

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC

OF SRI LANKA

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

S.C(FR) No. 599/2011

1. Kanahipadi Kankanamge Nalin.
2. Wickrema Kankanamge Nadeeka Lakmali

Both of

No. 204 C, Arachchigoda,
Dodangoda.

Petitioners

-Vs-

1. Kamalsiri,
Sergeant of Police 59558,
Dodangoda Police Station.
2. Wickramasinghe,
Civil Defence Officer 5330,
Dodangoda Police Station.
3. Mahinda Banda,
Sub-Inspector of Police,
Dodangoda Police Station.
4. Nishantha,
Police Constable P 1474,
Dodangoda Police Station.
5. Manjula,
Police Constable No. 38671,
Dodangoda Police Station.

6. Bimal Perera,
Chief Inspector of Police,
Officer in Charge,
Dodangoda Police Station.
7. N.K.Illangakoon
Inspector General of Police,
Police Head Quarters,
Colombo-01.
8. Hon. Attorney-General,
Attorney-General's Department,
Colombo-12.

Respondents

Before:

Sisira J.de Abrew, J

Anil Gooneratne, J &

Nalin Perera, J

Counsel:

Shantha Jayawardena with Niranjan Arulpragasam
for the Petitioners.

Upul Kumarapperuma for the 1st to 4th and 6th
Respondents.

Ms. Nayomi Wickramasekera SSC for the
7th and 8th Respondents.

Argued &

Decided on:

08.12.2017

Sisira J de Abrew, J

Heard Counsel for both parties in support of their respective cases. The two Petitioners in their petition filed in this Court alleged that their fundamental rights guaranteed by Articles 11, 12(1) and 13(1) of the Constitution have been violated by the Respondents. This Court by its order dated 09.08.2012 granted leave to proceed for alleged violation of Articles 11 and 12(1) of the Constitution with respect to the both Petitioners by the 1st to 6th Respondents. This Court also granted leave to proceed for alleged violation of Article 13(1) with respect to the 1st Petitioner by the 1st to 6th Respondents. The 1st Petitioner alleged that his lorry driven by his driver was parked near Thudugala Junction in Dodangoda police area. The 1st and 2nd Respondents who arrived at this place requested the Petitioner to take away the lorry as it was blocking traffic. Thereafter the Petitioner took the lorry away and the 1st to 4th Respondents started assaulting him. According to the 1st Petitioner, he was dragged on the road by the 1st and 2nd Respondents. The Petitioners alleged that the 1st Petitioner sustained injuries as a result of the said assault in his hands and legs. The 2nd Petitioner who is the wife of the 1st Petitioner in his affidavit filed in this Court whose name is K.K.Wickrama Kankanamge Nadeeka Lakmali states that she was assaulted by the 2nd and 3rd Respondents. As a result of the assault launched by the said Police Officers she suffered unbearable pain in the abdomen. She says that as a result of the assault she was thrown against a three wheeler. After the assault, the 1st Petitioner was examined by Dr. Jayamalee on 20.11.2011. The incident took place on 20.11.2011. According to

Dr. Jayamalee's report the Petitioner had sustained an abrasion in the left elbow joint and left ankle. Dr. Ruhul Haq the Judicial Medical Officer who examined the 1st Petitioner on 03.10.2011 had observed two healing wounds on the left elbow and on the left ankle. The 1st Petitioner had admitted to the J.M.O. that he had had a fall and sustained injuries. Dr. Jayamalee who examined the 1st Petitioner made the following observations. "Suggestive of a fall on the ground". Dr. who examined the 1st Petitioner has also made an observation in the Medico Legal Examination Form that the 1st Petitioner was smelling of liquor. The 1st Petitioner had admitted to Dr. Jayamalee that he had consumed a bottle of toddy. Petitioner's story was that the Police Officers assaulted him when he was dragged on the ground. It appears that he has only sustained one injury on the left elbow and one injury on the left ankle. When we examine his story and the medical evidence, we are of the opinion his story is not supported by the medical evidence. We note that the 1st Petitioner had admitted to the J.M.O that he had had a fall and sustained injuries. We therefore hold that his complaint made to this Court has not been presented with high degree of certainty.

His wife's complaint is that she was assaulted by the 2nd and 3rd Respondents. Although she says in her affidavit that she suffered unbearable pain in the abdomen. Dr. who examined her on the day of the alleged incident has made the following observations. "No head injuries, no E.N.T. bleedings, no vomiting and no abdomen pain". Therefore we feel that her complaint of assault has also not been supported by medical evidence. Both stories narrated by the 1st Petitioner and the 2nd Petitioner have not been presented with high degree of certainty. In this connection, I would like to rely on the judicial decision in

Channa Peiris Vs The Attorney General 1994(1) SLR, Page 01, by His Lordship Justice Dr. A.R.B.Amarasinghe wherein His Lordship held as follows:-

“(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.”

In the above case one of the allegations was that the Petitioner's fundamental rights guaranteed by Article 11 of the Constitution had been violated.

Applying the principles laid down in the above judicial decision, I hold that allegation of violation of Article 11 of the Constitution must be presented with high degree of certainty.

As observed by us both stories narrated by both Petitioners have not been supported by medical evidence. Further the 1st Petitioner had admitted to the J.M.O. that he had had a fall. He had also admitted to the Dr. Jayamalee that he had consumed a

bottle of toddy on the day of the incident. When I consider all the above matters, it is difficult to place reliance on the story narrated by the Petitioners.

Considering all these things, we hold that the Petitioners have not presented their case to the satisfaction of this Court. We therefore can't rely on the complaint of both Petitioners. For the above reasons, we dismiss the Petition of the Petitioner.

JUDGE OF THE SUPREME COURT

Anil Gooneratne, J

I agree.

JUDGE OF THE SUPREME COURT

Nalin Perera, J

I agree.

JUDGE OF THE SUPREME COURT

Kpm/-