

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

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

Ishantha Kalansooriya
“Jayanthi”
Narawala, Poddala
And also at
No. 267, School Lane
Borrelesgamuwa

Petitioner

SC FR Application No. 112/2010

Vs.

1. Karunaratne
Inspector of Police
Officer In charge of Police Station
Poddala.
2. Indika
Sub Inspector of Police
Police Station,
Poddala.
3. Saminda
Police Constable
Poddala Police Station
Poddala.
4. Mahinda Balasuriya (Now retired)
Pujith Jayasundera
Inspector General of Police of Sri Lanka
Police Headquarters.
5. Hon. Attorney General
Attorney General’s Department
Colombo 12.

Respondents

Before : Priyasath Dep, PC. J
Sisira J. de Abrew, J.
Nalin Perera J.

Counsel : Anil Silva PC for the Petitioner.
C. Paranagama for 1st – 3rd Respondents.
M. Tennakoon, SSC for Hon. Attorney General.

Argued on : 27.06.2016

Decided on : 04.08.2017

Priyasath Dep, PC. CJ

The Petitioner filed this Application alleging that his fundamental rights guaranteed under Articles 11, 12, 13(1) and 13(2) of the Constitution were violated by the Respondents. The Petitioner in this case is a former member of Bope-Poddala Pradeshiya Sabha during the years 1991 to 2002 and also an owner of footwear manufacturing business at Borelesgamuwa named “Elegant”. The Petitioner stated that prior to the 2010 Presidential Election he went to his native place at Poddala and he was assisting Dr Romesh Pathirana, the organizer of SLFP for Akmeemana electorate supporting the candidature of the incumbent President at the forthcoming Presidential Election.

On 24.01.2010 at or about 10.30 pm, the Petitioner was travelling on a pillion of a motor bike ridden by his friend Nanayakkara Masachchige Nalin Dayanga (Nalin) and were travelling

along Galle-Baddegama road. While he was travelling in front of Meepawala Karunanyake's house Sarath Kalansooriya ("Sarath") gave a call to him to inquire about a matter involving one of his friends.

The Petitioner stated that he had a friendly conversation with Sarath to resolve a minor dispute regarding a verbal abuse which had taken place between Somasiri Madanayake and Sarath. The Petitioner states that within few minutes the 1st Respondent came in a police jeep bearing registration number WP LE 9080 along with the 2nd and the 3rd Respondents and few other police constables and without making any inquiry slammed and punched his face whilst the other constables hit him with their weapons.

Thereafter the Petitioner was dragged and pushed towards the police jeep by 1st to 3rd Respondents with the help of other police constables and took him inside the jeep and drew away. Petitioner states that the 1st Respondent was smelling of liquor. He was given no reasons for his arrest.

The Petitioner in para 12 of the petition states that :

- i. "Once inside the Police station he was asked to kneel down by the said 1st Respondent while using abusive Language such as "Danagahapan Paraya" and was forced to do so, while other police officers such as the 2nd and 3rd Respondents looked on together with other police officers and constables and the Petitioner was shoved to the floor, punched and kicked on the head, face, chest, shoulders, stomach, back and legs etc. by the 1st Respondent.
- ii. Thereafter he was forcefully asked to stand and dragged from the legs and assaulted with a club by the said 1st Respondent who was easily identified as drunk and violent under the influence of liquor and otherwise, saying in Sinhala and in an abusive manner "Umbata mama sathiyak avidinna thiyanne ne" (I will not allow you to walk for one week) while the said 2nd and 3rd Respondents and the other officers and constable were holding the Petitioner tightly to facilitate such inhumane treatment.
- iii. The Petitioner who was threatened with life and limb pleaded with the said 1st and 2nd Respondents not to treat him like that by saying in Sinhala "Policiyen mehemath thirisan widiyata gahanawada" and however the said 1st Respondent did not stop such assault till the said club was broken.
- iv. Thereafter the said 1st Respondent directed one such police constable or an officer who was in civvies to handcuff him and then he was dragged to the police cell".

The Petitioner was taken to Baddegama Hospital and produced before the Judicial Medical Officer on the same night but however he was not sent to the hospital police post to record a

statement. According to the Petitioner at that time he was suffering from severe pain all over his body and had aberrations on and around the collar bone and swelling of the lower part of the lower limb on both legs. He was taken back to Poddala police station and he was handcuffed again and put to the police cell.

An Assistant Superintendent of Police came to the Police Station later in the night and the Petitioner was taken out from the cell and was taken to the 1st Respondent's room where the ASP was seated. The ASP instructed the 1st Respondent to record a statement from the Petitioner and it was recorded accordingly. Thereafter he was released from the police custody on police bail.

The Petitioner got himself admitted to the Karapitiya Teaching Hospital on 25. 01 2016 as he was suffering from a severe body pain. Petitioner in para 22 of the Petition stated that:

“The Petitioner was warded at ward 6 which is a surgical unit and was investigated for head injury by taking x-rays of the skull and the chest was examined with chest x-ray, and x-rays of the spine and knee joint were also taken, which were found out to be normal. The Petitioner was managed for head injury observations for about twenty four hours and was treated with captopril 12.5 mg. three times a day as his pressure was more than the normal rate due to the above mentioned inhumane treatment etc.”

The Petitioner was discharged on 26th January 2010 and he has been attending clinics as instructed and was treated further as required by the medical officer. The Petitioner annexed to the Petition the health white card marked as X1 and the book where such entries were recorded was marked as X2).

The Petitioner in paragraph 27 of the Petition stated that the abovementioned treatment meted out on the Petitioner on 24th January 2010 is illegal and amounts to torture and/or cruel, inhumane and degrading treatment by the 1st, 2nd and 3rd Respondents and /or anyone or more of the 1st to the 3rd Respondents in as much as,

- a. The Petitioner was abducted against his will and /or arrested not in accordance of the procedure established by law by anyone or more of the 2nd to 3rd Respondents under the command of the 1st Respondent.
- b. No reasons were given nor existent at the time of arrest,
- c. Treating the Petitioner in an inhumane manner as described above,
- d. Causing severe pain, both physically and psychologically and causing near fatal injury to him,

- e. Wrongly kept the Petitioner in detention and unlawful treatment.

The Petitioner alleged that the Respondents had violated the Fundamental Rights guaranteed under articles 11,12,13 (1) and 13 (2) of the Constitution.

The Supreme Court has granted leave to proceed for the alleged violation of Articles 11 and 13(1) of the Constitution.

The 1st Respondent in his objections stated that on 24th January 2010 he was on mobile patrol to prevent acts of violence related to the forthcoming Presidential Election. At or about 10.00 pm Poddala police station received an information from one Sarath that the Petitioner is verbally abusing him and trying to assault him. At this time the 2nd respondent was on duty at Poddala police station and did not join the patrolling group.

1st Respondent stated that at about 11.00pm he reached Meepawala Junction where the incident was taking place and there were 3 or 4 persons present at the scene and except for the Petitioner all others ran away. The Petitioner was acting violently and shouting in abusive language. The 1st Respondent and the 3 constables tried to control the situation and as the Petitioner resisted they had to use reasonable force and hand cuffed him to control the violent behavior. The Petitioner fell down near the police jeep due to the resistant offered by him.

The 2nd Respondent took the Petitioner to the District Medical Officer of Baddegama District Hospital as he was smelling of liquor. The Respondents had annexed certified extracts of paragraphs 2473-2478 of the daily information book marked as R1. According to the medical examination form submitted by the District Medical Officer marked R2 the Petitioner was suffering from non-grievous injuries and he was not drunk.

The complaint made against the Petitioner by the virtual complainant Sarath was recorded by Poddala police station and an extract of the complaint recorded in the minor complaints information book is marked as R3. According to the statement of Sarath, the Petitioner, Indrajith and Nalin reminded him of a previous incident and threatened to kill him and tried to assault him. He escaped from them and went to Karunanayake's house and gave a call to the police. The police came and arrested the Petitioner and took him away. He further stated that previously the Petitioner came to his house at about 2.00 am and knocked at the door and asked him to come out. The police recorded the statement of the Petitioner marked as R4. Thereafter Petitioner was given police bail.

The 1st Respondent investigated into the said matter and Poddala Police filed a B report in the Magistrate Court of Galle bearing No bearing No 46749 which is marked as R5. The

Respondent stated that the Petitioner after he was released on police bail went and got admitted to Karapitiya hospital and fraudulently changed his minor non-grievous injury to grievous hurt with the help of the local Member of Parliament Dr Ramesh Pathirana in order to file this application.

In this application leave to proceed was granted under articles 11 and 13 (1) of the Constitution. Having considered the material placed before this Court, this court has to consider whether or not the Petitioner has established his case on balance of probability. As there is an allegation of torture, cruel and inhuman and degrading against the Respondents if a finding is made against them it will affect their employment and expose them to a prosecution under Convention Against Torture Act No.22 of 1994. Therefore in cases of this nature high degree of proof is required to establish the case though the required standard of proof is not beyond reasonable doubt.

There are two versions to this incident. Therefore this court has to first ascertain which version is the probable version. If the Petitioner's version is probable the next question whether case was established on balance of probability.

The facts revealed that the 1st Respondent was on mobile petrol when he received information from one Sarath that the Petitioner was engaged in an act of violence and he proceeded to the scene and arrested the Petitioner. Sarath confirmed the information given by him when he made a statement to the police to the effect that the Petitioner and two others threatened to kill him and tried to assault him. Therefore the 1st Respondent had reasonable ground and also had credible information to arrest the Petitioner. As the arrest of the Petitioner is lawful there is no violation of Article 13 (1) of the Constitution. .

The next question is whether the Respondent after the arrest of the Petitioner subjected him to torture, cruel, inhumane and degrading treatment as alleged by the Petitioner. The Petitioner in his petition at para 12 described how he was assaulted and was subject to cruel treatment. According to the description given by him he would have sustained more serious injuries than what was revealed in the medical legal reports . According to the medical legal report he had a non -grievous injury. A medical report does not support his version. He had given an exaggerated version of the events.

The Respondents in their affidavits have stated that at the time of the arrest, the Petitioner resisted arrest and they were compelled to use force to arrest him and put him to the police jeep and bring him to the police station. There is a likelihood that he would have sustained injuries in the process.

The 1st Respondent and the other Respondents did not have any animosity nor a motive to cause harm to the Petitioner. In the course of his duties 1st Respondent visited the scene and arrested the Petitioner who was behaving in an unruly manner and produced him at the police station.

For the above reasons, I am of the view that the version given by the Respondents is more probable than the version given by the Petitioner. The Petitioner had failed to establish his case on balance of probability.

The Application is dismissed. No costs.

Chief Justice

Sisira J. de Abrew J.

I agree.

Judge of the Supreme Court

Nalin Perera J,

I agree.

Judge of the Supreme Court

