

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

In the matter of an application under Article 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka

- 1) S.C. (FR) Application No. 966/97 –
- 2) SC(Application) No. 967/97
- 3) SC(Application) No. 968/97

1. Ubeysinghe Weerabaddana
Tissamahar amaya.

2. Ubeysinghe Weerabaddana
Arachchige Kusumsiri,
529, Kuda Gammah 11,
Weerawila.

3. Ubeysinghe Weerabaddana
Arachchige Samantha Priya
Kelum Ubeysinghe,
'Saman' 158th Mile Post,
Andella, Weligatta,
Tissamahar amaya.

Petitioners

Vs

1. Inspector of Police, Korallalage, Police Station, Wattala.
2. Police Officer Ajith, Ela Kanda Police Post, Police Station Wattala.
3. Traffic Sergeant Premaratne, Police Station, Wattala,
4. Police Sergeant Keerthi, Crimes Branch, Police Station, Wattala.

5. W. B. Rajaguru, Inspector General of Police, Police
Headquarters, Colombo 1.

6. The Attorney General, Attorney General's Department,
Colombo 12.

Respondents

BEFORE: S.N. Silva, C.J. Shirani A. Bandaranayake, J. Edussuriya, J.

COUNSEL: K. Tiranagama for petitioners
Dr. Jayatissa de Costa with D.D.P. Dasanayake
And Asoka Fernando for 1st to 3rd respondents
Riyaz Hamza, SC, For 5th and 6th respondents

ARGUED ON: 03.05.2001

WRITEN SUBMISSIONS TENDERED ON

For the petitioners : 06.06.2001

For the respondents: 15.06.2001

DECIDED ON: 01.10.2001

Shirani A Bandaranayake, J.

The petitioner in SC (Application) No.966/97 (hereinafter referred to as the 1st petitioner) was a mechanic attached to Chandika Industries at Tissamaharama. Around 11.30 p.m. on 05th October 1997, he along with the petitioner in SC (Application) No.967/97 (hereinafter referred to as the 2nd petitioner) who is the cousin of the 1st petitioner, were waiting near the latter's house for a bus to proceed to Colombo. The purpose of this visit was to attend to a passport matter of the 2nd petitioner. At that time a van, bearing registration No.59-7101, stopped near the 2nd petitioner's house and the driver of the van, one Samson, who was known to the 2nd Petitioner, offered a lift to Colombo, for both petitioners. There were 4 other unknown persons in the vehicle who later got down near the petrol station at Embilipitiya. On their way to Colombo, Samson offered to help the 2nd petitioner with regard to his passport matter. Around 6.00 a.m. on 06th October, Samson dropped the 1st petitioner near the Kiribathgoda junction and proceeded with the 2nd petitioner. All three of them agreed to meet on the 07th at the 1st petitioner's younger brother's work place at Pannipitiya. However, as Samson and the 2nd petitioner did not come to Pannipitiya on the 07th as promised, the 1st petitioner returned to Weerawila on the 10th afternoon. While the 1st petitioner was chatting with a friend of his, one Deemon Ananda, around 10.30 p.m. on the 10th evening, a van bearing registration No.59-7101 stopped near them. The 1st petitioner was dragged inside the van, where he noticed 6 unknown persons, Samson, the 2nd petitioner and the petitioner in SC (Application) NO.968/97 (hereinafter referred to as 3rd petitioner), who is the elder brother of the 1st petitioner inside the vehicle. According to the 1st petitioner four of the unknown persons were armed with guns. The van went a short distance towards Wellawaya and stopped near the roadside. The 4 persons, whom the 1st petitioner later identified as police officers from Wattala Police Station started to assault him mercilessly inquiring about the name of his friends.

After a while, the police officer left the 2nd and 3rd petitioners at the Lunugamvehera Police Station and went with the 1st petitioner in search of his friends. After searching for several hours and arresting the friends whom the 1st petitioner had named, the police officers returned to Lunugamvehera Police Station around 2.00 p.m. on 10th October. The police officers brought the petitioners to a house at Pallemalala, Weligaththa around 3.00 a.m. on 11th October. The petitioners later learnt that it was the house of the owner of a van alleged to have been robbed. There the petitioners were shown to several hundreds of people who were gathered there as "vehicle robbers". In the evening of 11th October, the petitioners were brought to Wattala Police Station and the 3 Petitioners along with their friends, Upananda, Wasantha, Priyanga and Najith were detained at the police station. That night the petitioners were taken out of the police cell and were brutally assaulted by the police officers, who later brought them to Wattala.

On 12th October, the petitioners were taken to Palliyawatte Police Post at the Ela Kanda Road. Their wrists were rapped with a piece of cloth and the hands were tied with a nylon thread and they were hung on the roof and kept in that manner for a few minutes. Their legs were tied with a piece of coir yarn at the ankles and hung on their neck. In that position their soles were assaulted with a hosepipe. They were brought back in the night and were detained at the Wattala Police Station.

According to the petitioners they were produced before the Wattala Magistrate around 9.30 p.m. on 16th October and remanded. They were taken to Tangalle Prison on 18th October and produced at the Magistrate's Court, Hambantota on 22nd October.

The petitioners submitted that the 1st respondent by illegally arresting and detaining the petitioners and the 1st to 4th respondents by subjecting them to assault and torture have infringed their fundamental rights guaranteed under Articles 11, 13(1) and 13(2) of the constitution.

This Court granted leave to proceed in respect of the alleged infringement of Articles 11, 13(1) and 13(2) of the Constitution.

When this matter came up on the 30.06.2000, learned Counsel for the petitioners had submitted that he does not wish to proceed against the 4th respondent, as his whereabouts were not known. The Court accordingly discharged the 4th respondent from these proceedings, and also added the present IGP, Mr. B.L.V. de S. Kodituwakku as the 7th respondent.

The respondents have taken up the position that the three petitioners were arrested on suspicion of a robbery of a van. The 2nd petitioner was arrested at Wattala and on the information given by him the others were arrested. The respondent's version is that the 2nd and 3rd petitioners were arrested on 15th October at Wattala and Kamburupitiya, respectively and the 1st petitioner was arrested on 16th October at Kottawa. The respondents further submitted that "since the petitioners were reluctant to be co-operative with the investigations in ascertaining the truth, we had to use minimum force in view of getting the incident into light."

The mother of the 1st and 3rd petitioners and the Aunt of the 2nd petitioner, one G.W.Dingiri Menike had complained to the Tissamaharama Police Station on 14th October at 10.00 a.m.(P8). Her statement reveals that the 1st petitioner went to Colombo with the 2nd petitioner on the night of 05th October in order to attend the passport office. However, they had not returned until the evening of 10th October. On the early hours of 11th October a group of people, had come in a van inquiring about the 1st petitioner At that time she had seen the 2nd and 3rd petitioners lying unconscious inside the van. One Deemon Ananda, a friend of the 1st petitioner, in his affidavit had averred that the first petitioner was forcefully taken inside a van on the night of the 10th October.

The said G.V. Dingiri Menike had also made a complaint to the Grame Niladhari of Tissapura, Tissamaharama around 9.00 a.m. on 13.10.1997 stating that (P5) her two sons and Kusumsiri (the 3rd petitioner) were brought to her house late in the night of 10th October by an unknown group of people claiming to be police. She had also stated that her sons had been arrested in

connection with a vehicle robbery.

At the Magistrate's Court proceedings (P4), the Counsel for the petitioners had brought to the attention of the Magistrate that the respondents arrested the petitioners on the 09th and 10th October. The petitioners had also informed the DMO, Government Hospital, Tangalle that they had been in Police custody since 10th October 1997. Moreover, the complaints made by Dingiri Manike to the Tissamaharama Police Station and the Grama Niladhari on the 14th October and 13th October respectively, substantiates the position taken by the petitioners that they were arrested not on the 15th and 16th October, as suggested by the respondents, but on the 09th and 10th October 1997.

The Medico-legal Reports issued by the DMO, Government Hospital, Tangalle give the following details with reference to the three petitioners:

1st petitioner

SHORT HISTORY GIVEN BY THE PETITIONER

Assaulted by IP Koralalage, Police Station, Wattala on 10.10.1997.

Taken into police custody on 10.10.1997

Produced before Magistrate, Wattala on 16.10.1997.

INJURIES

Numbness of L/hand

Healing abrasions over the anterior aspect of L/forearm. 3cm x ½ cm in size and 3 cm above the L/wrist.

Healing abrasion over the meclial border of R/forearm at the R/wrist - 3 cm x 1 cm in size.

Contusion over the 2nd and 3rd meacarpo-phalangeal joints of R/hand

Tenderness over the heals

2nd petitioner

SHORT HISTORY GIVEN BY THE PETITIONER

Assaulted by IP Koralalage, Police Station, Wattala using a rubber hose.

INJURIES

Healed abrasions around R/wrist, 3 cm x 1 cm in size. Marks prominent on anterior side Not prominent on posterior side

Pain and tenderness of the L/wrist. Healed abrasion on the lateral border of L/wrist 2 cm in length

Healing contusion on the middle of the L/thigh 4 cm x 1 cm in size

3rd petitioner

SHORT HISTORY GIVEN BY THE PETITIONER

Assaulted by IP Korallalage, Police Station, Wattala

INJURIES

Healing abrasion on the anterior aspect of L/lower forearm, 5 cm x ½ cm in size, 3 cm above the L/wrist

Healing abrasion on the lateral wall of L/lower leg, 6 cm x ½ cm in size, 10 cm below the L/knee.

Healing abrasion on the lateral wall of R/lower leg, 5 cm x ½ cm in size, 2 cm above the R/ankle

Healing abrasion on the L/midclaiscular area and subclaiscular area, 4 cm x ½ cm in size.

Numbness of L/arm +

According to the DMO, Government Hospital, Tangalle, the injuries on the petitioners were caused by blunt weapons and "the age of healing of injuries was similar to the time of assault".

The respondents claim that the three petitioners were members of a group, who were involved in stealing vehicles. The 1st, 2nd and 3rd respondents in their affidavits, aver that the three petitioners were arrested as they were involved in a vehicle robbery. The 1st respondent in his notes had stated that the 2nd petitioner was arrested while he was in a van without a number plate. Moreover, there had been no documents in possession of the 2nd petitioner, pertaining to the vehicle. According to the material placed before this Court, it appears that there had been a reasonable suspicion that the petitioners were involved in this robbery. The arrest of the petitioners without a warrant by the respondents therefore cannot be regarded as an illegal act. I am of the view that they have been arrested in accordance with section 32 of the Code of Criminal Procedure. Therefore there has been no violation of Article 13(1) of the Constitution.

However, article 13(2) of the Constitution provides that,

"Every person held in custody, detained or otherwise deprived liberty shall be brought before the judge of the nearest competent court according to procedure established by law, and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such judge made in accordance with procedure by law."

"The procedure established bylaw" for the purposes specified in Article 13 (2) of the constitution is explained in the Code of Criminal Procedure. Section 36 of the Code thus, provides that,

"A peace officer making an arrest without warrant shall without unnecessary delay and subject to the provisions herein contained as to bail take or send the person arrested before a Magistrate having jurisdiction in the case."

It appears that the petitioners in these three applications, were arrested on the 09th and 10th October 1997. It is common ground that the petitioners were produced before the magistrate, Wattala around 9.30 p.m. on 16th October and remanded. Later they were taken to Tangalle Prison on 18th October and produced in Magistrate's Court, Hambantota on 22nd October. Section 37 of the Code of Criminal Procedure specifically provides that a person arrested, without a warrant cannot be detained for more than twenty-four hours. Section 37 reads as follows:

"Any peace officer shall not detain in custody or otherwise confine a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not exceed twenty-four hours exclusive of the time necessary for journey from the place of arrest to the Magistrate."

The respondents therefore had produced the petitioners before the Magistrates long after the twenty four hour period specified in section 37 of the Code of Criminal Procedure had lapsed which amounts to an infringement of the fundamental right guaranteed by Article 13(2) of the Constitution.

The medical evidence is consistent with the version of the petitioners and the injuries referred to have been sustained while the petitioners were in custody and at the hands of the 1st, 2nd and 3rd respondents. Atukorale, J. in *Sudath Silva v Kodituwakku*, IP ([1987] 2 Sri L.R. 119, at pg 127) said that,

"The petitioner may be a hard-core criminal whose tribe deserves no sympathy. But if constitutional guarantees are to have any meaning or value in our democratic set up, it is essential that he is not denied the protection guaranteed by our Constitution".

Although the respondents had a reasonable suspicion to justify the arrest of the three petitioners, after the arrest, the 1st, 2nd and 3rd respondents should have dealt with them, according to the procedure laid down by the Code of Criminal Procedure Act and without a denial of the protection guaranteed by the constitution to the petitioners. It is clear that the three respondents have overstepped their authority and in the process violated the fundamental rights of the petitioners guaranteed by the constitution.

I therefore declare that the fundamental rights guaranteed by Articles 11 and 13(2) OF THE Constitution have been violated by the 1st, 2nd and 3rd respondents in respect of Ubeysinghe Weerabanddana Arachchige Neil Ajantha, the applicant in SC(Application) No. 966/97, Ubeysinghe Weerabaddana Arachchige Kusumsiri, the applicant in SC

(Application) No.967/97 and Ubeysinghe Weerabanddana Arachcige Samantha Priya Kelum Ubeysignhe, the applicant in SC (Application) NO.968/97.

I make order that each of these above-mentioned petitioners be paid a sum of Rs 5000/- by the State as compensation and costs.

The Registrar of the Supreme Court is directed to send a copy of this judgement to the Inspector General of Police.

JUDGE OF THE SUPREME COURT

S. N. SILVA, C.J.

I agree

CHIEF JUSTICE

EDUSSURIYA, J.

I agree

JUDGE OF THE SUPREME COURT