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.

Mudugamuwe Arachchilage
Milan Chamara,
Salgahawatta, Molagoda, Kegalle.

Petitioner

SC FR Application No. 344/2016

V.

1. Head Quarters Inspector Levangama,
   Officer-in-Charge, Police Station, Kegalle.

2. Pradeep Kalupahana,
   Assistant Superintendent of Police, ASP's Office, Kegalle.

3. Lionel Gunathileka,
   Senior Superintendent of Police, SSP's Office, Kegalle.

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

5. 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: A. R. Ginige for the Petitioner.

Asela Serasinghe for 1st Respondent instructed by Nadeeka Senanayake.

Gamini Perera with Manoj Kumar de Silva and T. P. S. Kanchana for 2nd Respondent instructed by T. K. P. Arampath.

Prabath S. Amerasinghe with Nadeeka Jayasinghe for 3rd Respondent instructed by Nilanka Nanayakkara.

Chrisanga Fernando, SC for 4th and 5th Respondents.

Argued on: 28.10.2025

Decided on: 13.01.2026

K. PRIYANTHA FERNANDO, J

1. The Petitioner in this application is a resident at the above-captioned address. The Petitioner alleges that the 1st Respondent, who is a Head Quarters Inspector (HQI) of Police and the Officer-in-Charge of the *Kegalle* Police Station, violated the fundamental rights guaranteed to him under Articles 11, 12(1), 13(1), and 13(2) of the Constitution.

2. At the stage of granting leave, this Court granted leave to proceed with the alleged violations of Articles 11 and 13(1) and 13(2) of the Constitution.

Petitioner's Version

3. On 01.06.2016 at 10.00 a.m. the Petitioner has received a phone call from the *Kegalle* Police Station requesting him to report to the Police Station to investigate a complaint made by one fuel pumper (hereinafter referred to as "complainant").

4. The Petitioner states that he reported to the Kegalle Police Station at the given time and remained until around 1.00 p.m. However, the said complainant has been absent and unrepresented. Therefore, he has sought permission to leave and come back when the complainant is present. He claims that the Miscellaneous Complainant Branch of the *Kegalle* Police Station approved this and gave him permission to leave.

5. On 07.06.2016 the Petitioner has once again received a call from the *Kegalle* Police Station with regards to the same complaint. He has been asked to report to the *Kegalle* Police Station at 10.00 a.m. on 09.06.2016. The Petitioner has complied and has reported to the *Kegalle* Police Station at the said date and time. However, the said complainant has once again been absent and unrepresented.

6. Upon the Petitioner seeking permission to leave the Police Station due to the absence of the said complainant, a Police Constable has called the said complainant in front of the Petitioner and has requested him to report to the *Kegalle* Police Station. However, the complainant has informed the Police

Constable over the phone that he does not want to continue with the complaint and asked for the case to be closed.

7. Thereafter, on the instructions of a Police Inspector, the Police Constable who contacted the complainant was requested to record this information on the logbook and to produce the Petitioner to HQI Levangama, who is the 1st Respondent.

8. According to the Petitioner, he was asked to enter the 1st Respondent's Office. The Petitioner claims that after a few minutes, the 1st Respondent started to shout at him in obscene language and grabbed him by the belt and assaulted him. The 1st Respondent has blamed the Petitioner of making death threats to the complainant.

9. The Petitioner claims that he told the 1st Respondent that he did not make any death threats and that he only asked the complaint "*Are you working*". According to the Petitioner the 1st Respondent assaulted him again on his left ear and ordered for the Petitioner to be detained in the Police Station.

10. The Petitioner stated that the said arrest occurred around 10.40 a.m. and that he was released on Police bail around 6.00 p.m. on the same day, and the Petitioner was ordered to produce two sureties on 11.06.2016. He further claims that he was not given any food or water during the period in which he was detained.

11. The Petitioner states that upon being released from Police custody, he admitted himself to the *Kegalle* Hospital on the same day. As per the Medico Legal Report (MLR) dated 09.06.2016 there had been four injuries, all of which were non-grievous. Further, the comments in the Medical Report from the "Department of ENT Head and Neck Audiology Unit" of the *Kegalle* General Hospital marked "P1-B", states "*Normal hearing sensitivity*".

12. In these circumstances, the Petitioner alleges that on the totality of the facts and circumstances as herein described, the 1st Respondent in this case, has violated the Petitioner's fundamental rights guaranteed under Article 11, 12(1), 13(1) and 13(2) of the Constitution.

13. 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 only Articles 11 and 13(1) and 13(2) of the Constitution against the 1st Respondent.

Respondent's Version

14. The 1st Respondent in his Statement of Objections states that the complaint that the Petitioner has referenced in his Petition was related to a previous complaint against the Petitioner by the same complainant.

15. Accordingly the related complaint is as follows. On 15.05.2016, the *Kegalle* Police Station has received information that the said complainant, who is an employee of the *Molagoda* Filing Station, has sustained injuries as a result of an assault by the Petitioner and was hospitalized at the *Kegalle* Hospital.

16. The following has been recorded in the Police Information Book on 15.05.2016, extracts of which is marked as "R2", in relation to the CCTV footage of the said incident:

> *"...ලොරි රථයට ඉන්ධන ලබාදීමෙන් අනතුරුව සේවකයා විසින් ලොරි රථයේ ඉන්ධන ටැංකියේ මූඩිය නැවත වසන දර්ශනයක් ඇත. ඊට පසු රියදුරු ලොරි රථයෙන් බැස නැවත ඉන්ධන ටැංකියේ මූඩිය බලා එය වසා නැවත ලොරි රථයට ගොඩ වීමට තැත් කරන අතරතුර එම ලොරි රථයේ රියදුරු සහ සේවකයා අතර යම් කථා බහක් ඇති වන අතර ඉන් අනතුරුව ලොරි රථයේ රියදුරු එම ස්ථානයෙන් පැමිණ ඉන්ධන හලේ සේවකයා තල්ලු කරගෙන යන දර්ශනයක් ඇත...*
>
> *...දර්ශන පතයෙන් පිටතට මොවුන් යන අතර ඉන්ධන හලේ සවිකර ඇති වීදුරු තුලින් සේවකයාට පහර දෙන ආකාරය යන්තමට දිස් වේ. ඔහු බිම වැටී නැවත නැගිටින අතර එම අවස්ථාවේ රියදුරු හැටියට කටයුතු කල (ලොරි රථයේ) නිල්පාට දිග කලිසමක් හා කමිසයක් ඇඳ සිටි පුද්ගලයා සේවකයාට තර්ජනය කරන දසුන් ඇත..."*

17. As per the B-Report of the Case Number B 126PC dated 18.05.2016, marked "R6", the Petitioner was released on bail on the allegation of the offence of hurt under Section 314 read with Section 32 of the Penal Code.

18. According to the 1st Respondent, while the Petitioner was on bail in relation to Case Number B 126PC, the *Kegalle* Police Station has received another complaint on 30.05.2016. As per the second complaint, the Petitioner has threatened the same complainant again while he was employed at the *Molagoda* Filling Station. According to the Police Information Book extract from 30.05.2016, marked "R7", the Petitioner has visited the *Molagoda* Fuel Station where the complainant was working at around 8.30 a.m. on 30.05.2016 and has asked him "*වැඩද...කෝ වැඩද බලාගමු*".

19. Being alerted by the threatening tone of the Petitioner, the Manager of the Fuel Station has advised the complainant to lodge the second complaint at the *Kegalle* Police Station.

20. Thereafter, both parties were informed to be present at the *Kegalle* Police Station on 09.06.2016 for an inquiry in relation to the said second complaint. However, the complainant was absent while the Petitioner was present at the said date and time.

21. According to the 1st Respondent, the Petitioner has denied all the allegations made against him. At this juncture the 1st Respondent has undertaken to obtain copies of the CCTV footage to ascertain the truth of the allegations. Upon hearing this the Petitioner has become enraged and has started verbally abusing the Respondent using obscene language. The Petitioner has also threatened the 1st Respondent that he will take steps against the 1st Respondent through his contacts within the Police.

22. The 1st Respondent claims that the Petitioner's behaviour was extremely aggressive and unruly and was disrupting the official functions within the Police Station. He further claims that the Petitioner attempted to flee the Police Station. The 1st Respondent also states that he was concerned that the Petitioner would attempt to grab a fireman and cause serious harm as well and that he would immediately go to the *Molagoda* Filling Station and cause harm to the complainant as well.

23. Accordingly, the 1st Respondent claims that he was compelled to use minimum force to restrain and arrest the Petitioner. The extracts of the Police

Information Book on 09.06.2016, of which the extract is marked as "R8", reads as follows:

> *"ඔහු එම අවස්ථාවේ දැඩි කෝපයකින් සිටිනු දුටු අතර ඔහුගේ ක්‍රියාකලාපය අනුව පැමිණිලිකරුට යම් අනතුරක් සිදුකිරීමේ හැකියාවක් ඇති බව හා වග උත්තරකරුගේ හැසිරීම අනුව පැමිණිලිකරු සොයා ගොස් ඔහුට අනතුරක් සිදුවෙයැයි මා හට හැඟී ගිය බැවින් සාමය ආරක්ෂා කිරීමේ ක්‍රියාමාර්ගයක් ලෙස හා වග උත්තරකරුගේ ආරක්ෂාව සඳහා ඔහුගේ ගමන නැවත අත්අඩංගුවට ගැනීමට ක්‍රියා කලෙමි. එවිට ඔහු මාගේ ග්‍රහණයෙන් මිදී පලායාමට උත්සහ කල අතර නැවත මා ඔහුගේ කමිසයෙන් අල්ලාගෙන ඔහු මෙල්ල කිරීමට කටයුතු කලෙමි. එවිට ඔහුගේ හැසිරීම නිසා ඔහු මෙල්ලකර ගැනීමට බලය පාවිච්චි කල යුතු වූ අතර ඔහුගේ අතපයද මාගේ ශරීරයේ වැදුනි."*

24. Further, the following has been recorded in the statement given by the Petitioner himself, which was recorded at 11.30 a.m. on the same day and marked as "R9":

> *"...මට පොලිස් මූලස්ථාන පොලිස් පරීක්ෂක වෙත ඉදිරිපත් කල අවස්ථාවේ දැඩි කෝපයක් ඇති වුනා. ඒ නිසා මම තරහෙන් කෑ ගසා පැමිණිලිකරු සොයා යාමට හැදුවා. මට ඒ වෙලාවේ ඇති වූ කෝපය නිසා මාව පාලනය කරගැනීමට නොහැකි වුනා. එවිට මූලස්ථාන පොලිස් පරීක්ෂක තුමා මාව අල්ලා ගත්තා. එතුමාගේ ග්‍රහණයෙන් මිදීමට උනසහ කලා..."*

25. The 1st Respondent further states that the Petitioner was released on Police bail around 5.35 p.m. on the same day.

26. The 1st Respondent further states that Petitioner has a history of violent tendencies, including a charge of theft and complaints lodged by his wife on getting assaulted by him.

27. Therefore, the 1st Respondent alleges that on the totality of the facts and circumstances as herein described the 1st Respondent acted in good faith in discharging his official duties and that as the HQI of the *Kegalle* Police Station he had a primary duty to ensure that the Petitioner would not cause any physical harm to himself, the other Police Officers or the civilians at the Police Station.

28. Further, at the argument stage, the learned State Counsel appearing on

behalf of the 4th and 5th Respondents stated that an inquiry has been conducted by the 4th Respondent on the 1st Respondent.

My Observations

29. Given the inconsistencies between the sequence of events presented to this Court by the Petitioner and the 1st Respondent, I am compelled to, upon the perusal of the material before me, note the following.

30. The Petitioner has not disclosed that he had any prior knowledge on the cause for the inquiry which was to be held on 09.06.2016. He has also failed to disclose the details of the related incident which took place on 15.05.2016 which concerns the same complainant.

31. However, upon considering the facts presented herein, I am convinced that the Petitioner was well aware that the two complaints were connected. Whereby I am inclined to believe the above non-disclosure was merely an attempt to mislead the Court by the Petitioner.

32. Having resolved the inconsistency in the sequence of related events, I will move to discuss any possible violation of fundamental rights.

Alleged Violation of Fundamental Rights

33. 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.

34. 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

35. **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.*"

36. 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)

37. However, in assessing the claim of Article 11 violation in this instant case, the use of minimum force by the 1st Respondent must be taken into consideration. In the case of ***Kumara v Silva, Sub-Inspector of Police, Welipenna and Others (2006) 2 Sri LR 236 at page 245*** Bandaranayake, J stated that:

"It is not disputed that use of minimum force will be justified in the lawful exercise of police powers. However, ***the force used in effecting an arrest should be proportionate to the mischief it is intended to prevent.*** *Notwithstanding the aforementioned it would also be* ***necessary to consider the injuries sustained by the petitioner*** *in comparison with the version given by the 1st respondent."*

(Emphasis mine)

38. **Section 23(2) of the Code of Criminal Procedure Act, No. 15 of 1979** reads as follows:

"If such person forcibly resists the endeavour to arrest him or attempts to evade the arrest, the person matting the arrest may use such means as are ***reasonably necessary*** *to effect the arrest."*

(Emphasis mine)

39. When perusing the extracts of the Police Information Book, marked "R8", which I have reproduced at paragraph 23 of this judgment, it is evident that the Petitioner has behaved in an unruly and violent manner at the *Kegalle* Police Station when he was informed about the existence of the CCTV footage in relation to the second complaint that was made on 30.05.2016. This is further corroborated through the Police statement given by the Petitioner himself, which is found at "R9", which I have reproduced at paragraph 24 of this judgment.

40. Further, as per the MLR dated 09.06.2016 it is evident that there are no grievous injuries caused to the Petitioner either. It is possible that the non-grievous injuries mentioned in the MLR may have been caused when the 1st Respondent used force that was necessary to control the Petitioner, who was behaving in the manner the 1st Respondent has stated.

41. Therefore, I am of the view that the force that was exerted by the 1st Respondent was reasonable, necessary and proportionate to the behaviour of the Petitioner.

42. In these circumstances, I declare that the fundamental rights guaranteed to the Petitioner under Article 11 of the Constitution have not been violated by the 1st Respondent of the instant case.

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

43. **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*"

44. **Section 32 (1) of the Code of Criminal Procedure Act, No. 15 of 1979** provides the categories of persons that may be arrested without an order from a Magistrate or a warrant, which includes:

> *"(a) who in his presence commits any breach of the peace;*
>
> *(b)…*
>
> *(c)…*
>
> *(d)…*
>
> *(e)…*
>
> *(f) who obstructs a peace officer while in the execution of his duty or who has escaped or attempts to escape from lawful custody;*
>
> *(g)…"*

45. Further, **Sections 36 and 37 of the Code of Criminal Procedure Act, No. 15 of 1979** govern the procedure to be followed when a person is arrested. It states the following:

> *"(36) A peace officer making an arrest without warrant shall without unnecessary delay and subject to the provisions herein contained as to bail take or send the person arrested before a Magistrate having jurisdiction in the case.*
>
> *(37) Any peace officer shall not detain in custody or otherwise confine a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate."*

46. In the instant case, as per the extracts of the Police Information Book, marked "R9", the Petitioner was arrested due to his violent behaviour at the *Kegalle* Police Station and because he posed a threat to those around him. This is evident in the Police statement given by the Petitioner himself.

47. Further, as per "R8" he was arrested at around 10.35 a.m. and was granted Police bail around 5.35 p.m. as per "R9". Thus, since the arrest did not exceed the period of 24 hours, **Section 37 of the Code of Criminal Procedure** is not applicable to the case at hand.

48. Therefore, I am of the opinion that due process was in fact followed by the 1st Respondent in making the arrest and that there are no violations of Articles 13 (1) and 13 (2) of the Constitution.

Declarations

49. In the above premise, I declare that the fundamental rights that have been guaranteed to the Petitioner under Articles 11, 13(1) and 13 (2) of the Constitution were not violated by the Respondents.

Application is Dismissed

JUDGE OF THE SUPREME COURT

ARJUNA OBEYESEKERE, J

I agree

JUDGE OF THE SUPREME COURT

M. SAMPATH K. B. WIJERATNE, J.

I agree

JUDGE OF THE SUPREME COURT