

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

In the matter of an application under and in terms of Article 126 read with Article 17 of the Constitution.

**SC (FR) Application No. 149/2006**

O.K.D.Kithsiri Dharmawardana,  
604, Thanthirigewatta, Ganegoda.

**Vs.**

1. Constable Mahinda Gunathilaka, (13756)
2. Constable Jayantha Bandara, (38538)
3. Constable L.H.Chanaka Lakmal,
4. Constable K.A Sisira Punnyasiri Kumaradasa.
5. Constable A.A. Thushara Priyantha Amarakoon.
6. Police Assistant K.P Ruwan Indika
7. Constable M.M. Saman Priyantha
8. Officer in Charge  
All of Police Training College, Elpitiya,
9. The Inspector General of Police  
Police Headquarters, -Colombo 01.
- 10 Hon. Attorney General  
The Attorney General's Department  
Colombo 12.

## Respondents

BEFORE His Lordship Hon. Sarath N. Silva, C.J

Hon. Shiranee Tilakawardene, J.

Hon. N.E. Dissanayake, J

### COUNSEL

Ms. Sharmanie Guneratne for  
the Petitioner.

Viran Corea for the 1<sup>st</sup>, 2<sup>nd</sup> and 7<sup>th</sup> respondents

Dr. Jayantha de Almeida Guneratne PC with Maduranga Ratnayake for  
the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents

Rajitha Perera SC for the 8<sup>th</sup>, 9<sup>th</sup>, and 10<sup>th</sup> Respondents.

ARGUED ON 18.05.2006 and 01.09.2006

WRITTEN SUBMISSIONS ON OR BEFORE 09.10.2006 :

**DECIDED ON : 05.04.2007**

### Dissanayake, J

The petitioner instituted this application against the 1<sup>st</sup> to 5<sup>th</sup> and 7<sup>th</sup> respondents who were police constables and the 6<sup>th</sup> Respondent who was an Police Service assistant attached to the Elpitiya Police Training College for alleged having assaulted him mercilessly in public and thereby treating him in an inhuman and degrading manner. He also complained that he was deprived of equal protection of the law by the 1<sup>st</sup> to 7<sup>th</sup> respondents who were police officers and that thereby the petitioner's fundamental rights guaranteed under Article 11 and 12 (1) of the Constitution had been violated.

Court had granted leave to proceed to the petitioner under Article 11 and 12 (1) of the Constitution.

The facts relevant to this application are briefly as follows:

The petitioner is the owner of a three-wheeler. He was also engaged in a part time business of selling garments with his sister. He along with other three-wheeler drivers who operated the area parked their vehicles at Katapola junction which is situated near the Police Training College at Elpitiya. The 1st to 5th and 7th respondents were police constables and 6th respondent was a police service assistant attached to the police department. They were attached to the Police Training College, Elpitiya. The 8th respondent was the officer in charge of the Police Training College.

The relationship between the three-wheeler drivers who used to park their vehicles at Katapola junction, and officers of the Police Training College was not cordial. The reason for the strained relationship between them was that the officers of the Police Training College were in the habit of not paying their fares after hiring the three-wheelers for their errands.

On the 25<sup>th</sup> March 2006 at about 6p.m, whilst the petitioner was at the Katapola junction, awaiting a hire, the 1st respondent had come on a motor bicycle and had requested the petitioner to come at 9p.m to the Police Training College to go on a hire.

The petitioner had refused this request on the basis that he had prior engagement at 9p.m. Thereafter the 1st respondent had taken down the petitioner's mobile phone number and left.

Later at about 9 or 9.15p.m, the 1st respondent had telephoned the petitioner and had requested the petitioner to come to the training College to go on the said hire. The petitioner had declined once again saying that he was engaged in another hire and had politely stated that he was not in a position to conform to his request. Then the 1st respondent had stated "is that so" in a threatening manner and had disconnected the line.

Thereafter around 9.30p.m the petitioner had driven his three-wheeler to the Police College to meet the 1st respondent with the idea of taking him on his hire. However by that time the 1st respondent had not been there.

On the 27<sup>th</sup> of March 2006 at about 6p.m , the 1st and the 2nd respondents had come on a motor bicycle to the Katapola junction three wheeler park and had attempted to assault him after abusing him. The petitioner had been saved from being assaulted at that time due to the intervention of the other three wheeler drivers. Then when the petitioner had stated that he will complain to the Officer-in-Charge of the Training

College (8th respondent) , to which the 1st respondent had stated that O.I.C was one of them and had further stated that he will see to it later. So saying they had left the place.

Later on around 6.45p.m, that day the 1st to 7th respondents had come back with a group of officers and trainees of the Police Training College. The 1st respondent has walked up to the petitioner and had caught him by the collar of his shirt and had inquired whether they were thugs. He further had stated that the petitioner would not be allowed to operate his three-wheeler there in the future.

At this point of time, the 2nd to 7th respondents along with several of the rest of the crowd had set upon the petitioner and had pushed him on to the ground and had assaulted him mercilessly. The petitioner had tried to free himself and run away several times. However his attempts at escape had not been successful. He had been subjected to further assault. He had been given blows to his chest and legs preventing him from escaping.

Thereafter he had been picked up and thrown into a jeep which had been driven by the 4th respondent. By this time other villagers had gathered round the vehicle. On inquiry being made by the villagers and the other three wheeler drivers as to where the petitioner was being taken, they had been told that they could get the petitioner out from the Courts.

He was taken in the jeep to the Police Training College first where he had been subjected to further abuse. Subsequently he had been taken to the Elpitiya Police Station.

The petitioner and the respondent were asked to wait for the officer-in-Charge of Elpitiya police since he had not been there at the Police Station. The petitioner was asked to sit on a bench until the arrival of the said officer. He had been seated on a bench in severe pain and had been asked to describe how he had come by the injuries by the officers at the police station. When he had been trying to narrate his story as to how he had been assaulted, however the respondents had disturbed his narration and had stated that the petitioner was culprit who had assaulted the respondents.

Subsequently the Officer-in-Charge of the police station had arrived accompanied by the 8th respondent. The petitioner on being asked had narrated his version of how he had received the injuries in the presence of

the Officer-in-Charge and the 8th respondent. However his statement had not been recorded.

By this time the villagers and relatives of the petitioner including his mother and sister had arrived at the police station and on the request of his mother, the petitioner had been released to his mother who had admitted him to Elpitiya District Hospital. The District Medical Officer had examined him had directed that he be transferred to the Karapitiya Teaching Hospital. He had been transferred to the Karapitiya Teaching Hospital that night and had been warded there for treatment.

He had been examined by the Judicial Medical Officer of the Karapitiya Teaching Hospital on 28.03.2006. Later, the Medico Legal Report pertaining to his injuries had been issued by the Judicial Medical Officer. This report has been produced marked P2A by the petitioner. His diagnosis ticket has been produced marked P2B. The diagnosis ticket indicated that he had been warded in that hospital from 28-03-2006 to 06-04-2006 undergoing treatment for soft tissue injury to the Thoracolombar region of back, and that the shape of the injury had been indicated as a triangular one by drawing a triangle on the diagnosis ticket.

The Medico Legal Report (P2A) indicated that the petitioner had an abrasion and a contusion his right humerus (upper arm). He further had a couple of abrasions and contusions on back of his chest. He also had tenderness over the left side of his chest. He further had retention of urine which had been treated by inserting a catheter.

The short history recorded by the Judicial Medical Officer who examined the petitioner had been that he had been assaulted with hands and clubs by a group of trainees of the Police Training College.

The petitioner in his petition had correctly adverted to the identities of the 1st to 7th Respondents in his petition as persons attached to the Police Training College of Elpitiya. However he may have not known as to in what capacity they were attached to the Training College. Therefore his describing his assailants as trainees from the Training College to the J.M.O. is understandable.

In letter dated 06.04.2006 (P4) addressed to the Chairmen, Human Rights Commission with copies to the Chairmen Police Commission, I.G.P., D.I.G-Galle, S.P. – Galle, A.S.P. (Legal Branch), Police Headquarters, a few days

later the petitioner had described the 1st to 7th respondent by their names. This indicates that the petitioner has had no difficulty in identifying his assailants.

Coming back to the J.M.O's report (P2A) at page 3 the J.M.O had expressed an opinion that the injuries could have been caused by blunt force. He had further stated that the pattern of the injuries was compatible with the given history.

The 1st respondent by his affidavit and the 2nd and 7th respondents by their joint affidavit tendered by way of objections had admitted the following facts. They have admitted that since the petitioner has not heeded the request of the 1st respondent to come to the Training College at 9 p.m, on 26-03-2006, the 1st and 2nd respondents had gone to the Katapola junction three wheeler park and had advised the petitioner. They further had stated that at that stage the other three wheeler drivers had hooted at them. Thereafter that night the petitioner and three other three wheeler drivers had come to the Police Training College and had virtually threatened P.CC Ravindran and Rasika who had been on duty at the gate to the effect that the 1st and 2nd respondents will not be allowed to come out of the gates of the Training College. This alleged threat made by the petitioner is said to have been recorded by P.CC Ravindran and Rasika. However the respondents had failed to produce a copy of such written complaint or entry in any Register or Book to this Court.

The 1st respondent has admitted going to the three wheeler park at 6.30.p.m on the day of the incident to inquire from the petitioner as to why he had made such threats. According to the 1st respondent, the 7th respondent too had alighted from a bus and come there at that time. He had further stated that they advised the petitioner that he should desist from uttering threats to them. However the petitioner had persisted in doing so. According to the 1st respondent thereafter the petitioner along with the other three wheeler drivers had started a fight with them. He had further stated that a large crowd had collected around them at that time and the petitioner may have received injuries in the melee. However the petitioner was seeking to pin the responsibility on him.

The 3rd and the 6th respondents by their respective affidavits filed by way of objections have denied that they took part in the assault. They had stated that they had been assigned night duty on 27th of March 2006 and

they were both in the barracks of the Training College in the company of each other, getting ready to go on night duty. However they have failed to produce an extract of the night duty order book maintained by the Officer-in-Charge which would have corroborated this position. As an alternative they could have produced an extract of the Routine Information Book or the Information Book to show that they had been at the barracks that evening.

Documents 3R2 to 6R2 do not help the 3rd and 6th respondents to establish their position.

The 4th and 5th respondents had by their affidavits tendered by way of objections stated that they have been directed by the 8th Respondent to purchase food items for the police mess and had left for Ahungalla in van on 27.03.2006 at about 4.30.

However they admit that they had reached the Katapola junction on their way back at about 6.55.p.m. They have stated that they were forced to stop their vehicle at Katapola Junction as a large crowd of people were blocking the road.

The 4th and 5th respondents had stated further that the petitioner had come rushing towards the van and had pleaded with them to take him to the police station. Then the 1st and the 7th respondent too had come and got into the vehicle and 4th respondent had driven them to the Police Station, the 5th respondent too had accompanied him.

The petitioner in his counter affidavit had refuted version of the respondents as to the manner in which the petitioner had received injuries.

The petitioner had described in detail the incident that happened few days later in a written statement made to the Police i.e. on the 6th of April 2006. He had described the manner in which he had been set upon by the 1st to 7th respondents and assaulted him with hands and clubs.

The 1st to 7th respondents has not been able to offer a plausible reason as to why the petitioner should foist such serious charges on the 1st to 7th respondents falsely.

The respondents being Police Officers have conducted themselves in a manner unbecoming of the position held by them. The respondents have been in the habit of defaulting payment of fares to the three wheeler drivers

of Katapola junction. This had led to a situation where there was reluctance on the part of the three wheeler drivers to respond to call of hire by the respondents, who were known to be Police Officers attached to the Elpitiya Police Training College. The Petitioner and the other three wheeler drivers had a legitimate apprehension that they would not be able to collect their due fare by taking officers of the Training College in their three wheelers. Therefore they had the right to refuse to go on such hires. The law enforcement officers must set an example and conduct themselves in an exemplary manner. They must not abuse their powers as Police Officers. they cannot be above the law of the land and not pay their dues. And above all they should not assault people for not obeying their unreasonable and unjustified requests. The facts and circumstances of this case also clearly fall within abuse of power by police officers.

Even assuming that the version of the respondents that the petitioner had received injuries as a result of a fight that had ensued between some villagers and the three wheeler drivers is true, one would expect the other three wheeler drivers and some villagers too, to have sustained injuries. It is interesting to note that no one else expect the petitioner had received injuries in the melee.

Assuming that the petitioner has been set upon by some villagers it was the primary duty of the respondents as police officers to have used utmost efforts to prevent crimes or offences being committed. The respondents had not taken any steps to stop the assault on the petitioner or to apprehend the assailants and produce them before Elpitiya Police.

It is of significance to advert to section 56 of the Police Ordinance at this stage. Section 56 of the Police Ordinance provides;-

Every Police officer shall for all purposes in this Ordinance be considered to be always on duty and shall have powers of a police officer in every part of Sri Lanka.

It shall be his duty-

a) to use best endeavors and ability to prevent all crimes, offences and public nuisances



Failure to act in such circumstance have been considered culpable now and has been pronounced judicially that such action constitute a denial of equal protection.

In ***Fauz Vs Attorney General (1999) 1 SLR 372*** Perera, J quoting the American decision in *Lynch Vs U.S.A 189 F 2d 476 (5th CIR 1951)* has stated" there was a time when the denial of equal protection of the law was confined to affirmative acts but the law now is that culpable official in action may also contitute, denial of equal protection".....and proceeded that the police officers were liable for executive administrative inaction"

Upon a careful consideration of the evidence, I am satisfied that on 27.03.2006 the 1st to 7th respondents did assault the petitioner and thereby subjected him to inhuman and degrading treatment. I am of the view that the assault by the respondent in public, in the presence of petitioner's friends and colleagues grossly humiliates the individual before other and such treatment is violative of the petitioner's rights under article 11 of the Constitution.

For a discussion of what constitutes "inhuman treatment" Vide the judgment of Dr.Amarasinghe, J in ***W.M.K.Silva vs Chairman Ceylon Fertilizer Corporation (1989) 2 SLR 393 at 404-405***. Vide also the commentary of Article 3 of the European convention on Human Rights by P.J. Duffy in the International and comparative Law Quarterly Vol. 32 April 1983 p. 316. The said article which is similar to our Article 11 provides; "No one shall be subjected to torture or to inhuman or degrading treatment of punishment. At page 328, the author cites a passage from the judgment of the European Court of Human Rights in ***Tyrer Vs United Kingdom***, where the Court observed that one of the main purposes of Article 3 is to protect a person's dignity and physical integrity. The treatment meted out to the petitioner by the respondents has denied him of that protection.

The petitioner is entitled to equal protection of the law, a right that has been bestowed on the people by Article 12(1) of the Constitution. The above right of the Petitioner too had been violated as a result the actions of the 1st to 7th respondents who are Police Officers.

I declare that the fundamental rights of the Petitioner guaranteed to him under *Article 11 and 12 (1) of the Constitution* have been violated by causing inhuman and degrading treatment by the 1st to 7th Respondents.

The 8th Respondents who was the officer in charge of the police training college under whom the 1st to 7th Respondents were on duty and the 9th Respondent who is the head of the police department are liable for the aforesaid actions of the 1st to 7th Respondents.

I order the 9th Respondent who is the Head of the Police Department to pay sum of Rs. 25,000/- as compensation to the petitioner.

JUDGE OF THE SUPREME COURT

**Sarath .N. Silva CJ**

I agree.

CHIEF JUSTICE

**Shiranee Tilakawardene, J I agree.**

I agree.

JUDGE OF THE SUPREME COURT