

Land Mark case 02. PADMA - CHRISTY CASE

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

S.C. (FR) Application No. 298/2005

Petitioners:-

**Malikage Padma Wijesooriya and M.Christie, Both of 19th Mile Post Anuradhapura
Road,Puttalam**

VS

Respondents

1. G W.R.G. Thilekaratne alias Loku Aiya. Police constable, Driver.

2. Nalaka Ajit Bandara, P.C. 19690

3. D.M.R. Dassanayake alias Rane, Police Assistant 2694

4. A.M. Gunathillake, OIC

All of Police Post, Saliyawewa

5. Inspector General of Police

6. Hon. Attorney General

BEFORE:

**Sarath N.Silva Chief Justice, Shiranee Thilakawardena Judge of the
Supreme Court, Saleem Marsoof Judge of the Supreme Court**

COUNSEL:

Viran Corea with Ms. Shamaine Gunaratne for the Petitioners

Varuna Senadheera with Manoj Sanjeewa for the 1st, 2nd and 4th Respondents. Leo Pereera for the 3rd Respondent . Riyaz Hamza, S.S.C. for the 5th and 6th Respondents

ARGUED ON: 26.7.2007

DECIDED ON: 25.1.2008

Sarath N.Silva C.J.

The two petitioners and their minor children, including a mentally retarded daughter have been resident at Salaiyawewa junction on the Puttalam Anuradhapura road. In about 1996 the 2nd Petitioner was a victim of an attack which caused serious head injuries consequent to which he is paralyzed. The assailants have been indicted and the trial in respect of that attack was pending in the High Court of Chilaw at the time material to this application.

The Petitioners have pleaded that due to this disability the 2nd Petitioner could not make a living as a labourer and that he started to sell unlawfully manufactured liquor (UML). They ran a small boutique next to their house which appears to have been used partly for the sale of UML.

The Petitioners have been arrested on several occasions by officers of the Puttalam Police and the Saliyawewa Police Post. According to them in some instances they were compelled to bribe the officers of the Saliyawewa Police Post and also to voluntarily surrender bottles of illicit liquor to provide number of "cases" for the Police every month. The Petitioners have pleaded guilty to the offences and at times served short sentences in default of payment of fines.

The 4th Respondent being the Officer in Charge of the Saliyawewa Police Post has produced documents marked "4R11 (A) and (B) " schedules of the instances in which the two Petitioners have been prosecuted in the years 2003 to 2005 . According to the schedules they had been prosecuted separately. The 1st Petitioner (wife) has had 10 cases against her. They are for possession of UML of quantities that range from 8 to 20 drams. She had been fined on 6 occasions of amounts ranging from Rs. 1000/= to Rs. 15,000/=. She had done community service on two occasions. The 2nd Petitioner (husband) has had six cases against him. They are also for possession of UML of quantities ranging from 16 to 200 drams. He has

been fined amounts ranging from Rs. 5000/= to Rs. 25,000/=. These schedules of prosecutions are consistent with the version of the Petitioners of periodic arrests. The alternative prosecutions of the 1st and 2nd Petitioners who live in the same premises, for possession of limited quantities of UML tend to support the version of the Petitioners that these were not genuine detections but that they had to surrender some bottles to provide a given number of cases to the Police. There appears to have been a pattern of events with periodic prosecutions and the imposition of fines interspersed with bribery as alleged by the Petitioners. The upshot of this pattern of events is that the Petitioners remained in the business of selling UML to sustain themselves and also earn sufficiently to pay the bribes and fines lest they get imprisoned in default of payment.

According to the Petitioners in the evening of 26.7.2005 there was yet another routine visit of officers of the Saliyawewa Police Post, consisting of the 3rd Respondent and two other Police Officers. They asked the Petitioner to hand over two bottles of UML and the searched the house. Since the 1st Petitioner refused to hand over UML and the search turned to be negative, the officers requested the 1st Petitioner to open the boutique. At that stage the 1st Petitioner handed over one bottle of UML. The Police officers took charge of the bottle and the identity card of the 1st Petitioner and asked her to come to the Police Post the next morning. After about 15 minutes the 3rd Respondent returned with another officer and asked for Rs. 2000/= and further Rs. 200/= for petrol. The Petitioners gave Rs. 1100/= to the 3rd Respondent and said that they did not have any more money. The 1st Petitioner also said that there were two warrants of arrest issued against her for non payment of fines and that she would surrender to court when she collects sufficient money to pay the fines and begged of the officers not to harass her till then. The 3rd Respondent replied that to help her she also must help him and further stated that he is coming back at mid night. This was understood by the 1st Petitioner as an immoral suggestion which she claims was refused.

The Petitioners went to sleep that night as usual in their house and around mid night the 1st Petitioner was awakened by a noise of someone entering the house through the window of the room in which she was sleeping with her mentally retarded daughter. She started to scream "thief, thief" and switched on the light in the room. Then she had seen the 3rd Respondent jumping out of the window and the neighbours caught the 3rd Respondent who struggled with them and fled to the nearby hotel. The 3rd Respondent

left the T-shirt that he had been wearing and the motor cycle which had no number plate at the place when he ran away. The Petitioners took the motor cycle into their house with the intention of handing it over to the Assistant Superintendent of Police, the next morning. They learnt that the motor cycle belonged to one Buddhika, who lived near the Saliyawewa Police Post. About half an hour later a jeep and a three wheeler carrying about 12 Police Officers including the 1st and 2nd Respondents came to the Petitioner's house and smashed the windows. The 1st Respondent assaulted the Petitioners with clubs in the presence of several neighbours who were also assaulted by the Police party. These officers removed the motor cycle and the T-shirt. A neighbour, Warnakulasuriya Piyasiri has filed an affidavit (P2) in support of the version of the Petitioners starting from the point where he heard cries from their house at about 12 midnight. He had also been assaulted by the Police. The Petitioners were taken to the Police Post where they were detained over night and further assaulted by the 1st, 2nd and 4th Respondents. The next morning they were produced before the District Medical Officer and later in the Magistrate's Court. A medical report that has been produced reveals the injuries on the hand and leg of the 2nd Petitioner who is paralyzed.

According to the version of the Respondents on 26.7.2005 the 4th Respondent being the OIC of Saliyawewa Police Post left the Police Post at about 6.00p.m. with two Police Constables, a Reserve Police Constable, Police Security Assistant (3rd Respondent) and a Grama Arakshaka (4th Respondent) "on rounds". He has produced an extract from the Minor Offence Information Book marked "4R3" to support this version. According to his affidavit they left on "rounds on private motor cycles" and returned at about 9.30p.m. On the rounds he had arrested one Sampath at the 21st Mile Post for possession of 64 drams (8 bottles) and the 1st Petitioner at the 19th mile post also for possession of 64 drams. These arrest were made at 7.30p.m. At 8.30p.m. he arrested one Rohana for possession of 8 drams at Palugassegama. The 4th Respondent has further stated that Smpath and Rohana and the liquor were taken into custody to be produced in the Magistrate's Court of Puttlam the following day and the 1st Petitioner was released with a warning to be present at the Police Post the following morning.

I would pause at this stage to consider the two versions as regards the detection of UML. It is to be noted that the Petitioners did not refer to any visit or detection made by the O.I.C. being the 4th Respondent. They speak

only of a "collection" of one bottle by the 3rd Respondent followed up with the payment of a bribe and the immoral suggestion referred to above.

The version of the Petitioners is supported by the subsequent events in which admittedly the 3rd Respondent returned to the place on a motor cycle and was apprehended by the villagers shortly after midnight. If in fact there was a detection made as claimed by the 4th Respondent the 1st Petitioner had to be arrested and taken to the Police Station. No purpose would have been served by only taking the 8 bottles of UML found with her as claimed by the 4th Respondent. These bottles would have had to be sealed with her thumb impression and so on in order to establish the detection in court. Even her statement had not been recorded. Admittedly there were two warrants of arrest against her and if a genuine detection was made it was incumbent on the 4th Respondent to arrest and take her into custody.

In view of the manifest falsity of the entries produced by the 4th Respondent the court got down the Routine Information Book (RIB) of the Police Post for the relevant period. The suspicion entertained by Court was well founded since there was no entry by the 4th Respondent or by any other officer of having left the Station at the time specified in 4R3 or of having returned to the Station having made the detections and arrests as claimed. Furthermore, the entries in 4R3 state that the 4th Respondent and his team consisting of five persons left on the rounds on "private motor cycles". No numbers of these motor cycles are specified in the entry. This version is reduced to a point of absurdity when the 4th Respondent records that they took charge of as many as 17 bottles of UML and two suspects and returned to the Police Station. The 4th Respondent in his blind endeavour to prevaricate material to be submitted to Court has overlooked the fact that according to his claim they went on rounds on "private motor cycles" How could they have possibly brought back two suspects and as many as 17 bottles of UML on motor cycles.

For these reasons I would reject in its entirety the version of the 4th and the 3rd Respondents as regards the purported detection that was made of the 1st Petitioner. As noted above the version of the Petitioners is more probable and this is yet another instance of the "collection of a case" and also of a bribe.

As regards the second part of the incident which relates to the visit of the 3rd Respondent at midnight the version of the Police is preposterous. The

3rd Respondent has stated that after going out on rounds with the 4th Respondent he returned to the Police Post at 9.30p.m. and having had his dinner at the barracks at 9.45p.m. left on a night patrol with another Police Constable and a Grama Arakshaka. As he was having a severe headache he came to the Saliyawewa junction to buy two panadols on his private motor cycle at about 12.30p.m. in the night. Since the front wheel of his motor cycle was deflated he borrowed a motor cycle from one Buddhika and came to the 19th mile post boutique to buy panadols at about 1.00 a.m. According to the documents filed this place is more than 6 kilometers away from the Police Post. When he was near the 19th mile post boutique the two Petitioners and their daughter were by the side of the road and the 1st Petitioner called him. On inquiry she said that she could not talk and asked him to come home. He stopped the motor cycle on the side of the road and when he was proceeding to the house three or four persons hiding in the compound dealt several blows on the head and as he was being hit he heard stones striking the glass windows of the house. He has stated that he did not know that the windows were broken. With his bleeding injuries he fled to the hotel nearby and informed the Police. He was taken to the Nochchiyagama hospital in a three wheeler. This version is fanciful and absurd. One cannot even imagine a journey of 6 kilometers at midnight from the Police Post to a desolate way side boutique with the journey being interrupted with a flat tyre and a motor cycle being borrowed all in quest of some Panadols! Even if this be true how could the Petitioners have known of his headache to wait for him on the side of the road at 1.00 a.m. in the night with their disabled daughter?

The admitted presence of the 3rd Respondent near the house at about midnight supports the version of the Petitioners. It is probable that the Petitioners who had come to the end of their tether having been at the butt end of the periodic "collection of cases" demands of bribes and of immoral overtures, got together with the neighbours and lay in wait for the 3rd Respondent. If as claimed by the Petitioners the 3rd Respondent fled the moment the 1st Petitioner raised cries he would have got away on the motor cycle before the neighbours arrived. The fact that he had to leave his T-shirt and motor cycle behind shows that he was trapped inside the house not having time even to wear his T-shirt.

The 4th Respondent has stated that at about 12.30 in the night one Gihan who owns a hotel at the 19th Mile Post came to the Police Post in a three wheeler and informed that a Reserve Policeman in civil clothes who

is injured, is in his hotel and that some unknown persons are demanding that he be handed over to them. On receipt of this information he (4th Respondent) sent a team of Police officers on private motor cycles. He went with one Upali in a three wheeler. When he went to the place he found the 3rd Respondent inside the hotel with bleeding injuries. He also saw the 1st and 2nd Petitioners and also observed patches of blood on their clothes. According to him they had contusions all over their bodies. They stated that the "mahattaya" who came from the Police hit them with iron rods. He inspected the front of the house where he saw few pieces of glass, clubs and a motor cycle. According to him the glass of the front window of the house was broken.

It is to be seen that the version of the 4th Respondent which has been found to be false with regard to the first part of the incident regarding the purported detection is equal false with regard to the second part of the incident. What is significant is that he has admitted that in fact the house was damaged and both Petitioners were injured. The version of the 3rd Respondent and by implication of the 4th Respondent that some unidentified neighbours attacked the 3rd Respondent the two Petitioners and damaged the house cannot be accepted. The neighbours could have been alerted at that time of the night only on hearing the cries of the 1st Petitioner. They would not have harmed the person to whose aid they rushed in. Admittedly the Petitioners and the neighbours were together when the 4th Respondent arrived with the Police party which would not have been the case if the neighbours had attacked the Petitioners and damaged their house. No complain was made by the Petitioners of any such attack.

It is obvious that that 3rd Respondent was caught inside the house and attacked by the Petitioners and the neighbours causing him to flee leaving the T-shirt and motor cycle and in turn the 4th Respondent being the OIC who led the Police party severely assaulted the Petitioners at the house and at the Police Post and also damaged the house in retaliation. Even if there be some doubt as to the identification of the 1st and 2nd Respondents, the allegations against the 3rd and 4th Respondents are supported on their admissions and in respect of the 4th Respondent by the false entries that have been made and produced in court.

The Petitioners have apparently eked out a living by selling UML and thereby transgressed the law. But, as regards the incident in the night their

attack on the 3rd Respondent who entered the house is justified as being in the exercise of the right of private defense. On the other hand the conduct of the respective Police Officers is corrupt, immoral and criminal and descends way below the minimum standard of a civilized society let alone that of a disciplined Police Force.

The Court has in recent times entered judgments in several cases in which the fundamental rights guaranteed by the Constitution for the equal protection of the law (Article 12(1); freedom from arbitrary arrest and detention, (Article 13(1) and (2) and from torture (Article 11) have been infringed in instances of false and fabricated arrests by the Police. These cases are from different parts of the country. To cite, some; SC(FR) 559/2003 is from Dambulla, S.C (FR) 297/2007, is from Colombo and this case is from Puttalam. The problem of infringements is thus widespread. Only a few of the persons affected by these violations have the wherewithal and take the trouble to invoke the jurisdiction of this Court. Many persons pay up and suffer in silence leading to a general feeling of hopelessness, disbelief in the Rule of Law and the guarantee of fundamental rights. In the circumstances it is incumbent on this Court being vested in terms of Article 118(a) and 126(1) of the Constitution with the sole and exclusive jurisdiction for the protection of fundamental right of the People to make directions for the prevention violations of fundamental rights in respect of certain classes and categories of infringements, in terms of Article 126(4) of the Constitution.

These instances of infringements relate to alleged offences under specific statutes such as the Motor Traffic Act, Excise Ordinance, the Forest Ordinance and the like, in which investigations do not stem from any complaint of a victim of an offences. The statistics of our Magistrate's Courts reveal that the majority of cases are of statutory offences. In instances where complaints are made of offences in respect of person or property (especially in respect of house breaking, robbery, theft and the like) many investigations end as "accused unknown" and classified as "C3".

Where complaints are made to the Court by persons who are accused of having committed offences under the Penal Code, of violations of fundamental rights by the investigating Police Officers, the Court has invariably adjourned hearing of such matters until the criminal cases against the Petitioners are concluded. Thus attempts to thwart criminal prosecutions by recourse to the fundamental rights jurisdiction of this Court

have been prevented and such investigations and prosecution offences have been safeguarded wherever such course of action is warranted.

The problem is in respect of statutory offences. It appears that respective Police Stations cover up their lapses in investigating complaints of victims of offences by filling up statistics of detections of statutory offences. This leads to the process of "collection of cases" which the Petitioners have graphically described and which is borne out by the schedule of prosecutions produced by the OIC himself. It is manifest that the Petitioners have been sustained in the business of selling UML by the Police themselves. The periodic and alternative prosecutions for possession of limited quantities of UML has ensured that they remain in business and earn sufficiently to pay the bribes and the fines. Such arrangements can descend to the pursuit of sexual favours (as has happened in this instance) violence and other forms of criminality. In the circumstances the officers who have now been promoted to higher ranks in large numbers should be invested with responsibility to study the patterns of criminality in the respective areas of supervision, particularly of "collection of cases" and the failure to investigate genuine complaints of victims of offences and to arrest and apprehend the offenders. Commendations and rewards should not be on statistics of detections but on the successful prosecutions of offenders and the general level of law and order within a particular Police area.

As regards purported detections under the Motor Traffic Act that do not stem from any complaint of a victim of an accident a similar process of "collection of cases" is operative as revealed in the facts of SC(FR) 297/2007. It was noted in that case that unauthorized "No Parking" boards have been erected purportedly by the "SSP Traffic" and fines recovered illegally from hapless motorists. Such an illegal process would invariably be riddled with corruption especially because of the increased amount of "on the spot fines" permitted now. These unauthorized boards have now been removed on a direction of this Court and the people have been assured of the equal protection of the law and also relieved of harassment that stem from unlawful Police action.

Another area of flagrant violation of the guarantee of equal protection of the law relates to the imposition of speed limits on highways. It appears that sign boards have been erected on different highways without specifying the officer by whose authority such boards have been erected. It is to be noted that the applicable speed limits have been laid down Section 140(1) and (2)

of the Motor Traffic Act. The original provision was repealed by Act No. 21 of 1981 and substitute with a new provision on the metric system which reads as follows:

"140(1) A motor coach or a lorry shall not be driven –

(a) on any highway within an urban area at a greater speed than thirty-two kilometers per hour, or

(b) on any highway outside an urban area, at a great speed than fifty-six kilometers per hour;

(2) A land vehicle shall not be driven on any highway at a greater speed than twenty-four kilometers per hour;

(3) A motor tricycle or a motor tricycle van shall not be driven on any highway at a greater speed than thirty- two kilometers per hour;

(4) A motor vehicle of any class or description to which subsection (1),

(2) and (3) does not apply shall not be driven -

(a) on any highway within an urban area at a greater speed than fifty-six kilometers per hour, or

(b) on any highway outside an urban area at a greater speed than seventy -two kilometers per hour"

Thus the speed limit in terms of sub-section (4) for a motor car, van or motor cycle on any highway outside an "urban area" is 72 kilometers per hour and within an urban area is 56 kilometers per hour. In respect of a motor coach (bus) or lorry these limits are reduced to 56 kilometers per hour and 36 kilometers per hour, respectively.

The definition of the phrase "urban area" as contained in section 240 of the Act was vague and an amendment was effected by Act No. 40 of 1984, in terms of which an "urban area" would be the area within the limits of a Municipal Council or an Urban Council.

Section 141(1) of the Motor Traffic Act as amended by Act No. 21 of 1981 empowers the Minister to make regulations imposing more stringent speed limits. A Regulation has been made by the Minister dated 7.1.1995 and published in the Government Gazette 853/14 dated 13.1.1995. This Regulation lays down speed limits with regard to certain highways with reference to "A" and "B" numbers. It is essential that if any law is to be operative its content should be made known to the People. Such notification is necessary since the Minister has purported to reduce the limits laid down by the law and has used a classification of roads that has not been made under any law. In any event the reduction in respect of motor cars and the like is only by 2 kilometers per hour to 70 kilometers. In respect of certain restricted areas which appear to coincide with busy commercial areas it is reduced to 50 kilometers per hour. If the regulation is to be implemented the appropriate authority in terms of Section 164 of the Motor Traffic Act should cause proper sign posts to be erected in terms of Section 2.2.5 and 2.2.6 of the Regulation dated 9.1.1987 exhibiting the applicable limits. The erection of unauthorized sign posts appears to have taken place in the absence of such action being taken according to law. The enforcement of a law in such errant manner is a negation of the fundamental right to the equal protection of the law guaranteed by Article 12(1) of the Constitution. The consequences of such illegal enforcements are serious since the penalties have been drastically increased. The offence of speeding as contained in Section 140 of the Motor Traffic Act is punishable under the general penalty clause in Section 224. The punishment which was a fine of Rs. 100/= for the first offence and Rs. 200/= for any subsequent offence was increased in 1984 to Rs. 250/= for the first offence and Rs. 500/= for the second and Rs. 750/= for the third or subsequent offence.

In 1981 as an alternative to a prosecution an "on the spot fine" of Rs. 50/= was provided which was increased in 1984 to Rs. 200/=

The drastic increase referred to above was effected by Act No. 12 of 2005 whereby the fine after conviction was increased to an amount of not less than Rs. 1000/= and not exceeding Rs. 2000/= for the first conviction. The "on the spot fine" was also increased to Rs. 1000/=. It has to be noted that this increase necessarily leaves room for corruption. Be that as it may the comparatively drastic penalties require that the law be enforced only within its applicable limits. The sign posts that have been erected on highways purport to display speed limits as low as 50 kilometers per hour for all

vehicles. Different sign posts are seen at different places leaving it wide open for Police Officers on the roads to make recoveries from hapless motorists. In the circumstances a direction is made in terms of Article 126(4) of the Constitution for the removal of all sign posts that have been erected displaying incorrect speed limits. The Inspector General of Police is further directed to notify all relevant officers that the due exhibition of signs indicating the applicable limit and the point at which such limitation would cease is mandatory in terms of Regulation 6(2)(b) of the Regulations dated 9.1.1987.

The application is allowed and a declaration is granted that the fundamental rights of the Petitioners guaranteed by Article 11 and 13(1) of the Constitution have been infringed by executive or administrative action.

The 4th Respondent is directed to pay personally a sum of Rs. 100,000/= as compensation to the Petitioners. The 3rd Respondent will pay a sum of Rs. 50,000/= to the Petitioners as compensation. State to pay a sum of Rs. 50,000/= as costs to the Petitioners.

Registrar is directed to send copies of this Judgment to the Secretary Ministry of Defence and Inspector General of Police for compliance with the direction made in terms of Article 126(4) of the Constitution.

Sarath N.Silva C.J. Chief Justice

Hon. Thilakawardena J., I agree Judge of the Supreme Court

Hon. Masroof J., I agree. Judge of the Supreme Court

11:00 PM Friday April 30th, 2010