

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

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

**SC (FR) Application No: 304/2020**

Vithana Arachchige Anurasiri Vithana Arachchi,  
No. 295/2, Kandawalamadiththa,  
Gurudeniya.

**PETITIONER**

Vs.

1. Police Constable 57746, Jayakody
2. Aruna Krishantha,  
Officer-in-Charge,  
Inspector of Police.
3. Saman Kumara,  
Officer-in-Charge of Traffic,  
Inspector of Police.
4. Hettiarachchige Ranaweera,  
Sub Inspector of Police.

1<sup>st</sup> – 4<sup>th</sup> Respondents at  
Thalathuoya Police Station, Thalathuoya.

5. C. D. Wickremaratne,  
Inspector General of Police,  
Police Headquarters, Colombo 1.
6. Hon. Attorney General,  
Attorney General's Department, Colombo 12.

**RESPONDENTS**

**Before:** Arjuna Obeyesekere, J  
K. Priyantha Fernando, J  
M. Sampath K. B. Wijeratne, J

**Counsel:** Suren D. Perera with Manushika Cooray for the Petitioner  
  
Ashan Stanislaus for the 1<sup>st</sup> – 4<sup>th</sup> Respondents  
  
Varunika Hettige, Additional Solicitor General for the 5<sup>th</sup> and 6<sup>th</sup> Respondents

**Argued on:** 28<sup>th</sup> October 2025

**Written Submissions:** Tendered on behalf of the Petitioner on 5<sup>th</sup> June 2023 and 10<sup>th</sup> November 2025

Tendered on behalf of the 1<sup>st</sup> – 4<sup>th</sup> Respondents on 22<sup>nd</sup> May 2024

Tendered on behalf of the 5<sup>th</sup> and 6<sup>th</sup> Respondents on 28<sup>th</sup> April 2023

**Decided on:** 5<sup>th</sup> December 2025

**Obeyesekere, J**

- 1) By a petition filed on 5<sup>th</sup> October 2020, the Petitioner has complained to this Court that he was (a) subjected to cruel, inhuman and degrading treatment by the 1<sup>st</sup> – 4<sup>th</sup> Respondents, and (b) arrested by the 3<sup>rd</sup> Respondent without any basis, and that the Respondents have thereby violated his fundamental rights guaranteed under Articles 11, 12(1) and 13(1) of the Constitution. Leave to proceed was granted on 9<sup>th</sup> February 2022 against the 1<sup>st</sup> – 4<sup>th</sup> Respondents for the alleged violation of the said Articles.

**Case of the Petitioner**

- 2) The Petitioner is a lorry driver by profession and was 46 years of age at the time of the alleged incident. He states that at all times relevant to this application, he was employed as the driver of a tipper truck [truck] used for the transportation of sand from the Mahiyanganaya area. The owner of the truck is the 4<sup>th</sup> Respondent, a Sub Inspector of Police who was attached to the Thalatuoya Police Station in Kandy.

- 3) The Petitioner states that on 26<sup>th</sup> February 2019, he was charged in Case No. 25789/19 in the Magistrate's Court of Mahiyanganaya for transporting sand without a permit in the said truck belonging to the 4<sup>th</sup> Respondent. The Petitioner states further that after the said incident, he informed the 4<sup>th</sup> Respondent that he will not drive the truck in the future to transport sand unless a permit was available. The Petitioner claims that the 4<sup>th</sup> Respondent was furious with him over his refusal to drive the truck on such occasions as the 4<sup>th</sup> Respondent had to employ another driver.
- 4) According to the Petitioner, on 1<sup>st</sup> April 2019 he had taken the truck for repairs in the morning, returned home around 5.45pm and parked the truck on the side of the road close to his house without obstructing the traffic on the main road. The Petitioner states that he went for a funeral at about 7pm that night, consumed a beer while at the funeral house, returned home around 9.45pm and thereafter had dinner. The Petitioner states further that due to security concerns arising from the truck being parked adjacent to the main road, the 4<sup>th</sup> Respondent had requested the Petitioner to sleep inside the truck, as has been done on previous occasions. The Petitioner had accordingly acceded to the request of the 4<sup>th</sup> Respondent and slept inside the truck.
- 5) The Petitioner states that around 11.50pm, he was rudely woken up and saw two Police Constables and the 1<sup>st</sup> Respondent, whose name he was aware of, coming towards the truck. He states further that the 1<sup>st</sup> Respondent had got inside the truck and hit him on the head with a helmet. The Petitioner claims to have raised cries but the 1<sup>st</sup> Respondent and another officer had pulled the Petitioner out of the truck, thrown him to the ground and the 1<sup>st</sup> Respondent had kicked him on his back and chest. The Petitioner states that his wife and two children had heard him screaming and arrived at the scene. The Petitioner also states that the 3<sup>rd</sup> Respondent, an Inspector of Police at the Thalatuoya Police Station was present at the scene and was giving orders to the other officers.
- 6) The 1<sup>st</sup> Respondent and another officer had thereafter held the Petitioner with his head and legs and thrown him inside the Police jeep. The Petitioner states that he was not informed the reasons for his arrest. While being taken to the Thalatuoya Police Station, the Petitioner claims that he was kicked by two police officers whose

names he is not aware of. The Petitioner admits that at the Police Station, he was administered a breathalyzer test and placed inside the cell.

- 7) The next morning, the Petitioner had been taken before the 2<sup>nd</sup> Respondent, the Officer-in-Charge of the Police Station, who having threatened the Petitioner, had slapped him on the right side of his face. The Petitioner had thereafter been taken to the District Hospital, Thalatuoya. The Petitioner states that he informed the Doctor who examined him that he had been assaulted by the Police and that the 1<sup>st</sup> Respondent and another officer had threatened him for having complained to the Doctor about the assault.
- 8) Having been produced before the Magistrate's Court, Kandy on 2<sup>nd</sup> April 2019 for rash driving, driving under the influence of alcohol and criminal intimidation of two Police Officers, the Petitioner had been remanded until 4<sup>th</sup> April 2019 by the Magistrate. The Petitioner had thereafter been sent to the Bogambara Prison, Dumbara. The Petitioner states that his health took a turn for the worse and that he was admitted to the Prison Hospital the same day. On 4<sup>th</sup> April 2019, the Petitioner had been produced before the Magistrate's Court directly from the Prison Hospital and had been granted bail.
- 9) The Petitioner states that he sought medical treatment from a private doctor on the 4<sup>th</sup> and that he was advised to have himself admitted to the Ophthalmology ward at the Kandy Hospital due to the injuries that he had sustained to his eye. The Petitioner however had not done so. The Petitioner states that his health deteriorated while he was at home and that he was admitted to the National Hospital, Kandy on 8<sup>th</sup> April 2019 where he was treated as an in-house patient in Ward 57. The Petitioner had been discharged on 10<sup>th</sup> April 2019 and he had thereafter sought ayurvedic treatment for his injuries.
- 10) Thus, the crux of the Petitioner's story is that he has not done any wrong, but the 1<sup>st</sup> – 3<sup>rd</sup> Respondents picked him up at the request of the 4<sup>th</sup> Respondent who was annoyed with the Petitioner for having refused to transport sand without a permit, assaulted him and thereafter reported facts to the Magistrate on trumped up charges. According to the evidence, the 4<sup>th</sup> Respondent too had been involved in the investigation into the alleged incident of rash driving by the Petitioner, even though there existed a clear conflict of interest.

### The version of the Respondents

- 11) The Respondents deny the version of the Petitioner. The position of the Respondents is that the 3<sup>rd</sup> Respondent, who was the Officer-in-Charge of the Traffic Division and the 1<sup>st</sup> Respondent had left the Thalathuoya Police Station on night patrol at 10.30pm on 1<sup>st</sup> April 2019. At about 11.30pm, Sergeant Seneviratne had received a complaint via the Police Emergency [119] that a truck parked near the 'Ramitha Super Market' situated close to the residence of the Petitioner is obstructing the road. Seneviratne had communicated the said message to the 1<sup>st</sup> and 3<sup>rd</sup> Respondents, who had thereafter proceeded to the scene.
- 12) The Respondents state that once the 1<sup>st</sup> and 3<sup>rd</sup> Respondents arrived at the scene, the Petitioner, having seen them, had fled the scene and driven the truck towards Haragama. The Respondents state that even though the 1<sup>st</sup> and 3<sup>rd</sup> Respondents had tried to stop the truck, they had not been successful. The Respondents state further that the truck was driven at high speed and had returned to the scene about 20 minutes later. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents had thereafter directed the truck to stop, which order had been complied with and ordered the Petitioner to get out of the truck.
- 13) The Respondents state that the Petitioner was under the influence of alcohol at that time and that he had resisted arrest. The Respondents do not however claim that they used minimum force to arrest the Petitioner. The Petitioner had thereafter been produced at the Thalathuoya Police Station where he was subjected to a breathalyzer test which confirmed that the Petitioner was under the influence of alcohol. The Petitioner had thereafter been kept in the Police cell.
- 14) The Respondents claim that while inside the cell, the Petitioner "*has inter alia banged his head on the walls and iron bars of the cell*", whilst threatening the Police officers on duty. The next morning, the Petitioner had been produced before the Judicial Medical Officer and thereafter at the Magistrate's Court. By having the Petitioner examined by the Judicial Medical Officer, the Respondents have admitted that the Petitioner had injuries on him.

- 15) Thus, the versions of the Petitioner and the Respondents with regard to the circumstances that led to the arrest of the Petitioner are diametrically opposed to each other. Both parties have tendered statements of third parties to support their factual positions. The case filed against the Petitioner for rash driving and driving under the influence of alcohol is proceeding in the Magistrate's Court, Kandy where the evidence of several Police Officers have been led. The truthfulness of the Respondents' version therefore is a matter that is currently before the Magistrate's Court and in my view, it is the Hon. Magistrate who would be in the best position to decide the circumstances that led to the arrest of the Petitioner and which version is the more credible version.
- 16) Hence, I do not think it is appropriate for me to examine and/or analyse the factual circumstances that led to the arrest of the Petitioner and for that reason, I am not inclined to decide whether the fundamental right of the Petitioner guaranteed by Article 13(1) has been infringed by the Respondents. What is left to be decided is whether the Respondents have violated the fundamental rights of the Petitioner guaranteed by Articles 11 and 12(1) of the Constitution.

Has the application been filed out of time

- 17) However, before I do so, I must consider the objection raised by the learned Counsel for the 1<sup>st</sup> – 4<sup>th</sup> Respondents that the Petitioner has not invoked the jurisdiction of this Court within one month of the infringement, as required by Article 126(2), which stipulates that, *"Where any person alleges that any such fundamental right or language right relating to such person **has been infringed** or is about to be infringed by executive or administrative action, he may himself or by an attorney-at-law on his behalf, **within one month thereof**, in accordance with such rules of court as may be in force, apply to the Supreme Court by way of petition in writing addressed to such Court ..."* [emphasis added].
- 18) The learned Counsel for the 1<sup>st</sup> – 4<sup>th</sup> Respondents submitted that the imposition of a time-limit in Article 126(2) demonstrates the need for the prompt invocation of the jurisdiction of this Court – *vide* **Kumarasiri v Bandara** [SC (FR) Application No. 277/2009; SC minutes of 28<sup>th</sup> March 2014] – and that the consequence of not

complying with this requirement in Article 126(2) is that a petition which is filed after the expiry of a period of one month from the time the alleged infringement occurred, would be time-barred and unmaintainable.

- 19) Having considered a long line of jurisprudence relating to the applicability of the one month rule, Prasanna Jayawardena, PC, J held as follows in **Demuni Sriyani De Soyza and Others v Dharmasena Dissanayake, Chairman, Public Service Commission and Others** [SC (FR) Application No. 206/2008; SC minutes of 9<sup>th</sup> December 2016]:

*“The rule that, an application under Article 126 which has not been filed within one month of the occurrence of the alleged infringement will make that application unmaintainable, has been enunciated time and again from the time this Court exercised the Fundamental Rights jurisdiction conferred upon it by the 1978 Constitution.”*

*“[T]he general rule is clearly that, this Court will regard compliance with the ‘one month limit’ stipulated by Article 126(2) of the Constitution as being mandatory and refuse to entertain or further proceed with an application under Article 126(1) of the Constitution, which has been filed **after the expiry of one month from the occurrence of the alleged infringement** or imminent infringement” [emphasis added].*

- 20) Having referred to the rule, Jayawardena, PC, J went on to state as follows:

*“However, this Court has consistently recognised the fact that, the duty entrusted to this Court by the Constitution to give relief to and protect a person whose Fundamental Rights have been infringed by executive or administrative action, requires **Article 126(2) of the Constitution to be interpreted and applied in a manner which takes into account the reality of the facts and circumstances** which found the application. This Court has recognized **that it would fail to fulfill its guardianship if the time limit of one month is applied by rote and the Court remains blind to facts and circumstances which have denied a Petitioner of an opportunity to invoke the jurisdiction of Court earlier.**” [emphasis added].*

- 21) Similar reasoning has been enunciated by Mark Fernando, J in Gamaethige v Siriwardena and others [(1988) 1 Sri LR 384; at page 402] when he stated that, *“While the time limit is mandatory, in exceptional cases, on the application of the principle *lex non cogit ad impossibilia*, if there is no lapse, fault or delay on the part of the petitioner, this Court has a discretion to entertain an application made out of time.”*
- 22) In Saman v Leeladasa and another [(1989) 1 Sri LR 1], the petitioner alleged that he was assaulted on 1<sup>st</sup> December 1987 by a prison officer while being an inmate at the Galle Prison. He was released on bail on 11<sup>th</sup> December 1987. The application alleging the violation of fundamental rights was filed only on 7<sup>th</sup> January 1988. Upon an objection taken that the application is time barred, Mark Fernando, J stated as follows:

*“A preliminary objection was taken that the petition filed on 7.1.88 was out of time as more than one month has elapsed after the alleged infringement on 1.12.87. It was submitted that visits by lawyers and relatives were not restricted, and that the Petitioner had the opportunity to consult lawyers. There are two independent reasons why this contention cannot succeed. A remand prisoner cannot contact a lawyer with the same ease and facility as other persons; additional time has necessarily to be spent in sending messages to, or in awaiting a visit from, a relative, who would then have to contact a lawyer; and more time would be necessary to give proper instructions. The period of time necessary would depend on the circumstances of each case. Here, the Petitioner was hospitalised from 2.12.87 until his release, and was thus prevented from taking immediate action to petition this Court for redress: an impediment, to the exercise of his fundamental right (under Article 17) to apply to this Court, **caused by the very infringement complained of**. Further, the fact that he had been assaulted, or that an injury had been inflicted on him, would not per se bring him within Article 11; whether the treatment meted out to him would fall within Article 11 would depend on the nature and extent of the injury caused; until the Petitioner had knowledge, or could with reasonable diligence have discovered, that an injury sufficient to bring him within Article 11 had resulted, time did not begin to run.”*  
[emphasis added]



- 23) The need to adopt a pragmatic view in dealing with an objection that an application is outside the one month time period was emphasised in **Chathuranga Padmasiri and others v Inspector General of Police** [SC (FR) Application No. 46/2021; SC minutes of 23<sup>rd</sup> November 2022] where Samayawardhena, J stated as follows:

*“In exercising the extraordinary and exclusive jurisdiction conferred upon this Court to protect the fundamental rights of the people, this Court, whilst emphatically emphasising that the time limit of one month is mandatory and shall be complied with, has nevertheless relaxed the rigidity of the time lag in appropriate cases by adopting a liberal as opposed to a literal interpretation of Article 126(2). This is predominantly done by the adoption of the maxim *lex non cogit ad impossibilia*: the law does not expect a man to do the impossible. Hence, it is accepted that the period of one month begins to run not from the date of violation of the right but from the date of becoming aware of the violation of the right or from the time of being in a position to take effective steps to come before the Supreme Court.”*

- 24) The learned Counsel for the 1<sup>st</sup> – 4<sup>th</sup> Respondents submitted that the incident occurred on the night of 1<sup>st</sup> April 2019, and as the Petitioner was released on bail on 4<sup>th</sup> April 2019, he should have filed this application on or before 4<sup>th</sup> May 2019. However, in terms of Section 13(1) of the Human Rights Commission of Sri Lanka Act, No. 21 of 1996, *“Where a complaint is made by an aggrieved party in terms of section 14, to the Commission, within one month of the alleged infringement or imminent infringement of a fundamental right by executive or administrative action, the period within which the inquiry into such complaint is pending before the Commission, shall not be taken into account in computing the period of one month within which an application may be made to the Supreme Court by such person in terms of Article 126(2) of the Constitution.”*

- 25) In **Thilangani Kandambi v State Timber Corporation and others** [SC (FR) Application No. 452/2019; SC minutes of 14<sup>th</sup> December 2022], Janak De Silva, J stated that:

- (a) A petitioner relying on a complaint made to the Human Rights Commission to get over the time bar *“must show evidence that the Human Rights Commission*

*of Sri Lanka has conducted an inquiry regarding the complaint or that an inquiry is pending. Simply lodging a complaint is inadequate.”;*

- (b) *“A party cannot benefit from the provisions in section 13(1) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996 where the complaint to the Human Rights Commission is made **one month after** the alleged violation.”*

- 26) It is admitted that the Petitioner has lodged a complaint with the Regional Office of the Human Rights Commission on 7<sup>th</sup> May 2019 and that the Regional Office has acknowledged the receipt of the said complaint on 8<sup>th</sup> May 2019 [P7]. The Petitioner and the 1<sup>st</sup> – 3<sup>rd</sup> Respondents had thereafter been summoned for an inquiry on 21<sup>st</sup> August 2019 [P8] and after the inquiry, the Petitioner had been informed by letter dated 8<sup>th</sup> October 2019 [P9] that the inquiry file has been sent to the Head Office of the Human Rights Commission. The decision of the Human Rights Commission was pronounced on 21<sup>st</sup> December 2022 [P16]. However, this application was filed on 5<sup>th</sup> October 2020 pending the decision of the Human Rights Commission.
- 27) In terms of Section 13(1), the complaint to the Human Rights Commission should have been made by 4<sup>th</sup> May 2019, whereas the complaint had been made only on the 7<sup>th</sup>. However, taking into consideration the fact that:
- (a) Pursuant to his release on bail on 4<sup>th</sup> April 2019, the Petitioner was receiving medical treatment at home for the injuries that he had suffered at the hands of the Respondents;
- (b) The Petitioner was admitted to the National Hospital, Kandy as an in-house patient on 8<sup>th</sup> April 2019 as his condition deteriorated while being at home;
- (c) The Petitioner’s inability to complain to the Human Rights Commission within one month of 4<sup>th</sup> April 2019 was as a result of an impediment caused by the very infringement complained of, squarely falling within the principle recognised in Leeladasa,

I am of the view that the above reasoning relating to the calculation of the one month rule in Article 126 must apply with equal force for the purposes of Section 13(1) as well, and the time could not therefore have begun to run prior to 10<sup>th</sup> April

2019. Thus, the complaint of the Petitioner to the Human Rights Commission is within time and since this application was made to this Court while the matter was pending before the Human Rights Commission, this application is not time barred. I would therefore overrule the objection raised by the learned Counsel for the 1<sup>st</sup> – 4<sup>th</sup> Respondents.

#### Article 11 of the Constitution

28) That human dignity underpins the application of all fundamental rights, and is the fundamental virtue sought to be protected through the securement of fundamental rights and the Rule of Law is clearly demonstrated by the Svasti to our Constitution, and is reinforced in Article 11 which provides that, “*No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*”

29) In **Ajith C. S. Perera v Minister of Social Services and Social Welfare and Others** [(2019) 3 Sri LR 275 at page 300-301] Prasanna Jayawardena, PC, J stated “ ... *that it seems to me that **the concept of human dignity, which is the entitlement of every human being, is at the core of the fundamental rights enshrined in our Constitution.** It is a fountainhead from which these fundamental rights spring forth and array themselves in the Constitution, for the protection of all the people of the country. As Aharon Barak, former Chief Justice of Israel has commented [Human Dignity – The Constitutional Value and the Constitutional Right (2015)]:*

*‘Human dignity is the central argument for the existence of human rights. It is the rationale for them all. It is the justification for the existence of rights. ... The constitutional value of human dignity has a central normative role. Human dignity as a constitutional value is the factor that united the human rights into one whole. It ensures the normative unity of human rights.’* [emphasis added]

30) In his treatise, **Fundamental Rights in Sri Lanka (A Commentary)** [(1993) at page 69] Chief Justice Sharvananda has pointed out that:

*“The fundamental nature of the right of freedom from torture or inhuman treatment is emphasized by the fact that **it is an absolute right subject to no restriction or derogation** under any condition, even in times of war, public danger*

*or other emergency. This human right from cruel or inhumane treatment is vouched not only to citizens, but to all persons, whether citizens or not, irrespective of the question whether the victim is a hard-core, criminal or not.”*  
[emphasis added]

- 31) **Amal Sudath Silva v Kodituwakku Inspector of Police and others** [(1987) 2 Sri LR 119; at page 126] is one of those many cases of Police assault that have come up before this Court since the introduction of the fundamental rights jurisdiction. In that case, Atukorale, J stated that, *“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. Just as much as this right is enjoyed by every member of the police force, so is he prohibited from denying the same to others, irrespective of their standing, their beliefs or antecedents. 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 and that the executive by its action does not reduce it to a mere illusion.”*
- 32) An examination of the judgments of this Court starting from Velmurugu v Attorney General and another [(1981) 1 Sri LR 406], through Channa Pieris and others v Attorney General and others (Ratawesi Peramuna Case) [1994] 1 Sri LR 1] and culminating with Kumarihami v Officer-in-Charge, Mahiyanganaya Police Station and others [(2021) 2 Sri LR 464] demonstrate that 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, the testimonial creditworthiness of the petitioner and the difficulties and disadvantages that a petitioner could face in proving such allegations.

## Violation of Article 11

- 33) Even though the parties have taken diametrically opposite views relating to the circumstances that led to the arrest of the Petitioner, the parties do agree that the Petitioner suffered injuries after he was arrested by the Police on the night of 1<sup>st</sup> April 2019 and prior to the Petitioner being produced before the Magistrate on 2<sup>nd</sup> April 2019. The issue that needs to be determined therefore is whether these injuries were inflicted by the Respondents as claimed by the Petitioner or whether they were self-inflicted as claimed by the Respondents. The answer to this question can be found through the medical evidence and the nature of the injuries suffered by the Petitioner, and by the probability of the version of either party, with regard to the manner in which the injuries were sustained.
- 34) The Medico-Legal Examination Form issued by the Divisional Hospital, Thalatuoya [R6] tendered by the Respondents confirm that the Petitioner had been examined on 2<sup>nd</sup> April 2019 at 9.40am. Other than noting a contusion, the Form does not record any injuries on the Petitioner, even though the Petitioner claims that he apprised the doctor who examined him of the assault.
- 35) The Petitioner had been examined at the Prison Hospital on 3<sup>rd</sup> April 2019 at 10.49am. According to the Report issued by the Medical Officer of the Bogambara Prison [R8]:
- (a) The Petitioner has complained of assault by the Police at 6.30pm on 1<sup>st</sup> April 2019 with a helmet and hands;
  - (b) The Petitioner has complained of pain and swelling of the left mandibular region [lower jawbone];
  - (c) The Petitioner has complained of pain and redness of the right eye;
  - (d) On examination, the Doctor has observed a black eye on the right side, and swelling of the left mandibular region.
- 36) There is a discrepancy in the medical report with regard to the time of assault but it has no relevance since the Respondents too admit the time of arrest.

- 37) The Petitioner was admitted to the National Hospital, Kandy on 8<sup>th</sup> April 2019 at 9.15am. According to the Patient Admission Form [R7], the Petitioner had complained of assault by Police officers on 1<sup>st</sup> April 2019 and the redness of his eye had been noted. The Petitioner had been examined on 9<sup>th</sup> April 2019 at 1.50pm and the following are borne out by the Medico-Legal Report [R5]:
- (a) The Petitioner had stated in the short history that he was cleaning the truck between 8 and 9pm on 1<sup>st</sup> April 2019 outside his house when three officers from the Thalathuoya Police Station assaulted him;
  - (b) The Petitioner had a right eye injury with sub conjunctival haemorrhage;
  - (c) The Petitioner had a contusion 2x3 cm in size over the left lower part of the face with difficulty in opening the mouth, with the injury being older than 5-7 days;
  - (d) The Petitioner had a contusion 4x3 cm in size over the left nipple of the chest area – older than 5-7 days;
  - (e) The Petitioner had a contusion 4x3cm in size over the right chest near the nipple area - older than 5-7 days;
  - (f) All four injuries had been caused by a blunt weapon.
- 38) Here too, there is a factual discrepancy with regard to the time of the incident and what the Petitioner was doing at the time of his arrest but these discrepancies have no bearing since I will not be considering the circumstances that led to the arrest of the Petitioner.
- 39) According to the medical evidence, the most serious injury suffered by the Petitioner is to his right eye. He also has several contusions on his face and chest. The Medical report confirms that these injuries had been caused by a blunt weapon which is consistent with the claim of the Petitioner that the 1<sup>st</sup> Respondent used a helmet to assault him on the head, the 2<sup>nd</sup> Respondent slapped him on the face and that some of the other officers had kicked him while he was being taken to the Police Station.

- 40) Taking into consideration the facts of this case and the medical evidence that is before me, I am of the view that the version of the Petitioner with regard to the manner in which he sustained injuries is more credible and that the Petitioner has satisfied this Court with a high degree of certainty that he was assaulted by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and thereby subjected to cruel, inhuman and degrading treatment resulting in a violation of Article 11. The Respondents have tendered an affidavit of another person who was inside the cell at the same time as the Petitioner and who claims that the injuries on the Petitioner are self-inflicted. However, I am not inclined to accept that evidence as the version of the Respondents that the injuries of the Petitioner were self-inflicted is inconsistent with the medical evidence. I am also satisfied on the medical evidence before us that the assault on the Petitioner has been severe and has been carried out with an intensity that satisfies the test laid down in **Channa Peiris** [supra].
- 41) This Court has repeatedly stated that Police brutality in whatever form and in whatever degree must stop. Unfortunately, judgments pronounced by this Court have fallen on deaf years, both of the Inspector General of Police and the National Police Commission. The time is therefore right for the Government to intervene, examine the reasons for Police brutality and take action. If a person has committed an offence, that person most certainly must be arrested in terms of the law, produced before a Magistrate and the law must take its course. While I am not saying that it happens all the time, what we see in complaints made to this Court is that the moment a person suspected of an offence is taken before a law enforcement officer, that person is subjected to assault, torture or inhuman treatment. Whatever may be the circumstances that lead to an arrest, every citizen is entitled to be treated with dignity that goes with such person being a human.
- 42) I can at this stage only reiterate what was stated in **Hettiarachchige Gemunu Tissa v W. Lionel Jayaratne, Sub Inspector of Police and others** [SC (FR) Application No. 417/2016; 28<sup>th</sup> May 2024] that, *“Every human being is entitled to live with dignity and not be subject to any torture or cruel, inhuman or degrading treatment or punishment. It is the duty of this Court, as the guardian of the fundamental rights of our People, to foster and protect these rights. Whenever a complaint alleging the*

*infringement of Article 11 is made to this Court, it is our duty to examine thoroughly the facts relating to such complaint, the corroborative evidence, if any, tendered by the Petitioner in support of such complaint, the version of the Respondents and arrive at a considered decision."*

#### Article 12(1)

- 43) Article 12(1) of the Constitution provides that, *"All persons are equal before the law and are entitled to the equal protection of the law"*.
- 44) Human dignity and the Rule of Law demand that the entitlement of each person to the equal protection of the law must be respected at all times. Be it a hard core criminal or a person who has been charged for a mere traffic offence, that entitlement is paramount and must at all times be respected. It is clear to me that in this instance, the Respondents have by their conduct deprived the Petitioner of his entitlement to the equal protection of the law.

#### Conclusion

- 45) In the above circumstances, I declare that the fundamental rights of the Petitioner guaranteed by Articles 11 and 12(1) have been infringed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

**JUDGE OF THE SUPREME COURT**

**K. Priyantha Fernando, J**

I agree

**JUDGE OF THE SUPREME COURT**

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

I agree

**JUDGE OF THE SUPREME COURT**