

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

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

SC. FR Application No. 208/2012

N.A Nimal Ranjith

No.752, Navodagama, Sevanagala

**Petitioner**

Vs.

1. N.Bandara  
Officer-in-Charge,  
Sevanagala Police Station.  
Sevanagala
2. Edirisinghe  
Sergeant,  
Sevanagala Police Station.  
Sevanagala
3. Dr. C Vithana  
Medical Officer-in-Charge,  
Divisional Hospital,  
Sevanagala.
4. N.K. Illangakoon  
Inspector General of Police,  
Police Head Quarters,  
Colombo 1
5. Hon. Attorney General  
Attorney General's Department  
Colombo 12.

## Respondents

Before : Sisira J De Abrew J  
L.T.B. Dehideniya J  
Murdu Fernando PC J

Counsel : JC Waliamuna with Pulasthi Hewamanna and  
Pasindu Silva and Thilini Vidanagamage for the Petitioner  
Sanjeewa Dissanayake SSc for the Attorney General.

Argued on : 21.6.2018

Decided on : 6.3.2019

Sisira J de Abrew

The Petitioner complains that his fundamental rights guaranteed by Article 11, 12(1), 13(1) and 13(2) of the Constitution have been violated by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents. This court by its order dated 13.9.2012, granted leave to proceed for alleged violation of Article 11 of the Constitution. The facts of this case may be briefly summarized as follows.

The Petitioner is a sanitary labourer attached to Sevanagala Divisional Hospital. The Petitioner states that on 3.2.2012, the 3<sup>rd</sup> Respondent who is the Medical Officer-in-Charge of the said hospital called the Petitioner to staff rest room; that the 3<sup>rd</sup> Respondent questioned the Petitioner about the poisoning of the Water tank of him (the 3<sup>rd</sup> Respondent); and that thereafter the 3<sup>rd</sup> Respondent assaulted him with a rubber pipe. The Petitioner sustained injuries. The Judicial Medical officer (JMO) who examined the Petitioner on 4.12.2012 observed five contusions on the right upper arm, back of the chest and right buttock of the Petitioner. The JMO in

his report states that the injuries have been caused within two to three days from the date of examination.

The 3<sup>rd</sup> Respondent in his affidavit dated 19.3.2013 states that when he questioned the Petitioner regarding poisoning of the water tank of his official quarters, he admitted the poisoning of the water tank; that he assaulted the Petitioner with a conduit pipe due to provocation and loss of self control. Learned SSC tried to contend that the assault by the 3<sup>rd</sup> Respondent on the Petitioner could not be considered as torture. When considering this contention Article 11 of the Constitution should be considered. It reads as follows.

“No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

In *WMK de Silva Vs Chairman of Ceylon Fertilizer Corporation* [1989] 2 SLR 393 Amerasinghe J held as follows.

*"In my view Article 11 of the Constitution prohibits any act by which severe pain or suffering, whether physical or mental, is, without lawful sanction in accordance with a procedure established by law, intentionally inflicted on a person (whom I shall refer to as the victim ) by a public official acting in the discharge of his executive or administrative duties or under colour of office, for such purposes as obtaining from the victim or a third person a confession or information, such information being actually or supposedly required for official purposes, imposing a penalty upon the victim for an offence or breach of a rule he or a third person has committed or is suspected of having committed, or intimidating or coercing the victim or a third person to do or refrain from doing something which the official*

*concerned believes the victim or the third person ought to do or refrain from doing, as the case may be."*

The JMO confirms in his report that that the Petitioner had sustained five contusions and that they could have been caused by a flexible rubber pipe within two to three days prior to the date of examination. The date of examination had been on 4.2.2012. The alleged incident according to the Petitioner was on 3.2.2012. When I consider the above facts and the above mentioned legal literature, I am unable to agree with the contention of the learned SSC.

The learned SSC further contended that the allegation of torture on the Petitioner has not been proved with high degree of certainty. In Channa Peiris and Others Vs Attorney General [1994] 1SLR 1 this court held as follows.

*In regard to violations of Article 11 (by torture, cruel, inhuman or degrading treatment or punishment), three general observations apply:*

- (i) The acts or conduct complained of must be qualitatively of a kind that a Court may take cognizance of. Where it is not so, the Court will not declare that Article 11 has been violated.*
- (ii) Torture, cruel, inhuman or degrading treatment or punishment may take many forms, psychological and physical.*
- (iii) Having regard to the nature and gravity of the issue, a high degree of certainty is required before the balance of probability might be said to tilt in favour of a petitioner endeavouring to discharge his burden of proving that he was subjected to torture or to cruel, inhuman or degrading treatment.*

The 3<sup>rd</sup> Respondent in his affidavit filed in this court has admitted that he assaulted the Petitioner with a conduit pipe. When I consider the aforementioned matters, I

hold that the assault on the Petitioner has been proved with high degree of certainty. The 3<sup>rd</sup> Respondent is the Medical Officer in Charge of Sevanagala Divisional Hospital and the Petitioner is a Sanitary Labourer attached to the said hospital. When I consider facts of this case, I hold that the Petitioner was subjected to torture, cruel, inhuman and degrading treatment by the 3<sup>rd</sup> Respondent and the 3<sup>rd</sup> Respondent has violated fundamental rights of the Petitioner guaranteed by Article 11 of the Constitution. The Petitioner is entitled to receive a sum of Rs.50,000/- as compensation from the 3<sup>rd</sup> Respondent. The 3<sup>rd</sup> Respondent is directed to pay the above amount within three months from the date of this judgment.

Judge of the Supreme Court.

L.T.B Dehideniya J

I agree.

Judge of the Supreme Court.

Murdu Fernando PC J

I agree.

Judge of the Supreme Court.

