

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

In the matter of an Application under Article 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**SC. FR. Application No. 431/2010**

Warnakulasooriya Sunil Asoka  
Harischandra Fernando.

**Petitioner**

-Vs.-

1. Police Sergeant Dayawansa  
(Service No. 25084)  
Police Station,  
Madampe.
  
2. Sub Inspector Piyaseeli  
Police Station,  
Madampe.

**SC. FR. Application No. 431/2010**

3. Inspector of Police H.J.M.D. Indrajith  
Officer-in-Charge  
Police Station,  
Madampe.
4. Inspector General of Police,  
Police Head Quarters,  
Colombo 01.
5. Hon. Attorney General  
The Attorney General's Department,  
Colombo 12.

**Respondents**

**Before** : Shiranee Tilakawardane, J.  
P. A. Ratnayake PC, J. &  
S. I. Imam J.

**Counsel** : Shantha Jayawardane for the Petitioner.

Anura B. Meddegoda with Kirthana Krishnakumar  
and Achala Jayawardane for the 1<sup>st</sup> – 3<sup>rd</sup>  
Respondents.

Shanaka Wijesinghe, SSC, for the 4<sup>th</sup> Respondent.

**SC. FR. Application No. 431/2010**

**Argued on** : 21.01.2011, 01.02.2011, 22.02.2011 and 16.11.2011

**Written Submissions of the Petitioner**

**Tendered on** : 31.01.2012

**Written Submissions of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents**

**Tendered on** : 28.12.2011

**Decided on** : 22.02.2013

**S.I.Imam, J.**

Having heard all Counsel in this case, this Court granted Leave to proceed for the alleged violation of Article 11 of the Constitution on 03.09.2010.

The Petitioner in his Petition dated 02.08.2010 stated that on or about November 2009 he commenced employment in the “Mangalika Oil Mill” owned by Rukman Narasinghe of Karukkuwa, Madampe situated at Galahitiyawa, Madampe as a Machine Operator (Labourer). The Petitioner averred that his residence was situated approximately 400 Meters away from the aforesaid Oil Mill premises, and that his usual working hours at the Oil Mill were from 7.00 a.m. To 5.30 p.m. The Petitioner stated that there were 12 labourers inclusive of himself, and one Supervisor, of whom 7 of them namely Chathu, Karuppiah, Chaminda, Wimale, Ampare Jayantha, Nuwara Jayantha and Sudda resided at the Workers Quarters

**SC. FR. Application No. 431/2010**

situated at the Oil Mill premises. It was stated by the Petitioner that he did not spend the nights at the Oil Mill premises as he resided closeby. The Petitioner said that on 01.07.2010 after work he returned home at approximately 5.40 p.m., and that he reported for work as usual on 02.07.2010 at 6.45 A.M., consequent to which he became aware that on the previous night several bags of desiccated coconut had been stolen from the Oil Mill by a wall of the Oil Mill having been broken. The Petitioner stated that he became aware that Somaweera Chandrasiri who is a relation of the owner Narasinghe and who functioned as the Manager of the Oil Mill had made a complaint to the Madampe Police Station pertaining to the theft. The Petitioner contended that on 02.07.2010 the employees in the Oil Mill premises engaged in their work in the Oil Mill premises with Lunch break at 12.00 Noon, subsequent to which the Petitioner went home for lunch, with leave having been granted to all the labourers for the afternoon. The Petitioner claimed that on 02.07.2010 after having lunch when he was at home at approximately 12.50 p.m. the 1<sup>st</sup> Respondent and another Police Officer of the Madampe Police Station whose name the Petitioner was unaware of arrived at the home of the Petitioner clad in Police Uniform in a Police Jeep arrested the Petitioner and ordered the Petitioner to come with them to the Madampe Police Station to record a statement from the Petitioner with regard to the aforesaid theft of some bags of desiccated coconut. The Petitioner said that his wife Matilda

**SC. FR. Application No. 431/2010**

Fernando, elder son Sameera Dave Fernando and mother Wimala Wijesooriya were present at his home and witnessed the Petitioner being arrested. The affidavits of the Petitioner's wife Matilda Fernando and mother Wimala Wijesooriya were marked and annexed to the Brief as (P1) and (P2) respectively. The Petitioner claimed that his elder son Sameera Dave Fernando on 14.07.2010 went abroad for employment. It was stated by the Petitioner that on 02.07.2010 at about 5.30 p.m. when he was at the Madampe Police Station, the 1<sup>st</sup> Respondent accompanied by Somaweera Chandrasiri brought in Leon Singho another labourer and the Watcher employed at the Oil Mill to the Police Station. The Petitioner claimed that Leon Singho and he were locked up in the Madampe Police Station in two separate cells. The Petitioner in his Petition vividly set out the manner in which the 1<sup>st</sup> Respondent and another Police Officer tortured the Petitioner on 03.07.2010 by initially having assaulted the Petitioner in both his palms with a wooden stick, and consequent to a denial by the Petitioner of any Knowledge of the theft, that the Petitioner was taken to a room in the Barracks, where he was stripped naked and assaulted by the 1<sup>st</sup> Respondent. The Petitioner explicitly narrated in hi Petition the manner in which both his hands were tied behind, suspended on a hook fixed to the roof and assaulted by the 1<sup>st</sup> Respondent in 4 fifteen minute sessions on the soles, buttocks and rib cage with a baton, in between which the Petitioner was bathed with **water** from a **water tap** contained in a Bucket.

**SC. FR. Application No. 431/2010**

On covering the head and face in a shopping bag containing chilly powder up to the neck of the Petitioner, which caused the Petitioner a severe burning pain in his eyes, throat and lungs and which the Petitioner claimed almost suffocated him. The Petitioner and Leon Singho were produced before the Chilaw Magistrate in Case No. B655/2010 (P-3) the B Report being dated **05.07.2010** signed by the 3<sup>rd</sup> Respondent alleging that the Petitioner and Leon Singho committed offences punishable under Sections 443 and 369 of the Penal Code by the theft of 40 bags of Desiccated coconut from Mangalika Oil Mill. Subsequently the learned Magistrate of Chilaw ordered that they be Remanded until 15.07.2010.

The Petitioner averred that on 05.07.2010 consequent to being taken to Remand Prison Chilaw a Prison Officer namely Ariyaratne having observed the injuries on the Petitioner obtained a statement from the Petitioner in which the Petitioner stated that he was assaulted at the Madampe Police Station and not at the Prison, which is included in the Case Record of B 655/2010 (P3). The aforesaid statement on 15.07.2010 was tendered by the Prison Officers to the learned Magistrate after which on 15.07.2010 the Petitioner was enlarged on Bail.

The Petitioner complained that subsequent to being enlarged on Bail as he suffered a severe pain in his chest and numbness in his legs on 16.07.2010

**SC. FR. Application No. 431/2010**

the Petitioner was admitted to The Government Hospital, Chilaw having been warded in Ward No. 4B of the Hospital and was **Discharged** on **19.07.2010** . The Petitioner alleged that his 1<sup>st</sup>, 2<sup>nd</sup> , 3<sup>rd</sup> and 4<sup>th</sup> ribs were fractured (P5) which was the result of torture inflicted on him by the 1<sup>st</sup> Respondent. On 19.07.2010 at about 10.00 a.m. just before being Discharged from Chilaw Government Hospital, the Petitioner stated that he was examined by the Judicial Medical Officer of Chilaw and the JMO,s Report was marked as P5. The Petitioner claimed that the conclusions of the Judicial Medical Officer as set out in his Report corroborated the Petitioner's version of the injuries inflicted on him by the 1<sup>st</sup> - 3<sup>rd</sup> Respondents at the Madampe Police Station on 03.07.2010, and hence has established by clear and cogent evidence that he was subjected to torture by the aforesaid Respondents. The Petitioner averred that he was entitled to the reliefs prayed for in the prayer to the Petition.

It was the contention of the 1<sup>st</sup> Respondent that it was upon information received from a private informant that the Petitioner and S.A. Leon Singho were arrested on **04.07.2010** at **noon** and the 1<sup>st</sup> Respondent **denied that** the **Petitioner** was in **Madampe Police custody on 03.07.2010**. The 1<sup>st</sup> Respondent **denied** that Leon Singho another labourer, and the watcher employed at “Mangalika Oil Mill” were brought to the Madampe Police Station on 02.07.2010 by the 1<sup>st</sup> Respondent accompanied by Somaweera

**SC. FR. Application No. 431/2010**

Chandrasiri, 1<sup>st</sup> Respondent conceded that the Petitioner and S.A. Leon Singho were produced at the Chilaw Magistrate's Court before the Chilaw Magistrate on **05.07.2010** and remanded to Fiscal **custody**. Even the 2<sup>nd</sup> Respondent in his **Statement** of objections **denied** that the **Petitioner** was **arrested** on **02.07.2010** and stated that the 2<sup>nd</sup> **Respondent arrested** the **Petitioner** and S.A. Leon Singho on 04.07.2010 after noon, whereas the 1<sup>st</sup> Respondent recorded their statements on the **same day** at approximately **13.55 hours (1.55p.m.)**. The 3<sup>rd</sup> Respondent specifically denied the Arrest of the Petitioner on 02.07.2010, and stated that upon Information received from a Private Informant the Petitioner and S.A. Leon Singho were arrested on 04.07.2010 in the afternoon and that their **statements** were **recorded** by the 1<sup>st</sup> **Respondent** on **04.07.2010 commencing** from **13.55 hours (1.55p.m.)** The 3<sup>rd</sup> Respondent at 1.55 p.m. Specifically denied the Arrest of the Petitioner.

I have examined the allegation of torture to the Petitioner and the views of the Respondents expressed in this regard. The question to be determined by this Court was whether these was a violation of article 11 of the Constitution by acts alleged to have been committed by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents and/or any one or more of them towards the Petitioner which infringed the Petitioner's Fundamental rights guaranteed under Article 11 of the Constitution. Article 11 of the Constitution refer to Acts which

would constitute **“Torture, or cruel , inhuman or degrading treatment or punishment”** which violate the **Fundamental rights** of the aggrieved party. I have examined the facts of this case, the **Medical evidence** in support of the Petitioners **allegations** of **assault, Torture, Cruel, inhuman or degrading treatment and punishment**, the oral and written **submissions** of both the **Petitioner** and the **1<sup>st</sup> to 3<sup>rd</sup> Respondents** and the **Degree of Proof** required to **establish** an allegation of **Torture, Cruel, Inhuman or Degrading Treatment or Punishment. The Legal Authorities** in this regard are numerous.

1. **In Premadasa Vs. O/C Hakmana and Others SC App 127/94 SC Mon. 10 March 1995** it was held by Dr. A.R.B. Amerasinghe J that **“..... the mere fact that there was an assault and some injury may not be violative of Article 11.** Torture or Cruel, Inhuman or Degrading treatment or punishment may take **many forms**, but whether the relevant Criteria have been satisfied for the violation of Article 11 depends on the **circumstances** of each case. **Dr. A.R.B. Amerasinghe J** in **“Our Fundamental Rights of personal Security and Physical Liberty”** P. 28 stated that **“..... The Supreme Court will declare conduct to be violative of Article 11 only if it is satisfied that such Act was of a Sort the Court can take cognizance of but not otherwise.”**

2. **In Lucas Appuhamy v. Maturata and others [1994] 1 SLR P 401 at p. 404** it was held by the Supreme Court that the Evidence was **insufficient** to support the Petitioners allegations and held that the injuries of the Petitioner were **mere consistent** with the **Respondents version** of the **Cause of the inJury**. In this case the Petitioner tried to **escape** from the Police Officers **custody** and fell into a **pit**. It was held by Dr. amarasinghe J that “In my view the Petitioner has simply sustained inJuries in the process of the use of **reasonable force** in **making the Arrest**, and he has **failed** to establish that his **rights under Article 11** of the **Constitution were violated.**”
  
3. **In Thadchanamoorthi vs AG[1980] FRD (1) 129 at p.159** the Police claimed that they had to use **some force as** the Petitioner had **resisted Arrest** and **attempted to escape**. In this Case Wanasundera, J held that the Meical Report only revealed **Evidence of Minor inJuries** and that evidence of **Torture was neither clear nor cogent** and that it **fell short** of **Minimum Proof** required to proceed, “The **inJuries** found on the **Petitioner** are of **Minor Nature**. Consisting of a few **Abrasions** and **two superficial wounds** on the **left and right forearms**. The Medical report does **not** carry his

case any further **even when viewed most sympathetically to the Petitioner**” Article 11 of the Constitution envisages that “No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” and hence the protection in accordance with Article 11 of the Constitution is guaranteed to all persons. Dr. A.R.B. Amarasinghe, J in **his contribution on “Our Fundamental Rights of Personal Security and Physical Liberty” 1995 p. 43** concluded that Complaints made in respect of **violation of Article 11** of the **Constitution** are generally brought against Public Officers and if proved would carry **serious consequences** against them. Therefore it was surmised by His Lordship that the allegations complained of should be **strictly proved**.

In a series of decided cases such as **Velumurugu v Attorney General (1981) 1 FRD p 180, Goonewardene v. Perera and others (1983) 1 SLR p. 305, Kapugeekiyana v. Hettiarachchi (1984) 2 SLR p. 153** and **Malinda Channa Pieris and others v. Attorney General (1994) 1 SLR at p.6** have implicitly laid down the **Principle** that the **Civil standard of Persuasion** would apply, and a high degree of **Certainty** would be **required** 'before the balance of **probability** might be said to **tilt** in favour of the **Petitioner** who has

been attempting to **discharge** his burden in proving that his Fundamental Rights guaranteed in terms of Article 11 had been **violated** by the Respondents as stated by Dr. A.R.B. Amarasinghe J in “**Our Fundamental Rights of Personal Security and Physical Liberty**” 1995 p. 43.

4. **In Malinda Channa Pieris and Others v. AG and Others [1994] 1 SLR at p. 6** it was pointed out that having regard to the **gravity of** the matter in issue a “**high degree of Certainty** is required before the **balance of probability** might be said to **tilt** in favour of a Petitioner ....” as stated by **Dr. A.R.B. Amerasinghe, J.**
5. **In Jeganathan v Attorney General [1982] 1SLR p. 302** it was held that where **Public Officers** are accused of violating provisions of **Article 11**, the **allegations** must be **strictly proved**, for if **proved** they will carry **serious consequences**” for such **Officers.**
6. **In Namasivayam v Gunawardena [1989] SLR at p. 401** it was concluded that “**On the question whether the Petitioner was subjected to cruel treatment or torture, the Petitioner's averments stands uncorroborated by any Medical evidence and has been denied by the Respondents. The evidence is not**

**sufficient for us to hold that there had been any violation of Article 11 of the Constitution.**

7. **In Edward Sivalingam v S.I. Jayasekera and others SC FR 326/2008** wherein Judgment was delivered on 10.11.2011 by Tilakawardane, J some of the **critical issues** were analysed when allegations of torture or of brutal assault were alleged.

It was held that “when considering the allegations made by the Petitioner against Officers of the CID it is important to bear in mind that the burden of proving these allegations **lies with the Petitioner. This Court has held repeatedly that the standard required is not proof beyond reasonable doubt but must be of a higher threshold than mere satisfaction. The standard of proof employed is on a balance of probabilities test and as such must have a higher degree of probability and where corroborative evidence is not available it would depend on the testimonial credit worthiness of the Petitioner**”

The Court further held that “in its **deliberation** on the **violation** of rights alleged there must necessarily be an **Accurate deliberation** and **careful**

**assessment** of the **Petitioner's Case**. It was further held that **“testimonial Creditworthiness** has an added significant in the **absence** of any **independent records** to **substantiate** the **Petitioner's assertions.**”

On an examination of the facts and other matters this case, the Petitioner stated that he was arrested by the 1<sup>st</sup> Respondent on **02.07.2010** after lunch at his **home**. The Petitioner alleged that he was tortured by the 1<sup>st</sup> Respondent and another Police Officer' of the Madampe Police on **03.07.2010**. The 1<sup>st</sup> to 3<sup>rd</sup> Respondents however averred that upon **information** received by a **private informant** the Petitioner and Leon Singho were arrested by the **2<sup>nd</sup> Respondent** at Galahitiyawa on **04.07.2010** at about **1.55p.m.** The 1<sup>st</sup> Respondent in his statement of objections stated that pursuant to a complaint made by Chandrasiri the Manager of Mangalika Oil Mill made on 02.07.2010 with regard to the theft of copra valued at Rs. 263,250/=, the 1<sup>st</sup> Respondent together with a team of Police Officers of the Madampe Police went to the **scene** of the **crime to conduct investigations**. The 1<sup>st</sup> Respondent further stated that on 02.07.2010 at approximately 1.00 p.m. left in a private vehicle to the **Kuliyapitiya Police Kennels Division** to bring the Police Dog from there, as the Police Dog attached to the Chilaw **Police Division** was **not well**. The 1<sup>st</sup> Respondent further stated that in the course of investigations

**SC. FR. Application No. 431/2010**

'Sheba' the police dog handled by PC 49105 Bandara proceeded upto the verandah of Leon Singho's residence and stopped there. As Leon singho was not at home the 1<sup>st</sup> Respondent together with PC 87427 Samitha had returned to the Police Station at about **5.50 p.m.** The 1<sup>st</sup> Respondent sated that the **Petitioner** and **Leon Singho** were **arrested** on 04.07.2010 afternoon, and that their statements were recorded at about **1.55 p.m.**

On an examination of the affidavits of the wife (P1) and mother (P2) of the Petitioner namely Matilda Fernando and Wimala Wijesooriya respectively they too state that the Petitioner was arrested by the 1<sup>st</sup> Respondent on **02.07.2010**. However the **main fact** to be considered was whether the **petitioner** was tortured, by the **1<sup>st</sup> to 3<sup>rd</sup> Respondents** to constitute **cruelty or torture** as envisaged by Artocle 11 of the Constitution. On a perusal of the Extracts of the Information Book of the Madampe Police Station namely, 1R, 1R2, 1R3 and 1R4 reveal that the Complaint of Chandrasiri (1R1) was made on **02.07.2010** and the entry pertaining to the arrest of the Petitioner and Leon Singho by the 2<sup>nd</sup> [1R4] Respondent is dated **04.07.2010** respectively. Hence beside the averment of the Petitioner, except (P1) and (P2) namely the **affidavits** of Matilda (wife) and Wimala (mother) respectively, there is no other material to suggest that the Petitioner was arrested on **02.07.2010**. Although the Petitioner alleged

**SC. FR. Application No. 431/2010**

that he was assaulted mercilessly by the 1<sup>st</sup> Respondent and another Police Officer of the Madampe Police on 03.07.2010, the Admission form of the Judicial Medical Officer dated 16.07.2010 **refers** to the **date of Assault as 31.06.2010**, although the JMO's Report refers to the date of Assault as **03.07.2010**. Assuming that the Admission form mistakenly refers to the date of assault as **31.06.2010**, **neither the JMO's Admission form nor Report indicate that the Petitioner was subject to torture.**

The Injuries referred to are **Exfoliation of superficial skin**, a healing **Abrasion** of the **left hand at the Wrist Joint placed in an encircling manner** and of a superficial nature, could have been the result of the Petitioner being **hand cuffed** at the **time of Arrest**.

Hence as the Petitioner has failed to prove by evidence or otherwise that he was subjected to Torture cruel, inhuman or degrading treatment or punishment by the 1<sup>st</sup> Respondent as alleged by the Petitioner, the Petitioner in my view has not achieved the standard of proof required by law and **has not** strictly proved torture by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents to fall within the ambit of Article 11 of the Constitution.

Hence I dismiss the application of the Petitioner without costs.

**JUDGE OF THE SUPREME COURT**

**Shiranee Tilakawardane, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**P. A. Ratnayake PC. J.**

I agree.

**JUDGE OF THE SUPREME COURT**