

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

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

S.C. (FR) No. 276/2018

Lokugamhewage Deepika Damayanthi,
"Hasini",
Bandaramulla, Mirissa.

Petitioner

Vs.

1. W.S. Vasantha Kumara,
Officer In Charge,
Police Station, Thihagoda.
2. G.M.Premasiri,
Sub Inspector of Police,
Police Station, Thihagoda.
3. Kankamge Krishan Jeewaka Jayaruk,
"ThangalleGedara"
Uda Aparakka, Aparakka.
4. P.M. Thilaka Kalyani,
Southern Provincial Director of National
Police Commission,
1st Floor, District Secretariat, Galle.

5. S.P.H.Marapana,
Superintendent of Police,
Office of the Superintendent of Police,
Matara.
6. Deputy Inspector General of Police,
Matara Hambantota Division,
Office of the Deputy Inspector General of
Police, Matara.
7. Dumidhu Senanayake,
Assistant Superintendent of Police,
Officer of the Asst: Superintendent of
Police, Akuressa.
8. Mr. P.H. Manathunga,
The Chairman
National Police Commission,
Bandaranayake Memorial International
Conference Hall Premises,
Block No.9, Baudhaloka Mawatha,
Colombo 07.
9. Mr.D.M.Saman Dissanayake,
The Secretary,
National Police Commission,
Bandaranayake Memorial International
Conference Hall Premises,
Block No.9, Baudhaloka Mawatha,
Colombo 07.
10. Prof. S.T. Hettige
11. Mrs. Savithree Wijesekara
12. Mr. Y.L.M.Sawahir
13. Mr. B. A. Jeyanathan

14. Mr. Tilak Collure

15. Mr. Frank De Silva,

All of the 10th -14th Respondents are
Members of National Police Commission
BMICH, Block No.9, Baudhaloka
Mawatha, Colombo 07.

16. K.K. Janaka Thushara,
Officer In Charge
Police Station, Kotawila.

17. Inspector General of Police Sri Lanka
Police Headquarters, Colombo 05.

18. Honourable Attorney General, Attorney
General Department, Colombo 12.

Respondents

Before : Janak De Silva, J.
Menaka Wijesundera, J.
Sampath B. Abayakoon, J.

Counsel : Upul Kumarapperuma, PC with Radha Kuruwitabandara,
Ms. K.H. Dilrukshi & Ganani Malagoda instructed by
Nimali Abeysiriwardena for the Petitioner.
Priyantha Alagiyawanna with Tharushi Weerasekara
instructed by Nadeesha Alawaththa for the 1st
Respondent.
V. Hettige, ASG instructed by Riznie Firdous, SSA for 17th
& 18th Respondents.

Written

Submissions : Written submissions on behalf of the Petitioner on 20th of June, 2022.

Written submissions on behalf of the 17th & 18th Respondents on 14th July, 2023.

Written submissions on behalf of the Petitioner on 1st August, 2025.

Argued on : 09.07.2025

Decided on : 04.09.2025

MENAKA WIJESUNDERA J.

The petitioner in the instant matter is a social service activist and the 3rd respondent, who is a journalist, has been a friend of the petitioner and it is alleged that the 3rd respondent had borrowed some money from the petitioner on the understanding that it would be settled without much delay. It is submitted that the Petitioner had not obtained any written document regarding the said sum of rupees three million.

But according to the petitioner, the 3rd respondent had failed to repay the borrowed amount and the petitioner had stopped lending him money and their friendship had turned sour and the petitioner had got to know that the 3rd respondent had complained against her for poisoning her well. As such, she had been summoned by the Thihagoda Police station on 02.04.2017.

When she had gone to the police station, she has alleged that the 2nd respondent, who is now dead, had shown her to other people and had made futile allegations and that the Officer in charge of the police station, the 1st respondent, had not been present. The petitioner has alleged that she was distressed by the accusations of the 2nd respondent.

Thereafter, she had gone abroad and in her absence from the country she had learnt that certain allegations are being made against her and on her return, she had understood that facts have been reported to the Magistrate against her.

Thereafter, on the 26th of April, 2017, she had surrendered to Court and then she had been produced as a suspect.

The allegation in the B report bearing no: BR 59/17, had been that she had poisoned the well of the 3rd respondent. A water sample had been sent to the Government analyst and the report (marked as P14) had been negative.

The petitioner had taken steps to complain to the Police Commission and the Inspector General of Police against the conduct of the 1st and the 2nd respondents.

After a full inquiry had been held against the 1st and the 2nd respondents, it has been recommended by the 4th respondent in P16, P17 and P18 that disciplinary action be taken against the 1st and the 2nd respondents and it has been further instructed that the criminal proceedings be terminated against the petitioner in view of the Government analyst report.

But the 1st Respondent had continued to summon the Petitioner to the Thihagoda police station and she had gone to the police station on 22.07.2018 and then she had been told to appear before the mediation board on 04.08.2018.

Therefore, the petitioner had alleged that there was continuous harassment by the 1st and the 2nd respondents against her, which she had claimed had violated her fundamental rights under Article 12 (1) of the Constitution on which leave has been granted by this Court against the 1st, 2nd and 18th respondent on the 15th of October, 2019. The 1st respondent is the OIC of the Thihagoda police station, 2nd is a Sub Inspector of police attached to the Thihagoda police station, 17th respondent is the Inspector General of police in Sri Lanka and the 18th respondent is the Attorney General in Sri Lanka.

The petitioner states that the actions, inactions and decisions of the respondents are violative of his rights guaranteed under Article 12(1) of the Constitution which provides for equality before the law and equal protection of the law. In that, they are discriminatory, arbitrary, irrational, illegal and unreasonable and violative of equality and equal protection of law. The petitioner states that the actions, inactions and decisions of the respondents are a breach of legitimate expectations. The Petitioner filed this Application seeking a declaration of the violation of fundamental rights, withdrawal of judicial proceedings, disciplinary

inquiries against the 1st and 2nd Respondents, and compensation of Rs. 10 million.

Article 12(1) of the Constitution reads as follows:

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

This Article embodies the principle of equality before the law and equal protection of the law. It prohibits arbitrary and unequal treatment of persons by public authorities and demands that state authorities act fairly, reasonably, and without discrimination in exercising their functions.

In ***Wijerathna v Sri Lanka Ports Authority [2020] SC (FR) Application No. 256/2017*** - SC Minutes 11.12.2020, Justice Kodagoda explains the concept of equality as provided within Article 12(1) as follows:

“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.”

The Petitioner complains that the fundamental rights of the Petitioner and that of its members guaranteed by Article 12(1) of the Constitution have been infringed for one or more of the following reasons:

- i. Arbitrary and discriminatory treatment by the 1st and 2nd Respondents in investigating the complaint made by the 3rd Respondent.
- ii. Investigation was biased, driven by the animosity of the 3rd Respondent.
- iii. This investigation caused public humiliation and distress.
- iv. Failure by the police to take action on her complaints against the 3rd Respondent amounts to a denial of equal protection of the law.

The 1st and 2nd Respondents deny any violation of the fundamental rights and that they acted in compliance with the Police Ordinance and the Criminal Procedure Code upon receiving a complaint of a serious nature. It was stated that the Petitioner was summoned on multiple occasions to record a statement but initially failed to appear. The 1st and 2nd Respondents assert that the case was withdrawn upon receipt of the Government Analyst’s report, the Petitioner was discharged and their actions were lawful, non-arbitrary, and consistent with

the duties imposed on the police, thereby not violating the Petitioner's rights under Article 12(1).

The above view was reiterated in ***R.D. Shetty v International Airport Authority (1979) 3 SCC 489***:

“The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is protected and it must characterize every State action, whether it be under authority of law or in exercise of executive power without making of law.”

The 1st and 2nd Respondents were in receipt of a complaint of poisoning of a well, a serious allegation affecting public health. But upon receipt of the complaint, it is evident that the police didn't follow procedure and acted arbitrarily and irrationally.

In the determination of ***The Special Goods and Services Tax Bill*** (SC/SD/1-9/2022, page 36), it was held:

“Absolute and unfettered discretion being vested in an officer of the Executive is a recipe for (i) unreasonable and arbitrary decision making, (ii) abuse of power, (iii) corruption, and (iv) the roadway to depredation of the Rule of Law. On all such accounts, it results in an infringement of Article 12(1) of the Constitution which guarantees equal protection of the law.”

The Petitioner's claims of unequal treatment under Article 12(1) must be assessed in the context of whether the Respondents' conduct was arbitrary, unreasonable, or discriminatory. Equality before the law does not preclude the investigation of complaints made against individuals provided such investigations are conducted within the parameters of law and without malice or discrimination.

The allegations against the Petitioner stem primarily from the animosity of the 3rd Respondent and the personal disputes arising from the alleged loan transaction. The record reflects that the 1st and 2nd Respondents acted out of the scope of their lawful authority by making an application seeking further directions from the Learned Magistrate against the Petitioner, suppressing the directions given by the National Police Commission and by continuing to summon the Petitioner to the Thihagoda police and Mediation Board despite the directions given by the National Police Commission. The Petitioner states that these actions are unreasonable, capricious, which amounts to a violation of Fundamental Rights.

In conclusion, having considered the totality of the evidence and the material that has already been discussed above, it is clear that the 1st and 2nd Respondents acted unreasonably by reporting it to court without having a proper investigation and referring the Petitioner to the Police even after withdrawing the case. After conclusion of the said inquiry, the Assistant Superintendent of Police has recommended charges against the 3rd Respondent regarding the false allegations made but the 1st Respondent has failed to take any steps.

I am of the view that the Petitioner has established that there was arbitrary, unreasonable, and discriminatory conduct by the 1st and 2nd Respondents.

Therefore, I declare that the 1st and 2nd respondents have violated the fundamental rights of the petitioner under Article 12(1) of the Constitution. However, as the 2nd respondent has passed away, no relief can be sought from him. But against the 1st respondent, I direct the National Police Commission and the Deputy Inspector Police of the Matara Hambantota division to conduct a thorough disciplinary inquiry and take action accordingly.

JUDGE OF THE SUPREME COURT

Janak De Silva, J.

I agree.

JUDGE OF THE SUPREME COURT

Sampath B. Abayakoon, J.

I agree.

JUDGE OF THE SUPREME COURT