

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

In the matter of an application under Article 126 read with Article 17 of the Constitution

**S.C.F.R. Application No. 553/2002**

Brahmanage Arun Sheron Suranga Wijewardana  
444B, Batangama South,  
Kandana

**Petitioner**

**Vs.**

Priyasen Ampawila  
Inspector of Police,  
Criminal Investigation Department,  
Colombo 01

Anura Silva  
Sub Inspector of Police  
Criminal Investigation Department,  
Colombo 01

Roshan Massimbula  
Criminal Investigation Department,  
Colombo 01

Dharmalatha  
Woman Sub Inspector of Police  
Criminal Investigation Department,  
Colombo 01

Nimal Kulatanga  
Superintendent of Police  
Criminal Investigation Department,  
Colombo 01

Director  
Criminal Investigation Department,

Colombo 01

Inspector General of Police  
Criminal Investigation Department,  
Colombo 01

Hon. Attorney General  
Attorney General's Department  
Colombo 12

**Respondents**

**BEFORE**

S.N. Silva, C.J.  
E. Dissanayake, J.  
Raja Fernando, J,

Saliya Peiris for the Petitioner

D.S. Wijesinghe, P.C. with  
Sanjeewa Jayawardena for  
1st to 4th Respondents

K.A.P. Ranasinghe S.C.  
For 5th to 7th Respondents

**WRITTEN SUBMISSION**

**TENDERED:**

by the Petitioner on: 02.11.2004

by the 1st, 2nd, 3rd &  
4th Respondents on: 25.11.04

**DECIDED ON:** 27.05.2005

**RAJA FERNANDO, J.**

**On 19.9.2002 the Petitioner was granted leave to proceed by court for the alleged infringement of his rights under Articles 11, 13(1) and 13(2) of the Constitution.**

It was the complaint of the Petitioner that he was the Branch Manager of the Gampaha Branch of the Ceylinco Shriram Capital Investment Company (PVT) Ltd. from 1st April, 2001 and that his services were terminated by the Company in June 2002 over an alleged fraud of Rs. 1.5 million.

It is the Petitioner's contention that he left for Singapore on 21st June 2002 seeking employment.

When in Singapore he has been informed that the Criminal Investigations Department had visited his residence on several occasions looking for him and therefore he decided to return to Sri Lanka and surrendered to the C.I.D. on 26.8.2002.

**The petitioner has come to the C.I.D. on 26.8.2002 around 9:45 a.m. along with his uncle Leonard Nouis and attorney-at-law Jagath Abeynayake and surrendered to the 5th Respondent Nimal Kulathunga Superintendent of Police.**

The affidavits of the attorney-at-law Jagath Abeynayake marked P1; Leonard Noumis P2 confirm the fact that the Petitioner surrendered at 9:45 a.m. on 26.8.2002. the 5th Respondent has not filed objections before court and as such there is no denial that the Petitioner surrendered to the C.I.D. at or about 9:45 a.m. on 26.8.2002.

**After the surrender of the Petitioner to the 5th Respondent, the Petitioner had been handed over to the 1st and 4th respondent and the 1st respondent has commenced interrogating the Petitioner about 10:30 a.m. with regard to the complaint by the Management of Ceylinco Shriram. Around 1:30 p.m. the 2nd Respondent has assaulted the Petitioner with a PVC pipe on his fingers. According to the Petitioner when he was being assaulted by the 2nd Respondent the 1st, 3rd and 4th respondents have been present. Thereafter he has been assaulted by the 1st, 2nd and 3rd respondents. The 2nd Respondent is alleged to have forced the Petitioner to put his face into the commode in the toilet and flushed the toilet. The Petitioner has been produced before the Acting Magistrate about 8 p.m. on 27th August, 2002 and remanded.**

**At the same time, the petitioner was produced before the acting Magistrate the attorney-at-law who appeared for the Petitioner had informed the Magistrate of the injuries on the Petitioner.**

**The acting Magistrate has made order that the petitioner be produced before court on 28.8.2002 and 28.8.2002 the permanent magistrate had ordered that the Petitioner be produced before the J.M.O. Colombo North and further remanded the Petitioner until 2nd September 2002.**

**The Prison authorities have produced the Petitioner before the J.M.O. on 30th August 2002 and the Petitioner has been admitted to the hospital.**

**It is the complaint of the Petitioner that he was unable to pass urine for about four days and that his left hand was swollen, his genitals were swollen and that his legs and buttocks were swollen and**

**further that he suffered constant headaches as a result of the assault by the aforementioned respondents.**

**It is the submission of the Petitioner that there was insufficient material for the Police to arrest/detain him and that he was not informed of the charges at the time of his arrest also that he was kept in Police custody under arrest from 9:45 a.m. on 26.8.2002 until 8:00 p.m. on 27.8.2002 a period of 34 hours.**

**Therefore the Petitioner submits that his fundamental rights under Articles 11, 13(1) and 13(2) of the Constitution have been violated by the 1st to 7th respondents.**

The 1st to 4th respondents have filed their objections together with documents R1, R23; 2R1 - 2R12; 3R1; 4R1 - 4R6.

The 1st Respondent in his objection states that he was investigating into a complaint made by the General Manager, Ceylinco Shriram Capital management Services Co. against the Petitioner that the Petitioner who was the manager of the Gampaha Branch of the Company had defrauded the company of a sum of Rs. 1.5 million. After the statements of some of the witnesses were recorded a report was filed in the Magistrate's Court of Gampaha on 10.06.2002.

On 27.6.2002 a further report has been filed in the Magistrate's Court and an order has been obtained from the Magistrate restraining the Petitioner from overseas travel and a warrant of arrest upon arrival in Sri Lanka.

Further in the objections of the 1st Respondent it is stated that the criminal investigations department was in touch with the Interpol in Singapore and Nairobi with a view to apprehend the Petitioner who was by then said to have left Sri Lanka to Singapore. It is the position of the 1st Respondent that the Petitioner was on the run in order to evade apprehension.

In the teeth of the above submission the 1st Respondent states that after the Petitioner surrendered to the C.I.D on 26.8.2002 at 9:45 a.m. and when their investigations had by then revealed a fraud amounting to Rs. 40 million, did not arrest the suspect petitioner until 9 p.m. on 26.8.2002. The 1st Respondent also states in his affidavit that he has cause to believe that one of the reasons for the Petitioner to surrender to the C.I.D. was that the Petitioner was severely assaulted by several investors of Ceylinco Shriram Services Limited.

It is unbelievable that the CID officers who arrested the Petitioner at whatever time failed to make note of a single injury on the Petitioner at the time of his arrest. On the contrary the affidavits of the 4th Respondent who arrested the Petitioner and the person who took charge of the petitioner from her states that they examined the Petitioner for external injuries but found none. To say the least this assertion of the 1st, 2nd, 3rd and 4th respondents is a figment of their imagination.

For the reasons stated about, I disbelieve the averments of the 1st, 2nd, 3rd and 4th respondents regarding assault by third parties.

**According to the Medico legal report submitted by the J.M.O. Dr. Ananda Samarasekera he has examined the Petitioner on 30.8.2002 on the orders of the Magistrate, Gampaha and has found the following external injuries:-**

- 1. contusion 1cm x 2cm oval in shape in the vertex of the skull, midline. It is bluish in colour;**
- 2. contusion 3 cm x 1 cm oval in shape in the posterior aspect of the base of the index fingers.**
- 3. contusion 14 cm x 9 cm oval in shape in the left buttock. The centre of the contusion is placed 8 cm left of the mid line and 19 cm below the iliac crest. It is bluish in colour.**
- 4. contusion 8 cm x 11 cm oval in shape placed in the back of the rights knee joint.**
- 5. Swelling and tenderness in the left scapular area.**
- 6. Swelling and tenderness in the lower back and buttock of both sides from a level of 8 cm above the iliac crest.**

**His abdominal examination has revealed distended tender bladder.**

**The JMO has expressed his opinion that all injuries are of blunt force type and could have been sustained in the manner and dates described in the history given by the petitioner.**

**The history given to the J.M.O. by the Petitioner was that he was assaulted by Police officers on 26.8.2003 and that he was given blows to his hand, back, buttocks and legs with a s-lon pipe filled with some wooden substance. He was kicked on the abdomen and groin and he was order to lift a table from his back while a person was seated on it.**

**On the material filed before this court it is evident that the Petitioner has sustained the injuries described by the JMO in his report whilst in the custody of the 1st to 4th respondents.**

It was the position of the 1st Respondent that he was at an inquiry in the same building between 9:30 and 3 p.m. on the day of the alleged assault.

According to the petitioner he was assaulted for the first time at 1:30 p.m. by the 2nd Respondent and the 1st, 3rd and 4th respondents were present and thereafter the 1st, 2nd and 3rd respondents assaulted him.

Considering the fact that the inquiry attended by the 1st Respondent was also held in the same building where the Petitioner was allegedly assaulted it cannot be ruled out that the 1st Respondent had the opportunity to be there when the petitioner was assaulted on 26.8.2002.

It is further submitted by the 1st to 4th respondents that they did not arrest the Petitioner at 9:45 a.m. but arrested him after recording a statement around 9 p.m. on 26.8.2002. on the documents filed by the

respondents themselves they had obtained a warrant from the Magistrate for the arrest of the petitioner on 27.6.2002 and was in contact with Interpol to have the petitioner arrested. Further it is clear that the Petitioner was not permitted to move out of the CID building during the period 9:45 a.m. on 26.8.2002 to 8 p.m. on 27.8.2002 when he was produced before the Magistrate.

As held by Fernando J in the case of *Sirisena vs. Perera*, 1991 2 SLR 97, whether a person has been arrested depends on whether he has been deprived of his liberty to go where he pleases.

(*Namasivayam vs. Gunawardene* 1989 1 S.L.R. 394 and *Piyasiri vs. Fernando* 1988 1SLR 173)

**I conclude that the Petitioner has been arrested at 9:45 a.m. on 26.8.2002 and detained until 8.00 p.m. on 27.8.2002 for a period in excess of the period permitted under the law (Section 37 of the Criminal Procedure Code).**

According to the affidavit of the 4th Respondent the Petitioner has been handed over to her by the 5th Respondent and it was she who formally arrested the Petitioner after recording his statement.

At the time of her recording the statement of the Petitioner and arresting him, the 4th Respondent has not observed any externally visible injuries.

The 4th Respondent has also annexed marked 4R6 an affidavit from P.S. 2168 Nimal to whom she handed over the Petitioner. According to P.S. 2168 Nimal he has examined the Petitioner before detaining him and he too has not observed any external injuries.

**At the time he was produced before the learned Magistrate that Petitioner has complained of assault and when the Petitioner was examined by the J.M.O. he has found injuries both internal and external. Therefore I accept the version of the petitioner and reject the affidavits filed by the 1st to 4th respondents and the supporting affidavit of PS 2168 Nimal with regard to the injuries on the Petitioner. Their affidavits are self serving prepared for the purpose of this case to get over their responsibility.**

On the material placed before this court there was sufficient evidence for the respondents to have arrested the petitioner. In fact they had obtained a warrant for the arrest of the Petitioner from the learned Magistrate on 27.6.2002 two months prior to his surrender. **Therefore I find that there has been no violation of the Petitioner's rights under article 13(1) of wrongful arrest.**

**However, since his arrest which goes to the time he surrendered to the CID at 9:45 a.m. on 26th August 2002 he has been under detention until he was produced before the learned Magistrate 8 p.m. on 27th August 2002 in excess of the period authorised by law and hence his rights under Article 11 of the Constitution has been violated.**

With regard to the injuries found on the petitioner it is manifest on the affidavits of the Petitioner,

attorney-at-law Jagath Abeynayake marked P1; Leonard Nonis together with the J.M.O.s report that injuries were caused during the period he was in Police custody and the assault on the Petitioner was by the 1st, 2nd and 3rd respondents.

**Accordingly I hold that the 1st, 2nd and 3rd Respondents have violated the rights of the Petitioner under Article 13(2) of the Constitution.**

**Therefore I conclude that the 1st, 2nd and 3rd respondents have violated the rights of the Petitioner under Articles 11 and 13(2) and order the 1st Respondent who is the senior officer in charge of the investigation and assaulted the Petitioner pay personally Rs. 5000/- to the Petitioner.**

**I also order the 2nd Respondent who has inflicted most of the injuries to personally pay Rs.5000/- to the Petitioner.**

**The 3rd Respondent who has associated himself with the assault on the Petitioner is ordered to pay personally Rs. 2000/- to the Petitioner.**

**The 1st to 3rd respondents being Police Officers the State has to take responsibility for their actions in the course of their duty. State is directed to pay the Petitioner the costs of this application.**

**The amounts ordered to be paid by the respondents to be deposited in Court within three months of this order.**

JUDGE OF THE SUPREME COURT

S.N. SILVA, C.J.

CHIEF JUSTICE I agree.

N.E. DISSANAYAKE, J.

JUDGE OF THE SUPREME COURT

I agree