

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

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

**SC / FR / 85 / 2022**

**Thalangama Appuhamilage  
Chathuranga Dissanayake,**  
Sri Rahula Mawatha,  
Mahawa.

**PETITIONER**

**-Vs-**

- 1. Gajanayake Kankanamlage Methsiri  
Fernando Gajanayake,**  
Officer in Charge,  
Traffic Unit,  
Marawila Police Station,  
Puttalam.
- 2. Kulathunga Hettiarachchige Samantha,**  
Human Resource Management Division,  
Police Headquarters,

Colombo 01.

**3. Sarukkalige Nilan Prasanga,**  
Commission to Investigate Allegations of  
Bribery or Corruption,  
36, Malalasekara Mawatha,  
Colombo 07.

**4. Premadasa,**  
Acting Officer in Charge,  
Warakapola Police Station,  
Warakapola.

**5. Senadheera,**  
Officer in Charge,  
Warakapola Police Station,  
Warakapola.

**6. Kariyawasam Ampegama Gamage**  
**Aruna Deepal Kariyawasam,**  
38, Udugoda,  
Ruggahawila,  
Nittambuwa.

**7. Agosignnolage Nishantha Damindamal,**  
2/5, Second Phase,  
Hermanwatta,  
Dodangoda.

**8. H.D.S. Thusith Kumara,**  
Assistant Superintendent of Police,

Sri Lanka Police,  
Gampaha District.

**9. The Inspector General of Police,**  
Police Headquarters,  
Colombo 01.

**10. Hon. Attorney General,**  
Attorney General's Department,  
Colombo 12.

**RESPONDENTS**

**Before:** A.H.M.D. Nawaz, J.  
Janak De Silva, J. &  
K. Priyantha Fernando, J.

**Counsel:** Shaheeda Barrie with Muneer Thawfeek and K.A.W. Rinoshan for the  
Petitioner.

Ashan Nanayakkara with Sahiru Jasinarachchi for the 1<sup>st</sup> and 2<sup>nd</sup>  
Respondents.

Anil Silva, PC, with Amaan Bandara for the 3<sup>rd</sup> Respondent.

V. Hettige, PC, ASG, for the 4<sup>th</sup>, 5<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> Respondents.

**Argued on:** 05.08.2024

**Decided on: 29.04.2026**

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

1. The Petitioner in this case - a Sub Inspector of Police who had joined the Sri Lanka Police on 4 May 2014 and was working at the Gampaha Police Station invoked the jurisdiction of this Court under Article 126 of the Constitution alleging an infringement of several fundamental rights guaranteed under the Constitution. Though this Court granted leave to proceed in respect of the alleged violations under Articles 11, 12 (1), 13 (1) and 14 (1) (g) of the Constitution, the learned counsel for the Petitioner Ms. Shaheeda Barrie notified to this Court at the time of hearing that the Petitioner would only pursue his claims under Articles 11 and 12 (1) of the Constitution and as such, this Court would proceed to investigate the merits of the said claims but not before it has dealt with the factual template around which infringements of fundamental rights are alleged. The incident which has given rise to the complaint of the Petitioner took place somewhere near a place called *36 Kanda* on the Colombo - Kandy main road in Warakapola on 29 January 2022 around 7.30pm.
2. The Respondents against whom the Petitioner alleges the infringement of Article 11 are also Police officers who are designated as the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. The 1<sup>st</sup> Respondent is an Inspector of Police who was serving as the Officer-in-Charge of the Traffic Unit of the Marawila Police. The Petitioner identifies him as having directly participated in the assault on him and acted in a supervisory capacity over the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. The 2<sup>nd</sup> Respondent is an Inspector of Police serving in the Human Resource Management Division at Sri Lanka Police Headquarters, who is also said to have participated in the assault together with the 1<sup>st</sup> and 3<sup>rd</sup> Respondents. The 3<sup>rd</sup> Respondent is an Inspector of Police assigned to the Commission to Investigate Allegations of Bribery or Corruption, who it is alleged also participated in the assault together with the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

3. Thus, it is this riotous commotion in the middle of the Colombo-Kandy thoroughfare and the consequent assault on the Petitioner that has led to this application.
4. As for the allegation of an unjustified interdiction of the Petitioner, it would appear that it is the 8<sup>th</sup> Respondent - the Assistant Superintendent of Police at that time for the Gampaha District against whom the infringement of Article 12 (1) has been alleged and it is quite clear that it is his orders that placed the Petitioner under interdiction.
5. For the sake of identification of the other Respondents, suffice it to say that the 4<sup>th</sup> Respondent is a Chief Inspector of Police who was the acting Officer-in-Charge of Warakapola Police Station on the day of the incident. The 5<sup>th</sup> Respondent was the substantive Officer-in-Charge of Warakapola Police Station, holding the rank of Chief Inspector, who arrested the Petitioner on 3 February 2022.
6. The 6<sup>th</sup> and 7<sup>th</sup> Respondents are friends of the Petitioner who were travelling with him on the day of the incident and were also subjected to the assault by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents. The Petitioner avers that they have been added as parties in order to assist the Court.
7. Let me now unfold the incident that gives rise to the gravamen of the Petitioner's complaint.

### **The Incident of 29 January 2022 - Assault at Warakapola**

8. On 29 January 2022, the Petitioner, together with his two companions (the 6<sup>th</sup> and 7<sup>th</sup> Respondents), was travelling from his home in Mahawa to Gampaha following the end of his leave, in vehicle bearing No. WP KS 3715.

9. When the Petitioner's vehicle passed through an area known as '*36 Kanda*' in Warakapola at around 7.30 pm, the Petitioner alleges that a jeep bearing No. WP JK-3789, identified as a Mitsubishi Montero Sport, began tooting its horn aggressively at the Petitioner's vehicle. The driver of the Petitioner's vehicle was unable to give way as there was no road space to do so, other than to stop by the side of the road.
10. The said Jeep thereafter overtook the Petitioner's vehicle and stopped in the middle of the Colombo-Kandy Road, blocking and obstructing the path of the Petitioner's vehicle and those of several other motorists, thereby causing the Petitioner's vehicle to also come to a halt in the middle of the road.
11. A video footage of what happened next was demonstrated to Court and this Court had the benefit of watching with care the visuals of the incident that transpired that night. A man who was later identified as the 1<sup>st</sup> Respondent then got down from the Jeep, walked towards the front passenger side of the Petitioner's vehicle where the Petitioner was seated, identified himself in Sinhala as "a police IP (Inspector of Police)", and thereafter bluntly slapped the Petitioner.
12. Two other persons, subsequently identified as the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, then approached the vehicle and proceeded to inhumanely assault the Petitioner and his two companions.
13. The Petitioner kept screaming that he was a Police officer, but the assault continued unabated. The footage showed the Petitioner being dragged onto the main road in full view of pedestrians and motorists and being repeatedly assaulted again by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents.

14. It is further averred in the petition that throughout the assault, the 1<sup>st</sup> to 3<sup>rd</sup> Respondents were heavily under the influence of alcohol, as was evident from the stench of alcohol on their breath.

### **CCTV Evidence**

15. As I said before, the entire episode of the Petitioner being beaten by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents was captured on CCTV footage of a nearby shop, obtained through the Divisional Crime Investigation Unit (දිස්ත්‍රික් අපරාධ විමර්ශන ඒකකය) of Warakapola Police. This contemporaneous footage corroborates the version proffered by the Petitioner and this Court was left in no doubt about the manhandling of the Petitioner by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

### **Medical Treatment - Admission to Wathupitiwala Base Hospital**

16. After the 1<sup>st</sup> to 3<sup>rd</sup> Respondents fled the scene, one of the Petitioner's companions followed the Montero Sport while the other remained with the Petitioner and took him to hospital. The Petitioner was admitted to Ward 7 of the Wathupitiwala Base Hospital on the same day, 29 January 2022.

17. X-rays carried out at the hospital revealed that the Petitioner's left-hand elbow had been dislocated due to the assault, rendering him unable to move his left arm effectively and unable to carry out his duties as a Police officer. The relevant diagnosis card, prescription, and X-ray films dated 30 January 2022 and 4 February 2022 have been appended to the Petition as documents "**P3 (a)**", "**P3 (b)**" and "**P3 (c)**" respectively.

18. The Petitioner was also examined by the Judicial Medical Officer (JMO) at the Wathupitiwala Base Hospital on 31 January 2022.

19. The doctors who attended to the Petitioner informed the Wathupitiwala Police Post that a Police officer had been admitted following an assault upon him. An unidentified Officer from the Wathupitiwala Police Post thereafter visited the Petitioner, inquired about the incident, and subsequently informed both the Gampaha Police Station (where the Petitioner was attached) and the Warakapola Police Station (within whose division the assault occurred). The Petitioner was discharged from hospital on 31 January 2022.

### **Arrest and Release of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents**

20. As I stated before, the hot pursuit of the jeep which the 1<sup>st</sup> to 3<sup>rd</sup> Respondents had been fleeing the scene was made by one of the Petitioner's companions and a bystander. They alerted a Police motorcycle patrol operating in the area, and the officers on the patrol bike successfully intercepted and stopped the Jeep. The 1<sup>st</sup> to 3<sup>rd</sup> Respondents were brought to the Warakapola Police Station, the officers being convinced that they were heavily intoxicated. At the Warakapola Police Station, it came to light that the 1<sup>st</sup> to 3<sup>rd</sup> Respondents were Police officers holding the rank of Inspector of Police assigned to various divisions, and that they were returning after having attended a wedding of a colleague.

21. It is relevant to note that the 1<sup>st</sup> Respondent along with the vehicle was released by the Warakapola Police on the very same night. On 30 January 2022, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were produced before the Magistrate's Court of Warakapola and were subsequently released on bail.

### **Arrest of the Petitioner on 3 February 2022**

22. It was on 3 February 2022 that the Officer-in-Charge of the Warakapola Police Station visited the Petitioner at around 9.00 am and arrested him. The Petitioner alleges that he was still recovering from the injuries inflicted by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents, when the 5<sup>th</sup> Respondent made the arrest. There is no

pursuit of the claim of arbitrary arrest before this Court and the Court would now proceed to set out the facts and circumstances relating to the interdiction of the Petitioner that has been characterized as unjustified and violative of his fundamental rights under Article 12 (1) of the Constitution.

### **Interdiction of the Petitioner - Article 12 (1) violation of the Constitution**

23. Following the above events, the 8<sup>th</sup> Respondent, the Assistant Superintendent of Police for the Gampaha District, by letter dated 7 February 2022, purportedly interdicted the Petitioner from his post effective from 6 February 2022. The interdiction letter (annexed as "P4") stated, *inter alia*, that;

- *The Petitioner had been arrested by the Officer-in-Charge of Warakapola Police for the allegation of assaulting another police officer;*
- *The Petitioner had been produced before the Magistrate's Court of Warakapola and released on bail; and*
- *The Petitioner had thereby committed offences under Sections 1, 2 (e), 3 and 4 under Appendix A7B of the Disciplinary Code of the Sri Lanka Police Regulations.*

24. The letter of interdiction refers to the B-Report filed by the Warakapola Police against the Petitioner but whether the reasons cited therein as highlighted above does justify the interdiction will be dealt with presently in light of the fact that the Petitioner has averred that the interdiction was carried out without any disciplinary inquiry and was *unlawful, illegal, unreasonable and arbitrary*.

25. Thus, the core grievances as identified in the petition to this Court are over acts constituting infringement of the Petitioner's following fundamental rights;

- i. *The physical assault upon the Petitioner by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents, constituting cruel, inhuman and degrading treatment in violation of Article 11 of the Constitution;*
- ii. *The unequal and discriminatory treatment of the Petitioner - whereby the Petitioner (the victim) was interdicted and prosecuted.*

26. As opposed to the foregoing factual matrix, both the learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as well as the learned President's Counsel for the 3<sup>rd</sup> Respondent made submissions to the effect that the acts of the aforesaid Respondents were private acts which were not actionable in proceedings under Article 126 of the Constitution. Their argument in unison was that the commotion in which the 1<sup>st</sup> to 3<sup>rd</sup> Respondents inflicted grievous hurt on the Petitioner must be treated as having taken place outside the pale of their Police duties and as such it would not attract the jurisdiction of Article 126 of the Constitution as the acts were neither executive nor administrative.

27. In *Mariadas Raj v. AG*<sup>1</sup> Sharvananda, J. (as His Lordship then was with Ranasinghe and Rodrigo, JJ. agreeing) emphasized the public character of the proceedings under Article 126;

*“What the petitioner is complaining of is an infringement of his fundamental right by 'executive or administrative action', that the State has through the instrumentality of an over-zealous or despotic official committed the transgression of his constitutional right. The protection afforded by Article 126 is against infringement of fundamental rights by the State, acting by some public authority*

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<sup>1</sup> Fundamental Rights Decisions Vol II 397

*endowed by it with the necessary coercive powers. The relief granted is principally against the State, although the delinquent official may also be directed to make amends and/or suffer punishment”.*

28. It is undeniable that the Petitioner was a victim of a violent assault, committed by senior Police officers in a state of intoxication on a public road, and captured on CCTV, was himself arrested, interdicted, and subjected to disciplinary proceedings, while the 1<sup>st</sup> to 3<sup>rd</sup> Respondents were released the same night, granted bail, and faced no disciplinary action at that point of time. It is this stark asymmetry that forms the foundation of the equal protection challenge. Moreover, before the 1<sup>st</sup> Respondent laid his impious hands on the Petitioner, he identified himself in Sinhala as "*a police IP*" - see paragraph 11 of this judgement. There was a clear identification to the Petitioner that the 1<sup>st</sup> Respondent was a Police officer and it is this imperious swagger that gives the lie to the asserted stance of the above Respondents that they were not acting as Police officers.

29. There was no doubt that the 1<sup>st</sup> Respondent was acting under colour of his office and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, when they followed suit by turning on the Petitioner with equal felicity and ferocity, were not standing as mute bystanders, but they also served, as the saying goes.

30. It has to be remembered that these three Respondents had been released earlier in the day by their superior officer to attend the nuptials of a fellow policeman in ceremonial uniform and this was a reminder that they would act as Police officers to all intents and purposes. They were on their way back after having attended the wedding, when they indulged in this public display of arrogance of power and the bravado and sweep of their actions on the day in question inflicting harm and pain to another police officer cannot be characterized as a

personal pursuit such as rape by a police officer in his custody, because their actions manifested a display of State power vested in them.

31. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents took advantage of their office in going berserk on the Colombo-Kandy Road, when the traffic came to a grinding halt and passers-by watched in horror at the goings-on. Consequently, I would repudiate the argument that the aforesaid Respondents were on a frolic of their own or a personal vagary.

32. It is beyond question that Section 56 of the Police Ordinance deems a police officer to be on duty at all times, as a police officer is equally recognized as a “*peace officer*” in Section 2 of the Code of Criminal Procedure Act No.15 of 1979 as amended.

33. Section 56 of the Police Ordinance is to the following tenor;

*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.*

34. At the heart of Section 56 of the Police Ordinance is the maintenance and preservation of law and order and the 1<sup>st</sup> to 3<sup>rd</sup> Respondents who are repositories of the statutory power vested in them to keep the peace could not have turned that credo on its head on the day in question. This Court had occasion to discuss the impact of Section 56 on police duties in relation to the Inspector General of Police in the case of *Janath S. Vidanage et al v. Pujitha Jayasundara et al*<sup>2</sup> and observed thus;

*“The main objective of police is to apprehend offenders, to investigate crimes and to prosecute them before the Courts and also to prevent commission of crime and above all to ensure law and order to protect the citizens life and property”.*<sup>3</sup>

35. I must observe what transpired on the day in question is an inversion of the salutary norms that Section 56 of the Police Ordinance proclaims.

### **Allegation of cruel, inhuman or degrading treatment**

36. After having disposed of the indefensible defence of the 1<sup>st</sup> to the 3<sup>rd</sup> Respondents that their infractions on 29 January 2022 were purely private acts, I would now consider whether the infliction of pain and harm by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents on the Petitioner would amount to an infringement of the guarantee that *no person shall be subjected to torture or cruel, inhuman or degrading treatment or punishment*. It has to be borne in mind that the office of Attorney General did

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<sup>2</sup> SC / FR / 163 / 2019 and other allied cases (“Easter Sunday Judgement” decided on 12.01.2023)

<sup>3</sup> See p 99 of the judgment in *Janath S. Vidanage et al v. Pujitha Jayasundara et al*

not associate itself in undertaking the defence of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents as regards allegations of infringement of Article 11.

37. Before I come to the evidence, let me digress to be fortified with some principles that pervade the legal framework on the *jus cogens* or *peremptory norm* of prohibition against torture or cruel, inhuman, degrading treatment or punishment.

38. The universally recognized human rights standards on torture in Article 11 of the Constitution mirror the scope and ambit of Article 5 of the Universal Declaration on Human Rights and Article 3 of the European Convention for the protection of Human Rights and Fundamental Freedoms. Article 11 therefore reflects the phraseology adopted by the international treaty documents in relations to torture.

39. The Article articulates the view that in every civilized society torture or any kind of degrading treatment, which is offensive or violates the norms of civilized behavior, ought to be prohibited and condemned. Any process of law enforcement or regulation of society ought to be achieved through respecting and adhering to this principle. Thus, the prohibition against torture transcends national boundaries and it is now accepted as having evolved into a general principle of international law enjoying the status of *jus cogens* and therefore binding all states. The Third Restatement of US Foreign Relations Law relating to Customary International Law of human rights states;

*"A State violates international law if, as a matter of State policy, it practices, encourages or condones*

*(a) genocide*

*(b) Slavery or slave trade*

*(c) the murder or causing disappearance of individuals*

*(d) torture or other cruel, inhuman or degrading treatment or punishment”.*

40. Not all human rights norms are *peremptory norms (jus cogens)*, but those in clauses (a) to (f) of this section are, and an international agreement that violates them are void.....<sup>4</sup>

41. The intrinsic quality of Article 11 is that it is a right that is absolute and inherent in every human being. The prohibition against torture connotes constitutional morality, autonomy and dignity of a person and there should be no derogations from these constitutional imperatives.

42. There is no specific formula to determine what amounts to cruel, inhuman or degrading treatment or punishment. The distinction between torture and cruel inhuman and degrading treatment lies in the brutality of the suffering inflicted. Torture attaches a special significance because of the severe physical and psychological trauma that endures long after its infliction. The European Commission of Human Rights defined inhuman treatment in the *‘Greek Case’*<sup>5</sup> as an aggravated form of inhuman treatment which treatment or punishment may be said to be degrading if it grossly humiliates the individual before others or drives him to act against his will or conscience. It is accepted that punishment ought to be proportionate to the offence committed and it should not degrade human dignity.

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<sup>4</sup> Restatement of the Law: Third Restatement of US Foreign Relations Law Vol.2 (1987), p 165.

<sup>5</sup> 12 Y.E.B.C.H.R. 194

43. In the case of *Ireland v. United Kingdom*, the difference between torture and cruel, inhuman and degrading treatment or punishment was explained; *the "derives principally from a difference in the intensity of the suffering inflicted."*<sup>6</sup>

44. Therefore, what amounts to inhuman, degrading treatment or punishment often depends on the facts and circumstances of each case. The use of excessive force *per se* does not constitute cruel, inhuman or degrading treatment. It appears that this standard may change according to social and political circumstances. The case of *Wijayasiriwardene v. Kumara, Inspector of Police, Kandy and two Others*<sup>7</sup> concerned with the arrest and subsequent treatment by the Police of a 16-year-old student who had participated in a demonstration during the period of political unrest in 1989. Fernando J. stated inter alia;

*"... the use of excessive force may well found an action for damages in delict, but does not per se amount to cruel, inhuman or degrading treatment: that would depend on the persons and the circumstances. A degree of force which would be cruel in relation to a frail old lady would not necessarily be cruel in relation to a tough young man; force which would be degrading if used on a student inside a quiet orderly classroom, would not be so regarded if used in an atmosphere charged with tension and violence. I have to take into account the objective the Petitioner returned to the arena.....to participate albeit reluctantly, in the activities, far removed from sport..... The 1<sup>st</sup> Respondent's conduct, in striking a single blow, does not show any element of indifference or pleasure in causing pain and suffering, or intentional humiliation, or of brutal or unfeeling conduct"*

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<sup>6</sup> 25 Pub. Eur. Ct. Hum. Rts., ser. A. para 167 (1978)

<sup>7</sup> [1989] 2 Sri.L.R 312

45. The Supreme Court came to a similar view in the case of ***W.M.K. de Silva v. Chairman, Ceylon Fertilizer Corporation***<sup>8</sup>. In this case Jameel J. defining the conduct of the respondents stated that it fell short of the definition in Article 11;

*"It is clear that the Petitioner has been degraded and humiliated, by being made to mope in front of her colleagues and subordinates, isolated on a verandah, and at times locked out, even without her broken chair. She would naturally view this as the culmination of a course of conduct commencing in February 1987, after her statement to the C.I.D. While this treatment would undoubtedly amount to a grossly unfair labour practice, it does not constitute "torture, or cruel, inhuman or degrading treatment or punishment"; the acts complained of are clearly not "torture" or "punishment"; they fall far short of the degree of mental or physical coerciveness or viciousness required to constitute "cruel, inhuman or degrading treatment".....Thus ill-treatment per se, whether physical or mental, is not enough; a very high degree of mal-treatment is required."*

46. A similar conclusion was arrived at in ***Chandra Kalyani Perera v. Captain Siriwardene***<sup>9</sup>, where The Petitioner in this case alleged that the army assaulted her during interrogation and permitted the mother of the victim that was alleged to have been murdered with the aid of the Petitioner to beat her with a slipper while in custody. Kulatunga J. dismissing the petition stated;

*"The 1<sup>st</sup> Petitioner's own statement (9R7) only states that the army assaulted her during the interrogation. No further details of the*

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<sup>8</sup> 1989) 2 Sri.L.R. 393

<sup>9</sup> [1992] 1 Sri.L.R 257

*alleged inhuman treatment appear. She also states that the deceased driver's mother slapped her in the presence of Captain Siriwardena. It is possible that such assault was inflicted by an enraged mother on her own and not necessarily at the behest of Captain Siriwardena. There is no doubt that the 1<sup>st</sup> Petitioner was subjected to severe interrogation and confrontation in the course of which she would have been treated roughly and even insulted; but the acceptable evidence does not go beyond and establish that degree of grave inhuman treatment which constitutes an infringement of Article 11 of the Constitution."*

47. The case law suggests that it is important to take into account the circumstances in which the alleged breach took place to determine whether the action falls within the purview of Article 11.

48. The Medico Legal Report (MLR) submitted by the JMO of the base hospital of Wathupitiwala discloses three injuries on the Petitioner as having been caused as a result of the assault inflicted on the Petitioner namely;

1. Elbow joint - dislocation of the left arm.
2. Abrasion - 3 x 3cm medial side of the left arm distal to the elbow joint.
3. Tenderness - 7 x 5cm right side, lower abdomen.

49. An X-ray carried out also attests to the aforesaid injury that rendered the Petitioner unable to move his left arm thereby effectively disabling him to carry out his duties as a Police officer. Taking into consideration the extreme gravity and the seriousness of the acts as proved through the MLR and other evidence, it is crystal clear that the Petitioner was subjected to torture or inhuman treatment.

50. Thus, this Court comes to a firm finding that cruel, inhuman or degrading treatment has been established by the Petitioner and thus, this Court proceeds to make a declaration that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have violated the fundamental rights of the Petitioner guaranteed under Article 11 of the Constitution. In the exercise of the just and equitable jurisdiction of this Court, the Court orders that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents must each pay the Petitioner out of their personal funds a sum of Rs. 500,000/- individually.

### **Article 12 (1) Violation - Interdiction of the Petitioner.**

51. It remains to be determined as to the validity of the interdiction that was imposed by the 8<sup>th</sup> Respondent on the Petitioner.

52. I have already recited in paragraph 23 of this judgement the reasons proffered by the 8<sup>th</sup> Respondent in interdicting the Petitioner. The CCTV footage that this Court witnessed in the course of the proceedings showed unambiguously that the Petitioner was forcibly pulled and dragged onto the main road in clear view of pedestrians, passers-by and motorists by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and then assaulted. This act on the part of the aforesaid Respondents resulted in injuries to the Petitioner compelling him to be admitted to hospital. Any employer viewing this footage could have easily seen the flagrant violation and egregious disregard of constitutional safeguards enjoined for persons and citizens. No employer possessed of the aforesaid material could have formed any rational grounds to make the order of interdiction as the 8<sup>th</sup> Respondent came to make. It is on account of this realization that this Court granted at an anterior point of time an interim order pending the final hearing and determination of this application suspending the operation of the decision to interdict the Petitioner from service as contained in the letter dated 7 February 2022.

53. In fact, the Petitioner was reinstated in service by virtue of the interim order that this Court made on 30 May 2022. There was no material or reason that existed for such a capricious decision of interdiction and thus, the interdiction of the Petitioner amounts to an infringement of his fundamental right guaranteed under Article 12 (1) of the Constitution as the said interdiction was *arbitrary, capricious and unreasonable*. This Court makes the declaration that the 8<sup>th</sup> Respondent violated the Petitioner's fundamental right under Article 12(1) of the Constitution. No superior officer should proceed to make orders such as interdiction unless there was plausible and rational reason to do so and it is preposterous that the victim of an unwarranted assault and attack should have been interdicted while the aggressors went scot-free doing violence to the principle that all officers must be treated with uniformity.

54. Since this Court stood as a sentinel and minimized the deleterious effect of an unreasonable decision by its timely intervention, the Court would however visit the abuse of the discretionary power with an appropriate sanction. The 8<sup>th</sup> Respondent is ordered to pay a sum of Rs. 50,000/- out of his personal funds to the Petitioner for having taken a decision without any rational basis or having examined the evidence with due care.

55. Thus, we allow the Petitioner's claim for declarations for violation of his fundamental rights under Articles 11 and 12 (1) of the Constitution.

**Judge of the Supreme Court**

**Janak De Silva, J.**

I agree.

**Judge of the Supreme Court**

**K. Priyantha Fernando, J.**

I agree.

**Judge of the Supreme Court**