

**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

S.C. (FR) Application No. 506/2000 -

M. M. Sarath, No. 128, Palpita, Mandawala.

Petitioner:

Vs.

1. Inspector Munasinghe,
Officer-in-Charge, Police Station, Pugoda.
2. Police Constable Bandara, Police Station, Pugoda.
3. Police Sergeant Chandana, Police Station, Pugoda.
4. L. Kodituwakku, Inspector General of Police,
Police Head Quarters, Colombo 1.
5. The Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents:

BEFORE: FERNANDO, J. ISMAIL, J. EDUSSURIYA, J.

COUNSEL : Anil Silva with Nandana Perera, For Petitioner
Harsha Gamlath, For 1 st., 2 nd., and 3 rd. Respondents
Rohantha Abeysooriya, SC, For 4 th., and 5 th. Respondents.

ARGUED ON : 15. 02. 2001

DECIDED ON : 18. 05. 2001

EDISSURIYA, J.

The Petitioner has instituted these proceedings claiming compensation from the Respondents on the basis of an alleged violation of the fundamental rights guaranteed and protected by Articles 11, 13 (1) and 13 (2) of the Constitution.

The Petitioner claims that although during the period relevant to this application he had been residing with his wife at his brother Gamini's residence he was supervising the

construction of a house at Kalagedihena for his sister, one Vinitha Rukmani who was also residing at his brother Gamini's house, and that on 3 / 9 / 2000 after having supervised the construction of the house he had gone to sleep at a house in the neighborhood since they had planned the laying of the concrete slab the following day, and that between 1.00 a.m. And 2.00 a.m. of 4/ 9/ 2000 his brother Gamini had come there and awakened him and informed him that officers from the Pugoda Police Station wanted to interrogate him.

The Petitioner had then gone upto the 1 st. And 2 nd. Respondents and the 1 st. Respondent had questioned him about the murder of one Kambikotuwe Ralahamy (the father of one Duleep Wijesekera a Provincial Council member of the People's Alliance Party) which had been committed in 1989 and thereafter the 1 st. Respondent had ordered the Petitioner to get into the Police vehicle and was taken to the Pugoda Police Station and that in the vehicle too he was questioned further about the murder of Kambikotuwe Ralahamy and more particularly about his working for one Suranimala Rajapakse and his connection with the United National Party. That on the way , at Nittambuwa the Petitioner's brother Gamini was dropped at his home. After reaching the Pugoda Police Station the 1 st. Respondent had taken the Petitioner to the 1 st. Respondent's room and dealt a few blows on the Petitioner's legs with an iron rod and had threatened to break his legs if he did not speak the truth. Thereafter the Petitioner had been locked up in the Police cell.

At about 1.00 a.m., on 5 th. September 2000 the 2 nd. Respondent had come to the cell in which he had been locked up, covered his face with a white cloth and taken him to the upper floor and someone had thereafter tied his hands together with a rope and instructed him to get onto a chair. After he had done so, the chair had been removed and he found himself hanging from the roof by a rope attached to his hands, and thereafter he had been further questioned about Kambikotuwe Ralahamy's murder and when he denied knowledge of it he was dealt blows on his feet, ankles, knees, buttocks and other parts of his body with clubs. The Petitioner has also stated that one of the persons present at the time had addressed another as "Sir", and that he had been swung to and fro, and that when the cloth which covered his face got disentangled he saw the 2 nd. and 3 rd. Respondents and one other Police Officer. Since he could not bear the pain, on his saying that he would tell them the truth if he were brought down, the persons present in the room had taken him down. Thereafter, when the Petitioner once again denied knowledge of the murder those Police Officers had remarked that " the Petitioner is a hardened man, whatever we may do there is no point " and put him back in the Police cell.

Thereafter he complained that he felt that his hands and legs were fractured a Police Officer had been directed to take him to Wedagama for treatment. Then on 06 th. September 2000 he signed a prepared statement as he thought that he would be released if he signed it. The Petitioner has stated in his Petition and Affidavit that he did not place his correct signature on the statement and that later in the day he was produced before the Pugoda Magistrate on a report , which alleged that he was in possession of a forged seal. The Petitioner had informed the Magistrate that he had been assaulted and the Petitioner had been released on bail.

As opposed to this version given by the Petitioner the 1 st. Respondent has said in his affidavit that on receiving a complaint at about 9.30 p.m. on 3 rd. September 2000 from one Gunawardane regarding the Petitioner demanding a sum Rs. 2000/- for the purpose of issuing a Police Report, he the 1 st. Respondent had left the Police Station at 10.20 p.m. with a team of Police Officers which included the 2 nd. Respondent to investigate into the said complaint and arrived at the Petitioner's house at Palpita and that the Petitioner's father had informed him that the Petitioner was at his brother's house at Nittambuwa and that he had inspected that house and although the Petitioner's brother was there, the Petitioner was not there. The Affidavit is silent with regard to what the 1 st. Respondent did that night thereafter, and further the very next paragraph of the 1 st. Respondent's affidavit refers to S. I. Herath, the 2 nd. and the 3 rd. Respondents leaving the Police Station at 9.45 a.m. on 5 th. September for further investigations.

So that, it appears that the 1 st. Respondent who on the night of 3 rd. September on receiving the information at 9.30 p.m. regarding the Petitioner undertaking to issue a Police Report thought it necessary to set off at 10.20 p.m. that night itself (after having recorded another statement at 10.10. p.m.) to investigate into the complaint went as far as Nittambuwa to the Petitioner's brother's house, then suddenly lost interest in his search for the Petitioner and returned to the Police Station at 3.00 a.m. on 4 th. September and according to 1R2b and nothing further regarding the said complaint until the morning of 5 th. September when he instructed S. I. Herath to carry out further investigations. However from 1R1d S. I. Herath's notes, it appears that investigations had started from scratch once again, since they went to the Petitioner's house at Palpita and inquired from the Petitioner's father and was told that the Petitioner was at the brother's house and then proceeded to the brother's house at Nittambuwa. However it appears from the said notes that S. I. Herath unlike the 1 st. Respondent had the presence of mind to inquire from the Petitioner's brother where the Petitioner was and it also appears that the Petitioner's brother had given the information sought and consequently the Petitioner was apprehended at a place where he was supervising the construction of a house at 1 p.m. on 5 th. September 2000. However P 10 shows that the Petitioner's brother was working at People's Bank on that day, from 7.15 a.m. to 8.00 p.m.

Can it be accepted that this information regarding the whereabouts of the Petitioner was not sought from the Petitioner's brother by the 1 st. Respondent on the night of 3 rd. September ? The 1 st. Respondent is silent on this and does not even attempt to give any explanation for his not having pursued with the investigation that night, or even the following day.

On a balance of probabilities the Petitioner's version that the 1 st. Respondent came with the Petitioner's brother and took him (Petitioner) into custody in the wee hours of 4 th. September must necessarily be accepted. This position is further supported by the fact that on 5 th. September the Petitioner's sister had come to Colombo and made a complaint to the Human Rights Commission at 10.20 a.m. that the Petitioner had been arrested on the night of 3 rd. September and had been assaulted by the Police.

According to the Affidavits filed by the 2 nd. and 3 rd. Respondents and the notes of S. I. Herath (1R1i) after the Petitioner was taken into custody at 1.00 p.m. on 5 th. September the Petitioner was brought to the Police Station and on being questioned the Petitioner had revealed that he had hidden a forged Police frank in an almirah at his house in Pelpita. Thereafter according to the

notes about 7.00 p.m. that evening the Petitioner had been taken to his house in Pelpita where the Petitioner opened an almirah , which was not locked and took out a rubber frank and handed it over to S. I. Herath, and thereafter, the Petitioner had been injured as a result of his hitting against an iron rod used for husking coconuts, and falling, and then on jumping onto the roadway leading to the house of the Petitioner which roadway was about 12 feet below and thereafter by falling into a ditch when he was running away and the use of minimum force to subdue the Petitioner, when the Petitioner attempted to escape from Police custody.

On the question of the recovering of the forged rubber frank from an almirah in the Petitioner's house it is interesting to note that according to the 1 st. Respondent's notes 1R2b there was nothing found when the 1 st. Respondent examined the almirah in the Petitioner's house. Neither the affidavits of the 2 nd. and 3 rd. Respondents nor Police notes speak of a second almirah in the Petitioner's house at Pelpita. Thus, the entire story relating to the recovering of a forged rubber frank and the Petitioner coming by his injuries when he attempted to escape thereafter must be rejected, since there was no need for an attempt to escape if there was no forged Police rubber frank, which must lead therefore to the obvious inference that the Petitioner came by his injuries as a result of an assault by the Police Officers, namely, the 1 st., 2 nd. and 3 rd. Respondents after the Petitioner was arrested in the early hours of 4 th. September 2000.

I may also add that it is also rather difficult to accept that after the Petitioner informed the Police that he could show where he had " hidden " the forged Police rubber frank that the Petitioner was taken from the Police Station without being handcuffed, and without even taking a pair of handcuffs along, and that the injuries on the Petitioner's wrist were caused by a nylon cord (which, according to the affidavits of the 1 st. to 3 rd. Respondents was " found there ") which was used to tie the wrists of the Petitioner together after the Petitioner attempted to escape. This explanation to my mind on how the Petitioner's wrists came to be injured is far fetched, whereas the Petitioner's version that his wrists were injured as a result of him being hung by his wrists with a rope is more consistent with the injuries.

I may also add it is clearly the position of the 1 st. to 3 rd. Respondents that the Petitioner who had no injuries at the time of his arrest at 1.00 p.m. on 5 th. September received the injuries complained of, sometime after 7.00 p.m. the same day when he attempted to flee from Police custody, and that the Petitioner was falsely accusing the 1 st. to 3 rd. Respondents of having caused the said injuries on the nights of the 3 rd. and 4 th. September. If that be so, the Petitioner could easily have said without causing any damage to his allegedly false allegation, that he was assaulted by the 1 st. to 3 rd. Respondents after he was taken into custody on 5 th. September, since this is not a case where the Police say that the Petitioner had injuries at the time the Petitioner was taken into custody on 5 th. September.

In these circumstances it must be accepted that having beaten the Petitioner on his legs and buttocks with an iron rod, the Respondents have made a feeble attempt at explaining the injuries caused thereby by saying that the Petitioner tripped over an iron rod meant for husking coconuts and fell on his buttocks when the Petitioner jumped onto the road.

The Diagnosis ticket P1 issued by the Medical Officer of the Wathupitiwela Hospital who examined the Petitioner on 8 th. September 2000 discloses that the Petitioner had contusions on

his buttocks, right wrist, a healed abrasion on the left wrist, healed abrasion five (5) inches below the right knee joint, tenderness below the left knee and a healed abrasion on the left nipple which said injury the Petitioner had informed the Medical Officer was caused by the Police with a pin.

For the above-mentioned reasons I hold that the 1 st. 2 nd. and 3 rd. Respondents have violated the Petitioner's Fundamental Rights guaranteed and protected by Articles 11, 13(1), 13(2) of the Constitution and award the Petitioner a sum Rs. 35,000/- as compensation and costs of which the said sum Rs. 15,000/- is to be paid by the 1 st. Respondent, Rs. 10,000/- by the 2 nd. Respondent and Rs. 10,000/- by the 3 rd. Respondent on or before 31 st. July 2001.

JUDGE OF THE SUPREME COURT

FERNANDO, J.

I agree.

JUDGE OF THE SUPREME COURT

ISMAIL, J.

I agree.

JUDGE OF THE SUPREME COURT