honourable Attorney General, has informed this Court, by way of motion dated 26.07.2024, that the 1st Respondent is no longer in service and has gone abroad.

22. Further, at the argument stage, the learned State Counsel appearing on behalf of the 5th Respondent stated that the liability of the violation of the fundamental rights of the Petitioners cannot be apportioned to the State as the Police Officer was not in Police uniform at the time of the assault.

Alleged Violation of Fundamental Rights

23. 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.
24. 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 11

25. **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.”

26. Furthermore, Article 11 is an unqualified and non-derogable right as per Athukorala J. in **Sudath Silva v. Kodituakku Inspector of Police and Others [1987] 2 SLR 119 at 126**:

*“...It prohibits every person from inflicting torturesome, cruel or inhuman treatment on another. It is **an absolute fundamental right subject to no restrictions or limitations whatsoever**. (...) 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 (...)*

It is therefore the duty of this court to protect and defend this right jealously to its fullest measure with a view to ensuring that this right which is declared and intended to be fundamental is always kept fundamental (...) This court cannot, in the discharge of its constitutional duty, countenance any attempt by any police officer however high or low, to conceal or distort the truth induced, perhaps, by a false sense of police solidarity.”

[Emphasis mine]

27. This Court, in assessing the claim of Article 11 violation in this instant case, takes the following facts into consideration.
28. The Petitioners claim that they were assaulted, and the injuries sustained by them as a result of the assault by the 1st Respondent are depicted in the MLRs marked “P-9” and “P-10”.
29. Further, upon examining the facts presented by the two Petitioners as well as the victim of the accident, it is evident that the 1st Respondent has a consistent methodology of assaulting victims on the head and neck. Moreover, the 1st Respondent has also subjected the Petitioners to mental torture by demanding ransom.
30. In these circumstances, I declare that the fundamental rights guaranteed to the Petitioners under Article 11 of the Constitution has been violated by the 1st Respondent of the instant case.

Alleged Violation of Article 12(1)

31. **Article 12(1)** of the Constitution of Sri Lanka states:

"All persons are equal before the law and are entitled to the equal protection of the law."

32. Over the years the interpretation of Article 12 has expanded beyond its literal meaning. In the case of **Wijerathna v. Sri Lanka Ports Authority [SC/FR/ 256/2017 S.C. Minutes of 11 December 2020]** it was stated that:

“...The concept of ‘equality’ was originally aimed at preventing

discrimination based on or due to such immutable and acquired characteristics, which do not on their own make human being unequal. It is now well accepted that, the ‘right to equality’ covers a much wider area, aimed at preventing other ‘injustices’ too, that are recognized by law. Equality is now a right as opposed to a mere privilege or an entitlement, and in the context of Sri Lanka a ‘Fundamental Right’, conferred on the people by the Constitution, for the purpose of curing not only injustices taking the manifestation of discrimination, but a host of other maladies recognized by law. While all Fundamental Rights are of equal importance and value, the ‘right to equality’ reigns supreme, as it can be said that, all the other Fundamental Rights stem from the ‘right to equality’. The ability of human beings to live in contemporary society (as opposed to merely existing), and develop and reap the fruits of social, scientific, economic and political developments, is based on their ability to exercise fully the ‘right to equality’. Similarly, for human civilizations may they be national or international, to reap the full benefits of knowledge, skills, experience, talents and wisdom that people possess, people of such societies must enjoy the ‘right to equality’.”

33. Further, in the case of **Ariyawansa and Others v. The People’s Bank and Others [2006] 2 Sri LR 145 at 152** Bandaranayake J. stated that:

“The concepts of negation of arbitrariness and unreasonableness are embodied in the right to equality as it has been decided that any action or law which is arbitrary or unreasonable violates equality.”

34. Thus, considering the unreasonable and arbitrary conduct of the 1st Respondent towards the Petitioners it is evident that it affects the equal protection guaranteed to the Petitioners under Article 12(1) of the Constitution. Whereby I hold that Article 12 (1) of the Constitution was violated by the 1st Respondent against the Petitioners.

State Liability

35. It was the submission of the learned State Counsel at the argument stage

that the liability of the alleged violation of the Petitioners' fundamental rights cannot be apportioned to the State as the 1st Respondent was not in his official Police uniform at the time of assault and thus the Petitioners were unaware of the fact that he was a Police Officer.

36. However, I will take the following into account in relation to the above contention.

37. **Article 126 (1)** of the Constitution reads as follows;

“The Supreme Court shall have sole and exclusive jurisdiction to hear and determine any question relating to the infringement or imminent infringement by executive or administrative action of any fundamental right or language right declared and recognized by Chapter III or Chapter IV.”

38. In ***Velmurugu v. The Attorney General and Another*** (supra) Wanasundera, J. stated the following in relation to the argument that a violation of fundamental rights can only be established with the collective will of the government;

*“The effect of this argument is to further restrict the ambit of Article 126. **If only such acts as representing the will of the State or done in consequence of a settled administrative practice can alone be admitted as falling within the ambit of Article 126,** then the bulk of unlawful and illegal acts committed by executive and administrative officers would be left without redress. Such an interpretation would even exclude unlawful acts committed through over-zealousness in carrying out duties which the Privy Council said involves the commonest risk of the contravention of an individual's right, and for which the State should be held liable. I agree ... that **such a construction would empty these provisions of nearly all content and make these safeguards ineffective and void.**”*

[Emphasis mine]

39. The question of whether the State is liable for an unauthorized act by a

public officer was addressed in the case of ***Saman v. Leeladasa and Another [1989] 01 SRI LR 001*** as well. In that case it was held by Fernando, J. that both the Respondent and the State are jointly and severally liable to pay compensation for a violation of Article 11 of the Constitution as the Respondent in that case was exercising the powers vested in him by the State.

40. Hence, our Courts have opined that the State is responsible where fundamental rights guaranteed in terms of the Constitution are infringed by executive or administrative actions as per **Article 126** of the Constitution.
41. Turning to the facts at hand, as per the summary of one of the statements of the witnesses contained in the B Report of the case number 89427 dated 11.02.2019 and marked as “P-6”, the 1st Respondent has stated that he was a Police Officer attached to the *Katunayake* Police Station and has produced an Identity Card during the course of the assault. Hence, it is evident that he has indeed disclosed his identity as a Police Officer at the time of the assault. Further, this statement will no doubt evoke fear in the minds of the victims and is a clear abuse of the powers vested in him by the State.
42. Thus, the learned State Counsel’s submission at the oral argument stage that the Petitioners were unaware of the 1st Respondent being a Police Officer is contradicted in the facts revealed in the said B Report.
43. Thus, taking into consideration the facts of the present case I affirm the view of this Court in relation to State liability and declare that the State is liable for the violation of Article 11 of the Constitution alongside the 1st Respondent.
44. I will now turn to the contention of the learned State Counsel that the 1st Respondent was on a private voyage of his at the time of this occurrence and that he was not wearing the official Police uniform.
45. **Section 56 of the Police Ordinance** states as follows:

*“Every police officer shall for all purposes in this Ordinance contained be **considered to be always on duty**, and shall have the powers of*

a police officer in every part of Sri Lanka. It shall be his duty

(a) to use his best endeavours and ability to prevent all crimes, offences, and public nuisances;

(b) to preserve the peace;

(c) to apprehend disorderly and suspicious characters;

(d) to detect and bring offenders to justice;

(e) to collect and communicate intelligence affecting the public peace; and

(f) promptly to obey and execute all orders and warrants lawfully issued and directed to him by any competent authority”

[Emphasis mine]

46. In ***Bandula Samarasekera v Vijitha Alwis, O.I.C., Ginigathhena Police Station SC And Others [2009] 1 SRI LR 213 at 230*** it was stated by Bandaranayake, J. that:

*“It is the duty of a police officer to use his best endeavour and ability to prevent all crimes, offences and public nuisances and more importantly to preserve the peace. In order to carry out his duties efficiently and effectively, it would be necessary to have the trust and respect of the public. It is not easy to command that from the public and in order to earn such trust and respect, the **police officers must possess a higher standard of moral and ethical values than that is expected from an average person.**”*

[Emphasis mine]

47. Thus, the 1st Respondent, being an officer of the Police force, had a professional obligation to ensure that his conduct, at all times, reflected the standards expected from a Police Officer.

48. In any event, as per the facts reported in the B Report of the case number 89427 dated 11.02.2019 and marked as “P-6”, the pistol found in his possession has been identified as an official pistol, bearing the registration number 1101806 and that it has been officially issued to the 1st Respondent:

“..සැකකරු සම්බන්ධ විමර්ශනයේදී සැකකරු කටුනායක පොලීස් ස්ථානයට අනුයුක්තව රාජකාරි කරන අයකු වන අතර ඔහු වෙත නිකුත් කර ඇති සේවා අවියක් බවට අනාවරණය වන අතර...”

Moreover, there is no evidence to suggest that the 1st Respondent was on officially approved leave as well, although being on leave would not be an excuse either.

49. Considering the above I am of the view that the mere fact the 1st Respondent was not wearing the Police uniform is not credible ground for the State to evade responsibility as he was a Police Officer and was in possession of an official pistol which was officially issued to him by the *Katunayake* Police Station.

50. Finally, I will address the concern with regards to the 1st Respondent no longer being in office.

51. It was held in the case of ***Mariyadas Raj v. Attorney General and Another [1983] 02 SRI LR 461***, where even though the relevant officer who was alleged to have violated the Petitioner’s fundamental rights was not named, the State was liable for the alleged infringement.

52. Therefore, even though the Respondent is no longer in office or in the country, I re-iterate that the State cannot evade the liability of the violations of the Petitioners’ fundamental rights guaranteed under Articles 11 and 12(1) of the Constitution.

53. Whereby I reject the learned State Counsel’s argument on the State bearing no responsibility for the actions of the 1st Respondent and hold that the State must be liable as well.

Declarations and Compensation

54. In the above premise, I declare that the fundamental rights that have been guaranteed to the Petitioners under Articles 11 and 12 (1) of the Constitution were violated by the 1st Respondent and that the State must bear the liability of the same.

55. As per Article 126(4) of the Constitution, the Supreme Court is empowered to grant such relief as it may deem just and equitable in the circumstances in respect of any petition referred to it under Article 126(2). Therefore, in the circumstances of this case, considering the injuries, the discomfort and the losses that were suffered by the Petitioners due to the acts of the 1st Respondent, I order the State to pay a sum of Rs. 10,000 each to the Petitioners within the period of three months from the date of this judgment.

Application is Allowed

JUDGE OF THE SUPREME COURT

A. L. SHIRAN GOONERATNE, J.

I agree

JUDGE OF THE SUPREME COURT

ACHALA WENGAPPULI, J.

I agree

JUDGE OF THE SUPREME COURT